

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
JUNE 1, 2005**

MINUTES

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

ABSENT: Ann Townsend, Board member
Catherine Kauffman, Board member

STAFF: Hamid Arshadi, Building & Zoning Director
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 6:05 p.m.

REGULAR BUSINESS

PUBLIC HEARING: Consideration of an appeal of Section 402.9 of the Town's Zoning Ordinance filed by Rafael Font de Mora, appealing the decision of the Building and Zoning Director, which limits the number of tennis courts on an R-43 zoned property. The appeal is to allow more than one tennis court, lighted and unlighted, on the property located at 5311 N. 74th Street. The subject property is developed, has a lot size of 108,129 square feet (2.48 acres), and is zoned R-433.

Mr. Arshadi reported the appeal request of Section 402.9 of the Town's Zoning Ordinance appealing the decision of the Building and Zoning Director, which limits the number of tennis courts on an R-43 zoned property. The appeal is to allow more than one tennis court, lighted and unlighted, on the property located at 5311 N. 74th Street. He further reported that last Friday the property owner Mr. Font de Mora submitted a letter to the Town requesting a continuance of this appeal case to a date in the future to be determined. Staff is recommending a continuance of this case.

Chair Johnson acknowledged that there are a lot of residents who have submitted requests to speak most in opposition to this request. He explained that because there has been a

request from the applicant to continue this case the Board has not been given any information for review and that two of the Board Members are absent this evening so it would be appropriate to continue this case.

Board Member Hagenah inquired if the neighbors had been informed that this request would be continued. Mr. Arshadi replied staff informed the office of the Attorney that is representing one of the neighbors and we called the neighbors adjacent to the property.

Board Member Ozer moved to continue the public hearing on the Rafael Font de Mora variance until some future time at which the applicant comes back to us and reapplies for a public hearing on this application. Second by Board Member Wainwright.

Board Member Wainwright stated that there is a lot of interest in this case and he would suspect that the applicant would want to work with the neighborhood to develop a plan that is more palatable.

Board Member Kile stated that she felt this case should be continued because the applicant is not present and the Board has not received any information on this case. She further stated that in the future it would be helpful to figure out a way to notice the homeowners of the continuance.

Steven Earl, 4101 N. Central, Phoenix, AZ, stated he represents the Spears who immediately adjoin this property. He further stated they are concerned that the continuance to some future date puts this in limbo and due to the serious nature they would prefer it be continued for 30 days or 60 days and not just shelved. Mr. Arshadi explained that the applicant made this request and the most important part here is that because there is not a date certain the Town would be obligated to re-advertise this case in the local newspaper and re-notify the property owners in the vicinity of this property.

Chair Johnson inquired if there is an expiration date on the appeal. Mr. Davis replied that he was not aware of case law or statute that limits or gives guidance of when to set a time frame for hearing this case. He stated that he has heard that there is the possibility that this case might never come back before the Board.

Frank Moskowitz stated that he is the attorney for Rafael Font de Mora, and is here to confirm the agreement with the Town Council that this case would be postponed for an indefinite time. He further stated that there are other parameters in the agreement.

Board Member Wainwright inquired if the applicant would object to a stipulation that the continuance would be granted for no more than three months. Mr. Moskowitz replied in the affirmative. Board Member Wainwright inquired if it was continued up to a year. Mr. Moskowitz replied that would be consistent with the agreement between his client and the Town.

Chair Johnson called for the vote. The motion passed by a vote of five to zero.

PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Table 1001B, to allow for the construction of a lap pool at 6404 N. 52nd Place, which will encroach into the 20-foot side yard setback. The variance will allow the lap pool to be constructed at an 11.5'-foot side yard setback. The subject property is developed, has a lot size of 39,151 square feet and is zoned R-43.

Mr. Arshadi presented this case as per the project coordination packet. Staff recommends a motion to approve Case No. BA-05-04, a request by Bob Shiloh, property owner, for a variance from the Zoning Ordinance Table 1001B, to authorize encroachment of a lap pool into the 20-foot side yard setback area, reducing the side yard setback to 11.5 feet on the south side of the property located at 6404 N. 52nd Place. The proposed lap pool shall be built in compliance with the submitted Site Plan and Survey Exhibit on file, prepared by Standage & Associates, LTD.

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

Mr. Arshadi stated staff is recommending approval. The subject lot meets all six variance criteria. Special circumstances; including, 1) lot size and width, 2) location and orientation of the house, 3) on-site wash / drainage areas, and 4) location of a shared driveway, underground drainage piping, and septic tank will limit the area suitable for constructing a lap pool and warrant the requested variance.

Board Member Hagenah expressed his concern regarding putting another fence on the south side of the property all the way around the pool in addition to the block wall that already exists and creating a tunnel. Mr. Arshadi explained the reason staff mentioned the location of the privacy wall on the south side was to inform the Board of the easement agreement between the two property owners. He further explained that we could not rely on the existing wall to stay and be used as a pool barrier. The subject property will be required to have a minimum 5-foot high pool barrier to ensure the pool is safe. It is the hope the applicant chooses a view fence rather than a solid wall.

Board Member Ozer inquired if construction had not already commenced would staff still recommend this variance rather than looking at another location on the property.

Mr. Arshadi replied that staff would most definitely recommend approval because of the limitations on the property.

Board Member Ozer inquired it is a State or local ordinance that requires a fence around the pool. Mr. Arshadi replied both. He commented on the different ways to secure a pool.

Chair Johnson explained the order in which meetings are conducted. First, the staff makes their presentation and recommendation. At this point, the Board will direct questions and comments to the staff. Second, the applicant, or their representative, will

present their case and the Board will direct their questions or comments to the applicant. At that point, the meeting will be opened to public hearing for outside comments or questions. Once this is done, the public hearing will be closed and the Board members will conclude with any remaining questions. Once deliberations are done, a motion will be called for and the Board will vote.

Peter Spiess, 420 W. Roosevelt Street, Phoenix, AZ, stated that he represents the Applicant. He stated the applicant is seeking a variance to have the Board approve an 11.5-foot side yard setback from the 20-foot requirement. He reviewed how this request meets all six of the variance criteria. He discussed the constraints of the site. He remarked the fact that the pool construction has begun is not a hardship or a reason to grant or not grant the variance. He further remarked the granting of this variance supports the feeling of open space between the two properties. He noted that that there has been some discussion regarding the construction of the fence and the tunnel affect, the applicant intends on putting in a wrought iron or open fence.

Mr. Spiess stated the Board has a letter of support from the adjoining neighbor on the south side of the privacy wall that explains the easement agreement.

Mr. Spiess requested the Board find in favor of the variance because all six variance criteria have been met.

Board Member Kile stated that in the study session, she inquired about when the house was built and whether it had been remodeled; could you address that. Mr. Spiess replied the house was built in 1964. Before the applicant purchased the house an interior remodel was done and the garage may have been built at the end of the house.

Chair Johnson inquired where the pool equipment would be located. Mr. Spiess replied on the west side of the property. Chair Johnson inquired if Mr. Butler was okay with this location. Mr. Shiloh replied in the affirmative.

Board Member Hagenah inquired what would happen to the agreement if Mr. Butler leaves. Mr. Spiess outlined the terms of the agreement.

Chair Johnson inquired if the pool fence would be wrought iron. Mr. Shiloh replied in the affirmative noting it would be open wrought iron or steel.

Chair Johnson inquired if the Applicant had any future plans for improvements to the property. Mr. Shiloh replied we currently have a permit for some landscaping on the north side and plan on doing some landscaping in the front. He added the pool is the last of the major improvements.

Mr. Davis advised the Board that it is within their purview to add a stipulation regarding the location of the pool equipment should they be inclined.

Board Member Wainwright moved approval of Case No. BA-05-04, a request by Bob Shiloh, property owner, for a variance from the Zoning Ordinance Table 1001B, to authorize encroachment of a lap pool into the 20-foot side yard setback to 11.5 feet on the south side of the property located at 6404 N. 52nd Place. The proposed lap pool shall be build in compliance with the submitted Site Plan and Survey Exhibit on file, prepared by Standage & Associates, LTD. Second by Board Member Ozer.

Board Member Hagenah stated that he supports the motion because the subject lot does meet all six of the variance criteria especially due to the small size of the lot.

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

MINUTES APPROVAL

Study Session May 4, 2005 Regular Meeting May 4, 2005

Board Member Ozer moved to approve the Study Session meeting minutes. Second by Board Member Hagenah.

The motion passed by a vote of four (4) to zero (0) with Board Member Wainwright abstaining.

Board Member Ozer moved to approve the Regular Meeting minutes. Second by Board Member Kile.

The motion passed by a vote of four (4) to zero (0) with Board Member Wainwright abstaining.

BOARD/STAFF REPORTS

Board Member Kile stated that in the future it would be helpful to have contact information for the applicant. So, when they visit the property they would not be considered a trespasser. If they could call ahead of time be granted permission to do the inspection. Board Member Wainwright stated that he tries to avoid exparte contact with the applicant. Mr. Davis suggested going through the staff to arrange the time to visit the property. He noted that there could not be more than three people visit the site at any time.

FUTURE AGENDA ITEMS

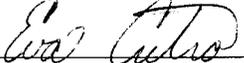
Mr. Arshadi reviewed the future agenda items as listed below:

Workum Variance – 5728 N. Harding Drive (pre-application)

Chair Johnson commented that the Board usually takes the month of August off. He suggested discussing this at the July meeting after everyone has reviewed their vacation schedules.

ADJOURNMENT

The meeting was adjourned at 7:30 p.m.



Eva Cutro, Secretary