

**Summary Minutes  
City of Sedona  
Board of Adjustment Meeting  
Vultee Conference Room, Sedona City Hall, Sedona, AZ  
Friday, December 19, 2014 – 1:00 p.m.**

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

Chair Gilgoff verified the meeting was properly noticed and called the meeting to order at 1:00 p.m.

**Roll Call:**

**Board Members Present:** Chair Joel Gilgoff, Vice Chair Gary Rich and Board Members Michael Carnahan and Robert Gordon. One position is vacant.

**Staff Present:** Nick Gioello, Audree Juhlin and Donna Puckett

Chair Gilgoff briefly explained the two types of issues heard by the Board of Adjustment – one a variance from the City Codes, and second, an appeal from a decision made by the Director of Community Development. He then explained the process that would be followed for each item.

**2. Approval of the following minutes:**

**A. December 02, 2011 (R)**

**B. September 10, 2014 (R)**

The Chair asked if he could have a motion to accept the December 2<sup>nd</sup> meeting minutes.

**MOTION: Board Member Gordon so moved. Vice Chair Rich seconded the motion. VOTE: Motion carried four (4) for and zero (0) opposed. One position is vacant.**

The Chair then asked if he had a motion to accept the September 10, 2014 minutes.

**MOTION: Board Member Carnahan so moved. Board Member Gordon seconded the motion. VOTE: Motion carried four (4) for and zero (0) opposed. One position is vacant.**

**3. CONSIDERATION OF THE FOLLOWING REQUESTS THROUGH PUBLIC HEARING PROCEDURES:**

**A. Discussion/possible action regarding an appeal of the Community Development Director's decision to deny a fence permit for the construction of a wood fence made of shipping pallets on private property. The subject property is located at 2555 Leisure Lane and is zoned RMH-12 (Mobile Home and Single-family). The property is further identified as Assessor's Parcel Number 408-22-057. A general description of the area affected includes but is not limited to the area south of the intersection of Meander Way and Leisure Lane, between Andante Drive and Sunshine Lane. Applicant: Helen Ashley. Case Number: AP14-00002 (Appeal)**

**Presentation, Nick Gioello:** Presented an overview of the appeal and indicated that Community Development received a complaint in July regarding a fence made out of pallets that was placed along the property line. Code Enforcement investigated the complaint, took pictures, and found there was no Fence Permit on file. The property owner was told that she needed to get a Fence Permit. An application was filed, and after reviewing the application, the Permit was denied based on the fact that the pallets were secondhand materials.

Nick indicated that there were several meetings with the property owner and staff made a decision based on a couple of things in the Code. One point that was not clear in the Staff Report is that the appeal filed applies only to the Land Development Code. The portion discussed in the City Code is not appealable to the Board of Adjustment, so two codes were

cited in staff's decision, but today's appeal is about Article 9, Development Standards, Section 902.03, Outside Storage, and the decision that was partly based on that part of the code is what is being appealed.

The Chair asked if Nick was saying . . . , Nick stated that the portion about public nuisance is not appealable to the Board of Adjustment. The Chair then stated that no matter what the Board's decision would be, that would stand. Nick indicated yes, that is a different process. The Chair asked if there is an appeal of that available, and Nick indicated that he thinks it is appealable to the City Council. The Chair then asked if that has been done before, and Audree Juhlin indicated that it has not been done to her knowledge.

Nick indicated that in essence it came down to a request to construct this fence out of pallets that were wired to the typical green metal T-posts used for wire fences, and in checking the Codes, the logic behind denying it came down to the Outdoor Storage section where it talks about on a residential property, if you have materials in your rear or side yard and if you have secondhand materials, including but not limited to . . . , and to make it clear, the list is not all inclusive. This is an open-ended list, but the key words "secondhand materials" were what staff looked at, and "lumber" was another key word that was considered. Nick then read, ". . . auto parts, household appliances, pipe, drums, machinery or furniture. Such outdoor storage shall be screened by a wall, fence, landscaping, structure, or other suitable screening from adjacent properties and streets . . . in rear or interior side yards."

Nick then explained that if you have secondhand materials, and in staff's opinion, pallets clearly are secondhand materials in this case. A fence is not an intended purpose of pallets, so they are a secondhand material. Also, you could make a claim that pallet fences are made out of lumber, and that is the thing that is consistent with a pallet fence and a wooden fence. They are both made out of lumber, but they look intrinsically different. Therefore, the argument is if you take something like pallets that are secondhand materials and have 40 or 50 of them at your house, we would say that you have to screen those, if you want to keep them in your backyard. To then take those things you have to screen, stand them on end, and wire them to T-posts and call it screening isn't appropriate. In the same sense, could you take furniture as it is listed and put them around your property and call it a fence? He doesn't think anyone would try to rationally argue that, nor would staff approve that, and that is the basis of the argument staff considered.

Nick indicated that regardless of how anyone feels about what a pallet fence looks like, the Board's duty today is to look at the decision made by the Director and rule if that was a correct interpretation of the Code. He has heard some people say that they like the idea of pallet fences, so he is asking the Board to keep that part aside and just look at the Code applied and indicate if the right decision was made. The additional information about the public nuisance describes having stacks of things that can be defined as a public nuisance, when you have them piled in your backyard, and it describes things like packing crates, barrels, etc., so the same argument applies in that case. If you have a stack of pallets in your backyard, that could be called a public nuisance, and that is a different argument that once you stand them on end, it is the same type of stacked-up pile of pallets, and he doesn't want to get into that discussion, but it was part of the rationale for staff's decision.

Nick explained that the applicant then asked if pieces of plywood could be cut, attached to the pallets and painted, and staff said the pallets would still be propped up, which were considered secondhand material, so that wouldn't be appropriate for a fence.

Chair Gilgoff asked if they offered to conceal the current fence with sheets of plywood, and Nick stated that they asked if they could do that. The Chair then asked if that would be a new fence, and Nick explained that staff said it would still be pallets that were used. The Chair pointed out that they would be screened, so that would no longer meet the definition of unscreened lumber. Nick indicated that is not what is being appealed today. The Chair asked if that was part of the

application, and Nick indicated no, that came as a question later, and in the applicant's letter, they mentioned something about landscaping, and that was something that wasn't discussed in the meetings, as he recalls; that was in the letter with the appeal.

Board Member Carnahan asked if to screen the pallets with plywood, the applicant would have to request a permit, and Nick indicated yes, it would still be a Fence Permit, because you need a permit to erect a fence over 36 ins. high in the City. Board Member Gordon then confirmed with Nick that this was not permitted, and Nick added that staff then requested an after-the-fact permit, at a double fee.

Chair Gilgoff asked if the applicant were to come in with a new permit request to even out the current pallet fence, make it look good by putting plywood sheeting and painting it, and then screening that with planting, would staff be open to that. Nick indicated that he would have to ask the Director, and we would have to see the plan. The Chair then commented that staff would be open to the submission, and Nick agreed staff would be open to the consideration.

**Presentation, Helen Ashley, Appellant, Sedona AZ:** Indicated that she moved to Sedona in 2013 and was surprised to see a large recycling center on Shelby Road and large recycling blue bins on the corner of Upper Red Rock Road and Uptown. She was very pleased to know that the City of Sedona is progressive, as our country – reduce, reuse and recycle. The City of Sedona has not only the recycling businesses, but also these businesses – you have 11 thrift stores, which are recyclable stores, you have Sedona Scrap Metal, Electronic Recycling, Patriot and Taylor Waste, and Rubbermaid recycling centers. In driving through Sedona, before she made her decision of what she was doing, many homes are using recycled material for fencing and other needs.

Ms. Ashley stated that in 2014, she went online to find the best recycling product to use that would be strong and economic. She is a senior citizen on a fixed income, and many websites show the use of wood pallets for fencing, gardening, artwork, housing, furniture and many more uses. The universal term is "upcycle". Wood pallets for fencing are perfect for her, since Hale's Roofing Company in Sedona gives free pallets. Her son and daughter-in-law built the pallet fence to surround her organic garden of vegetables and fruit trees in her backyard, and she emphasizes backyard. It is not on the property line, and it cannot be seen by the public from any street, only by being invited onto her property or a backyard neighbor.

Ms. Ashley indicated that it took her family two weeks to collect pallets and build the fence. She was so happy to have an enclosure in her garden of vegetables and fruit trees, to protect from the wild animals. In the month of July, Glenn came to her house saying someone reported her fence to the City and that she was not following the City Code for her fence. She is very sad to say that she wasn't given the name; the person only came forward after the fence was built, and it took two weeks. Finding out later, she had no idea that she was violating any City Codes. The City said if no one complained, they would not have known about the fence, and it would have been fine.

Ms. Ashley stated that she went to the City's Zoning Department on July 11<sup>th</sup> and received a permit #B-000857. She consulted with Brian Pearson, Keith Chamberlain and Glenn Sharson, and filled out all of the information required on all of the materials used for the fence and pictures, not knowing they already had pictures from the complainant. She went through the whole procedure, then Brian came to inspect her fence on August 6<sup>th</sup>, so Brian could check out the strength of the fence. Brian was impressed with the structure and the strength of it. David Peck and Roxanne Holland had no requests for her fence. She has done all the requests by Keith, and she felt and heard verbally that her pallet fence was going to be signed off and approved, but Keith informed her that Nick, Development Services Manager, did not approve it. She then had a meeting with Nick and Keith on August 11<sup>th</sup>. At that meeting, Nick explained to her that the violation code was 8.10.020. She doesn't know what he was talking about, Public Nuisance Defined, Section F. August 14<sup>th</sup>, she received a letter from Glenn Sharshon about

her meeting with Nick and Keith, and the third paragraph of that letter said that under the provisions of City Code Sedona, pallets are considered secondhand materials and are not appropriate for fencing purposes. That is their interpretation, why she says that it is, because no one has been turned in for using pallets before. There are other properties in Sedona using pallets for fencing; they are focusing totally on her. Chair Gilgoff asked if there were pictures of others, and Ms. Ashley indicated that she has samples, and one, the Catholic Church, has pallets as fencing, and you have a picture on that.

Ms. Ashley then stated that Nick explained that she could appeal the decision for a fee of \$150.00 to the Board of Adjustment, and he informed her that he would issue a report to the Board of Adjustment and would send her a copy if it was different than what he first wrote. Nick also said that if she wanted to say more than she wrote for the appeal application, put it in writing, give it to him by the 6<sup>th</sup> of December, and he would give it to the Board of Adjustment, so they would have it before the appeal date. She did not like the fact that he could have read her statements prior to the hearing; he kept the appeal application and read that prior to setting up an appointment. She thought it was going directly to the Board of Adjustment, not to him. She would have sent you one, emailed or mailed it to you.

Ms. Ashley indicated that she consulted a lawyer and he read the appeal code 404.10 and she was not required to do that, so she did not, and also Nick did not email her. Her lawyer also read 8.10.20, Public Nuisance Defined, and he saw no written words "recycle" or "pallet" or "secondhand materials". She has an original paper; they highlighted Section F, defining her pallet fence. Again, the words "recycle", "pallet", "secondhand materials" are not used. It does say accumulation; her fence is not an accumulation or stackable, it is a fence, built together as a fence and it is not unsightly. She has paint samples, she offered to paint it, which Keith went through saying it was too bright and blah, blah, blah. She has color samples that she could paint, and she offered to paint the fence. She also wanted to have plants growing around it, ivy, to grow over it.

Ms. Ashley explained that she was told by the City Zoning Department that her pallet fence would be fine if no one complained. She put in a request to know who the complainant was and that was Tom Fish, her neighbor. As she said before, she is not the only one who has a pallet fence on their property. She is being discriminated by the City Zoning Department, because of a complaint. As they said, if no one complained, it would have been fine.

Chair Gilgoff stated that if no one complained, they wouldn't know about it. Ms. Ashley stated, "Exactly". The Chair pointed out that is just the way life is; if you built a bomb in your house and nobody complained . . . Ms. Ashley interrupted to say that there are other places and ask if they are going to go after them.

Board Member Gordon asked if she got pulled over for speeding, would she say that is not fair, because people speed every day and don't get pulled over, so she is being discriminated against. Ms. Ashley indicated no; she doesn't know if she is ready to go forward with this as a case of discrimination, so yeah, she feels that way.

Ms. Ashley stated that her other thing is that Nick mentioned before that she could take the boards apart, build a fence and use the wood that way. That is extremely hard; she can't afford to do anything of that sort. She wants to grow ivy over the fence, so it won't look like a pallet fence. Ivy grows very quickly and that is what she put in her permit, which you can see; this is an original, and she made copies of other companies using pallet fences as artwork and as fencing.

Ms. Ashley then showed her idea and what she would have liked to have done. She also showed a picture of the pallet fence being used at the St. John Vianney Church and pointed out that is right in town, but she doesn't want to report them. Chair Gilgoff noted that those don't really look like pallets though, and Ms. Ashley stated, "Exactly, she didn't get finished," and she

explained that the guy reported her, and then they were looking at it, and she didn't have a chance to paint it. She is at a standstill, because she is appealing, so if she spends more money . . . Chair Gilgoff agreed, it is not a good thing to go forward, unless you have the approval. Ms. Ashley agreed, and stated that does not look like a pallet fence, but it is a pallet fence.

Ms. Ashley again stated that she offered to paint it. You go through Keith and you have to go through a color scheme, and it was yes, paint it brown, paint it green, and then her other thing was to have ivy growing over it, so it would be more of an art and living structure than just pallets. It wasn't going to be just pallets, and she would assume that he gave you all of the reports. It is not on the property line; the property line means that it is on the edge of the property. It is within 28 ft. from her east property, 61 ft. from her . . .

Chair Gilgoff interjected that the City's argument is that pallets are considered unsightly, and by stacking them on edge, they still are unsightly, and you can't have pallets stored anywhere on your property, unless your property is fenced. That is the argument that the City is making, so it doesn't particularly matter if they are 20 ft. from the property edge, as long as they are visible, and if they weren't visible, a neighbor couldn't complain. That is the argument of the City.

Board Member Gordon stated that it is possible that it would be different if she had given them the treatment, like St. John Vianney had, before the fence was constructed. Ms. Ashley indicated that she couldn't do that, because somebody complained and took pictures of it, and showed it to them. Board Member Gordon pointed out that he didn't complain until she put the fence up, and he was saying before she constructed the fence. Ms. Ashley indicated that she didn't realize that she had . . .

Chair Gilgoff stated that he is sure she didn't realize there was even a permit required, and Ms. Ashley agreed, and noted that also, he was saying 36 ins. high, and somebody told her it had to be less than 30 ins. in height, and then you wouldn't need a permit. Nick acknowledged it is 30 ins.; he previously misstated it. Ms. Ashley then stated that if she cut it down, and the other people before him, Keith and Brian, were saying you could do that, which is really difficult, but then you wouldn't need a permit.

Chair Gilgoff explained that what he is saying is that to store pallets on your property, the City Code says the property has to be screened, so you can't just have pallets raw. It wouldn't matter if they were 8 ins. high; you have to stack them on the side. Ms. Ashley asked where the word "pallet" is used, and the Chair indicated that it's not, but the City is interpreting the fact that it is used materials and used lumber. Ms. Ashley then stated that is not in the Code that Nick quoted her.

Board Member Gordon indicated that in Article 9 of the Land Development Code, it says, "In all residential districts, a maximum area of 200 sq. ft. may be used on any one lot or parcel for the outdoor storage of any used or secondhand materials", and that is what they are referring to when they talk about recycled and secondhand. Ms. Ashley stated that it is not fair, when he quotes that Code, because he didn't quote that to her at all, and this is the original form he gave her and highlighted, and when they sat down and talked, he quoted her Code 8.10.020.

The Chair explained that unfortunately, the presumption is that once the City creates an ordinance and publishes it, it is public notice to everyone. He knows she only turned up last year, so she wouldn't know that, but the way all laws are, traffic laws and everything else, they are because somebody created an ordinance and there is a presumption that the public knows about that ordinance. Even though he may misstate something, the ordinance is what counts, not really what he says.

Ms. Ashley indicated that the other thing is . . . , the Chair acknowledged her frustration, and Ms. Ashley stated it is; she got free . . . , it wasn't free, because her kids did the labor, but she is

on a fixed income. She priced fencing and there is no way she can afford it, and she wants an organic garden to supplement her income and everything else, for feeding herself. The pallet fencing, and as you look at the pictures, and even pictures online, they can look nice. She can make it look nice; she can't see destroying it.

Board Member Carnahan indicated that it sounds like a potential solution would be for her to seek a permit, sheath the pallets with plywood and paint them. He then asked if she was willing to do that, and Ms. Ashley indicated that she believed so. It would be an expense again, but she doesn't want to tear them down; she can't afford to and they are structurally sound.

Board Member Carnahan then noted that she had said she didn't have a chance to make it nice and asked what she was planning. Ms. Ashley explained that her plan was like the Church; painting them and having plants growing on them. The Chair noted that one comment from the City was the fact that the pallets have lots of broken boards, etc., and are non-uniform. They probably would be willing to look at it, if it looked more like a fence and you took the boards off and made them linear and painted them; you would have a better chance of obtaining a permit. Ms. Ashley indicated that they tried that initially, and it is extremely hard to take the screws out, and Chair Gilgoff indicated that he understood, because it is hard wood.

Chair Gilgoff asked Audree Juhlin if the City would be open to entertaining another permit, if she were to make the fence look more like a fence and provide a diagram showing what she was going to do, either by straightening out the boards in the fence and adding new boards or sheathing it with plywood and painting it, and then doing plantings. Audree Juhlin indicated certainly. Ms. Ashley then noted so adding boards . . . , and the Chair explained that in other words, working with the Director of Community Development to come up with something. Ms. Ashley commented that she has never spoken to her, and the Chair stated that the Director is a wonderful woman and she is really bright. The Chair then stated that the Board didn't want to hurt Ms. Ashley; they are locals like she is and they would like to come to something that everybody can live with, so if she is willing to work with it and submit another application . . . , Ms. Ashley commented another \$50, and Audree Juhlin indicated that the City would waive that. Ms. Ashley thanked her, and stated that it has already been \$200.

Chair Gilgoff stated that the Director will waive that fee, and asked Ms. Ashley if she would be willing to come back to the Director; who is the one that actually made the decision. Ms. Ashley stated that she thought it was Nick, and the Chair explained that Nick is her agent. Ms. Ashley commented that Nick told her that, but she didn't believe him. The Chair indicated that if Ms. Ashley is willing to do that, then there is a chance that we can all win.

Ms. Ashley asked if she needed to paint both sides and Audree Juhlin explained that they need to sit down and talk about her plans and how we can make it look like a fence, and not like she just assembled a number of pallets every which way, with the result she has now. We do have guidelines within the Land Development Code that we need to follow, and if we can make the guidelines work with some kind of retrofit, we are open to that. She is not guaranteeing that we can make it work, but we are open to looking at that, to see if it would work.

Ms. Ashley then asked if it doesn't work, does she appeal again, and Chair Gilgoff stated no, because there is actually a section of the Code that Nick cites that doesn't allow you to appeal that. The only way you could appeal it would be to the City Council to have them change the ordinance that governs that, to allow your specific type of fencing using recycled materials, because you think it is good for the environment. The City Council might go along with it, but they have to enforce the current law. They can't make an interpretation and say they think the law should be this. Audree Juhlin added that it is not that the City doesn't support and encourage the reuse of materials, but it is the manner in which it is done, and that is why we are involved now. In this case, it is still acting, looking and behaving as secondhand material; it is not aesthetically meeting the Code requirements for a fence.

Chair Gilgoff indicated that he could note, with the permission of the rest of the Board, that we could leave this case open, which would allow you the time to meet with the Director of Community Development, and then come back to the Board of Adjustment. Ms. Ashley asked what the Board would . . . , the Chair indicated probably lose, because you are violating a City Code according to them, and they are the ones who interpret it.

Ms. Ashley then asked if it is really that whatever the Code is, they can interpret it however they want to perceive it. Audree Juhlin explained that in the Land Development Code under Article 3, it gives the responsibilities of the various positions within the City and the departments, and authority of the Director of Community Development to interpret the Code is spelled out in there. No Code, no matter how well written, is going to cover every scenario, so there is a certain degree in every section of the Code that needs interpretation, and it will happen and does happen, as you can see now.

Ms. Ashley asked if the Board has pictures of her pallet fence, and the Chair indicated yes. Vice Chair Rich referenced one of the pictures that showed a lower block wall and asked if that is on Ms. Ashley's property. Ms. Ashley explained that is the back neighbor's property. The pallets are not on his property. Vice Chair Rich then asked how many feet of this wall there is, and Ms. Ashley indicated that there is 45 ft. one way and 48 ft. on the side too. The Vice Chair stated that there is about 100 ft. then, and Ms. Ashley then indicated it is about 58 ft. - 60 ft. or something. Nick indicated that from the drawing, it looks like one section is about 45 ft. long and another section is 48 ft. long, and then another one is maybe 4 ft., so it is a little over 90 ft.

Board Member Gordon asked if there is any benefit to continuing this case. He doesn't think any decision the Board would make would prejudice the future action. The Chair indicated that he understood, but this is a hearing and she is entitled to resolution. Board Member Gordon agreed, and asked if there is any benefit to continuing the Board's decision, rather than making a decision today. Chair Gilgoff indicated that it is a public hearing, and he wanted to hear from the public. The Chair then asked if the neighbor was present and there was no response from the audience.

*Chair Gilgoff opened the public portion of the hearing at this time.*

**Drake Mitchell, Sedona, AZ:** Indicated that he is a big advocate of reuse and sustainability, and his interest in this was that the City set a standard, so that in the future, people who wish to do something like her can be told in advance that if they are set-up like the Church at John Vianney or if they do it like this, you will approve it, so people don't have an expectation or spend time and money in a process that would then be rejected. He can understand some of the concerns of the different sizes, shapes and the different angles of the current construction. It seems that she can mediate that and he hopes there will be a way to allow her to correct it, rather than all the work and effort put into it, time and money, be for naught.

*Having no additional requests to speak, the Chair closed the public portion of the hearing.*

#### **Summary Discussion:**

Board Member Carnahan referenced Board Member Gordon's comment about making a decision today, and asked if the appeal is denied, what the City's next step would be. Nick indicated that there are two approaches that could be taken, the Board could certainly continue this item or make a ruling, but staff has committed to look at a different application on the pallets to see if we can get to an approval point.

Board Member Carnahan asked if the Board denied it today, would the City take enforcement action against her tomorrow, and Audree stated no, because we have stated on the record that we would like to see if there is a solution that would meet her needs and allow for the reuse of this material in a way that meets the Code, however that is, she doesn't know. If we aren't able to find a resolution that is satisfactory to both sides, then we would start enforcement, basically

saying that this is not allowed by Code for the reasons outlined today and asked that it be removed. The Chair added that it would be giving her a certain amount of time before the City Attorney would get involved.

Ms. Ashley asked what the City Attorney does, and the Chair explained that the City Attorney could take her to court and fine her, if the City decides that a mutually agreeable solution can't be reached. The City Attorney has the enforcement powers, and they have all kinds of enforcement powers – fines and even jail. Ms. Ashley stated that it is jail for a fence, and the Chair indicated yes.

Vice Chair Rich stated that if you can't reach a decision or come to an agreement, then basically, you have to remove the pallets, and he realizes that you put a lot of time and effort into that. There should be some common ground hopefully.

Chair Gilgoff pointed out that the Board of Adjustment is a quasi-judicial function, but if you don't agree with the Board's conclusion, you can also go to the Superior Court of the State of Arizona and try to overturn the Board's decision. Ms. Ashley asked if that is with just a judge or with other peers, and the Chair indicated it could be a judge or jury trial, but that kind of gets expensive. It is probably cheaper to put up a new fence, but that is the law.

The Chair then indicated that he would entertain a motion; however, Nick wanted to clarify that the reference that Ms. Ashley made about only receiving one of the Codes in the initial discussion probably was true, but upon further review, he believes he referenced the secondhand materials part of the Code, and Ms. Ashley stated yes, he did. Nick then indicated that he also sent an email on Monday with the Staff Report and everything. He used the email address that was on the application. Ms. Ashley indicated that several people put double A's, and that is why she emphasizes only one A, but she didn't get anything.

Audree added that staff is revising the Land Development Code and putting in sustainability elements throughout it, where we can repurpose and reuse materials in accordance with the standards, because we want to encourage that where we can, so that will be looked at as we revise the Land Development Code. The Chair noted that you can see a little piece of the fence through the carport from Leisure Lane, but not much of anything else, and this started because it obviously upset one of the neighbors who didn't like looking at it. He then asked if it would be possible to also pass something by the neighbor to see if whatever you come up with is acceptable to him as well. That might be even less than is required, and as long as it is okay with staff and Ms. Ashley, it certainly would save a bunch of money. Ms. Ashley indicated that he is never even in his backyard; however, the Chair noted that it doesn't matter. If he wanted to sell his property and somebody didn't like the fence, it would lower the value of his property.

Board Member Gordon commented that he agrees in that he also hopes an amicable resolution can be achieved.

***MOTION: Board Member Gordon moved to deny the appeal of the Director's decision related to Case Number AP14-00002, and therefore require the removal of the fence installed without a permit and made from pallets. There was no second.***

Chair Gilgoff asked if the maker of the motion would want to amend that to say you do that, and recommend that the applicant work with the Director of Community Development to come to an amicable solution. Board Member Gordon stated that he would be happy to accept that amendment to his motion.

***AMMENDED MOTION: Board Member Gordon moved to deny the appeal of the Director's decision related to Case Number AP14-00002, and therefore, require the removal of the fence installed without a permit and made from pallets, and recommend***

**that the applicant work with the Director of Community Development to come to an amicable solution. Board Member Carnahan seconded the motion.**

Ms. Ashley asked if she could have her original paperwork, and it was returned to her.

**VOTE: Motion carried four (4) for and zero (0) opposed. One position is vacant.**

Chair Gilgoff indicated that the Board wants Ms. Ashley to have her fence and work with the City to make it so both can come out happy.

- B. Discussion/possible action regarding a request for a variance to exceed the exterior rear yard solid fence height of six feet in the RS-10b (Single-family) zoning district by an additional three feet, six inches. The applicant is requesting the additional height to provide privacy and a barrier from the vehicular headlights on State Route 89a and Rolling Hills Road. The subject property is located at 485 Barcelona Road and is adjacent to State Route 89a and Rolling Hills Drive. The property is further identified as Assessor's Parcel Number 401-46-001A. A general description of the area affected includes but is not limited to the area east of the intersection of State Route 89a and Rolling Hills Drive. Applicant: Theodore D. Guleserian. Case Number: VAR14-00001 (Variance)**

**Presentation:** Nick Gioello presented an overview of the request and indicated that this property also borders S.R. 89A at the entrance to the Rolling Hills subdivision. The applicant is requesting a variance to exceed the exterior rear yard solid fence height, which is 6 ft. in the RS-10b zoning district, and allow an additional 3 ft. 6 ins. in several places, and then varying heights lower than that to 6 ft.

Nick explained that the intent is to intercept the glare of headlights that strike the applicant's house from vehicles traveling along S.R. 89A and on Rolling Hills Drive as they exit the subdivision. In April, staff received a complaint that a fence had been built, and it was built without a permit, so staff contacted the property owner and requested that they file for the permit. They did so, and at a later point, Nick indicated that he met with the applicant and a representative from a local engineering company to discuss the over-height nature of the fence.

Nick indicated that once he received the additional information, we discussed the possible solutions, and there were three. One was to lower the fence to 6 ft. in all places, which wouldn't achieve the goal of screening the glare from the headlights. Two was to apply for an Administrative Waiver that allows the Director to alter the Code by 25%, but in this case, it would only allow another 1¾ ft., which would not achieve the goal. The third was the Variance, which is why we are here today.

Nick explained the three criteria that the Board has when dealing with a variance and indicated that, in this case, staff feels it meets that criteria, because the house and the property is unusual in the Rolling Hills subdivision and is located almost at street level to S.R. 89A, and most of the house is also below street level to Rolling Hills Drive. As you exit, you can see one of the two fences erected, and you are basically looking down on the top of the house, so without that fence, the headlights shine right into some windows facing Rolling Hills Drive. The fence along S.R. 89A is obviously higher in some spots due to the topography and the way the grade goes downhill, and it is heavily vegetated, so it is pretty hard to see. He hadn't noticed the fence, and he had driven by it a number of times, and in discussion with the Chairman, the same sentiment was expressed. Chair Gilgoff noted that it also is dark in color.

Nick stated that directly across the street is the Mariposa development that is anticipated to be a popular destination, and the lower driveway for that site is almost directly across the highway from the subject property, so it is anticipated that there will be additional issues from vehicles exiting that property and turning right to go up the hill, and those headlights would be shining directly at the house, and this fence will most likely intercept most of that light glare.

Chair Gilgoff asked about staff's recommendation and Nick indicated that it is to approve the variance for the fence, and he wanted to point out that the applicant paid a double fee, for not getting a fence permit when they initially built the fence. The reason that happened was that the owner didn't know fence permits were required and assumed that the HOA that approved

the over-height fence would have told him, and that he was good to go, so he had it built. Additionally, a condition was put in that says we would like engineering calculations for the portions of the fence that are over 6 ft. and those have been supplied to the City, because of concerns about the wind load and making sure it doesn't fall over in a 60 mph - 80 mph wind.

**Presentation, Neil Johnson, SEC, Sedona, AZ:** Indicated that the applicant had always intended to do things the correct way, and as stated by Nick, he thought he had done it correctly by going to his HOA. He came to SEC after the fact, because of some of the concerns expressed by City staff, and they did the evaluation of the wall height to make sure that it could handle the wind loads, and it will; they have supplied the report that states the way it will work. Mr. Gulerserian had also gone back to the HOA to make sure they hadn't changed their mind, and the HOA reissued their approval and Mr. Gulerserian agreed to plant some Photinas in front of the wall to soften the impact of the wall.

**Theodore Guleserian, Applicant, Sedona, AZ:** Stated that they put in 11 Photinia plants in front of the vinyl fence; the reddish one is the one that required Photinias. They put in the watering system for them, and that is connected to his watering system. They also had fertilizer put in, so when the roots grow down, these plants will grow, and he has committed himself to maintenance of those Photinias, so he hopes that meets one of the objections to this fence that was raised by a neighbor.

Neil Johnson added that the vegetation by itself could not block the light, and while the fence only gives marginal amounts of relief from noise coming from S.R. 89A, the decision was to stay with a durable, aesthetic TREX material that is made by deck manufacturers and is stamped to look as close to natural as possible and is way more durable. Also, it was deliberately darkened, so it is not obtrusive.

*Chair Gilgoff opened the public portion of the hearing at this time.*

**Drake Mitchell, Sedona, AZ:** Indicated that he lives in the subdivision and attended both of the HOA meetings, when they voted on it. He came to support Mr. Guleserian, because they all thought it was a good idea and liked the outcome. Yes, there is always going to be one dissenter that wanted him to put more colored stone in it to make it look like the other wall, but what he has is a wonderful piece of fence, and he can truly appreciate the desire for it. Coming up that steep grade and in and out of there, we are always putting lights into his home, so if coming here today will help support him, he has done his job.

*Having no additional requests to speak, Chair Gilgoff closed the public portion of the hearing.*

**Summary Discussion:**

Nick Gioello indicated he had mentioned Conditions of Approval, but didn't include them in the Staff Report. The Chair noted that the condition was the engineering calculations, and Nick agreed, but added that the Board would need to amend the Conditions and just say to allow the over-height fence not to exceed 9½ ft. as built.

**MOTION: Board Member Gordon moved for approval of Case Number VAR14-00001 based on compliance with required ordinance findings and the requirement of the City staff that the fence is not to exceed 9.5 feet as built, and as set forth in the staff report. Vice Chair Rich seconded the motion. VOTE: Motion carried four (4) for and zero (0) opposed. One position is vacant.**

**4. Adjournment**

Chair Gilgoff called for adjournment at 1:59 p.m., without objection.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment held on December 19, 2014.

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Donna A. S. Puckett, *Recording Secretary*

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Date