

**Summary Minutes
City of Sedona
Board of Adjustment Meeting
Council Chambers, Sedona City Hall, Sedona, AZ
Monday, April 14, 2016– 10:00 a.m.**

1. Verification of Notice, Call to Order, Pledge of Allegiance and Roll Call.

Chair Gilgoff verified that the meeting had been properly posted and called the meeting to order at 10:00 a.m.

Roll Call:

Board Members Present: Chair Joel Gilgoff, Vice Chair Gary Rich and Board Members Robert Gordon, Charlotte Hosseini and Mike Ward

Staff Present: Warren Campbell, Audree Juhlin, Robert Pickels and Donna Puckett

2. CONSIDERATION OF THE FOLLOWING REQUEST (S) THROUGH PUBLIC HEARING PROCEDURES:

- a. **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 located at 58 Grasshopper Lane, Sedona, Arizona 86336. The subject property is approximately 0.27 acres, zoned RS-10a (Single Family Residential) and further identified as Assessor's Parcel 408-24-112A. Applicant: Thomas Calamia Case Number: VAR16-00001**

Chair Gilgoff invited the applicant to present the nature of his appeal.

Tom Calamia, Applicant, Sedona, AZ explained that he is asking for a little fence; a little split-rail fence of maybe 150 lineal feet. It is cedar and as natural as you can get; it is split with little holes in it, and the neighbors had to come over, and being honest with you, it might have been illegal, but he and his granddaughter, Susan, has transformed what used to be a lot of weeds and railroad ties, which are toxic, and they loaded up his truck and got them out of there. It took hours, and then they trimmed a tree or so and all of the neighbors except you (Chair Gilgoff), praised them for transforming the land from scrubby to good-looking. There is a loop around it with AB gravel going around it, and he told the neighbors that it is possible he would build a fence and put a little dirt on the gravel, and he just spent \$100 on wildflower seeds. He was going to spread wildflower seeds, define the property and make it look good. He is a retired landscape designer of 30 years and takes a lot of pride in landscaping and stuff like that.

Chair Gilgoff stated that just for the record, he owns the adjacent property, but in conference with our City Attorney, they came to the conclusion that there is not a conflict. He doesn't stand to gain financially or lose financially from any decision of this Board. In knowing the property, the Chair asked if the applicant proposes a fence on three sides with an opening for the easement, and Mr. Calamia confirmed yes, on three sides with an opening for the easement on the north side of the property.

Warren Campbell then showed a site plan showing the extent of the fence and indicated that the fence shown in red is the existing fence and the fence in blue would be the new fence, and the proposed fence would not obstruct any access easements that are in place. The yellow cloud is to delineate where the applicant is proposing to put some boulders to define an area for parking, when he visits the site to maintain it.

Chair Gilgoff asked if Grasshopper Lane is on the right and north is up, and Warren indicated yes and pointed out the location of Grasshopper Lane and a driveway back to the two homes.

Audree Juhlin then explained that staff has a prepared Staff Report if the Board would like for staff to go right into that. The Chair then asked Warren to present the Staff Report.

Presentation, Warren Campbell: Warren noted that we are here to discuss a fence request, and the property is zoned Single-Family Residential where fences and freestanding walls are listed as an accessory use, and they are accessory to a primary use when they are approved on a site, which in this case would be a home. Without the home being constructed at this time, you would not be permitted an accessory use, and we are here to discuss a variance to install the remainder of the fence and delineate it, so it can be revegetated and have controlled access without developing the house at this time.

Warren indicated that there is a bit of an existing fence there today and it is the applicant's intent to replicate that two-rail, split-rail fence, which is about 36 inches in height, to enclose the north and east sides of the site and the entirety of the south property line. He did not say the property line on the north and east, because of the easements, and if he enclosed the property, it would obstruct those access easements. The boulders would define a parking area and the applicant's purpose in doing that before building a home on the site is to control access, prevent trespass, eliminate liability concerns and revegetate disturbed portions of the site.

Warren explained that a variance is required to meet three criteria that are in the memorandum, but in general, a variance is to help balance the scale when there may be some inequities or differences between sites, in the same zoning district, that may have some uniqueness about them. These criteria speak to that plus the adjustment should not give privileges that are above and beyond anyone else in the same zoning district, and that the applicant has not created the circumstances by which the variance is needed. Staff responded to each of the criteria in great detail in the memorandum before making a recommendation.

Warren indicated that some things to consider in making a decision is that Grasshopper Lane is unique in that the access was established through the use of multiple easements to create access to the parcels, and traditional rights-of-way were not created. The subject site has been impacted by the placement of two access easements on the north and east property boundaries, which equates to almost one-third of the site being in the access easements. The two access easements provide access to properties to the north, south and west, which is the rear of the subject site. The vacant nature of the site has contributed to its use as a turnaround and parking location for overflow and large vehicles visiting adjacent properties, and according to statements made by the applicant, he has witnessed RVs park there, and it is his belief that they are probably visiting people in the neighborhood and parking on the AB gravel.

Warren stated that in visiting the site, looking at aerials and doing research, there was once a common ownership and some development of the lots has occurred, with this being one of the few remaining vacant lots in the neighborhood. Staff speculates that there probably was some construction activity on the adjacent lots and this vacant lot was used for construction access and staging, which has led to the situation we see today. Trespass is occurring with frequency and the applicant is concerned about liability resulting from injury on the property. There is degradation of the site vegetation and erosion occurring, and there is a concern about possible prescriptive easement claims if a controlled access is not put in place.

Warren noted that fences are not uncharacteristic within most Sedona neighborhoods, so it would not be granting a special privilege in that regard, and the site is unique with regard to access easements, historic use, trespass frequency, the undeveloped nature and the trespass actions had been occurring even prior to the current owner's purchase.

Warren pointed out the easements and an east-west lane that goes to some parcels on the site plan, and he explained that the applicant is proposing to start where the existing fence stops and extend the existing style and design, and then place the boulders to create a little parking area for the owner. Warren showed some photographs of the site with the existing fence, the

driveway to the homes in the rear, the home to the south and where the fence would tie-in. He also pointed out a gravel road that was probably used for construction, because it is not an access easement, and indicated that the applicant will place the boulders in that area to create the defined parking area. He also pointed out the southern property line where the fence would tie-in and indicated that he received one call from the owner of a nearby home, and she had some questions about the fence. Once he explained how the proposed fence would tie-in and that she was not required to also construct a fence, she stated that she had no concerns. Warren then showed a photograph of the two homes to the northwest served by the site.

Warren indicated that staff is recommending approval of the application, because we found that it meets the criteria that we've spoken about, with one condition that we have talked with the applicant about, so if approved, the applicant would follow-up the approval with a complete Fence Permit application for review and compliance of all height regulations, etc., and as generally understood today, we believe it will be in compliance with the heights, setbacks required and location identified on the site plan.

Board Members' Questions:

Board Member Ward noted that the easements had not been legally documented and asked who is responsible for setting up the boundaries upon which the fence could be built, because there isn't anything obvious that says where the personal land ends and the access easements start. Warren explained that a survey was provided by Mr. Calamia, which is Attachment 2 in the application, and the surveyor identified where those easements are, so they are fairly well defined. The Board Member indicated that looking at the pictures, it wasn't clear. Warren then explained that his suspicion is that the physical locations of all of the dirt and where people turn is not exactly where the easement lines are, because they are pretty squared off and very parallel to parcel lines, but in constructing the fence, Mr. Calamia would need to confirm that the fence would not be in the easements. Board Member Ward then noted that is the applicant's responsibility and Warren stated yes.

Warren then stated that he received an email from Vice Chair Rich prior to the meeting, and he had responded that he would answer the questions in the hearing, so everyone had the benefit of the information. Vice Chair Rich asked three questions in the email: 1) Is Grasshopper Lane maintained by the City of Sedona or is there just merely an easement over place of it. Warren responded that we do maintain Grasshopper Lane and he was told that a few years back, the City paved that road, and there are some sewer and stormwater improvements planned in that neighborhood. You saw the first phase on Coffee Pot this spring. 2) There was a map in the packet that showed the people within 300 ft. of the parcel, and yes, a notice was sent to all those properties and he heard from one individual. 3) With regard to some of the damage on the site to the road access, etc., Vice Chair Rich seemed to have witnessed Tiffany Construction, the City's contractor on the most recent stormwater management project, filling up with water and using this site to turn around. Warren explained that he couldn't speak as to whether or not that occurred, but he would suggest that the damage there has been going on for a much longer period of time, as the aerial was taken in 2015 before construction began, so if they used the site, they did not cause all of the impacts.

Vice Chair Rich thanked Warren for his responses and indicated that he had one other question. He then asked if there are any utilities that cross this lot or if they all are in the easement. Warren explained that he cannot speak to what is below grade, but he has not seen any outside of the easements or been given any indication that they are outside the easements. Mr. Calamia added that there is a water line that goes through the property to accommodate the property in the back, and he then pointed out where he thinks it runs. Chair Gilgoff stated that all utilities serving that side of Grasshopper come from the other side of Grasshopper, but he doesn't know what that would have to do with the appeal. Vice Chair Rich explained that he was just curious in case there were any electric lines or sewer lines crossing the property.

Susan DeShelly, Applicant, Sedona, AZ added that Grasshopper Lane is a dead-end and that adds to the usage of this property as a turnaround.

Tom Calamia, Applicant, Sedona, AZ stated that to be upfront with the Board, there is a truck from Texas that backs-up along the property line and parks in back of Chair Gilgoff's house. He then pointed out the location on the diagram and indicated that it is parked there right now. Chair Gilgoff indicated that he had no knowledge of that and Mr. Calamia stated that he knew the Chair did not and that is why he said it.

Warren then asked if Mr. Calamia is saying that a truck is parking in a specific area and Mr. Calamia apologized if he . . . Board Member Gordon interjected that he would like to make a motion; however, the Chair indicated that the discussion should be finished.

Robert Pickels, City Attorney, explained that he was present to advise the Board on matters of procedure, and he wanted to make sure, because it has been a while since the board has met and we have a high-profile case coming up, so he wanted to be sure that the Board familiarizes itself with the rules of procedure and follows them very strictly. The correct approach would be to have the City staff present the case, then hear from the applicant. Following that, even though there is no public present, we would open it for a public hearing before any motion. Chair Gilgoff stated that he understood; he just wanted to finish the question for the applicants.

Chair Gilgoff then opened the meeting to the public and, having no members of the public present, he closed the public comment period and indicated that he would entertain a motion.

MOTION: Board Member Gordon moved for approval, with a condition, of case number VAR16-00001 based on compliance with the required ordinance findings as set forth in this Staff Report. Board Member Ward seconded the motion.

Chair Gilgoff commented that while doing this application, he would recommend that knowing that the house number and the property number is not correct, because that side of the street should be odd numbers . . . , Mr. Calamia interjected a question as to what he should do about that. The Chair explained that he just needs to fill out an application with the City to change the address. Mr. Calamia stated okay, because it should be an odd number, and Warren indicated that he could work with Mr. Calamia on that process.

VOTE: Motion carried five (5) for and zero (0) opposed.

The Chair stated that the applicant's request is granted, and the applicant thanked the Board and staff.

3 Adjournment.

Chair Gilgoff then requested a motion to adjourn.

MOTION: Board Member Gordon moved to adjourn. Vice Chair Rich seconded the motion.

The Chair then adjourned the meeting at 10:24 a.m., without objection.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment held on April 14, 2016.

Donna A. S. Puckett, *Administrative Assistant*

Date