

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.