

***Project Narrative
Pool Setback Variance
5204 N. 70th Place***

I. Introduction and Overview

This variance application is being submitted on behalf of Sanctuary Holdings Living Trust, the applicant and owner of approximately 0.465 acres located at 5204 N. 70th Place in Paradise Valley, Arizona (the “Property”) as illustrated in the Aerial Map at **Tab 1**. The Property is currently zoned R-18A as shown on the Zoning Map at **Tab 2**.

The Property sits at the northwest corner of 70th Place and Vista Drive within the Grosse Pointe 2 subdivision, originally platted and recorded on October 9, 1958 – prior to the Property’s annexation into the Town of Paradise Valley. According to the available property records, many of the residences in the Grosse Pointe 2 subdivision were built in the late 1950s and early 1960s. The Property has lot width of approximately 157 feet and a depth of approximately 127 feet and is currently improved with a 3,393 square-foot single-family residence constructed in 2022.

In 2023, the applicant submitted a variance request to reduce the required 20-foot pool setback to 12 feet due to the Property’s shallow lot depth and limited space for a swimming pool in the backyard in case number BA-23-04. The Board of Adjustment denied the variance request by a vote of 4-2, finding that the request did not meet the requirements of the variance test based on the information available. Since then, the applicant has obtained critical information related to the special circumstances burdening the Property and revised the proposed swimming pool plans to significantly decrease the area of the pool encroaching into the required setback.

In light of this new information, the applicant requests a variance to reduce the 20-foot rear yard pool setback to 12 feet – the minimum relief necessary to contend with the special circumstances associated with the Property. Additionally, as described below, the eight feet of relief needed to address this hardship is offset by the adjacent alley and the design considerations implemented by the applicant.

II. Request

- 1. Variance to reduce the required pool setback to twelve (12) feet on west property line. 20 feet required. Section 702.4.a.**

III. Variance Test

- 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.***

Legal Non-Conforming Lot Depth

The Property is a legally non-conforming lot per the Subdivision Standards outlined in Chapter 6 of the Paradise Valley Town Code. Section 6-3-5.G.1 states:

A lot shall be designed so that the side and rear boundary lines and the front setback line fully enclose a circle which fits within the lot area and touches the front setback line at a single point (see diagram in figure 6-3-5.G). The diameter of such circle shall be no less than the minimum lot width for the zoning district within which the lot is located (see Table 1001-A1).

In essence, any individual lot must have a minimum depth equal to or greater than the minimum depth plus the minimum front setback required by the underlying zoning district. In this case, an R-18A lot is required to have a minimum lot width of 120 feet and a depth equal to the sum of the minimum legal width plus the minimum front setback of 35 feet. This makes the minimum legal depth 155 feet. . Consequently, per Section 6-3-5.G.1, the Property has a legal non-conforming lot depth 28 feet shallower than the minimum required lot depth for a parcel with R-18A zoning.

The challenges associated with developing a shallow non-conforming R-18A parcel with both a 35-foot front setback and a 20-foot rear yard pool setback can be found all over the neighborhood surrounding the Property. There are countless examples of homes with similarly non-conforming shallow lots containing swimming pools within the current 20-foot setback requirement. See the Non-Conforming Pools Exhibit at **Tab 3**.

The Property's non-conforming depth is exacerbated by the fact that it is a corner lot. Corner lots require 35-foot setbacks on three sides of the lot. In this instance, the home faces 70th Place and sides on Vista Dr. The 70th Place orientation is required under Section 1002-A-4 of the zoning ordinance which requires the the home to be sited parallel to the local street. It requires 35' front and 35' rear setbacks on a lot which is only 127' in depth which severely compresses the allowable building envelope. Additionally, as a corner lot, this home must be set back from Vista Drive by 35', pushing the home to the north and further compressing the already compressed building envelope. This condition runs afoul of Section 6-3-5.D, which requires corner lots to have "adequate width to permit appropriate building orientation to and setbacks from both streets." The combination of the shallow lot and required setbacks leaves little room for both a usable backyard and a pool that does not encroach within the 20-foot pool setback requirement.

Ordinance Changes

Several changes to the Paradise Valley Zoning Ordinance over the last several decades have left similarly zoned properties on unequal footing with respect to development standards and property rights. In 1994, the Town of Paradise Valley established the R-18A zoning district – which included a 10-foot setback requirement for rear yard swimming pools. In 2005, the Town adopted Ordinance No. 564 and Resolution No. 1101 to overhaul the Zoning Ordinance. Included among the revisions was an increase in the setback for a rear yard pool from 10 feet to 20 feet in the R-18A zoning district. This change to the R-18A development standards immediately created a significant number of legally non-conforming pools within the neighborhood surrounding the Property and other areas of Paradise Valley zoned R-18A. The practical result of this amendment was an unequal restriction on the developable area of R-18A lots for any property owner constructing their home/pool after 2005. With the pool setback change from 10' to 20' the code requires a greater setback for pools and spas, which typically extend from only a few inches for pools or a few feet for spas above grade than for accessory structures which only have a 10' setback requirement and are allowed to rise to a height of 15' above grade.

2. *The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor.*

The applicant played no role in the platting of the Grosse Pointe 2 subdivision, the Property's annexation into the Town of Paradise Valley, or the adoption of the Town of Paradise Valley Zoning Ordinance and subsequent amendments that created a legally non-conforming lot with inadequate lot depth.

While explaining votes to deny the previous variance request, several board members stated that they felt the applicant, being a professional in the development industry had or should have had advance knowledge of the hardship created by the depth and location of the lot. Several members also expressed that the design and construction of the new home itself created a self-imposed hardship.

However, on a lot with appropriate depth for the R-18A district, the applicant would have no difficulty constructing both the new home on the Property and a swimming pool that abides by the 20-foot setback. The inadequate depth of the lot, which is a condition out of the applicant's control, places the property at a disadvantage relative to legally conforming lots with R-18A zoning in the Town of Paradise Valley – the textbook definition of a special circumstance that is not self-imposed. The applicant's awareness of these issues at the time of the purchase of the Property does not constitute "self-imposed" special circumstances, as established by *Pawn 1st, LLC v. City of Phoenix*, 294 P.3d 147, 231 Ariz. 309 (2013). Furthermore, in that same case, the court found that an applicant having used the property for a use allowed under the zoning district does not in itself constitute a self-imposed hardship.

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.*

As noted above, there are many other homes in the immediate area and other areas of the Town of Paradise Valley with R-18A zoning that either, a) enjoy legally conforming lot depth and adequate yard area to locate a pool that abides by the 20-foot rear yard pool setback requirement, or b) enjoy a legally non-conforming pool setback as a result of building the pool prior to the November 2005 overhaul of the Zoning Ordinance, or both. The Property suffers from inadequate dimensions relative to the requirements of the Paradise Valley Zoning Ordinance and Town Code, and unfortunate timing relative to the November 2005 overhaul of the Zoning Ordinance – both of which have deprived the applicant of property rights that owners of other R-18A zoned properties in the Town of Paradise Valley enjoy.

IV. Other Considerations

Design Changes

The original submittal for the BA-23-04 variance application depicted a swimming pool with a total encroachment of 390 square feet into the 20-foot setback area. See Initial Pool Design Submittal at **Tab 4**. During the variance process, the applicant revised the proposed swimming pool to reduce the area of encroachment to 296 SF, a reduction of nearly 100 SF. See Second Pool Design Submittal at **Tab 5**. As part of this submittal, the applicant has once again reduced the area of encroachment to 227 SF – a reduction of 163 SF relative to the initial submittal and 69 SF relative to the second submittal. See Proposed Pool Design Submittal at **Tab 6**. This new pool design is a significant modification from the applicant's desired geometrical layout, but significantly reduces the encroachment area and creates a more safe pool.

As illustrated by the revised exhibit, the applicant has made an earnest effort to minimize the encroachment into the 20-foot setback area. Importantly, the proposed swimming pool encroaches into the setback area significantly less than the majority of the existing pools in the surrounding area and is

the absolute minimum encroachment required to allow for necessary view angles from both active and passive areas of the residence.

Existing Alley

The purpose of the pool setback requirement is to ensure a minimum buffer between a swimming pool and the backyard of an adjacent property, thereby limiting the nuisance created by noise/activity in the pool to the adjacent neighbor. In this instance, there is a 16-foot-wide alley separating the Property from the lot to its west. Consequently, the alley ensures that with a proposed pool setback of 12 feet, there is a minimum buffer of 28 feet between the pool and the property to the west. Even if the alley were effectively “split” in two, with 8 feet going to each property owner, the effective setback is 20 feet as measured to the centerline of the alley (12-foot setback + 8-foot half width of alley).

The alley ensures, in this instance, that the intent of the 20-foot pool setback is still honored by providing an additional 16-foot buffer between the properties. As proposed, the swimming pool will be no closer than 28 feet to the property line of the home to the west, and no closer than 20 feet to the centerline of the alley.

V. Conclusion

The new information presented demonstrates that there are special circumstances unique to the property that create a hardship that is not self-imposed. The legally non-conforming shallow lot limits the developability of the Property to a greater degree than lots that meet the Town’s requirements for an R-18A lot. The R-18A development standards in the Zoning Ordinance were intended for lots that meet the minimum lot dimensions outlined in Section 6-3-5 of the Town Code. Lots that do not meet the minimum dimensions are disproportionately impacted by the development standards in the Zoning Ordinance.

These special circumstances create a demonstrable hardship that was not created by the applicant and merits relief via the proposed variance. Furthermore, the existence of the 16-foot wide alley to the west of the Property ensures that a reduced pool setback still meets the intent of the Zoning Ordinance by providing an additional buffer and a minimum distance of 28 feet between the proposed pool and the adjacent property to the west. In light of the foregoing, the applicant respectfully requests approval of the proposed variance.

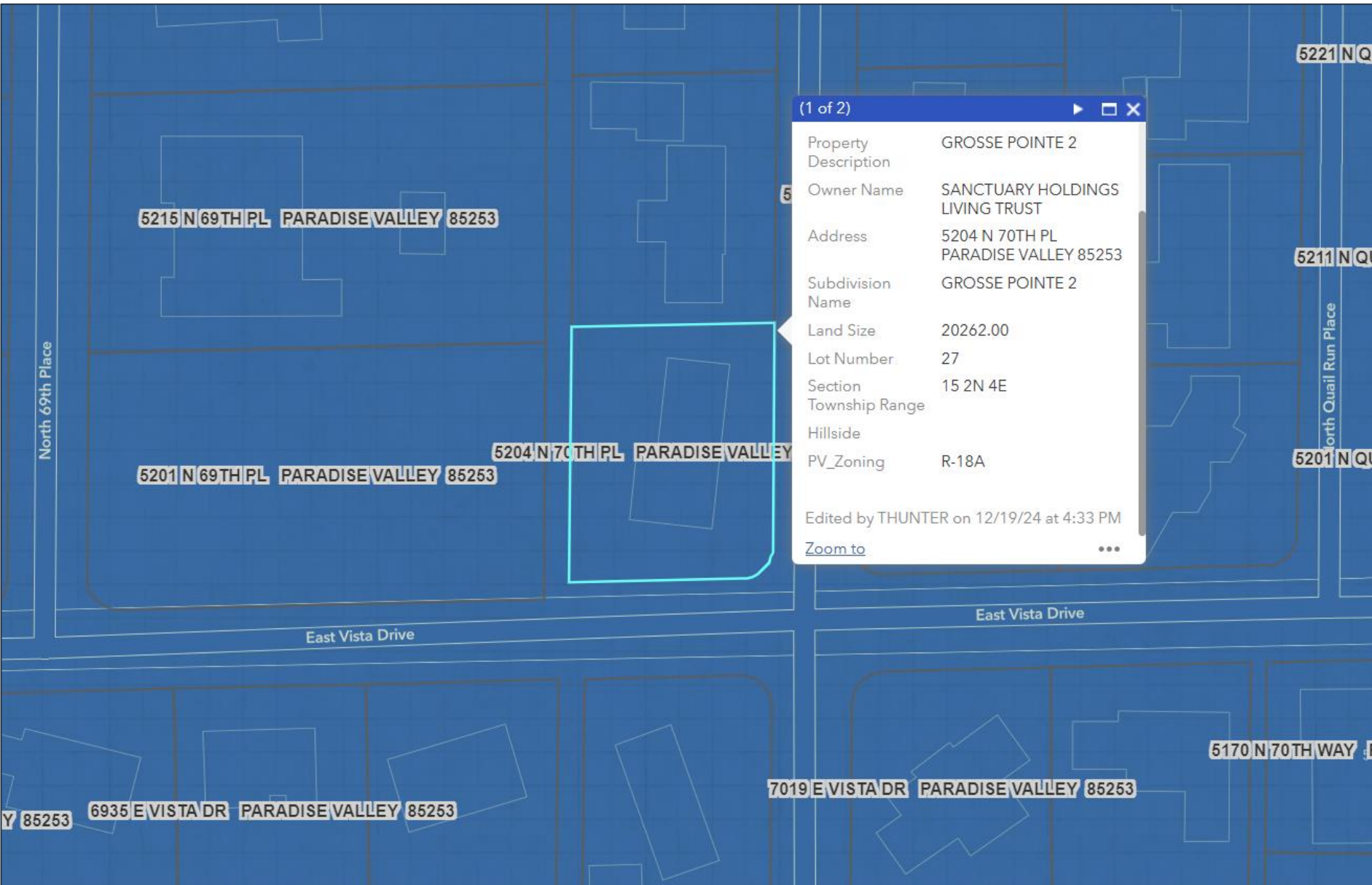
TAB 1

Aerial Map



TAB 2

Zoning Map



WITHEY
MORRIS
BAUGH

5204 N. 70th Place - Paradise Valley, AZ










TAB 3



TAB 4

EXHIBIT I



	= CONCRETE/PAVERS
	= POOL
	= TURF
	= PLANTER
	= DECOMPOSED GRANITE
	= GARDEN/DIRT
	= POOL ENCROACHMENT AREA

TAB 5

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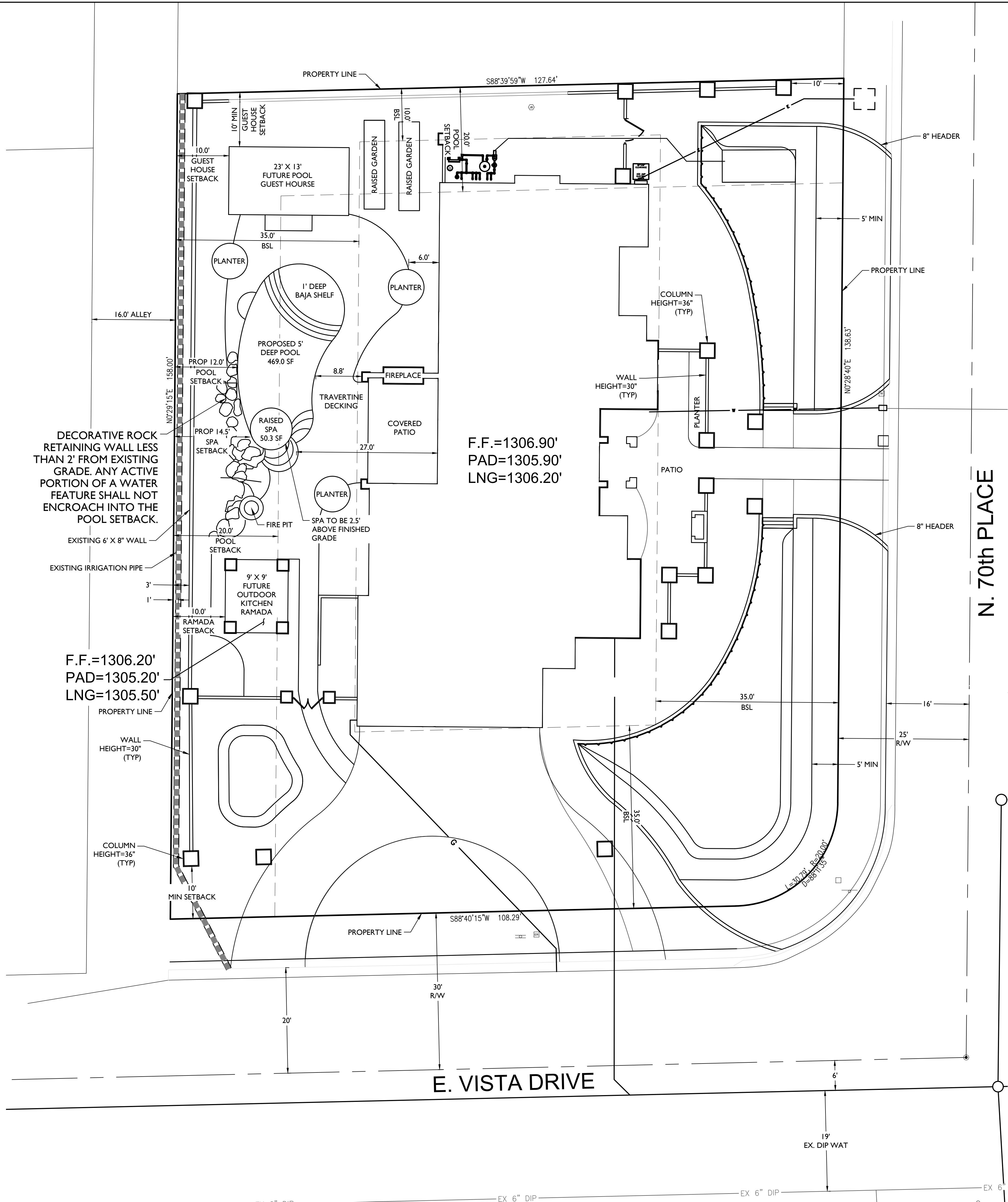


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TAB 6

18-561 - 5204 N 70th Place - Pool Encroachment Exhibit

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LOT NOTES:
ADDRESS: 5204 N 70th PLACE
APN: 173-18-028
ZONING CATEGORY: R-18A
LOT AREA: 20,262 SF

POOL SET BACK ENCROACHMENT

190 SF

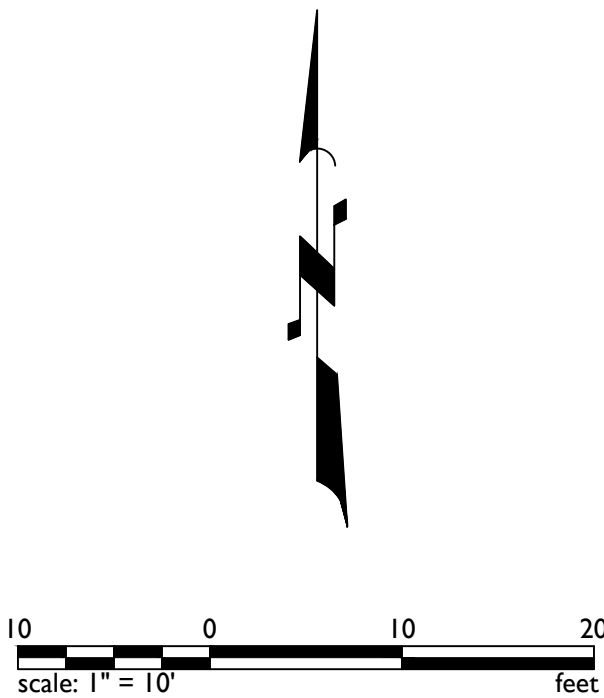
SPA SET BACK ENCROACHMENT

37 SF

TOTAL SET BACK ENCROACHMENT

190 SF + 37 SF = 227 SF

ALL STRUCTURES UNDER ROOF SHALL COVER NO MORE THAN 5065.50 SF, WHICH IS 25% OF THE TOTAL LOT AREA



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EPS GROUP

5204 N 70th Place Paradise Valley
Pool Encroachment Exhibit
NWC 70th Pl & Vista Dr, Paradise Valley, Arizona

Project:

Revisions:

Call at least two full working days before you begin excavation

ARIZONA
NEW 301 or 1-800-STATE-IT (782-5248)
In Maricopa County, 000203-1100

Designer: JMS
Drawn by: JMS

Professional Engineer Seal
50291
DANIEL B. AUXIER
06/2019-06/2025
ARIZONA, U.S.A.

Job No.
18-561

EX01

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