



NOTE: THESE ARE DRAFT MINUTES, WHICH HAVE NOT YET BEEN APPROVED.

**BOARD OF ADJUSTMENT HEARING
TOWN OF QUEEN CREEK**

6:00 P.M., Tuesday, October 23, 2007

**Town of Queen Creek Development Services Building
Saguaro Room
22358 S. Ellsworth Road
Queen Creek, Arizona**

I. Call to Order

The meeting was called to order by Planning Manager Brittingham at 6:02 P.M.

II. Roll Call

At roll call, there was a quorum of five (5) Board members: Sharon Steinhauer, Thom Schuett, Chuck Lopez, Anthony Roach, and Andrew Fritz.

Town Staff: Planning Manager Brittingham, Principal Planner McCauley, Planner Sandidge, Planning Assistant Moats.

On behalf of the applicant: Charles Huellmantel, Quik Trip attorney; Jeff Guyette, Project Manager, Jarod Mendez, Project Manager.

III. Selection of Chair and Vice-Chair

Board member Steinhauer made a motion nominating Chuck Lopez for Chairman; seconded by Board member Schuett.

Board member Lopez accepted the nomination as **Chairman**.

Vote: All ayes (Schuett, Steinhauer, Roach, Fritz). Motion carried.

Selection of Vice-Chairman

Board member Schuett made a motion nominating Sharon Steinhauer for Vice-Chairman; seconded by Board member Roach.

Board member Steinhauer accepted the nomination as **Vice-Chairman**.

Vote: All ayes (Lopez, Schuett, Roach, Fritz). Motion carried.

IV. Public Hearing:

BA 07-174: A request by Jeff Guyette of the Quik Trip Corporation, on behalf of Pam Shelly for an appeal of a Zoning Administrator's Determination of fence standards under Article 5 Design and Improvement Standards, Section 5.2 Fences of the Queen Creek Zoning Ordinance. If approved, Quik Trip will install a 6' chain link fence along approximately 270' of the northwest boundary of property currently owned by Pam Shelley.

Staff Presentation

Planner Sandidge presented the staff report, stating the nature of the applicant's request. Ms. Shelley's property, located adjacent to the southern boundary of the Quik Trip site, is zoned R1-43. The Zoning Ordinance requires 33% openness/view fencing in R1-43 zoned districts. The property surrounding Ms. Shelley is zoned C-2.

The applicant believes the 33% openness can be attained through the use of a chain link fence, with vertical slats.

Questions from the Board

Chairman Lopez asked for clarification on the 33% openness. Planner Sandidge responded that 33% openness is typically shown by the use of 4' solid/2' view, where the bottom or solid portion of the fence would be stucco or masonry, and the top portion would be wrought iron or a panel of some sort.

Chairman Lopez asked if this proposal was for 100% chain link with vertical slats. Ms. Sandidge responded in the affirmative, noting that when driving past the fence, you will be able to see through the fence.

Planning Manager Brittingham added that the applicant has stated this will be a temporary fence.

Attorney Charles Huellmantel, representing Quik Trip, made a brief presentation to the Board, noting that Ms. Shelley will eventually sell her land for future development. In the interim, she would like a fence to protect her animals. In order for QT to develop Duncan Street, they need to acquire a portion of Ms. Shelley's land. In conjunction with this, the fence will be the best solution to protecting her animals.

Mr. Huellmantel explained the calculation for acquiring 33% openness with this particular fence, noting the fence will be open at the bottom and at the top of the fence. Mr. Huellmantel also provided the applicant's view of benefits that approving this request will provide to the community.

Mr. Lopez asked for an expanded explanation of what is meant by "temporary".

Mr. Huellmantel responded that Ms. Shelley is attempting to sell her property. He pointed out the commercial development that will be going on in the area surrounding Ms. Shelley's property. He estimated six months to one year; however, this is just a guesstimate.

Mr. Huellmantel added that Ms. Shelley's stipulation to QT is that she stay on her property until she sells and moves out.

Vice-Chairman Steinhauer asked how close to the road the fence will be. Mr. Brittingham responded that it will be immediately adjacent to the road. Ms. Steinhauer noted the intent of this fence, which is close to the road is so that horses can see over the fencing. Ms. Steinhauer asked if the fence could have been designed differently. Mr. Huellmantel responded that Ms. Shelley wants her animals shielded from the QT traffic. Ms. Shelley will not agree to less than 6 feet of vertical slats.

Board member Fritz asked if it's possible to extend the height of the fence, with six feet of slats. Mr. Brittingham responded the maximum allowable height is six feet.

Board member Roach asked if screen fencing, such as that used for area construction, can be used as long as the fencing will be temporary.

Mr. Brittingham responded that type of fencing is allowed on constructions sites, but not on residential property.

Board member Schuett asked if the fence rules change between R1-43 and C-2 zoning. Mr. Brittingham responded that different types of fencing are allowed in different zoning categories.

Board member Schuett questioned what type of fencing would be allowed if the Shelley property were already zoned C-2. Mr. Brittingham responded a masonry fence, such as that being installed on the UASA property, would be allowed in C-2 zoning. This would be a 6-foot solid fence; however, in C-2 zoning districts, there is an option for view or solid. In R1-43 zoning, there must be 33% openness.

In response to a question by Chairman Lopez, Mr. Huellmantel stated that development of the site by Quik Trip is contingent upon whether or not the Town allows the chain link fence to be installed.

Chairman Lopez asked if the fence is being stipulated by the Town. Mr. Huellmantel responded the Town is not stipulating the fence; however, QT cannot develop without the additional land for the roadway (Duncan Street), and cannot develop Duncan without Shelley's land, which she will not sell unless she can erect the chain link fence.

Planner Sandidge clarified the importance of the development of Duncan Street in providing full access to the QT site and as part of the Town Center Plan for secondary streets.

Chairman Lopez opened the Public Hearing at 6:35 p.m. There was no further discussion. The Public Hearing was closed.

Vice-Chairman Steinhauer noted the code states "may" instead of "will", and noted the intent of the code.

Board member Schuett stated his opinion that this is a self-imposed hardship as to the use of property.

The Board discussed the merits of the case, and the possible interpretations of the Zoning Ordinance, noting this is not a variance request; rather, it is a question of interpretation of the code.

Board member Schuett stated that this type of fence was not intended to be used on R1-43 zoned property.

Chairman Lopez asked for clarification on whether or not the proposed fence falls within the code mathematically

Board member Roach stated that it appears there will be 75% coverage/25% openness.

There was further discussion on whether or not the requested fence provides enough openness; it was decided it provides 30% openness.

Chairman Lopez entertained a motion:

Motion: Board member Schuett moved to deny the applicant's request, because as he interprets the ordinance, this type of fence is not what was envisioned, and if the applicant (Ms. Shelley) rezones the property, the solid fence will be allowed. Mr. Schuett agrees with the Zoning Administrator's interpretation of the Ordinance.

Second: Board Member Roach.

Discussion on the motion:

Board member Fritz questioned if the Town has the ability to provide alternatives and if so, what are the alternatives, other than rezoning? In response, Mr. Brittingham noted there are no other options available.

Call the vote:

Voting Aye: Schuett, Roach.

Voting Nay: Lopez, Steinhauer, Fritz. Motion failed.

Vice-Chairman Steinhauer asked if the motion could include a stipulation to clarify the ordinance. Planning Manager Brittingham clarified this would be a direction to staff, not a stipulation on the motion.

Vice-Chairman Steinhauer noted this motion should limit action to this case only.

Vice-Chairman Steinhauer made a motion to approve the applicant's interpretation of the ordinance and allow installation of the temporary chain link fence, with the understanding this approval is for this case only, due to the unusual circumstances.

Board member Fritz seconded the motion.

Voting Aye: Steinhauer, Fritz, Lopez.

Voting Nay: Schuett, Roach. Motion carried.

V. Adjournment

Motion: Board member Roach made a motion to adjourn.

Second: Board member Fritz.

Vote: All ayes. Motion carried. The meeting adjourned at 6:45 p.m.

Chuck Lopez, Chairman

Laura Moats, Planning Assistant

I, Laura Moats, do hereby certify that, to the best of my knowledge, the foregoing Minutes are a true and correct copy of the Minutes of the October 23, 2007 Board of Adjustment Meeting. I further certify that the meeting was duly called and that a quorum was present.

Dated this 24th day of October, 2007.

Passed and Approved this ____ day of ____, 2007.