

**TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
NOVEMBER 2, 2005**

**MINUTES**

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

**STAFF:** Eva Cutro, Planning Director  
Paul Michaud, Senior Planner  
George Burton, Planner  
Jim Davis, Assistant 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 7:03 p.m.

Chair Johnson reviewed the meeting procedures.

**REGULAR BUSINESS**

**PUBLIC HEARING: Consideration of a height and setback variance from the Zoning Ordinance, Section 1001 and Table 1001-A1, for a new single-story home that will replace an existing home located at 6520 N. 63rd Place. The variance includes 1) an approximate one-foot height variance from Open Space Criteria to allow the ridge of the roof at an approximate height of 23 feet 6 inches; 2) a 1.5-foot variance into the north side yard setback to allow a chimney at a setback of 18.5 feet; and 3) a 10-foot front yard setback variance from the 63rd Place right-of-way to allow the garage of the new home at a front setback of 30 feet. The subject property has a lot size of 30,334 square feet, and is zoned R-43.**

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to approve the variance for a new single-story home at a proposed 1 foot and 6 inch encroachment into the side yard setback for a new chimney and a proposed 1 foot height encroachment above the 20-percent Open Space Criteria imaginary plane for the roof of the proposed home located at 6520 N. 63rd Place. Staff finds that the applicant's

proposed 10 foot encroachment into the front yard setback for an attached garage does not fully meet all the required variance criteria. However, Staff can support a 5 foot and 4 inch front yard setback encroachment for this garage because 1) the existing home has a similar front yard encroachment and 2) the total encroachment area will be similar to the total existing encroachment area.

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

Board Member Ozer asked a series of questions regarding how this lot compares to other lots in the subdivision and whether any of those lots have been redone. Mr. Burton provided information on the lot sizes and buildable areas in this subdivision. He reported that the two most recent lots in the area that have been redone have not requested a variance.

Board Member Ozer inquired if the pool was put in by the current owner. Mr. Burton replied in the affirmative.

Board Member Kile inquired about the total buildable square footage. Mr. Burton explained the total floor area ratio will be 23.6-percent, less than the maximum 25-percent allowed by the R-43 District. The total floor area of the new home will be 7,163 square feet.

James Konves, 8124 N. 13th Place, Phoenix, Arizona, stated he is a residential designer representing the applicant. He reviewed the requested variance and conditions for the variance as outlined in the written narrative. He provided information on the dimension of a typical R-43 lot noting that this lot width is approximately 36 percent more narrow than the zoning ordinance minimum lot width, the gross area of this lot is approximately 30 percent smaller than the zoning ordinance minimum, and the buildable area is approximately 41 percent less than the area of a typical 165 foot wide typical lot.

Mr. Konves provided information on how this lot compares to the other lots in this subdivision. He noted that with regard to the building height envelope, the substandard lot width in conjunction with a 20 percent sloped imaginary plane beginning 16 feet above the 20 foot building setback line only permits an achievable building envelope height of 22'-6 which is less than similarly zoned properties and significantly limits the building height and volume.

Mr. Konves explained that while the pool was built without having a plan for the main house, the pool location would maximize the solar access to the pool. He remarked that the house could be moved closer to the pool edge which would be an acceptable solution but it would not be optimal from a design standpoint.

Mr. Konves stated the unique issues which constitute the special circumstances, hardship and difficulty are specifically applicable to this property and do not represent special

benefit but allow development of the lot with a use congruent with the intent of the R-43 zoning district.

Mr. Konves responded to questions from the Board Members regarding the variance application.

Chair Johnson commented that he felt that some of the hardship was self-imposed because the homeowner went ahead and put the pool and now because he has the pool he wants to have his way with a variance. He further commented that the applicant put the cart before the horse and now is coming in and saying that they have done it this way and now want a special privilege.

Chair Johnson requested information on how the pool looks. Mr. Konves replied that the last time he saw the pool it did not have water in it. Board Member Townsend stated the pool had water in it on Tuesday. Chair Johnson stated that with regard to solar access the trees could be shading the pool and deleting the solar gain. Mr. Konves explained that he was not part of the pool plans because the pool permit had already been pulled when he came on board. He further explained that the hardship is being imposed on this lot because of the size of the lot in relation to the other lots in the R-43 district.

Board Member Kile inquired if the applicant intends to stay in this property. Mr. Konves replied in the affirmative. Board Member Kile inquired when this property was purchased. Mr. Michaud replied April 7, 2005. Ms. Cutro noted that they applied for the pool permit on June 24, 2005.

Chair Johnson inquired if this house is on sewer or septic. Mr. Burton replied the entire subdivision is on septic. Mr. Konves stated the septic tank is directly north of the pool.

Board Member Ozer inquired what point in the process of planning the pool did Mr. Konves come on board. Mr. Konves replied that the pool contract was in place, and the location of the pool was fixed when the house was being designed. Board Member Ozer inquired if the pool was constructed. Mr. Konves replied in the negative.

Board Member Ozer remarked so what you are saying is that there was nothing from preventing the pool from getting shifted a little further so that it would no longer be encroaching into the setback. Mr. Konves replied the location of the pool was fixed at that time.

(There was no public comment)

Board Member Ozer moved approval of Case No. BA-05-05, a request by Steven Aiello, property owner, for a variance from the Zoning Ordinance, Section 1001 and Table 1001-A1, for a 1 foot and 6 inch side (north) yard setback encroachment for a new chimney, a proposed 1 foot height encroachment above the 20-percent Open Space Criteria imaginary plan for new roof of the proposed home located at 6520 N. 63rd Place.

She moved for denial of a 10 foot front yard setback encroachment for an attached garage on a new single-family home located at 6520 N. 63rd Place.

Second by Board Member Kile.

Board Member Hagenah inquired why staff was supportive of a five foot and four inch encroachment and not a 10 foot. Mr. Burton replied because the existing home has a similar front yard encroachment and the total encroachment will be similar to the total existing encroachment area.

Chair Johnson noted that the new construction in this area have stayed within the code. He further noted that he felt by putting in the pool before the plans were made was an error in judgment and he did not see it as a hardship. He stated that he would support the staff recommendation for the 5 foot and 4 inch encroachment.

Board Member Kile stated that she felt the subject lot does not meet all six variance criteria and that an undue hardship does not exist for the proposed front yard encroachment.

Board Member Wainwright stated that he would be inclined to go with the staff recommendation and allowing some latitude on the side entry for the garage and is in the best interest of the neighbors given the existing house is being demolished because the overall affect will be more open space farther back.

Chair Johnson called for the vote: The motion passed by a vote of four (4) to three (3) with Board Member Hagenah, Board Member Wainwright and Chair Johnson dissenting.

#### **ELECTION OF CHAIRMAN**

Board Member Hagenah nominated Chair Johnson to serve another term as Chair of the Board of Adjustment. Second by Board Member Hagenah and passed unanimously.

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

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

#### **MINUTES APPROVAL**

**Study Session June 1, 2005**  
**Regular Meeting June 1, 2005**

Chair Johnson requested a correction to the June 1, 2005, regular meeting minutes; the header reads Planning Commission and should be amended to Board of Adjustment.

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

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

## **BOARD/STAFF REPORTS**

Board Member Kile stated that she would like to thank Hamid Arshadi for his service and hard work to the Board and the Town.

Mr. Michaud announced if any of the Board Members' are interested in attending the Boards and Commission Conference by the Department of Commerce the Town will pay for their registration.

## **ADJOURNMENT**

**The meeting was adjourned at 8:00 p.m.**



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Eva Cutro, Secretary