

MINUTES
VARIANCE APPEAL – BOARD OF ADJUSTMENT
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
CITY COUNCIL CHAMBERS, YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
AUGUST 7, 2024
5:30 p.m.

Mayor Nicholls explained that City Council will transition to a quasi-judicial body sitting as the statutory Board of Adjustment to hear Variance Appeal/VAR-42542-2024 for property at 9616 E. 33rd Lane. **Mayor Nicholls** called for a motion to recess the regular City Council meeting.

Motion (Morales/Morris) To recess the City Council Meeting and reconvene as a quasi-judicial body sitting as a statutory Board of Adjustment to hear a Variance Appeal. Voice Vote: 7-0.

The regular City Council meeting recessed at 6:56 p.m.

CALL TO ORDER

Chairman Nicholls called the Variance Appeal/VAR-42542-2024 to order at 7:05 p.m.

ROLL CALL

Boardmembers Present: Morales, Smith, McClendon, Morris, Shoop, Shelton, and Mayor Nicholls
Boardmembers Absent: None
Staff Representation: Acting City Administrator, John D. Simonton
Board’s Legal Counsel, Steven W. Moore
Principal Planner, Amelia Domby
Other various department representatives
City Clerk, Lynda Bushong

Chairman Nicholls turned the dais over to Attorney Steven W. Moore, legal advisor to the Board of Adjustment (Board) during the appeal process.

Moore presented the following:

- Variance Appeal VAR-4252-2024 was requested by Appellant
- The variance request is to increase the allowable fence height from 30 inches to seven feet in the Recreational Vehicle Subdivision District
- The property is located at 9616 East 33rd Lane
- State law and the Yuma City Code require all four of the following conditions to be met for a variance:
 - There is a special circumstance or condition that applies to the property, building, or use referred to in the application that does not apply to most other properties in the district
 - The special circumstance was not created or caused by the property owner or applicant
 - Granting the variance is necessary for the preservation of substantial property rights enjoyed by other property owners in the vicinity under identical zoning regulations
 - Granting the variance will not be materially detrimental to any person residing or

working in the vicinity, to adjacent property, to the neighborhood, or to public health, safety, and general welfare

Mohamad Hasan, Appellant, explained that he was notified of a potential issue by City staff who came to complete an inspection inside his house and noticed the steel bars being installed. He believes that a variance is not required in this situation because he has not constructed anything, and the steel bars provide for full visibility into his property and are only meant as a criminal deterrent. The surrounding neighbors told him they do not have any problem with the change to his property. He reiterated that he does not see it as raising the height of the fence as it is not solid and does not block visibility. He pointed out that every house in his neighborhood has at least one code violation, and questioned why those violations are being ignored.

Domby presented the following:

- This is an appeal of the hearing officer's denial of the variance request to increase the maximum fence height for the property located at 9616 East 33rd Lane, which is within the Recreational Vehicle Subdivision District
- The fence constructed on the property exceeds the 30-inch maximum height set forth in the zoning code; the zoning code does not specify fencing materials
- During the variance process, staff notified neighbors within 300 feet of the subject property
- A neighborhood meeting was held on site on April 18th; 17 neighbors were in attendance
- While a few neighbors expressed that they do not oppose the variance request, the majority of the neighbors were opposed to the request; the neighbors who opposed the variance request cited traffic, property access, and safety concerns
- Staff received correspondence both in favor of and opposed to the variance request
- The property owner continued to construct the fence after the stop work notice was posted
- During the variance process, staff analyzed the variance request and the applicant's responses to the four conditions
- Staff did not find that all four conditions were met, as indicated in the brief filed with the City Clerk's Office on June 20th
- State law and the Yuma City Code forbids the hearing officer from granting a variance if all four conditions are not met
- The subject property is similar in size and shape and is developed in a similar way as most other properties within the zoning district
- On May 9th the hearing officer held a hearing on the variance request; staff filed a report with the hearing officer recommending denial of the request
- After taking testimony on the variance application, the hearing officer denied the variance
- Staff requests that the Board affirms the decision if the hearing officer

Discussion

- The City has not approved any similar variance requests within the zoning district or in its general vicinity (**Morris/Domby**)
- The Appellant is not requesting to increase the height of the fence as he does not believe the addition of steel bars to his fence qualifies as construction as it is not solid and does not block visibility (**Shelton/Hasan**)
- The Appellant did not stop work on the fence after the stop work notice was posted because it did not make sense to him and he did not believe he was violating the zoning code (**Shelton/Hasan**)

- The objections to the requested variance cited safety, emergency personnel accessing the property, and the appearance of the fence (**Shelton/Domby**)
- The maximum fence height applies to any fence, regardless of the material the fence is constructed from (**Mayor Nicholls/Domby**)
- The Appellant did not understand that he was able to bring witnesses or documentation from those who were in favor of the variance to tonight’s hearing (**Mayor Nicholls/Hasan**)
- The existing cinderblock wall is seven-foot high (**Mayor Nicholls/Hasan**)
- There is a two-inch gap between the property line and the seven-foot fence (**McClendon/Hasan**)
- While the Board could continue this hearing to allow the Appellant to provide letters of support or bring witnesses to testify on his behalf, the neighbor’s comments and any written correspondence are included in the meeting packet; additionally, their testimony would have no bearing on the four required variance conditions (**Shelton/Mayor Nicholls/Morris/ Moore**)
- Because most of the residents in the vicinity of the property are winter visitors and are not in Yuma at this time to provide input, their opinions – either for or against – have not been taken into consideration (**Morales**)
- While the zoning code does not provide a definition of a fence, the structure installed by the Appellant does appear to be a fence; additionally, none of the four variance conditions were met and the fence could negatively impact safety by impeding access and visibility (**Morris**)
- Even if the Board were to find that the fence is not materially detrimental, the remaining three conditions have not been met; all four conditions must be met to approve a variance under State law and the Yuma City Code (**Mayor Nicholls/Moore**)
- Assuming that the structure installed is indeed a fence and the variance case applies, the Appellant confirmed he is not able to demonstrate that the four variance conditions have been met (**Morris/ Hasan**)

Motion (Morris/Smith):

I find that one or more of the four necessary variance conditions were not present, therefore I move to affirm the hearing officer’s denial of the Variance VAR-42542-2024 for the property located at 9616 East 33rd Lane.

Roll Call vote: **affirmed (Hearing Officer’s denial upheld) 7-0.**

Mayor Nicholls reconvened the regular City Council Meeting at 7:46 p.m.

Lynda L. Bushong, City Clerk

APPROVED:

Douglas J. Nicholls, Mayor

APPROVED AS TO FORM:

Steve Moore, Counsel for Board

Approved at the City Council Meeting of: _____ City Clerk: _____
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