

**Summary Minutes
City of Sedona
Board of Adjustment Hearing Officer Meeting
Vultee Conference Room, Sedona City Hall, Sedona, AZ
Monday, September 25, 2017 – 1:00 p.m.**

1. Call to Order and Pledge of Allegiance.

Hearing Officer John O'Brien called the hearing to order at 1:00 p.m. and led the Pledge of Allegiance with the applicants Rob and Christine Adams and staff members Warren Campbell, Audree Juhlin, Matt Kessler, Cari Meyer, Robert Pickels Jr., Rob Pollock, and Donna Puckett present. Councilor Scott Jablow was also present.

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

Discussion/possible action regarding a request for approval of a variance from Subsection 903.07 (Walls and Fences) of the City of Sedona Land Development Code (LDC) concerning an existing fence located at 181 Paramount Drive, Sedona. The variance is requested, pursuant to the Subsection 404 (Variances and Appeals) of the LDC, to allow an existing fence to exceed the maximum allowable height within the front yard area. The subject property is approximately 1.75 acres, is zoned RS-18b (Single Family Residential), and is further identified as Assessor's Parcel 401-24-021.

Applicant: Christine & Rob Adams

Case Number: VAR17-00002

Hearing Officer O'Brien explained that this is a public hearing regarding a request for approval of a variance from Subsection 903.07 of the Land Development Code concerning an existing fence.

Presentation: Matt Kessler stated that as a quick summary, the request is to allow for an increase in height of a fence within the front yard area of the property from 3 ft. to 4 ft. 9 in., which is a deviation of about 58% from what is permitted in the Land Development Code. Matt showed a proximity map of the neighborhood, pointed out the subject property, and described the surrounding area. The property is within the Broken Arrow Subdivision, which borders the National Forest and the majority of the properties are zoned RS-18b, which is Single-family with a minimum lot size of 18,000 sq. ft. and a front yard setback of 25 ft. Matt showed that Paramount Drive is not considered a connector street; it loops around off of Arrow, so it is not really a street for people to get from point A to point B. Its main service is to provide access for the lots on that street. He then showed more details of the subject property and surrounding lots. While the minimum lot size is 18,000 sq. ft., the subject property is around 76,000 sq. ft. and a lot of the surrounding lots are of a similar size, so they are quite a bit larger than the minimum size for the zoning district. You can also see that there is a lot of natural vegetation with a lot of juniper and pine trees that provide screening as well.

In reference to the subject property, Matt displayed an aerial showing the property line (shown in white) and the existing walls and fences (shown in blue) on the property that have not been modified under this Variance. The home itself was constructed in the 1960s and many of the walls and fences were constructed around that time, but the map gives a pretty good sense of what the applicants were trying to do with the property, with the modified portion being shown in red. You can see with the blue and the red, they fully secure their property. They are avid dog lovers and owners, and with their location close to the National Forest, they are concerned with the safety and security of the property, keeping the dogs in and keeping the wildlife out.

Matt explained that the original fence in the front yard was constructed pre-incorporation back in the '60s. It was a split-rail style with block columns that were about 5 ft. in height, and horizontal wood timbers that were about 4 ft. in height. The majority of the fence is set back about 6 ft. from the front property line; however, there is short portion south of the driveway that is further back at about

20 ft. The Land Development Code does allow for a maximum of 3 ft. of solid fencing within the front yard with an additional 1½ ft. of non-solid on top of that, so because of the height of 5 ft., this fence is considered nonconforming with those development standards; however, taking into consideration when the fence was built, it is considered legal, nonconforming.

Matt then showed a picture of the fence as modified in 2017 and the modification took it from the non-solid post and rail style to a solid latilla or coyote-style fence, which are untreated vertical rough timbers that are solid to keep out wildlife and create a little better security for the property. He then referenced a view of the modifications made that showed the existing rails and how the vertical timbers were attached. The top of the wood timbers are at about 4 ft. 9 ins., so based on that height, the modifications are not compliant with the height regulations, since they are taller than 3 ft. solid plus 1½ ft. of non-solid.

Matt referenced the Land Development Code and indicated that staff is largely looking at Section 903.07, which pertains to walls and fences, and more specifically, item b. that states that no opaque wall or fence shall exceed 3 ft. in height in the required front yard area, which for this district is 25 ft., and item b. goes on to say that half of the permitted fence height may be added, as long as that additional height is non-solid, and an example used in the Code is like lattice work, but something see-through. Since we also stated that the fence is legal, nonconforming, Section 1202 in the Nonconforming Development section also applies, and item B. states that no modification may result in an increase in nonconformity with current development standards, so that is why the modification made could not be approved at a staff level, as these modifications would constitute an increase in nonconformity with the nonconforming structure.

Matt indicated that as with any variance, there are three required findings needed based on the unique situation and evidence provided by the applicant. The first being Finding A that reads, "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." We felt that, in particular from that finding, that the location or surroundings criteria were important, being that Paramount Drive is not a connector street. It is really meant primarily just for access to those 16 lots that take access off of the Drive, six of which are currently vacant. The other location or surrounding criteria that staff found to be pertinent was the proximity to the National Forest. When he measured the distance, the subject property is about a quarter-mile, so it is very close, and many of the letters provided by the applicant from the neighbors have confirmed that they do see a lot of wildlife like javelina, deer, etc., so that would lead to this special circumstance, being close to the National Forest.

Matt stated that the next finding is Finding B, which states, "That any variance is subject to 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." If the variance is approved, staff is recommending a couple of Conditions of Approval to ensure that that finding is met. Staff would like to see that the approval be conditioned that the modifications already made to the existing legal, nonconforming fence be granted this variance, meaning that if the applicant was to demolish this fence or want to construct a new one in the future, that they would need to meet the legal Land Development Code; this variance would not grant anything special to any new construction in the future.

Matt indicated that the last finding is Finding C, which states, "That special circumstances applicable to the property are not imposed by the property owner/applicant." As stated, the house and original fence has been in place since 1964 and according to County records, the Adams purchased the property in 2003, so they did not construct the fence that is nonconforming; it wasn't self-imposed. They purchased the property with the fence on it, and as a further note, staff received seven letters of support from neighbors – one of which included the President of Broken Arrow Civic Improvement Association, the HOA, and also the neighbor directly across the street, who arguably would be one of the most impacted by this fence.

Matt stated that there are several alternatives that are compliant with the Land Development Code. The first of which would be to return the modified fence to its original condition, remove the timbers; however, this would not address the security needs of the applicant. Another option would be to cut the timbers down to the permitted 3 ft. height, but this also does not necessarily address the security needs of the applicant, and you could argue that it would look odd from a practical standpoint. Since the top of that second rail is at 4 ft., it might be difficult to do, and the last option would be to install a new fence outside of the front yard setbacks, so it would set back at least 25 ft. from the front property line; they could do a fence that goes up to 6 ft. in height or taller; however, this would require either the owner to remove the existing fence or have two fences close to each other, which again practically may not be an option for the applicant.

Matt stated that if this variance is approved, staff is recommending two conditions. The first is that the granted variance would apply only to the modifications already made to the existing legal, nonconforming fence, and again, this would ensure that Finding B would be met and satisfied. The second condition being that the applicants submit a complete building permit for review within 30 days of the approval, if it is approved today.

Presentation, Applicant Rob Adams: Mr. Adams stated that he pleads guilty of building a nonconforming fence. The first thing he did is check the CC&Rs in the neighborhood, because honestly he felt as though the CC&Rs were the guidelines for building fences in that neighborhood, and the CC&Rs allow for actually a 6 ft. tall fence. He also felt as though adding latillas to an existing fence wasn't necessary for a permit as well. With those two things in mind -- you know he worked for the City for nine years; he normally didn't do planning & zoning or this type of review, so he did it in good faith quite frankly. He actually built the fence himself and the reason, as it was brought out, that we put the fence up was for security. He has had German Shepherds all of his life. He had to put his last one down several years ago, but the idea behind this fence was to get another German Shepherd, and they have had German Shepherds that have bitten people, even on their property, so really the paramount reason for building a fence was for security for the public going by there to be secure from their dogs. The other thing is that since they purchased the property, they have put in extensive landscaping in the front and the back. The back is walled-in, and they have gone through years of attacks by javelina, deer and rabbits, and everything else in the neighborhood wiping out their gardens, and they literally have spent thousands of dollars redoing the gardens. Thirdly, they built the fence as they did, because they felt it really reflected the character of the house. It was built in 1966, but it is a Santa Fe territorial. He is from New Mexico; these types of fences you find all over New Mexico – the latilla-style fence, so he felt as though it enhanced the character of the house and the neighborhood, and it is very, very organic. As you can see by the picture, these are rough spruce poles that are set in a vertical position, and they probably blend into the surrounding area with the pinon trees better than the other fence did. It is certainly a better looking fence. Those were the primary reasons. He obviously has learned something here, and by the way, before they got turned in, they did go in, because they were intending on fencing the rest of the property, and they came in knowing that if they built a new fence, they would have to get a permit, so they came in and pulled a permit for all of the rest of the fencing around the property, thinking full and well they were in full compliance, so this wasn't something that they were trying to sneak through in other words.

Ms. Christine Adams added that she submitted about 10 pictures and asked if they are on there. Matt indicated yes, he would pull them up. Rob Adams stated that while Matt is looking those pictures up, probably the only way to come into compliance is to completely tear the fence down, to take the latillas down to a 3 ft. height, when the top rail is at 4 ft. wouldn't work. Christine Adams then indicated that the photograph pretty much shows that the rest of the property has the chained link fence on it, and you can see the difference in character.

Hearing Officer's Questions and Comments:

Hearing Officer O'Brien asked if their intent was to make that front yard look aesthetically pleasing and in character with the neighborhood, and Ms. Adams stated yes, kind of blend in and be a very quiet type of thing. Hearing Officer O'Brien then asked if, when you applied for the other fencing

permit in November of 2016, that is what he saw in your letter, when did you build this; when was this changed? Mr. Adams stated that he didn't remember and Ms. Adams explained that when they applied for the permit for the rest of the fencing, they didn't know there was anything wrong with the front fencing at that time. Hearing Officer O'Brien then asked when they built . . ., Mr. Adams indicated probably a year prior and Hearing Officer O'Brien stated okay. Ms. Adams added that as Mr. Adams said, they were probably going to foster a service dog. Mr. O'Brien then stated that this was then done first; he thought it was the other way around; that helps him.

Having no other questions, Hearing Officer O'Brien opened the public comment period.

Rio Robson, Sedona, AZ: He is actually a majority property owner in the Broken Arrow area, across the street there, and he wanted to come in today and talk to you about this fence. He wanted to take some time out of his day, because he feels it is very important that we all be on the same page here. That fence is beautiful; that fence should stay. and it should not be taken down, and you guys should be able to have those service dogs, and they have his full support on keeping that fence. John should take a close look at this; this fence is important. They have had robberies at their business before. His dad had his car stolen out of their house before. They want a fence too, but they haven't had time to do it, and security is paramount right now. He totally understands what you are saying; you have his support 100%, and please take that into consideration, when you are making your decision.

Paul Lindberg, Sedona, AZ: Mr. Lindberg stated that he owns the property immediately south of Rob and Christine Adam's house, Lot 22. He has been a member of the Broken Arrow Property Association for the last 46 years, and he has never in his life heard anybody complain about the original fence, and he is in full support of the fence that is now there. He has to put in a little bit of a perspective historically. When they moved to Sedona in 1971, the back lot of their two respective houses faced the Forest Service. It was a land exchange, and they had free-range cattle wondering all over the place. Their house and the houses next to them had cattle guards on their lower yards. Cattle were wondering around on the highway periodically and some were hit by cars. It was mandatory that you had fences in those areas. Some of the irresponsible people in the neighborhood, not necessarily ours, but adjacent neighborhoods would feed javelinas. They were wondering through and tearing up our plants, particularly century plants and cacti, so the fences are a necessary item. He respects the fence that is there; it is a very attractive fence, it is a very effective fence to keep the skunks and javelinas out of the yard, and he fully supports the use of what he has in the yard.

Scott Hancock, Sedona, AZ: Mr. Hancock indicated that he is kind of in their general neighborhood, and he can attest to the problem with the animals and the dog, because he and his wife have small dogs, and because of the javelina and coyotes that frequent the property and come through, they will not let them outside without being physically there with them. Last week, he noticed twice, coyotes coming in transit during the day time, which is a very dangerous situation; they are looking for something to eat. Also, something he hasn't heard addressed here, and he assumes that the Adams have the same issue; they certainly do, and that is the increased noise on the street with the ATVs, the four-wheeler quads, that people bring. He doesn't think the tour companies are doing it, but also the people that bring their four-wheel drive vehicles up here, and they are looking for places to go. They come up and go up into the cemetery, go around their cul-de-sac, and it is really becoming an issue for them. He has never seen this fence before, but it is absolutely a beautiful fence, some quality went into that. It is nice to look at, and he feels that you should go ahead and approve it. It doesn't hurt anybody or anything. It is a beautiful fence, and as homeowners, we need to stick together, because of all the tourists coming up here. Things have changed, and things are changing rapidly, and we need to have our privacy. We shouldn't have to give up our [privacy, because of the tourism coming, so please John, if you would approve this, it would be a good thing. They tried to do something in good faith, and they didn't throw up anything. It looks attractive and it certainly helped his property value.

William Robson, Sedona, AZ: Mr. Robson indicated that he has a degree in architectural design from the University of Oklahoma, and he has viewed this fence and thinks it is a wonderful fence. The variance should be granted on this fence; it fits with the neighborhood. It is actually an upgrade from what it was before, and keeping the animals out, he has problems with that same scenario, and trying to keep the animals out is a real burden, so he really does support the fence. He thinks it looks good, and it fits with the neighborhood, and he honestly feels that it brings the neighborhood up, so he is for the variance.

Andrea Smith, Sedona, AZ: Ms. Smith stated that actually she is a little bit confused; she lives across the street from Rob and Christine. She is a little confused only because she thought the Robsons were the ones that brought this whole thing up, so she is here to support their fence. Anything they do at their house, she has lived there for nine years, is beautiful. He only enhances the property, both of them, so she doesn't even understand what just happened, so she is here to totally support anything they do. She loves the fence; she is also just a bit confused, a little confused, because she honestly thought there was a complaint against the fence.

Hearing Officer O'Brien stated that there is nothing about that is in his report, so he is dealing with the variance request. He doesn't know if staff wants to add anything to that

Eric Shrode, Sedona, AZ: Mr. Shrode indicated that he is the President of Broken Arrow Civic Improvement Association, but he is speaking here not specifically for that organization, but for himself. He lives two houses down from Rob and Christine. He has spoken with some of their other members and got their support, but he doesn't want to use that as an impetus here, but he can shed some clarity on the last confusion. This whole issue came before the City, because someone went to the City, opened an account under his name, using his email and using his name to file a complaint against Rob and Christine. He filed a Police Report on it and asked the City if they could find out who did it and that he wanted to prosecute for identity theft, but that is how it became before the City. Someone who had a grudge against Rob and or him, decided to use his name to file against him. Now, he understands that once it came to the City's attention, they couldn't ignore it if it was in fact not compliant, but that is the first time he ever heard about it. It was the first time Rob ever heard that it wasn't compliant, because he (Mr. Shrode) was even over there, not helping him, but talking to him while he was building it, and he certainly had no problem against it, and he was President of the Association. It's his job to tell people when they are non-compliant that you can't do that, so we certainly had no reason to believe it was non-compliant. He thinks it is a beautiful fence; it does add to the character of our neighborhood, and he encourages you to let him have the variance

Jerry Hartleben, Sedona, AZ: Mr. Hartleben indicated that he lives in the Broken Arrow area right on the forest, so he knows what it is like having animals come in through your property. It's a beautiful fence, he really supports it. He wishes we had more fences like that in the neighborhood; maybe he will start a craze. Mr. Adams laughingly commented, not if you have to do this.

Having no additional requests to speak, Hearing Officer O'Brien closed the public comment period.

Hearing Officer O'Brien asked if this fence has been up a couple of years, and Mr. Adams indicated yes. Mr. O'Brien indicated that he had thought it was fairly recent. He then stated that this is anecdotal, but he can relate to the javelina issue. His neighborhood is -- especially lately, the javelina are hungry now, but they are out ripping up his neighbors' front yard on both sides, and then his front yard recently. He planted flowers in his front yard and bulbs over the years, and they last about two nights, because the javelinas come in and when he wakes up the next morning, they are destroyed, so he keeps everything in the back yard now that is fenced. Also, the danger of javelina, he knows firsthand. His dog was attacked by a javelina and he was out hiking, and it nearly killed him, but luckily, he survived, so he understands your concern about animals and your landscaping and safety. Mr. Adams asked to add that the neighbors around him all have fences, so their property became the javelina highway and a lot of the javelina go down to the stream to drink, and then come back through there, so they usually traverse through there twice a day, and they

literally had herds of 20-30 javelina coming through there on a daily basis. Again, the response to that was to put up a fence, and a 3-ft. fence along the front of your property really doesn't stop much ingress or egress with animals. Sill, deer will jump over that and they are still going to have to deal with that, but they are not as destructive as the javelina, and just because of the proximity to the wilderness area there, the forest, there is considerably more animals traveling through there than there would be in West Sedona.

Hearing Officer O'Brien noted that they are on the edge of the Munds Mountain Wilderness area, so that area has a prevalence for especially javelina, because of the terrain back in there and the vegetation. That Munds Mountain area behind you, Marg's Draw and that, definitely has a higher population of javelina back in there. Deer, he is not sure, but he definitely knows about the javelina in that area, so you are kind of in a little corridor.

Mr. Adams stated that there were a number of others -- they actually ask neighbors not to come today; he didn't see anything on here for public comment, so people showed up in spite of that and they do appreciate that. There were more people willing to come and testify on behalf of the fence.

Hearing Officer O'Brien stated that in looking at the findings, he does feel there are special circumstances that apply to this property, and we discussed the javelina; the safety of your animals and trying to keep them within the fenced area, and wanting your landscaping to stay and not spending a lot of money. He didn't spend as much money on his landscaping as you did, but he lost his within a couple of days, and living in that area where it is a wildlife corridor is a special circumstance. He doesn't see it as a special privilege that is inconsistent with other properties in the vicinity, especially with the conditions that City staff is recommending. There are a lot of other areas in Sedona, in other zoning districts, that do allow 6 ft. high fences in the front yard; your zoning district is just not one of them, but there are a lot of other areas, and he knows the City doesn't enforce CC&Rs; they are separate issues, but the fact that Broken Arrow does allow 6 ft. fences, he thinks needs to be taken into consideration somewhat. Although it was modified, he thinks you did it in good faith. You showed that, by getting the permit for the other new fence, you didn't realize that a modification really needed that permit, especially given the fact that your HOA allowed it to be 6 ft. Evidently, the President walked by and said, hey Rob great fence, so he sees that you did this in good faith. The fence is a vast aesthetic improvement over what was there previously. It is in character with the neighborhood, obviously, and your home. It has been given support by several nearby property owners and the President of the Civic Improvement Association of Broken Arrow. He also doesn't see that with these circumstances this was a self-imposed variance. You purchased the property with that fence in place, you acted in good faith, the other permit that you got kind of told him that demonstrated that you were trying to follow the rules as you understood them. Again, he can beat a dead horse, but the wildlife corridor, javelina corridor.

Hearing Officer O'Brien stated that based on satisfaction of the three findings noted in Section 404.06 of the Land Development Code, he approves case number VAR17-00002 subject to the following staff conditions: The variance shall only apply to modifications of the existing legal nonconforming fence. Any newly constructed fence shall fully comply with all applicable regulations. And condition two, "The applicant shall submit a completed building permit for review within 30 days."

3. Adjournment.

Hearing Officer O'Brien adjourned the meeting at 1:35 p.m.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment Hearing Officer held on September 25, 2017.

Donna A. S. Puckett, *Administrative Assistant*

Date