



# Town of Paradise Valley

6401 E Lincoln Dr  
Paradise Valley, AZ 85253

## Minutes – Draft

### Board of Adjustment

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

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Wednesday, October 4, 2023

5:30 PM

Council Chambers

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#### 1. CALL TO ORDER

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

#### STAFF MEMBERS PRESENT

Senior Planner George Burton  
Planning Manager Paul Michaud  
Town Attorney John Gaylord  
Administrative Assistant Cherise Fullbright

#### 2. ROLL CALL

**Present 5 –** Chair Hope Ozer  
Boardmember Ken Barnes  
Boardmember Robert Brown  
Boardmember James Kuykendall  
Boardmember Eric Leibsohn  
Boardmember Priti Kaur  
Boardmember Quinn Williams

#### 3. EXECUTIVE SESSION

#### 4. STUDY SESSION ITEMS

#### 5. PUBLIC HEARINGS

**A. 23-230 Discussion and Possible Action on Case No. BA-23-04  
Jellies Variance - 5204 N 70th Place (APN 173-18-028)  
Variance to allow a pool and spa to encroach into the setback.**

Boardmember Kaur recused herself from this item due to a conflict. She removed herself from the dais at 5:33 PM and remained in Chambers.

Mr. Burton presented an overview of the item, starting with the conditions of the rectangular-shaped corner lot. He noted the scope of the request to encroach into the 20' rear yard setback. He displayed a table comparing setbacks in the zoning ordinance to the encroachment in the request, an aerial photo showing the proposed location of the pool and spa, and photos of the site currently. Mr. Burton provided an analysis, highlighting the request did not meet the three variance criteria and there was no property hardship. He addressed public comments, then noted an inquiry and letter of opposition had been received. Further, Mr. Burton shared that Staff is recommending denial of the request.

The applicant, Richard Jellies, presented various mitigating factors. He noted that the R-18A lot is one of 2 special classifications of lots in Paradise Valley, designed to fit the code. He pointed out that the lot was 28 feet shallower than what the code would require for a legal lot and questioned this as a hardship. Mr. Jellies elaborated on the size, setbacks, lot coverage, and configuration of this corner lot in relation to code. He noted the building pad becomes shallow, but wide, as a result, and although the previous pool complied with code, the home was not. Mr. Jellies noted that visibility of the pool from active areas of the home is impeded the closer it is to the house. He said that being able to visibly monitor a pool was just as important as all other safety measurements, such as fences, alarms and covers. Mr. Jellies reiterated his request to allow a pool that is safe and pointed out many pools in the area are out of compliance. He spoke to the intent of the pool setback ordinance being a safety and nuisance concern, then presented additional mitigating factors in relation to those concerns. Mr. Jellies expressed his belief that a lot being 28 feet shallower than what is in the code is a hardship as it has dictated what could be done.

Boardmember Williams first noted that great arguments had been made by Mr. Jellies. He further noted that to meet the front setback there was limited space where the house could go. He questioned if the pool was included in beginning designs when the home was laid out, or if it was something new.

Mr. Jellies stated he had contacted Paul Michaud, Planning Manager, about 1.5 years ago regarding the pool issue in relation to setbacks. He had limited choices but hoped there would be reasonable consideration for his difficult situation. He confirmed the pool was not included in the original plans approved by the Town.

Boardmember Williams asked about other pools in the area, indicated by Mr. Jellies to be out of compliance.

Mr. Jellies noted that over 50 of approximately 80 pools in this zoning did not comply. He further noted that if the pools do comply, the houses do not comply.

Boardmember Leibsohn asked if there was any way to verify if the East West dimension was unique for the R-18A category. He wanted to know if there were other lots of this width.

Mr. Burton confirmed and noted that the lots to the North are like those shown in the provided plat. Further, there are some lots smaller in width with the same R-18A zoning.

It was noted that the previous home encroached into the front setback, and Member Brown asked Mr. Jellies how many feet he had to give up, to reach the front setback requirements for construction of the new home. He also questioned where the pool equipment would be located.

Mr. Jellies stated he had pushed the house back 6 feet from where the original home was in order to meet the front setback requirements with the new build, and confirmed he was requesting 12 feet in the back for the pool encroachment. He shared that pool equipment would be located to the North of the house, behind a wall. Further, he talked to the neighbor about pool equipment after the house was moved. The pool equipment would be located about 15 feet from the neighbor's property, near the utilities, but he would be willing to complete the wall all around this area and plant heavy to help mitigate noise.

Boardmember Leibsohn asked about the masonry wall constructed to the West side of the property, which was constructed somewhat to the East of the property line. He sought clarification on the proposed pool being measured from the masonry wall versus the property line.

Mr. Jellies confirmed that the wall encroached about 8 inches into the property. He shared that the alley was in the original plat and attached to the private flood irrigation district there. He also confirmed the pool would be approximately 8.5 feet from the existing block wall.

Chair Ozer mentioned the written information that quoted the main reason for pool position is to maintain views of the surroundings and to keep a clear line of sight to the pool from the house for safety reasons. She addressed a previous variance request by this applicant and referenced the applicant's position within the commercial construction industry, related to his awareness of rules and regulations.

Mr. Jellies stated that visibility of the pool, from the house, is limited if the pool were to be positioned within the proper setback. He stated his current position is in commercial brokerage and development consulting.

Chair Ozer expressed a safety concern, specifically that the placement of the pool is being requested to observe the pool and patio from inside the home. She stressed the importance of an adult sitting outside, not inside, to observe children in the pool.

Boardmember Barnes again addressed the applicant's knowledge within the building industry. He pointed out that the current home is much larger than the home there in the past. He considered the argument that there are 50 noncompliant pools in the area, but pointed out that those were likely to exist prior to annexation, and not approved by the Board. Boardmember Barnes questioned if anything in the Zoning Ordinance had changed since Mr. Jellies' purchase of the property, and if Mr. Jellies was aware of the rules and regulations at the time of purchase.

Mr. Jellies noted the home was larger by about 400 sq ft. He also confirmed that nothing had changed in the Zoning Ordinance since his purchase, and he was aware of the rules and regulations.

Chair Ozer opened the Public Hearing at 6:07 p.m. to allow public comment.

John Clifford, a Paradise Valley resident, and neighbor to the project, voiced his reasons for opposition which had also been listed in the letter submitted to Staff. He shared that he and his wife, Kathleen, remodeled an existing home in this neighborhood and complied with the rules. He stated they did not get what they wanted and possibly spent more money to reach compliance. He believed, in fairness to anyone, it would be best not to make exceptions and only grant variances in cases where there is palpable hardship with no other options.

Kathleen Clifford, a Paradise Valley resident, and neighbor to the project, stated her opposition to the variance and shared that she has thoroughly researched the Town Code. She addressed problems within the existing R-18A lots and suggested the town look into revisions for the entire area, benefiting the entire neighborhood.

Boardmember Leibsohn pointed out the exhibit presenting an alternate location. He asked if this exhibit showed the same footprint of the pool just moved to the north. He also asked if this location was within the required setbacks.

Mr. Burton affirmed that was correct; the same footprint had been moved to the North and the location was within the setbacks.

Mr. Jellies agreed the code should be addressed as suggested by Kathleen Clifford. He clarified that a pool could be built, but the challenge is that it would not be seen from the patio.

Chair Ozer closed the Public Hearing at 6:13 p.m. She addressed her concerns which included the pool not being considered during planning of the house, knowledge of the rules when building, and all 3 variance criteria not being met. She voiced her intent to vote no on the variance.

Boardmember Williams stated The Clifford's have the same rights under code to request a variance. He shared that this area, when annexed into the Town, created a hardship by increasing the setbacks from 10 feet to 20 feet, preventing use of the property. He noted that it seemed unfair someone would not have the same abilities to have their pool as others do. He also added that the size of the lot, being less than 1-acre, creates a hardship as well. He agreed the development area is difficult and there should be a change. He expresses his intent to vote in favor of the variance.

Boardmember Leibsohn weighed the challenging decision. He expressed his respect for the points made by the Board as well as the special circumstances for this lot. He shared that the alley to the West should also contribute as an element for approval. Boardmember Leibsohn questioned the legality of the project moving forward without meeting the 3 required variance criteria.

John Austin Gaylord, Town Attorney, advised that as a statutory Board, they only have the authority to grant a variance if all 3 variance criteria are met.

**A motion was made by Boardmember Barnes seconded by Boardmember Kuykendall to deny the variance. The motion carried with the following vote:**

**Aye:** 4 – Chair Ozer, Boardmember Leibsohn, Boardmember Kuykendall, Boardmember Barnes

**Nay:** 2 – Boardmember Brown, Boardmember Williams

Boardmember Williams reiterated the 3 variances, and believed the request met all three. As a result, he shared he would be against the motion to deny the variance.

Chair Ozer explained her reasons for denial. Specifically, she believed the design of the newly built home created a self-imposed hardship.

Boardmember Barnes talked about a trend in Paradise Valley to maximize home sizes in response to increased land costs. He agreed that the hardship has been created by the size of the building on the lot and the design not leaving enough room for the pool.

Mr. Burton confirmed that the motion passed, and the variance was denied.

## **6. ACTION ITEMS**

## **7. CONSENT AGENDA**

### **A. 23-259 Approval of September 6, 2023 Board of Adjustment Minutes.**

**A motion was made by Boardmember Barnes, seconded by Boardmember Brown to approve the September 6, 2023 Board of Adjustment Minutes The motion carried with the following vote:**

**Aye:** 7 – Chair Ozer, Boardmember Barnes, Boardmember Brown, Boardmember Kuykendall, Boardmember Williams, Boardmember Leibsohn, Boardmember Kaur

## **8. STAFF REPORTS**

## **9. PUBLIC BODY REPORTS**

## **10. FUTURE AGENDA ITEMS**

Mr. Burton stated there are several variances in the queue, but they are not expected to be heard until November or December.

## **11. ADJOURNMENT**

**A motion was made by Boardmember Barnes seconded by Boardmember Leibsohn to adjourn the meeting at 6:30 PM. The motion carried with the following vote:**

**Aye:** 5 – Chair Ozer, Boardmember Barnes, Boardmember Brown, Boardmember Kuykendall, Boardmember Williams, Boardmember Leibsohn, Boardmember Kaur

**Paradise Valley Board of Adjustment**

By: \_\_\_\_\_  
Cherise Fullbright, Secretary