

**TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
DECEMBER 5, 2007  
MINUTES**

**PRESENT:** Rick Johnson, Board Member  
Catherine Kauffman, Board Member  
Hope Ozer, Board Member  
Jonathan Wainwright, Board Member

**ABSENT:** Phil Hagenah, Board Member  
Emily Kile, Chair  
O'Dell Kiel, Board Member

**STAFF:** Eva Cutro, Planning Director  
George Burton, Planner  
Steven Zraick, Assistant Town Attorney

**CALL TO ORDER**

The work study session meeting of the Town of Paradise Valley Board of Adjustment was called to order by acting Chair Johnson at 5:30 p.m.

**REGULAR BUSINESS**

**Consideration of a variance from the Zoning Ordinance, Article XXIV, Walls and fences, to allow for an increase for a fence wall, located at 6701 E. Doubletree Ranch Road.**

Mr. Burton provided an overview of the case. He reported this is a request by John and Shelly Dougherty. The applicant requests a variance from the Zoning Ordinance, Article XXIV, Section 2404 b Setback Regulations 2 Adjoining Local, Collector and Minor Arterial Streets, of the Zoning Ordinance for increased height of a fence. Section 2404 2 requires a setback of 40' in the front yard for a fence over 3' in height.

Mr. Burton explained the previous owner of the property, Eagle Canyon Realty LCC represented by Mr. Paul Ryan, applied for a permit to "add approximately 100 lineal feet of 3 foot view fence to an existing 3 foot block wall". The plans showed a 10' setback. The permit was approved with a note in red that stated, "Minimum 40' from the Property Line".

In response to a question from Board Member Ozer, Mr. Burton reviewed the general practice that is in place for reviewing plans for a permit.

Mr. Burton stated an inspection on August 14, 2007 revealed that the wall was too high and needed to be 40' from the front property line. After several discussions with Mr. Ryan, the Building Safety Manager, Robert Lee, revoked the permit and informed the owner that the wall would have to be lowered 3' (prior to the transfer of ownership to the Dougherty's). Mr. Ryan agreed to lower the wall to 3' however, during conversations with Mr. Ryan, the town was told that the Dougherty's would not allow his crews to access to the property to lower the wall.

Mr. Burton provided information on the lot history and lot condition. He stated the fence is visible from the road but sits well back from the pavement. Staff believes the fence is sensitive to the existing architecture of the home. However, staff cannot recommend approval of this variance request do to the clear violation of the Zoning Ordinance.

Mr. Burton reported staff has received eight letters for approval of this variance request. He further reported that he received a phone call from a resident in opposition to the request.

Mr. Burton responded to questions and comments from the Board members regarding the proposed variance.

Board Member Wainwright commented that Doubletree Ranch Road in this particular area is oddly shaped. A discussion ensued regarding the different setbacks in this area. It was noted that there is a house east of this house with a similar configuration on the road with a view wall above it.

Chair Johnson requested at the public hearing the applicant address why the property was sold before Mr. Ryan had the opportunity to correct the violation.

A brief discussion ensued regarding the wall ordinance changes and the wall ordinance as it relates to major and minor arterials.

Board Member Wainwright moved to adjourn the work study session. Second by Board Member Ozer. The motion passed unanimously.

The regular meeting of the Town of Paradise Valley Board of Adjustment was called to order at approximately 5:50 p.m.

Chair Johnson reviewed the meeting procedures.

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to deny the variance request for a 2 foot encroachment in the wall height. Denial will require the removal of the 2 additional foot high fence wall at a front yard setback of 10 feet, located at 6701 E. Doubletree Ranch Road.

Mr. Burton reviewed the findings in favor and the findings opposed for this request.

Board Member Ozer inquired if it was standard practice to approve a permit with a note in red that stated, "Minimum 40' from the Property Line". Ms. Cutro discussed the standard practice. She explained that the plan was not clear.

Shelly Dougherty, applicant, provided the history of events that took place that led to their purchase of the home. She explained this is the house that they wanted to raise their family. If they lived on a street with heavy traffic they wanted the house to be safe. On July 10th, 2007 they submitted a purchase offer to obtain the property. Terms of the purchase included the addition of a wrought iron view fence to be placed on the existing 3 foot front wall.

Ms. Dougherty reported that they paid for this fence as part of the total purchase price of their home. Had they know that the fence was not within zoning at the onset they would have not purchased this home?

Ms. Dougherty stated that this project was built 'in good faith by all parties. She further stated that she found out about the problem at 4:00 p.m. the day escrow closed. She further stated that the neighborhood is in full support of the variance. She added that she felt the variance would be in harmony with the spirit of the zoning code.

John Dougherty stated if you look at the transfer records they bought 1.2 acres because they thought that they owned the land all the way to the street. They were upset to find out they only purchased a one acre lot.

Ms. Dougherty noted that they had no idea the right-of-way is so large. She explained why she felt this street does not meet the standards for a minor arterial. Ms. Cutro provided information on the standards for minor and major arterials.

Mr. Dougherty reiterated that the purpose of the higher fence is to create a barrier for the safety of their children. He stated they have created something nice looking.

Mr. Dougherty inquired about their options regarding the double fence issue in the back yard. Ms. Cutro explained their options. It was noted that this issue does not relate to this request.

Chair Johnson opened public comment.

Bob Passariello, 6647 E Doubletree Ranch Road, spoke in favor of this request. He stated that he felt the wrought iron fencing that was added to the existing fence looks great. He further stated that it is really not noticeable and is for the safety of their children.

Chair Johnson closed public comment.

Chair Johnson stated it is important to note the recent zoning code changes that have occurred in the last few years.

Board Member Wainwright stated the properties that have received recent building permits were not required to give up the additional right-of-way that would have squared off that road.

Board Member Ozer moves for approval of Case No. BA-07-06, a request by John and Shelly Dougherty, property owners of 6701 E Doubletree Ranch Rd., for a variance from the Zoning Ordinance, Article XXIV, Section 2404. The variance will allow the applicant to keep an existing wall at 5 feet high, at a front yard setback of 10 feet.

Board Member Ozer stated she finds that there are special circumstances, applicable to only the subject lot, meeting the variance criteria.

Second by Board Member Wainwright.

Board Member Wainwright stated that he felt the applicants' and the previous owner's acted in good faith and relied on the information from various government agencies. He further stated that he did not feel they are being granted a special privilege because it is a privilege that would be consistent with what most people in the Town would have if this were not a right-of-way anomaly. He noted that he felt when the wall ordinance was discussed and passed that this is something similar to what they intended to be constructed and this is in spirit and harmony of the wall ordinance.

Chair Johnson called for a roll call vote. The motion passed unanimously by a vote of four (4) to zero (0).

## **BOARD/STAFF REPORTS**

Mr. Burton informed the Board that the Town Council confirmed the election of Emily Kile to serve as chair of the Board of Adjustment.

Mr. Burton reported there is one variance requested scheduled to be heard at the January 2, 2008 meeting. He further reported because of the holiday there might not be a quorum so he suggested holding the meeting on January 9, 2008. The Board members concurred with staff's suggestion.

## **EXECUTIVE SESSION**

The Board of Adjustment may convene in executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding the requests described under Regular Business as authorized by AIR'S. 38-431.03.A.3.

**ADJOURNMENT**

Board Member Ozer moved to adjourn the meeting at 6:30 p.m. Second by Board Member Wainwright. The motion passed unanimously.

  
\_\_\_\_\_  
Eva Cutro, Secretary