

**MINUTES OF THE SPECIAL MEETING OF  
THE LITCHFIELD PARK BOARD OF ADJUSTMENT  
June 3, 2021**

**I. Call to Order**

The meeting was held online via Zoom and was called to order by Chair Ledyard at 7:04 p.m.

Present: Chair Ledyard; Vice Chair Charnetsky; and Boardmembers Dudley, and O'Connor.

Absent: Boardmember Clair.

Staff Present: Jason Sanks, Planning Consultant; and Pam Maslowski, Director of Planning Services.

**II. Business**

**A. Public Hearing: Variance ZA.21-03: 14044 W. Greentree Drive South**

Chair Ledyard opened the Public Hearing.

1. Staff Report:

Mr. Sanks stated that the applicant is requesting a variance from the Zoning Code requirements for shade structures located in a side yard. In this case, the applicant has already started construction of the structure, which he believes will be some type of outdoor kitchen type area. The request is to reduce the side yard setback to 5'6". Ms. Maslowski noted that the applicant is also requesting to encroach 6' into the 10' setback distance required from the primary structure. The variance notice was posted for both requests. Mr. Sanks displayed his Staff Report which included a photo of the property, and indicated where the structure is located. He stated that detached shade structures can be located within a side yard but must meet the main building setbacks, which in this case is 10'. He is not aware if the applicant was aware of the requirements when he began construction, but the City did issue a Stop Work Order. He also believes that the homeowner has coordinated somewhat with the Homeowners' Association (HOA) and may have received approval for some drawings at some point. Getting a variance from the Zoning Code requires that all four of the following conditions be met:

- a. Are there are special circumstances or conditions applying to the land, building, or use referred to in the application which do not apply to other properties in the district?
- b. Were the special circumstances not created by the owner or applicant?
- c. Is authorization of the variance necessary for the preservation and enjoyment of substantial property rights?
- d. Will authorization of the application not be materially detrimental to persons residing or working in the vicinity, to adjacent properties, to the neighborhood, or to the public welfare in general?

The application notes that the homeowners believe they have met the four conditions, stating that it is difficult to put a shade structure on the lot, because it is a corner lot. The Board has looked at corner lots in different capacities in the past. However, being a corner lot does not automatically create a special circumstance. Therefore, it is not certain that Condition a has been met and, if Condition a has not been met, then Condition b cannot be met. Staff also believes that Condition c cannot be met. The home already has a large covered rear patio, a pool, and a fully landscaped rear yard. They applicant just wants a structure on this part of the property. Prior to tonight's meeting, Staff received an email from a nearby property owner that was opposed to the variance. It noted that the homeowner should follow the rules and locate the structure where the rules allow. Based on the appearance of the half-built structure and that it is very visible from the street, Staff did find that it could be perceived as

detrimental to others. It can be difficult to meet the four conditions required for a variance. That does not mean that Staff does not sympathize with the applicant's desires for the property. It means that, from an objective perspective, based on experience with other projects and State Statutes, Staff was unable to confirm that all four conditions have been met.

2. Applicant Presentation:

Ben Metcalf, the applicant, noted that he has a different opinion regarding whether his request meets the four required conditions. The home is located on a corner lot. He was given the choice to select the yard on the pool side as the rear yard and the one on Litchfield Knoll as the side yard. That was their understanding before they decided to move forward with submitting their architectural plans to the HOA. When it was approved at that time, the job transitioned from a flat roofed pergola to an apex pergola to mirror the aesthetics and design of his home. They went through the HOA and the property management company, who approved the project. They did not go through the City. They did not realize they had to go through the City for more than just a permit. They did not realize they had to get a variance. The neighbors, specifically the ones on the adjacent property line, have been extremely supportive and in favor of this. He is sure there are members of the community who are wondering why this is taking so long to complete, as are he and his wife. He would like to complete this, not only for aesthetic purposes, but also for safety and functionality. The backyard is panoramic and shallow, about 14' from the patio. He cannot watch the kids in the pool safely from that patio. He has to be in front of the pool which has no covered structure. It is not anyone's fault; but, it creates a safety barrier for the pool area for his family, and that is a number one priority. If he had steamrolled this in the beginning, he would not be here today. They have taken the progressive steps to ask for a variance to complete the project. They did not take it upon themselves to sidestep the rules of the City. They are asking forgiveness. However, they also want the Board to know that there are extensive and progressive steps that they have taken to get to where they are today. They have fulfilled the obligations of 80% of the requirements. He would like to hear from the community to see if they support this project.

Chair Ledyard inquired if there has been a change from what the HOA had approved and what is being proposed now. Mr. Metcalf replied that there have been multiple approvals from the HOA. The first approval from the HOA was on October 31, 2019 for a structure with a flat roof in the same proximity. The second approval was on July 9, 2020, which is when the project changed from a flat roof to an apex to align with the architectural design of the home. The last approval was on March 26, 2021, which was to make sure that they had the adequate information and authorization to provide to the City to get to this hearing. This was the confirming copy to give to the City. Chair Ledyard asked if the last approval matched what they were trying to build. Mrs. Metcalf nodded in agreement and said that the change from the flat roof to the apex roof did not change the footprint of the structure. The HOA did approve the Apex roof design.

Boardmember O'Connor inquired if the HOA approval noted that the approval was contingent upon approval from the City. Ms. Maslowski responded that the HOA approval did note that. Mr. Metcalf stated that the intent of his project is to uphold the aesthetics of the property and community. They are not looking to deviate from that. They made some decisions that were not 100% accurate throughout this process. At this point in time, with the resources and the expenses spent, and the fact that it is 80% complete, he is hoping that they do not have to regress and that a compromise can be made.

3. Public Comments:

Ms. Maslowski stated that she had received one letter, which was included in the agenda packet, that did not support the application, and 13 emails/letters supporting the project were received after the agenda had been processed. She also received Request to Speak forms from Bruce Berroth and Rick Shows.

Bruce Berroth stated that he lives near the applicant. The structure provides shelter from the hot Arizona sun and they have no other place to put it. It appears they met Condition a. They meet Condition b as they did not build the house. He thinks they are the second or third owners. As for Condition c, the summers here are getting hotter and longer. Providing shade for the family is valuable and necessary. He walks his dog daily in this neighborhood, and the structure is not in any way obtrusive to the neighborhood or neighbors. It is behind the wall and landscaping. He hopes the variance will be approved.

Rick Shows stated that he and his family live next door to the west of the applicants. He and his wife built their house, and he has no problem with the structure because of the pool's location. Mr. Metcalf talked to him before starting the project. The structure is in a perfect location and does not affect his family's living space. They have no concerns with the variance.

Patrick Moran stated that he is speaking on behalf of his wife and himself. They also submitted a letter to the City. They are in favor of the variance. They live on the other side of the applicant's house, across Litchfield Knoll. The structure fits nicely in the neighborhood and is not an eyesore. It sets back quite a way from the road. They hang out together a lot and understand the importance of having that structure to watch the kids in the pool.

Carol Anonomura stated that she and her husband, Arthur, live across the street. Her brother and his wife built the house many years ago, and they are very familiar with the house and the pool. It seems that there is no other place to put a shade structure where the kids in the pool can be observed. The structure's design seems to be in keeping with the architecture of the house and neighborhood. They support the request.

Doug and Trisha Rankin stated that they live two houses down from the applicants' home. They walk by it on a daily basis and do not have any issues with the structure. It makes sense for them to have a shade structure to be sure their children are safe around the pool. They support the variance.

Jenny and Brady Sullivan noted they also live in Litchfield Greens. They have had the opportunity to be both inside and in the back yard of the Metcalf's home. It definitely makes sense to locate the shade structure where they have put it for the safety and security of those using the pool. They believe the four conditions have been met. The second option design of the structure works with the integrity of the home. They are fully supportive of the project.

Cameron Hauser stated that he and his wife live on Litchfield Knoll and are in favor of the structure. Moving from the Seattle area, they really love how every home in this neighborhood is different. With the roofline matching the house, they have no issues with this being built. They would just like it to be built in a timely manner. They know the Metcalf family and believe this will be a benefit to the neighborhood and to the returns should they decide to sell. It will also serve for the safety purposes for the kids.

Mr. Sanks thanked the people providing comments for the information they provided. He noted that, after hearing the detailed testimony from the homeowner and neighbors, he could suggest that it is possible that Condition d could be considered differently. The structure is 5'6" from the property line, the adjacent neighbor testified that he supports the project, and many of the neighbors noted that it will not have a detrimental impact on the neighborhood. Also, with the testimony provided tonight, he could evaluate that substantial property rights would be better enjoyed with the shade structure. Looking at the aerial, the pool orientation is unusual as well, tucked in the corner. He would suggest that Staff could lean toward support of the project. He would like the applicant to tell the Board what the structure will look like.

Mr. Metcalf stated that the structure will mirror the aesthetics and structure of the existing home. Everything was ordered, constructed, fabricated and installed too mirror the home. It will be a tall roof upon completion with an open beam configuration. The undercarriage will be T1-11. The paint and stucco will match the house. Everything will mirror the existing home. The encroachment on the property line is just the front left west corner. The back portion is about 9' away from the property line. It is because of the pie-shaped lot.

Vice Chair Charnetsky noted that she has noticed that residents have been building within the setbacks lately. She believes people are doing it without permits. It seems that, in this case, the homeowner tried to do the right thing, at least with the HOA. She is concerned about all the construction going on without permits.

Boardmember Dudley inquired if the position of the pool has ever been considered a special circumstance in previous variance applications. Mr. Sanks replied that a special circumstance can be any number of items. The Board has previously identified that being a corner lot by itself is not a special circumstance. Sometimes, when a home is spun at an angle, and it creates odd-shaped dimensions on a corner lot that can be considered a special circumstance. That is not the case here, but the shallow rear yard and the location of the pool, mixed with the corner lot and the side yard being adjacent to a home being at a different orientation, could be considered as a special circumstance.

Boardmember O'Connor inquired as to what is the minimum side yard setback for the building, and Mr. Sanks replied that it is 10'. He noted that the home currently exceeds that. The applicant is asking to reduce the minimum 10' required to 5'6". The structure does veer further away as the property line tapers toward the neighbor. Boardmember O'Connor asked if the 10' setback would be maintained if the structure were attached to the home instead of being free-standing. Mr. Sanks replied that if it were slid over to attach to the home, it would meet the setback requirement. However, it cannot remain in its current location and be attached to the home because it would still encroach into the 10' setback.

Boardmember O'Connor **moved** to close the Public Hearing; Boardmember Dudley **seconded**; **unanimous approval**.

## **B. Variance ZA.21-03: 14044 W. Greentree Drive South**

Chair Ledyard stated that these types of projects are difficult to act on. The Board is tasked under State Law and the City's Code to find that all four of the conditions have been met. He was taught that an unusual circumstance would be something like a pie-shaped lot, or a lot shaped so that it would be difficult to build a home on while meeting the setback requirements. Side yard setbacks are not there just for aesthetics, but also for safety. Also, it is not a special circumstance if a previous owner laid out a home a certain way because the new owner purchased the home the way it is. He asked if a couple of patio tables with shade umbrellas by the pool would be allowed, and Ms. Maslowski replied that they would. Chair Ledyard noted that he understands that might not be the best solution. There is overwhelming neighborhood support for this variance, but if the Board wants to approve this, specific findings must be found for the four conditions.

Boardmember O'Connor commented that this is a difficult case. He inquired if there is another location where the shade structure could be located. Mr. Sanks stated that the homeowners already have a patio cover attached to the rear of the home; however, the applicant has testified that they are unable to see the pool area from that back patio. They would like to have a shade structure closer to the pool. Looking at the aerial, he cannot suggest that there is another more logical place in the rear of the property to add a structure.

Boardmember Dudley commented that, because of the orientation of the lot, it seems that locating a structure on the back side would not provide any shade. She asked what the process would be if this were denied. Mr. Sanks replied that if the variance is denied, the decision can be appealed to Superior Court.

Chair Ledyard asked if there is a way to moved the shade structure closer to the pool because the lot widens toward the rear. Mr. Sanks replied that, in theory, it probably could be, but the case before the Board now is with the current location. Chair Ledyard noted that the applicant had noted something about

compromise and this might be a solution. Mr. Metcalf stated that the front columns are just two feet away from the water so it will create shade over the Baha step area. If moved further the pillars would infringe on the water. Mr. Sanks stated that the site plan provided by the applicant indicates that the structure is much further away from the pool than 2’.

Boardmember O’Connor stated that the structure is about 80% completed and inquired what bearing that would have on the conditions. Chair Ledyard replied that the applicant noted that it was built without following the proper procedures. If that is considered, then the City would be encouraging others to do the same. A variance is not a popularity contest. Anyone can appeal the decision, including those in favor and those not in favor. The Board must make findings as to why they feel all four conditions have been met.

Vice Chair Charnetsky expressed that there do not appear to be any special circumstances unless the corner lot is considered along with the placement of the pool.

Vice Chair Charnetsky **moved** to approve the variance, noting that the four conditions could be met considering the corner lot and placement of the pool; Boardmember Dudley **seconded**. Vice Chair Charnetsky noted she made the motion to start discussion. The lot is slightly off-square and is a corner lot which requires two large setbacks.

Chair Ledyard called for the vote. The motion **failed 0-4**, with Chair Ledyard, Vice Chair Charnetsky, Boardmembers Dudley and O’Connor opposed.

Chair Ledyard **moved** that, based on the testimony provided and the original Staff Report, that the four conditions have not been met because, although it is a corner lot, the conditions are not much different than other corner lots and the conditions were present when the applicant purchased the home; Vice Chair Charnetsky **seconded**; **the motion failed 1-3**, with Vice Chair Charnetsky and Boardmembers Dudley and O’Connor opposed.

Boardmember O’Connor inquired if the Board could request legal advice. Chair Ledyard suggested continuing the decision tonight in order to receive legal advice from the City Attorney. Mr. Sanks inquired if the Chair be open to placing this on the July Design Review Board’s meeting agenda so the applicant would not have to wait another month should the variance be approved at that time. Chair Ledyard had no objection.

Boardmember O’Connor **moved** to continue this to the July 1, 2021 meeting in order to obtain legal advice; Boardmember Dudley **seconded**; **unanimous approval**.

### **C. Public Hearing: Variance ZA.21-02: 614 La Loma Avenue**

Chair Ledyard opened the Public Hearing.

#### **1. Staff Report:**

Mr. Sanks stated that this applicant is requesting a reduction of the required 5’ side yard setback required for accessory structures to 1’4”. The four conditions the Board must find apply in order to grant a variance were noted during the previous Public Hearing. The applicants noted that they reached out to the Building Department and were told that, based on the size of the structure, they did not need a building permit. However, they are still required to follow the requirements for placements of accessory structures in the rear yard. It is Staff’s understanding, that this was an oversight with regard to the owner’s understanding as to where this type of structure can be located. Mr. Sanks displayed a picture supplied by the applicant showing that the columns have already been installed. It is not very often that the City sees a structure above the fence line built almost right on the property line. There may be some instances where people have done so without City approval, but that does not

constitute grounds for granting a variance. In this case, Staff found they could not make the findings for any unusual circumstances applying to this lot. It is a regularly shaped lot. It just happens that the homeowners want to place the structure very close to the lot line. Perhaps, they could work with City Staff to find a different location for the structure where it could be located without a variance. Staff finds that there is no special circumstance that applies. It appears to be just a mistake.

## 2. Applicant Presentation:

The applicants provided the following information:

They referred to the picture of their rear yard supplied with the application. They had put down a small brick patio prior to beginning their project. They emailed the City, noted their project was under 120 SF (square feet), and were told they did not need a permit. As they were doing the brick patio, they had to put in the footings and supports for the shade structure. There really is no other place to put it in the rear yard. They have an east by southeast exposure, and the sun exposure would be terrible at any other any other location they could put it. There is nowhere else to put it inside their safety fence. He did talk to the neighbors about the project. Only one neighbor shares that particular wall, and they are fine with this. They reached out to the City Building Department in September 2020 before they put the bricks in and asked what was needed to put in a pergola. They were provided the guidance dated July 2017, included in the agenda packet, regarding permits. It says permits are required only for structures over 120 SF. Their structure is less than that. Based on that guidance, they felt they were good to go. They should not have to get variance because, based on the City's guidance provided, they do not need a permit. The guidance also says the Design Review Board will approve the permit. They did their due diligence. As for special circumstances, their rear property wall is being replaced soon. Currently, it is very low. She referred to the aerial photo provided to the Board and said their pool is located in the southwest corner of the rear yard. If they put the new structure 10' away from the house would cause them to encroach into the 5' setback from their neighbor's property. If they put it on the north side of the pool, it would not provide shade. That is why they chose the area where they put it. It is 6' from the pool to the property wall at its closest point. Their grill is built in, but it is also within the 10' area. There is no place in close proximity within the safety fence where they can watch their children. The special circumstance is the wall height is very low and the City will replace it with a higher wall. No one will see it. Their neighbor has no objection, but they are out of town at this time. They took photos of encroaching structures and submitted them to the City. To allow that practice to continue, the City is setting an example of not doing anything about it. The City is granting approvals by abstaining. Their structure will not be seen from the street because they have a tall tree that blocks the view. Also, the poles are currently taller than the wall but that does not mean that the pergola will be taller than the wall. When the installation takes place, they will cut them down to whatever height it needs to be. If the issue is being visible over the wall, they would be happy to raise the wall. This is the only logical space for the shade structure due to the location of the pool and the sun.

In response to questions, the applicants supplied the following:

They do not want to use rolling umbrellas because they get blown into the pool and are a safety risk. The structure they are proposing would look aesthetically better than two umbrellas. There are two gates in the fence that lead to the pool. There is not a good view of the pool area from the existing patio area. There is no break in the safety fence that goes along the patio, and they do not consider that part of the pool area. The patio is 15' off the pool, and not within the pool fence. The pamphlet they received from the Building Department states that the City Planner or Design Review Board must approve the project prior to submitting for a permit. Vice Chair Charnetsky pointed out that, in another paragraph it notes that a site plan is necessary to show the location of the project on the property in relation to the house and other structures. Above the requirement for design review, the pamphlet states that structures must meet certain setbacks and clearances from other

buildings, and that they should contact the City 's Building or Planning Department for information about specific zoning areas. The applicants noted that they saw that, since they did not need a permit they did not have to do that. They reduced the size so they would not have to meet the other requirements.

The Zoning Code section on accessory structures notes that screened accessory structures do not need to meet the requirements. Ms. Maslowski explained that the Zoning Code definition for screened accessory structures is one that is completely screened by a masonry wall. The structure cannot be higher than the masonry wall that surrounds it and cannot be seen through the wall.

The City will be raising the wall. Ms. Maslowski noted they will be only raising the City wall. Residential walls are limited to 6' in height.

There is another structure on the corner of her street that is inches from the property wall. It is larger than 120 square feet and in plain view. To allow that, while not allowing hers which will be 200 feet from the street view. The City needs to take a look at how they are addressing these issues. They obviously misinterpreted the requirements.

Mr. Sanks pointed out that Staff is not trying to place blame. There appears to be a misinterpretation of the requirements, but the requirements must be followed unless a variance is granted. Chair Ledyard noted that the Board can only act on what is in front of them. If there are other structures in the City built without City approvals, then that is something that the City's Code Compliance will have to address. What is before the Board now is this application. Setbacks are required for a number of reasons, one of them being for safety purposes. There are poles within 18' of the property wall. The Board is reviewing whether this request meets the four conditions.

The applicants expressed that they believe they have met the four conditions. The special circumstances applying to this property is that it backs to Litchfield Road. The cannot have anything in another place because of the pool. The City is improving the property wall for all of the La Loma residents. The way the sun tracks through the yard, there is no other feasible location. As for the preservation and enjoyment of property rights, they believe that it would allow adults to sit next to the pool and watch the kids in the pool. It will not be detrimental because they only people next to them that will know it exists are the neighbors who said they think it will be great. Chair Ledyard asked why the applicants think their property is different from others in the neighborhood. They replied that their property is the only one that has a safety barrier around the pool. The pool is on the corner of the property. The pool is located in the corner of the lot so the only place to put the structure is where they have proposed. The neighbors' pools are centered in the rear yard where their pool is in the corner. The City is raising the wall height. Chair Ledyard noted that the lot itself is about the same size and shape as other lots in the area. The pool was in that location when the applicants purchased the property. The applicants noted that they are flexible in changing the height or anything else they can do to make it work.

In response to questions from the Board, Mr. Sanks replied that, if the pergola was lowered to 6' and screened by the adjacent wall, a variance would not be required. The intention behind allowing screened accessory structures to be closer to the fence wall was to allow for small sheds to store for tools, lawn equipment, and such. The pergola would have to be at or below the height of the wall in order to avoid the variance issue. There are a number of options. The Board can request that the variance amount be minimized to the extent possible or the structure be reduced in height to not require a variance at all.

Chair Ledyard suggested this item could be continued to the next meeting to allow the applicants to adjust lower the height of the structure. The applicants noted they would be willing to work with the Board to lower the height of the pergola to make it work. Mr. Sanks stated that Staff could work with the applicant to build the structure so that the portion of the structure within the 5' setback is not

above the height of the fence. The roof would be somewhat different looking. Vice Chair Charnetsky commented that this structure is so close to the property line that there are other issues. A shed can be easily moved, where this cannot. Chair Ledyard noted that, perhaps, there is a way to make this work while still complying the Code. Boardmember O'Connor pointed out that, if the variance is denied, the applicant can still work with Staff to bring it into compliance. The variance can be continued, and if it happens that a variance is not required, the item can be withdrawn. In response to a question regarding what is considered as visible, Mr. Sanks noted that to be located within the required setback, the structure has to be under the height of the opaque property wall on all sides, which means it would be under the 6' height. The applicants noted that they believe their wall is less than 6', and even a 6' height would be too low. The supports can be cut and removed and the pergola slides over those supports. It can be removed so this is not a permanent structure. Chair Ledyard noted, it appears that the applicant does not think the height can be reduced to under 6'. Mr. Sanks suggested that there might be an option where the height can be cantilevered to be under 6' in the portion of the property within the required setback and then cantilevered up as it moves away from that area. Ms. Maslowski noted that the structure is considered as a whole. If the structure is visible from any portion of the property, it is not considered a screened structure and cannot be located within the setbacks. The applicants noted that they would have to work with Staff and go through options.

3. Public Comments:

There were no comments.

Boardmember O'Connor **moved** to close the Public Hearing; Boardmember Dudley **seconded;** **unanimous approval.**

**D. Variance ZA.21-02: 614 La Loma Avenue**

Boardmember O'Connor **moved to deny** the variance, based on Staff's recommendation and finding that the four conditions cannot be met; Boardmember Dudley **seconded;** **unanimous approval.**

Chair Ledyard commented that the denial of the variance does not mean that the applicant cannot work with Staff to come up with a compromise.

**E. Minutes**

Vice Chair Charnetsky **moved** to approve the minutes from the March 4, 2021 meeting; Boardmember Dudley **seconded;** **unanimous approval.**

**III. Adjournment**

Boardmember O'Connor **moved** to adjourn the meeting; Boardmember Dudley **seconded;** **unanimous approval.** The meeting was adjourned at 9:18 p.m.

APPROVED:

**BOARD OF ADJUSTMENT**

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David Ledyard, Chair

/pm