

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Chad Weaver, Community Development Director
Paul Michaud, Planning Manager
George Burton, Senior Planner

DATE: May 7, 2025

DEPARTMENT: Community Development Department/Planning Division
George Burton, 480-348-3525

AGENDA TITLE:

Jellies Variance – 5204 N 70th Place (APN 173-18-028)

Variance to allow a pool and spa to encroach into the setback

Case No. BA-25-03

This application is a variance request to allow a new pool and spa to encroach into west/rear yard setbacks. Staff recommends approval of this variance request.

RECOMMENDATION

Motion For Approval

It is recommended that the Board of Adjustment **[approve]** Case No. BA-25-03, a request by Richard Jellies (of the Sanctuary Holdings Living Trust), property owner of 5204 N 70th Place; for a variance from the Zoning Ordinance, Article VII, (R-18 and R-18A) Single Family Residential Districts, to allow a pool and spa to encroach into the west/rear yard setback.

Reasons For Approval:

Staff finds that there are special circumstances and property hardship that warrant the request for setback encroachment and staff believes that the request meets all three variance criteria.

BACKGROUND/DISCUSSION

Scope of Request

The applicant is requesting a variance for setback encroachment. Section 702.4 of the Zoning Ordinance requires a minimum pool and spa setback of 40 feet from the front property line and a 20-foot setback from the side and rear property lines. The applicant is requesting a variance to allow a new pool to be setback 12 feet from the west/rear property line and the new spa to be setback 14.5 feet from the rear/west property line.

The pool is 469 square feet with 190 square feet encroaching into the rear yard setback. The spa is 2.5 feet above grade, located at the south end of the pool and is 50 square feet with 37 square feet encroaching into the rear yard setback. A total of 227 square feet encroaches into the rear yard setback. Below is a comparison of the Zoning Ordinance requirements and proposed pool/spa setbacks.

Zoning Ordinance	Proposed Pool & Spa
40' Front Yard Setback	94' (+/-)
20' Side Yard Setback with Street	95' (+/-)
20' Side Yard Setback with Neighbor	33' (+/-)
20' Rear Yard Setback	12' Pool & 14.5' Spa

Lot History

The subject property is Lot 27 of the Gross Pointe 2 subdivision. This lot was platted in 1958 under Maricopa County's jurisdiction and then annexed into the Town on May 25, 1961. According to Maricopa County aerial photos, the original home was built in the late 1960s. However, it was demolished and replaced with the current home in 2021. The original home also had a pool that was setback approximately 25' from the rear property line. The following is a chronological history of the property:

September 11, 1973	Building permit for Addition to House
September 27, 1984	Building permit for Pool
July 23, 2021	Building permit for New Single-Family Residence

Variance History

The property owner requested two variances on this property. The first variance request was reviewed by the Board on May 1, 2019 and was regarding a major remodel/addition to the existing nonconforming home. Specifically, to convert the carport into a garage and to maintain existing setback and height encroachments. This variance request was denied.

The second variance request was reviewed by the Board on October 4, 2023 and was to allow a proposed pool and spa to encroach into the rear yard setback. This variance request was denied. Below is a comparison of the previous pool/spa request with the current/proposed request.

	Proposed Pool	Previous Pool	Proposed Spa	Previous Spa
Rear Setback	12'	12'	14.5'	12'
Size (Sq Ft)	469	432	50	100
Encroachment (Sq Ft)	190	216	37	80
Shape	Kidney Bean	Rectangular	Round	Square

Lot Conditions

The property is zoned R-18A and is 20,262 square feet in size (0.47 acres). The property is a corner lot and is rectilinear in shape. The property is 158 feet wide and 127 feet deep. The R-18A zoning district requires a minimum width of 120 feet which results in an approximate minimum depth of 155 feet (if platting a new R-18A property).

The subject property and many of the other properties in the subdivision are not meeting the minimum depth since this subdivision was platted in Maricopa County and then annexed into the Town. There is also a 16-foot-wide alley located between the rear of the subject property and the neighboring property to the west.

DISCUSSION ITEMS

Variance Criteria:

Town Code and Arizona Revised Statutes set criteria an applicant must meet before a Board of Adjustment may grant a variance request. If the Board finds an applicant meets all of these criteria, the Board may grant the variance. However, if the Board finds the applicant does not meet all of the criteria, the Board may not grant the variance. The following are staff's analysis with regard to the variance criteria:

1. *"That there are special circumstances applicable to the property, which may include circumstances related to the property's size, shape, topography, location, or surroundings; and"* (Town Code Section 2-5-3(C)4).

Staff Analysis:

The special circumstance is that the property is shallow for its zoning classification (approximately 28 feet shallower than required by code) and that it adjoins a 16-foot-wide alley way. If the property met the 155-foot depth, there would be additional space to accommodate a code compliant pool and spa. Also, the existing alley creates an additional buffer and with the proposed pool and spa is located at least 28 feet away from the western property.

One of the goals of the pool and spa setback requirements is to help mitigate noise of the use. The existing alley helps the subject property achieve this goal by creating an "effective" setback of 28 feet from the western property. Also, there are masonry fence walls on both sides of the alley which provide additional buffering and noise mitigation.

Another peculiarity with the R-18A zoning district is that detached accessory structures are required to have a 10-foot side and rear yard setback with a 15-foot height limit, whereas pool and spas are required to have a 20-foot side and rear yard setback.

2. *"That the special circumstances applicable to the property were not self-imposed or created by the property owner; and"* (Town Code Section 2-5-3(C)4).

Staff Analysis:

The request for setback encroachment is not self-imposed since the dimensions and location of the property are how the lot was platted under Maricopa County jurisdiction in 1958. The applicant is using a "kidney bean" design to help lessen the amount of setback encroachment. The existing 16-foot-wide alley also provides additional buffering and results in an effective setback of 28 feet from the western property (adjoining the rear of the subject property).

3. *“That the strict application of the Zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district”* (Town Code Section 2-5-3(C)4).

Staff Analysis:

Setback encroachment is not atypical for this neighborhood since several neighboring properties have existing non-conforming pools.

REQUIRED ACTION

The Board of Adjustment must consider the facts and determine if the variance request meets all three variance criteria. The Board of Adjustment may take the following action:

1. Approve the variance request, subject to the following stipulations:
 - a. The improvement shall be in compliance with the submitted plans and documents:
 - i. Site Plan, Sheet 1 of 1, prepared by EPS Group and dated March 31, 2025.
 - b. The applicant must obtain the required building permits and inspections from the Building Division.
2. Deny the variance request.
3. Continue the application for further review.

COMMENTS

Staff received one comment in opposition of this variance request. The neighbor identified that there is no burden that warrants the request.

COMMUNITY IMPACT: None.

CODE VIOLATION: None.

ATTACHMENTS

- A. Staff Report
- B. Vicinity Map & Aerial Photo
- C. Application
- D. Narrative & Plans
- E. Notification Materials
- F. Power Point Presentation