

Board of Adjustment

Staff Report

CASE NUMBER: BA15-042 (PLN2015-00366)
LOCATION/ADDRESS: 526 West Rio Salado Parkway
COUNCIL DISTRICT: Council District 1
STAFF PLANNER: Lisa Davis
OWNER: The Oaks Apartments
APPLICANT: Park Pro-Jeff Reed

REQUEST: *Requesting a Variance to allow a fence to exceed the maximum height permitted when located within the required street side setback in the RM-4 zoning district.*

SUMMARY OF APPLICANT'S REQUEST

The applicant is requesting a variance to allow a 6' high fence to encroach into the 20' street side setback adjacent to West 9th Street. This will allow for installation of a wrought iron fence with two automatic vehicular gates. This will mitigate the excessive non-resident pedestrian and vehicle through traffic accessing Rio Salado Parkway.

STAFF RECOMMENDATION

Staff recommends **approval** of case BA15-042, *conditioned upon the following:*

- 1. Compliance with the site plan and elevations submitted, except as modified by the conditions listed below.*
- 2. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
- 3. Compliance with all requirements of the Transportation Department with regard to access to a public street and sight line visibility standards.*

SITE CONTEXT

CASE SITE: Existing multi-residence – Zoned RM-4
NORTH: (Across 9th Street) Existing multi-residences – Zoned RM-4
EAST: Existing multi-residence – Zoned RM-4
SOUTH: (Across Rio Salado Parkway) Existing single residence – Zoned RM-2
WEST: Existing multi-residence – Zoned RM-2

STAFF ANALYSIS

The 2.3 acre apartment complex project was approved for 86 units (Z83-146) and constructed in the early 1980's. Since the development of this project, the area has changed. In the 1980's Rio Salado Parkway was named 8th Street. Riverview, Tempe MarketPlace, the 202 Red Mountain Freeway and 101 Price Freeway were not in existence. The development of these commercial centers and freeways has impacted the traffic and circulation of the area.

Currently the site has one driveway access at the south from Rio Salado Parkway, and at the north from West 9th Street there are two driveways. The applicant is requesting a variance to allow a 6' high black wrought iron fence to be installed within the 20' required street side setback. The wrought iron fence with two vehicular gates and two pedestrian gates will be placed on the north side of the property adjacent to West 9th street at 5' from the

property line. This will help to alleviate the non-resident cut through pedestrian and vehicle traffic using the site to access Rio Salado Parkway.

The ordinance does allow for a 4.5 high fence to be installed in the street side setback as long as the upper 1.5 feet are transparent. The proposed 6' gate and fence are fully transparent. There is an existing 3' high stucco wall used for screening of parking and circulation that will be required to remain. Should the applicant be required to install the 6' high fence at the 20' setback it would significantly impact the site design. Parking spaces would need to be eliminated and circulation on site would need to be reworked. This would create a shortage of parking on the site.

One of the vehicular gates will be used for entrance with a transmitter. The other will be for exit only. No gates or fences are proposed to be installed adjacent to Rio Salado Parkway.



View from 9th Street at the western most curb cut.



461 W. 9th Street-directly to the east of the site

On August 11, 2015 the City of Mesa Transportation Department provided an email (attached) stating that the gate concept at 9th street is ok. The email from Dale Brunk, Senior Traffic Studies Analyst, further indicates safety requirements that will be required to be met prior to the issuance of a building permit.

As proposed, the placement of the 6' high fence and gate within the 20' street side setback requires the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:

- a) *There are special conditions that apply to the land or building.*
- b) *The special condition was pre-existing and not created by the property owner.*
- c) *That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*
- d) *The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.*

As justification for the requested variance, the applicant has noted: 1) This is the only property located between North Date Street and North Country Club Drive that has access between Rio Salado Parkway and 9th Street; 2) The property condition is pre-existing and creates excessive non-resident pedestrian and vehicle traffic through property; 3) Without the variance the automatic gates and fence are not feasible; 4) The installation of the automatic gates and fence is similar to other sites with existing fencing and does not give special privileges.

The 86 unit apartment complex was constructed in the early 1980's. The area has had significant changes including increased traffic at Rio Salado Parkway. This is the only property within this block with direct access from 9th Street to Rio Salado Parkway. The applicant indicates there is significant pedestrian and vehicular cut through traffic to expediently access Rio Salado Parkway.

Therefore the site does have special conditions and those conditions were pre-existing and were not created by the property owner.

- a) Strict compliance with placement of the 6' high wall at 20' from the property line would impact the parking and circulation of the site, creating a hardship condition that would force complete redesign of parking, vehicle circulation, and building locations.

- b) This would create an undue hardship related to existing conditions on the site. If the fence was built in conformance with fence setback standards, then the owner would lose required parking for the site, in addition to the potential loss of several existing multi-tenant apartment buildings.
- c) A similar condition does exist in this vicinity, as the apartment complex at 461 W. 9th Street, directly to the east of this property, does have a 6' high wrought iron fence and gate.
- d) Staff believes this variance will not constitute special privileges, or otherwise allow something that does not typically occur on multi-tenant apartment campuses to provide extra security, or control unwanted vehicular access.

FINDINGS

- 1. The existing 86 unit apartment complex on a 2.3 acre site was constructed in the early 1980's.
- 2. Close proximity and access to several newer regional scale commercial developments, and to the 101 and 202 Freeways, have impacted this site through increased traffic on Rio Salado Parkway. The increase in traffic occurred after the construction of this apartment project in the early 1980's.
- 3. The buildings, parking and circulation are existing on the site and are pre-existing, built in conformance to the standards in place at the time of development, and are not self-imposed conditions.
- 4. Strict compliance with the placement of the 6' high fence behind the 20' setback would impact the design of the parking and circulation of the site, resulting in a reduced number of parking spaces. In turn, reducing the number of parking spaces does create undue hardship to the property owner, as it would create another non-conforming condition (fewer than the minimum number of parking spaces) on the site.
- 5. The apartment complex to the east has an existing 6' high wrought iron fence with gates placed adjacent to West 9th Street. It is common for apartment complexes to have such security and traffic control related 6-ft high fencing at the perimeter of the site.
- 6. The request does not involve an expansion or intensification of the apartment complex.
- 7. Strict compliance with development standards would deprive the property owner of a privilege enjoyed by surrounding property owners.
- 8. An e-mail has been received from the City of Mesa Transportation Department, dated August 11, 2015. It indicates that they accept the gate concept, and lists additional requirements for full compliance with Traffic Safety requirements needed to obtain required building permits for this fence project.

ORDINANCE REQUIREMENTS

Zoning Ordinance, Variance Required Findings Section 11-80-3:

A variance shall not be granted unless the Zoning Administrator, when acting as a Hearing Officer, or Board of Adjustment shall find upon sufficient evidence make a determination:

1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, and
2. That such special circumstances are pre-existing, and not created by the property owner or appellant; and
3. The strict application of the zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district; and
4. Any variance granted will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

Zoning Ordinance, Sec 11-5-5: Development Standards for the RM District

RM-4 – Front and street facing side setback- 6 lane arterial: 30'; 4 land arterial 20'; Collector 25 feet; Local street 20'.

Zoning Ordinance, Sec. 11-30-4 General Site Development Standards

A. Fences and Freestanding Walls:

1. **Maximum Height.**
 - a. **Front Yards.** No opaque or non-transparent fence or freestanding wall within or along the exterior boundary of the required front yard shall exceed a height of 3.5 feet. Fences or freestanding walls over 3.5 feet high are allowed in front yards, provided the fence or freestanding wall does not exceed a maximum height of 4.5 feet, and the topmost 1.5 feet is visually transparent and not opaque.