



MINUTES
BOARD OF ADJUSTMENT
Thursday, October 18, 2007 - 9:00 AM
City Council Chambers
201 S. Cortez Street, Prescott, AZ

I. CALL TO ORDER

Chairman Klein *pro tempore* called the public hearing to order at 9:00 AM.

II. ATTENDANCE

MEMBERS PRESENT Mike Klein, Vice-Chairman Duane Famas Johnnie Forquer Tom Kayn Ken Mabarak Bill Warren	OTHERS PRESENT George Worley, Assistant Community Development Director Gary Kidd, City Attorney Ryan Smith, Community Planner Bob Bell, Council Liaison Bob Luzius, Councilman Kathy Dudek, Board Recording Secretary
MEMBERS ABSENT Calvin Fuchs, Chairman	

III. REGULAR AGENDA

1. **Approve the minutes** of the September 20, 2007 public hearing.

Mr. Mabarak, **MOTION: to approve the minutes** of the September 20, 2007 public hearing. Ms. Forquer, 2nd. **Vote: 5-0-1** (abstention due to absence: Famas).

2. **V07-007, Pinnacle of Prescott Lakes, Unit 2.** Located at the Northside of Lakeview Drive. APN: 106-51-054 and totaling ±10.99 acres. Request variance to reduce setback distance for two retaining walls. *LDC* Section 6.8.4.D. Owner is Prescott Lakes Homeowners Community Association. Applicant/agent is EFO/PL Pinnacle, LLC. Community Planner is Wendell Hardin.

Mr. Worley reviewed the staff report and indicated:

- this is a variance request to reduce the *Land Development Code (LDC)* hillside requirements;
- the *LDC* calls out not more than an 8-foot vertical segment and a 4-foot step back going up the hillside;
- the request is north of Smoketree Lane with both developed and developing subdivisions nearby;

- the proposal is for land that is zoned Open Space;
- the proposal by the applicant is to install a 16½-inch channel as opposed to a 4-foot step back;
- the applicant's concern is with the steepness of the slope and aesthetic quality;
- examples of the proposed vs. required retaining walls were presented;
- during the plat review, the cut of this and other slopes was a prime concern for staff and City Council. Recommendations were written into the staff report, as well as an actual note placed on the plat, which requires the step wall conformance that is generic to the whole site;
- it would require City Council action to remove the plat note;
- the original area in question was to be a 1:1 rock cut;
- the plat calls out a 10-foot planting area adjoining the road;
- beginnings of the construction appear to have less than a 10-foot planting area and has triggered staff's looking into the construction;
- the applicant indicates that the previously approved design is unable to be maintained at the top level of landscaping; and,
- based on the criteria of the *LDC*, staff does not support this request because the hardship appears to be self imposed.

Mr. Jeff Davis, applicant, M3 Company, 110 E. Gurley Street, presented background information and included:

- Prescott Lakes' standards include retaining walls that are 6-feet high with an 8-foot offset;
- the variance request is critical to preserving the slope;
- a natural rock edge was planned, but the area is not solid rock and is a sand mixture;
- the area is an eyesore;
- a permit was issued and the wall was started;
- there is a stipulation that the top of the ridgeline would not be built on;
- three choices for the area include:
 - a) leave the area alone
 - b) pull the wall out
 - c) go 8-feet and start from there which will render the area unplatable because of the steepness; and,
- the need for staff's recommendation is understood.

Board members queried and remarked on:

- the amount of roadside that is involved [Mr. Davis: 1100 feet]; and,
- what governs a 16½" planting area as opposed to a 20"-24" area.

Mr. Rick Radovich, 3200 Village Lake Drive, indicated that the block being used is the only size precast by Redi-Rock.

Board members further queried and discussed:

- will the same type of wall be requested in Phase 2 [Mr. Radovich: no];
- the landscaping plan;
- will the area be irrigated [Mr. Radovich: yes];
- with the proposed 16" setback, will the slope above be at 3:1 [Mr. Radovich: more areas that will be 3:1 and the rock boulders will be left];
- who will maintain the shrubs and plantings in the future [Mr. Davis: the plants

- to be installed are drought-resistant native vegetation. They will be watered until established and will not require irrigation after establishment];
- how shrubs could be planted that would eventually cover the wall;
 - the City's standards for wall heights;
 - discomfort with overruling the Planning & Zoning Commission's decision;
 - sending the item back to City Council for Council's removing the note on the plat dealing with hillside requirements;

Chairman Klein asked City Attorney Kidd about sending the item back to City Council with a condition or requirement for removal of the plat note.

City Attorney Kidd indicated that by sending this item back to City Council with a recommendation, the City Council would have some indication of how this is viewed in terms of meeting the variance criteria.

Board members further discussed:

- being uncomfortable with overruling the notes that were specifically added by City Council;
- letting City Council know that some accommodation must be made because the site could be made to look more aesthetically pleasing; and,
- having trouble approving this item today.

Mr. Davis asked that this item be sent forward with a recommendation subject to City Council's approval.

Mr. Radovich asked about withdrawing the item today. City Attorney Kidd stated that the item would then have to go through the subdivision process to amend the plat.

Mr. Davis requested that he would like to see a recommendation go forward and would not withdraw the item. He further indicated that Council's decision would give more protection and would eliminate other developers from feeling they don't have to go through the BOA for approval.

Board members further queried:

- the depth of dirt in the wall [Mr. Davis: approximately 13"];]
- how the wall will be watered [Mr. Davis: an opening goes through the back of the wall and will remain in 4" to 6" sections. As the wall is backfilled, it will be irrigated];
- being in a precarious position by a "back door" approach to City Council's decision [City Attorney Kidd: forwarding a recommendation to City Council simply advises them of the BOA's recommendation. It sends a message that Council strongly consider a waiver to the hillside regulations in the *LDC*];
- a need to realize that staff has determined that, with all the information, it is not recommending approval of this variance;
- could City Council return this item to Planning & Zoning Commission [Mr. Worley: probably it is not something that would go back]; and,
- the factor that this is a self-imposed hardship and that there are no guidelines on aesthetics.

Mr. Warren, **MOTION: to approve V07-007** as submitted conforming to the City-approved planting and irrigation requirements and that the variance be subject to City Council's approval of the removal of the plat note. Mr. Kayn, 2nd. **Vote: 6-0.**

3. **CUP07-007, 401 E. Aubrey.** APN: 109-04-095 and totaling ± 1.15 acres. *LDC* Section 9.3. Zoning is Multi-Family Medium (MF-M) density. Request conditional use permit for a private club. Building owner is City of Prescott. Acker Trust Land. Applicant/agent is Casey Knight for Boys & Girls Clubs of Central Arizona. Community Planner is Ryan Smith (928) 777-1209.

Mr. Mabarak recused himself from this item due to a potential conflict of interest. He then left the dais.

Mr. Smith reviewed the staff report and indicated:

- the applicant is asking to occupy the former Adult Center on Acker Trust Land;
- the City of Prescott owns the building and will lease it to the applicant;
- the request is for an after-school day care center;
- surrounding zoning is Multi-Family Medium (MF-M) and Multi-Family High (MF-H) densities;
- parking does not appear to be a problem as children will be bussed in or arrive in carpools;
- the Acker Trust Board has voted unanimously in support of this request;
- staff has received no adverse comments for this request from neighbors who were sent public hearing notices; and,
- staff is recommending approval of the conditional use permit.

Ms. Casey Knight, Boys and Girls Clubs of Central Arizona, stated that Humboldt Unified School District busses children to the Prescott Valley Location. She is working with the charter schools and Prescott Unified School District #1 to examine the feasibility of bussing. When bussed, children are never unsupervised. There was a neighborhood meeting that was noticed at a 500' radius of the proposed request. The neighborhood was "on board" by the end of the evening. At the City Council meeting, three neighbors spoke in favor of the project.

Board members queried:

- will both floors be used [Ms. Knight: yes];
- will the parking lot stay with the property [Ms. Knight: it is our understanding, yes]; and,
- is the change of use because the building is no longer an adult center [Mr. Smith: the *LDC* requires a conditional use permit for a club].

Mr. Bob Luzius, Councilman, 237 S. Arizona Avenue, stated he is a liaison for the Acker Trust Board and was present when the members approved the Boys and Girls Clubs' request. In Councilman Luzius' opinion, this request meets the intent of Mr. Acker's will and is really a better fit than the previous Adult Center.

Mr. Kayn, **MOTION: to approve CUP07-007** for the Boys and Girls Clubs of Central Arizona at 401 E. Aubrey Street. Mr. Warren, 2nd. **Vote: 5-0-1** (recused: Mabarak).

IV. REVIEW ITEMS

4. **CUP06-002, St. Paul's Anglican Church, 325 Eastwood Drive.** APN: 110-03-067F. Request a Conditional Use Permit for a church/place of worship with the condition that additional uses or expansions, not expressed in this application, shall require the applicant to return to the public hearing process and obtain approval by the BOA amending the CUP.
BOA Approved 04-20-06

Letter received on September 17, 2007, indicating that the church will not ask for an extension. Conditional Use Permit, CUP06-002, becomes null and void on October 21, 2007. (See letter attached).

Mr. Worley proffered the letter received from St. Paul's Anglican Church indicates they will not request an extension of CUP06-002. Should the church want to operate at the Eastwood Drive address in the future, the church will need to apply for a conditional use permit. The current conditional use permit becomes null and void on October 21, 2007.

No action taken.

5. **V06-003, 400 S. Marina Street.** APN: 109-04-058. LDC Sections 3.10.3D & 3.10.3F. Request variance for a reduction of the required side and rear yard setbacks to accommodate a single-car attached carport to within 2 feet of the property line and to allow a 53.4% lot coverage with the following conditions of approval: 1) replace the wood fence with a 6' concrete masonry unit (CMU) wall above the high side of the property extending to the rear property line; and, 2) be in substantial conformance with the site plan dated 05/18/06.
BOA Approved 05-18-07.

Letter received on October 1, 2007, requesting extension of V06-003 for one year. Original approval due to expire on 11-18-07. (See letter attached).

Mr. Worley reviewed the request for an extension. The property was foreclosed on and Fannie Mae is the new owner. The property is for sale at this time. An extension would allow a new owner to bring the project to fruition.

Mr. Warren, **MOTION: to extend Variance V06-003** for one year ending on October 18, 2008. Mr. Kayn, 2nd. **Vote: 6-0.**

V. SUMMARY OF CURRENT OR RECENT EVENTS

6. **Boards & Commissions Conference,** Black Canyon Conference Center, Phoenix, Friday, December 7, 2007. Please RSVP to Kathy Dudek as the deadline for registration is October 31, 2007.

VI. ADJOURNMENT

Chairman Klein, *pro tempore*, adjourned the public hearing at 10:22 AM.

Michael Klein, Chairman *pro tempore*