

**TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
DECEMBER 6, 2006**

**MINUTES**

**PRESENT:** Rick Johnson, Chair  
Phil Hagenah, Board Member  
Emily Kile, Board member  
Catherine Kauffman, Board member  
Jonathan Wainwright, Board Member

**ABSENT:** Ann Townsend, Board member  
Hope Ozer, 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 by Chair Johnson at 6:05 p.m.

Chair Johnson reviewed the meeting procedures.

**REGULAR BUSINESS**

**PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article X, Height and Area Regulations, and Article XXIV, Walls and Fences, to allow for an encroachment into the setback for an addition to a single family residence and to allow for an encroachment into the height limitation for a retaining wall, located at 6324 N 42nd St.**

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to approve the variance request to allow an encroachment of a proposed addition to an existing family residence into the rear yard setback and a proposed retaining wall to exceed the height limitation. The variance request includes an 8'6" encroachment into the rear yard setback to construct a garage addition and a 2'8" encroachment in height to construct a retaining wall. The area of encroachment for the proposed addition includes a four car garage. The property is located at 6324 N 42 St.

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

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

Doug Jorden, 7272 E. Indian School, Suite 205, Scottsdale, Arizona, discussed the proposed changes to the design and living area addition and garage, resulting in a substantial reduction in the setback encroachment. The proposed changes also eliminate the open space criteria/height requirement.

Mr. Jorden reported the revised site plan and floor plans, the second-story living area has been relocated, resulting in the elimination of the open space criteria/height encroachment. The garage addition has been redesigned in such a manner that the rear yard setback encroachment has been greatly reduced. He provided information on the retaining wall.

Chair Johnson inquired if Mr. Gimble was in favor of the proposed changes. Mr. Gimble replied in the affirmative.

Chair Johnson inquired if the HOA was in favor of the proposed changes. Mr. Davis replied in the affirmative.

Board Member Kauffman stated that the applicant has done a great job.

Board Member Kile stated that the applicant took their comments from the last meeting and came up with a better plan.

Board Member Hagenah moves for approval of Case No. BA-06-08, a request by Structural Investments & Planning V, LLC/Don Davis, property owner of 6324 N 42 St., for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, Section 1001 and Article XXIV, Walls and Fences, Section 2407. The variance will allow the applicant to construct a proposed addition to an existing single family residence at a 31'6" rear yard setback and to construct a retaining wall that will encroach 2'8" beyond the allowable height limitation. The proposed addition and retaining wall will comply with all other applicable requirements.

I find that there are special circumstances, applicable to only the subject lot, meeting the variance criteria.

Second by Board Member Wainwright.

Chair Johnson stated that the applicant went back to the drawing board and came up with a better plan. He further stated that everybody appreciates their efforts.

The motion passed unanimously by a vote of five (5) to zero (0).

**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.**

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to deny the variance request to construct a six foot high wall at a setback of 10 feet from the front-west property line. The property is located at 5149 N Invergordon Rd.

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

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

Rod Cullum, 6501 E Cheney Drive, stated that he was contacted by the applicant to do a remodel on this property. He discussed the hardships that arise from the property's proximity to the Cholla Trail and public parking. The owner must contend with noise, trash and loitering. He explained the existing home was built on a 40' setback from the front property line, which causes hardships to the Owner because if a 10' wall setback is not granted then there would be no privacy at all from the auto and pedestrian traffic.

Mr. Cullum responded to questions and comments regarding the proposed variance. He provided information regarding the plans for the extensive remodel on this property and the property to the south. A discussion ensued regarding the code as it relates to remodels. The group also discussed the changes made to the Walls and Fence Ordinance and how those changes impact this property.

Chair Johnson opened public comment.

Ed Gaylord, property owner, 5149 N Invergorden Road, stated that they are very private people. He further stated the wall is important for security because they have four young children. He reported that the guesthouse has a playroom and computer room for the children. And their elderly in laws will be moving on the property. He noted that it is his dream to have a nice family compound that is safe, secure and free of trash.

Board Member Wainwright inquired if Mr. Gaylord would be willing to agree to a stipulation that required the landscape remain in a lush condition similar to the existing condition of the landscape. Mr. Gaylord replied in the affirmative.

Doug Jorden, 7272 E. Indian School, Suite 205, Scottsdale, Arizona, stated that his in-laws were one of the prior owners of this property. He further stated that he has spent a great deal of time on this property. He provided information regarding the hardships unique to this property as it relates to the Cholla Trail.

In response to a question from Board Member Hagenah, Mr. Cullum discussed what the applicant gets from a 10 foot setback. He provided information on the long-term plan. A wall at a 10 foot setback will provide consistency. He noted that the same variance was granted on a nearby property.

Chair Johnson closed public comment.

Board Member Kile commented that she does not see how this is a hardship. This appears to be a request out of convenience so that they can keep the house where it is yet do more than a half million dollar renovation. She further commented that there is not anything special about the topography. She added this request does not meet all of the variance criteria.

Board Member Wainwright stated that there were similar variances granted two lots down.

Board Member Wainwright moves for approval of Case No. BA-06-10, 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. With the added stipulation that the landscaping remains in a lush condition similar to the existing condition and that landscaping fully screen the wall from view. The variance will allow the applicant to construct a 6 foot fence wall at a setback of 10 feet from the front/west property line. The fence wall will comply with all other zoning requirements.

Second by Chair Johnson.

Board Member Kauffman commented that the mountain and Cholla trail has been there for as long as she knows. The applicant was aware of these factors when he purchased the home.

Board Member Kile stated that she felt there are other possible solutions.

The motion failed by a vote of two (2) to three (3) with Board Member Hagenah, Board Member Kauffman, and Board Member Kile dissenting.

Board Member Kile moves for denial of Case No. BA-06-10 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 6 foot high fence wall at a setback of 10 feet from the front/west property line. Second by Board Member Kauffman

The motion passed by a vote of three (3) to two (2) with Chair Johnson and Board Member Wainwright 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 a fence wall prior to the construction of the main building, located at 5203 N Monte Vista Dr.**

Ms. Cutro stated it is recommended that the Board continue this case.

Board Member Hagenah moves to continue this variance request until the January 3, 2007, Board of Adjustment meeting. Second by Board Member Wainwright.

The motion passed unanimously by a vote of five (5) to zero (0).

## **MINUTES APPROVAL**

### **Study Session October 4, 2006 Regular Meeting October 4, 2006**

Board Member Kile requested a correction to the October 4, 2006, regular meeting minutes. On page 3, on the motion to continue Case No. BA-06-08 the minutes should reflect motion passed unanimously by a vote of four (4) to zero (0) as opposed to four (4) to (1).

Board Member Wainwright moved to approve the Study Session and regular meeting minutes as amended. Second by Board Member Kile.

The motion passed unanimously by a vote of five (5) to zero (0).

## **ELECTION OF CHAIRMAN**

Mr. Davis explained that the rules provide that any Board Member can serve 2 years as chair and that Chair Johnson would be eligible to serve several months until his 2 year term is completed.

Board Member Hagenah nominated Chair Johnson to serve several months as Chair of the Board of Adjustment until his 2 year term is completed. Second by Board Member Wainwright and passed unanimously.

## **APPOINTMENT OF A SERGEANT AT ARMS**

Chair Johnson nominated Board Member Hagenah to serve another term as Sergeant at Arms. Second by Board Member Kile and passed unanimously.

## **BOARD/STAFF REPORTS**

### **Discussion of Board Attendance**

Chair Johnson passed out information from the Department of Commerce Board and Commission Conference he attended. The information indicates that board members should make it to at least 85 percent of meetings.

**Discussion of Board Vacancy**

Mr. Burton reported that staff has received four applications for the Board vacancy.

Mr. Burton reviewed the agenda for the next Board of Adjustment 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 7:45 p.m.**

  
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Eva Cutro, Secretary