

**TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
APRIL 5, 2006**

**MINUTES**

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

**ABSENT:** Ann Townsend, Board member

**STAFF:** Eva Cutro, Planning Director  
Molly Hood, Senior Planner  
George Burton, Planner  
Andrew Miller, 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 6:00 p.m.

Chair Johnson reviewed the meeting procedures.

**REGULAR BUSINESS**

**PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article X, Section 1001, for an addition to a single-family residence, located at 6924 E. Chaparral Rd. The variance request includes a 5 foot encroachment into the front yard setback to allow for an expansion of a Portico and Garage at a setback of 30 feet.**

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to approve the variance request for a 5 foot encroachment into the front yard setback, to allow for an expansion of a Portico and Garage at a setback of 30 feet, located at 6924 E. Chaparral Road.

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.

Richard Klauer, 301 E. Bethany Home Rd, Phoenix, Arizona, stated that he represents the applicant. He further stated that staff gave a fair representation of the request and would concur with the recommendation of staff. He provided a brief review of the request. He reported that the applicant has not done any work since the stop order.

Chair Johnson inquired if Mr. Christian drew these plans. Mr. Christian replied in the affirmative. Chair Johnson further inquired if Mr. Christian has formal training in architecture. Mr. Christian replied in the negative. He explained that he worked with Mr. Burton on this project. He noted that it was such a small job that he could not get anybody to do the job.

Board Member Ozer moved for approval of Case No. BA-06-01, a request by Ronald Christian, property owner of 6924 E. Chaparral Rd., for a variance from the Zoning Ordinance, Article X, Section 1001. The variance will allow the applicant to construct an addition at a front yard setback of 30 feet instead of the 35 feet required by the Zoning Ordinance. The proposed addition will comply with all other applicable requirements.

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

Second by Board Member Wainwright.

Board Member Hagenah stated the proposed addition would not be visible from the road since there is an abundance of vegetation. He further stated that he hopes the vegetation would remain.

The motion passed by a vote of six (6) to zero (0).

**PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article XXIV, Section 2403 and Section 2404, to allow for a proposed fence wall along the east property line, located at 5311 N 74th Street. The variance request includes 1) a 2 foot encroachment into the height limitation, to allow for an 8 foot high fence wall and 2) a variance from the minimum fence wall finish requirements.**

Mr. Burton presented this case as per the project coordination packet. Staff is not making any recommendation regarding the consideration of a variance from the Zoning Ordinance, Article XXIV, Section 2403 and Section 2404, to allow for a proposed fence wall along the east property line, located at 5311 N 74<sup>th</sup> St. The variance request includes 1) a 2 foot encroachment into the height limitation, to allow for an 8 foot high fence wall and 2) a variance from the minimum fence wall finish requirements. However, staff has no objection to the approval of this request.

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.

The Board discussed the issues surrounding the conflicting uses of the tennis courts and horse property. There was a discussion regarding the fact that the problem is regarding the noise and lights coming from the tennis courts and how this disturbs the horses on the

neighboring property. It was noted that per the code the lights are required to go off at 10 p.m.

Steven Earl stated that this is a joint application with the Speirs and Mr. Font de Mora. He further stated that he represents the Speirs and Scott Ostrander represents Mr. Font de Mora. He commented that staff has done a good job in giving an overview of the request but it did not give a lot of detail regarding the spirit of compromise and the controversy between these two properties. He reported there was a settlement reached between the Town and Mr. Font de Mora. This is an attempt to mitigate the two uses.

He further reported that historically in this area the lots are oversized and these two lots were horse properties. Then the property to the west was sold to Mr. Font de Mora and he did not want to use the property for horses but wanted to build several tennis courts. These two uses are very different and we are trying to find a way to make the situation work. He further reported that there is not a single example in the Town where a horse property is adjacent to two tennis courts. This is a very unique situation. The eight foot wall would help to mitigate the light and the noise.

Mr. Earl discussed how this request relates to the six variance criteria.

Mr. Earl stated the painted block is consistent with the walls in the entire neighborhood.

Scott Ostrander 1103 W. Roadrunner Drive, Chandler, Arizona, stated that he is here representing Mr. Font de Mora. He further stated that Mr. Font de Mora travels 40 out of the 52 weeks of the year. He reported the main premise behind the variance is to create harmony between the two neighbors. Both parties are victims of different circumstances. He further reported that we believe the wall meets the variance criteria and the painted block is consistent with what is in the neighborhood. He noted that there is not a single neighbor opposed to this variance.

Board Member Ozer inquired when Mr. Font de Mora purchased the property, was he aware that there were horses next door. Mr. Ostrander replied in the affirmative and that he was not concerned with the horses. He explained that Mr. Font de Mora purchased the property with the intent that it would be used to build four tennis courts in various areas of the property and over the last few years an agreement was reached for two courts.

Board Member Ozer inquired if Mr. Font de Mora could have built the tennis courts at the north end of the property rather than the south end. Mr. Ostrander explained that in Arizona the most optimal condition is to have the courts face the north and not facing the sun. Also if they were to be moved to the north, the pool would have had to be moved.

Board Member Ozer inquired that if Mr. Font de Mora travels 40 weeks out of the year who is using the courts. Mr. Ostrander explained that there is a guesthouse on the property that a family member lives in and he has family that uses the home almost as a second vacation home.

Board Member Ozer inquired if Mrs. Speirs was comfortable with this compromise. Mrs. Speirs replied that she has had a loss of enjoyment on her property and that it is hard to predict what the wall will do to help mitigate, but it will of course help.

Board Member Wainwright inquired if the applicants explored the possibility of using a two foot berm with a six foot wall. Mr. Earl replied that they did not consider the berm. He stated that there could be some plants at the end of the wall to buffer the impact of the wall behind the vegetation.

Board Member Hagenah inquired why it is necessary for the wall to be eight feet high all the way south and all the way north along both properties. Mr. Earl explained that the concern is regarding the light and the noise associated with the tennis and if the wall were only six feet the noise would go into the pasture. The effort is to protect the lifestyle of the existing home.

Board Member Hagenah inquired why they do not put up a ten foot tennis wall. Mr. Earl explained that the chain link mesh would not provide noise relief to the horses. Ms. Cutro noted that the tennis fencing at 10 feet would not be allowed.

Board Member Kile inquired who would be in charge of the maintenance of the wall. Mr. Earl replied there will be an agreement between the two parties.

Board Member Kile stated that this is a beautiful area and it seems like a shame to put up this incredibly tall block wall between two properties. She further stated that she understood that these two neighbors have worked together to come up with a resolution but it just seems like a shame to put up such a large wall in such an open area in town.

Mr. Earl explained that the noise does affect the horses fairly dramatically because of the erratic nature of the balls being hit.

Board Member Kile stated that throughout the Town there are existing properties that have existing heights of the homes where pools are located and then a new home comes in with a second story balcony and now the existing home has loss of privacy. She further stated that in her opinion she did not see any difference in conflicting uses. Mr. Earl stated that is a valid point but there is no where else in the Town where there are two tennis court next to a horse property. He noted the tennis is a commercial type use. It was noted that this is not a commercially zoned property. Mr. Ostrander noted that the courts are not being used for commercial purposes.

Board Member Kauffman inquired if it would be possible to move the pasture to the north side of the property rather than build the wall. Mrs. Speirs reviewed the reasons why it would cost too much to move the pasture.

Chair Johnson inquired if staff has verified the fact that this is the only property with two tennis courts next to a horse property. Ms. Cutro replied that staff is unaware of any other such property.

Chair Johnson inquired how often are the lights being used. Mrs. Speirs replied during Thanksgiving to New Years there was intense use. She noted that during that time there was usually music playing.

Chair Johnson inquired if Mrs. Speirs had issues with tennis balls landing in her pasture. Mrs. Speirs replied in the negative.

Board Member Ozer inquired if any of Mr. Font de Mora's students play on these courts. Mr. Ostrander replied in the negative.

Board Member Ozer inquired if the horses are an issue of annoyance for Mr. Font de Mora. Mr. Ostrander replied in the negative.

Chair Johnson moved for approval of Case No. BA-06-02, a request by Rafael Font de Mora, property owner of 5311 N 74<sup>th</sup> St, for a variance from the Zoning Ordinance, Article XXIV, Sections 2403 and 2404A. The variance would allow for a non-stucco finished fence wall and allow the applicant to construct the wall at a height of 8 feet, instead of the 6 feet height limit required by the Zoning Ordinance. The proposed fence wall would comply with all other applicable requirements. With the following added restrictions:

The wall on the Font de Mora side continues to be screened with vegetation. If the vegetation is damaged during construction it will be replaced.

The end of the wall will be landscaped to the satisfaction of staff.

Second by Board Member Ozer.

Chair Johnson stated that hopefully good fences do make good neighbors. He further stated that hopefully this fence is a movement towards harmony between the two parties. He remarked that there are several extenuating circumstances that make the approval of the variance possible. This situation is unique in many ways.

Board Member Hagenah stated that he is against the wall but, in hopes this will create some harmony he would vote in favor of the motion.

Boar Member Kile stated that she would agree with Board Member Hagenah but is not sure the extra two feet will make a difference with regard to the issues in this particular case. She further stated that it is a shame given the open feel of this neighborhood that this fence has to go up. However, given the circumstances to promote some peace between these two neighbors, she will vote in favor of the motion.

The motion passed unanimously by a vote of six (6) to zero (0).

## **MINUTES APPROVAL**

### **Study Session February 1, 2006 Regular Meeting February 1, 2006**

Board Member Hagenah moved to approve the work study session meeting minutes as presented. Second by Board Member Ozer.

The motion passed unanimously by a vote of five (5) to zero (0) with Board Member Wainwright abstaining.

Chair Johnson stated the Board did not receive or approve the November 2, 2005, study session minutes.

Board Member Ozer requested a correction to the February 1, 2006, regular meeting minutes, page 3 that reads: Board Member Ozer stated that this is not legally a conflict but she would like to disclose the fact that her daughter babysat for Mr. O'Connor around 15 years ago. Should be amended to read: ... her daughter babysat for Mr. O'Connor's daughter...

Board Member Ozer moved to approve the regular meeting minutes as amended. Second by Board Member Hagenah.

The motion passed unanimously by a vote of five (5) to zero (0) with Board Member Wainwright abstaining.

## **BOARD/STAFF REPORTS**

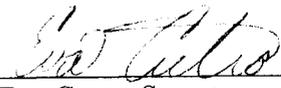
Mr. Burton provided a brief overview on the most recent variance application staff received.

## **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.**

  
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Eva Cutro, Secretary