

**BOARD OF ADJUSTMENT  
PUBLIC HEARING  
MARCH 19, 2009  
PRESCOTT, ARIZONA**

**MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT** held on **MARCH 19, 2009** in **COUNCIL CHAMBERS, CITY HALL** located at **201 S. CORTEZ STREET**, Prescott, Arizona.

**I. CALL TO ORDER**

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

**II. ATTENDANCE**

<b>MEMBERS PRESENT</b>	<b>OTHERS PRESENT</b>
Michael Klein, Chairman	George Worley, Asst. Community Development Director
Duane Famas, Vice-Chairman	Gary Kidd, City Attorney
E. Calvin Fuchs	Richard Mastin, Development Services Manager
Johnnie Forquer	Mike Bacon, Community Planner
Tom Kayn	Wendell Hardin, Community Planner
Ken Mabarak	Kelly Sammeli, Recording Secretary
Bill Warren	<b>COUNCIL MEMBERS PRESENT</b>
	Bob Luzius

**III. REGULAR AGENDA**

- 1. Approve the minutes** of the January 15, 2009 public hearing.

Mr. Fuchs, **MOTION: to approve the minutes** of the January 15, 2009 meeting.  
Mr. Forquer, 2<sup>nd</sup>. **Vote: 6-0-1. (Abstention due to absence Kayn)**

- 2. V09-001, 460 Isabelle Lane.** APN: 105-03-314 and totaling ± 9,592 square feet. Land Development Code Section 3.4.3.D. Zoning is Single-Family 18 (SF-18). Request if for a variance to increase lot coverage to 44% maximum where 35% is allowed per code. Owner is Sherman Family Trust. Agent is Jeffery Adams. Community Planner is Mike Bacon, (928) 777-1360.

Mike Bacon reported that the variance request was for an increase in the maximum lot coverage allowed in the district from 35% to 42.2%. Mr. Bacon placed a map of the area and the property being discussed on the overhead projector. Mr. Bacon continued to report that property is located in the Blooming Hills Estates subdivision which is a Planned Area Development that was approved in 2002. Mr. Bacon placed an overview of the development on the overhead which reflected several large homes with a scattering of vacant lots. Mr. Bacon indicated that the applicant is requesting an increase of the lot coverage to 42.2% and staff has not received any objections from the surrounding neighbors in the area. Mr. Bacon noted that there has not been any other similar variance request in the area however, the applicant did submit a detailed analysis which reveals that there are 18 other lots which have homes that exceed the maximum lot coverage of 35%. Mr. Bacon noted that staff reviewed the finalized permits issued for the area and found it to be true. Mr. Bacon

noted that there were over-sights from staff, that occurred in the building application review process and there were several permits issued in 2005 exceeding the lot coverage. Mr. Bacon indicated that granting the variance will not be detrimental to the public health, safety, or welfare of other properties in the neighborhood. Mr. Bacon further noted that the applicant had submitted for the building permit to build a similar house as those in the area when the lot coverage was discovered. In closing the staff report Mr. Bacon reported that because of the circumstances applicable to the property, including the size, shape, topography, location, and surroundings of similar style homes, the strict application of the ordinance would deprive the property owners the privileges that others in the same zoning district have. Mr. Bacon noted that staff is recommending approval of the variance with the following conditions of approval; in order to give notice to all future home builders of the maximum lot coverage requirements and, the notice will help ensure that future variance requests of exceeding the maximum lot coverage will not have a sound basis. Mr. Bacon noted that the conditions were: 1. The Blooming Hills Estates CCR's will be modified to include the requirement that lot coverage shall not exceed 35% lot coverage for homes. 2. The amended CCR's shall be recorded with the Yavapai County Recorded within 60 days and a copy of the CCR's given to the Community Development Department for confirmation prior to the final building inspection for 460 Isabelle Lane. Mr. Bacon placed a proposed site plan of the home on the overhead projector and indicated that it is a similar type home that was built and approved in the area. Mr. Bacon added the house is the same size the lot is a little smaller. Mr. Bacon noted that the applicant was in attendance.

Mr. Fuchs inquired what the procedures would be if an applicant wanted to create a Planned Area Development within Prescott.

Mr. Bacon noted that first there would be a preapplication meeting with staff to discuss all the City codes and regulations regarding the project, then a preliminary plat would be filed with the City with all the details of the project, the Planning Commission reviews it for approval and upon approval it is send to the City Council for approval. If the City Council approves it then a final plat would need to be filed with the City to again be reviewed by the City Council for approval. If the Final Plat is approved it becomes a recorded legal document with specific details such as, the lots, the legal terms, obligations, responsibilities, easements, street details and anything pertaining to the plat as a final legal document.

Mr. Fuchs inquired if a Final Plat would include the maximum size of a residence that would be allowed on the lots.

Mr. Bacon indicated no.

Mr. Fuchs inquired if the information was referenced anywhere in the Planned Area Development.

Mr. Bacon indicted no.

Mr. Fuchs commented that the land code is a part of the process even if it is not referenced.

Mr. Bacon indicated that was correct.

Mr. Fuchs noted that as he understands it the subdivision has eighteen houses located in it that are in violation of code.

Mr. Bacon indicated that they were approved by the City.

Mr. Fuchs indicated that there are a lot of vacant parcels in the subdivision and inquired if the Board decides to grant a Variance for this request, will the Board not have to grant a Variance to others applicants within the subdivision with a similar request.

Mr. Bacon indicated no and added that because staff had made over sites in the past, staff is recommending that the 35% lot coverage requirement be included in the homeowners CCR's. Mr. Bacon added that once the CCR's were recorded it would effectively close the door.

Mr. Fuchs asked Mr. Kidd if the Home Owners Association could retroactively change the CCR's and change the size of the house if a person had already purchased the lot with the intent of building a similar size house as the other eighteen houses in the subdivision.

Mr. Gary Kidd, City Attorney, reported that the Board of Adjustment looks at each property by law, on the individual basis based on the unique topography or other circumstances to that piece of property. Mr. Kidd added that there is no legal precedent set and the City normally does not have the power to condition CC and R changes as it is a matter of private contract. Mr. Kidd further added that the developer can make the changes to the CCR's on their own, but it cannot be a condition.

Mr. Fuchs noted that he did not think the City could mandate the change to the CCR's that could possible cause future complications for the Home Owners Association in the future. Mr. Fuchs further indicated that as a practical matter the Board of Adjustments is empowered to permit zoning variances where appropriate, on land conditions and not on mishaps created by the City, and does not believe that a Variance is the appropriate step to address this problem.

Mr. Kidd indicated that a PAD or a rezoning where there is flexibility on the part of City to look at the variables to allow uniformity would make sense.

Chairman Klein called upon the property owner to speak.

Mr. Steven Sherman, 1155 Northridge Drive, Prescott, indicated that he owns the remaining 25 lots within the subdivision and he retains the voting control for the CCR's.

Chairman Klein asked Mr. Sherman if there were any sold lots that do not have homes on them.

Mr. Sherman indicated no, and further noted that he was the one who made the suggestion to amend the CCR's so there would not be any further problems in the future.

Mr. Fuchs inquired what the procedure was in respect to the houses that were built in violation of the code.

Mr. Bacon reported that in the event of oversights staff believes that options need to be provided for the community for the best remedies.

Mr. Fuchs inquired how staff would remedy the situation that was being reviewed today.

Mr. Bacon noted that a final building inspection was provided for the houses that were already built and that provides the homeowner with the information that the house has been built to code.

Mr. Kayn inquired if the lot coverage was not reviewed because the properties were located within a PAD or how did the oversight occur?

Mr. Bacon noted that when a building plan is submitted it is reviewed by various departments as part of the review. Mr. Bacon further noted that zoning looks at the setbacks as well as the overall height and the lot coverage is usually determined by a visual check that it does not occupy more than 25% of the lot. Mr. Bacon added that it could be different in a PAD because there could be smaller lot sizes allowed than are required in the zoning district as part of the flexibility of the PAD. Mr. Bacon indicated that the trade off is that something is being offered to the overall subdivision and in this case it was open space. Mr. Bacon further indicated that there is an administrative adjustment in the *Land Development Code* to allow for an adjustment of up to 10% of the maximum lot coverage requirement, if it is requested and if the neighbors approve. Mr. Bacon noted that by looking at the analysis that was provided it appears that several of the houses were adjusted administratively.

Mr. Kayn indicated that by listing 18 properties it gives the impression of excessive code violations when there are really only 3 or 4 homes that were built in violation, and does not represent what truly occurred. Mr. Kayn further indicated that because there is only one other house with 40% lot coverage it is leaning towards a special privilege.

Mr. Fuchs noted that if the CCR's state 35%, the applicant would not automatically get the additional 10% as it is reflected, and that all 18 houses on the list exceed the lot coverage. Mr. Fuchs further noted that he was not convinced that the Board was empowered to place a condition, even if the applicant does control the remainder of the lots and the Home Owners Association, and it is beyond the scope of the Board. Mr. Fuchs indicated that when the City Council made the final decision on the development it took many things into consideration that the Board is not looking at today and it makes more sense for the City Council to make the decision rather than the Board of Adjustments. Mr. Fuchs commented that he felt this was a self imposed hardship based on the fact that the developer has built houses that are larger than allowed and got caught this time, and wants to get a variance to make it match the other 18 houses that were built.

Mr. Bacon noted that as Mr. Kidd had reported that the condition on the CCR's is not legal and staff is requesting that the condition be withdrawn. Mr. Bacon reiterated that was the property owner's suggestion. Mr. Bacon further noted that in a PAD there is a specific requirement that as long as there 20% of open space set back modifications can be made to any dimensional standard except for lot coverage.

Mr. Fuchs inquired if Mr. Bacon was indicating that the City Council cannot approve a replat to fix the problem in review today.

Mr. Bacon noted that was correct.

Mr. Mabarak inquired what was the propose of a reduced setback in a PAD.

Mr. Bacon indicated that a Planned Area Development allows the developer to design the use to better fit the site with the variation on the dimensional standards. Mr. Bacon further noted that if there was not a provision for the PAD the developer would be locked in to all the regulatory requirements for the zoning district and the PAD allows for creativity.

Mr. Mabarak inquired if a PAD subdivision allowed for more lot coverage on a lot.

Mr. Bacon noted the lot coverage would be the same regardless of the lot being located in a PAD or not. Mr. Bacon further noted in this case the lots vary in size and the same home has been built on other lots, but if the house is placed on a smaller lot the house exceeds the lot coverage.

Mr. Mabarak inquired if the lot coverage had been varied by the applicant as noted in table one.

Mr. Bacon reported that before the Variance option was offered to the applicant Mr. Bacon reviewed all the permits of the homes in the area, and that the lot coverage's were consistent of 36% to 40 % lot coverage.

Mr. Mabarak indicated that he had questions for the applicant.

Chairman Klein noted that he also had questions for the applicant but would like to finish with staff before inviting the applicant back to the podium. Mr. Klein called for other questions for staff.

Mr. Warren noted that the way he understands the request is that the developer developed the PAD and started to build the houses, and over half of the houses exceeded the lot area requirement, which were not verified and now they are before the Board of Adjustment. Mr. Warren asked Mr. Bacon to further explain the reduction request.

Mr. Bacon noted that that the 44% was put in the request to allow for a margin of error for the public notice and indicated that the request is for 42.2%.

Mr. Warren reiterated that the request is for 42.2% of lot coverage and the Board has to determine if the Board will approve a Variance request for a house that is overbuilt, but smaller than the largest illegally built house in the subdivision.

Mr. Bacon noted that was correct in terms of building a similar size home in the neighborhood.

Mr. Warren indicated that the request is to exceed the lot coverage with the home.

Chairman Klein invited the applicant back to the podium to speak to the Board.

Mr. Sherman indicated that the only thing that he would add is that the home in question is the sixth largest home in the subdivision with some of the homes on larger lots and some on smaller lots.

Chairman Klein asked the applicant if there were any larger lots left in the subdivision that the home would fit on at the 35% lot coverage.

Mr. Sherman indicated no.

Chairman Klein inquired if it was the largest lot left in the subdivision.

Mr. Sherman indicated that it was.

Chairman Klein inquired if the house plans were model plans or if it was a custom built home.

Mr. Sherman noted that there are three different plans for the lots and the home proposed is a model home with 4 bedrooms and 3 baths.

Chairman Klein noted that it was the lot size that was creating this problem and inquired if there was another 11,000 square foot lot available where the house could be built.

Mr. Sherman indicated no.

Mr. Mabarak inquired who the contractor was that built the houses.

Mr. Sherman reported that all of the homes but one were built by Peterson and Associates.

Mr. Mabarak inquired if Mr. Sherman was a member of Peterson and Associates.

Mr. Sherman indicated no he was the land owner. Mr. Sherman further indicated when Mr. Peterson would sell a land home package, Mr. Sherman would sell and transfer the title to the land to Mr. Peterson and Mr. Peterson would build the house.

Mr. Mabarak inquired if Mr. Sherman subdivided the property.

Mr. Sherman indicated no he purchased it after it was subdivided.

Mr. Mabarak indicated that he keeps coming back to why Mr. Peterson was willing to overwrite the CCR's.

Mr. Peterson indicated that he was not aware of the 35% lot coverage restriction and did not know about the problem until this plan was submitted to the building department. Mr. Peterson further noted that is when he came up with the idea to not the restriction of the 35% lot coverage in the CCR's.

Mr. Mabarak inquired if there was a buyer of the house.

Mr. Peterson noted that was correct and the house was designed for the buyer.

Mr. Mabarak noted that the replat process seemed very complicated.

Mr. Bacon reported that the replat of the subdivision was not an option.

Mr. Mabarak asked Mr. Peterson why a smaller house could not be built on the lot.

Mr. Peterson indicated that the purchaser wants a four bedroom home and a three car garage to accommodate the needs of the family.

Mr. Kayn asked Mr. Peterson if he knew why the resident at 472 Isabelle did not sign the petition that was presented to the Board.

Mr. Sherman indicated that Desert Hills Bank is the owner of that location as well as lot 57 and it was signed off as part of lot 57.

Chairman Klein called from any other questions, comments, or discussion.

Mr. Kayn noted that it appears that the applicant is asking for approximately 350 sq feet and it would not be before the Board if the building plan had not been caught in the permitting process. Mr. Kayn further noted that he felt although staff has noted the hardship is not one of the applicants, the building has not been built, the plan is re-workable, there are not any topography issues, and by insisting on the square foot it is a self imposed hardship.

Mr. Warren asked the applicant if the house would fit on any of the remaining vacant lots within the subdivision.

Mr. Sherman noted that there were not any vacant lots within the subdivision that could hold the house and stay within the 35% or 38% lot coverage. Mr. Sherman noted that lot that the house is proposed for is the largest lot left in the subdivision.

Mr. Famas inquired since the houses were models would they all have to be redesigned now.

Mr. Sherman indicated no the other models were at 1,900 and 2,100 square feet. Mr. Sherman added that the house has already been redesigned down to 2,680 sq ft.

Mr. Mabarak noted that if the square footage of the home is only 2,700 and the lot is 9,500 square feet, quick math notes that a 3,500 square foot home could go on the lot.

Mr. Famas noted it was the garage.

Mr. Peterson commented that it was his understanding that the covered patio, covered front porch, and the garage, are added to the square footage of the home.

Mr. Mabarak commented that it was the total footprint that would bring the total to 42.2 %.

Mr. Peterson noted that was correct.

Mr. Mabarak noted that everyone is very aware of the economic situation of the community and understands why Mr. Peterson would like this request to be approved however, he is having a difficult time because he is seeing the request as a self imposed hardship. Mr. Mabarak further noted that the Board cannot require the changing of the CCR's and that he would vote against the request until he sure that the CCR's were amended for the subdivision.

Chairman Kline called for additional questions or comments from the Board.

Ms. Forquer indicated that the builder and the developer should have determined what could fit on the lots a long time ago.

Mr. Kayn inquired if there was any reason to bring this item back to the Board so that Mr. Peterson does not have to leave with a denial and added that he would concur with his fellow Board members. Mr. Kayn added that it might be possible for Mr.

Peterson to reconfigure the house to lower the square footage and return back to the Board.

Chairman Klein asked staff under what conditions could the applicant return before the Board.

Mr. Bacon noted that would depend upon the concerns of the Board. Mr. Bacon added that Mr. Mabarak had commented that he would be more favorable if the changed CCR's reflected 38%, and were recorded and brought before the Board rather than a statement of intent. Mr. Bacon further noted that could be an option for the Board to Discuss.

Mr. Famas indicated that would not change his vote.

Chairman Klein noted that he was trying to determine if anything could be done prior to the Board going to a Vote.

Mr. Kayn indicated that he concurred with Mr. Famas unless there was a reduction in the square footage.

Mr. Worley, Assistant Community Development Director indicated that one of the ways the item could be brought back is that the applicant asked the action be deferred to a date certain today, and return with modifications to the design of the site. Mr. Worley added that the CCR's would not be enough criteria as the City does not enforce CCR's and it would not be one of the criteria's that the City uses to review the plans of any project and anyone wanting to build is required to meet both the building code requirements and the zoning code requirements.

Mr. Fuchs comments that he had a question for Mr. Kidd. Mr. Fuchs then asked Mr. Kidd if the applicant comes in and requests for the deviation in the Land Development Code to increase to the 38% lot coverage, where the City Council approved the subdivision at 35% lot coverage would that be acceptable.

Mr. Kidd, City Attorney indicated that some of the lots in the subdivision were reviewed under a different code and that code allowed for a 10% deviation by staff. Mr. Kidd added that the City Council did approve the subdivision at the 35% lot coverage and it each lot would be determined on a lot by lot basis as determined by staff.

Mr. Fuchs indicated that he understood the code to read as a line of what is allowed and the Board of Adjustment has the power to adjust that code if there is a good reason to adjust it however, it is not expected that staff will go in and deviate 10% or all the different lot coverage and different zoning areas.

Mr. Kidd noted that was correct.

Mr. Fuchs indicated that the reason it was brought back up was that because he does not see any reason for the applicant to bring the item back however, there should not be any indication that the applicant can just amend the CCR's for 38% lot coverage, which would be in violation of the code.

Mr. Kayn indicated that it would allow for future applicants to request for administrative adjustment to max out at 38% and they would not be in violation of the CCR's.

Chairman Klein indicated that any discussion of the CCR's is a moot point. Chairman Klein then called for a motion.

Mr. Fuchs, **MOTION: that the Board deny** application for Variance V09-001 at 460 Isabelle Lane.

Mr. Warren, 2<sup>nd</sup>.

Mr. Kayn indicated that he would like to ask the applicant if he would like to bring the item back.

Chairman Klein indicated that the open discussion portion of the item has been closed and the discussion is open to the Board only.

Mr. Kayn indicated that because he is not aware if the applicant has intention to revise the site plan and bring it back he would have to vote against the Variance.

Chairman Klein asked the applicant to address the question.

Mr. Peterson indicated that he would be willing to change the CCR's and come back before the Board.

Mr. Kayn noted that he was not talking about the CCR's but an amended site plan.

Mr. Peterson noted that he could try but it would be up to the prospective home owner.

Chairman Klein called for the vote.

**Vote: 7-0. Motion was denied.**

#### IV. REVIEW ITEMS

None.

#### IV. SUMMARY OF CURRENT OR RECENT EVENTS

None.

#### VI. ADJOURNMENT

Chairman Klein adjourned the meeting at 10:09 AM.

  
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Michael Klein, Chairman

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Kelly Sammeli  
Recording Secretary