

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
FEBRUARY 7, 2007
MINUTES**

PRESENT: Rick Johnson, Chair
Phil Hagenah, Board Member
Emily Kile, Board Member
O'Dell Kiel, Board Member
Catherine Kauffman, Board Member
Hope Ozer, Board Member
Jonathan Wainwright, Board Member

STAFF: Eva Cutro, Planning Director
George Burton, Planner
Jim Davis, Town Attorney

CALL TO ORDER

The regular meeting of the Town of Paradise Valley Board of Adjustment was called to order at 7:00 p.m.

REGULAR BUSINESS

PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow for an encroachment into the setback for a fence wall, located at 5121 N Invergordon Rd.

PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow for an encroachment into the setback for a fence wall, located at 5149 N Invergordon Rd.

Chair Johnson announced that these two cases would be presented together but voted on separately.

Chair Johnson reviewed the meeting procedures.

Mr. Burton presented these cases as per the project coordination packet. Staff recommends motions to deny the variance requests to construct a meandering 6 foot high fence wall at an average setback of 15 feet from the front/west property line. The properties are located at 5121 N Invergordon Road and 5149 N Invergordon Road.

Mr. Burton reviewed the findings in favor and the findings opposed for these requests.

Mr. Burton responded to questions from the Board members regarding the proposed variances.

Brian Miller, 8408 E Shea Blvd, #D-100, Scottsdale AZ, applicant representative, stated at the last meeting we asked for a continuance. He further stated that we took the Board's comments very seriously and took them back to the applicant. He remarked that we hope the new proposal will be approved this evening.

Mr. Miller reviewed the new proposal. He explained the overall plan is to combine the properties into one lot; tear down the existing home that is on 5121 N. Invergordon Road and construct a barn with corral on the south end of the combined lot. The home that is currently located on 5149 N Invergordon Road would become the primary residence for the combined property. The setback frontage along Invergordon Road would be landscaped with lush vegetation and the meandering wall that is being requested in this variance application would allow the Owner to save most of the mature trees and cactus that are currently planned on the properties.

Mr. Miller discussed the traffic issues on Invergordon Road. He requested that Invergordon is considered as a major arterial. He also discussed the parking issues related to the Cholla Trail. He reported the owner has to content with the constant noise of vehicles, people parking in their driveways, loitering in front of the property, trash being left behind, and occasions when hiker have used their front vegetation as a place to urinate.

Mr. Miller stated without the approved fence variance, this property could not be remodeled under the current 40' setback guidelines because the front door of the property would virtually be at the wall setback, access to the garages would be non-functional, and there would be no privacy and/or security from pedestrian traffic.

Mr. Miller responded to questions and comments from the Board members' regarding the proposed variances.

Board Member Emily Kile stated that it is her understanding if all three lots were combined the applicant would not need a variance. Mr. Burton replied that if these three lots were combined, then 5121 N Invergordon would become the rear yard (which would allow for a meandering 6 foot high wall at a 15 foot setback). Mr. Burton discussed what options the applicant would have if the three lots were combined. Board Member Wainwright stated an alternative would be to abandon the variance to the north.

Chair Johnson inquired about the current use of 5149. Mr. Miller replied that it used as a guesthouse and children's playhouse.

Board Member Ozer stated that the most logical entry would be on the east side in which case the driveway on the west side would be less significant. Mr. Miller replied that the

driveway to 5149 is used daily for the nanny, for people staying at the house and for service people. It is a fully functioning house.

Board Member O'Dell Keil expressed his frustration that at the last meeting the Board was advised that the house at 5121 was not going to be demolished and may be remodeled and that the 40 foot setback would cause a problem because it would be within 7 feet of the house and today the plan is to demolish that structure which then the variance would not be needed. Mr. Miller replied that the variance would still be needed in order to allow for the construction of the barn.

Board Member Kauffman stated at the last meeting we discussed combining the two lots. She inquired why the applicant did not make an attempt to combine the two lots. Mr. Miller replied that the lots will be combined but they did not have time do it within this timeframe.

Board Member O'Dell Keil stated that there does not appear to be an overall game plan and that he would like to see one.

Chair Johnson stated in the information provided by the applicant it states the location of the Phoenician Resort and one of the resorts primary entry/exit gates across the street as a hardship. He further stated that every time he has driven past it is closed. Mr. Miller replied that the gate is used at certain times. He stated that he has been to many functions when the gate is used.

Chair Johnson inquired how this fence will prevent the driveway from being used as a turn-around for vehicles. Mr. Miller replied that part would be the additional vegetation. Chair Johnson stated that he did not see how a fence or vegetation would correct this particular problem.

Chair Johnson stated with regard to the Cholla Trial, how the meandering fence will cure the problem of the City of Phoenix not enforcing the illegal parking. Mr. Miller stated that it would provide more privacy so that they cannot see the cars, traffic and see people walking up and down the street.

Chair Johnson inquired how putting the fence back is going to improve the loitering issue. Mr. Miller replied right now we have a three foot wall and it is basically a place fore people to sit and rest. Chair Johnson inquired if Mr. Miller had information on the number of people over a given period of time that sit on the wall, and how many people urinate on the fence. Rod Cullum, 6501 E Cheney Drive, stated that they would need to request a continuance in order to gather that information. The consensus of the Board is that that information is not needed.

Board Member Emily Kile stated that every comment seems to be related to the convenience of the applicant and the desire to use as much of the property as they can.

She further stated that she would agree that a 40 foot setback is a big setback but that is the setback set by the code. She remarked that the 40 foot setback should be easier due to the fact that each lot is two and a quarter acres and does not have any unusual conditions. The applicant should be able to work within the code. She further remarked that nothing she has heard indicates a hardship. She added that she did not see how any of the six variance criteria are being met. She expressed her concern regarding the fact that different proposals regarding the plans for the structures on the property have changed since the last meeting.

Board Member Hagenah stated that he would agree with the applicant's concerns regarding the noise and littering issues, but it would seem to be more beneficial to keep the wall closer to the road rather than bringing it back from the road. He further stated that he liked that they are saving all of the vegetation because they need as much buffer as possible. He remarked that the gate at the Phoenician is almost always open.

Board Member O'Dell Keil stated that he would agree that Invergordon is a heavily traveled road and having a meandering fence as proposed would be in line with that part of the neighborhood. He further stated that he would agree with Board Member Emile Kile that this does not meet any of the criteria. He expressed his concern regarding they have heard different plans from one meeting to the next regarding the plans for the structures on both lots.

Board Member Wainwright stated that in general he felt their proposal is reasonable. He further stated that he sat on the Board that granted the same variance to the property to the south because at that time we felt it was a hardship. He commented that he felt this street may be designated as a minor arterial but it is a very busy street and he felt that it seems reasonable to treat it as a major arterial to accommodate the meandering wall. He further commented that he sees this is as a hardship. He added with regard to changing the plans, he did not see this as being any sort of deception. He further added that he would support the variance.

Board Member Kauffman stated that when on two plus acres the owners' cannot go back 40 feet is sad commentary.

Board Member Wainwright stated the fact that this is a larger property and people with larger properties are usually trying to subdivide, he felt this applicant should be given some latitude because he is trying to combine the properties and that is more in keeping with the open space that the Town desires.

Chair Johnson stated that for two months he has been driving past these properties looking at it and trying to figure out what the applicant wishes to accomplish. He further stated at this point he has no idea what the applicant intends. He remarked that he felt this is situation where the cart is before the horse that the applicant is asking for a fence variance before the real plans for the property have been developed and presented to the

Town. He further remarked that he felt this request is out of convenience for the applicant and is not out of hardship.

Mr. Cullum clarified what the applicant's intentions are for the two structures on 5121 and 5149. He reiterated that the applicant is requesting that the Town treat Invergordon as a major arterial in order to accommodate the proposed meandering wall.

Board Member Emily Kile reiterated that she felt this request is out of convenience and not hardship.

Board Member Ozer moved that the Board deny Case No. BA-06-09, a request by Safe Haven Family Limited Partnership/Ed Gaylord, property owner of 5121 N Invergordon Rd., for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, Section 2404, to allow the applicant to construct a meandering 6 foot high fence wall at an average setback of 15 feet from the front/west property line. Second by Board Member Kauffman.

The parties had a brief discussion regarding the issues related to this variance.

The motion passed by a vote of five (5) to two (2) with Board Member Hagenah and Board Member Wainwright dissenting.

Board Member Emily Kile moved that the Board deny Case No. BA-07-01, a request by Safe Haven Family Limited Partnership/Ed Gaylord, property owner of 5149 N Invergordon Rd., for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, Section 2404, to allow the applicant to construct a meandering 6 foot high fence wall at an average setback of 15 feet from the front/west property line. Second by Board Member Kauffman.

The motion passed by a vote of five (5) to two (2) with Board Member Hagenah and Board Member Wainwright dissenting.

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 advise regarding the requests described under Regular Business as authorized by A.R.S. 38-431.03.A.3.

BOARD/STAFF REPORTS

Review of the State Statute and Variance Criteria

Mr. Miller provided information on the governance of the state statute and variance criteria. He discussed past Board of Adjustment cases that lead to some of the criteria

being developed. He also provided information on what other cities do with regard to granting variances. He responded to questions and comments from the Board Members regarding this issue.

Mr. Miller discussed some possible options regarding the previous cases. He also discussed the wall code and previous Board of Adjustment cases regarding wall variances.

Mr. Miller provided information on Proposition 207.

At the request of Board Member Ozer, Mr. Miller provided a brief overview on meeting procedures.

ADJOURNMENT

The meeting was adjourned at 7:55 p.m.



Eva Cutro, Secretary