MINUTES OF THE GILA COUNTY
BOARD OF ADJUSTMENT
Thursday September 19, 2019
9:00 AM
GILA COUNTY BOARD OF SUPERVISORS CONFERENCE ROOM
610 E. Highway 260, Payson, AZ
GILA COUNTY BOARD OF SUPERVISORS CONFERENCE ROOM
1400 E. Ash St., Globe, AZ

REGULAR MEETING

1. The meeting was called to order at 9:00 A.M. by Chairman Mickie Nye.

2. Pledge of Allegiance was led by Mary Lou Myers.

3. Roll Call: Shealene Loya did the roll call; Mickie Nye (in Payson), Bill Marshall (in Globe), and Mary Lou Myers (in Payson). A quorum is present.

   Community Development Staff Members Present: Senior Planner, Michelle Dahlke, Administrative Assistant, Shealene Loya and Director, Scott Buzan.

4. Review and approval of the Minutes of the Board of Adjustment Hearing on June 20, 2019 and July 18, 2019.

5. **Director/Planner Communication:** At any time during this meeting of the Planning and Zoning Commission, the Director and/or Planner of Community Development may present a brief summary of current events. No action may be taken.

   Scott Buzan did not have anything to discuss.

   Michelle Dahlke did not have anything to discuss.

   Public Hearing:

6. **AV-19-19 GLEN HOWELL**
   An appeal has been filed against the approval of the Administrative Variance application. The applicant wishes to construct a detached garage adjacent to the primary residence with a 16' front setback. This property is located at 4487 N Chalet Drive in Pine, Arizona (APN # 301-62-025) and zoned Residential One District Limited (R1L).

   Mrs. Dahlke began her presentation by explaining that the 16' setback requires an Administrative Variance because a 20' front yard setback is the minimum requirement. Due to the irregular shape of the subject property and the placement of the septic system, there is not a lot of places the detached garage could be placed. When looking at surrounding properties for any negative impact that may be caused by this garage, it was noted that most of them had attached garages. However, detached garages can be permitted as long as they meet setback requirements or have gone through the proper Administrative Variance process. Our office received an appeal from the Portal Homeowner's Association to whom the subject property is apart of. Our understanding of the

letter is that the HOA does not permit detached garages. According to their requirements, any garages must be attached to the main dwelling on the property.

After speaking to the County Attorney, staff has made the determination that it still has the legal right and authority to approve this Administrative Variance because the Zoning Ordinance allows it. Even though staff has decided to approve the Administrative Variance, staff is not implying that they are approving a violation against the HOA's rules and that staff is not limiting their authority of enforcing these rules.

Mrs. Dahlke addressed that the property owner, Mr. Howell, was present at the meeting, as well as a member of the Portal Homeowner's Association and can answer any questions the Board may have.

Chairman Nye wanted to clarify with Mrs. Dahlke that the Board has approved other similar to cases to this one and that this case was not handled in any special way. Mrs. Dahlke confirmed that this case was not given any special treatment.

Mrs. Myers acknowledged that she is aware that detached garages have always been an issue in the Portal Homeowner's Association area. She is aware that the cul-de-sac is very narrow where the subject property sits and that the lots in the HOA are not very large.

Mr. Marshall agreed with Mrs. Myers that the property appeared to be very narrow and small.

Chairman Nye opened the hearing up to the public.

Jack Malloy, a member of the Portal Homeowner's Association, addressed the Board by stating the HOA's does not have any issues with the setbacks regulated by Planning & Zoning. Mr. Malloy asked to clarify where the word "detached" came from in regard to this Administrative Variance and how Mrs. Dahlke knew that the applicant was wanting to obtain the Administrative Variance for a "detached" garage.

Mrs. Dahlke explained that based on the request and site plan that was provided with the Administrative Variance application, the proposed garage is not attached to the main dwelling on the property.

Glen Howell, the applicant, also decided to address the Board. Mr. Howell informed the Board that he is unsure how staff came to the conclusion that the garage was detached because he planned on having a breezeway between the main residence and proposed garage.

Mrs. Dahlke explained to the Board that based on the information that was provided at the time Mr. Howell applied for the Administrative Variance, there was no indication that there would be a breezeway attached to the proposed garage. However, Mrs. Dahlke also explained that the Administrative Variance is for the setbacks and not whether the garage is attached or detached.

Mr. Howell stated that he had a contractor draw his site plan for the proposed garage, which indicated a 6' space between the proposed garage and main residence. He stated that this space is actually 5' which would classify the garage as being "attached".

Chairman Nye stated that the County used the word "detached" because based on the site plan, the 6' space between the garage and main residence would indicate a detached garage.

Mr. Malloy addressed the Board again to say that knowing the garage is not going to be detached from the main residence, the HOA has no problem with the construction of the garage.

Chairman Nye closed the public hearing and asked the Board for a motion on this case.

Mrs. Myers motioned to deny the appeal against Case No. AV-19-19.

Mr. Marshall second the motion.

The motion was unanimously passed.

7. **V-19-05 ADAM FRAZIER**

An application to request a two-foot setback at the rear of proposed residence and a two-foot setback on side of proposed garage. This property is located at 28 Chamberlain Trail in Payson, Arizona (APN # 303-28-028) and zoned Suburban Ranch (SR).

Mrs. Dahlke began her presentation by explaining to the Board that the reasoning for the Variance is the topography of the property and existing improvements on the property which limit the space to be able to construct the residence and garage. Staff does not believe that granting the Variance will have any negative impact on surrounding properties.

Mrs. Dahlke informed the Board that the applicant was not present at the meeting; however, she would try and answer any questions the Board might have regarding this project.

Chairman Nye asked Mrs. Dahlke if there is any idea of when the applicant plans to begin the permitting process for these structures. Mrs. Dahlke stated that Mr. Frazier will being applying for permits as soon as the Variance has been approved by the Board.

Chairman Nye also talked about the idea of setting revisionary clauses in the staff recommendations that states the property owners has a specific amount of time after the approval of a Variance to begin the next process of the project before the Variance becomes void. Mrs. Dahlke recommended that Mr. Buzan or Jeff Dalton, the Gila Count Attorney, give their insight on putting a time limit on Variances.

Mr. Buzan asked to get Mr. Dalton's opinion on the subject. Mr. Dalton stated that he does not believe that there is a statute that specifically explains limitations on Variances. He was also not aware of any enforcement the Board would have in regard to any limitations on Variances.

Chairman Nye referred to a case that occurred in 2002 in which an Administrative Variance was approved for a property owner applied for a 10' rear yard setback. Chairman Nye proceeded to ask Mr. Dalton that if that property was then sold, do the new property owners automatically have that Administrative Variance approval?

Mr. Dalton answered by stating that he would likely need to do additional research on this subject and that he believes that if the Board thinks it is important to set revisionary clauses then it should be able to set those clauses.

Mr. Buzan added that it is his understanding that either a Variance or Administrative Variance is attached to the property itself and not the property owner.

Mr. Marshall motioned to approve the Variance for Case No. V-19-05.

Mrs. Myers second the motion.

The motion was unanimously approved.

8. **V-19-06 VIRGIL WAGNER**

An application to request a 12' front setback for existing shed and a 5' setback for a proposed carport. This property is located at 280 Saddle Mountain Road in Payson, Arizona (APN # 303-05-138C) and zoned General Unclassified (GU).

Mrs. Dahlke began by explaining that the owner of the subject property was not aware that a permit was needed for the existing shed at the time he constructed it. When Mr. Wagner began the process of obtaining a Variance for the proposed carport, it was discovered that no permit was issued for the existing shed. Mrs. Dahlke explained that staff believes the property meets the criteria needed to obtain a Variance. An Administrative Variance was also recently approved for this property to allow for a 3' setback for the existing shed and to allow both structures to be located at the front yard of the property. The Administrative Variance will go into effect on September 26th if no adjoining property owners file an appeal.

Mrs. Dahlke went on to explain that because of the irregular lot shape and placement of the primary residence on the property, staff believes that it meets the criteria for a Variance.

Mr. Wagner was present at the meeting and offered to answer any questions the Board may have.

Mrs. Myers asked Mr. Wagner is the existing shed that was built without an Administrative Variance was on the property prior to him purchasing it. Mr. Wagner informed the Board that he had constructed the shed after purchasing the property.

Mrs. Myers motioned to approve Case No. V-19-06.

Mr. Marshall second the motion.

The motion unanimously passed.

9. Adjournment. Mr. Marshall made a motion to adjourn the meeting and Mrs. Myers second the motion. The motion to adjourn was unanimously approved at 9:28 A.M.