

BOARD OF ADJUSTMENT REPORT



Meeting Date: 3/6/2024

ACTION

Smith Front Fence Variance 2-BA-2024

Request to consider the following:

1. Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.104.G to allow walls taller than three feet within the required front yard setback for the property located at 10651 E Cactus Road with Single-Family Residential, (R1-43) zoning.

OWNER

Martha Smith
(602) 725-9942

LOCATION

10651 E Cactus Rd
Scottsdale, AZ



BACKGROUND

History

In 1975, the subject site was annexed into the City of Scottsdale and rezoned to R1-43, Single-Family Residential. The existing primary residence was permitted and constructed in 1997 within the City of Scottsdale. City permit records indicate the primary residence has received permits for a number of subsequent improvements, most recently for a pool, pool barrier, and several minimum permits. Currently, there are several active plan submittals for new improvements on the property, including an RV garage, guest house, and a porte-cochere.

Analysis of aerials indicate several other improvements to the property throughout its existence, including walls greater than 3' in height within the required front yard, however, permit records of those improvements are unavailable. The eastern portion of the wall along the front property line appears to have been constructed around the same time as the main residence but was not identified on the original single-family residence plans. The eastern portion of the wall along the front property line and the side property line, until the return wall, appeared in aerial records fall of 2020. At the time of this wall's construction, it exceeded the

maximum permitted height within required front yards. This portion of the wall does not have recorded history through the plans that are available through City permit records.

The current property owners are requesting a variance of two (2) feet to allow for a three (3) foot tall wall with a two (2) foot view fence along the front property line and variance of three (3) feet to allow for the existing wall along the western side property line to be brought into conformance. The two (2) foot variance would allow for the existing wall and view fence along the western side of the front property line to be brought into conformance and allow for the conversion of the existing six (6) foot tall, nonconforming wall along the eastern portion of the front property line to be reduced to a three (3) foot tall wall with a two (2) foot view fence. The three (3) foot variance would allow the current owners to permit this unpermitted wall along the western property line. As it stands the wall cannot receive an approval with the current height without a variance as it was built by the previous owner at an unconforming height without permit.

Zoning/Development Context

The site is zoned Single-Family Residential (R1-43). The R1-43 zoning district allows for single-family residential and ancillary uses.

The subject property is located east of the intersection of North 106th Street and East Cactus Road. This lot is surrounded by other single-family residences. Along the southern side of East Cactus Road, these properties share the same zoning designation of R1-43. The properties along the northern side of Cactus Road have R1-35 and R1-35 PRD zoning designations. The subject property shares a similar shape and size to the abutting R1-43 properties; however, this property's elevation is lower than that of Cactus Road and has drainage facilities located on site. The drainage facilities were installed to serve the local area since the topography appears to decrease as it moves southward.

Zoning Ordinance Requirements

Pursuant to Article V, Section 5.204.G. "Walls, fences, and hedges up to eight (8) feet in height are allowed on the property line or within the required side or rear yard. Walls, fences, and hedges up to three (3) feet in height are allowed on the front property line or within the required front yard. Where a corner lot does not abut a key lot or an alley adjacent to a key lot, the height of walls, fences and hedges in the yard facing the longer street frontage need only conform to the side yard requirements":

The applicant is requesting a variance of two (2) feet to allow for a three (3) foot tall wall with a two (2) foot view fence along the front property line and variance of three (3) foot to allow for the existing wall along the western side property line to be brought into conformance. The eastern side property line is not included in this variance as it was included in the approved 1988 variance for the neighboring property (10705 East Cactus Road).

Code Enforcement Activity

At the time the of drafting this report, there have been no reported code enforcement activity. This site has had previous code enforcement activity throughout the years, but all cases have been closed.

Community Input

The City has sent out hearing postcards to properties within 750 feet of the subject site and posted a sign at the subject site. At the time of drafting this report, no public comments have been received.

Discussion

Pursuant to Article V, Section 5.204G, “Walls, fences, and hedges up to three (3) feet in height are allowed on the front property line or within the required front yard.” The owner of the subject lot is requesting a variance for an increase in the maximum permitted height within the required front yard, stipulated to the site plan. The owner’s narrative states that walls within the required front yard are necessary due to the stormwater facilities located on the subject property and the elevation difference between the property and East Cactus Road.

The subject parcel is configured with a single frontage along East Cactus Road along the northern property line. Per City permitting records, six (6) foot tall walls along the side & rear property lines and additional areas outside of the required front yard setback have been approved throughout the years, dating back to the original Single-Family Residence approval. In each of those approvals, no walls exceeding 3 feet have received permits within the required front yard.

Without the granting of the variance, the owner would have to reduce the height of the existing walls within the forty (40) foot required front yard to the maximum permitted height of three (3) feet in height.

The property directly adjacent and to the east of the subject site received a variance to allow for walls up to 6 feet in height within the required front yard. In case 6-BA-88, the applicant requested for a three (3) foot variance for walls within the required front yard. The applicant presented that they had two primary special circumstances; the higher elevation of East Cactus Road and the drainage facilities (specifically the culvert) present on their property. The alignment and elevation of East Cactus Road was a constant undercurrent in discussion and taken into consideration for the decision to approve that case.

VARIANCE CRITERIA ANALYSIS

- 1. That because of special circumstances applicable to the property including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district:**

Applicant Statement:

The owner states that the subject site shares the same circumstances that their neighbor at 10705 E Cactus Road presented in their approved variance case, the Cactus Road elevation being higher than the property and the culverts & associated drainage facilities located on site. The owner goes into more detail on the drainage improvements completed on site and the level of traffic experienced along East Cactus Road.

Staff Analysis:

The subject property is located east of the intersection of North 106th Street and East Cactus Road. The lot has a regular shape and exceeds the minimum lot size required for this zoning district with an area of 74,945 square feet. The topography within the lot is not irregular but does decrease in elevation as it moves towards the rear property line. This property has a lower elevation than that of Cactus Road along with drainage facilities located on site. The culvert and associated drainage facilities were installed to serve the local area since the topography appears to decrease as it moves southward. The drainage infrastructure is not necessarily related to the need for a taller wall and the elevation difference between Cactus Road and the subject property is not unusual among other properties within R1-43 and other single-family residential districts.

- 2. That the authorization of the variance is necessary for the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, and does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located:**

Applicant Statement:

The owner states that they would like to enjoy the same privileges enjoyed by the next-door neighbor and provides additional details on how the present drainage facilities impact their ability to fully use their property.

Staff Analysis:

The property directly adjacent and to the east of the subject site received a variance to allow a 6-foot-tall wall on the front property line in 1988, and therefore has the right to maintain a wall in the front yard commensurate with the subject request. Aside from this property next door, other lots in the R1-43 district are subject to the same wall height limitations. This property is still able to maintain a 3-foot-tall wall in the front yard as granted to all properties in this zoning district. Due to the fall in grade from East Cactus

Road to the front property line, the wall sits in a low area, which may create a perception that the height and screening achieved through a three (3) foot tall wall would be the same as a property with a typical elevation difference between the frontage and the property.

3. That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant:

Applicant Statement:

The owner states that the existing conditions were not self-imposed. The stormwater culvert and pipes and the road elevation were existing conditions. The owner also details how when the property was purchased, the seller disclosed there was an approved permit for the Cactus Road fence and was led to believe that such a statement was correct.

Staff Analysis:

The lot has a regular shape and exceeds the minimum lot size required for this zoning district with an area of 74,945 square feet. The topography within the lot is not irregular but does decrease in elevation as it moves towards the rear property line. The property has a lower elevation than that of Cactus Road along with drainage facilities located on site. The drainage infrastructure is not necessarily related to the need for a taller wall, and it is not unusual for the grade to slope away from the adjacent road elevation.

The subject property was not graded by the property owner, or previous owners, to have a lower elevation than that of East Cactus Road. The property owners did not add the culvert and associated drainage facilities to their property without direction from the City. City records show a 2021 fence permit approval for a pool barrier fence (Plan Check 410-21). Per the approved site plan, this fence was supposed to be located behind the main residence but was not constructed in accordance with the approved plans. No new walls were approved along the western side property line and along the front property line.

4. That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general:

Applicant Statement:

The owner states that the existing walls do not have a detrimental impact to the adjacent property owners or the neighborhood. The portion with the view fence still allows for visibility without creating visibility issues when accessing East Cactus Road. The owner emphasizes there is additional vegetation that is being restored along the frontage to ensure their property is in-line with the surrounding area.

Staff Analysis:

The intent of required setbacks and wall height limitations along frontages is to create open rural character, establish view corridors for public safety, and maintain aesthetic continuity with adjacent lots. The request for the solid wall along the side property line may impact

the character of the street frontage, however, it should be noted that the adjacent property to the east already has a 6-foot-tall wall on the front property line. While the proposed modification to the CMU wall along the eastern portion of the front property line would still exceed the height limitation, the view portion of the fence would increase the perceived openness of the property by reducing the amount of solid CMU wall which would align more with the objective of the Zoning Ordinance. The applicant's request for a 3-foot-tall wall with 2-feet of view fence across the frontage will provide the desired security while generally maintaining the open residential character of the neighborhood.

SUMMARY

Based on the facts presented by the applicant, the evidence would support a finding that the property may not have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size, shape, topography and configuration of the property are typical. Further, the applicant's proposed variance does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood. However, the decision about whether the criteria have been met is for the Board to make after hearing all the evidence at the hearing.

If the Board chooses to grant the requested variance, staff recommends a stipulation that the wall heights, locations, construction, and design be consistent with the site plan in Attachment 6, including conversion of the existing 6-foot-tall solid wall on the front property line to a 3-foot-tall solid wall with 2-feet of view fence.

APPROVED BY



Sandra Childers, Report Author
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February 16, 2024

Date



Bryan Cluff, Board of Adjustment Liaison
480-312-7713, bcarr@scottsdaleaz.gov

2/16/2024

Date



Tim Curtis, AICP, Current Planning Director
480-312-4210, tcurtis@scottsdaleaz.gov

2/19/2024

Date



Erin Perreault, AICP, Executive Director
Planning, Economic Development, and Tourism
480-312-7093, eperreault@scottsdaleaz.gov

02/21/2024

Date

ATTACHMENTS

1. Project Description & Justification
2. Context Aerial
3. Aerial Close-Up
4. Zoning Map
5. Site Photographs
6. Site Plan – Existing
7. Site Plan – Proposed Stipulations
8. Site Plan – Proposed Stipulations, Zoomed-in