

Staff Report
VAR16-00001 Calamia Fence
Summary Sheet: Variance Request



**City Of Sedona Community
Development Department**
102 Roadrunner Drive Sedona, AZ 86336
(928) 282-1154 · Fax: (928) 204-7124

Public Hearing Date: April 14, 2016

Hearing Body: Board of Adjustment

Action Requested: Discussion/possible action regarding a request for approval of a Variance, pursuant to Subsection 404, Variances and Appeals, LDC, to construct a fence, on a vacant site.

Staff Recommendation: Approval, with a condition

Location: 58 Grasshopper Lane

Parcel Number: Assessor's Parcel Number 408-24-112A

Property Owner: Thomas Calamia
42 Sienna Court; Sedona, AZ

Project Summary: The applicant is requesting the ability to construct the fence to secure it from trespass and provide protection against liability.

Site Size: ± 0.25 acres

Current Zoning: RS-10a (Single-Family)

Current Land Use: Vacant

	<u>Area zoning</u>	<u>Area land uses</u>
East, North, West, South:	RS-10a	Residential

Report Prepared By: Warren Campbell, Principal Planner

Staff Report

VAR16-00001 Thomas Calamia

Variance Request



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The applicant, Thomas Calamia, is requesting a variance from the City of Sedona Land Development Code to construct a fence at 58 Grasshopper Lane, a vacant site of approximately 0.25 acre, also known as APN 408-24-112A – See Attachment 1 (Vicinity and Aerial Maps). The intent of the request is to extend a two-rail split rail fence which is currently on a portion of the site to fully enclose the site in order to secure it from trespass.

Attachments:

1. Vicinity Map & Aerial View
2. Application Documents including survey (provided by the applicant)
3. Photographs
4. February 24, 2016 Staff Determination Letter

Staff Report

VAR16-00001 Thomas Calamia

Variance Request



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BACKGROUND

The site at 58 Grasshopper Lane was purchased by the applicant in November of 2015. In the time the applicant has owned the property he has witnessed a number of trespassers on the site. He states that he has witnessed a recreational vehicle parking over night while visiting a neighboring property and off highway vehicles and automobiles parking or turning around on the property. As can be seen in the aerial view and photographs, Attachments 1 and 3, there is clearly significant use of the site by vehicles as the vegetation has ceased to grow around the perimeter of the site as it appears to act as a turn-around for the neighborhood.

Prior to purchasing the site the applicant spoke with city staff about his concern that the site appears to be utilized by a number of parties as a turn-around or for parking. The applicant inquired into the ability to install a split rail fence on the property which would match the approximately 36-inch tall two-rail split rail fence currently on a portion of the north and east sides of the site. Staff informed the applicant that pursuant to Subsection 607.02.A.2.c a fence is an "accessory use" to the permitted principal use constructed on the site. As the site was currently vacant and did not have a permitted principal use constructed upon it, a fence (accessory use) permit could not be applied for nor granted. Staff suggested that in place of a fence that maybe a number of large boulders, which did not require review and approval, could be placed strategically around the site to control access. Neither staff nor the applicant knows when or under what if any process the existing fence was installed. Its weathering suggests it has been in place for some time.

Subsequent to the applicant's purchase of the site, staff responded to a request for a written determination regarding the ability to install a fence on the site. On February 24, 2016, staff provided the applicant with a letter, Attachment 4, explaining staff's determination that a fence was an accessory use and with the absence of a permitted principal use the fence permit could not be permitted. Upon receipt of this letter the applicant engaged staff in determining his options regarding the pursuit of installing a fence. Both the appeal and variance processes were discussed.

The applicant chose to apply for a variance in an effort to make an argument for the approval of a fence on the vacant site as special circumstances exist.

SITE CHARACTERISTICS (EXISTING)

- The project site consists of one parcel of approximately 0.25 acres or 10,890 s.f.
- The property is currently vacant.
- The property is not part of any subdivision.
- There are 20-foot access easements paralleling the north and east property boundaries encompassing 3,780 s.f. or ~35% of the site
- The property is not within a designated floodplain.
- The existing vegetation onsite consists of several fruit trees and mixture native ground cover and grasses.
- The west and south portions of the site are disturbed to the point that no vegetation is growing as a result of apparent vehicular traffic trespass.

APPLICABLE LAND DEVELOPMENT CODE (LDC) PROVISIONS

Subsection 607.02.A.2.c, Single-Family Residential (in part)

607.02 Use Regulations. Buildings, structures or premises shall be used and buildings and structures shall be erected, altered or enlarged only for the uses listed below. All other uses not specifically listed or determined to be similar to those described below shall be prohibited and unlawful.

A. Permitted Uses and Structures.

2. Accessory uses and structures located on the same lot as the principal uses and structures and including the following:

c. Fences and freestanding walls;

The LDC defines “accessory use” as “a use conducted on the same lot as the primary use of the structure which it is related and which is clearly incidental to and customarily found in connection with such a primary use”.

Subsection 903.07, Wall and Fences (in part)

903.07 Walls and Fences.

A. Height shall be determined for fences and walls above the average elevation of the ground level within a 6-foot radius of the point of measurement on the fence or wall.

B. Except as provided in subsections [903.07\(C\)](#) and (D) of this section, in any required front or street side yard area, an opaque or solid wall or fence shall not exceed 3 feet in height. Nonopaque corral fences may be established in any required front or street side yard area to a maximum height of 6 feet where permitted in RS-5A, RS-70, RS-36 and RS-35 zoning districts.

C. A wall or fence not more than 6 feet in height may be established in any required front or street side yard area in the RS-6, RS-10a, RS-10b, RS-12, RMH-6, RMH-10 and RMH-12 zoning districts subject to the following requirements:

1. If the wall exceeds 20 feet in length, a landscape area a minimum of 3 feet in width and planted with a minimum of 5-gallon shrubs for each 20 linear feet of wall shall be established on the street side of the wall.

2. If the wall exceeds 40 feet in length, architectural features such as columns, breaks to accommodate existing trees or to include wrought iron fence sections, incorporation of red rock accents and jogs, shall be designed into the wall to break up its linear plane, to give it architectural interest and to ensure that it is designed as an integral architectural element of the principal building.

3. No chain link fences of any kind shall be permitted.

4. The visibility triangle requirements of SLDC [910.09](#) shall be maintained.

D. A wall or fence not more than 6 feet in height may be maintained along the interior side or rear lot lines; provided, that this wall or fence does not extend into any required front yard. A 6-foot-high chain link fence may be permitted within the front yard setback in the C-3 zoning district. Unpainted chain link fences are prohibited. Painted chain link fences shall be of a nonreflective color, compatible with the natural character of the site and surrounding area (such as brown, beige, green, and the like) and shall meet the exterior color requirements of SLDC 904.1.

F. In single-family residential districts a wall or fence adjacent to a driveway providing vehicular access to an abutting lot shall not exceed 3 feet in height within 15 feet of the intersection of this driveway and the street right-of-way.

ANALYSIS

Section 404, Variance and Appeals, of the LDC establishes specific findings that must be made in order for a variance request to be approved. These required findings are listed below in italics and are followed by a staff response covering the facts that pertain to each finding.

Required Findings Subsection 404.06

A. That due to special circumstances applicable to the subject property, including its size, shape, topography, location, or surroundings, the strict application of this code will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district.

In staff's opinion, the applicant's property, as situated, is unique with regard to its location and surroundings. The method and configuration in which the parcels were created along Grasshopper Lane is unique in that access was established through the use of multiple easements to create access. Traditional rights-of-way were not created. The subject site, due to its location has been impacted by the placement of two access easements upon the north and east property boundaries. These two access easements provide access to properties to the north, south and to the west (rear) of the subject site.

The subject site's vacant nature amongst the surrounding developed lots has contributed to the use of the site as a turn-around and parking location for overflow and large vehicles visiting adjacent properties. It appears to staff, after visiting the site, that the likely cause of the subject site being used as described above is the outcome of the use of the subject property for access and maneuvering during previous construction on adjacent lots. This theory appears to be supported by the visible gravel access to 35 Grasshopper Lane which abuts the subject site to the southwest (see Attachment 1). This theory may be further substantiated as there was once common ownership of the parcels, as researched on the Yavapai County Assessors webpage, which may have resulted in using areas of the subject site, the last vacant site, for construction maneuvering and staging on those lots being built at that time.

B. That any variance is subject to the conditions that will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the subject property is located.

Regardless of how the subject site evolved to become a turn-around and parking location for overflow and large vehicles visiting adjacent properties the fact remains that the site is being trespassed upon. The applicant has suggested concern around the liability that he as the owner may be assuming by not preventing the trespass and about the degradation of the site. Staff believes that there could be a negative impact beyond liability and site degradation if the trespass issue is not addressed. Staff believes that the

ability for a party to claim a prescriptive easement over those circulation routes along the west and south property lines may be of concern. Under the argument of claiming a prescriptive easement, a party could claim that although there is not a granted access easement, that because there has been an ability to use the area for access for a period of time that a right has thereby been established and restricting access should not be permissible. In staff's opinion, if the requested variance were approved, the conditions present on the subject site would not result in a granting of special privilege. The degree of trespass upon the site warrant the ability of the applicant to install a fence to delineate ownership and access as is the right of all the adjacent properties within the RS-10a Residential District.

C. That special circumstances applicable to the property are not imposed by the property owner/applicant.

The subject site, recently purchased by the applicant, has been used for vehicular circulation and potentially parking for some lengthy period of time as can be seen in the aerial depicting the absence of vegetation. The conditions, construction of structures on all adjacent lots and provision of access easements, which existed to create this situation, were in place prior to the applicant's purchase. It is staff's opinion that the request to install an extension to the existing 3-foot tall split rail fence to control trespass concerns is a special circumstances not imposed by the applicant.

STAFF RECOMMENDATION

A fence is a permissible use upon residentially zoned properties within Sedona and is not uncharacteristic within most neighborhoods. The applicant, through this request, has the goal of eliminating trespass with a low impact solution (3-foot tall split rail fence) to protect the property from further degradation, personal liability, and potential loss of property rights. Furthermore, the applicant intends to continue with improvements to the site (has trimmed trees and removed rotted timbers) such as revegetation of disturbed areas for beautification purposes until such time he is ready to construct his home.

It is staff's opinion that the applicant has satisfied the necessary required findings of the Land Development Code, section 404.06 A, B and C as outlined in this report. Therefore, staff recommends approval, with a condition of variance request case number VAR16-00001 subject to applicable ordinance requirements and the conditions of approval listed at the end of this staff report.

Condition:

- 1) The applicant shall submit a complete fence permit application which is in compliance with all applicable regulations included within Subsection 903.07, Walls and Fences, Land Development Code.

RECOMMENDED MOTION FOR APPROVAL

I move for approval, with a condition, of case number VAR16-00001 based on compliance with required ordinance findings as set forth in this staff report.

ALTERNATIVE MOTION FOR DENIAL





I move for denial of case number VAR16-00001 based on non-compliance with the following findings relative to the testimony presented at this hearing (specify findings).

Please note that the above motions are offered as samples only and that the Board may make other such motions as appropriate.

Attachment 1: Vicinity Map

300ft Owners

Parcel #408-24-112A
58 Grasshopper Lane

-  Parcel #408-24-112A
-  Parcels within 300ft
-  Parcel Boundary
-  Street Centerline



0 75 150 Feet

City Index

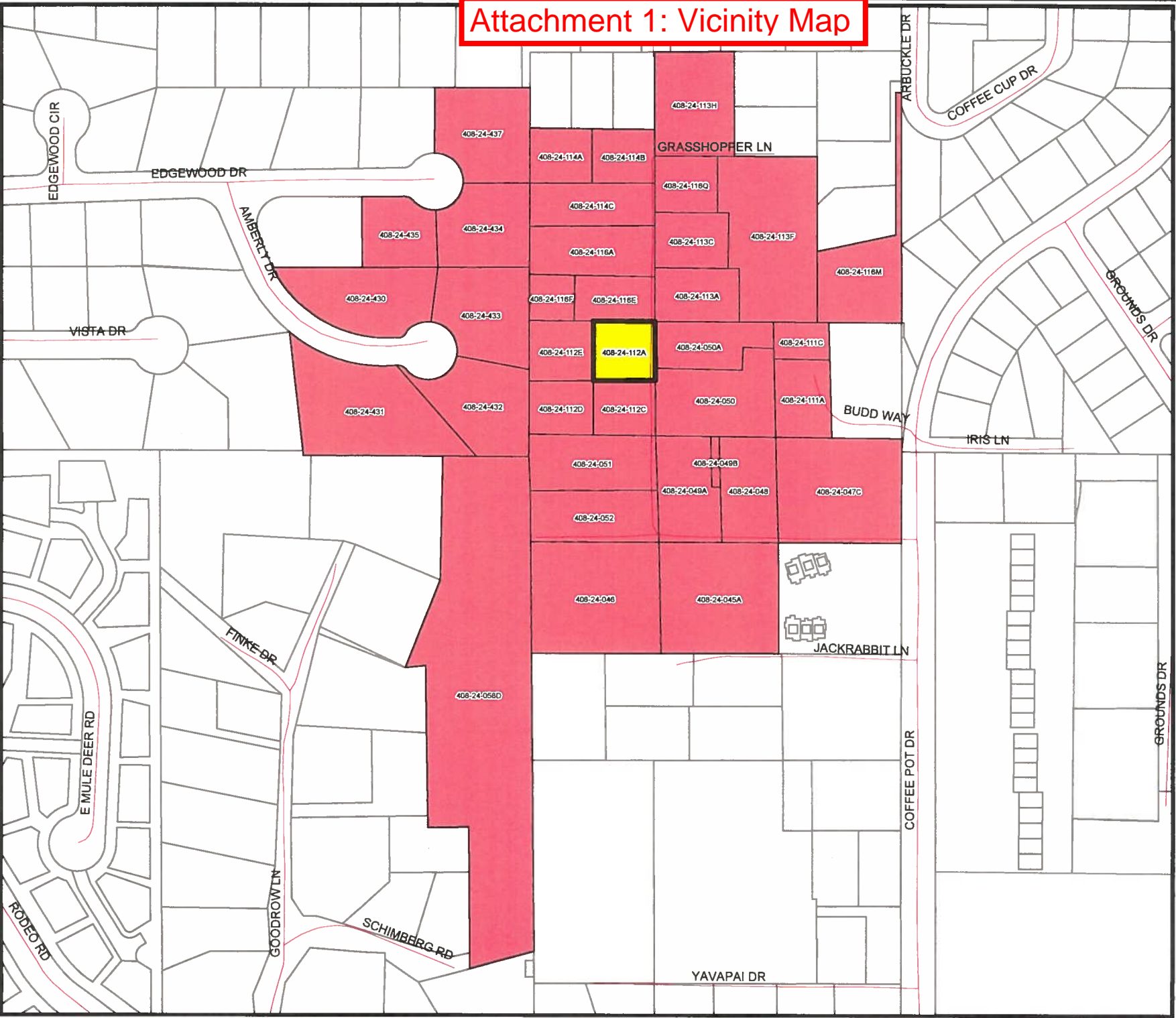


GIS, City of Sedona
03/07/2016
g:\projects\cd\staff\warren\campbell\maps\408-24-112a_owners.mxd



The map is designed to provide information about Sedona, and has been prepared for general planning and informational purposes only. It is not necessarily accurate as engineering or surveying standards. Every effort has been made to make this map as accurate and as complete as possible, however, no warranty or release is implied.




The information is provided on an "as-is" basis. The City of Sedona shall have neither liability nor responsibility in any portion of any way with respect to any loss or damages in connection with or arising from the information contained on this map.



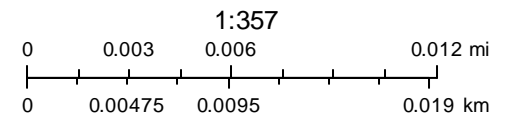
58 Grasshopper Lane Fence Variance Request



March 22, 2016

-  OAK CREEK
-  COUNTY LINE
-  PARCEL BOUNDARY

Attachment 1: Aerial Map with Fence Proposal Shown



Attachment 2: Application

Board of Adjustment
 Variance Consideration
 Appeal of Administrative Interpretation



City Of Sedona
Community Development Department
 102 Roadrunner Drive Sedona, AZ 86336
 (928) 282-1154 • Fax: (928) 204-7124

This is a request for:

- Variance Consideration
- Appeal of Administrative Interpretation

Date Rec'd: 3-1-16
 Appeal # ~~16-00001~~
 Fee Paid: 150.00

Property/Business Owner Information:

Name:	Thomas Calamia	Phone:	
Address:	42 Sienna ct Sedona AZ 86336	Cell Phone:	(970) 247-3928
E-mail:	Tom calamia@yahoo.com		

RECEIVED
 MAR 01 2016
 CITY OF SEDONA
 COMMUNITY & ECONOMIC
 DEVELOPMENT

408 24 112A
 408-24-112A

Authorized Agent (if applicable) Information:

Name:		Phone:	
Address:			
E-mail:			

Pursuant to the City of Sedona Land Development Code, this is a formal request for a variance consideration or appeal of an administrative interpretation regarding the following:

Note: Requestor should be as specific as possible regarding the reasons for the variance consideration or appeal and refer to the specific sections of the Sedona Land Development Code being contested. (Attach additional pages if more space is required)

The Reason I feel That a two rail split rail fence is appropriate for The Property on 58 Grasshopper lane is liability. There are vehicles turning around on The Property power sliding on Their ATVs, parking Their campers and vans and spending The night. IT is a Private Piece of Property not a Public driveway, and a fence would make it private, and defined - Setting up boulders is a statement To The neighborhood creating disharmony and taking away The beauty of The land. A split rail fence would do The opposite.

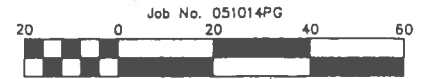
Signature: Thomas Calamia Date: 3-1-16

RESULTS OF SURVEY

and PROPOSED SPLIT

A Parcel of Land in the S.E. 1/4 of the S.E. 1/4 of the N.E. 1/4 of Section 11, Township 17 North, Range 5 East
Gila & Salt River Base & Meridian
City of Sedona, Yavapai County, Arizona.

APN: 408-24-112



ZONING RS-10a

L.S. 135/64

Access Easements

Subject Site

408-24-433

408-24-432

408-24-432

408-24-051

408-24-050

408-24-116F
BOOK 2692, PAGE 489, Y.C.R.

408-24-116E
BOOK 2692, PAGE 489, Y.C.R.

PARCEL 2
10890 sq. ft
0.2500 Acres

PARCEL 3
10890 sq. ft
0.2500 Acres

PARCEL 1
21780 sq. ft
0.5000 Acres

20' INGRESS/EGRESS & UTILITY EASEMENT
BENEFITING PARCEL 408-24-116F

FOUND OLD 1" PIPE
PROPERTY CORNER

20' EASEMENT FOR ACCESS & UTIL. BENEFITING PARCEL 408-24-116E Y.C.R.

GRASSHOPPER LANE

FOUND CAPPED REBAR
1.47' S. OF PROPERTY CORNER

UNRECORDED EASEMENT FOR SEWER LINE WITHIN GRASSHOPPER LANE

E 1/4 COR.
SEC 11

CURVE TABLE

NUMBER	DELTA ANGLE	ARC LENGTH	RADIUS	CHORD DIRECTION	CHORD LENGTH
C1	90°04'50"	31.44	20.00	N 45°27'35" W	28.30

CERTIFICATION

This survey found and confirmed the lot corners to match the Public Record and is published subject to all items of the Public Record.

No. 3936856

LEGEND

- FOUND MONUMENT
- SET REBAR & CAP #5357
- CALCULATED LOCATION
- ⊕ 1/4 CORNER

YCR - YAVAPAI COUNTY RECORDER



FILED AND RECORDED AT REQUEST OF
Capital Title Agency
NOV. 2, A.D. 2005
AT 2:18 O'CLOCK P.M.
BOOK 135 of Land surveys
PAGE 64
RECORDED IN YAVAPAI COUNTY, ARIZONA
Ana Wayman-Trujillo
County Recorder
Angie J. Small
Deputy Recorder



PLANNING and DESIGN ASSOCIATES



P.O. BOX 1863
CAMP VERDE, ARIZONA 86322
520-567-9141

Attachment 2: Survey

Attachment 3: Photograph Looking Southwest



Attachment 3: Photograph Looking West



Attachment 4: Staff Determination Letter



City Of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

February 24, 2016

Thomas Calamia
PO Box 4401
Sedona, AZ 86336

RE: Fencing a Vacant Lot

Dear Mr. Calamia,

Thank you for your request for a determination of whether it is permissible to construct a fence on a vacant lot.

The lot in question for this request is located at 58 Grasshopper Lane, APN 408-24-112A. This lot is zoned RS-10a. Allowed uses in this zone are governed by Section 607 of the Sedona Land Development Code. This section of the code lists "Fences and freestanding walls" as an accessory use (SLDC 607.02.A.2.c). Accessory uses are permitted when "located on the same lot as the principal uses and structures." Based on this language, a fence is only permitted when a primary use or structure already exists on a property. Therefore, a fence cannot be permitted on a vacant lot because no primary use or structure exists.

As the Community Development Director, this is my interpretation of the Sedona Land Development Code District Regulations as it relates to permitted uses in Single-Family zoning districts, specifically the RS-10a zoning district. Any person aggrieved by this decision may appeal this decision to the Board of Adjustment in accordance with the provisions of SLDC 404 (Variances and Appeals). A copy of this code section and an appeal form are attached to this letter.

If you have any questions, please feel free to contact me, at (928) 204-7107 or ajuhlin@sedonaaz.gov.

Sincerely,

Audree Juhlin
Community Development Director

Attachments:

1. SLDC 404 (Variances and Appeals)
2. Appeal Form