



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes – Final

Board of Adjustment

Chair Hope Ozer
Boardmember Ken Barnes
Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember James Kuykendall
Boardmember Eric Leibsohn
Boardmember Quinn Williams

Wednesday, May 3, 2023

5:30 PM

Council Chambers

1. CALL TO ORDER

Chair Ozer called the meeting to order at 5:30 PM.

STAFF MEMBERS PRESENT

Senior Planner George Burton
Community Development Director Lisa Collins
Hillside Development Planner Jose Mendez
Town Attorney John Gaylord
Administrative Assistant Cherise Fullbright

2. ROLL CALL

Present 6 – Chair Hope Ozer
Boardmember Ken Barnes
Boardmember Robert Brown
Boardmember James Kuykendall
Boardmember Eric Leibsohn
Boardmember Quinn Williams

Absent 1 – Boardmember Priti Kaur

3. EXECUTIVE SESSION

4. STUDY SESSION ITEMS

5. PUBLIC HEARINGS

A. 23-147 Pavo/Meyer Variance to allow an addition to the primary residence to exceed the allowable floor area ratio limit Case No. BA-23-02. 4502 E. Moonlight Way (APN 169-11-932)

Mr. Burton provided an overview of the request. He explained that the goal of the meeting was to review and take action on a proposed variance request to exceed the 25% floor area ratio (FAR) limit for an addition to the main house. He provided background information on

the property, including its location in a gated community with unique access through Maricopa County. The Board had previously granted variances for the construction of a new home on the property. The current construction of the house was already at the maximum 25% floor ratio limit and the applicant now wanted to add a 640 sq ft guest suite addition that would exceed the limit. The proposed addition meets setback and height requirements.

Mr. Burton presented the site plan and elevations to show the placement and design of the addition. Staff analysis concluded that there was no property hardship justifying the variance request. The property was slightly oversized for its classification and the existing home already reached the maximum floor ratio limit. Staff compared the livable space of neighboring properties and found that the subject property was within the average range. Two neighboring property owners had inquired about the scope of work but did not express support or opposition. Based on the lack of property hardship, staff recommended denying the application. The Board had three possible actions: deny the request, approve it with stipulations, or continue the review.

Scott Carson, the architect representing the applicant, discussed the unique aspects of the property. He explained that there used to be three parcels, but two were combined in Paradise Valley. However, for unknown reasons, one parcel in Maricopa County was not annexed into the Town along with the others. The existing home on the property straddled the two property lines, making remodeling impossible. Consequently, it was decided to demolish the house and build a new one, remaining within the Paradise Valley parcel. He further explained that the property had an existing detached garage on the Maricopa County parcel, which was intended to be converted into a guest house. However, the county regulations required a main house before allowing an accessory structure, resulting in the need to demolish the garage. The property spanned two jurisdictions, totaling just over two acres, and the client could not construct a home that met the floor area ratio (FAR) requirements. Combining the lots was not possible due to the different jurisdictions. To address the issue, it was proposed to place a guest house at the back of the property. However, staff indicated that it would not be allowed since the property was already at the maximum 25% FAR. Mr. Carson explained that combining the lots would require an extensive and time-consuming process, including a general plan amendment and annexation by the Town, which could take a year or more. Mr. Carson emphasized that the client desired a small guest house and proposed that the property be considered as one, allowing for a 1.4% FAR exceedance on the Paradise Valley lot. He mentioned a recorded covenant that prevented the property from being divided and requested that the property be treated as a unified entity, considering the current 12% total FAR if the lots were combined.

Boardmember Williams inquired about the staff's opinion on the covenant that restricted the property's use to be considered as one

entity.

Mr. Burton responded that from a zoning perspective, they are treated as separate lots and development on the in Town must be in compliance with the R-43 standards.

Boardmember Williams expressed confusion regarding how to consider the covenant and its impact on the application.

Mr. Burton reiterated that they only looked at the lot in the Town and its compliance with the R-43 requirements.

Boardmember Williams further questioned why the application was not considered when it originally came in, taking into account the covenant.

Boardmember Barnes asked if architectural studies had been conducted to incorporate the 640 sq ft into the existing approved residence or reduce the size of the home.

Mr. Carson responded that increasing the size of the existing residence would also exceed the FAR. The decision to have a separate guest house was influenced by the need to remove the building on the Maricopa County parcel, which couldn't be retained without a main house.

Chair Ozer expressed her observations regarding the location of the guest house addition and the need to consider the entire property as one piece for the purpose of the FAR calculation. She mentioned that despite the property being divided between the county and the Town, treating it as one property would align with the goal of the FAR regulations to prevent excessive bulk without adequate open space and views. She indicated that she would consider the property as a unified entity when making her motion.

Mr. Gaylord commented that there might be a difference between considering property outside the Town's jurisdiction and considering factors related to the property within the Town's jurisdiction. He emphasized that the covenant did not bring the county property into the Town's jurisdiction.

Ms. Collins added that the covenant could not be considered a development standard in the decision-making process.

Mr. Carson mentioned that during the earlier stages of the case, they had to consider the entire property for stormwater retention purposes, including the county parcel. However, they were not allowed to count the county parcel towards the FAR.

Boardmember Brown inquired about whether stormwater retention could have been accommodated solely on the Paradise Valley site.

Mr. Carson explained that a combination of factors, including the

driveway and house footprint, led to the decision to locate stormwater retention on the county parcel.

A motion was made by Boardmember Williams, seconded by Boardmember Brown, to approve the variance request subject to the stipulations in the packet. The improvement shall be in compliance with the submitted plans and documents, and the applicant must obtain the required building permits and inspections from the building department. The motion carried with the following vote:

Aye: 4 – Chairperson Ozer, Boardmember Brown, Boardmember Williams, Boardmember James Kuykendall

Nay: 2 – Boardmember Barnes, Boardmember Leibsohn

**B. 23-152 UR Project Variance - 7941 N 55th Street (APN 169-06-076B)
Case No. BA-22-06**

Mr. Mendez provided an overview of the item. The goal of the case is to review and take action on a variance request to allow the construction of a new single-family residence that exceeds the allowable disturbed area and maximum hillside height. He provided background information on the property, including its zoning, lot size, and history. The property is legal nonconforming and smaller than what would be allowed under current codes. The applicant had previously submitted a variance request that was continued to allow for design adjustments. The current request seeks to exceed the allowable disturbance and cut height. Mr. Mendez explained the reasons behind the variance request, including the difficult site conditions, existing disturbance from prior road construction, and limited access to the lot. He highlighted that the proposed design aligns with the size and development of the neighborhood and reduces the extent of variances. The proposed cut height is visibly hidden by the home, and the placement of the home in the terrain helps reduce its visibility. Mr. Mendez mentioned that the variance request is a result of property hardship due to the average slope and preexisting disturbance on the lot. He also mentioned receiving letters of opposition, which raised concerns about the destruction of the desert environment, adherence to the general plan's vision and values, and drainage issues. Staff recommended approval of the variance request, citing special circumstances related to the undersized lot, existing disturbance, and the need to provide privileges enjoyed by similar adjacent properties. The proposed design was considered to be in compliance with engineering and building design standards.

Boardmember Brown asked if the case would go to the Hillside Committee for review.

Mr. Mendez confirmed that the proposal had not yet gone through the Hillside Committee and explained that the applicant chose to bring it to the Board first because they would still need to present it to the Committee after Board approval. If the Board approves the request,

the applicant will proceed with the Hillside process, including conceptual review, safety improvement plan, and formal review. If the request is denied, the applicant can decide how to proceed.

Boardmember Barnes mentioned that the opposition seemed to be concerned about additional disturbance exceeding what is normally allowed.

Mr. Mendez confirmed that the opposition letters raised concerns about the destruction of the desert environment, adherence to the general plan's vision and values, and drainage issues.

Boardmember Barnes asked about the amount of disturbance attributed to the roadway and whether it was peculiar to this lot or applicable to other lots.

Mr. Mendez explained that while other lots were impacted by road construction, this lot had a more severe cut due to limited access.

Andy Byrns, the architect representing the applicant, explained that they decided to go through the variance request before the Hillside Committee because the Committee said they couldn't comment until the variance request was resolved. He mentioned that they worked with staff to come up with a two-story design that minimized the need for variances, particularly the disturbance issue. They pushed the house down to minimize the grade of the driveway and keep the cut as low on the site as possible. They also reduced the house size by almost 2,000 sq ft and made sacrifices to comply with the neighborhood's characteristics. Mr. Byrns expressed hope for the Board to grant their request so they can proceed to the Hillside process.

Heather Dukes, a land-use attorney representing an adjacent property owner, presented her opposition to the variances. She referred to the table on page three of her letter, which compared the site plan details from the previous submission with the current proposal. Ms. Dukes highlighted that granting the variances would constitute a grant of special privileges inconsistent with the limitations imposed on other properties in the vicinity and the zoning district. She emphasized that the hillside ordinance sets maximum disturbance area percentages based on lot slope and the requested variances would allow a significant increase in disturbance area from 9.6% to 41.6%, four times the amount permitted. Ms. Dukes argued that this would result in special privileges for the applicant that were not intended by the Hillside ordinance.

Ms. Dukes further noted concerns about the increase in total floor area, floor area ratio, building footprint, and net disturbance in the current proposal compared to the previous submission. She argued that the design of a large home on a lot with a 43% slope was a self-imposed choice by the applicant and did not meet the variance tests. Referring to the Town Staff report from October, she pointed out that

staff recommended denial of the previous variances, stating that the number and scope of the variances requested were self-imposed and merely a convenience for the applicant. Ms. Dukes expressed concerns about the safety and welfare of residents and properties due to increased stormwater runoff and erosion resulting from the disturbance. She emphasized the importance of protecting the public from hazards and suggested that approving the variances could expose the Town and the applicant to future liability. She concluded by urging the Board to consider the alternatives and either continue or deny the variances based on the significant disturbance at stake.

Boardmember Leibsohn asked the architect to clarify the discrepancy in square footage mentioned by Ms. Dukes.

Mr. Byrns explained that the design had reduced the interior square footage by 2,000 sq ft. However, they included exterior spaces such as the courtyard, covered deck, and trellis, which added approximately 3,500 sq ft. These exterior spaces were designed to meet zoning requirements and did not require additional variances. Mr. Byrns clarified that the total floor area of the house was 10,697 sq ft, with 6,000 sq ft representing the livable square footage. He mentioned that the design aimed to improve the site's current issues with runoff and erosion by implementing measures such as retaining walls and stormwater control. He emphasized that the design would stabilize and address the existing problems rather than exacerbate them.

Boardmember Barnes asked if the amount of disturbance could be reduced by decreasing the size of the home.

Mr. Byrns responded that the disturbance was not directly tied to the size of the home. In fact, increasing the home's footprint could reduce the net disturbance, as the disturbance area is subtracted from the footprint. He explained that the hillside development regulations allowed for larger homes with increased footprints, which reduced net disturbance.

Mr. Mendez clarified that reducing the footprint would actually increase the disturbance because a smaller footprint would mean less subtraction from the gross disturbance, resulting in a higher net disturbance. The calculation of net disturbance subtracts the footprint of house.

Mr. Mendez further explained that the current design, with a two-story house and outdoor spaces, may seem counterintuitive in terms of disturbance calculations. If the outdoor spaces were enclosed and considered indoor spaces, they would not be considered part of the net disturbance. However, Hillside regulations do not accommodate two-story designs by considering the square footage of the house and less ground contact, resulting in a discrepancy between gross and net disturbance.

A motion was made by Boardmember Leibsohn, seconded by Boardmember Brown, to approve the variance request subject to the stipulations in the packet. The motion carried with the following vote:

Aye: 6 – Chairperson Ozer, Boardmember Brown, Boardmember Williams, Boardmember Kuykendall, Boardmember Barnes, Boardmember Leibsohn

6. ACTION ITEMS

A. 23-151 Discussion and Possible Action to Amend the Board of Adjustment Code of Conduct

Ms. Collins opened the discussion about amending the Board of Adjustment code of conduct. She mentioned that the Board had previously asked for a review of the code during an orientation session. The code specifically addressed site visits, and she provided references indicating that the Council had authorized the Board to create a code of conduct. Ms. Collins mentioned that the Chair had suggested noticing a possible quorum from the time the agenda was posted until the meeting dates. She also highlighted the importance of not communicating with each other or anyone else during site visits.

Boardmember Williams raised a concern about the wording of the code of conduct, particularly the last paragraph. He suggested that it should explicitly state that Boardmembers should not communicate with each other, the applicants, or any other person regarding the case.

Ms. Collins responded by assuring him that speaking politely to applicant or others, without discussing the case or its merits, was permissible.

Boardmember Williams expressed that the wording should be simplified to avoid potential misinterpretation.

Chair Ozer noted her own experience during a site visit and how she had communicated with the superintendent while ensuring that no lobbying or discussion of the case's merits took place. She stated that the key was to gather the necessary information without engaging in improper conversations.

Mr. Gaylord clarified that the Town Council had already adopted the resolution and that the Board couldn't change it. He suggested that the Board could recommend changes or establish its own rules within the Council's parameters.

Boardmember Williams sought clarification regarding Chair Ozer's interaction with the superintendent during her site visit.

Chair Ozer explained her own experience, emphasizing that the superintendent had simply provided directions and necessary information without discussing the case's merits. Ms. Collins added that staff should also inform applicants not to engage in such

discussions, as it could have negative consequences.

Chair Ozer suggested making a motion and taking a vote on changing the code of conduct since it was an agenda action item. Ms. Collins agreed with her suggestion.

Overall, Ms. Collins provided an overview of the discussion, and the Boardmembers expressed their concerns and opinions regarding the wording of the code of conduct and the appropriate communication during site visits. Chair Ozer and Mr. Gaylord provided guidance and clarification on the matter.

A motion was made by Boardmember Kuykendal, seconded by Boardmember Williams, to approve the Board of Adjustment Code of Conduct amendments as presented. The motion carried with the following vote:

Aye: 6 – Chairperson Ozer, Boardmember Barnes, Boardmember Brown, Boardmember Kuykendall, Boardmember Leibsohn, Boardmember Williams

7. CONSENT AGENDA

8. STAFF REPORTS

9. PUBLIC BODY REPORTS

Chair Ozer noted that Valley Youth Theatre's "SpongeBob Square Pants" would open at the Herberger Theater Center in June.

10. FUTURE AGENDA ITEMS

Mr. Burton stated that the Board probably won't have a meeting in June. He would email the Board next week to let them know if there will be any items on the June agenda. If not, the Board would go on recess and would reconvene on the first Wednesday in September.

11. ADJOURNMENT

Motion for adjournment made 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: 6 – Chairperson Ozer, Boardmember Barnes, Boardmember Brown, Boardmember Kaur, Boardmember Leibsohn, Boardmember Williams

Paradise Valley Board of Adjustment

By: 
Cherise Fullbright, Secretary