Legislation Details (With Text)

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On agenda:	1/2/2019			**Final action:**	
Title:	M'Saad Variance - 7549 N. Tatum Blvd. (APN: 169-07-034) Case No. BA-18-08				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	1. Vicinity & Aerial, 2. Application, 3. Narrative & Plans, 4. Noticing Materials				

Date	Ver.	Action By	Action	Result

TO: Chair and Board of Adjustment

FROM: Jeremy Knapp, Community Development Director
Paul Michaud, Senior Planner
George Burton, Planner

DATE: January 2, 2019

CONTACT:
George Burton, 480-348-3525

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

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-18-08, a request by Hichem M'Saad, property owner of 7549 N. Tatum Blvd.; for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow a gate and its columns to exceed the allowable height limit. The variance shall be in compliance with the submitted plans and documents:

1. The Variance Criteria Narrative, prepared by Ryan Rasley Construction Services LLC;
2. Site Plans, prepared by Ryan Rasley Construction Services LLC; and
3. Gate Elevation/Photograph, prepared by Ryan Rasley Construction Services LLC.

Reasons for Approval:
I find that there are special circumstances, applicable to only the subject lot, meeting the variance criteria.

B. MOTION FOR DENIAL

I move for **[denial]** of Case No. BA-18-08, a request by Hichem M'Saad, property owner of 7549 N. Tatum Blvd.; for a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow a gate and its columns to exceed the allowable height limit.

Reasons for Denial:
I find that the variance requested does not meet the variance criteria.

BACKGROUND

Lot Conditions
The property is zoned R-43 and is approximately 41,326 square feet in size (0.95 acres). The property is a rectangular shaped lot and adjoins a major arterial street (with the front yard adjoining Tatum Blvd.).

Request
The applicant is proposing to add an 8' tall entry gate and gate columns to the front yard fence. The gate and columns are setback approximately 25' from the front property line (adjoining Tatum Blvd.) and the height of the gate varies from 6.7' tall on the side to 8' tall in the center. However, the Town Zoning Ordinance limits the gate and gate column height to 6' tall.

Fence Wall/Zoning Requirements
The heights and setback requirements for fences are different for properties that adjoin major arterial streets and for properties that adjoin local, collector, and minor streets. Due to the noise and traffic created by major arterial streets (such as Tatum Boulevard, Lincoln Drive, and Scottsdale Road), the Town Zoning Ordinance allows these properties to have 8' tall fence walls at a 20' front yard setback. However, the code limits all gate located within the 40' front yard setback to a maximum height of 6' tall. As a result, this can create a 2' difference in height between the fence and gate for properties that adjoin major arterial streets. Below are applicable sections of the Town Zoning Ordinance that pertain to fences and gates:

Table 2404A

FRONT YARD ALONG RIGHTS-OF-WAY			
STREET TYPE	**TYPE OF WALL OR FENCE**	**SETBACK FROM PROPERTY LINE, FEET**	**MAXIMUM HEIGHT, FEET**
Major	View Fence	10, Minimum	**8, including berm
	Meandering Wall	15, Average	**8, including berm
	All Others	**20, Minimum**	****8, including berm**
	Any	10, Minimum	3
Local, Collector, Minor	Any	10, Minimum	3

	View Fence/Combination View Fence	***20, Minimum (Landscape Restrictio with Maintenance Requirements)	6
	All Others	*40, Minimum	6

Section 2404.a.3
Adjoining Major Arterial Streets. The maximum height of a wall, view fence and combination view fence, including the berm, adjoining a major arterial street shall not exceed eight (8) feet. The maximum exposed vertical wall or view fence element from the exterior side of the property shall be no more than six (6) feet, except for a single-entry gate and columns as permitted under Section 2413.

Section 2413.b:
Driveway Columns and Entry Gates. Columns and entry gates at and beyond the forty- (40) foot front yard setback may be allowed to exceed the six-foot maximum height, but in no event shall the height of the gate and its associated columns exceed eight (8) feet. A transition may be made from the top of the column to the six (6)-foot high wall, but the length of the horizontal transition shall not exceed the difference in the vertical height between the wall and the column or gate, whichever is greater.

Lot History
The subject property is Lot 94 of the Paradise Hills subdivision. The subdivision was platted in 1953 and annexed into the Town in 1963. The following is a chronological history of the property:

- March 13, 1980. Building permit issued for new residence.
- October 10, 1980. Building permit issued for a pool.
- February 8, 2018. Building permit issued for front yard fence.

During inspection for the new front yard fence wall, the inspector identified a gate was installed without a permit and that the gate exceeded the 6' height limit. As a result, the applicant is requesting variance to allow the gate and gate columns to exceed the 6' height limit.

DISCUSSION/ FACTS:
Variance criteria:
Town Code and Arizona Revised Statutes set criteria an applicant must meet before a Board of Adjustment may grant a variance request. If the Board finds an applicant meets all of these criteria, the Board may grant the variance. However, if the Board finds the applicant does not meet all of the criteria, the Board may not grant the variance. The following are staff's findings with regard to such variance criteria.

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 to warrant a variance under the circumstances." (Town Code Section 2-5-3(C)2).*

   Findings in Favor (FIFs):
   The code recognizes that properties adjoining a major arterial street are adversely impacted by the noise and traffic and therefore allows for a taller wall at 8' high; however, the code does not allow the gate to match the 8' height limit of the fence.

   Findings Opposed (FOPs):
   The size, shape, and topography of the property do not prevent the gate and columns from meeting the height requirement. The property is not undersized for its zoning classification, is not oddly shaped, or burdened with an adverse topography that prohibits the gate from meeting the 6' height limit.

2. *The "special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake…" (Town Code Section 2-5-3(C)4(b)).*

   FIFs:
   The hardship is not out of mistake or misunderstanding. The code allows an 8' tall fence with a 6' tall gate for properties adjoining a major arterial street. As a result, this creates a 2' difference in height between the fence and the gate.

   FOPs:
   The applicant should be aware of all special circumstances on the property and plan any designs accordingly.

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).*

   FIFs:
   The intent of the Town Zoning Ordinance is to encourage visual openness, provide safety, noise abatement, and/or security. The request meets the intent of the Zoning Ordinance since the additional gate and column height will provide noise abatement from Tatum Blvd. Also, the cured and varied height of the gate (from 7' to 8' tall) provides architectural relief/variation.

   FOPs:
   The request does not meet the intent of the code since other alternatives exist. Although not ideal, a 6' tall gate and columns can be constructed. The size, shape, and topography of the lot do not prohibit the applicant from meeting code and using a 6' tall entry gate.

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).*

   FIFs:
   The code recognizes that properties adjoining a major arterial street are adversely impacted by the noise and traffic and therefore allows for a taller wall at 8' high; however, the code does

not allow the gate to match the 8’ height limit of the fence. As a result, this creates a 2’ difference in height between the fence and the gate.

FOPs:
The request is self-imposed since a 6’ tall gate and gate columns can be installed or constructed.

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)).

FIFs:
The hardship is the location of the property. The property adjoins and has its frontage on a major arterial street (adjoining Tatum Blvd). The additional gate and gate column height will help abate the noise created by the large volume of traffic from Tatum Blvd.

FOPs:
The size, shape, and topography of the property do not prevent the applicant from using a 6’ tall gate. The property is square in shape, is approximately 1 acre in size, and is not burdened with adverse topographical features that prevent compliance with the Town Zoning Ordinance. Also, Arizona Revised Statues and the Town Zoning Ordinance do not require the most optimal or profitable use of a property.

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)).*

FIFs:
The request is in character with the Zoning Ordinance. The code allows for 8’ tall walls along major arterial streets to mitigate traffic noise. As a result, the proposed gate will match the height of the fence and will help abate traffic noise.

The gate will also blend in and will have limited impact. The arched style of the gate not out of character with the neighborhood since it is similar other gates in the area. The gate also is situated approximately 1’ lower than the street, which gives the appearance of a shorter gate.
FOPs:
All other properties in the area must meet the height requirements outlined the Zoning Ordinance.

COMMENTS: Staff received no comments regarding this request.

COMMUNITY IMPACT: None.

FISCAL IMPACT None.

CODE VIOLATIONS: None.

ATTACHMENTS

Vicinity Map & Aerial Photo
Application
Narrative and Plans
Noticing Materials

C: Ryan Rasley (Applicant)
Case File BA-18-08