

**Summary Minutes  
City of Sedona  
Board of Adjustment Hearing Officer Zoom Meeting  
Vultee Conference Room, Sedona City Hall, Sedona, AZ  
Tuesday, April 13, 2021 – 10:00 a.m.**

**1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Hearing Officer Ron Ramsey called the hearing to order at 10:00 a.m. via Zoom and waived the Pledge of Allegiance with applicants Larry Cepek and Joyce Recek in-person with staff members Cari Meyer, Donna Puckett and Kyle Storey present.

Hearing Officer Ramsey indicated that he had been appointed as Hearing Officer on a rotational basis for the City of Sedona and disclosed for the record that for about 12 years, he was the Assistant City Attorney in Sedona and one of his primary duties was assist and attend all Planning & Zoning Commission meetings, and he has some history with Cari and some of the other staff. He doesn't recollect any type of application or agenda item involving the applicant nor this particular piece of property, but he wants to make sure on the record that everybody knows that he did have some prior contact with the City.

**2. CONSIDERATION OF THE FOLLOWING ITEM THROUGH PUBLIC HEARING PROCEDURES:**

- a. Discussion/public hearing/possible action regarding a request for approval of a variance from Sedona Land Development Code (LDC) Section 2.24.E(1).d.2 (Building Height, Measurement, Plane Requirements, Parallel Plane). This section of the LDC limits building to a height of 22 feet, measured vertically from any point of the building or structure to natural grade, except as allowed to exceed this plane under LDC Section 2.24.E(3) (Exceptions) and/or LDC Section 2.24.E(4) (Alternate Standards). For the proposed house, if alternate standards were applied, the maximum height would be 27 feet above natural grade. The Applicant is proposing a maximum height of 34.1 feet above natural grade for approximately 450 square feet (30%) of the floor plane area of the proposed Single Family residence to exceed building height requirements. The subject property is located at 690 Quail Tail Trail, is approximately 0.65 acres, is zoned RS-18 (Single Family Residential), and is further identified as Assessor's Parcel Number 401-05-003B. Owner/Applicant: Larry Cepek and Joyce Recek. Case Number: VAR21-00001.**

**Presentation by Kyle Storey, Associate Planner:** Kyle introduced himself and explained that the request is to construct a house at 690 Quail Tail Trail and adjust the height of that. He then described the size of the property as 0.65 acres with a current land use of Single-Family Residential zoned RS-18.

Kyle explained that the applicants are requesting to construct a house above the Land Development Code requirement. He then showed a house that has the same characteristics as the requested design concept and described the surrounding area with an aerial view of the site.

Kyle stated that the plan submitted by the applicants showcase the proposed house location and trees they would like to preserve, as well as trees to be removed with their design. The dashed line is the overhang of the home and the solid line is the structural integrity. A gravel driveway of sorts already exists as shown in the grayish area. These plans are for a single-story home with a lower opening and columns to raise the house, and the plans highlight in yellow the different areas of the home that are above the height limits of the Land Development Code. The west and north elevations have the most roof area above standards.

Kyle then reviewed the following applicable Land Development Code Sections:

- Section 2.24.E(1).d.2. - No part of a building or structure, exclusive of the exceptions in Section 2.24.E(3) and/or the alternate standards in Section 2.24 E(4), shall exceed 22 feet in height as measured from the parallel plane.

- Section 2.24.E(3) - Exceptions to Height requirements. Project does not fulfill the Building Height exception of having a 3.5:12 pitched roof slope or greater that would allow the roof height to extend five feet above the maximum height requirement.
- Section 2.24.E(4) - Alternate Height Standards. The maximum height allowance for Alternate Standards is 5 more feet for a total of 27 feet maximum. Kyle indicated that around 30% of the roof structure is above that limit as shown in the plan.

Kyle showed a graphic of the annotated site plan depicting the areas of the roof that are above the height limit with the area in green indicating the area that complies with the height requirement if alternate standards are maxed out at 27 ft., and the area in red is the 30% that would require a variance, as the plan has been proposed.

As a project summary, Kyle stated that the subject property presents topographical challenges and mature vegetation. The project proposes to construct a house of approximately 1,490 sq. ft. that would comply with all setbacks and lot coverage standards. Lastly, the applicants are requesting a variance to allow home construction as proposed on the plan submitted that exceeds Land Development Code height limits.

Kyle noted that staff completed public noticing as shown with the project documents placed on the Community Development website; the public hearing sign posted on the property; letters were mailed to property owners within 300 feet, and the public hearing was noticed in the Red Rocks News. Eight comments were received from neighbors; there were no objections, and they were included in the packet.

Kyle added that the Board of Adjustment may approve a variance upon making all of the following Variance findings in Land Development Code Section 8.8A(4):

- A. The subject property has an exceptional shape, topography, building configuration or other exceptional site condition that is not a general condition throughout the zone district.
- B. The strict application of the Code standards for which a variance is sought would produce undue hardship not related to purposes of convenience or financial burden.
- C. The applicant did not create the hardship by their own actions.
- D. The variance requested does not harm the public and does not impair the intent or purposes of this Code, goals, and policies, including the specific regulation for which the variance is sought.
- E. The variance requested will not violate building or fire code requirements or create a safety hazard.
- F. The requested variance is the maximum variance necessary from the subject standards of the Code.

Hearing Officer Ramsey questioned a misspelled word shown in item F, and Kyle clarified that it said the "minimum relief necessary".

Kyle stated that staff had recommended Conditions if approved and read the following Conditions:

1. This variance only allows to exceed the Land Development Code height requirements in Section 2.24.E(1)d.2 for the proposed house of approximately 1,490 sq. ft. as illustrated on the plans submitted.
2. All existing trees identified in this application as being preserved shall be preserved during construction activities for this permit and any future construction.
3. The house shall be installed on columns as described in the application, preserving the trees under the house. Enclosure of the area below the proposed house shall not be permitted with this permit or under a future permit.
4. The building permit application shall be amended to achieve a minimum of 10 points under Alternate Standards (LDC Section 2.24.E(4)).
5. In order to preserve the sensitive areas identified in the application, no future construction shall be permitted below the 4,365 ft. contour.

6. The Applicant shall obtain a building permit for the proposed house. Revised plans shall be re-submitted to the Community Development Department addressing all outstanding comments within 90 days of approval of the variance.
7. A building permit for the proposed house shall be issued within six months of the variance approval. The Community Development Director may grant a one-time extension of six months if the applicant is working diligently to address all outstanding corrections.

Kyle then showed a view of the neighboring house, steep topography and vegetation.

**Comments by Applicants Larry Cepek and Joyce Recek:** Mr. Cepek showed a view of the site from the street on Quail Tail Trail and indicated that the site drops off immediately, and there is significant vegetation on the lot. He then showed a view that Kyle had shown and referenced a pile of tree mulch used to cover the ground and is good for trees. That pile is approximately the bottom of the platform of the house. The house will be built on a platform with six-inch square tube steel, and it goes up about 18 ft. on that.

Mr. Cepek stated that he talked with the neighbors to the east, and they agreed it would not affect their views, and they sent a letter saying they are happy with the project. He then showed a rendering of the house from the street to show how the house will look without the trees and pointed out that the trees will cover most of the house, particularly the two large Junipers that are between the house and the street. They essentially cover the house, so the view from the street will be just a little of the house.

Mr. Cepek noted that the City had multiple goals when the Building Code was developed. One of them is on page two of the Land Development Code Introduction that says regarding height, "Notice that there are no tall buildings in Sedona. This is decided by the Land Development Code that sets limits for building heights. The fact that these houses are barely visible is the goal", and that is what their proposed house will have.

Mr. Cepek referenced another line that says, "Does the roofline of these houses going up the hill follow the slope roughly even with the tree line." That is also their case. Besides the colors, the background is not correct, but you will notice that it is sitting on these steel piers, so you will see green trees underneath the house from the north. They also placed the house, and you can see where the two large old Junipers are; the house is perfectly sited to miss those. He then pointed out the location of smaller pine trees.

Mr. Cepek explained that in order to build the house, they have to come in on the only flat area on the lot; everything else drops drastically. In the future, depending on cost, etc., they may build a two-car garage and studio, but construction costs are going up rapidly, so they may not be able to do that at this stage. That is the only flat area of the lot, and they need to leave it open anyway for access to the house.

Mr. Cepek indicated that they went to a one-story house because he is 81 and Joyce will be 80 in a week, so they are preparing a place to age in place. Their current townhouse that they have lived in for 26 years is also on Mormon Wash and they can see this property from there, but it has a second level for the master bedroom, and one of the more dangerous things for older people is falls, and it goes up significantly as you get older, because the knees get weak, etc., so stairs are a particular hazard. In 2016, there were 28,000 people over 65 who died of falls, many of them on stairs. Stairs are particularly dangerous to anybody as they get older, so that is why they want one story.

Mr. Cepek stated that they meet the intent of the Land Development Code for masses, height, etc. He doesn't think it thought about this particular situation, but by building on a platform, they solve their problem, and they plan on hand digging the footings. They will have 4 ft. diameter solid footings going down to anchor into rock 2 ft. down. They've already dug a couple of holes, so they know what they've got, and being dug by hand, they won't have to get equipment in there.

He has been around construction all his live, and when a guy gets a piece of equipment, they tend to be cowboys and run over everything, but on this property, if they run over anything, they will be tumbling down the bank. They will have to be on the level part, but they won't be there anyhow to speak of.

Mr. Cepek noted that with this design at 1,500 sq. ft. it will meet their needs and the square footage is the same as they presently live in, but it is on one level, and they are going to save these two Juniper trees. If they did anything else, they would have to take them out. They do meet the other height requirement the City has of 40 ft. maximum, but this is the one requirement they need some variance on.

Mr. Cepek then showed the colors proposed for the facia, roof and siding. The facia and siding are both dark colors that meet the color code. Also, this is a fiber cement siding that will help fire concerns, so it is a flat black roof, black facia with that type of siding. He then asked if he should talk about the conditions now.

Hearing Officer Ramsey indicated that he had some questions about the Conditions, so we can go over those in more detail. He then said it was probably Ms. Recek's turn to say what Mr. Cepek forgot to say, if she had any comments at this time.

Ms. Recek stated that all of this discussion has been technical, and she would just like to add a personal note about why this house is important to them -- the one level, as Larry said. They're aging and love Sedona and have been here 26 years in the very same area as this lot, and they want to stay here. In order to do that, they need a simple house; this is not an ostentatious house or fancy. It is more practical than anything else, and it will have wide open areas and basically be maintenance free, including the siding which is also fireproof. It will give them a chance to really enjoy the scenery. If they can't hike, they can at least enjoy the scenery.

Ms. Recek indicated that you saw the front of the house; it is quite plain. She then showed a picture of the rear view where all the glass is and where the views are looking at Wilson Mountain, Steamboat and all that beautiful scenery. They're fairly healthy now, but that can change quickly. They have a lot of friends who are in the same shape as they are. They're just anticipating the future, and any other solution on this lot is going to require setback into the hillside and require stairs. They thought of an elevator, but power goes out in an elevator, and at some point, you either use stairs or you are limited to one level of living, which may be if they stay in their townhouse, so this satisfies all of their needs. It may not be everybody's idea of a perfect house. Her brother was an architect who died in his early 40s. He was a student and co-worker of Mies van der Rohe -- less is more, and if he were here, he would design something really wonderful. This is kind of our tribute to him, and this is our design. She and Larry put this together, no one else did, so they have a great investment in it, and they hope that you agree that this height variance they are asking for is far outweighed by the other positive points presented.

**Hearing Officer Ron Ramsey's Questions and Comments:** Hearing Officer Ramsey noted that he is only three years behind them in age, but he has been in the Cottonwood/Sedona area since 1974, so he can outdistance them on that. There were two-lane roads going everywhere when he first got here, and Old Town Cottonwood was like eight buildings.

Hearing Officer Ramsey then asked if either of them are in engineering or construction, and Ms. Recek explained that Larry is a Civil Engineer licensed in two states now, and he is still working. He will be 82 in July, and this is a place where he can work from home. Her background is primarily in marketing and public relations. She worked with her brother and he called on her for her input on the interior components of the buildings he designed, and she worked in interior design for quite a while.

Hearing Officer Ramsey explained that he mentioned it, because this is a challenging proposition in terms of its location and construction, so he feels more comfortable knowing that they know

what they are doing. Mr. and Ms. Cepek added that Larry had his own construction company for 18 years in Madison, Wisconsin.

Hearing Officer Ramsey indicated that he wanted to assure everybody that we have no opposition. He has reviewed the entire packet and he is in favor of granting the variance. He just wants to make sure we are clear on some of the recommended Conditions and that the applicants understand what they have to do from here on in. He then asked if there were no changes to the application Cari submitted dated February 21<sup>st</sup>. He wants to be sure the record is accurate and the application hasn't been modified or any drawings or photographs. Kyle stated no, they have not been modified or changed. The Hearing Officer then stated that we are comfortable in assuming that the packet is accurate up to the time of the hearing.

Hearing Officer Ramsey indicated that he needs a little better explanation of some of the Conditions; he understands but wants to be sure everybody agrees to them. First, you did say that all existing trees identified in the application as being preserved shall be preserved during construction, and he knows that we looked at the vegetation from the aerial, but it would be to the applicant's advantage to identify which trees we are talking about. Obviously, the renderings show that some are larger than others, but let him preface all of these comments about Conditions on his experience. Everybody seems to know and understand what the Conditions are when we have a hearing, but six months or a year later when somebody else is looking at the application and questions come up, we're possibly making some assumptions that shouldn't be made on the record, and he doesn't want to have something trip this up, because he understands there is an emergency in getting the project completed, so he is just making some recommendations on these. His intention is to go ahead and pretty much parrot the Conditions on the decision, and he is going to do a draft of his decision and send it to the City and maybe to the applicant to make sure he is saying everything that everybody understands before we sign off. Looking at the trees, it would be an advantage to identify which trees are to be preserved, so there is no misunderstanding. Once construction starts, it would be an advantage to have the vegetation marked.

Mr. Ramsey then noted that it says no enclosure in the area below the house, so he wants to be sure it includes things like landscape features or lattice work, or is absolutely nothing the Condition? Kyle stated that it would be the intent as a Condition to have no sheds, lattice, etc. It would be completely open as the rendering shows. Mr. Cepek agreed and said that the only thing they would have down there is probably an air conditioning condenser and obviously the steel columns and footings. Mr. Ramsey indicated that it would be an advantage to say, except for air conditioning unit, to ensure that we understand that.

Hearing Officer Ramsey pointed out that when we talk about no construction below the 4,365 ft. contour because of the drastic slope, does that prohibition prevent them from having an outside storage shed or modular building not constructed on site? We have prohibited construction on site, but we haven't prohibited bringing in something pre-constructed on site. Mr. Cepek explained if it is below 4,365, he doesn't think they have a problem with that. Access will be difficult, because it drops 20 ft. Ms. Recek asked Hearing Officer Ramsey if he is asking about manufactured storage buildings and Hearing Officer Ramsey stated, right. Ms. Recek explained that if they build anything, it would be the garage with the studio attached. Hearing Officer Ramsey explained that is not part of these Conditions as it is not part of the main home. He doesn't necessarily see that these Conditions would prevent them from coming back later trying to do the garage and studio at the upper street level, because all of these Conditions are associated with the variance on the main construction of the building of the home. If he is wrong, maybe we need to add a Condition that says if you come back with some future construction, it would be on the street level or a certain contour level. Do we need to add that?

Cari explained that if he would like, prohibiting construction below the 4,365 ft. contour would allow them to build potentially at the higher level, but we can modify that if you think it would be clearer. Kyle asked if the Hearing Officer was inferring that the no future construction would

include no future construction or any sort of buildings in general? You started out kind of rewording the language in Condition 5 saying no future construction or any development in general, any buildings, any modular, is that what you were saying? Hearing Officer Ramsey stated no, he understands Condition 5 is to preserve the concepts of the home as presented in the drawing. When Mr. Cepek talked about being able to potentially come back in more at the street level, that is the first he had heard of coming in with a garage and studio. He doesn't think any of these Conditions would prevent that because these are associated with the construction of the home; however, the basis for some of these Conditions and the recommendation for granting the variance is somewhat based on the fact that the visual impact is minimized. So, we want to make sure we don't trip ourselves up in the future by preventing him from coming in on the street level. He is not sure if you need to reword that; his guess is possibly we would change Condition 5 to say no construction shall be permitted and any construction at the street level will have a separate building permit, application process or something. He didn't want this to be a prohibition that would stop him from doing it. Cari explained that anything at the street level would be above the 4,365 ft. contour, and the Hearing Officer indicated he understood. Cari then pointed out that he is the Hearing Officer and can write this however. . . , and Hearing Officer Ramsey indicated he might make a recommendation on that one.

Hearing Officer Ramsey indicated that when he read the application and saw 4 ft. diameter column footings, he wondered how that could be consistent with the description of a 6 in. steel tube, but is it right that it is probably going to be buried? Mr. Cepek stated that it will be buried except maybe for the top foot or so, because there is a down slope, so there may be a foot at the top sticking out. It will be 4 ft. in diameter founded on rock. It is on a hillside, so you have to be careful that it doesn't slide down the hill in an earthquake, etc. He has structural engineering training, but he used a local Structural Engineer, Brent Maupin, to do most of it, so between the two of them, structurally it is a little tricky to make it work versus just a slab on grade. Hearing Officer Ramsey stated that is what he assumed. The drawing wouldn't necessarily show the footings, just the poles going right to the ground. Obviously, there has to be some exposure of the footing and that's fine.

Hearing Officer Ramsey indicated that the applicant is required to achieve a minimum of 10 points under Alternate Standards and that is the maximum in Table 2.9, Alternate Height Standards, and the credit of 10 gives another 5 ft., but you say that the applicant has to amend the permit application, what does that entail? He wants to be sure we are clear about that, does he have to change the paint, a wall facing or anything? Kyle stated yes, basically it would have to be a different paint color as showcased earlier, but paint can only get you seven Alternate Standard points, which is 3.5 ft. To achieve the other three points or 1.5 ft., there needs to be an unrelieved building plane, which we've discussed showcasing the largest unrelieved building plane in a certain square footage to get the 10 points.

Hearing Officer Ramsey stated that he wants to make sure that everybody understands what has to be done to get the 10 points. Mr. Cepek indicated that he didn't understand, and Kyle explained that with the Alternate Standards, we talked earlier about the colors in order to get you seven points for 3.5 ft. and having an unrelieved building plane of a certain square footage to get you more points and feet.

Cari added that when looking at this, the original house plans did not have anything Alternate Standards-wise on the plans saying how much, and we see didn't anything to indicate it would be an issue. We just need to make sure the application is amended to show it correctly to call out the points you are getting. There wasn't any red flag that you wouldn't be able to, but you'll have to add some information to the permit.

Mr. Cepek asked if a possible relief would work, and Cari indicated yes. Kyle added that staff will work with the applicant to make sure the permit is amended correctly with the information needed. Mr. Cepek noted it is mostly paperwork; you can't just say 7.1 ft. or something and Kyle stated that is correct; we will need to document it on the permit application. Mr. Cepek asked if

they could stay with the color, and Kyle said that staff will determine that. Mr. Cepek explained that is important. Ms. Secek worked a lot of time to find something that would work. There is a lot of stuff, but this is about the only thing so far that would work from a setting point-of-view. That's her department.

Hearing Officer Ramsey stated that he is looking at Table 2.9 and that gives you an additional 5 ft. It says for Largest Unrelieved Building Planes (sq. ft.) for Single-Family Residential – n/a, and for Largest Unrelieved Building Planes (sq. ft.) for All Other Uses - 200, so are they going to have to change any of the color or building plane to meet the 10 points?

Cari explained that staff will have to evaluate the color, because the color will give them a certain number of points. If the color gives them five points, they will have to get five points under the building plane. Hearing Officer Ramsey stated that he is not sure that either he or the applicant knows what that means. What do you mean when you say you will evaluate the color? Cari stated that staff will take it and compare it to the reference samples we have to determine the Light Reflectance Value and that will give them a number of points for the color column, and then the difference between that number and 10 is the number of points needed through the unrelieved building plane column, so they don't have to do the row of 10 for both; if they get five points for color, they have to get five points for unrelieved building plane. If they get four points for color, they have to get six points for unrelieved building plane.

Hearing Officer Ramsey commented that now that you have seen a rough rendition, what do you see might be the changes that they need to make in that rendition to get the 10 points? Kyle indicated that he personally doesn't think any. We talked about not really see any. The color looks really dark just initially, but as Cari said, we have to attune that to the color samples. The largest unrelieved building plane in the rendering looks like they have the square footage necessary to get those points, but we would need to do some precise calculation on that to confirm, and initially looking at the color and the unrelieved building plane, we don't see any red flags that would prevent the Alternate Standards from being able to be obtained. Hearing Officer Ramsey stated that he wants them to understand that there is going to be some tweaking of the design they submitted, but nothing drastic; however, Kyle noted that he doesn't know that they will have to redesign anything. We'll have to get to that point with the calculations.

Hearing Officer Ramsey asked if the applicant had any questions about being able to get the 10 points. Mr. Cepek explained that his worry is that something could be involved here that they would have to come back to get a variance for a little bit, and he would like to not have to do this again. Hearing Officer Ramsey explained that he doesn't think it would be a variance. The variance Conditions would be pretty much the same; you have to get to 10 points. Since we do have some rendition of what you anticipate the color to be and some design rendition of the building layout, it looks like something you and the staff can work on. He just wants to make sure that chart is not going to force you to redesign part of the building or change the paint, or if it does, you agree to that before we get the variance going.

Kyle stated that the proposed black color is at least less than 10 LRV and Cari agreed, but added that we would evaluate it based on the gray. She can go look at it right now. (Cari left to go evaluate the LRV.) Hearing Officer Ramsey indicated that the color would be easy enough to work out. He just wants to make sure there is not going to have to be a redesign of one of the sides of the building.

Kyle stated that he didn't believe so. He then asked the applicant to confirm the largest plane of the home, and Mr. Cepek stated, yes, that is what they submitted originally. They submitted plans originally for approval. Kyle then asked if this is the largest plane of the home that doesn't have anything, and Ms. Recek replied yes. Kyle explained that we would use that side to determine the calculation of how many square feet it is. Mr. Cepek then calculated 54 ft. by 10 ft. minus the 4x9 door is 504 ft plus or minus. Kyle then stated that around 500 sq. ft. is the largest unrelieved building plane just roughly calculating based on the rendering in front of us.

Hearing Officer Ramsey indicated on the chart that is a plus three, if he is reading that right. Kyle responded that he could pull up the chart if necessary and asked if the Hearing Officer wanted him to pull it up. Hearing Officer Ramsey stated again, everybody likes the design. He understands the design and it is minimal impact, it meets a lot of the points of the application that are supportive. He just didn't want somebody to realize at the last minute that they have to change a whole side of the building or something to meet the 10 points. He might be misreading this chart, because it does talk about additional height, and then it says Single-Family Residential, so for the column, Largest Unrelieved Building Plane of 500 sq. ft., you only get a plus two. It seems that the chart is trying to tell us that when you have a smaller unrelieved building plane, you earn more points. They don't want to see a big flat surface, if he is reading the chart correctly. It is Table 2.9 in Building Height, Sub-section E.

Mr. Cepek asked if two very large old Juniper trees count to break up the building plane, and Kyle indicated that he doesn't think so, but he is going to defer questions about Alternate Standards to Cari, because he has only been here three and a half months, and this is a new topic.

*[Note: Cari returned to the hearing at this time.]*

Hearing Officer Ramsey stated that his recollection of the Alternate Standards is that the more you break up large surfaces, the more points you earn, because you don't want to see huge flat walls. He remembers talking about this concept with some of the commercial buildings we reviewed over the years, and you also get more points if you have less reflective values with the paint, and that makes sense if you want to minimize the impact of that building in that particular location. You don't want it to look like a big box and you don't want it to look reflective. By reading the chart to get to 10 points, he just wants to be sure that what we are looking at for the preliminary design is pretty close.

Hearing Officer Ramsey noted that the applicant, on page 2, or 16 of the packet, stated that the height request is 6 ft. above the 27 ft. maximum roof height, but the Staff Report, on pages 8 and 10 says 7.1 ft., so if we stay with this proposed design, he wants to clarify that they are going to be getting the 7.1 ft. Cari stated that is correct, that was staff's evaluation, and the color would get the full 7 points, so they would need to make sure that their largest unrelieved building plane is no more than 450 sq. ft. to meet the 10-point requirement. Hearing Officer Ramsey stated that is what he was trying to clarify.

Mr. Cepek stated that he didn't know if they could do that without significantly changing the house. It is all intricately placed. He then asked if the doorway counted as breaking it up, and Cari explained that it would, but we have not done an evaluation based on the size and the issue is that to meet the finding that the variance is the minimum amount necessary, they would need to get the full 10 points. Ms. Secek asked if the deck is considered, and Cari stated yes, but you have to look at the building plane.

Hearing Officer Ramsey suggested that they could have the wall just come out a little at some point just to break up the flat plane. Cari stated that it is not a scientific measurement, but it looks like it would be at about 430 sq. ft. as their largest building plane. They would meet that requirement; they just need to be sure they are showing it on the plans correctly. Mr. Cepek asked if the 430 sq. ft. is the front and Cari replied yes, but you will have to confirm that when you resubmit the plan. Mr. Cepek asked if it would make it then, and Cari restated if it is under 450 sq. ft. They will have to give staff information on all of the unrelieved building planes on the building. It looks, from a visual standpoint, that it is the largest one, but they will need to confirm that when they resubmit the plan. If it is larger than 450 sq. ft., people do shed roofs over windows, but there are different things they can do to the face of the building to create a break in the building plane; the windows don't count. They have to have an actual projection or recession to create a shadow line. Mr. Cepek then confirmed the area of the unrelieved plane, and Cari added that it is the total size of that. Cari then confirmed that she was not counting the door and



Ms. Secek noted that they could add a design element on that side. but Kyle said we will figure the exact square footage and determine if we need to do anything different. Ms. Secek stated that she is sure that they could come up with something that won't drastically change the building design.

Hearing Officer Ramsey indicated that he appreciated the discussion. He wanted to make sure they were clear about what they have to do to get that 10 points, and it looks like the maximum they will be granted is going to be 7.1 ft. Staff confirmed that is accurate.

Hearing Officer Ramsey also wanted to be clear about the next steps and their timeline. There are three timelines. He has to make the written decision and there is a 15-day period for appeals, so there is a lag, before you can say it is complete. Condition 6 requires a building permit be submitted within 90 days of approval of the variance. He wants to be sure the applicant can meet that deadline of 90 days to obtain a permit. The applicants responded yes.

Hearing Officer Ramsey stated that there is one more point he wants to be sure everybody is clear on, particularly the applicant, about what the next steps are and what their timeline is. He will express that by reading three different timelines that are associated; they are not really that clear to him and he wants to be sure the applicant understands. Before he does that, obviously, he has to make the written decision, and then we have a 15-day waiting period by Code in case anybody appeals, so when we are talking about when the variance is final, it will really be after it is in writing and after the 15 days, so there is a lag time before you can say the variance is complete. Having said that, Condition 6 requires the applicant to obtain a building permit for the proposed house and revisions to the plan submitted to the Development Department addressing its comments within 90 days of the approval of the variance. It looks like there is quite a bit of work that has already been done, but he wants to be sure the applicant is comfortable with being able to meet that first deadline of within 90 days of approval of the variance you are going to submit enough information to the Development Department to obtain a building permit. Is that feasible? Ms. Secek and Mr. Cepek both stated yes.

Cari wanted to clarify that the building permit needs to be issued within six months. They need to bring in their corrections within 90 days; it wouldn't be that the building permit needs to be issued within 90 days. Hearing Officer Ramsey pointed out that is not what Condition 7 says. Cari explained that Condition 6 says revised plans shall be resubmitted to the Community Development Department within 90 days of approval of the variance, and Condition 7 says the building permit shall be issued within six months of the variance approval. That gives us some time between when they resubmit the plan to work with them to ensure all of the issues are addressed.

The Hearing Officer stated that he just wanted to make sure we are clear. The first point in the timeline is when the variance is complete and that is going to be within 21 days. He has to do a written opinion, and then the 15 days. Then, you have to have revised plans submitted within 90 days of when the variance decision is complete, and then you have to obtain the building permit within six months, again coming back to the date of approval, so you have used up some of that six months, because part of it is the same 90 days. It is not 90 days plus six months, so a building permit can be issued within six months. Is that still feasible? The applicants both stated yes, but Mr. Cepek added unless they have some problem with the plane, because the structural steel is . . . mostly they are minor corrections to make on the plan submitted. The major one being this type of variance; the rest are minor. If he would have to do something to make some different types of . . . with the unrelieved plane, he might have to change something structurally and that would take a lot of time, because Structural Engineers are extremely busy.

Kyle asked if he would need more time than the six months, and Mr. Cepek said no. If they can get this unrelieved plane thing done that is the first step. He then asked if he could submit that informally and Cari said yes, work with Kyle. Kyle then reiterated that the applicant says they are comfortable with the six-month timeline.

Hearing Officer Ramsey stated that it is curious to him that when you look at variances in general in the Code, there is a separate section that says a variance approval expires and a variance permit shall expire and may be considered for revocation following one year of inactivity as defined in another section. If you go to that other section, it says approval shall expire at the end of a scheduled development, and we are not really creating a scheduled development, are we? We're just saying 90 days and six months to get a permit. Once a permit is obtained, what is the deadline for completion of construction? Kyle said the permit is valid for six months after; however, Cari explained that you have to have an inspection every 180 days, so we have typically put these Conditions on there, because there is an active permit that based on other mandated timeframes needs to continue to move forward through the process, but once a permit is issued, the timeframe is in the Building Code, which is that they have to have an inspection every 180 days.

Hearing Officer Ramsey continued to read "curious" sections associated with the variance, saying that a variance expires within one year of inactivity as defined by this further section. The further Section 8.8A says, "Approval shall expire at the end of the scheduled development or set time for development for a specific improvement or if no specific time is given, two years from final approval, so he is looking at a one year, a two year, and a building schedule. We have run into this in the past primarily with commercial projects, sometimes residential, wondering when things are actually going to be done. What is the deadline to getting something done whether it is one phase of construction or another? It expires within two years if none of the following have occurred, and that is that construction has commenced and is being diligently perused, so what he is seeing with a variance is that approval expires after one year of inactivity, so that is one year from when we get this 15-day window shut down on the variance – that is one potential deadline for construction to be completed, because the variance has expired. On the other hand, it doesn't have a schedule of development, so instead of the one year the next section referenced says two years, if none of the following have occurred, and that is construction has commenced and is diligently pursued. Putting this altogether tells him that a variance might expire in a year, but it might be a two-year period, but it might not, if some construction has started and is being diligently pursued. What are we working with here? He is bringing this up, because this is a very specialized kind of construction job, and he wants to ensure we don't get tripped up by saying nine months from now because of some problem that this is held up. He doesn't want the variance to expire on top of it. He understands Conditions 6 and 7, but there is no timeframe past Condition 7 as far as when construction has to be completed.

Cari stated right, because then they would just need to maintain an active building permit, which requires an inspection every 180 days. Once the permit is issued based on the variance approval, we don't double up on timeframe requirements, we would just defer to the Building Code, which has time requirements as to how to keep a building permit active.

Hearing Officer Ramsey stated that he assumes they don't just walk out and look at the same thing every 180 days; there has to be some progress. Cari stated that is correct, but again, it would go to the Building Code requirements for keeping the permit active. The variance process is essentially complete once the permit is issued, then it goes into the building permit process.

The Hearing Officer asked if the applicants understand what that entails in terms of time limits, let's say for footings? Mr. Cepek stated that under normal conditions, they are going to proceed as fast as they can. Time is of the essence; they're going to run out of steam one of these years. Ms. Recek added that they want to live in this house for a while, and Mr. Cepek indicated that the other thing that is happening in the Verde Valley and Arizona is that construction is very active and there is a shortage of construction workers, so things may go slower than anticipated. Cari explained that as long as people are actively working towards the project, they do not have any issues with keeping an active building permit. It is when people stop construction and decide to go do something else with their time that they run into issues; it is not hard to get an inspection every 180 days if you are actually working on the project.

The Hearing Officer asked Cari if she remembered the monstrosity in Uptown Sedona that eventually became the hotel that sat as an empty shell for like 10 years, and Cari said no. He then stated that he better understands how the building permit needs to be obtained and once it is obtained, then the variance is pretty much locked in. He doesn't think we then have to make any changes to the language in Condition 6 or 7, but he still thinks it is kind of curious the way that the Code is written in general, outside this application necessarily, but the Code is telling him two different things as far as when a variance expires. It does expire following one year of inactivity, but the second section that particular paragraph referred to is very nebulous. It's talking about a two-year period of inactivity, unless it is being diligently pursued, so the variance doesn't really end once the building permit takes over. Even though you have the variance granted and have the building permit, it looks to him like under the Code, for things that are not diligently pursued, the variance can evaporate. He wants to be sure everybody understands that, and everyone said yes.

Hearing Officer Ramsey noted that he had muddled up a few things and asked if there was anything else that needed to be covered while we are on the record. Mr. Cepek said that regarding the trees, he would suggest that he will get the actual corners laid out and maybe he and Kyle can go there and note the trees to be removed on the plan, and only those would be removed. The Hearing Officer indicated that would be very helpful.

Hearing Officer Ramsey stated that we still have no public input and staff indicated there was nothing else. The Hearing Officer stated that this case presents a very good basis for granting the variance, and he will be working towards the language on that and submit it to the City in the next couple of days.

**3. ADJOURNMENT**

Hearing Officer Ramsey adjourned the hearing at 11:15 a.m.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment Hearing Officer meeting held via Zoom on April 13, 2021.

\_\_\_\_\_  
Donna A. S. Puckett, Administrative Assistant

\_\_\_\_\_  
Date