



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Meeting Notice and Agenda Board of Adjustment

Wednesday, November 7, 2018

5:30 PM

Council Chambers

Special Meeting/Joint Meeting with Planning Commission & Hillside Building Committee

1. CALL TO ORDER

2. ROLL CALL

Notice is hereby given that members of the Public Body will attend either in person or by telephone conference call, pursuant to A.R.S. §38-431(4).

3. EXECUTIVE SESSION

The Public Body may convene into an executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03.A.3.

4. STUDY SESSION ITEMS

Work/Study is open to the public however the following items are scheduled for discussion only. The Public Body will be briefed by staff and other Town representatives. There will be no votes and no final action taken on discussion items. The Public Body may give direction to staff and request that items be scheduled for consideration and final action at a later date. The order of discussion items and the estimated time scheduled to hear each item is subject to change.

- A. [18-432](#) **Discussion and Recommendation to the Town Council re Amendments to the Board of Adjustment Rules & Regulations.**

Staff Contact: Andrew Miller, 480-348-3526

5. PUBLIC HEARINGS

The Public Body may take action on this item.

6. ACTION ITEMS

The Public Body may take action on this item.

7. CONSENT AGENDA

All items on the Consent Agenda are considered by the Public Body to be routine and will be enacted by a single motion. There will be no separate discussion of these items. If a Commissioner or member of the public desires discussion on any item it will be removed from the Consent Agenda and considered separately.

- A. [18-426](#) Approval of the September 5, 2018 Board of Adjustment Meeting Minutes

8. STAFF REPORTS

9. PUBLIC BODY REPORTS

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

AGENDA IS SUBJECT TO CHANGE

**Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Planning Commission are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.*

The Town of Paradise Valley endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for disabled persons at public meetings. Please call 480-948-7411 (voice) or 480-483-1811 (TDD) to request accommodation to participate in the Planning Commission meeting.



Action Report

File #: 18-432

TO: Chair and Board of Adjustment

FROM: Andrew Miller, Town Attorney
Jeremy Knapp, Community Development Director

DATE: November 7, 2018

CONTACT:

Andrew Miller, 480-348-3526

AGENDA TITLE:

Discussion and Recommendation to the Town Council re Amendments to the Board of Adjustment Rules & Regulations.

BACKGROUND:

Recently the Council determined that some changes to the Rules of Procedure for the Planning Commission, Board of Adjustment, Hillside Building Committee (which has no adopted rules of procedure), and Council should be explored. A Town Manager working group was organized to discuss some potential solutions to some of the problems that the Council had identified. The working group consisted of the Town Manager, Town Attorney, Vice-Mayor Bien-Willner (who is the Council liaison to the Commission) and Council Member Scott Moore (a former Board of Adjustment and Commission Member). The working group identified four problem areas where some changes to the rules for the aforementioned public bodies would be useful: 1) late submittal of materials by applicants or residents/general public; 2) surprise submittals of documents or electronic materials on the night of a meeting; 3) lack of clarity on allotted speaking times for "spokespersons" for residents or neighborhood groups; and 4) clarity on timing requirements and agenda setting for motions to reconsider a motion or action from the prior meeting.

The working group discussed changes that could be implemented in each of these areas that would help staff, residents/general public, applicants, and the public bodies maintain greater transparency and openness as well as providing for a more rigorous and thorough review of submitted materials by the Town staff. Of particular concern was making sure that all parties have sufficient time to review materials submitted for public review prior to scheduled hearings or meetings. Based on the input of the working group the Town Manager and Town Attorney have now prepared some changes to the existing Board of Adjustment ("Board") Rules that should be reviewed by the Board. Staff desires to have the Board provide comments on these proposed changes, as well as any other changes that the Board believes are in order, so that the Council can receive those comments and have a coordinated approach to the Rules of Procedure for the Council, Planning Commission, Board of Adjustment, and Hillside Building Committee.

Current Code Provisions Regarding Board Rules:

The Town Code (Section 2-5-3(C)) provides that the Board has the power to “make and publish rules and regulations to govern its proceedings.” The “rules” are to be “filed in the office of the Board and... the Town Clerk...”

Section 2-5-3 Board of Adjustment

C. Rules and Regulations, Records, Procedures, Limitations. The Board shall have power to make and publish rules and regulations to govern its proceedings and to carry into effect the provisions of this section. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, or every amendment or repeal thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and in the office of the Town Clerk, and shall be a public record.

If changes to the Board Rules are to be made, then those changes should be adopted at a public meeting after discussion and input from the public. It is also recommended that proposed changes be sent to the Town Council for its input prior to the adoption of such changes.

The current “Board of Adjustment Rules & Regulations” were last modified in 1998, under then-chair Hope Ozer (copy attached).

Issues Identified and Potential Solutions

1. Late submittal of materials by applicants or residents/general public:

Council Members had observed that all too often applicants have been submitting materials for inclusion in the agenda packets at the last minute (that is, just in time for the staff to place them in the agenda packet), or even on the night of a public meeting. The practice of staff only receiving an applicant’s written and electronic materials “at the last minute” (or even later) does not allow the staff to have adequate time to review the materials and comment or respond to them prior to having to prepare and distribute the agenda packet. Due to the technical nature of matters that come before the Board and the lack of any prior opportunity for the public to gain insight into the application materials (by way of contrast, rezoning matters that come before the Commission have a citizen review requirement and often have several work study sessions prior to a public hearing). For the Board in particular, a late submittal by the applicant makes it difficult for members of the public who may oppose the variance or appeal set for a hearing to have adequate time to research and respond to late submittals. The working group felt that a hard deadline should be instituted; with repercussions should an applicant not meet the required deadline for submitting materials. On the other hand, since residents/general public comments (typically emails) are responding to materials submitted in the agenda packet, residents/general public comments should have a later “cut-off” time, such as 24 hours prior to the posted public meeting time.

Potential Solutions

The working group suggested that applicants should be required to submit their materials (including electronic materials such as a PowerPoint presentation that the applicant would like to use at the public meeting) before the first date on which an advertisement for the hearing is published in a newspaper of general circulation. This will generally be at least fifteen days before the Board's hearing date. Materials submitted after the "cut-off" date and time would not be distributed to the Board and would not be considered at the public meeting or hearing on the applicant's matter. If the applicant felt that the consideration of materials submitted after the cut-off date and time absolutely needed to be placed before the Board, then the applicants' public hearing would then need to be automatically continued and the applicant would have to pay the costs of re-advertising, re-noticing, and/or re-posting the public hearing. Applicant "hand-outs" of materials at the public meeting would not be permitted unless the hand-out is a copy of materials that were already submitted prior to the cut-off time. Similarly, any electronic materials, PowerPoint presentations included, cannot have new or updated slides or graphics.

The working group suggested that submittals or written statements by residents/general public should have to be submitted at least 24 hours prior to the posted public meeting time in order for the staff to be able to assemble and distribute them to the Board prior to the meeting time. If a resident or member of the general public cannot make a meeting time and has a late submittal, that material may be given to another member of the public who can "present" that material at the public meeting. Because the material would be handed out at the meeting, the member of the public should also be required to have at least ten (10) copies of the material available for distribution (one for each Board Member, and one copy for the staff, the applicant, and the minutes-taker). Similarly, the residents/general public present at the meeting may also submit their own written comments at the public meeting, provided that they have at least (10) copies available to distribute.

PowerPoint presentations by residents/general public present unique problems due to the need to load such electronic materials on to the Town computer system and the concomitant shortened public comment times typically allotted to the general public. Thus, the working group suggested that PowerPoint presentations by the general public should not be permitted; provided, however, a member of the general public may hand-out a printed copy of the PowerPoint "slides" that such member of the public desires to present, again requiring at least ten (10) copies of the PowerPoint "slides" submitted for distribution.

2. Surprise submittals of documents or electronic materials on the night of a meeting:

As noted above, the submittal of documents by an applicant on the night of the hearing are problematic and should not be permitted. The current Board Rules do not address the submittal of materials or written comments from the applicant or the general public.

Potential Solutions

Because the current Board Rules do not contain any provisions regarding the submittal of materials by an applicant or comments/materials by the general public, the working group suggested that applicants should not be permitted to submit anything after the cut-off noted above (that is the date that the first ad for the public hearing is published) and that there be a 24-hour cut

-off for written comments or materials from the general public. If a member of the public does have a written comment to submit after the 24-hour cut-off period, then that member of the public should have to submit 10 copies of the written material, for the reasons noted above. Additionally, the Board Rules should provide that the Community Development Department can distribute the comments from the general public to the Board Members by email.

3. Lack of clarity on allotted speaking times for “spokespersons” for residents or neighborhood groups:

When contentious applications have been heard in the past, neighborhood groups have often organized and selected a spokesperson (and sometimes an attorney hired by the neighborhood group) to speak on behalf of numerous individual residents. The current Board Rules do not address the length of time that a designated spokesperson for a larger group of residents or members of the public has to speak. The Board Rules also do not set the amount of time that an applicant is allotted to state their case during public hearings. The Board Rules simply provide that “If the Chair reasonably believes it is necessary to do so, to expedite the Board’s actions on a matter, the Chair may impose reasonable time limits upon the oral statements of any persons wishing to speak and address the Board” (see “Procedure for Board Meetings, Section E). In comparison, the Town Council Rules of Procedure allot fifteen minutes to an applicant at a public hearing, but also do not set time periods for a “spokesperson.”

Potential Solutions

The working group suggested that there be some consistency between the public hearing processes of the Board and the Council. This would aide applicants and the public on what to expect during public hearing processes conducted for official town business. When a “spokesperson” is identified, both sets of rules should have a specified time set aside for a spokesperson. Although the current Board Rules would provide that the Chair “may impose reasonable time limits” this does not guarantee consistent treatment of spokespersons. Additionally, to the members of the group that have designated a spokesperson, it seems inconsistent to allot 15 minutes or more to an applicant, but to have a much lesser time (sometimes as little as 3 minutes) allotted to a spokesperson who is presenting for a potentially large neighborhood group. Thus, the working group recommended that when a spokesperson for an identified group of residents (such as a HOA officer or an attorney) desires to speak on behalf of that group, a larger amount of time should be allotted, but not in excess of fifteen minutes unless the chair finds that there are particularly detailed and difficult matters involved in the case before the Board so as to justify additional time for the designated spokesperson.

One additional requirement suggested by the working group was that when a neighborhood group brings forward a spokesperson the members of that group should be required to be present at the meeting. This requirement would then allow for the chair to be able to gauge how many residents a spokesperson represents and that the spokesperson will actually be speaking for a larger group, not just on behalf of one or two people. The chair can then also advise the members of that group that if they choose to speak individually they should limit their time and avoid any repetition of matters already addressed by the neighborhood spokesperson.

4. Clarity on timing requirements for motions to reconsider a motion or action:

The current Board Rules do not mention how a motion to reconsider should be handled, thus Robert's Rules of Order has been the default process for handling such motions. However, the Council Rules do mention motions to reconsider and provide that a motion to reconsider any action of the Council can only be made "on the day that the action was taken or at the next regular meeting of the Council." Because of the open meeting law requirements, the Council has also been required to have any member who desires to make a motion to reconsider "at the next regular meeting" first request that the Town Clerk place on the agenda the action item from the prior meeting showing that such member requested that it be placed on the agenda for the purposes of being able to move to reconsider the motion approved at the prior Council meeting. Robert's Rules' procedures for motions to reconsider do not fit well with the need for public bodies to publish agendas in advance of public meetings.

Potential Solutions

The working group suggested that the Council should make a formal change to its rules sometime in the future to have the "agenda request" requirement placed in the Council Rules. Since the Board has had past requests for motions to reconsider, the working group also felt that the Board should have a place in its rules for a motion to reconsider, with an approach similar to what is contained in the Council's Rules, including having a time limit for when a member who voted in the majority must request that the matter be placed on the next business meeting agenda. Such time limits should be discussed by the Commission to see what will work best, but staff would suggest that the request to reconsider be done within a limited time period so that staff would have time to notify interested parties of the request to have a motion to reconsider placed on a future agenda.

NEXT STEPS

Discussion of proposed changes to the Board Rules and recommendation to the Town Council of potential changes.

ATTACHMENTS

Current Board Rules & Regulations (adopted on May 6, 1998)

Redline of suggested changes to the Board Rules (to follow later)

TOWN OF PARADISE VALLEY

Planning Commission Rules & Regulations

TABLE OF CONTENTS

- I. Application Requirements
- II. Scheduling and Advertising of Hearings
- III. Recording of Meetings
- IV. Chair and Acting Chair
- V. Meeting Procedures
- VI. Subcommittees
- VII. Commission Secretary
- VIII. Repeal of Previously Adopted by-laws and Rules

Appendices

- A. Affidavit of Mailing
- B. Application Checklists
 - I. Preliminary Plat
 - 2. Final Plat
 - 3. Lot Split
 - 4. Special Use Permit
 - 5. Zoning Ordinance Amendment
 - 6. General Plan Amendment
 - 7. Roadway Vacation
- C. Drainage Easement Agreement

Rules & Regulations

October 21, 2008

These "Rules and Regulations" are intended to amplify and clarify how the Planning and Zoning Commission, which may also be referred to as the Planning Commission, will conduct its business and carry out its responsibilities as further described in Town Code Section 2-5-2, and in the Arizona Revised Statutes Sections 9.461 and 9.462.

Section I. Application Requirements

Applications for land divisions or zoning permits shall not be deemed to have been filed or properly submitted until the applicant has provided all data, plans, and information required by the Town's Checklist for that permit, and other materials relevant to the application that the Planning Director, reasonably believes are necessary for the Planning Commission and the Town Council to evaluate, analyze, or understand the subject matter of the application. Such applications may only be filed by the owner of the land that is the subject of the application, or another person with proper authority from the owner.

Section II. Scheduling and Advertising of Hearings

When an applicant for a preliminary subdivision plat, final subdivision plat, Special Use Permit, amendment to a Special Use Permit, a zoning change, an amendment to the General Plan or abandonment has been accepted as complete, the Planning Director will assign the application a case number, schedule the application for a meeting, and advertise the meeting as required by law, which shall be not more than forty days from the date of acceptance of the application as complete. The applicant shall be notified of the date, time, and place of the meeting, or hearing, and shall be responsible for mailing notice to all property owners legally entitled to notice as well as other property owners which the planning director determines may be specially affected by the application and providing the Town with an "Affidavit of Mailing" listing all owners noticed.

Section III. Recording of Meetings

Regular and special public meetings of the Planning Commission shall be recorded by audio/video tapes and/or some other electronic means and shall be kept in the Town Clerk's office.

Section IV. Chair and Acting Chair

- A. The Chair of the Planning Commission shall preside at all meetings of the Planning Commission.
- B. When the Chair of the Planning Commission will not be present at a regular or special meeting of the Commission, he shall, prior to the meeting, select a member of the Commission to be Acting Chair. If he does not select an Acting Chair and a quorum of the Commission is present at the meeting, the members present shall elect an Acting Chair. In either case, such Acting Chair shall exercise all powers and prerogatives of the Chair until such time as the Chair is present at a regular or special meeting of the Commission.

Section V. Meeting Procedures

- A. All meetings of the Commission shall be held at the Paradise Valley Municipal Complex, 6401 E. Lincoln Drive, in the Town of Paradise Valley, or such other location as the Chair may determine.
- B. Meeting times
 - 1. Regular meetings of the Commission shall be held on the first and third Tuesday of each month at a time designated by the Chair, except (1) when the date for any regular meeting is a legal holiday for the Town of Paradise Valley, and (2) when the Commission or the Chair cancels a meeting.
 - 2. Special meetings of the Commission may be called at any time by the Chair, provided that each member is personally given notice at least forty-eight (48) hours prior notice.
- C. Quorum - No meeting of the Commission can convene or continue unless four members are present.
- D. Decisions and actions
 - 1. All decisions of the Commission shall be by an affirmative vote of a majority of those members present, including any member or members who abstain from voting.
 - 2. The vote, or abstention from voting, of every member on all matters voted upon shall be recorded in the minutes of the meeting.
 - 3. No member who is present at a meeting of the Planning Commission may abstain from voting unless:
 - (a) the member was not present for all or a portion of the hearing on the subject to be voted upon; or
 - (b) the member has a conflict of interest, in which case, the member should state the conflict before the business is discussed by the Commission, remove himself from the meeting room, and not vote on the matter, or
 - (c) because of certain facts, the member believes he cannot fairly and impartially consider and vote on the subject because of his personal interest in the subject or his prejudice on the subject.
 - 4. When a member who is present at a meeting of the Planning Commission does abstain from voting, he shall publicly state the reason for such abstention prior to or at the time of the vote.

E. During a public hearing, or at other times at the discretion of the Chair, persons present at a Planning Commission meeting may speak and address the Commission to express an opinion on any matter before the Commission. A person may not address or speak to the Commission or present evidence to the Commission unless he has first been recognized by the Chair and stated his name and town of residence. If the Chair reasonably believes it is necessary to do so in order to expedite the Commission's action on a matter, he may impose reasonable time limits upon the oral statements of any persons wishing to address the Commission.

Any person may submit written comments to the Commission. Such comments will be provided to the members of the Commission, at their homes or offices, if they are delivered to the Planning Department at least 48 hours before the meeting to which they relate; otherwise they will be distributed at the meeting.

- F. All or any part of a Commission meeting may be recorded by any person in attendance by means of a tape recorder, camera or other means of audio or video reproducing, provided the Commission Chair determines that there is no interference with the conduct of the meeting.
- G. The Order of Business of all regular Commission meetings shall generally be as follows:
 - 1. Call to Order
 - 2. Roll Call
 - 3. Approval or Amendment of the Minutes of the Previous Meeting
 - 4. Regular Business
 - 5. Commissioner/Staff Comments
 - 6. Adjournment

Section VI. Subcommittees

The Chair, or the members of the Commission, may establish standing subcommittees within the Commission to consider any matter within the purview of the Commission if they find that creation of such a subcommittee will expedite the consideration and processing of such applications by the Commission. The membership of such a subcommittee shall be appointed by the Chair, and shall consist of three or fewer members, one of whom shall be appointed as the Subcommittee Chair by the Chair of the Commission. The Chair of the Commission, or the members of the Commission, dissolve and disband such-subcommittees if find that they do not expedite the consideration and processing of Planning Commission matters.

Section VII. Commission Secretary

The Planning Director shall serve as the Commission Secretary and shall:

- A. Attend all Commission meetings and prepare all minutes or designate a substitute.
- B. Prepare the agenda of matters to be considered by the Commission prior to every meeting, distribute copies of these agenda to the members of the Commission prior to every meeting, and post one copy of the agenda in a conspicuous place in the Paradise Valley Municipal Complex at least 24 hours before the meeting.
- C. Provide a report to the commission regarding future agenda items.

Section VIII. Repeal of Previously Adopted By-Laws and Rules

The previously adopted and promulgated "by-laws and Rules and regulations of the Planning Commission of the Town of Paradise Valley, Arizona", dated MAY 5, 1998, are hereby repealed.

Revised 10/21/08

Revised 5/5/98

Revised 10/15/96

Adopted 1/17/94

DOLF STROM, Chair

TOWN OF PARADISE VALLEY
Board of Adjustment Rules & Regulations

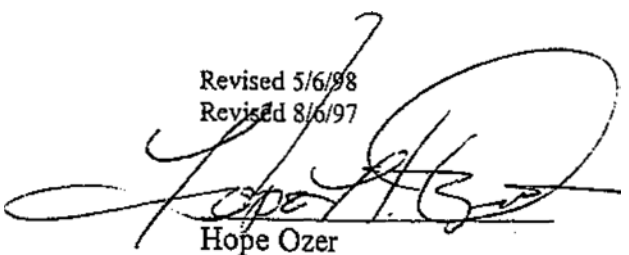
TABLE OF CONTENTS

REQUIREMENTS FOR APPLICATION FOR VARIANCE	1
SCHEDULING AND ADVERTISING OF HEARING	1
CHAIR AND ACTING CHAIR	1
PROCEDURE FOR BOARD MEETINGS	1
CONDITIONS AND DURATION OF VARIANCES	3
ASSISTANCE FROM THE TOWN STAFF	4

APPENDICES

- A. Appeal Hearing Procedures
- B. Variance Hearing Procedures
- C. Variance Criteria
- D. Arizona Statutes Governing Boards of Adjustment
- E. Town Code Governing Boards of Adjustment

Revised 5/6/98
Revised 8/6/97


Hope Ozer
Chair

Requirements for Application for Variance

A. Who may apply?

The owner or agent.

B. Requirements for application:

Completed application form (and any other information or documents relevant to the application).

Scheduling and Advertising of Hearing

A. When an applicant has completed an application and paid the required fee, a hearing shall be scheduled, which shall be no later than sixty (60) days from the date of filing of the application.

B. A hearing on an application for a variance shall be held only after:

1. One publication of a notice of the time, place and date of such hearing in an official newspaper of the Town, or in a newspaper of general circulation in the Town, at least fifteen (15) days prior to such hearing; and
2. The posting of a notice of the time, place, and date of such hearing on the affected property for at least fifteen (15) days prior to the date of such hearing.

Chair and Acting Chair

A. The Chair of the Board shall preside at all Board meetings.

B. In the absence of the Chair, the members present at any meeting shall elect a member to be Acting Chair, and such Acting Chair shall exercise all powers and prerogatives of the Chair until such time as the Chair is present.

Procedure for Board Meetings

A. All meetings of the Board shall be held at the Paradise Valley Town Hall, 6401 East Lincoln Drive, or other location selected by the Chair.

B. Time for meetings:

1. Regular Meetings:

The Board shall hold regular meetings as needed on the first Wednesday of each month at 6:00 p.m., except that when the date set, hereby for any regular meeting is a legal holiday for the Town of Paradise Valley, the regular meeting shall be held on the next following Wednesday. The Board may hold work sessions at 5:30 p.m. to discuss agenda items or other items as called for.

2. Special Meetings:

Special meetings of the Board may be called at any time by the Chair, provided that each member personally receives notice of such meeting, in person, by telephone, or in writing, at least forty-eight (48) hours prior to such meeting.

C. Quorum Requirements:

A quorum of the Board is four members.

D. Decisions and Actions by Majority Vote:

1. All decisions and actions of the Board shall be by an affirmative vote of a majority of those members present and voting.
2. The vote or abstention from voting, of every individual member, on all matters voted upon, shall be recorded in the minutes of the meeting by the Board Secretary. A member shall vote "yes", "no", or expressly abstain from voting.
3. No member who is present at a meeting of the Board shall abstain from voting unless:
 - a. the member was not present for all or a portion of the hearing on the subject to be voted upon, or
 - b. the member has a conflict of interest as provided by law, or
 - c. because of certain facts, the member cannot fairly and impartially consider and vote on the subject because of his personal interest in the subject or his prejudice on the subject.
4. When a member of the Board abstains from voting, he shall publicly state the reason for such abstention prior to the consideration of the item by the Board.
5. If there is a tie vote on any matter before the Board, the matter shall automatically be continued to the next regular meeting, or at the option of the Chair, the matters may be continued to a special meeting if (a) the date and time of such special meeting is announced at the time of such tie vote; and (b) the party or parties formally appearing before the Board on such matter all consent to the matter being continued to such special meeting. If there is a tie vote on any matter and the matter is continued to a subsequent meeting pursuant to the preceding sentence, and there is another tie vote at the subsequent meeting, the subsequent tie

) votes shall be deemed to be a negative vote, and the matter shall be treated as having failed to be approved by the Board.

E. Any person recognized by the Chair may speak and address the Board to express his opinion on any matter before the Board. The Chair may require any person who wishes to speak to the Board or to present evidence to the Board, to take an oath which shall be administered by the Chair. If the Chair reasonably believes it is necessary to do so, to expedite the Board's action on a matter, the Chair may impose reasonable time limits upon the oral statements of any persons wishing to speak and address the Board. Any person may submit written comments to the Board on any matter before the Board. Upon the request of any party, a certified court reporter shall record the proceedings of all or any portion of a meeting. Such party shall arrange for the attendance of a certified court reporter and pay all related expenses. If a transcript of all or any portion of a Board proceedings is prepared and completed, a copy shall be furnished to the Board by and at the expense of the party ordering or causing the transcript to be prepared and completed.

F. All or any part of a Board meeting may be reported by any person in attendance by means of a tape recorder, camera or other means of sonic or pictorial reproduction, provided that there is no active interference with the conduct of the meeting.

G. The Order of Business of all regular Board meetings shall be:

- I. Call to Order
2. Roll Call
3. Approval or Amendment of Minutes of Previous Meeting
4. Regular Business of the Board
5. Adjournment

H. Presumption against unsuccessful applicant for variance.

\\Then an application for a variance is denied or disapproved by the Board and the reason for such denial or disapproval is not stated in the motion for such denial or disapproval, there shall be a rebuttable presumption that the applicant has failed to prove that he or she has qualified for a variance by proving that he or she has met all of the criteria in ARS ITT 62.00.

Conditions and Duration of Variances

A. The Board may grant a variance subject to certain (reasonable conditions or limitations; Where such a condition or limitation is imposed, the Variance shall be valid if the condition or limitation is complied with, but the variance shall automatically be revoked and void and of no force and effect if, at any time, such a condition or limitation is not complied with.

-) B. Once granted by the Board, a variance shall run with the land in perpetuity unless (1) the variance is expressly limited in duration; or (2) provided otherwise by law; or (3) the variance **is revoked.**

Assistance from the Town Staff

A. Upon request from the Chair of the Board, the Town Manager shall, by himself or through a subordinate, **endeavor to provide any information or assistance requested which may assist** the Board or any member of the Board.

B. The Town Planning Director shall attend all meetings of the Board, and may comment on **any matter before the Board.**

PURSUANT TO A.R.S. § 9-462.06 C and § 2-5-3 C of the Code of Ordinances of the Town of Paradise Valley, the Board of the Town of Paradise Valley hereby makes, publishes, adopts **and promulgates these Rules and Regulations to govern its proceedings and carry out its duties under Town law.**

)

Appendix A. • Appeal Hearing Procedure

- I. Chair states the name of the case and invites the staff to present the facts relating to the appeal.**
- II. Chair invites the appellant, or appellant's attorney, to step to the podium, to introduce himself, and to present the witnesses to be sworn in.**
- III. Chair invites witnesses to step forward and face the staff table for swearing in.**
- IV. Staff rises, asks witnesses to raise their right hands and repeat swearing in statement after him.**
- V. Chair invites applicant/attorney to present argument and invite witnesses to speak as needed.**
- VI. Chair invites interested citizens who wish to speak to be sworn in.**
- VII. Chair invites interested citizens to speak.**
- VIII. Board members are invited by the Chair to ask questions of the attorney, witnesses, and/or staff.**
- IX. Board deliberates.**
- X. Chair calls for a motion, and a second.**
- XI. Voting, either by roll call, hand signal, or voice vote.**
- XII. The results of the voting are declared by the Secretary.**
- XIII. Board moves to next item of business.**

Appendix B - Variance Hearing Procedure

- I. Chair states the name of the case and asks for the staff report.
- II. Staff presents its report and recommendation; Board is invited to ask questions.**
- III. Applicant/representative presents case; Board is invited to ask questions.**
- IV. Chair opens the public hearing and asks speakers to state name and address. (Board is invited to ask questions of each speaker after they conclude their remarks.)**
 - A. Chair invites anyone in favor of the proposal to speak.**
 8. Chair invites anyone opposed to the proposal to speak.
 - C. Applicant/representative is invited to rebut/clarify/conclude.
- V. Chair closes public hearing
- VI. Board members are invited by the Chair to ask applicant/representative and/or speakers questions.**
- VII. Board deliberates.
- VIII. Chair calls for a motion, and a second.
- IX. Voting, either by roll call, hand signal, or voice vote.
- X. The results of the voting are declared by the Secretary.
- XI. Board moves to next item of business.**

Town of Paradise Valley Variance Criteria

The following code requirements must be met for the Board of Adjustment to grant a variance. Please provide evidence to satisfy the conditions below. Attach additional sheets as necessary.

1. *"Such variance...will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstrable hardship or difficulty so great as warrant a variance under the circumstances."* (Town Code Section 2-5-3(C)2).
2. *The "special circumstances, hardship, or difficult [do not] arise out of misunderstanding or mistake..."* (Town Code Section 2-5-3(C)4(b)).
3. *"Such variance from ... the strict application of the terms of (the Zoning Ordinance] ... are in harmony with its general purposes and intents ..."* (Town Code Section 2-5-3(C)2).
4. *"The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor..."* (Town Code Section 2-5-3(C)4).
5. *"Because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. "* (Arizona Revised Statutes 9-462.06(G)(2)).
6. *The variance would not "constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located."* (Arizona Revised Statutes 9-462.06(G)(2)).



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Action Report

File #: 18-426

TOWN OF PARADISE VALLEY

MINUTES – DRAFT

BOARD OF ADJUSTMENT

WEDNESDAY, SEPTEMBER 5, 2018 AT 5:30 PM - COUNCIL CHAMBERS

1. CALL TO ORDER

Chair Leibsohn called the meeting to order.

2. ROLL CALL

In Attendance:

Chair Eric Leibsohn

Board Member Emily Kile

Board Member Hope Ozer

Board Member Rick Chambliss

Board Member Anna Thomasson

Board Member Quinn Williams (*Arrived at 5:35 pm of the public hearing*)

Absent:

Board Member Jon Newman

Staff in Attendance:

George Burton, Planner

Eva Cutro, Special Projects Coordinator

Deborah Robberson, Deputy Town Attorney

3. EXECUTIVE SESSION

None

4. STUDY SESSION ITEMS

A. Edwards Variance – 7001 E. Balfour Road (APN: 173-22-096) Case No. BA-18-07

George Burton, Planner provided an overview of the requested variance. The applicant has submitted a variance request to allow the pool to encroach into the rear yard setback. The property is located on lot 3 of the Gross Point Subdivision. It was platted in 1957 and the home was constructed under County jurisdiction. It was annexed in 1961. Most recently, they received a demolition permit to remove the house in August 8, 2016 and on June 21, 2017 they received a building permit for a new single-family residence.

The property is zoned R-18A, contains 18,427 square feet and is pie shaped. There is a 10-foot-wide alley adjoining the property to the west and south. He then showed two maps identifying the property. The town code requires a 20-foot rear and side setback. The applicant is requesting a decreased setback of 15'-6". The pool would have 162 square feet encroaching into the setback. He then showed photos of the site.

A Board Member asked if a wash is running along the back of the property.

Mr. Burton replied that he does not think it is a wash. It may be a drainage swale. The applicant may also have to modify the site plan to accommodate property drainage. He then overviewed the Finding Opposed, which included:

- The request is self-imposed and other alternatives exist
 - The size, shape, and topography of the lot do not prevent the pool from meeting setbacks.
 - The lot is not undersized
 - There is no adverse topography
 - The largest area of the lot is the backyard due to its pie shape
 - The pool may be redesigned and re-engineered to reduce or eliminate the setback encroachment
 - The hardship is self-created since the location and size of the house limit the amount of area for accessory structures
- The applicant should be aware of special circumstances on the property and plan any designs accordingly
- The Arizona Revised Statutes and Town Ordinances do not require most optimal or profitable use of a property

Mr. Burton then presented a graphic illustrating how the pool's location could be modified to meet the zoning setbacks.

The Findings in Favor included:

- The Variance will alleviate a hardship:
 - The Zoning Ordinance creates a hardship:
 - R-18A zoning does not provide reduced pool setbacks to accommodate the smaller lot sizes
 - The lot is 58% smaller than standard one-acre R-43 zoned lot
 - The pool must meet the same setback as one-acre lots
- The Variance is in character with the neighborhood:
 - There are five or six other pools in the neighborhood that encroach in the 20-foot setback
- The Variance meets the intent of the code:
 - The intent is to help buffer effects of outdoor amenities and maintain visual openness:
 - There is a 10-foot alley that creates an additional buffer, effectively creating a setback of 25'-6" from the neighboring property
 - The pool is not visible and is screened by an existing six-foot-tall fence
 - A new four-foot tall wall on the west side of the pool will be added - which should help buffer pool activity

Mr. Burton then presented a map identifying properties in the neighborhood with pools that encroach into the required setback. There was one public comment in support of the variance and four were in opposition.

A Board Member indicated that she could not read the hand writing of the comment in support of the project.

Mr. Burton responded that it is from a resident in Scottsdale. This is not an immediate neighbor, but they reside within the 1,500-foot radius.

Chair Leibsohn asked if this type of variance comes up a lot.

Mr. Burton stated that this is the first one he has received. A property north of Vista Drive came in for a variance for an addition to the house.

A Board Member asked when the home came in for a permit and if there was there any indication that there would be a pool.

Mr. Burton responded that there was not. Each structure requires a separate permit. Since an inspection must be received every 180 days to keep to keep a permit active, many applicants will submit a separate permit for each structure.

A Board Member asked if there were any variances for the house.

Mr. Burton indicated that there were none.

A Board Member inquired about the other properties with pools within the setback.

Mr. Burton suggested that those pools may have been built under an older code.

Chair Leibsohn asked if each variance would stand on its own.

Mr. Burton responded that each case would have to present its own merits.

A Board Member asked if there was a pool on the property prior to the home being rebuilt.

Mr. Burton commented that he was not sure.

Chair Leibsohn mentioned that the site plan for the variance should a house with a floor area ratio of 30%. This was a red flag for him. He spoke with George and was told the approved building permit shows a house within the allowable floor area ratio requirement. The footprint of the house constructed is about 300-400 feet smaller than the plans that were given to the Board of Adjustment. From the west property line, it is practical to build the pool as designed given the conditions of the site. Based upon the correct location and size of the house, he feels that the proposed pool can be built in conformance with the setbacks. He asked if he is correct.

Mr. Burton stated the building plan shows the house with an additional five feet away from the rear property line.

Chair Leibsohn indicated that the request for the 4'-6" could be accommodated given the actual building permit dimensions for the house.

Board Member Chambliss commented that the plan that was submitted with the application shows the necessity of a four foot plus encroachment into the rear setback, but in fact, based upon how the house that was actually built would not need a variance.

Chair Leibsohn responded that this would be his conclusion.

Board Member Chambliss asked if they deny the application would this preclude the applicant from applying for the variance again.

Ms. Cutro stated that they cannot apply for the same variance within a year.

Board Member Chambliss commented that if the pool only encroaches six inches they could then come back for another variance.

Chair Leibsohn stated that the exhibits submitted are outdated. He feels that they are deceiving. There may not be a hardship.

Ms. Robberson commented that if the Board feels they do not have accurate information, they can continue the project to the next meeting and have the applicant correct the plans.

Board Member Ozer stated if they find out the information they have been reviewing is wrong, she would rather get it corrected.

Chair Leibsohn stated that he would like to hear from the applicant and asked for a motion to adjourn the work study.

Board Member Ozer motioned to adjourn the work study.

Board Member Chambliss seconded the motion.

The motion passed 5 to 0: Leibsohn, yes; Kile, yes; Ozer, yes; Chambliss, yes and Thomasson, yes.

5. PUBLIC HEARINGS

A. Edwards Variance – 7001 E. Balfour Road (APN: 173-22-096) Case No. BA-18-07

Chair Leibsohn invited the applicant to present.

Kareem Edwards introduced Mary Joe Edwards and himself to the Board. He purchased the lot from Green Street Development. He had them build the home and will using a third party to build of the pool. He apologized for wrong information and stated that it was not his intention to deceive the Board. His preference would be to build the pool within the setbacks. There was an original plan presented but it was rejected due to the setbacks. The home was modified so he submitted the wrong plans in error. He stated that if he does not have to request the variance he would appreciate that.

Chair Leibsohn asked if he is satisfied with the size, shape, and location of the pool if it fits within the required setbacks.

Mr. Edwards responded that this is correct but he would like to go back and research it.

Board Member Chambliss suggested that they continue the application to provide the applicant the opportunity to look at the actual plans and decide if he needs to proceed forward. If he does, he may need to modify the application.

Mr. Burton requested that they continue the item to a date-specific meeting so he will not have to re-notice the application.

Chair Leibsohn opened public comment.

John Clifford at 7028 E Balfour Rd commented that he lives just down the street. He welcomed the Edwards to the neighborhood. He commented that he would oppose the request as proposed but would prefer that they meet the setbacks. He did not request a variance and built his home within his building envelope. He indicated that he has a water drainage issue where all of the water in the street runs by his home in a narrow swale. He does not believe that because other pools in the neighborhood do not meet the setbacks that this variance should be approved.

Kathleen Clifford at 7028 E Balfour Rd stated that she does not want to have the variance approved because there is no hardship. The pool can be modified to meet the setback standards. People need to work within the rules.

Patrick Ford at 5201 N. 70th Place commented that he lives near the applicants - across the street. He had this same struggle. For three years, he filed for a variance and it was denied. He had to live without a pool or build a narrow five-foot-wide pool. At that time, the Town Council felt that the setbacks were not appropriate and changed the setbacks to be more accommodating. They were then able to build their pool. He stated that he did not realize they eliminated this setback reduction. He is supportive of the variance and feels that it is not a large request.

A Board Member asked him which subdivision he lives in.

Mr. Port stated Gross Point II. He then pointed out his property on the map. He stated that this happened between 1992 to 1995. There was a special board that was created to change the zoning.

Board Member Ozer motioned to continue the Edwards Variance, Case No. BA-18-07 to the next regularly scheduled meeting on October 3, 2018.

Board Member Kile seconded the motion.

Board Member Kile commented that this is a great idea.

Board Member Williams requested some history on the zoning overlay that was discussed regarding this neighborhood.

Mr. Burton stated that he will have to research the code.

Ms. Robberson, responded that there was an amendment in 1991 and then 1996. There were three amendments in 2005. They do not know what happened historically but will find out and bring it back to the board.

The motion passed 6 to 0: Leibsohn, yes; Williams, yes; Kile, yes; Ozer, yes; Chambliss, yes and Thomasson, yes.

Chair Leibsohn encouraged the applicant to continue with his research and determine if he needs the variance.

6. ACTION ITEMS

None

7. CONSENT AGENDA

A. June 6, 2018 Board of Adjustment Meeting Minutes

Chair Leibsohn asked if there were any additions or corrections to the June 6, 2018 minutes.

Board Member Chambliss indicated that he was not in attendance at that meeting and identified that the minutes show him asking a question at the meeting. This was a type-o and it was clarified that Board Member Williams asked the questions.

Chair Leibsohn requested a motion to approve the minutes as corrected.

Board Member Kile made the motion.

Board Member Ozer seconded the motion.

The motion passed 5-1-0: Leibsohn, yes; Williams, yes; Kile, yes; Ozer, yes; Chambliss, abstain and Thomasson, yes.

8. STAFF REPORTS

None

9. PUBLIC BODY REPORTS

Mr. Burton congratulated Board Member Thomasson on her election to Town Council.

10. FUTURE AGENDA ITEMS

Mr. Burton stated that they have a pre-application for a fence variance. The next meeting is on October 3, 2018.

11. ADJOURNMENT

Board Member Kile motioned to adjourn.

Board Member Thomasson seconded the motion.

The motion passed 6 to 0: Leibsohn, yes; Williams, yes; Kile, yes; Ozer, yes; Chambliss, yes and Thomasson, yes.