



**TOWN OF PRESCOTT VALLEY
BOARD OF ADJUSTMENT**

Meeting Minutes
Monday, September 28, 2020
Prescott Valley Library Auditorium

I. Call to Order

Chairperson Shimmin called the meeting of the Board of Adjustment to order at 5:23 p.m. and outlined the public hearing rules and procedures for the Board of Adjustment.

II. Roll Call

Members present: Chairperson Shimmin, Vice-Chairperson Johnson, Member Griffis, and Member Van Boening. Staff present: Fernando Gonzalez, Code Enforcement Supervisor, and Kelly Campbell, Administrative Support II.

Chairperson Shimmin stated that as a full Board was not present, pursuant to Article 13-29-060, applicants have a right to request that their items be placed on an upcoming agenda for review by a full Board.

The applicants elected to proceed.

III. Approval of Minutes – August 24, 2020

Chairperson Shimmin asked if there were any changes to the minutes from the August 24, 2020 meeting. No revisions were submitted; therefore, Chairperson Shimmin called for a motion to approve the minutes. Member Van Boening made the MOTION, seconded by Chairperson Shimmin, to approve the minutes as submitted from the August 24, 2020 Board of Adjustment meeting.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Van Boening YES, and Member Griffis YES.

MOTION carried with 4 ayes and 0 nays.

IV. Announcements

There were no announcements.

V. Action Items

1. UP20-003. Upon the application of Nicole J. Frost, Owner, a request for a Use Permit per Section 13-14-020.C.1 of the Town of Prescott Valley Zoning Ordinance in order to operate a Hospital for Animals. The subject property is located at 7876 Florentine Road, Prescott Valley, APN # 103-02-776A.

Fernando Gonzalez, Code Enforcement Supervisor, stated that the subject property is located in a C2-PAD (COMMERCIAL; GENERAL SALES AND

SERVICES) zoning district. This site is surrounded by conventionally built commercial properties in the medical field and the Town believes this business is a complement to that area.

Mr. Gonzalez explained that Town Code Section 13-14-020.C.1 allows Hospitals and Clinics for Animals as a permitted use in a C2 zoning district in conjunction with a Use Permit.

Mr. Gonzalez stated that Staff recommends the Board approve Use Permit UP20-003 with the following conditions:

1. That the boarding and lodging of animals is conducted within a completely enclosed and soundproofed building.
2. That the Use Permit is allowed to operate as long as the business or clinic is in good standing with all state and local licensing authorities.

Mr. Gonzalez mentioned that he spoke with the applicant and they will not be housing any animals at the clinic, and animals will only be there for as long as necessary. Mr. Gonzalez also stated that the applicant has pulled permits for any changes and alterations to the building, and soundproofing will not be necessary because the applicant will not be housing animals.

Chairperson Shimmin opened the item to questions or comments from the Board.

Member Griffis asked for clarification on the "housing" of animals, and she questioned the length of time animals will be on premises.

Mr. Gonzalez explained that animals will not be housed for a week at a time. They will only be at the clinic for the length of time required to complete their care and then will be released.

Member Griffis questioned the second condition of the Use Permit regarding the business or clinic being in good standing. Member Griffis inquired as to whether the Town periodically checks the standing of businesses, or if it is just checked once to grant the Use Permit.

Mr. Gonzalez replied that every year, businesses are required to renew their Business License, which involves an inspection by the Town, as well as the Fire Department, and the State of Arizona is involved in this process as well.

There were no further questions or comments from the Board for Staff; therefore, Chairperson Shimmin invited the applicant to address the Board.

Applicant Nicole Frost thanked the Board for considering the Use Permit and stated that she was part of the first emergency pet clinic in Yavapai County that was opened seven (7) years ago. The practice grew quickly and was sold privately, then sold to a corporation, and unfortunately closed June 15, 2020, which has negatively impacted the veterinary community. Ms. Frost indicated that she has been in the profession for twenty-three (23) years and her first job was at Prescott Valley Pet Clinic, and she is excited to be able to provide this needed service to the community.

Chairperson Shimmin thanked the applicant for all she is doing for pet families in the area.

Member Griffis congratulated Ms. Frost and wished her luck in her business.

As there were no further questions for the applicant, Chairperson Shimmin opened the item to public comment.

There was no public comment; therefore, Chairperson Shimmin brought the item back to the Board for discussion.

There were no further questions or comments from the Board; therefore, Chairperson Shimmin called for a motion related to the item.

Action UP20-003:

Vice-Chairperson Johnson moved to approve UP20-003 as submitted with the following conditions:

1. That the boarding and lodging of animals is conducted within a completely enclosed and soundproofed building.
2. That the Use Permit is allowed to operate as long as the business or clinic is in good standing with all state and local licensing authorities.

Member Griffis seconded the motion.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Van Boening YES, and Member Griffis YES.

MOTION carried with 4 ayes and 0 nays.

2. V20-003. Upon the application of Stephen Hernandez and Alan Boyert, Agents for Cedar Springs Casita LLC, Owner, a request for a Variance of Section 13-21-060.C.3 of the Town of Prescott Valley Zoning Ordinance in order to allow a six (6) foot high replacement fence to remain in the exterior side setback. The subject property is located at 9020 E. Longhorn Drive, Prescott Valley Unit 20, Lot 1494, APN # 402-22-621.

Fernando Gonzalez, Code Enforcement Supervisor, confirmed with the applicants that they would like to proceed without a full Board present.

Mr. Gonzalez stated the subject property is located on a corner lot within the R1L (RESIDENTIAL; SINGLE-FAMILY LIMITED) zoning district. The applicant replaced an existing fence on the subject property with similar material and location. It is customary not to require a new permit for a permitted pre-existing fence when it is repaired or replaced.

Mr. Gonzalez indicated that the Code Enforcement Officer assigned to this area was alerted to the new fence due to its incorrect placement on the exterior side of the property, which is in violation of Town Code Section 13-21-060.C.3, which requires a six (6) foot high fence to have a minimum setback of ten (10) feet from the exterior side yard line as required by the density district standards. The fence was noted to be on the exterior side property line.

Mr. Gonzalez stated that prior to sending the property owner a Notice of Violation, a review of Town records was conducted, and it was noted that there was no evidence of a fence permit being issued for the existing fence as installed on the exterior side of the property.

Mr. Gonzalez explained that Town Code Section 13-21-060.C.3 (as provided in the meeting materials as Exhibit A) states "Any fence/wall constructed on the exterior side lot line of a corner lot and/or between the exterior side lot line and the required exterior side set back line ("required exterior side setback area") shall not exceed four (4) feet in height as measured from the adjacent finished grade at the exterior of the fence/wall. Exterior side fences/walls that are constructed outside of the required exterior side setback area may be six (6) feet in height as measured from the finished grade at the exterior of the fence/wall."

Mr. Gonzalez further clarified that per Town Code Section 13-20-010.D (10), the exterior side setback for this property is ten (10) feet as indicated on Exhibit B in meeting materials.

Mr. Gonzalez reiterated that the existing fence placed on the exterior side of the property was not permitted. Town Code Section 13-20-010.D (10) requires that a six (6) foot high fence have a minimum setback of ten (10) feet. Mr. Gonzalez clarified that the special circumstances were created by the previous property owner and therefore self-imposed.

Mr. Gonzalez indicated that Staff recommends the Board deny V20-003 to allow a six (6) foot high replacement fence to remain in the exterior side setback.

Chairperson Shimmin opened the item to questions or comments from the Board.

Vice-Chairperson Johnson asked if the fence was already up when the code enforcement officer was at the property.

Mr. Gonzalez replied, "Yes."

Vice-Chairperson Johnson asked if the person who installed the fence was a licensed contractor, and if so, why they didn't obtain a permit. A gentleman in the auditorium stood and confirmed he was the licensed contractor (ROC# 319157) who installed the fence.

Chairperson Shimmin asked the contractor to wait to answer until the applicant had the opportunity to address the Board.

Member Griffis asked Mr. Gonzalez for confirmation that a six (6) foot fence can be installed on a lot if it is ten (10) feet from the exterior side property line.

Mr. Gonzalez confirmed that was correct on a corner lot.

There were no further questions or comments from the Board for Staff; therefore, Chairperson Shimmin invited the applicant(s) to address the Board.

Applicants Stephen Hernandez and Alan Boyert addressed the Board. Mr. Hernandez explained that when they purchased the house, the fence was already there in poor condition and falling down. Mr. Hernandez stated they replaced the fence at the same height and location and using the same materials.

Mr. Boyert commented that the previous owner (who has passed away) lived there for twenty (20) years and the fence they replaced was there for that length of time.

Member Griffis asked the applicants when they purchased the property and if they had a realtor assisting with the purchase.

The applicants indicated that they purchased the property in May 2020, and they did have a realtor.

Member Griffis commented that in her observations in multiple jurisdictions, often activities take place on lots where due diligence is not always done properly, and homeowners end up facing the consequences. Member Griffis expressed her opinion that the applicants had done nothing wrong and feels that this was an event where the homeowner was not aware of the rules and regulations. Member Griffis reiterated that she would support their request for a Variance.

Mr. Hernandez stated that it was brought to his attention that one of the things Town Code enforces is the view of oncoming traffic, and commented that the fence is approximately seventeen (17) to twenty (20) feet back from the street and does not block any view of oncoming traffic.

Mr. Boyert added that the distance from the edge of the fence to the yield sign is seventy-one feet (71').

Chairperson Shimmin stated that it is not in the purview of the Board to interpret or revise Town Code.

Mr. Hernandez replied that he wanted to make it clear that the fence in question does not block any view, as he was told that was one of the purposes of the Town Code.

Member Van Boening asked Mr. Gonzalez to speak to the reason behind the code.

Mr. Gonzalez replied that the setback requirement is for line of sight, continuing that most properties within the Town have line of sight issues. Mr. Gonzalez provided the example of the intersection of Manley & Robert Road, where a fence was placed six (6) feet high on the exterior lot line, blocking the view of oncoming traffic from Robert Road. Mr. Gonzalez acknowledged that the subject property may not enjoy the same characteristics as that example, but it is still a corner lot and must abide by the applicable Town

Code. Mr. Gonzalez commented that the Town cannot be biased and must enforce the code uniformly.

Member Griffis mentioned that there was no indication in the Staff Brief that this property involved a line of sight issue, and if that was largely the issue, that should have been indicated directly up front.

Mr. Gonzalez clarified that every property is different and has different characteristics; however, his previous comment was in response to Member Van Boning's question about the reason for the code itself, not necessarily relating to the subject property.

Member Griffis inquired as to whether the subject property has a line of sight issue.

Mr. Gonzalez replied that he had not driven by to look at it because it is in violation of the Town Code for the placement of the fence. Mr. Gonzalez continued that he does not have the authority to choose which properties would be required to follow the code and which would not.

Chairperson Shimmin reiterated that the Board does not interpret, rationalize, or question Town Code. The Board is intended to review the item presented to the Board being in violation of existing Town Code.

Chairperson Shimmin invited the contactor, Armando Torres, to address the Board.

Chairperson Shimmin asked Mr. Torres if he is a licensed contractor, and if it is his obligation as a licensed contractor to determine if a permit is required.

Mr. Torres confirmed he is a licensed contractor and agreed regarding the requirement for a permit.

Chairperson Shimmin questioned if, in this instance, he decided it was not necessary to determine if a permit was needed.

Mr. Torres stated that when he called and spoke to developmental services, his understanding was that if the fence height and materials are replaced as is, then a new permit is not required.

Chairperson Shimmin stated that would be accurate if the fence was permitted; however, the fence never was permitted, and was initially constructed in violation of Town Code.

Mr. Torres commented that he was under the understanding that there was a permit.

Chairperson Shimmin asked if Mr. Torres was told by a member of Town Staff that there was a permit.

Mr. Torres stated that he got the information from Yavapai County parcel search.

Chairperson Shimmin recapped that Mr. Torres was not misinformed by the Town, he simply did not understand the requirement.

Mr. Torres agreed.

Member Griffis commented that it is easy to misunderstand that it is not customary to require a new permit when the existing fence is previously permitted. Member Griffis stated that all parties assumed the previous fence was permitted. Member Griffis continued, telling the applicants and fence contractor that they did not do anything wrong or create the violation.

Member Van Boening asked Mr. Gonzalez what fence height would be allowed at the present fence location.

Mr. Gonzalez explained that a four (4) foot fence would be allowed on the property line where the current fence is placed. A six (6) foot fence would need to be moved back ten (10) feet to meet the setback requirement. Mr. Gonzalez clarified that the Town is not stating that the applicant did anything wrong or purposely created the violation; however, the property is still in violation and that is why it was brought before the Board.

Vice-Chairperson Johnson mentioned that multiple fences near his home were built close to the road, one of which was moved back ten (10) feet and others were shortened to four (4) feet. Member Van Boening reiterated that it would not be fair to allow one (1) to remain and make others be corrected.

Mr. Gonzalez explained the code enforcement process and repeated that properties in violation must be uniformly addressed as they come to the attention of Code Enforcement. Mr. Gonzalez commented that the Town understands that rules and regulations vary in different towns and states, and those new to the area may not be aware of local rules; however, it would be to their benefit to call and ask questions and Town Staff will provide assistance, rather than coming before the Board after the fact.

As there were no further questions for the applicant, Chairperson Shimmin opened the item to the public and advised that the Board cannot make amendments or changes to Town Ordinance.

Francine Anderson, resident on East Longhorn Drive, addressed the Board. Ms. Anderson stated that she drives past the subject property three or four times per week, and in her opinion, there is no line of sight issue at that property.

Dean Mickelson, 9021 East Bighorn, addressed the Board. Mr. Mickelson stated he lives behind the subject property and had three (3) photos to submit to the Board showing the old fence and how deteriorated it was. Mr. Mickelson stated that the new fence is exactly on the same line and is the same height of the prior fence. He questioned the possibility that there may not have been a Town Ordinance twenty (20) years ago to address the issue. Mr. Mickelson stated that he has no visibility problems, and he enjoys the new fence that is much more pleasing to the eye.

Kevin Nell, Broker for Realty One Group Mountain Desert and Principal for AmeriCorps General Contractors, addressed the Board. Mr. Nell felt compelled to speak for the applicants. Mr. Nell stated they are not greedy house flippers. The old fence was up for twenty (20) years, and they have cleaned the property to benefit the look of the community. The issue he sees is that if the Code must be enforced, it should be enforced everywhere. Mr. Nell stated that in the subject property's neighborhood, there are several other fences that may also be in violation but are not being discriminated against. Mr. Nell stated that the applicants do everything top notch and use licensed contractors.

Ellen Malverty, 9176 East Bighorn Drive, addressed the Board. Ms. Malverty stated she is new to the neighborhood and drives by the subject property every day. Ms. Malverty feels the applicant has improved the property and the fence does not block views at all.

There was no further public comment; therefore, Chairperson Shimmin brought the item back to the Board for discussion.

Vice-Chairperson Johnson mentioned that there was a case years ago regarding a fence height issue that was presented to the Board, and the applicant bought in photos from other properties all over the Town of Prescott Valley that appeared to be in violation. Vice-Chairperson Johnson stated that is not enough grounds for the Board to approve a Variance.

Chairperson Shimmin mentioned that the Board is required to visit the subject property, and having done so, she agrees that it is a nice property and nice fence. Chairperson Shimmin stated she does not believe that due diligence was exercised, and the contractor did not ascertain that the fence was unpermitted. Chairperson Shimmin reiterated that the Board is to consider the stated Ordinance and is not allowed to change the Ordinance.

There were no further questions or comments from the Board; therefore, Chairperson Shimmin called for a motion related to the item.

Action V20-003:

Chairperson Shimmin moved to deny V20-003 as submitted because Town Code does not allow a fence at that height and location.

Vice-Chairperson Johnson seconded the motion.

MOTION carried 3:1 by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Van Boening YES, and Member Griffis NO.

MOTION carried with 3 ayes and 1 nay.

VI. Call to Public

Chairperson Shimmin called for public comment. Applicant Stephen Hernandez addressed the Board. Mr. Hernandez commented that the code enforcement officer drove by the property every day. It took three (3) weeks to put the new fence up. Mr. Hernandez continued that the code officer saw

the fence going up in sections but did not “red tag” until after the fence was completed.

Applicant Alan Boyert addressed the Board. Mr. Boyert stated they were made aware of the code after the fence was up, but they decided to come before the Board in an attempt to get a variance so that their fence, which does not present a line of sight issue, could stay in place.

Chairperson Shimmin stated that, although this is mute because the decision had already been rendered, she would comment that it is not in the purview of the Board to grant a variance when the circumstance is self-imposed. Chairperson Shimmin stated that since the pre-existing fence was not permitted, that hardship was self-imposed. Chairperson Shimmin further stated that the Board does not revel in making anyone’s life difficult, but there are perimeters in which they are allowed to function, and they must abide by those perimeters.

VII. Adjournment

There was no further public comment related to any item presented during this meeting; therefore, Chairperson Shimmin asked if there was any further business for the Board. There was none; therefore, Chairperson Shimmin called for a motion for adjournment.

Member Van Boening made the MOTION to adjourn by roll call vote. Board members voted as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Van Boening YES, and Member Griffis YES.

MOTION carried with 4 ayes and 0 nays.

The September 28, 2020, Board of Adjustment meeting adjourned at 6:04 p.m.

Linda Shimmin, Chairperson