Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes

Board of Adjustment

Wednesday, January 2, 2019 | **5:30 PM** | **Council Chambers**

1. CALL TO ORDER

Chairman Leibsohn called the meeting to order.

2. ROLL CALL

Board Members in Attendance:

Chairman Eric Leibsohn
Board Member Emily Kile
Board Member Rick Chambliss
Board Member Anna Thomasson
Board Member Jon Newman
Board Member Quinn Williams
Board Member Hope Ozer

Staff in Attendance:

Jeremy Knapp, Community Development Director
Deborah Robberson, Deputy Town Attorney
George Burton, Planner

3. EXECUTIVE SESSION

4. STUDY SESSION ITEMS

5. PUBLIC HEARINGS

18-500 M'Saad Variance - 7549 N. Tatum Blvd. (APN: 169-07-034)
Case No. BA-18-08

Chairman Leibsohn asked George Burton, the Town Planner, to make the presentation.

Mr. Burton stated that today's item is a variance request for 7549 North Tatum. Today's goal is to review and act on the variance request which is to allow a gate to exceed the six-foot height limit, for a maximum height of eight feet. He then identified the background on the property. In February of this year, they received a building permit to construct a front yard fence. The gate was later installed without a permit and exceeded the six-foot height limit, which has necessitated the variance request. He then stated that the lot is zoned R-43, is rectangular in shape, and slightly under an acre in size. The proposed gate is 24 feet long with an arched top that varies from seven feet tall on the sides to eight feet tall in the center. The gate is currently setback 25 feet from the west property line, however, the ordinance calls for a gate to be setback at least 40 feet from the front property line to utilize the eight-foot height limit.

Board Member Kile asked why they needed the variance if the Town Code allows an eight-foot-tall fence at a 20-foot setback and the applicant's gate is eight feet tall with a 25-foot setback.

Mr. Burton responded that the eight-foot height maximum is for the fence - not the gate.

Board Member Kile clarified that the wall along Tatum is acceptable, it is the gate that is not.

Chairman Leibsohn asked Mr. Burton if the gate was part of the permit application for the wall.

Mr. Burton replied that it was not. The application only showed an opening. He then showed the site plans provided by the applicant including aerial photos as well as photos of the site and the gate.

Mr. Burton then gave findings that opposed giving variance. First, the site shape and topography do not prevent the gate from meeting the six-foot height limit. Next, the applicant should be aware of all special circumstances in planning and designing a project. State Statute and Town Code do not require the most optimal use of the property and all the other properties in the area must conform with the code unless they want to seek variance.

Mr. Burton stated the findings in favor of the request. The additional gate height meets

the intent of the code and the property hardship is its location next to a major arterial street. The code allows for an eight-foot tall wall to mitigate the impacts of a major arterial street. However, the eight-foot height does not apply to the gate. The code limits the gate height to six-feet tall at the 20' front setback.

Board Member Williams stated that it seems inconsistent to allow for an eight-foot fence for negation with noise and visual, but the gate can only be six-feet tall.

Mr. Burton responded that he believed that this may have been an oversight when the code was updated in 2004. He added that it may be something they address at a later date. Other findings in favor are the gate style is in character with the neighborhood, the property sits about a foot lower than Tatum, and the gate will match the existing fence in terms of the eight-foot height. The gate will also help mitigate noise from Tatum Boulevard.

Board Member Kile stated that the gate at 7619 N Tatum is the same height as this one.

Mr. Burton responded that it is forty feet back and the code allows it to be eight feet tall at or beyond the 40-foot setback.

Board Member Ozer asked if the center of the gate was eight feet tall or if it was higher at the center or if the tallest point was over eight feet.

Mr. Burton responded the center is eight feet and the sides are about seven feet tall.

Mr. Burton stated that staff did not receive any public comment on the application. He then stated there is potential for three actions, approve with stipulations, deny the request, or continue with further review. He added that there are two actions listed in the report. First, Motion A, approval of the variance request. Second, Motion B, denial of the variance request.

Board Member Chambliss stated whether the gate was constructed with or without a permit is not a concern of the Board of Adjustment with respect to whether they grant the variance or not..

Chairman Leibsohn opened the floor for further discussion among the Board.

Board Member Ozer stated the builder or contractor or whoever applies for permits should know they needed a permit for the gate and what the code is. She added that she was confused as to how they ended up with an eight-foot-high gate when he went through the correct procedures for the wall such as applying for a permit and knowing the height limit of eight feet.

Mr. Burton stated he would have to defer to the applicant on that.

Board Member Ozer replied that they will wait for the public hearing on that then.

Board Member Williams stated that like Ms. Ozer, he wondered if this was knowingly done or had been an oversight. He added that they are a legislative body which has to interpret the variance criteria and they do not make Zoning Ordinance regulations.

Mr. Burton commented that applicant probably thought that since he could have an eight-foot-tall fence he could have an eight-foot-tall gate as well.

Board Member Chambliss stated that whether the home owner knowingly or unknowingly added the gate, that is a code enforcement issue and not a Board of Adjustment issue. He added that it may color their view of the morality of the applicant but in terms of the variance it does not matter.

Chairman Leibsohn asked for any further comments or discussion. He then called for a motion to adjourn the Study portion of the meeting and move to the Public Hearing portion.

Board Member Kile motioned to adjourn.

Board Member Chambliss seconded the Motion.

Chairman Leibsohn called for a vote on the Motion.

The motion passed unanimously.

Mr. Burton called roll. He then announced they have a quorum.

Chairman Leibsohn stated at this point they would hear the applicant's case. He then turned the floor over to the applicant to make his presentation.

Ryan Raisley stated that he is the contractor on both the gate and the wall. He had come about eight times to get the permit on the wall. Since the processes for attaining a permit was taking so long and they had not selected a gate from Sunset Gates yet, they decided to move forward with the permit on the wall leaving the gate for a future date. He acknowledged that it was his responsibility and not the home owners and that he should have looked into the permit for the gate as well. He then explained that when inspections were made the first time nothing was mentioned about the gate only that the Knox Box needed to be inspected. The second time someone came out he

was told that the gate was too big.

Chairman Leibsohn stated at this point there is still no permit on record for the gate.

Mr. Raisley responded that is correct.

Chairman Leibsohn asked if the gate company did not have any knowledge of the height limitations.

Mr. Raisley responded that in working with them they never mentioned anything. He added that this is the first gate he has ever done and ultimately he takes full responsibility as the general contractor. He then stated that he never imagined there being a height difference from the gate to the fence.

Chairman Leibsohn clarified that Mr. Raisley is claiming it was an innocent mistake due to a lack of knowledge on the Zoning Code.

Mr. Raisley responded that they were looking for a gate that fit and restrictions on the gate did not cross his mind.

Chairman Leibsohn opened the floor for discussion from other Board Members.

Board Member Kile stated that she does not have any judgement on what happened with the gate. She added that she does not see it as a hardship though since the lot is flat. She feels terrible that the gate was installed already and may now have to change, but that is the rule for properties on a major arterial. She added that she thinks it is strange that someone can have an eight-foot fence but only a six-foot gate, but that is what the code says and what all the other homes on that street are complying with. She then stated that regardless of how bad she feels it does not meet the six criteria to get the variance.

Board Member Williams stated from the gate to the back of the sidewalk it is 25 feet 2 inches. He then asked if the start of the property line was the back or the front of the sidewalk.

Mr. Burton stated the County shows it behind the sidewalk, but the site plan shows it on the other side. He added that he does not have a survey showing where the property line is.

Board Member Kile stated it does not matter what side the property line starts on since it still has to be 40 feet back in order to be eight feet tall.

Board Member Chambliss stated that it does not seem very smart that they will allow

for an eight-foot fence but only a six-foot gate.

Board Member Kile commented that it could be possible it was left that way, so they do not end up with a corridor effect.

Board Member Chambliss stated that from his point of view the primary reason to allow the eight-foot-high fence is to protect from visual and noise related to major streets. He added that he does not think it is the Board of Adjustments role to substitute its judgment for the folks that adopted the code. He then stated that this application does not meet the criteria for the variance although he feels badly.

Board Member Ozer stated they are constricted by Statute as to the grounds we can issue a variance, and this does not meet the criteria to provide a variance. She then stated she will vote against allowing the variance when the time comes.

Mr. Raisley stated several examples of neighbors in the Town that he does not feel meet the code and variances that have been allowed. He added that Tatum is only getting busier and he feels it would be a blessing to allow for the gate to be the same height as the wall for noise protection from one of the biggest roads in Paradise Valley.

Chairman Leibsohn stated the point is it is still a violation of the Ordinance as it is currently written. He added that they do not have the authority to overturn an item in a Zoning Ordinance without meeting the criteria for the variance. He sees this as a self-imposed hardship that does not meet the criteria for a variance.

Mr. Raisley stated that this was a mistake, but he also feels the fact that Tatum Boulevard is getting busier could be the hardship that this is a response to.

Mr. Chambliss stated his response would be that the home owner is supposed to be aware of the difficulties when they buy the house. He added that if the home owner had wanted an eight-foot fence there were other remedies that could have allowed for that, such as building it 40 feet off the property line. He would like the Code to say they can have an eight-foot gate 20 feet back on a major street, but it does not.

Chairman Leibsohn stated they can still comply with the code by relocating the gate 15 additional feet back and doing return walls on the fence.

Board Member Kile clarified there is a code for gates on minor arterials and a code for gates on major arterials.

Mr. Burton responded yes, there are two different fence requirements.

Board Member Kile asked what the fence requirement would be if it was not on Tatum Boulevard.

Mr. Burton stated it would be six feet. He added that on Tatum they get two additional feet because it is a major arterial.

Chairman Leibsohn asked Mr. Raisley if he has considered the design alternative of setting the gate back 15 additional feet.

Chairman Leibsohn asked Ms. Thomasson if she had any comments.

Board Member Thomasson stated that because the gate is already installed she is sympathetic to the situation and tempted to grant the variance, but she has to go back to what the code actually says.

Mr. Chambliss stated their hearts are with Mr. Raisley, but their heads are not.

Chairman Leibsohn asked Mr. Newman if he had any comments.

Board Member Newman stated he wants to say yes and what happened is unfortunate, but the rules say six feet. He then asked Mr. Raisley if the gate could be returned or exchanged.

Mr. Raisley responded he has spoken with them a little bit. He added that because of the size of the gate even getting it powder coated was a process.

Board Member Newman stated they all agree that it is strange to allow for an eight-foot fence and only a six-foot gate. He added that as Ms. Kile had said it could have been to help create undulation or an oversight, but they do not know.

Board Member Kile clarified that the Board of Adjustments does not have anything to do with setting the rules.

Mr. Raisley clarified that they would not be able to make a change to the Ordinance tonight.

Board Member Newman responded they could not tonight and it would not be the Board of Adjustment anyhow. He then stated that they sympathize with him, but the rules say it has to be six feet unless there is a hardship. The only hardship is that it is on a main road but most of the other houses on that street have a six-foot gate.

Board Member Thomasson stated it does not make sense that the six-foot gate is an oversight in the Code since it separately specifies a different height with a different

setback.

Board Member Williams commented that it could have previously been six, but they forgot to change the gate height. He clarified that he is not saying that this is what happened but that it is a possibility. He then stated the gate looks great, but the rules state it has to be six feet.

Board Member Thomasson clarified that she did not want to leave the applicant with the impression that the rules as stated were possibly the result of a mistake.

Board Member Ozer stated that none of them where present when the code was written, so they are just beating a dead horse. She also feels if this had come to the Board before the gate was installed, there would have been no reason to issue a variance. She added that it is heartbreaking, but it does not fit any of the criteria for a variance.

Chairman Leibsohn asked if Mr. Williams had any comments.

Board Member Williams asked if there are any other eight-foot fences and gates the Town has approved. He then asked if there is a policy issue that has been overlooked in the past and the interpretation is that we would allow an eight-foot fence.

Mr. Burton stated that to his knowledge the interpretation of that has not changed.

Board Member Williams stated that if they had allowed eight-foot fences before that would influence him a little bit.

Board Member Kile responded that Mr. Williams cannot because the rule says that there is no precedence that happens in the Board of Adjustment.

Board Member Williams clarified that what he meant was, if the Town had done that and the applicant relied on that then it is not a self-imposed hardship since he relied on Town policy.

Board Member Kile replied the Board of Adjustment does not have the ability to rely on precedence.

Board Member Ozer stated it was a mistake on the contractor's part since he did not check the code. She added that a permit was never submitted for the gate.

Chairman Leibsohn called for a motion.

Board Member Kile motioned for denial on case number BA-18-08 for variance

from the zoning ordinance, article 24, Walls and Fences to allow the gate and column to exceed the allowable height limit.

Board Member Chambliss seconded the Motion.

Chairman Leibsohn asked for any further discussion. Hearing none he asked for Mr. Burton to read back the motion.

Mr. Burton stated the motion was for denial of the request as the Board does not find the request meets the variance criteria.

Chairman Leibsohn called for a roll call vote.

The Motion passed 7 to 0: Leibsohr, yes; Kile, yes; Chambliss, yes; Thomasson, yes; Newman, yes; Williams, yes; Ozer, yes

Chairman Leibsohn stated they are sympathetic to Mr. Raisley dilemma.

Board Member Chambliss asked Mr. Burton if there was a remedy for the situation.

Board Member Newman asked what the application to get an adjustment to the code is.

Mr. Burton stated that as he recalls the fee is around $2,000- $3,000.

Board Member Newman asked if the home owner could approach the Town and ask them to change the code.

Mr. Burton responded that they could, and that has that happened before.

Board Member Newman clarified that the cost for that initially is $2,000.

Mr. Burton replied that it was around $2,000- $3,000.

Board Member Williams asked if he could they file for a variance if the gate was removed.

Board Member Newman commented that it would be the same issue.

Mr. Burton stated he believes you cannot apply for the same variance within a year.

Board Member Ozer stated if he did the Board would not approve it, since it does not meet the criteria.

Board Member Thomasson asked if it is possible that the gate could be removed, and the applicant could apply for an adjustment to the code after which he could reinstall the gate.

Board Member Thomasson also asked what the typical timing sequence is for applying and changing the code.

Mr. Burton stated that it depends but the last one took about four months.

Board Member Thomasson clarified that would be an option to the applicant.

Mr. Raisley stated there are gates not on major roads that are see-through and definitely over eight feet. He then asked if there is a variance to the height because it is see-through.

Mr. Burton responded that there is a variance in terms of setback and not height.

Chairman Leibsohn stated that concludes the motion. He then stated they will move on with the remainder of their meeting.

6. ACTION ITEMS

7. CONSENT AGENDA

18-501 November 7, 2018 Board of Adjustment Meeting Minutes

Chairman Leibsohn called for approval of the last Board meeting minutes on November 7th.

Board Member Thomasson stated she had a modest typographical error which she will give to Mr. Burton.

Board Member Kile moved to approve the minutes with the minor typographical change.

Board Member Newman seconded the Motion.

Chairman Leibsohn called for a vote.

The motion passed unanimously.

8. STAFF REPORTS

Board Member Ozer stated that in those minutes there is discussion that there would be an email draft of the new proposed rules. She was curious when they could expect that. She clarified that she did not have any urgency, that she simply wanted to know when it would be sent out. She then read a portion from the November meeting minutes discussing the potential email with the new proposed rules.

Mr. Burton responded probably the end of this month.

Chairman Leibsohn asked Mr. Burton if he has any additional staff reports at this time.

Mr. Burton stated that he does not.

Mr. Knapp stated they may have a meeting on February 6, 2019. He added that next week is the deadline and right now they are looking at two possible applications.

9. PUBLIC BODY REPORTS

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

Board Member Kile motioned to adjourn the meeting.

Board Member Chambliss seconded the Motion.

The motion passed unanimously.

Paradise Valley Board of Adjustment

By: _____
Jeremy Knapp, Secretary