



BOARD OF ADJUSTMENT HEARING
TOWN OF QUEEN CREEK

6:00 P.M., Tuesday August 12, 2008

Town of Queen Creek Development Services Building
Council Chambers
22358 S. Ellsworth Road
Queen Creek, Arizona

I. Call to Order

The meeting was called to order by Chairman Lopez at 6: P.M.

II. Roll Call

At roll call, there was a quorum of four (4) Board members: Chairman Lopez; Board Member Roach, Board Member Fritz, and Board Member Schuett. Absent: Board Member Steinhauer. Ms. Steinhauer was absent due to conflict of interest with this request.

Town Staff: Planning Manager Balmer, Planning Assistant Moats.

III. Consideration and Possible Approval of Minutes

Motion: Board Member Schuett.

To approve the February 5, 2008 Meeting minutes as presented.

2nd: Board member Roach. All ayes. Motion carried 4-0.

IV. Public Hearing

BA08-107, A request by Kenneth and Cindy Selbach for a variance from the Zoning Ordinance to allow a six-foot (6') solid block wall outside the building setback in the R1-43 Zoning District. The property is located at 19701 E. Calle De Flores Drive.

Staff Presentation

Planning Manager Balmer distributed an email he had received late in the day, from Mr. Steve Mayher, Sr. of M.A.G. Construction in Queen Creek, expressing Mr. Spears' support of the application (email attached).

Planning Manager Balmer presented the staff report, stating the Selbachs are requesting a variance from the Zoning Ordinance. Mr. Balmer stated an applicant typically needs to prove a hardship exists in order to obtain a variance from the Zoning Ordinance. Mr. Balmer referred to the photos submitted as part of the agenda packet, which show the current chain-linked fence on the Selbach's property, and the other fences in the neighborhood.

Mr. Balmer distributed the Town's Fence Requirements brochure. He stated the issue before the Board as follows: 1) On lots that are one acre or larger in size, in order to have a solid masonry fence, the fence must be on or inside the building envelope. Mr. Balmer referred to the example on the fence brochure showing proper installation of open/view fencing. Mr. Balmer noted the Selbachs live in an older subdivision which pre-dates the Town's incorporation. Therefore, there are a variety of fence types currently existing in this neighborhood. He noted the Town's ordinance pertaining to fences is specific as to time periods when solid fencing was and was not allowed in in R1-43 Zoning Districts. After a specific time, only view fencing was permitted. Mr. Balmer stated the applicant feels they have a unique circumstance given the history of their subdivision. Mr. Balmer stated staff is bringing this issue to the BOA in order to get direction on this request and to garner the Board's thoughts pertaining to whether or not they think it is warranted that this issue be revisited, and whether or not a modification to the Zoning Ordinance should be made to address fence requests for the special circumstances listed on page 3 of the Staff Report:

- 1) The new wall would not be visible for the street, except in the cases of items 3 and 7 below;
- 2) When at least one other side of the property already has approved opaque fencing of masonry, slatted chain link, wood, landscaping, etc;
- 3) When the new fence would be substituted for another opaque fence;
- 4) When the prevailing pattern in area (on same street) is mixture of solid and non-solid fencing similar to the proposed fence;
- 5) With the approval of the adjacent neighbors;
- 6) When the subdivision where the property is located predates incorporation or annexation;
- 7) When the existing fence is damaged, poor condition, etc., and in need of repair or replacement.

Applicant's Presentation

Mr. Kenneth Selbach addressed the Commission. He explained the special circumstances he feels give him the right to have a solid wall, which include the fact that the Selbachs have two dogs; their next door neighbor has goats and wishes to get additional farm animals. The Selbachs' dogs always bark anytime the neighbors or anyone else approaches the yard. A solid block wall would eliminate this. Currently, the Selbachs have a chain link fence which is covered by wood slats. Mr. Selbach stated replacing the chain link fence with the solid wall would not impede the intent of the ordinance due to the location of the fence. Mr. Selbach noted the wall would be facing the back yard.

Mrs. Cindy Selbach addressed the Commission, stating she understands the ordinance and the reasons it was put in place. She stated she is not asking to change anything. She is only asking for an exception. She pointed out that she is aware of the view fence ordinance; however, she drives around the town and sees people covering up view fence with all different types of materials. Mrs. Selbach asked when the view fence ordinance was put into place. Mr. Balmer stated that information is not included in the staff report, however, August 2004 was the date of the Zoning Administrator's determination specific to this property that prohibited construction of a solid wall on the property line. In June, 2005, the Zoning Administrator issued a determination that prohibited additional solid walls from being built on the property line in R1-43 Zoning Districts. Walls that were already in place prior to November, 2004 were designated legal non-conforming. Mr. Balmer stated the Council acted in August 2004. Mrs. Selbach asked if the people who have made their view fences solid are now in violation of Town Ordinance. Mrs. Selbach also stated that residents in her neighborhood have put up solid fences without going through the Town at all, and wondered if these people would be in violation as well.

Chairman Lopez responded that residents who have installed solid walls in areas of Town where it is prohibited do run the risk of being given a violation by the Town's Code Enforcement division. Planning Manager Balmer clarified when and where view fences are permitted. Mrs. Selbach asked if she installed a view fence and blocked it with landscaping, would she be in violation of the Fence Ordinance. She again referred to other areas of town where several different types of material are being used to gain privacy fencing. She stated she feels there are a lot of issues the Town needs to look at in regards to view fencing. She stated she feels if people are in violation of the code, they are violating it because they are not happy with having a view fence. She added having a block wall would be a blessing to their animals and neighbors.

Mrs. Selbach stated even if something were done within the building envelope, there would not be enough room to put the fence within the building envelope on their lot due to the unusual shape of the lot. They currently have a pool that is open to everyone.

Mr. Balmer stated the ordinance currently states that on the perimeter the fence needs to be a solid wall.

Chairman Lopez, referring to the staff recommendation, questioned exactly what staff is asking the Board to do, and asked if staff is asking the Board to give more latitude to the Zoning Administrator and staff in interpreting the Zoning Ordinance where it relates to solid fences in the R1-43 Zoning District.

Mr. Balmer clarified that if the Board believes circumstances warrant a change in the ordinance, staff may forward this to the Council for a recommendation for text amendment to the Ordinance. To further clarify, Mr. Balmer reiterated that staff is saying, if the Board thinks it's appropriate, then staff will forward the seven items (test items) shown on page 3 of the staff report to the Council.

Mrs. Selbach questioned whose decision it is to grant her request or deny the request. Chairman Lopez responded that all he can do today based on the staff report is to make a recommendation to the Council to revisit this section of the ordinance.

Mr. Balmer clarified the Board can approve or deny the request tonight, but staff would also like to know if it should proceed to Council for modifications to the Zoning Ordinance where special circumstances exist.

Mrs. Selbach noted her neighbor is here to speak. Mrs. Selbach asked for clarification on the ordinance as far as the view fence and what she has seen driving around town.

Chairman Lopez opened the Public Hearing at 6:25 P.M.

- 1) Dotty Spears, next door neighbor, addressed the Commission. Ms. Spears stated she has lived in the neighborhood 8 years. She would like a block wall between the lots. She stated the block wall affects no one else with exception to her family and the Selbach's property. She stated she thought the purpose of this meeting was to approve or deny the block wall at this meeting, and expressed her confusion over whether or not the Board would take final action based on the discussion tonight. She sees no reason why the block wall should not be allowed. There are other properties on her block that have six and seven-foot high block walls that have been installed within the last five years. No one in her neighborhood has been made to have their fences conform to looking alike. All the properties look different. She restated the block wall being requested is only affecting the Selbachs and her family. She does not foresee there being any

problem with anyone else. She stated in talking with other people about this, they are incredulous as to the steps required in getting this fence approved or denied.

Mr. Balmer noted he had received one email from Mr. Steve Mayher, who stated there should be latitude in allowing six-foot (6') block walls on the property line between neighbors in older subdivisions. The email further stated that Rancho Jardines IV is an older subdivision with lots divided by block walls, in which case he feels the applicants should have the right to decide which type of fence they use.

Chairman Lopez entertained questions from the Board.

Board Member Schuett asked Mr. Balmer if there are any changes being contemplated to the existing fence ordinance. Mr. Balmer responded no, at this point, there are not. Mr. Balmer stated the Town Council took action earlier this year to allow some modification to the Fence Ordinance to say if the property backs up to an arterial street, particularly if the applicant is a developer, the applicant could develop a new plan that was a solid wall, but if this was done, there are trade-offs as to the type materials being used, such as three types of block with additional landscaping, in order to make the wall distinctive. Mr. Balmer stated following that, one of the Council Member's asked that this be revisited to move back from having the solid walls to having view fences; however, the majority of the Council decided that given the circumstances, they did not want to revisit the issue with the wall, but to leave it the way it is. There was discussion as to options, particularly if an applicant was in a subdivision that has a view fence (which may be what Mrs. Selbach is referring to) to increase the individual property to six feet. The Council direction on that was if the applicant is in a homeowner's association, the HOA would decide among themselves and they wanted to raise the height of the wall, it would be done as a group so that there was consistency in how the wall looked and was designed. Mr. Balmer stated this amendment does not affect the Selbach's application, since this is an existing use as opposed to the new subdivisions which is what they were looking at.

As there were no other public comments, the Public Hearing was closed at 6:29 P.M.

Chairman Lopez confirmed the subject property is located in Unit IV of Rancho Jardines and these are large one-acre lots. The Board discussed the issue of where the fences would be located, the visibility issues, the intent of the Town Code, the size of the properties in this area, and the impact to neighbors east and west of the subject property. The Board stated if aesthetics are not an issue, the request seems in line with what is already existing in the neighborhood, in addition to the fact this is in an older subdivision pre-dating Town ordinance.

Chairman Lopez noted the fence being requested would be between neighbors. He feels the intent of the ordinance is to open views, not enclose the views.

Motion: Board Member Fritz

6

To allow the variance request for a six-foot solid block wall at 19701 E. Calle De Flores, per Kenneth & Cindy Selbach's application.

2nd: Board Member Roach

All ayes. Motion carried 4-0.

Chairman Lopez referenced the drawing and plot plan showing the property lines and neighboring block walls. He stated in making their decision, the Board took into consideration the fact that the east and west neighbors already have block walls in place. This variance would allow uniformity within the neighborhood along with the BOA's interpretation of the open view requirement of the code; the BOA does not believe views from the north/south neighbors would be obstructed.

Mr. Balmer informed the Board that three Members' terms will expire on August 31 and that the reappointments will be made at the August 27 Town Council meeting. He thanked the Board Members for their service.

Board Member Fritz asked if the Board needs to pass along a recommendation regarding the seven special circumstances/issues noted on page 3 of the staff report. Mr. Balmer responded it is not necessary; however, it is something being brought to the Board's attention to ask would these be issues the Board thinks in the future the Council might want to consider in terms of issues like this in terms of a variance request. Staff is not asking to use these so that the Selbachs or neighbors like them would be approved by the Staff when the ordinance states something else, but to say in these circumstances the Council might address the issue of changes in the ordinance to address those. Mr. Balmer stated if the Board elected not to forward a recommendation on this, that would be fine. Staff has only brought this to the Board's attention since there are issues like this.

Board Member Schuett stated he feels the Board should discuss whether or not they present any result to staff or the Council. Mr. Schuett stated his opinion that the seven issues listed in the report make sense because they include things such as pre-existing conditions, replacement of an existing opaque fence, etc. It is Mr. Schuett's feeling that the ordinance was not intended to have damaged solid fences replaced with a view fence. The prevailing pattern is another reason the Board approved the variance request. They do not think this fence poses a significant impact to the surrounding area since it's not visible from the street. Mr. Schuett stated he is in favor of using the seven criteria/circumstances raised in the staff report as a basis for possible modification to the Zoning Ordinance. Chairman Lopez asked if staff will forward the Board's recommendation to Council.

Mr. Balmer responded yes, staff would propose, as they work with Council on possible amendments to the fence ordinance in the future, that these issues be considered. Staff felt it necessary to be able to inform Council that Staff has reviewed these issues with the Board of Adjustment for input before moving them forward to the Council.

Mr. Schuett recommended there be a way for homeowner's to get their cases reviewed by staff, since it would be difficult to write into Code these cases that have extenuating circumstances. He stated it would be easier if staff were given latitude along these lines, since it is not in the best interest of residents to come before the BOA each time they want a fence variance from the Zoning Ordinance.

Mr. Balmer stated per the Zoning Ordinance, this is exactly how it is currently set up. Anyone wishing for a variance would come before the BOA, or modify their plat. Staff is suggesting next time this comes before Council some of these issues be raised that fall within the Board's domain, for similar subdivisions. Typically, subdivisions like Cortina or Sossaman Estates would not have variance requests before the BOA. Mr. Balmer stated the Council probably wasn't thinking about lots such as those in the older subdivisions because they were looking at new projects, not existing subdivisions. If the Council would choose to give staff more latitude by putting these issues into the Ordinance, the Zoning Administrator would have better direction from the Council as to when or when not to approve a variance at the staff level and if staff felt uncomfortable with making a determination, that in that instance the case would be forwarded to the BOA.

Board Member Fritz asked if this case was used as an example and these situations were put into text to allow the Zoning Administrator more latitude, would it eliminate these types of cases coming before the Board of Adjustment.

Mr. Balmer responded that likely is correct because the staff would review each request to determine how well it thought the request met those tests with the direction of the Council and make a determination. In the Selbach's case, the change is relatively modest in that it doesn't affect other properties in the area. But if the same fence were put on a corner lot, it would be more visible to the neighborhood and even though there might be a good reason for it as far as a variance request, due to the visibility of it, this may be a case that was referred to the Board.

Chairman Lopez asked how to go about doing this, and asked if a formal motion of approval was necessary.

Mr. Balmer stated staff would simply need something in the minutes stating the Board feels there is merit to having this issue forwarded to the Council and possibly

incorporating the seven special circumstances into the Ordinance the next time Council looks at amending the Fence Ordinance. Chairman Lopez stated he agreed.

IV. Adjournment

Motion: Board Member Schuett.

To adjourn.

2nd: Board Member Roach.

Vote: All ayes. Motion carried (4-0)

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 August 12, 2008 Board of Adjustment Meeting. I further certify that the meeting was duly called and that a quorum was present.

Dated this 12th day of August, 2008.

Passed and Approved this 23rd day of April, 2009.