

Summary Minutes
City of Sedona
Board of Adjustment Meeting
Vultee Conference Room, Sedona City Hall, Sedona, AZ
Thursday, January 8, 2009 – 2:00 p.m.

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

Chairman Gilgoff called the meeting order at 2:00 p.m.

Roll Call:

Board Members Present: Chairman Joel Gilgoff and Board Members Robert Gordon and Gary Rich

Staff Present: Nick Gioello, Maria Keller, John O'Brien, Donna Puckett and Ron Ramsey

Chairman Gilgoff announced that Gary Libby, who was a member of this panel, passed away this past weekend and will be missed; he was a member of the Board twice, for a period of four or five years.

2. **Approval of minutes for the following meetings: July 9, 2008**

Chairman Gilgoff confirmed that board members had received copies of the minutes and asked if there were any corrections. Board Member Gordon expressed concern about a statement on the last page that he is not sure should go with an adjournment announcement, so he would respectfully request that the editorial portion of that comment not be included. The Chairman asked if it is possible to remove that and the Recording Secretary indicated that she and the Chairman had exchanged emails regarding that statement; it was typed in the sequence in which it occurred and the meeting was not adjourned until after those comments were stated; however, she will defer that question to the attorney. The Chairman indicated that he didn't recall making that statement, but if the recording states that, he guesses that is the minutes. Ron Ramsey agreed that is the minutes. The Chairman asked if there is a motion to approve the minutes.

MOTION: Board Member Rich moved to approve the minutes. Board Member Gordon seconded the motion. Vote: Motion carried three (3) for and zero (0) opposed.

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

A. **Discussion/possible action regarding a request for variance from the City of Sedona Land Development Code maximum building height requirement of 22-feet above the highest point at natural grade within the building footprint associated with Single-family residential buildings. The applicant is proposing to increase the height limit to 26-feet since the existing house is located within the Oak Creek floodplain. The applicant proposes to demolish the existing two-story residence and replace it with a new two-story residence, and FEMA regulations require the new finish floor elevation be raised approximately four feet above the existing finish floor. This property is located in the RS-10b Single-family Residential Zoning District and located at 240 Bear Wallow Lane, and is further identified as assessors parcel # 401-12-009B. An application for this variance is on file and available for public inspection at the Department of Community Development located at 104 Roadrunner Road, Sedona Arizona 86336. Appellant: Mr. Richard C. Dixon. Case Number: V08-01**

Nick Gioello read the description of the request for agenda item 3A, explained the Administrative Waiver process and provided an overview of the request as presented in the Staff Report prepared for January 8, 2009.

Chairman Gilgoff asked for a reading of the Letter of Protest and Nick Gioello indicated the letter was dated October 6th from Margaret Frye and also received by the City on October 6, 2008, and said the following: "Dear Mr. O'Brien, We hereby protest the project on Parcel 401-12-009B, located at 240 Bear Wallow Lane. If you have any questions, please contact me . . .", and it gave her number.

Nick noted that no reason was given and explained that the code doesn't say there has to be a reason, so at that point, staff took that as a Letter of Protest and stopped the Administrative Waiver, and the applicant then applied for the variance. In the Staff Report, he has provided an analysis of the three required findings, which are as follows:

1. "Due to special circumstances applicable to the subject property, including its size, shape, topography, location, or surroundings, the strict application of this code would deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district." It is staff's opinion that the FEMA requirement to now raise this structure up 4 ft. is causing the over-height issue. There are many examples throughout the City in this zoning designation of similar two-story structures with pitched roofs; there are even several within the Bear Wallow neighborhood, immediately surrounding this property. Therefore, staff feels it would deprive the owner of that privilege.
2. "That any variance is subject to the 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." Based on that same reasoning, staff feels that the granting of this 4 ft. height increase would not be granting a special privilege, given there are two-story houses all over the City.
3. "That special circumstances applicable to the property are not imposed by the property owner or applicant." It is staff's opinion that in this case, the only reason to request the 4 ft. is because of the FEMA requirement to raise the finished floor.

Chairman Gilgoff noted one correction to the report is that the report says 1 ft. in the first sentence under C; however, Nick Gioello clarified that is correct. The Chairman indicated that is on the base flow then, so it is three plus one. Nick agreed and added that he talked at length with Bill Towler, Floodplain Administrator for Coconino County, and in this case, the property is within the floodplain of Oak Creek and they have jurisdictional authority over what gets built; that FEMA floodplain has an elevation, and then the finished floor has to be one foot about that. The other problem is that there is Bear Wallow Wash, which is on the side of this property, and a portion of this property and a portion of the existing structure is within the floodway, and the typical issue is that you can't build in the floodway; however, we have a number of things that were built years ago, so when they have existing structures that are going to be rebuilt, certain things kick-in, and in this case, the whole house is being removed and a new one is being built in its place. They now have to demonstrate that they are not raising the level of water coming through by putting something in the floodway, and they have to show through an engineering study that they have mitigated it somewhere else on the property, so they may have to grade additional land on the property to keep that flood level from rising. It is only about one-half inch that make it a problem, but the applicant may have to do some other things on the property, and they will have to work with Coconino County, but it will all be mitigated before the building permit is issued by the City.

With that, it is staff's opinion that the applicant has satisfied the required findings as outlined in the Staff Report and defined in the Land Development Code, Section 404.06; therefore, staff recommends approval of case number V08-01 subject to the Conditions of Approval, and for the record those are as follows:

1. Approval to construct a single-family structure, with the highest portion of the roof ridgeline not to exceed an elevation of 4246.3.
2. The proposed structure shall comply with all FEMA and Coconino County Flood Control District requirements, and subject to review by the City of Sedona Engineering Department.

Architect, Hal Driggs, Sedona, AZ: Indicated that he is representing Richard Dixon as his architect, and staff has presented everything that he had requested, but one thing he would like to clarify is the reason for the extra story, because the Staff Report begs the question of why they don't put a one-story house on this, and there are a couple of reasons. The primary reason is that the County Flood Control requires, in addition to the things stated, that the area of disturbance on the property . . . , in other words, if we took the footprint of the existing building and expanded that footprint to a wider target for the floodwaters, that would be a condition that they would not approve. The other reason is if they did expand it, they would not only have to encroach into the floodwater area, but to build a building of equivalent size, they also would have to destroy a lot of big trees there, so from an architectural standpoint, the step-by-step solution to a problem tends to be identifying the problems and determining how they can best solve all of those problems. The house is an existing two-story, if not a full second story at least about two-thirds, and the owner wishes to develop that in the same character or have the same kind of residence that the rest of the neighborhood can have.

Today, the idea of getting a house as small as 2,700 sq. ft. is very difficult. He has three other houses under construction and one is 8,700 sq. ft., one is 3,600 sq. ft. and one is about 2,800 sq. ft., so it is getting harder and harder to shoehorn two people or one person into anything less than 4,000 – 5,000 sq. ft. Going with the second floor is really the best way to do it in his opinion, rather than trying to increase the footprint.

Chairman Gilgoff opened the public comment period at this time.

Gerald Frye, representing GEF, Inc., Frye Investment Partnership, Rancho Sedona Land Development Company, and for the record, Margaret Frye, Sedona, AZ: Indicated he has one question; since we are talking about FEMA, does this mean this property will be able to get flood insurance through FEMA, after building this in an area that we know floods. He is throwing that out there; he knows you can't answer, but he is telling you, because he got a letter from Coconino County saying that the back part . . . Chairman Gilgoff indicated that is not part of this hearing; however, Mr. Frye indicated that he is going to tell you what he wants to tell you, and then you can kick him out. He has watched the City work for 12 years and everybody else gets to say what they want, so he is going to say his piece. This is from Coconino County and this particular area has had flood claims in excess, from 1993, 1995 and 2004, and he has problems, because he doesn't want to be flooded out by this property. He also has problems, because they cannot get back there with equipment bigger than a pick-up truck. It is a low-water crossing at Bear Wallow and that impacts him, and that is why his wife wrote this letter, so he wants something done, if you are going to pass this, so these people don't affect his life and his business by blocking the road, unloading the things on his property and all sorts of other things. He also doesn't like construction people flipping him off and going through the park about 50 mph, so those are his beefs and he has had this problem in the past with his wonderful neighbors in the back. He can come up with a lot of other things, but that is mostly it.

Board Member Rich asked who signed the letter from Coconino County and Mr. Frye stated it was signed by William Towler and dated September 26th. He is sure this was generated because of a couple of things going on, but specifically this property, and the last time we had flooding this property flooded, the house even flooded, and he isn't exaggerating, because he has lived there and watched it. Nobody has lived in that house for years though, so it didn't matter to anybody.

Having no additional requests to speak, the Chairman closed the public comment period at this time.

Architect, Hal Driggs, Sedona, AZ: Responded that as far as control of the access, workman and delivery of materials, etc., he really doesn't have much control of that, but he can, as the architect, write in conditions. When they submit their bids, they will be advised about access and how to contact the person who controls the access and even how to be polite if that is necessary. It is going to be difficult to get materials to that site; it is a typical construction job and there will be a concrete truck having to go down there. He doesn't know what conditions could be required; that they mix the concrete on-site, but he supposes it is technically possible, although expensive.

Chairman Gilgoff asked Mr. Frye if he thinks he can work with Hal Driggs to get this done, and Mr. Frye said yes, as long as he is not affected. He doesn't care if they drive through it or about anything, as long as they don't block his access to his business. The Chairman suggested a dialogue between the two and Mr. Frye indicated that they did that already. Nick Gioello explained for the record that we discussed this issue before the hearing and Mr. Frye will also be supplied with a telephone number for the General Contractors, so when issues do arise, he will be able to contact them immediately.

MOTION: Board Member Gordon moved for approval of case number V08-01 based on compliance with required ordinance findings as set forth in this Staff Report. Board Member Rich seconded the motion.

Ron Ramsey asked, for the record, that the motion include the conditions as stated, and the Chairman suggested adding, ". . . and to include the conditions in the Staff Report". The maker of the motion and the second stated they accepted that modification.

AMENDED MOTION: Board Member Gordon moved for approval of case number V08-01 based on compliance with required ordinance findings as set forth in this Staff Report and to include the conditions in the Staff Report. Board Member Rich seconded the amended motion. VOTE: Amended motion carried three (3) for and zero (0) opposed.

The chairman indicated that the applicant gets the variance.

4. **Adjournment.**

The chairman called for adjournment at 2:26 p.m., without objection.

Respectfully Submitted,

Donna A. S. Puckett, *Recording Secretary*