

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
JANUARY 3, 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

The regular meeting of the Town of Paradise Valley Board of Adjustment was called to order at 6:00 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.

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

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

Chair Johnson reviewed the meeting procedures.

Rod Cullum, 6501 E. Cheney, stated he is representing the Gaylord's who are the property owners of this property as well as the property to the north as well as the property behind that on Wilkerson. They have just short of eight acres that they own and want to enjoy. He further stated that he sat on the Planning Commission that wrote this fence ordinance. He noted that you cannot, when writing an ordinance, think of every situation that will occur in the Town. The ordinance uses major and minor arterials which is something we had major discussion. This street is one of the major streets even through it is not classified as such. When writing the code the Planning Commission

looked at and relied upon the variance process to give relief from the code when warranted.

Mr. Cullum stated with regard to the discussion that this request is for the owner's convenience, he does not know what variance isn't for the owner's convenience. He further stated that the application that the Board heard last month there is no application of greater convenience than to violate the setbacks to enlarge a house and put a garage on it.

Mr. Cullum stated the hardships on this property are the Cholla Trail, public parking, public access, higher traffic than all but three streets in the Town, there are physical circumstances on the property that are unique and limited to three properties in the Town. He further stated that he felt this request is a good candidate for a variance. He discussed the topography on the lot.

Mr. Cullum responded to questions and comments from the Board Members regarding this variance request.

Board Member Ozer inquired if the applicant had considered just continuing the oleanders on this property so there would be one continuous hedge and then they would not need a variance. Mr. Cullum replied that the homeowner does want the park like landscaping and oleanders, but the oleanders do not provide the security that the wall would provide.

Chair Johnson inquired if a lesser setback would be required if it is an open fence. Mr. Burton replied that there is, but it does not apply to the front yard. Mr. Cullum stated that an open fence does not provide the privacy that is mandated for this particular situation. There are hundreds of people everyday on the Cholla Trail that walk along this yard. He provided information regarding the issues that relate to the Cholla trail.

Chair Johnson inquired if the applicant has any documentation or studies that identify how many cars are parked in front of the subject property at different times during the day. Mr. Cullum replied they would be happy to get that information if it is a requirement of this Board. Chairman Johnson noted that this illegal parking, litter and loitering are law enforcement issues and not zoning issues. Mr. Cullum noted that an applicant was granted a variance in 1998 on the same issue.

Board Member Emily Kile requested a clarification from staff; a variance does not have precedential value from one property to another property regardless of when it was granted or why it was granted. Mr. Burton replied in the affirmative.

Board Member Emily Kile asked a series of questions regarding the topography on this lot. Mr. Cullum provided information on the topography.

Board Member Emily Kile inquired about the plans for the house. Mr. Cullum reported the intent at this point is to try to make this existing facility a tack room and a caretaker type facility out of the existing structure by adding stable areas for the horses, and potentially adding a riding pen.

Board Member O'Dell Keil stated with regard to the Cholla Trail, he has been going by there everyday since last Friday to get a feel. He further stated today there were more than 10 cars parked there. He noted that he wanted to cross the street to get a better look at the property and it must have taken him several minutes before he could find a break in the traffic to cross to that side of the street. He further noted that he has never seen anyone on the Paradise Valley side of that street walking to the trail. They have always been on the Phoenix side. He inquired if the applicant knew when their plans to modify the existing structure will be definitive. Mr. Cullum explained that they are in the design phase for this, as well as for the existing home to the south, and the home on Wilkinson Rd. The problem is figuring out how to locate everything if they in fact have to deal with this fence at a 40 foot setback verses a 10 foot setback to the property to the south.

Board Member O'Dell Keil stated that this a chicken and an egg thing. He further stated that it would be nice for us to get a feel for what that structure is going to end up looking like because he wonders why they are asking for a variance before they know how that property is finally going to look.

Board Member Hagenah inquired what the hardship is with the trail. He stated that it would seem being further away from the trail would be better. Mr. Cullum replied because the existing structures are at 40 feet. The functionality of the property to the north is rendered useless if they build a wall at 40 feet back.

Board Member Wainwright stated last month he made a motion that would grant the variance but require a stipulation that there be lush landscaping, dense landscaping consistent to what is there now, and if such a variance were granted with the same type stipulation, would that be okay. Mr. Cullum replied that it would be acceptable.

Board Member Wainwright inquired if the applicant would have any interest in a variance that is less than 10 feet or would they rather be turned down and start from scratch. Mr. Cullum replied they would be receptive to the idea of investigating a meandering wall.

Chairman Johnson stated there are two decisions the Board can make this evening: They can vote on the current application or they can entertain a request for continuance.

Board Member Hagenah stated that he felt it was unfortunate that both of these did not come up at the same time. He further stated that it would behoove everybody to maybe re-look at this.

Board Member Emily Kile stated that she is not convinced that this request meets all six criteria in order to move a wall closer to the property. In fact, it has been stated that since the hardship is out side the property, moving the wall closer in and moving the subject property further away from the thing that is offensive seems like a better solution than moving the wall closer to the street. She further stated that the existing house was built in the 60s and it is going to need all new electrical, plumbing walls, and roof so she is not sure what is going to be left over other than the pad. She commented that she would hate for the applicant to go through the time and the effort to rework an application when she is not sure the hardship has changed or that the circumstances will have changed as a result. She further commented that she did not feel like even if they go back and rework it and put a meandering wall in that that somehow changes any of the criteria or fixes the hardship of the fact that there are 100 people who climb up the trail everyday.

Board Member Ozer inquired if the property owner intends to combine these two properties. She further stated that it seems like that should have been done before applying for the variance. Mr. Cullum stated that they are going to end up having to combine the two lots in order to accomplish the size of the stables. A discussion ensued regarding how combining the two lots would impact the setbacks. Mr. Cullum stated that he would be open to a continuance so the two applications could be heard together. The parties also discussed the process for legally combining the two lots.

Board Member Hagenah moved that the Board approve Case BA-06-09. The variance will allow the applicant to construct a 6 foot high fence wall at a setback of 20 feet from the front/west property line. The fence will comply with all other zoning requirements. Second by Board Member Wainwright.

Mr. Cullum requests an amendment to the motion to allow a meandering wall. A discussion is held with the parties regarding the motion and proposed amendment.

Based on the discussion, Board Member Hagenah rescinds his motion. Board Member Wainwright rescinds his second.

Board Member Hagenah moved that the Board continue Case BA-06-09 to the February 7, 2007, Board of Adjustment meeting. Second by Board Member Wainwright.

Board Member Ozer inquired if this motion were to be approved could it be approved on the contingency that the lots are combined or are they approved as two separate lots. Mr. Burton replied approved as two separate lots. Ms. Cutro explained there would be two separate applications and the Board would make two separate motions. Unless the applicant legally combines the two lots.

Board Member Emily Kile inquired if you can come before the Board after a variance has been denied as many times as you want and ask again. Mr. Davis replied in the affirmative. He stated that there is no time limit you have to wait.

Board Member Emily Kile stated that she assumes if people are in favor of continuing it then they feel it meets all six variance criteria to move forward in the future even though when we voted last month the majority did not feel that the property to the north met all six variance criteria.

Chair Johnson stated that he would be in favor of letting the applicant work with staff to try and come up with a solution that works for everyone.

Board Member Emily Kile stated that she would like to reiterate that this is a property that is two and a half acres big that we are trying to save a structure that is forty some years old and that there are no topography issues other than the small section to the south where there would be no structures where the topography goes down. She further stated that she is having a hard time understanding how this lot meets the six criteria. She added she cannot get her mind around how this is a hardship.

Board Member Ozer stated that she still feels the two properties should be combined when we deal with them. She further stated that the expectation is that the applicant work with staff to put something together that makes sense.

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

CONTINUATION: Consideration of a continuance for the variance request from the Zoning Ordinance, Article X, Height and Area Regulations, to allow for the construction of fence wall prior to the construction of the main building, located at 5203 N Monte Vista Drive.

Mr. Burton advised the Board that the applicant for case Number BA-06-11 has requested that this case be continued to the February 7, 2007 hearing date. The applicant would like to further address Staff's concerns before moving forward with the request. Board Member Ozer moved to continue BA-06-11 until the February 7, 2007 hearing date. Second by Board Member Wainwright.

The motion passed unanimously by a vote of seven (7) to zero (0).

MINUTES APPROVAL

Study Session December 6, 2006
Regular Meeting December, 2006

Board Member Wainwright moved to approve the Study Session minutes as presented. Second by Board Member Hagenah.

The motion passed unanimously by a vote of seven (7) to zero (0).

Board Member Hagenah moved to approve the regular meeting minutes as amended.
Second by Board Member Kile.
The motion passed unanimously by a vote of seven (7) to zero (0).

BOARD/STAFF REPORTS

Discussion of Chair Term Limit

Ms. Cutro reported on December 6, 2006, the Board of Adjustment elected Rick Johnson as Chair. However, there was ambiguity regarding what constitutes a full term since Rick Johnson completed Ann Townsend's term as Chair in 2005. The Town of Paradise Valley has determined that Rick Johnson's completion of Ann Townsend's tenure does not constitute a full term. Therefore, Rick Johnson's term as Chair will end in October of 2007. She further reported that the reason for bringing this forward is to ensure that this does not affect the Board Members' decision to elect Chairman Johnson to a full term rather than a partial term.

The consensus of the Board is that this new information from staff does not affect their decision.

Board Member Ozer suggested that there is food provided at the February meeting due to the length of the meeting.

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.

ADJOURNMENT

The meeting was adjourned at 7:50 p.m.



Eva Cutro, Secretary