

TOWN
Of
PARADISE VALLEY



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Lisa Collins, Community Development Director
Paul Michaud, Planning Manager
George Burton, Senior Planner

DATE: January 4, 2023

DEPARTMENT: Community Development Department/Planning Division
George Burton, 480-348-3525

AGENDA TITLE:

Thiara Fence Wall Variance

**Variance to allow 6-foot-tall fence wall to encroach into the setback
Case No. BA-22-10. 5608 E. Horseshoe Road (APN 168-43-004)**

This application is a variance request to allow a new 6-foot-tall fence wall to encroach into the rear yard setback.

RECOMMENDATION

Motion For Denial

It is recommended that the Board of Adjustment [**deny**] Case No. BA-22-10, a request by property owners Sukhvider & Daljit Thiara; for a variance from Article XXIV, Walls and Fences, to allow a new fence wall to encroach into the rear yard setback.

Reasons For Denial:

Staff finds that there are no property hardships that warrant the request for setback encroachment and staff believes that the request does not meet all three variance criteria.

BACKGROUND/DISCUSSION

Scope of Request

The applicant is requesting a variance for setback encroachment. Section 2404 of the Zoning Ordinance allows a 6-foot-tall wall at a 20-foot setback from a rear and side property line which adjoins a street/right-of-way. The applicant is requesting a variance to allow a 6-foot-tall masonry fence wall at a 0-foot setback from the rear property line (adjoining Doubletree Ranch Road).

Approximately 163 lineal feet of fence wall will be placed in the rear yard setback. The fence wall will have a stucco and paint finish and will also comply with the Town sight visibility/triangle requirements. Below is a comparison of the Zoning Ordinance requirements and proposed fence.

| Zoning Ordinance | Proposed Fence |
|-------------------------------|----------------|
| 40' Front Yard Setback | 80' (+) |
| 20' Side Setback with Street | 20' |
| 0' Side Setback with Neighbor | 0' |
| 20' Rear Setback with Street | 0' |
| 6' Maximum Height | 6' |

Lot History

The subject property is Lot 1 of the "Double Tree Ranchos" subdivision. This subdivision was approved by the Town in 1968. In 2020, the applicant received permits to redevelop the lot with a new home, new pool & spa, and new fence walls and began construction of the new home. Later, the applicant met with the Building Official to discuss potential modifications to the side yard wall that was not under construction. During that discussion, the Building Official noticed an error on the plans for the rear wall that was shown encroaching into the rear yard setback that was also not under construction. The following is a chronological history of the property:

| | |
|-------------------|---|
| November 22, 1968 | Building permit for a single-family residence |
| July 22, 2020 | Demo permit to remove house and septic |
| July 22, 2020 | Building permit for new single-family residence |
| July 22, 2020 | Building permit for fence |
| July 22, 2020 | Building permit for fountain |
| June 21, 2021 | Building permit for pool and spa |

Lot Conditions

The property is zoned R-43 and is 43,617 square feet in size (1.00 acres). The property is square in shape and is surrounded by three streets (Horseshoe Road at the front/south, 56th Street on the west side, and Doubletree Ranch Road at the rear/north). Horseshoe Road is classified as a local street, 56th Street is classified as a collector street, and Doubletree Ranch Road is classified as a minor arterial street.

DISCUSSION ITEMS

Variance Criteria:

Town Code and Arizona Revised Statutes set criteria an applicant must meet before a Board of Adjustment may grant a variance request. If the Board finds an applicant meets all of these criteria, the Board may grant the variance. However, if the Board finds the applicant does not meet all of the criteria, the Board may not grant the variance. The following are staff's analysis with regard to the variance criteria:

1. *“That there are special circumstances applicable to the property, which may include circumstances related to the property’s size, shape, topography, location, or surroundings; and”* (Town Code Section 2-5-3(C)4).

Staff Analysis:

There are no property hardships that warrant the request for setback encroachment. The property is not undersized, oddly shaped, or burdened with an adverse topographical feature that prohibits compliance. Although not ideal, the applicant has code compliant alternatives. The applicant can place a view fence at a 10-foot setback or reconfigure the retention basin to accommodate a masonry wall at a 15-foot meandering setback or a straight wall at a 20-foot setback.

2. *“That the special circumstances applicable to the property were not self-imposed or created by the property owner; and”* (Town Code Section 2-5-3(C)4).

Staff Analysis:

The request for setback encroachment is self-imposed since the applicant can construct a code compliant wall. There are no property hardships that prevent compliance. Also, despite the property being surrounded by three streets, the Zoning Ordinance requires a setback for fence walls adjoining every classification of street (except for pre-existing subdivision walls).

3. *“That the strict application of the Zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district”* (Town Code Section 2-5-3(C)4).

Staff Analysis:

The Zoning Ordinance requires a setback for all new fence walls (except for pre-existing subdivision walls). There are no property hardships that warrant the variance and the neighboring properties must meet setback requirements when constructing new fence walls and/or must bring non-conforming fence walls into compliance when building a new home or remodeling more than half of an existing home.

REQUIRED ACTION

The Board of Adjustment must consider the facts and determine if the variance request meets all three variance criteria. The Board of Adjustment may take the following action:

1. Deny the variance request.
2. Approve the variance request, subject to the following stipulations:
 - a. The improvement shall be in compliance with the submitted plans and documents:
 - i. Sheet 1, prepared by Mark F. Hoerner & Associates Inc and dated November 2022.
 - b. The applicant must obtain the required building permits and inspections from the Building Department.

3. Continue the application for further review.

COMMENTS

Staff has not received any comments or inquiries regarding this variance request.

COMMUNITY IMPACT: None.

CODE VIOLATION: None.

ATTACHMENTS

- A. Staff Report
- B. Application
- C. Vicinity Map & Aerial Photo
- D. Narrative & Plans
- E. Notification Materials