



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes - Draft

Board of Adjustment

Wednesday, January 6, 2021

5:30 PM

Council Chambers

1. CALL TO ORDER

2. ROLL CALL

Board Member Newman was present but unable to vote due to technology issues.

Present 5 - Board Member Emily Kile
Board Member Rohan Sahani
Chairperson Quinn Williams
Board Member Jon Newman
Board Member Hope Ozer

Absent 1 - Board Member Rick Chambliss

3. EXECUTIVE SESSION

4. STUDY SESSION ITEMS

5. PUBLIC HEARINGS

A. [21-007](#) Tan Variance - 6204 N. Hogahn Circle (APN 169-22-080C)
Case No. BA-20-08

Quinn Williams introduced the item and turned the time to Loras Rauch, Special Projects Planner.

Loras Rauch, Special Projects Planner stated the site is on the corner of Hogahn Circle and Hogahn Drive. She presented a photo of the front of the home. She mentioned the applicant is requesting a variance to install unscreened solar panels on the pitched roof. She identified three roof locations. The property is zoned R-43 Hillside. The home was built in 1972. She then overviewed six permits that were issued for the property. The property was sold in 2019 to the current applicant. They received a permit from the county to replace the original septic system. Ms. Rauch showed a site plan of the property. In total, the applicant is requesting three solar arrays with 36 panels. The panels will sit three feet below the roof line. All of the setback requirements are met. The property is currently in compliance with all codes. All panels will be non-reflective black which includes the frame, cells, and back sheet. The racking system is also black. The panels will sit seven inches above the roof structure. The panels are inconspicuous

and non reflective. Ms. Rauch presented photos from the property on the east side of the subject property. There is a perimeter wall along the east side of the property. Ms. Rauch mentioned the house sits below the street of Hogahn Circle and is setback 60 feet from the property line.

She indicated that the applicant's findings include:

- This is a Hillside lot.
- The home was built in 1972 with the existing pitched roof design.
- Other properties within Hillside areas of Town have been granted variances for unscreened roof top solar panels when no other alternatives existed, which is the case with this application.

Staff findings include:

- There are no specific hardships with the property itself.
- There are no cut slopes to screen the panels.
- If this was not a Hillside lot, panels would be allowed by right.

Ms. Rauch mentioned that staff overviewed an option to have a ground mounted system. The vegetation onsite would need to be removed. In order to screen ground mounted equipment it would require raising the height of the perimeter wall to 15 feet due to the slope of the lot. This would require a variance as well. They are proposing a 325-kw panel and if they decided to go with a 350 kw instead, they could have a few less panels on the roof, but the panels would be larger. There are no larger panels available at this time due to market conditions with COVID-19. The Town recently updated the hillside code to allow for solar roof tiles, but they are not readily available in the market. The panels are not visible from the downhill side of the property which is the intent of the Hillside ordinance.

She overviewed two proposed motions to either approve or deny the request. She further indicated there is a flat roofed home in the Hillside that has 180 panels which are allowed by right.

Bob Singh, neighbor to the north, indicated he had shown up late.

Chair Williams explained that they will allow Mr. Singh to speak after the applicant's presentation.

Mark Grabowski with Aneva Solar, stated that there is no other way to install the panels on the property. As proposed, the panels will not be visible from the streets.

Chair Williams opened public comment.

Mr. Singh indicated he would like to speak on the next item.

Chair Williams stated that there is a hardship with this property and mentioned they have approved other homes in similar situations in the past. He stated he is inclined to be in favor of the variance.

Board Member Kile stated her concern, based on visiting the property, that it appeared to her the panels would be visible. She does not believe they have a hardship because they bought of house with a sloped roof. She mentioned she would vote against the request.

Board Member Ozer mentioned it would be difficult to see the panels and that she would vote in favor of the request.

Board Member Sahani motioned to approve BA-20-07 due to the special circumstances particular to this property which meet the variance criteria. The variance shall be in compliance with the submitted documents contained in the packet.

Mr. Michard, Planning Manager suggested they fully open the public comment.

Chair Williams opened the item for public comment. No one spoke. He closed the public comment.

Chair Williams asked for a second to the motion.

Board Member Ozer seconded the motion.

Board Member Kile suggested they add a stipulation that the landscaping remain in place.

Board Member Sahani amended his motion to include Board Member Kile's suggested language.

Ms. Rauch asked if they are speaking about the landscaping in the front yard on the south side.

(Ms. Rauch's video and audio froze during the meeting. Deborah Robberson, Assistant Town Attorney called for the vote.)

Motion passed: 3-1

Aye: 3 - Board Member Ozer, Board Member Sahani, and Board
Member Williams

Nay: 1 - Board Member Kile

The Board recessed to work out technical issues.

Following the recess, the Board reconvened at approximately 6:30 pm and recalled the role. The same members were present.

Ms. Rauch clarified that since Board Member Newman was not present during the presentation of the last item, he cannot vote on that item. She requested clarification on the added stipulation and asked if the Board would entertain an amendment to the motion. Staff is concerned that the stipulation as stated would apply to the entire lot, whereas the intention is to preserve the landscaping on the street frontage to help screen the panels on the south side of the house.

Chair Williams motioned to reconsider.

Board Member Sahani seconded the motion.

Motion passed: 4-0

Aye: 4 - Board Member Ozer, Board Member Kile, Board Member Sahani, and Board Member Williams

Board Member Newman was present but unable to vote due to technology issues.

A motion was made by Board Member Sahani, seconded by Board Member Ozer, to Approve Case No. BA-20-07, a request by Wendy Tan, property owner of 6204 N. Hogahn Circle, for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, to allow for unscreened roof mounted solar panels. The variance shall be in compliance with the following submitted plans, documents, and stipulations:

1. The Tan Variance Narrative Resubmitted 12/11/20, prepared by Aneva Solar.
2. Tan Solar Plans; Sheet(s) E-1-15 dated 12/3/20, prepared by Aneva Solar.
3. The street frontage landscaping (front yard) along Hogahn Drive must remain in place to further screen the panels from the public street view.

The motion passed by the following vote:

Aye: 3 - Boardmember Sahani, Chairperson Williams and Boardmember Ozer

Nay: 1 - Boardmember Kile

Absent: 1 - Chambliss

B. [21-003](#) Pringlei Variance - 3320 E. San Miguel Pl. (APN 170-03-133)

Case No. BA-20-08

George Burton, Senior Planner presented the case. He indicated that the variance request was to allow nonconforming portions of the house to remain and to permit the home to be remodeled. He showed a vicinity map identifying the property on 32nd Street and San Miguel Place. He overviewed the history of the property in regards to its development and approved permits. He indicated that when they applied for building permit, staff found the house encroached into required setbacks. Town Code indicates if more than 50% of the home is remodeled, the structure is required to meet current setback requirements. The building department notified the applicant that they either had to remove the nonconforming portions of the home or apply for a variance. The property is zoned R-43, contains 50,362 square feet, is pie shaped and has a wash/public utility easement in the rear yard, which accounts for approximately 22% of the lot.

He mentioned that Town Code requires a 40-foot front setback. Two portions of the home encroach into this setback at 28'-10" and 32'-1" on the front. Code requires a 20-foot side setback on the north side and the home has a side setback of 19'-1". In total 349 square feet of the home encroach into the required setbacks. He showed an aerial photo and site plan of the property and identified the areas encroaching into the setbacks. These areas were identified in the elevation plan as well.

Mr. Burton reviewed the findings in favor of the variance, including:

- Lot is burdened with a pie shape and easement which creates an unusual building envelope.
- The easement takes about 22% of the lot.
- Shape of lot creates a narrow frontage
- The intent of the Code is met which preserves the visual openness with height and setback requirements.
- There is no proposed increase in the amount of nonconformity.
- The nonconforming portion of the home are low in height at 14'-11".
- There is no change in the building footprint.

He reviewed the findings opposed to the variance which included:

- The request is self-imposed since other alternatives exist.
- The easement and shape of the lot do not prevent the encroachments from being removed to meet setback requirements.
- The intent of the Code is to conform with current setbacks when remodeling more than 50% of the structure.

He mentioned that staff received two public comments. One comment was originally in opposition, but this was removed once the neighbor received more information regarding the request. The second comment expressed concern regarding the blocking of views of the mountains. He then overviewed two proposed motions, one for approval and one for denial.

Chair Williams opened the meeting for questions.

Board Member Kile asked for clarification regarding the neighbor's email.

Mr. Burton explained the applicant originally submitted a plan showing an increase in height of the house. Once staff informed the applicant of the encroachment issues, the applicant applied for the variance and modified the plans which now maintain the building height and footprint for the nonconforming portions of the house.

Board Member Kile stated that the neighbor in their second email mentioned there seemed to be a difference between the existing design and the plans shown in the variance.

Mr. Burton responded that the applicant used the County measurement tool to show setback distances on an exhibit, but this was inaccurate. The setbacks on the site plan identify the correct setbacks for the nonconforming portions of the house.

Chair Williams asked if the same footprint and height will remain.

Mr. Burton stated the height and footprint for the nonconforming portions of the home will remain the same.

Chair Williams invited the applicant to present.

Randy Berger, representing the applicant, mentioned they would like to keep the pool in its same location. If the request is denied they would request a modification to its location as the home would most likely need to be pushed further into the rear of the property.

Board Member Kile asked Randy if the Board were to stipulate that the pool remains in its current location, and the variance were granted, would this be acceptable.

Mr. Berger responded that it would be.

Chair Williams opened public comment.

Dorothy Lincoln Smith stated she would like the building to maintain its same height so the view of Camelback will be preserved.

Mr. Burton asked the applicants to clarify if the portions of the home which are in setback compliance will be increased in height.

Ms. Pressor, representing the applicant, stated the parapet walls would be raised 36"-48" in order for the roof structure to be hidden. This would not happen in the front of the home. The entrance way will also be 17' high.

Board Member Sahani asked if the parapet wall will block the neighbor's view.

Ms. Pressor responded that it most likely would not.

Board Member Kile asked if the variance were not approved, would they still

increase building height.

Ms. Pressor stated that the code allows them to build up to 24 feet and they may have to go to that high. If the variance was approved, they would only build up to 17'-19'.

Board Member Kile asked George to clarify if they could build up higher.

Mr. Burton stated the nonconforming area would not increase its height or foot print. Other areas of the house that are conformance may be increased in height in accordance with the code.

Chair Williams stated they could put a stipulation on the height.

Board Member Kile commented they are basically tearing the house down and building a new home. The variance will only allow them to maintain a small portion of the front of the house. She indicated there does not seem to be a hardship. If they can limit the height change then she would be open to that.

Board Member Sahani mentioned that he did not see a hardship.

Chair Williams stated that the lot seems to pose a hardship and the footprint will remain.

Board Member Ozer stated that she is comfortable with them building in the same footprint and height of the house. Due to the shape of the lot and easement in the rear, there is not a lot of room for a home. Ms. Ozer asked the applicant to provide the overall height of the proposed home and the maximum height that could be on the lot.

Ms. Pressor stated the maximum that could be built on the lot is 24 feet. The highest they are proposing is 19'.

Board Member Ozer asked if they would be open to having the variance approved with a stipulation that a building height of 19 feet shall not be exceeded on any portion of the home.

Ms. Pressor indicated she needs to confirm with her draftsman.

Mr. Burton mentioned the elevation plan shows the highest portion of the home is the entrance and it contain a height of 18'-9".

Ms. Robberson indicated that the Board of Adjustment's jurisdiction is whether or not grant a variance. She commented that if the applicant is willing to have this stipulated, she would be inclined to allow the motion.

The applicant would need to consent. The motion should state that the variance be in conformance to the plans submitted, whether located in a conforming or nonconforming area.

Ms. Pressor stated that she is willing to consent to this.

Board Member Kile motioned to approve the variance with the stipulation that the applicant shall make sure that all conforming and nonconforming areas are in compliance to the plans submitted to the Board of Adjustment.

Board Member Newman was present but unable to vote due to technology issues.

A motion was made by Board Member Kile, seconded by Board Member Sahani, to Approve Case No. BA-20-08, a request by Dr. Curt Hartmann/Pringlei LLC, property owner of 3320 E. San Miguel Place; for a variance from the Zoning Ordinance Article XXIII, Nonconformance and Article X, Height and Area Regulations, to allow nonconforming portions of the house to remain in the setbacks and to be modified.

The variance shall be subject to the following stipulations:

- 1. The improvement shall be in compliance with the submitted plans and documents:**
 - a. The Property Narrative, pages 1 – 7, prepared by Swartz Construction, Inc. and dated December 1, 2020;**
 - b. Site Plan for Requested Variance, prepared by Swartz Construction, Inc. and dated October 22, 2020; and**
 - c. Elevations Plan, prepared by Swartz Construction, Inc. and dated October 22, 2020.**
- 2. The applicant shall make sure that all of the conforming and nonconforming areas of the house are in compliance with the submitted plans and documents submitted to the Board of Adjustment.**

The motion passed by the following vote:

Aye: 4 - Boardmember Kile, Boardmember Sahani, Chairperson Williams and Boardmember Ozer

Absent: 1 - Chambliss

**C. [21-005](#) Left Turn LLC Variance - 5901 E. Sanna Street (APN 168-37-018)
Case No. BA-20-09**

Mr. Burton overviewed the application. He showed a vicinity map of the property and listed a history of permits. He mentioned the fireplace and fence were constructed without a permit. The property is zoned R-43, contains 54,893 square feet in size, has a rectangular shaped lot and a drainage/golf course easement covers 60% of the lot. The request is to allow an outdoor fireplace to encroach into the front yard setback. The fireplace is 6' tall and 6' wide. It will be designed to match site architecture,

will be located in the new courtyard area which is enclosed by a three-foot-tall fence wall and gate. The height of the fireplace determines the required setback.

The Town Code requires a 40-foot front yard setback for a 6' tall fire place. The applicant is proposing a front yard setback of 27'-6" for the fireplace. He showed an aerial and site plan identifying the location of the fireplace. He presented photos of the site and then presented the finding of favor, including:

- The property hardship is due to the drainage/golf course east.
- Approximately 140' of the rear yard is covered by the easement which encompasses nearly 60% of the lot.
- Structures cannot be built within easements.
- Development is limited to the front part of the lot.
- The easement essentially turns the lot into 21,000 square feet of useable space.
- The applicant is trying to utilize the existing conditions to create a more usable outdoor space.
- The request meets the intent of the Code which encourage visual openness and preservation of the natural environment.
- Due to the size of the fireplace, it will not obstruct neighboring views.
- The fireplace appears to have a greater setback since there is six feet of ROW between the curb and property line.
- There are other front yard setback encroachments in the neighborhood.

He listed the findings opposed, including:

- The request is self-imposed since other alternatives exist.
- The fireplace can be replaced with a code compliant fire pit/feature.
- The encroachment can be reduced by relocating the fireplace closer to the home.
- State statutes and Town Code do not require the most optimal or profitable use of property.
- The applicant should be aware of all special circumstances and plan their design accordingly.

Mr. Burton indicated that one comment was submitted in opposition.

Board Member Kile asked if the location shown in the last slide, as proposed by staff, would meet the setback or does it reduce the encroachment.

Mr. Burton indicated that it reduces the encroachment to approximately a 37' setback.

Chair Williams invited the applicant to present.

Zac Pekala with Green Room commented that 60% of the lot is covered with an easement which affects the buildable area of the property. He indicated there are two other cases on this street where neighbors encroached into the front yard setback. He mentioned there is a privacy concern as well because there is a trail that runs through the property. The rear yard has a view fence that people can look through. He mentioned that this came to the Town's attention because the contractor did not pull a permit and they received a cease-and-desist order from the Town and found out the issue with the fireplace when they submitted the building permit.

Board Member Ozer asked if they check zoning rules on project they work on.

Mr. Pekala responded that they typically do check local ordinances.

Board Member Ozer responded that the fireplace was in her face when she visited the site. She recommended they install a fire pit instead.

Mr. Pekala stated that two of the neighbors approved of the design because they felt it created a community feel.

Board Member Ozer mentioned that each variance request is taken on its own merit and does not set precedence.

Chair Williams stated that typically people shield their yard with landscaping and not a fireplace. He believes there are other options and the request appears self-imposed. He indicated that he will not vote in favor of it. He then opened the public comment. No one spoke. He then closed the public comment period.

Board Member Newman was present but unable to vote due to technology issues.

A motion was made by Board Member Ozer, seconded by Board Member Sahani, to Deny Case No. BA-20-09, a request by Jim Ransco/Left Turn LLC, property owner of 5901 E. Sanna Street; for a variance from the Zoning Ordinance, Article XXIV, Walls & Fences, to allow an outdoor fireplace to encroach into the setback.

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The motion passed by the following vote:

Aye: 4 - Boardmember Kile, Boardmember Sahani, Chairperson Williams and Boardmember Ozer

Absent: 1 - Chambliss

6. ACTION ITEMS

None.

7. CONSENT AGENDA

Board Member Newman was present but unable to vote due to technology issues.

A motion was made by Board Member Ozer, seconded by Chair Williams, to Approve the October 7, 2020 and November 4, 2020 Board of Adjustment meeting minutes. The motion passed by the following vote:

Aye: 4 - Boardmember Kile, Boardmember Sahani, Chairperson Williams and Boardmember Ozer

Absent: 1 - Chambliss

- A. [21-001](#) Approval of the October 7, 2020 Board of Adjustment Meeting Minutes
- B. [21-002](#) Approval of the November 4, 2020 Board of Adjustment Meeting Minutes

8. STAFF REPORTS

None.

9. PUBLIC BODY REPORTS

None.

10. FUTURE AGENDA ITEMS

Mr. Burton indicated there is one item tentatively scheduled in February.

11. ADJOURNMENT

Board Member Newman was present but unable to vote due to technology issues.

A motion was made by Board Member Ozer, seconded by Board Member Williams, to adjourn the meeting. The motion passed by the following vote:

Aye: 4 - Boardmember Kile, Boardmember Sahani, Chairperson Williams and Boardmember Ozer

Absent: 1 - Chambliss