



Action Report

File #: 18-105

TO: Chair and Board of Adjustment

FROM: Eva Cutro, Community Development Director
Paul Michaud, Senior Planner
George Burton, Planner

DATE: March 7, 2018

CONTACT:

George Burton, 480-348-3525

AGENDA TITLE:

Request for Reconsideration of Emerson Fence Variance - 5739 N. Casa Blanca Drive (APN: 173-08-004A). Case No. BA-17-04

BACKGROUND

The Board of Adjustment reviewed and denied this variance request at the January 3, 2018 meeting. The variance request was to allow existing non-conforming fence walls to remain.

Board Member Ozer is requesting that the Board of Adjustment reconsider this variance based upon new information presented by the applicant. The applicant identified that they "have learned that it is the Town's policy to establish a vehicular non-access easement along right-of-way for new subdivisions where it is adjacent to existing homes so as not to burden those homes with additional setbacks because of a road that only benefits the new subdivision. This is essentially an acknowledgement by the Town that those increased setbacks being imposed on adjacent property owners would constitute a hardship and lower their property value. With this information, the Board may be inclined to acknowledge the hardship, not as a need to move improvements like a pool or sport court but the very fact that a significant amount of property is lost with nothing gained." Attached is a copy of Board Members Ozer's request for reconsideration.

Currently, when a subdivision creates a new right-of-way (ROW) that adjoins an existing property, a separate tract (instead of a vehicular non-access easement) is generally created and placed between the existing property and the new ROW. This is done to prevent greater setback requirements on the existing property and/or to prevent the creation of non-conforming structures on the neighboring lot. Creation of this tract is not common.

The Board will discuss and take a vote to determine if they want to reconsider the application/variance request. If the Board approves a motion to reconsider (to a specific date), then the meeting date for the reconsideration will be advertised and noticed. The Board will then reconsider/re-review the application and take action at the scheduled meeting.

File #: 18-105

ATTACHMENTS

- January 21, 2018 Email Request for Reconsideration from Board Member Ozer
- Emerson Variance Case Material from January 3, 2018
- January 3, 2018 Draft Meeting Minutes

C: Nick Labadie (Applicant)
Case File BA-17-04

George Burton

From: Hope Ozer
Sent: Sunday, January 21, 2018 12:07 PM
To: George Burton
Cc: Emily B. Kile (emily@kilekuplaw.com)
Subject: EMERSON VARIANCE: REQUEST TO RECONSIDER

Dear George....I would like to request that we reconsider the Emerson variance request based on the new information presented below. Please advise how we move forward. Thanks! Hope.

From: Jordan Rose
Sent: Thursday, January 18, 2018 4:36 PM
To: Hope Ozer
Cc: Rebekah Pineda
Subject: Emerson Variance Case; New Information

Board Member Ozer – I appreciate your willingness to potentially reconsider due to some new and quite impactful information that was not in any way shared at the hearing a few weeks ago. Since that time, we have learned that it is the Town’s policy to establish a vehicular non-access easement along right-of-way for new subdivisions where it is adjacent to existing homes so as not to burden those homes with additional setbacks because of a road that only benefits the new subdivision. This is essentially an acknowledgement by the Town that those increased setbacks being imposed on adjacent property owners would constitute a hardship and lower their property value. With this information, the Board may be inclined to acknowledge the hardship, not as a need to move improvements like a pool or sport court but the very fact that a significant amount of property is lost with nothing gained. In addition, we learned that this is one of only 6 lots in all of the Town impaired by three roadways, which, if not corrected, will end up reducing the property size by a full 12,000 square feet. In other instances this hardship would be corrected. We will very much appreciate an opportunity to present new information if a motion to reconsider the Variance case is provided. Thank you again and let me know if you have any further questions or need more information. Jordan.

Jordan R. Rose



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Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes

Board of Adjustment

Wednesday, January 3, 2018

5:30 PM

Council Chambers

1. CALL TO ORDER

The meeting was called to order at 5:30 p.m.

Staff Members Present

Town Attorney Andrew Miller
Community Development Director Eva Cutro
Planner George Burton

2. ROLL CALL

Present 6 - Chairperson Emily Kile
Board Member Catherine Kauffman
Board Member Eric Leibsohn
Board Member Jon Newman
Board Member Hope Ozer
Board Member Quinn Williams

Absent 1 - Board Member Rick Chambliss

3. EXECUTIVE SESSION

None

4. STUDY SESSION ITEMS

A. 18-007 Emerson Variance – 5739 N Casa Blanca Drive (APN: 173-08-004A) Case No. BA-17-04

George Burton, Planner, presented the history on this application, noting that Right-of-Way was dedicated and the walls became non-conforming due to decreased setbacks. The applicant is now proposing a remodel over 50% and the Town Code requires that all walls shall be brought into conformance. The applicant is requesting a variance to allow the non-conforming walls to remain. The north wall is 10.4 feet from the property line and the south wall is 11 feet from the property line. The Code requires a 20-foot setback. Staff is recommending denial of this application due to the lack of a hardship on this property.

It was noted that the location of the wall will not impact the location of the home improvements. Three letters of support were received. There was discussion regarding the pool. It was noted that the wall may be in the pool if it is relocated. However, the pool will also be remodeled. The applicant

explained that there was no Right-of-Way along Palo Verde prior to the applicant dedicating it in 2002.

**B. 18-008 Holyoak Variance – 6641 E Ironwood Drive (APN: 174-36-004)
Case No. BA-17-045**

George Burton, Planner, provided the history on this request. He noted this is a variance request to allow a new wall at the south property line along Mockingbird Lane. The wall is proposed at 6'3". The Code allows a 6' wall at a 20' setback along a ROW. It was noted that the adjoining properties have walls at the property line. Staff is recommending denial of this application due to the lack of a property hardship necessitating a variance.

There was discussion regarding whether the adjoining walls were part of a subdivision wall. There was no proof of that, but since this property did not have this wall it was not determined if the adjoining lots have a subdivision wall.

5. PUBLIC HEARINGS

**A. 18-007 Emerson Variance – 5739 N Casa Blanca Drive (APN: 173-08-004A)
Case No. BA-17-04**

Cameron Carter, Rose Law Group, presented for the applicant. Mr. Carter explained that this lot is unique because it is a peninsula lot with roads that were created after the home was constructed and that the lot developed over 70 years ago.

In 2002 the lot was redeveloped and Right-of-Way (ROW) was dedicated. Mr. Arshadi, then Community Development Director, issued a letter stating that all new structures must be in conformance with the Town Code. At that time the wall setback was 10' and the walls were built in conformance. In 2004 the Code was amended to require a 20' setback. The Emersons purchased the property a year ago.

The applicant believes this lot is unique as it is the only peninsula lot in the Town that is not in a subdivision. The distance from the ROW pavement is over 20', giving the appearance of a greater setback. The conditions are not self-imposed since they were created due to required roadway dedications.

There was discussion of the proposed plan that was included in the packet. It was noted that this shows a new pool and a substantial remodel. Mr. Carter noted that this is not a final plan. Mr. Blockberger, architect, gave additional information on the remodel. It was noted that this is an oversized lot at 2 plus acres. The applicant noted that they have a 40' main house setback on all sides.

The Board discussed whether there is a true hardship on this property. Mr. Blockberger stressed that moving the walls will greatly affect the existing Improvements, including the pool and basketball court. Mr. Carter added that the uniqueness of this lot does not give the homeowner the same rights as other properties in the Town.

There was discussion of changing the walls to view fences, which could remain at their current setbacks.

It was also noted that the pool and sport court would have to be relocated to meet setbacks if they are remodeled by more than 50%.

At 6:38 pm the meeting was opened for public comment.

Fife Symington - spoke in favor of the variance request due to the lot having roads on three sides. He is the immediate neighbor and believes the current wall is aesthetically pleasing and the landscaping mature.

At 6:45 the public comment was closed.

Board Member Leibsohn made a motion for denial. Board Member Kauffman seconded the motion. Board Member Williams is in favor of the variance due to the uniqueness of the lot and because the walls are existing. Board Member Leibsohn believes that other options exist for this homeowner. Board Member Williams believes denying this discourages people improving their property. Chairman Kile believes this is a tough case. Board Member Williams asked if the Mr. Arshadi letter gave the applicant any vested rights. Mr. Miller does not believe it gives any vested rights.

The motion was made by Board Member Leibsohn, seconded by Board Member Kauffman, to deny the variance request. The motion carried by the following vote:

Aye 5 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, and Chair Kile.

Nay 1 - Board Member Williams

Absent 1 - Board Member Chambliss

**A. 18-008 Holyoak Variance – 6641 E Ironwood Drive (APN: 174-36-004)
Case No. BA-17-05**

Wendy Riddell, Berry and Riddle, presented for the applicant. She stated that the applicant wants to match the existing wall that exists to the east and west of the property. The applicant would like to secure the property with the wall as it is a safety risk. This property is the only gap in a continuous wall.

At 7:06 the public hearing was opened.

Joe Panter, a neighbor, stated that he has wanted that wall built for 25 years to close the gap. He is in support of the variance request.

Susan Rand, HOA president, stated that the HOA has voted to recommend approval to the Board of Adjustment. It is a safety concern because a car could

drive through this gap. It would be nice if it continued to close the gap. There was discussion that there are areas of view fence where a large wash passes through. Susan Rand stated that the wall is maintained by the HOA.

Walter Binsom, a 39 year resident and member of HOA, stated that he is in favor of the request as long as it matches the walls to the east and west. It should also provide noise mitigation for the owner.

At 7:11 pm the meeting was closed to the public.

Board Member Ozer made a motion for approval of the variance based upon the special circumstances noted in the narrative and that the wall will match the height of the existing walls adjoining it and not to exceed a height of 6' tall. Board Member Leibsohn seconded the motion. All in favor.

The motion was made by Board Member Ozer, seconded by Board Member Leibsohn, to approve the variance request. The motion carried by the following vote:

Aye 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

Absent 1 - Board Member Chambliss

B. ACTION ITEMS

None

C. CONSENT AGENDA

A. 18-013 Approval of the December 6, 2017 Board of Adjustment Meeting Minutes

A. 17-195 Approval of the April 12, 2017 Board of Adjustment Minutes

A motion was made by Board Member Leibsohn to approve the April 12, 2017 minutes and April 5, 2017 minutes as amended. Seconded by Board Member Newman. The motion carried by the following vote:

Aye 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

Absent 1 - Board Member Chambliss

D. STAFF REPORT

None.

E. PUBLIC BODY REPORTS

None

F. FUTURE AGENDA ITEMS

G. ADJOURNMENT

A motion was made at 7:15 p.m. by Board Member Williams and seconded by Board Member Kauffman, to adjourn the meeting. The motion carried by the following vote:

Aye 6 - Board Member Leibsohn, Board Member Jon Newman, Board Member Hope Ozer, Board Member Williams, and Chair Kile.

Absent 1 - Board Member Chambliss

Paradise Valley Board of Adjustment

By: 
Eva Cutro, Secretary