



**TOWN OF PRESCOTT VALLEY  
BOARD OF ADJUSTMENT**

Meeting Minutes  
*Monday, August 26, 2019*  
*Prescott Valley Library Auditorium*

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**I. Call to Order**

Chairperson Shimmin called the meeting of the Board of Adjustment to order at 5:30 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 Corrigan, and Member Van Boening. Members absent: Member Brower. Staff present: Fernando Gonzalez, Code Enforcement Supervisor and Kristi Jones, 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 applicant, Keira Gannon, elected to proceed.

**III. Approval of Minutes – May 20, 2019**

Chairperson Shimmin asked if there were any changes to the minutes from the May 20, 2019 meeting. Chairperson Shimmin called for a motion to approve the minutes. Member Corrigan made the MOTION, seconded by Chairperson Shimmin, to approve the minutes as submitted from the May 20, 2019 Board of Adjustment meeting.

MOTION carried unanimously by roll call vote as follows: Chairperson Shimmin YES, Vice-Chairperson Johnson YES, Member Corrigan YES, and Member Van Boening YES  
MOTION carried with 4 ayes and 0 Nays.

**IV. Announcements**

**V. Action Items**

- 1. V19-001.** Upon the application of Keira Gannon, Owner, a request for a Variance per Section 13-21-060.C.3 and 13-21-120.A.2.b of the Town of Prescott Valley Zoning Ordinance in order to allow a six (6) foot high fence to remain in the exterior side setback. The subject property is located at 4915 N. Shadow Lane, Prescott Valley Unit 20, Lot 376, APN# 402-21-376.

Fernando Gonzalez, Code Enforcement Supervisor, stated that the subject property is zoned R-2 (Residential; Multiple Dwelling Units). The R-2 district requires the following minimum setbacks 25 ft. - front, 20 ft. - rear, 7 ft. - interior side, and 10 ft. - exterior side.

Mr. Gonzalez noted that prior to construction of the duplex, he had spoken with the developer regarding the setbacks for this parcel and explained the logistics of placing a fence on the property. The developer did not fence the property at the time of completion of the project and sold it to Mr. & Mrs. Gannon, the applicants.

Mr. Gonzalez reported that Mr. Gannon submitted a permit application to install a fence on January 31, 2019. In review of the fence permit, it was noted that their corner lot backed up to a key lot as noted in Town Code Section 13-21-120.A.2.b. This section states that "On a corner lot backing to a key lot, no structure exceeding a four (4) foot height may be located adjacent to the side street within a triangular area formed by a line connecting the street intersection with the required front setback line of the key lot." Mr. Gonzalez displayed a GIS aerial photo of the subject property highlighting the adjacent key lot and he also displayed an example of a corner lot and key lot via a visual diagram.

Continuing, Mr. Gonzalez stated that Mr. Gannon was informed via phone of the key lot issue that would prohibit staff from approving his permit as submitted. He noted that Mr. Gannon came in and revised the site plan to reflect the 4 ft. high standard; therefore, zoning permit Z19-0054 was approved and later issued.

Mr. Gonzalez reported that on May 1, 2019, a site inspection found that the fence installed on the property was erected at 6 ft. in height, which is in direct conflict with the approved zoning permit. A notice of violation was sent to the owners regarding the fence exceeding the maximum height allowed. Mr. Gonzalez indicated that Mr. Gannon had called him to discuss the violation and Mr. Gannon explained that his fence contractor told him that it would not be an issue to install the 6 ft. high fence instead of the 4 ft. high fence that was approved on the permit; therefore, Mr. Gannon approved the construction of the 6 ft. high fence. Mr. Gonzalez noted that Mr. Gannon had a similar conversation with the Community Development Director.

Based on the facts provided, both the developer and the applicant were aware of the fence height restriction per Town Code Section 13-21-120.A.2.b. prior to the fence installation. Mr. Gonzalez emphasized that the applicant's decision to allow the placement of a 6 ft. high fence was in direct conflict with the approved zoning permit; therefore creating a self-imposed hardship. Thus, Staff recommends the Board deny V19-001.

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

Member Corrigan inquired as to whether erecting the illegal fence makes it a self-imposed hardship or is it just a violation of the ordinance.

Mr. Gonzalez responded that it is both. He noted that it is a self-imposed hardship as the applicant chose to allow the 6 ft. fence instead of the approved 4 ft. fence. It also violates Town Code and a notice of violation was issued.

Member Corrigan commented that, in his opinion, the ordinance imposed the hardship and the applicant installed an illegal fence to get around the ordinance.

Chairperson Shimmin asked for confirmation that both the original developer and the owner were told of the fence height restriction prior to the placement of the fence. She also asked for confirmation that the applicant obtained a zoning permit to construct a 4 ft. fence.

Mr. Gonzalez replied "correct."

Chairperson Shimmin expressed that building a 6 ft. fence in direct conflict with the approved 4 ft. fence basically fulfilled the definition of a self-imposed hardship.

Member Corrigan asked for clarification that each application stands on its own merit; therefore, the photographs of corner lot properties with 6 ft. fences submitted by the applicant would not be taken into consideration in regards to Variance V19-001.

Mr. Gonzalez replied "100% correct." He noted that any action made by the Board, whether an approval or denial, is specific to the subject property only.

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

Keira Gannon, Owner, addressed the Board. Mrs. Gannon asked if she could have Mr. Gonzalez explain the full intention and purpose of the code that they violated.

Chairperson Shimmin indicated that it is late in the process to ask questions of Mr. Gonzalez. She asked Mrs. Gannon if the process and requirements were explained to them.

Mrs. Gannon explained that they understand the four points that need to be met in order to have the Variance granted; however, their question of the ultimate purpose of the Town Code has never been satisfied.

Chairperson Shimmin stated that the Board is there to assess the Variance request; they have no purview to address or modify Town ordinances or zoning.

Mrs. Gannon reported that the developer had never disclosed the conversation that had occurred between Mr. Gonzalez and the developer regarding placement of a fence. She indicated that they had been told their application for a 6 ft. fence was denied because their property is a key lot not a corner lot and that didn't make sense to them based on definitions in the Town Code. Mrs. Gannon stated that the fence contractor advised them to move forward with a 6 ft. fence due to the slope of their property in relation to the street; it would have the appearance of a 4 ft. fence and would be considered as such due to the street level. She noted that the fence contractor told them if it became an issue, they could apply for a Variance after the fact. Mrs. Gannon reported that it was not their intent to disrespect the Town Code; she explained that the timeline for the home was delayed due to the major snowstorm in February.

Mrs. Gannon expressed that an approval of the Variance would enable them to enjoy their full property rights – mainly safety, privacy, and security. Due to the slope of their property, a 4 ft. fence would destroy their privacy. Mrs. Gannon explained that they have a young son, she is currently pregnant with their second child, they have small dogs and there is a coyote problem in their neighborhood and they rent the other side of the duplex to four young ladies that attend Embry Riddle. She indicated that if the Variance is denied, they will lose the security and privacy of their property.

Mrs. Gannon stated that they have spoken to all of their neighbors and everyone really likes the fence. She noted that it is a top end fence that is built very well and adds value to the neighborhood. Mrs. Gannon reported that the fence doesn't obstruct any traffic views.

Vice-Chairperson Johnson asked if the contractor was a licensed fence contractor.

Mrs. Gannon stated that he was not a licensed fence contractor; however, he has been in business for over thirty years. She noted that they had spoken to other clients and he was highly recommended and produced high quality fences.

Vice-Chairperson Johnson commented that a licensed contractor wouldn't suggest deviating from approved plans.

Mrs. Gannon indicated that they were originally supposed to move into their home at the end of February and that her husband had applied for the fence permit at the end of January. They would have applied for the Variance sooner if they thought they had time but wanted to ensure their safety, security, and privacy at the scheduled time of move in.

Vice-Chairperson Johnson asked if Mr. Gannon was the one that met with Mr. Gonzalez to discuss the issue of a 6 ft. fence. He commented that Mr. Gannon must have agreed to the 4 ft. fence and was surprised that a 6 ft. fence was installed.

Mrs. Gannon indicated that her husband came in to gather more information. She reiterated that they were originally told their 6 ft. fence was denied because their lot is a key lot. She noted that they had contacted other people at the Town and they were given different definitions of what their lot was; thus causing confusion. Mrs. Gannon indicated that they were never given the option to have a non-perimeter fence that was shown on the diagram displayed earlier.

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.

Member Corrigan explained that in order to grant a Variance, the applicant needs to show special circumstances exist that justify granting the Variance. He noted that the applicant must also show granting the Variance will not affect the health and safety of the community. Member Corrigan conducted a site visit and observed that the fence is completely out of character with the rest of the neighborhood and did not find any other 6 ft. fences in the area. In regards to the coyote problem, he didn't see any coyotes and he doesn't think the neighboring properties are concerned with coyotes as the majority of lots have no fencing at all; therefore, it isn't a special circumstance to warrant a Variance. Member Corrigan mentioned that the applicant's submittal referenced a registered sex offender that resides in the neighborhood as another special circumstance. He indicated that he didn't think it should be taken into consideration as a special circumstance as there are a number of registered sex offenders around and Variances can't be granted on that basis alone. Member Corrigan reiterated his previous comment that the additional photos submitted by the applicant of corner lots with 6 ft. fences can't be taken into consideration as each application needs to stand on its own merit.

Mrs. Gannon asked to readdress the Board. Mrs. Gannon stated that there is a home with a 6 ft. fence two houses down from their property at Rancho Vista and Mariner. She noted that their home doesn't look like the others on Rancho Vista as those homes face Rancho Vista whereas their home faces Shadow Lane. Mrs. Gannon indicated that their home is complimentary to the neighborhood as both the home and fence were built with high quality. She stated that her home adds value as it isn't a single or double wide home like those across the street and they work hard to maintain their property to keep it at a higher level than others in the neighborhood. Mrs. Gannon reported that the natural topography as well as originally being identified as a key lot is a natural hardship that they didn't impose. She stated that no one in the neighborhood finds their fence to be a hardship.

As there was no further discussion among the Board, Chairperson Shimmin called for a motion related to the item.

**Action V19-001:**

**Chairperson Shimmin moved to deny V19-001 based on the self-imposed hardship.**

Member Van Boening seconded the motion.

Member Corrigan asked to make a motion to amend the original motion. Discussion ensued among the Board and the voted unanimously to accept the amended motion.

**Member Corrigan moved to deny V19-001 based on a self-imposed hardship and no applicable special circumstances shown.**

Chairperson Shimmin seconded the motion.

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

MOTION carried with 4 ayes and 0 nays.

**VI. Call to Public**

Chairperson Shimmin called for public comment. There was none.


**VII. Adjournment**

There was no further public comment related to any item presented during this meeting; therefore, Chairperson Shimmin called for a motion for adjournment.

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

MOTION carried with 4 ayes and 0 nays

The August 26, 2019, Board of Adjustment meeting adjourned at 6:00 p.m.



Linda Shimmin, Chairperson