



TOWN OF PRESCOTT VALLEY
BOARD OF ADJUSTMENT
Meeting Minutes
Monday, November 23, 2020
Prescott Valley Library Auditorium

I. Call to Order

Chairperson Shimmin called the meeting of the Board of Adjustment to order at 5:27 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 Van Boening, Member Griffis, and Member Kunisch. Staff present: Richard Parker, Community Development Director; Fernando Gonzalez, Code Enforcement Supervisor; Ivan Legler, Town Attorney; and Kelly Campbell, Administrative Support II.

III. Approval of Minutes – September 28, 2020

Chairperson Shimmin asked if there were any changes to the minutes from the September 28, 2020 meeting. No revisions were submitted; therefore, Chairperson Shimmin called for a motion to approve the minutes. Member Griffis made the MOTION, seconded by Vice-Chairperson Johnson, to approve the minutes as submitted from the September 28, 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, Member Griffis YES, and Member Kunisch YES.

MOTION carried with 5 ayes and 0 nays.

IV. Announcements

- ✚ Fernando Gonzalez, Code Enforcement Supervisor, introduced new Board member Bill Kunisch. Mr. Kunisch is a practicing attorney in Sedona and previously worked for Yavapai County.

V. Action Items

- 1. V20-003/V20-005.** Upon the application of Stephen Hernandez and Alan Boyert, Agents for Cedar Springs Casita LLC, Owner, a renewed request for a Variance from the requirement in Town Code §13-21-060(C)(3) that a portion of a backyard fence running along the exterior property line of this corner lot (and a portion crossing the 10 foot (10') exterior side setback to connect with the house) be only four feet (4') high instead of six feet (6') high like the remainder of the fence. The subject property is located at 9020 E. Longhorn Drive, Prescott Valley, Unit 20, Lot 1494, APN # 402-22-621. This application was first considered at the Board's September 28, 2020 hearing. Agents have renewed the application requesting reconsideration of the matter in accordance with Robert's Rules of Order (per Town Code §13-29-020(D)).

Richard Parker, Community Development Director, addressed the Board. Mr. Parker stated that the Board would first consider the request to reconsider denied Variance application V20-003, which would require a member of the Board who previously voted in denial of the Variance request to move to reconsider. A second would be required, as well as a majority vote to reconsider. Mr. Parker stated that the applicant has proposed that while the original request related to the lack of a building permit, the current request is based on their assertion that there are special circumstances surrounding their lot, specifically regarding sight distance requirements, which is the premise for the setback requirement in the Zoning Ordinance. Mr. Parker reiterated that if the Board chooses to reconsider this matter, it would be among the three (3) members that voted to deny Variance application V20-003 at the previous meeting. The request would then be presented for Board reconsideration.

Chairperson Shimmin read from Robert's Rules of Order regarding the rules for reconsideration. Chairperson Shimmin read that the motion can only be made by someone who voted on the prevailing side, the motion must be made on the same day the vote to be considered was taken, or on the succeeding calendar day but no later, and it requires a second. Chairperson Shimmin clarified that those eligible to make such a motion are Chairperson Shimmin, Member Van Boening, and Vice-Chairperson Johnson.

No motion was made; therefore, Chairperson Shimmin stated the item V20-005 died from the agenda.

Action V20-003/V20-005:

No motion made. Item not re-considered.

2. **V20-004.** Upon the application of Timothy & Patricia Lowe, Owners, a request for a Variance from the residential fence-height standard in Section 13-21-060.C.1 of the Town of Prescott Valley Zoning Ordinance. The subject property is located at 5167 N. Saddleback Drive, Prescott Valley Unit 15, Lot 4609R, APN # 103-32-210C.

Mr. Gonzalez stated the subject property is located within the R1L (RESIDENTIAL; SINGLE FAMILY LIMITED) zoning district and surrounded with conventionally built single-family homes. The applicant is requesting a variance from the fence-height standards as noted in Town Code section 13-21-060.C.1 that states "On any residentially-zoned lot (or that portion of other lots contiguous thereto): four (4) feet in front yard and six (6) feet in side or rear yards."

Mr. Gonzalez indicated on or about May 22, 2020, the applicant submitted a zoning permit application for a fence on the above-mentioned property. In review of the application, corrections were noted to the front yard setback as described on his approved site plan (Exhibit A). Mr. Gonzalez noted that the permit was marked in red, indicating that the front setback is twenty-five feet (25') from the property line, and the fence can be only four feet (4') inside the setback, and could be six feet (6') thereafter. The permit was approved on May 26, 2020 and issued on May 28, 2020. Mr. Gonzalez explained that after construction of the fence was completed, it was noted that the applicant had exceeded the height standard in Town Code and worked beyond the scope of the approved permit.

Mr. Gonzalez stated that the applicant claims that the special circumstances influencing the height of the fence around his property are the existing natural sloping topography, which is a product of the ridgeline that Saddleback Drive is located on, and the downslope east

towards Robert Road. Mr. Gonzalez mentioned the applicant is correct in that the natural sloping topography pre-dates the development of the original subdivision; however, the natural sloping topography has been changed and altered since its development in 1978. Homes, yards, accessory structures, drainage and grading requirements, and landscaping have been erected and installed, modifying the natural topography of this area, including the subject property. Continuing, Mr. Gonzalez stated that the original sloped topography of the subject property was substantially altered when a request for a Reversionary Plat to split lot 4610 and combine a portion of lot 4610 with lot 4609. The Reversionary Plat was initiated by the property owner to use in conjunction with the primary buildings and uses.

Mr. Gonzalez indicated that the requesting and acquiring of the Reversionary Plat, which substantially altered the original topography of the property, was not a requirement but a voluntary action on the part of the previous property owner and therefore constitutes a self-imposed hardship.

Mr. Gonzalez further noted that the slope of the topography is enjoyed by all residents along Saddleback and is not unique to the subject property. Mr. Gonzalez stated that the granting of the requested Variance would give the property owner a special privilege that is not offered to other residents of the neighborhood, and the facts indicate the property owner was aware of the height standards noted on the approved zoning permit at the time of construction. The original sloping topography had been changed and altered by the previous property owner which constitutes a self-imposed hardship.

Mr. Gonzalez indicated that Staff recommends the Board deny V20-004 to allow a fence to remain in place in excess of the residential fence height standards in Town Code.

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

Vice-Chairperson Johnson commented that when he visited the property, he observed that the fence was higher than six feet (6') in some areas, and six feet (6') is the maximum height allowed, so he questioned how high can a fence be constructed.

Mr. Gonzalez confirmed that six feet (6') is the maximum height allowed in a residentially zoned district, and the highest point of the fence on the subject property is ten feet (10').

Member Griffis questioned if the fence height violation was only on the side of the lot.

Mr. Gonzalez clarified that both sides and the rear are in excess of six feet (6'), and a portion of the front is correct in the first four feet (4') but the height increases from there.

Member Griffis asked for clarification on Exhibits B.1, B.2, and B.3, and what the photos reflected. Member Griffis continued, asking if the fence height problem was a result of the topography change, and if the dirt was already there and the fence was placed on top of it.

Mr. Gonzalez restated that changes were made to the lot; therefore, the natural grade no longer exists.

Member Griffis asked if the current owner made changes to the lot.

Mr. Gonzalez confirmed that the current owner did not make the initial changes but did improve the lot after initial changes were made, including adding pavers and other alterations. Mr. Gonzalez explained that the previous owner combined lots, adding half of the adjoining lot, which changed the topography.

Chairperson Shimmin questioned when the applicant was made aware, and when the Town became aware that the applicant had exceeded the height standard.

Mr. Gonzalez explained that approximately one to two months after the fence was constructed, Code Enforcement noticed the height of the fence when driving by the property.

Member Kunisch asked if the topographical changes, as well as the Reversionary Plat, were done by the previous owner.

Mr. Gonzalez confirmed they were.

Member Kunisch asked if any additional changes to the topography were made by the current owner.

Mr. Gonzalez indicated that improvements have been made to include pavers, a gazebo, and other changes, but most of the property was a vacant lot (aside from the home), and the current owner has done several improvements.

Member Kunisch questioned if the applicant discussed the type of fence (horizontal slats) with Town Staff.

Mr. Gonzalez clarified that the type of fence was not discussed, only that the fence would be wood.

Vice-Chairperson Johnson asked if a permit was acquired before the start of the fence construction.

Mr. Gonzalez confirmed that a permit was acquired and referenced Exhibit A.

Vice-Chairperson Johnson stated that the permit states two hundred ninety-six (296) lineal feet of six-foot (6') wood fence.

Member Van Boening questioned if the notations in red were included on the original permit, to which Mr. Gonzalez confirmed all notations are made prior to issuing the approved permit.

Member Kunisch asked if Exhibit A was the actual permit given to the applicant, and if it would include the highlighted areas and handwritten notes as shown on Exhibit A. Mr. Gonzalez confirmed.

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

Applicant Timothy Lowe addressed the Board and provided a printed packet of photos which Mr. Gonzalez dispersed to Staff and each member of the Board.

Mr. Lowe explained that he acquired the property in April 2019 as a lot and a half, after the adjoining lot had been split and combined with his lot, and there was a two-story home on the property. He noted the portion of the half-lot which lies south of the home had a gravel driveway in the middle of it with a gravel parking pad down below and a fourteen-foot (14') garage used for RV parking. Mr. Lowe referred to the provided packet, which included photos of several different angles of the property, showing both the interior and exterior of the fence. Mr. Lowe detailed the various fence heights at different portions of the fence as shown in the photos. Mr. Lowe commented that at the interior of the fence, the fence is actually just over six feet (6') from the elevation of the land that was filled behind the retaining wall they built. This was part of Mr. Lowe's rationalization for constructing the fence at that height. Mr. Lowe explained that his goal with the horizontal boards was to have the fence follow a common straight line across. Mr. Lowe agreed with Mr. Gonzalez that the highest point of the fence is ten feet (10'), which is six feet (6') from where the retaining wall is on the interior side of the fence. Mr. Lowe expressed his belief that the photos shown by Mr. Gonzalez during the staff presentation are not necessarily misleading, but only tell half of the story. Mr. Lowe proceeded to show photographs labeled A-N, each illustrating a portion of the fence, and the different heights of each portion due to the sloping site. Mr. Lowe reiterated that at the highest point of the fence, it is ten feet (10') on his neighbor's side of the fence, but on Mr. Lowe's side, because of the fill and retaining wall, it is only six feet (6').

In conclusion, Mr. Lowe stated that his hope is that the Board would grant the variance and he would be allowed to keep his fence intact.

Vice-Chairperson Johnson commented that Mr. Lowe did a beautiful job with his home and landscaping, indicating that many homes in Prescott Valley are not maintained to that standard. Continuing, Vice-Chairperson Johnson stated that regardless of measuring from the inside or outside of the fence, it still must be six feet (6'). Vice-Chairperson Johnson expressed his opinion that the Board would not be able to grant a variance for this.

Mr. Lowe thanked Vice-Chairperson Johnson for his comments, and expressed his disagreement with Mr. Gonzalez regarding the Ordinance, and whether it provides for a "pre-existing condition". Mr. Lowe maintained that he has responded to the existing conditions on the site.

Member Van Boening asked if Mr. Lowe built the fence himself and if he personally obtained the permit.

Mr. Lowe responded that he had a handyman that assisted him with building the fence, and he did obtain the permit himself.

Member Van Boening stated that Mr. Lowe was aware of the requirements of the permit and questioned if he ignored the requirement for aesthetic purposes.

Mr. Lowe responded that he respected the four (4) and six (6) feet heights, he has a sloping site, and there is no language in the Town Ordinance on how a property owner should accommodate a sloping site. Mr. Lowe expressed his opinion that he did a good job of sticking with the spirit of the Ordinance and constructed an attractive and appropriate fence.

Member Griffis questioned Mr. Lowe on the possibility of removing some of the boards on the fence to come down to six feet (6').

Mr. Lowe stated that if the variance is not granted, the fence could be tapered down but would be more irregular and would lose some of the intentional symmetry and patterning. Mr. Lowe mentioned that no fence is exactly six feet (6'). It will always be a little more or a little less where the land is rolling and not level.

Member Griffis commented that the fence is beautiful and applauded his hard work and effort. Member Griffis suggested removing some of the horizontal fence slats to keep the beautiful fence. Member Griffis explained that a built-up yard is not a hardship to grant a variance and suggested further discussion with Staff on how to keep the fence.

Member Kunisch agreed that Mr. Lowe took a challenging topographical area and did a wonderful job with the fence. Member Kunisch questioned Mr. Lowe on his reasoning for leaving the highest point of the fence at ten feet (10').

Mr. Lowe responded that his design intention was to use a reduction of boards to step down to the next elevation. Mr. Lowe explained that the ten-foot (10') portion resulted from wanting to be six feet (6') above the retaining wall edge on the interior of the fence.

Member Kunisch questioned if Mr. Lowe made any changes to the topography of the lot when he acquired it.

Mr. Lowe responded that at the highest portion of the fence, that slope has not been changed since he acquired the lot. Mr. Lowe indicated that he built the retaining wall right up to the location of the fence and filled in up to the fence. The remainder of that slope line is unchanged from the time he acquired the property.

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

Mr. Gonzalez clarified that the site plan (Exhibit A) is stamped with the words "All fence/wall heights shall be measured from the adjacent finished grade at the exterior of the fence/wall", which is stamped on every site plan that goes out so the applicant knows where and how to measure. Mr. Gonzalez further clarified that there is a section of Town Code that discusses topography and a step-down section of fence. Additionally, Mr. Gonzalez stated that Mr. Lowe could have erected his fence back three feet (3') which would have resolved the issue.

Mr. Lowe indicated that prior to constructing the fence, he had conversations with neighbors on the north and south of the property. Moreover, once the fence posts were installed, Mr. Lowe walked the fence line with those neighbors to show the elevations of the fence. Mr. Lowe stated that the neighbors had no concerns with the proposed fence.

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

Chairperson Shimmin commented that opinions of neighbors and aesthetic consideration is not Town Code. The Board is given the responsibility to discuss the matter. Chairperson Shimmin continued that the applicant got the permit and "exceeded the height standard in Town Code and worked beyond the scope of the approved permit."

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

Action V20-004:

Vice-Chairperson Johnson moved to deny V20-004 as submitted.

Member Van Boening seconded the motion.

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

MOTION carried with 5 ayes and 0 nays.

VI. Call to Public

Chairperson Shimmin called for public comment.

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

MOTION carried with 5 ayes and 0 nays.

The November 23, 2020, Board of Adjustment meeting adjourned at 6:12 p.m.

Linda Shimmin, Chairperson