



Minutes - Final

Board of Adjustment

Chair Hope Ozer
Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember Eric Leibsohn
Boardmember Jon Newman
Boardmember Quinn Williams

Wednesday, January 4, 2023

5:30 PM

Council Chambers

1. CALL TO ORDER

2. ROLL CALL

Present 5 - Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember Eric Leibsohn
Boardmember Jon Newman
Chairperson Hope Ozer

Absent 1 - Boardmember Quinn Williams

3. EXECUTIVE SESSION

4. STUDY SESSION ITEMS

5. PUBLIC HEARINGS

- A. [23-001](#) 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)
- Mr. Burton identified the variance request is to allow a fence wall to encroach into the rear yard setback. The property is zoned R-43 , is one acre in size, and is bordered by Doubletree Ranch Road to the north, 56th Street to the west, and Horseshoe Road to the south.
- In 2020, the applicant received permits to redevelop the site, and during a July 2021 meeting with the building official, it was discovered that a wall in the rear yard did not meet the required setback. The code allows for three options for fences in the rear yard: a view fence with a 10-foot setback, a meandering fence with a 15-foot setback, or a solid straight wall with a 20-foot setback. The wall in question is a solid straight wall at the property line. The staff determined that the property has no hardships that warrant the variance and that the code compliant alternatives exist. Therefore, staff recommends denial of the application. The Board has three options: to deny the application, to approve the application with conditions, or to continue the application for further review.

Andrew Miller, the applicant's representative, noted that the property is uniquely located next to a busy street and a school, which creates a hardship that could be solved by allowing the requested variance for a wall with a lesser setback. He also argued that the location and surroundings of the property, including the nearby school and busy streets, are distinctive factors that justify granting the variance. Additionally, he pointed out that the property's location was not self-created and that the hardship it experiences is not unique to this property. He provided photographs of the property and the surrounding area to illustrate his points. He also pointed out that other properties in the area have walls with lesser setbacks and that the strict application of the code would deprive the property in the question of the same benefits. He provided photographs and other evidence to support his arguments, including the impact of traffic on the property and the attractiveness of the proposed wall. He also noted that the property owner had received a permit to build the wall and that they had relied on the assumption that they could proceed with the construction when they made improvements to the backyard.

Boardmember Leibsohn asked Mr. Miller to clarify the timing of when Bob Lee informed the homeowners that they were building the wall in an improper location.

Mr. Miller replied that there was a misunderstanding because the homeowners thought that they could rely on their permit and did not understand that part of the wall was in violation. He also explained that the homeowners had health issues and worked with the Town staff to see if the wall could be considered a subdivision wall. They decided not to appeal the interpretation and chose to seek a variance instead.

Boardmember Newman asked how the wall is safer now than if it were at the required setback.

Mr. Miller explained that having a consistently built six-foot wall along the entire stretch promotes safety because it does not give people a place to hide and provides better noise attenuation.

Chair Ozer noted that the two homes to the east of the subject property have their walls built on the property line in alignment with the subject property. She also noted that neighboring non-conforming walls would have to come into setback compliance when they redevelop or seek a variance to keep them at their current location.

Mr. Miller explained that the subject property's decision to build a six-foot wall was not an exceptional or unusual decision, given that the neighboring properties also have six-foot walls.

Sam Thiara, the applicant, stated that in June 2016, he visited the Town to gather information about building a home on a property they were interested in purchasing. The Town representative, Sharon Bennett, provided information about building restrictions and setbacks. He was also told that the existing walls

and fences on the property could remain and that the front yard wall could be a maximum of three feet tall and must be set back ten feet from the property line. He consulted with a builder and was told that they should be able to design a home on the property. He ultimately decided to purchase the property, and the Town approved plans for a home with a 6-foot concrete block wall replacing the existing fence. However, when the applicant asked if they could add an iron fence above the 3-foot wall on the west side, they were told that the wall on the north side could not be built as planned and would need to be moved. The applicant argued that the change would significantly impact the design and drainage of the site but was told that the approval stamp on the plans protected the Town from errors. He later spoke to a superior, Lisa Collins, who apologized and attempted to find a resolution. Mr. Thiara believed that the Town did not follow the correct process and is now requesting a variance.

Ms. Collins clarified that the stamp on the building permit plans identify that the approved permit does not allow construction to violate the Town Codes.

Dahljit Thiara, the applicant, discussed the process of purchasing property and building a home, including consulting with the Town and obtaining permits. She mentioned concerns about privacy and security. She stated that she had planned to enjoy her backyard with future grandchildren but now feels that this is being taken away from her due to the potential need to move the wall. She expressed frustration about the situation and felt that Mr. Thiara and she should not be penalized for mistakes made by the Town.

Mr. Ankifer, a resident, talked about the benefit of the ordinances in the Town and how they have positively impacted the community. He also mentioned an experience he had while trying to build a guest house on his property and how the setbacks described to him by the Town made it impossible to do so. He expressed concern about the issue with the Thiaras' wall, saying that if the proper notification was not given to them in a timely manner, the Board should consider that. However, if the information was provided and the wall was still built out of compliance, he believed the Board should follow the standard set by the ordinances. He also noted the beauty and wildlife in the community and the issue of traffic outside the Thiara's house.

Lannie Grant, the Thiara's realtor, stated that the Town staff gave them information that the wall could be placed on the property line and if they had known a 20-foot setback was required, they would not have purchased the lot.

Chair Ozer stated that she initially had a negative reaction to the request for a variance. However, after considering the request further and examining the property, she saw that there were special circumstances and hardships present that fits the criteria for granting a variance. She also observed that other properties in the same classification have privileges that would be denied to the subject property if the variance were not approved.

Board Member Leibsohn stated that he would not support the motion to approve the variance for the property and would vote for denial. He believed that the 20-foot setback should apply to the wall in question and that the property may

be redeveloped in the future, at which point the same setback rules would apply.

A motion was made by Boardmember Brown, seconded by Boardmember Kaur, to approve Case No. BA-22-10, to allow a 6-foot-tall fence wall to encroach into the rear yard setback subject to the stipulations in the staff report and with the addition of the following stipulation: That reasonable landscaping be added to the exterior of the wall and approved by the Town. The motion passed by the following vote:

Aye: 3 - Boardmember Brown, Boardmember Kaur and Chairperson Ozer

Nay: 2 - Boardmember Leibsohn and Boardmember Newman

Absent: 1 - Boardmember Williams

6. ACTION ITEMS

7. CONSENT AGENDA

A motion was made by Boardmember Brown, seconded by Boardmember Newman, to approve October 19, 2022 and November 2, 2022 meeting minutes. The motion carried with the following vote:

A. [23-003](#) Approval of the October 19, 2022 Board of Adjustment Meeting Minutes

Approved

Aye: 5 - Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Newman and Chairperson Ozer

Absent: 1 - Boardmember Williams

B. [23-004](#) Approval of the November 2, 2022 Board of Adjustment Meeting Minutes

Approved

Aye: 5 - Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Newman and Chairperson Ozer

Absent: 1 - Boardmember Williams

8. STAFF REPORTS

9. PUBLIC BODY REPORTS

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

Meeting Adjourned at 7:02 pm.

A motion was made by Boardmember Leibsohn, seconded by Boardmember Brown, to adjourn the meeting. The motion carried with the following vote:

Aye: 5 - Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Newman and Chairperson Ozer

Absent: 1 - Boardmember Williams

Town of Paradise Valley Board of Adjustment

By: George Burton
George Burton, Secretary