



Action Report

File #: 18-240

TO: Chair and Board of Adjustment

FROM: Paul Michaud, Interim Community Development Director
George Burton, Planner

DATE: June 6, 2018

CONTACT:

George Burton, 480-348-3525

AGENDA TITLE:

Cuculic Variance - 5204 E San Juan Ave (APN: 172-47-032)
Case No. BA-18-02

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-18-02, a request by Lawrence and Mary Jo Cuculic, property owners of 5204 E San Juan Ave; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow a single-family residence to encroach into the setback. The variance shall be in compliance with the submitted plans and documents:

1. The Narrative;
2. Preliminary Grading & Drainage Plan, Sheets C-1 and C-2, prepared by Land Development Group and dated May 14, 2018;
3. Site Plan, Sheet 1, prepared by Birchfield Design and Furcini Construction Corporation and dated May 15, 2018;
4. Floor Plan, Sheet 2, prepared by Birchfield Design and Furcini Construction Corporation and dated May 15, 2018;
5. Exterior Elevations Plan, Sheet 3, prepared by Birchfield Design and Furcini Construction Corporation and dated April 18, 2018;
6. Exterior Elevations Plan, Sheet 4, prepared by Birchfield Design and Furcini Construction Corporation and dated May 15, 2018;
7. Cross Sections Plan, Sheet 5, prepared by Birchfield Design and Furcini Construction Corporation and dated April 18, 2018;
8. Roof Plan, Sheet 6, prepared by Birchfield Design and Furcini Construction Corporation and dated May 15, 2018;

Reasons for Approval:

I find that there are special circumstances, applicable to only the subject lot, meeting the variance criteria.

B. MOTION FOR DENIAL

I move for **[denial]** of Case No. BA-18-02, a request by Lawrence and Mary Jo Cuculic, property owners of 5204 E San Juan Ave; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow a single-family residence to encroach into the setback.

Reasons for Denial:

I find that the variance requested does not meet the variance criteria.

BACKGROUND

Lot Conditions

The property is zoned R-43 Hillside and is 47,205 square feet in size (1.08 acres). The property is an hour-glass shaped lot and is surrounded by streets on three sides. If the variance is granted, the improvements will go thru the Hillside Building Committee review process.

Request

The applicant is proposing to demolish the existing home and construct a single-family residence on the existing pad. Section 1001 of the Zoning Ordinance requires a 40' rear yard setback for the primary residence and the proposed home will encroach into the rear setback. Due to the design of the house with multiple vertical planes, the rear setback of the proposed home varies from 20' to 39' (measured from the north/rear property line). The house has 2' deep overhangs that are setback 18' to 37' from the north/rear property line.

The new home is a 5,158 square foot single-story residence that varies in height from 17'6" tall to 21'6" tall. 1,736 square feet of the house will encroach into the rear yard setback (with 1,261 square feet of livable encroachment, 243 square feet of covered patio encroachment, and 232 square feet of overhang encroachment). The existing house is also a single-story home that encroaches into the rear yard setback. Approximately 638 square feet of the existing home encroaches into the rear yard at a setback of 28' from the north/rear property line.

Lot History

The subject property is Lot 32 of the Stone Canyon subdivision. The subdivision was platted in 1955 and annexed into the Town in 1961. The following is a chronological history of the property:

- Per the Maricopa County website, the existing house was constructed in 1956.
- March 10, 1989. Building permit issued for a remodel to the house.
- February 22, 1994. Building permit issued for a trellis.
- February 22, 1994. Building permit issued for a fence.
- February 22, 1994. Building permit issued for a spa.
- August 19, 2004. Building permit issued for a retaining wall.

DISCUSSION/ FACTS:

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 findings with regard to such variance criteria.

1. *“Such variance... will serve not merely as a convenience to the applicant, but [is] necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variance under the circumstances.” (Town Code Section 2-5-3(C)2).*

Findings in Favor (FIFs):

The property is burdened with an odd shape and triple street frontage which creates a narrow and restrictive building envelope. Also, the improvements will not create additional disturbance to the hillside since the new house will be located on the existing pad.

Findings Opposed (FOPs):

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. Although not ideal, the size of the house may be scaled down or the house may be redesigned in order to reduce the amount of encroachment or comply with the setback requirements.

2. *The “special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake...” (Town Code Section 2-5-3(C)4(b)).*

FIFs:

The hardship is not out of mistake or misunderstanding. The hour-glass shape and multiple frontages of the lot are the result of how the parcel was platted in Maricopa County.

FOPs:

The applicant should be aware of all special circumstances on the property and plan any designs accordingly.

3. *“Such variance from ... the strict application of the terms of [the Zoning Ordinance] ... are in harmony with its general purposes and intents...” (Town Code Section 2-5-3(C)2).*

FIFs:

The intent of the code is to minimize the amount of disturbance to the hillside, preserve the visual openness, and preserve the natural features of the mountain. The request meets the intent of the Zoning Ordinance since the new house will not increase the amount of disturbance, will preserve the rock feature to the west, and will have limited visual impact. The house will not create additional disturbance since it will be placed on an existing pad and it will have limited visual impact since the house is a single-story home that is below the 24' height limit (with a varying height between 17'6" tall and 21'6" tall).

FOPs:

The request does not meet the intent of the code since the proposed home increases the

amount of encroachment and since other alternatives exist. The existing home is setback 28' from the rear/north property line with 638 square feet of encroachment. The new home is setback 20' from the rear/north property line with 1,736 square feet of encroachment. Also, the orientation of the house may be reconfigured or redesigned to reduce the amount of setback encroachment.

4. *"The special circumstances, hardship or difficulty applicable to the property are [not] self-imposed by the property owner, or predecessor..." (Town Code Section 2-5-3(C)4).*

FIFs:

The request is not self-imposed. The applicant has a difficult lot to build on and is trying to design a house that utilizes the existing site conditions. The hour-glass shape and triple street frontage create a restrictive building envelope.

FOPs:

The request is self-imposed since the applicant may redesign a house to reduce the amount of encroachment or comply with the setback requirement. The applicant should be aware of all special circumstances on the property and plan any designs accordingly.

5. *Because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, 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." (Arizona Revised Statutes 9-462.06(G)(2)).*

FIFs:

The property hardship arises from the odd shape and triple frontage of the lot. The hour-glass shape creates a narrow and unusual building envelope. The property is 47' (or 28%) narrower and has a building envelope 44% smaller than a standard R-43 zoned lot. If the property were platted under current code, the lot would be required to have a minimum width of 165'. However, the subject property is 118' wide at its narrowest point. If the property met the minimum lot width of 165', a variance would not be needed. Also, the applicant is trying to limit the amount of disturbance and preserve the rock outcropping on the western part of the property by utilizing and orientating the house on the existing pad.

FOPs:

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. It appears that other alternatives exist and that the amount of setback encroachment can be reduced by redesigning and/or re-orientating the house (e.g. moving the house closer to the front/south setback line and/or modifying the size or shape of the rooms to reduce the amount of encroachment).

6. *The variance would not "constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located." (Arizona Revised Statutes 9-462.06(G)(2)).*

FIFs:

File #: 18-240

The request is in character with the neighborhood and the Zoning Ordinance. The setback encroachment is not out of character with the neighborhood since several of the neighboring homes encroach into the setbacks (via the Maricopa County aerial photo, it appears that six of the neighboring homes encroach into the setbacks).

The request is also in character with the Zoning Ordinance since the intent of the code is to preserve the hillside. The new house will not increase the amount of disturbance by utilizing the existing pad. The size of the proposed home is in character with the neighborhood. The proposed house has a livable square footage of 3,300 square feet. Via data from Maricopa County, the homes in the neighborhood have an average livable square footage of 4,800 square feet.

FOPs:

All other properties in the area must meet the setback requirements outlined the Zoning Ordinance. Also, the proposed home increases the amount of encroachment. The existing home is setback 28' from the rear/north property line with 638 square feet of encroachment. The new home is setback 20' from the rear/north property line with 1,736 square feet of encroachment.

COMMENTS: Staff received no comments regarding this application.

COMMUNITY IMPACT: None.

FISCAL IMPACT None.

CODE VIOLATIONS: None.

ATTACHMENTS

Vicinity Map & Aerial Photo
Application
Narrative and Plan Set
Noticing Materials

C: Jim Furcini (Applicant)
Case File BA-16-6