SCOTTSDALE
BOARD OF ADJUSTMENT MEETING
MEETING NOTICE AND MARKED Agenda

Wednesday, August 1, 2018

BOARD OF ADJUSTMENT
Paul Garry, Chair
Gary Donahoe, Vice Chair
Alper Adli, Board Member
Joseph Dawson, Board Member
Michael Gonzalez, Board Member
Brian Kaufman, Board Member
Jay Leopold, Board Member

6:00 P.M.
BOARD OF ADJUSTMENT MEETING
City Hall Kiva Forum, 3939 N. Drinkwater Boulevard

Call to Order – 6:00 PM
Roll Call – ALL PRESENT

Administrative Report – Brad Carr, AICP

1. Identify supplemental information, if any, related to the August 1, 2018 Board of Adjustment agenda items, and other correspondence.

Minutes

2. Approval of the June 6, 2018 Board of Adjustment Regular Meeting Minutes.

APPROVED 7-0: MOTION BY BOARD MEMBER ADLI, 2ND BY DONAHOE.

REGULAR AGENDA

3. 6-BA-2018 (Branski/Hasic Variance)
Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.204.G pertaining to wall height within the required front setback, for a property with Single-Family Residential (R1-35) zoning located at 12187 N. 76th Place.

MOTION TO DENY THE VARIANCE BY BOARD MEMBER LEOPOLD, 2ND BY VICE CHAIR DONAHOE. MOTION TO DENY FAILED 3 TO 4 WITH BOARD MEMBER DAWSON, BOARD MEMBER GONZALEZ, BOARD MEMBER ADLI, AND CHAIR GARRY DISSenting.

MOTION TO GRANT THE VARIANCE BY BOARD MEMBER ADLI, 2ND BY BOARD MEMBER DAWSON. MOTION TO GRANT WAS APPROVED 4 TO 3 WITH BOARD MEMBER LEOPOLD, BOARD MEMBER KAUFMAN, AND VICE CHAIR DONAHOE DISSenting.

Adjournment – 6:59 PM

Persons with a disability may request a reasonable accommodation by contacting a staff coordinator at (480-312-7767). Requests should be made 24 hours in advance, or as early as possible to allow time to arrange accommodation. For TTY users, the Arizona Relay Service (1-800-367-8939) may contact a staff coordinator at (480-312-7767).
SCOTTSDALE BOARD OF ADJUSTMENT
KIVA-CITY HALL
3939 DRINKWATER BOULEVARD
SCOTTSDALE, ARIZONA

WEDNESDAY, JUNE 6, 2018

*SUMMARIZED MEETING MINUTES*

PRESENT:  
Paul Garry, Chairman  
Gary Donahoe, Vice Chairman  
Alper Adli, Board Member  
Brian Kaufman, Board Member  
Joseph Dawson, Board Member  
Jay Leopold, Board Member  
Michael Gonzalez, Board Member

STAFF:  
Brad Carr  
Margaret Wilson  
Will Randolph

CALL TO ORDER

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Garry at 6:00 p.m.

ROLL CALL

A formal roll call confirmed all members present as stated above.

* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Board of Adjustment page on ScottsdaleAZ.gov, search “Board of Adjustment”.
APPROVAL OF MINUTES

1. Review and possible approval of May 2, 2018 Board of Adjustment Regular Meeting Minutes.

VICE CHAIR DONAHOE MADE A MOTION TO APPROVE THE MAY 2, 2018 BOARD OF ADJUSTMENT REGULAR MEETING MINUTES AS PRESENTED. SECONDED BY BOARD MEMBER ADLI. THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

REGULAR AGENDA

2. 2-BA-2018 (Sonders Residence)

Request by owner for variances to the City of Scottsdale Zoning Ordinance, Section 5.204.G pertaining to wall height, and Section 5.204.E.1.c pertaining to the required front yard setback, for a property with Single-Family Residential (R1-35) zoning located at 7655 East Cactus Road.

Located at: 7655 East Cactus Road
Robert Sonders, applicant/owner
Will Randolph, coordinator

BOARD MEMBER LEOPOLD MADE A MOTION TO APPROVE VARIANCE #1 PERTAINING TO WALL HEIGHT WITH AN ADDITIONAL STIPULATION THAT THE VARIANCE BE LIMITED TO THE SITE PLAN PROPOSED. SECONDED BY BOARD MEMBER KAUFMAN. THE MOTION CARRIED UNANIMOUSLY WITH A VOTE OF SEVEN (7) TO ZERO (0).

VICE CHAIR DONAHOE MADE A MOTION TO APPROVE VARIANCE #2 PERTAINING TO FRONT YARD SETBACK WITH AN ADDITIONAL STIPULATION TO LIMIT THE VARIANCE TO THE EXISTING STRUCTURE. SECONDED BY BOARD MEMBER LEOPOLD. THE MOTION CARRIED A VOTE OF FIVE (5) TO TWO (2) WITH BOARD MEMBER ADLI AND BOARD MEMBER KAUFMAN DISSenting.

ADJOURNMENT

With no further business to discuss, the regular session of the Board of Adjustment adjourned at 7:14 p.m.

* Note: These are summary action minutes only. A complete copy of the meeting audio is available on the Board of Adjustment page on ScottsdaleAZ.gov, search "Board of Adjustment".
Meeting Date: 8/1/2018
Item No.: 3

ACTION

Branski/Hastic Variance
6-BA-2018

Request to consider the following:
1. Approve a Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.204.G pertaining to wall height within the required front setback, for a property with Single-Family Residential (R1-35) zoning located at 12187 N. 76th Place.

OWNER

Branski Bartosz
602-619-8209

APPLICANT CONTACT

Branski Bartosz
602-619-8209

LOCATION

12187 N 76th Place

BACKGROUND

History
The subject site was annexed into the City of Scottsdale in 1962 through Ordinance No. 165 and the City of Scottsdale R1-35 zoning was applied. In 1979, the original main residence and site walls appear on historical aerials, and the County Assessor's records identify the house having been constructed in 1978. This property is Lot 10 in the Desert Star Acres Unit 1 subdivision plat which went through the Maricopa County plat process and was recorded in January of 1960.
Zoning/Development Context
The subject site is zoned Single-family Residential (R1-35) and is located at the southeast corner of N. 76th Place and E. Cactus Road, Lot 10 in the Desert Star Acres Unit 01 subdivision.

Adjacent Uses and Zoning
- **North:** Buenavante subdivision, zoned Single-family Residential (R1-35 PCD); existing single-family residence.
- **South:** Desert Star Acres Unit 01 subdivision, zoned Single-family Residential (R1-35); existing single-family residence.
- **East:** Desert Star Acres Unit 01 subdivision, zoned Single-family Residential (R1-35); existing single-family residence.
- **West:** Las Sombras 02 subdivision, zoned Single-family Residential (R1-35); existing single-family residences.

Zoning Ordinance Requirements
**Variance:** Pursuant to Section 5.204.G. of the City of Scottsdale Zoning Ordinance, pertaining to walls, fences, and landscaping:

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, except as provided in Article VII. The height of the wall or fence is measured from within the enclosure. Exception: 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 three (3) feet to allow the construction of a six (6) foot tall site wall within the required forty (40) foot front yard setback along Cactus Road at a ten (10) foot setback from the north property line._

Code Enforcement Activity
There has been no recent code enforcement activity at the subject site.

Community Input
City of Scottsdale hearing postcards were sent to properties within 750 feet of the subject site. Staff has received verbal information inquiries regarding the variance requests and how they can express their concerns. Staff informed the concerned citizen to attend the BOA meeting to voice their opinion/concerns. As of the writing of this report, staff has not received any written comments regarding this application.

Discussion
The applicant wishes to add a 6-foot tall wall within the required forty (40) foot front yard setback along E. Cactus Road to provide for privacy and noise abatement. The E. Cactus Road
street frontage is the narrower street frontage, and by Zoning Ordinance definition is the primary frontage, which restricts walls to a maximum of 3-feet in height.

Previously a 25-foot wide Future Roadway Easement existed along the northern boundary of the property, which was abandoned by case 12-AB-2016. The result of that abandonment was the dedication of a 1-foot wide Vehicular Non-Access Easement, a 4-foot wide Water and Sewer Facilities Easement, and a 10-foot wide Public Non-Motorized Access Easement along Cactus Road. The proposed wall location would sit south of the 10-foot wide Public Non-Motorized Access Easement, as show on the attached Site Plan. The primary and future access to the property is provided by N. 76th Place.

Other properties along Cactus Road have proceeded with wall height variance requests along Cactus Road and have achieved approval, such as the property at 12180 N 76th Court through case 8-BA-1996, but a property at 12056 N 74th Place was denied a variance request (14-BA-1996). Additionally, previous wall height variance cases have been approved along Cactus Road west of Scottsdale Road (15-BA-2006 and 14-BA-2006). The most recent variance case was approved for an adjacent property to the east titled the Sonder’s Residence (2-BA-2018) as of June 6th, 2018. The Sonder’s variance approved a wall south of the 10-foot Public Non-Motorized Access Easement along Cactus Road, which directed south towards the existing home approximately 80 feet away from the N. 76th Way north and south alignment. The Board of Adjustment stipulated a specific wall location in case 2-BA-2018 as a condition of granting the wall height variance.

**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 front yard setback, for Parcel 175-16-031, could be represented as a side yard, with reference to the house address and driveway entry. The access point along Cactus Road are scheduled for removal and sidewalk replacement by the City of Scottsdale in the future. The 25 ft roadway easement has been abandoned (ABN. 17/0746118). The placement of a 6ft wall along part of Cactus Road frontage will also serve as noise abatement for the property. The proposed wall will be 10ft from the property line along N.M.ACC.E 17/0738404 as depicted in the site drawings attached.

   **Staff Analysis:**

   The subject property is similar in lot size and topography compared to the other R1-35 zoned properties in the area. The subject property is located at the southeast corner of N.
76th Place and E. Cactus Road. This lot is rectangular and is of similar size and configuration of the surrounding lots. The shorter frontage of this lot faces E. Cactus Road which is defined as the primary frontage based off the yard, front definition from section 3.100 of the Zoning Ordinance. This lot is also a corner lot, requiring a forty (40) foot setback along both street frontages. This lot is not adjacent to a key lot to the south. The plat for this lot and surrounding lots in the same subdivision were recorded with Maricopa county in 1960, and later annexed into the city in 1962.

Contextually there are other six (6) foot tall walls along E. Cactus Road, their specific placements are relative to the configuration of each property and/or previous variance approvals.

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:

There are five examples of properties to the east, west and south of the above property with a wall over 3ft tall on at least 3 sides, setting a precedent by other residences in the area regarding a 6 ft high wall along 76th Place, 76th Way and Cactus Road with a front yard setback. These owners enjoy the privacy of their respective properties from Cactus Road and other corridors. This variance is asking for those same privileges and rights of existing homeowners. The widening of Cactus Road is complete, and we have noticed increased traffic. There have also been instances when vehicles have used the driveway on 76th Place as a short cut to enter Cactus Road, causing a safety concern for vehicular traffic as well as the homeowners of 12187 N. 76th Place.

Staff Analysis:

Any new walls taller than three (3) feet in height would be subject to the required forty (40) foot front yard setback in accordance with the R1-35 zoning district on a corner lot. The recent variance case for the property to the east known as Sonder’s residence (6-BA-2018) approved for a 6 ft wall to be within the corner lot setback 10 feet south of the property line. The wall along Cactus Road for this proposed variance would be constructed to be consistent with the Sonder’s wall placement.

The R1-35 zoning district allows for primary use as a single-family residence. Regardless of the outcome of this variance request, the existing structure can continue to function as a single-family residence. Wall height exceptions exist in this zoning district for the longer street frontage of the property, which would allow them to observe the required side yard setback of fifteen (15) feet or build to the property line.
3. That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant:

**Applicant Statement:**

The variance is not self-imposed. The residence, built in 1978, and the alignment of the property was not self-imposed as it is a corner lot. The previous widening of Cactus Road did encroach onto the property, which allows traffic noise to be closer to the residence. The removal of the driveway, north of the property to Cactus Road, has increase the public safety in the area.

**Staff Analysis:**

The plat for this lot and surrounding lots in the same subdivision were recorded with Maricopa county in 1960, and later annexed into the city approximately in 1962. In 1979, the original main residence and site walls appear on historical aerials, and the County Assessor’s records identify the house having been constructed in 1978.

One of the results of the associated abandonment case, 12-AB-2016, was the dedication of a 1-foot wide Vehicular Non-Access Easement along Cactus Road. This easement eliminates the historical driveway access onto E. Cactus Road in line with the goals of the City’s Design Standards and Policies Manual and the Transportation Master Plan. The primary existing access to the property is provided by N. 76th Place. Other options also exist for site wall locations that meet the setbacks.

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 requested variance is in no way detrimental to the persons residing or working in the area. The requested wall will be constructed with brick and mortar to a similar style as other existing walls in the vicinity. The wall variance request does not extend to the corner of Cactus Road and 76th Place; traffic views will not be affected. The wall will be built in a manner that will keep with the 25-foot site radius on the corner of Cactus Road and 75th Place and will not obscure traffic patterns at that stop sign, this is shown in the site plan attached.

**Staff Analysis:**

The intent of the required setbacks along street frontages is to create an open residential character, to establish view corridors, and to maintain uninterrupted visual continuity with adjacent lot setbacks for main buildings. Contextually there are other six (6) foot tall walls along E. Cactus Road, and their specific placement are relative to the configuration of each property and/or previous variance approvals.
Staff has received one citizen inquiry from a property owner to the south who is concerned about sight visibility onto Cactus Road when approaching from N. 76th Place to the south. The applicants site plan shows the proposed wall to extend to within approximately 20 feet of N. 76th Place along Cactus Road, tying into the proposed wall directing south along N. 76th Place. The wall along N. 76th Place plans to be 20 feet offset to the east of the property line along the north and south roadway alignment. Sight distance visibility will not be restricted and adheres to the City of Scottsdale Design Standards Policy Manual. The sight distance triangle per the Design Standards Policy Manual will also be clear of any wall construction. Pedestrian access will not be restricted on the southside sidewalk which runs along Cactus Road. The proposed wall location will sit south of the 10-foot wide Public Non-Motorized Access Easement along Cactus Road.

SUMMARY

Based on the facts presented by the applicant, the evidence would support a finding that the property may have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size, shape, topography or configuration of the property may be unique and applicable. Further, the applicant’s proposed variance does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood.

The decision about whether the criteria have been met is for the Board to make after hearing all the evidence. The Board of Adjustment does have the ability to grant or deny the variance for the wall height as proposed or approve with additional stipulations as to allowable height or location.
Board of Adjustment Report | 6-BA-2018

APPROVED BY

Will Randolph, Report Author
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7.10.2018

Brad Carr, AICP, Board of Adjustment Liaison
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7.10.2018

Tim Curtis, AICP, Current Planning Director
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7/13/2018

Randy Grant, Planning and Development Director
480-312-2664, rgrant@scottsdaleaz.gov
7/16/18

ATTACHMENTS

1. Applicant’s Request
2. Context Aerial
3. Aerial Close-Up
4. Zoning Map
5. Proposed Site Plan
Narrative #1: Variance on Parcel 175-16-031

**Purpose:**

The purpose of this narrative is to request a variance of Section 1.804 of the Zoning Ordinance on the offset of parcel 175-16-031. The variance is for a wall height over 3 ft. within the front yard setback. Address 12187 N 76th Place Scottsdale, AZ 85260.

**Criteria 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 the privileges enjoyed by the other property of the same classification in the same zoning district.

**Response:**

The front yard setback, for Parcel 175-16-031, could be represented as a side yard, with reference to the house address and driveway entry. The access point along Cactus Road are scheduled for removal and sidewalk replacement by the City of Scottsdale in the future. The 25 ft roadway easement has been abandoned (ABN. 17/0746118). The placement of a 6ft wall along part of Cactus Road frontage will also serve as noise abatement for the property. The proposed wall will be 10 ft from the property line along N.M.A.C.C.E 17/0738404 as depicted in the site drawings attached.

**Criteria 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.

**Response:**

Below are five examples of properties to the east, west and south of the above property with a wall over 3 ft tall on at least 3 sides, setting a precedent by other residences in the area regarding to a 6 ft high wall along 76th Place, 76th Way and Cactus Road with a front yard setback. These owners enjoy the privacy of their respective properties from Cactus Road and other corridors. This variance is asking for those same privileges and rights of existing homeowners. The widening of Cactus Road is complete, and we have noticed increased traffic. There have also been instances when vehicles have used the driveway on 76th Place as a short cut to enter Cactus Road, causing a safety concern for vehicular traffic as well as the homeowners of 12187 N 76th Place.
- Parcel 175-16-027, a corner lot, has a wall within the 40-ft offset (approx. 5 ft. outside 40-ft offset) on the West side of their property.
- Parcel 175-16-028, a corner lot, has a wall within the 40-ft offset (approx. 32 ft.) on West side of their property.
- Parcel 175-16-029, a corner lot, has a wall within the 40-ft offset (approx. 14 ft.) on East side of their property.
• Parcel 175-16-039 has a wall within the 40-ft offset (approx. 0 ft.) on north side of their property.
Parcel 175-15-028, a corner lot, has wall within the 40 ft offset (approx. 0 ft.) on the north of their property.
Criteria 3:
That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant.

Response:
The variance is not self-imposed. The residence, built in 1978, and the alignment of the property was not self-imposed as it is a corner lot. The previous widening of Cactus Road did encroach onto the property, which allows traffic noise to be closer to the residence. The removal of the driveway, north of property, to Cactus Road has increased the public safety in the area.

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

Response:
The requested variance is in no way detrimental to the persons residing or working in the area. The requested wall will be constructed with brick and mortar to a similar style as other existing walls in the vicinity. The wall variance request does not extend to the corner of Cactus Road and 76th Place; traffic views will not be affected. The wall will be built in a manner that will keep with the 25 foot site radius on the corner of Cactus Road and 76th Place and will not obscure traffic patterns at that stop sign, this is shown in the site plan attached.
**Board of Adjustment Decision**

**Zoning Ordinance Variance**

### Variance Request

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<tr>
<th>Case Numbers:</th>
<th>342-PA-2018 / 6-BA-2018</th>
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<tbody>
<tr>
<td>Project Name:</td>
<td>Branski/Hasic Variance</td>
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<tr>
<td>Location:</td>
<td>12187 N 76th Pl</td>
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- Single-Family Residential [✓] Multi-Family Residential [☐] Commercial [☐] Industrial [☐]

**Section of the Zoning Ordinance to be varied:** Section 5.204.G pertaining to walls, fences, and landscaping.

**Scottsdale Ordinance Requires:** Walls, fences, and hedges up to three (3) feet in height are allowed on the front property line or within the required front yard, except as provided in Article VII.

**Applicant’s Request:** Request by owner for a variance to the City of Scottsdale Zoning Ordinance, Section 5.204.G pertaining to wall height within the required front setback, for a property with Single-Family Residential (R1-35) zoning located at 12187 N. 76th Place.

**Amount of Variance:** Up to a 6 foot wall within the required forty (40) foot front yard setback.

### Board of Adjustment Decision

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<th>Hearing Date:</th>
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- [✓] Approved
- [☐] Approved with Stipulation(s):
- [☐] Denied
- [☐] Continued to:
- [☐] Other:

**Chair Signature**
Marked Agendas
Approved Minutes
Approved Reports