



Action Report

File #: 17-278

TO: Chair and Board of Adjustment

FROM: Eva Cutro, Community Development Director
Paul Michaud, Senior Planner
George Burton, Planner

DATE: September 6, 2017

CONTACT:

George Burton, 480-348-3574

AGENDA TITLE:

Hart Variance - 5137 N. Tamar Way (APN: 173-65-001A)
Case No. BA-17-01

RECOMMENDATION

Staff recommends Motion "A", a motion to approve the variance request allow non-conforming portions of the house to remain and be modified.

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-17-01, a request by Bruce and Nadine Hart, property owner of 5137 N. Tamar Way; for a variance from the Zoning Ordinance, Article XXIII, Nonconformance, to allow nonconforming portions of the house to remain and to be modified.

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-17-01, a request by Bruce and Nadine Hart, property owner of 5137 N. Tamar Way; for a variance from the Zoning Ordinance, Article XXIII, Nonconformance, to allow nonconforming portions of the house to remain and to be modified.

Reasons for Denial:

I find that the variance requested does not have any special circumstances.

BACKGROUND

Lot History

The subject property is Lot 20 of the Casa Blanca Estates subdivision. The subdivision was platted in 1959 and annexed into the Town in 1974. The following is a chronological history of the property:

- 1964. House constructed under Maricopa County jurisdiction.
- March 20, 1979. Building permit issued for a remodel/addition.
- June 12, 1984. Building permit issued to for a Ramada.
- February 6, 1987. Building permit issued for a fence.
- November 9, 1997. Building permit issued for a remodel/addition.

Request

The applicant is proposing a remodel and addition to the existing house and two portions of the home encroach into the side yard setback. The existing master bedroom encroaches 4' into the north side setback (at a setback of 16' from the north property line) and is 14' tall. The existing garage encroaches 4'8" into the south side setback (at a setback of 15'4" from the south property line) and is 16' tall. The footprint and height of these encroaching parts of the house will remain the same.

Section 2307 of the Zoning Ordinance states that:

- All nonconforming portions of a structure shall be made to conform to current regulations when more than 50% of the existing footprint undergoes a structural remodel, alteration or repair.
- Remodels and alternations to non-conforming structures shall not result in an increase in any existing encroachment over current setbacks, result in an increase in the height of the affected structure, or result in an increase in any other nonconforming aspect.

Since the remodel/addition exceeds the 50% limit, the applicant requests a variance from Article XXIII of the Zoning Ordinance to allow the non-conforming portions of the house to be remodeled and to remain at their existing setback and height.

Lot Conditions

The property is zoned R-43 and is 36,073 square feet in size (0.83 acres). The lot is triangular in shape with a curvilinear frontage. Staff believes the shape and size of the lot create a hardship and is supportive of allowing the non-conforming portions of the house to remain.

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 undersized and burdened with an odd shape. The property is approximately 7,487 square feet (or 17%) smaller than a standard R-43 zoned lot and is oddly shaped, which creates a small and unusual building envelope. The triangular shape results in a property with no rear yard, just a front yard and two side yards. A standard R-43 zoned property is 43,560 square feet in size and is rectilinear in shape.

Findings Opposed (FOPs):

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. The size, shape, and topography of the lot do not prevent the house from meeting the 20' side yard setbacks.

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 shape and size of the property is the result of how it was platted and is considered existing non-conforming.

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 ordinance is to provide visual openness and maintain view corridors. The request meets the intent of the Zoning Ordinance since the footprint and height of the non-conforming portions of the house will remain the same, the encroachments are low in height (at 14' and 16' tall), and since only a limited amount of the house encroaches into the setback (with 20 square feet of encroachment into the north setback and 132 square feet of encroachment into the south setback).

FOPs:

The intent of the nonconforming ordinance is to encourage compliance with the current code. Although not ideal, the existing non-conforming portions of the house can be removed and reconfigured to meet setbacks.

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

improve the house while utilizing the existing conditions. The improvements do not change the size, height, or setback of the existing encroachments and will maintain visual openness by preserving the single story design of the house.

FOPs:

The request is self-imposed since the applicant can remove the non-conforming portions of the house to meet setbacks.

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 size and shape of the property are non-conforming. The small size, triangular shape, and curvilinear frontage of the lot are the result of its creation in Maricopa County, which creates an unusual and restrictive building envelope.

Current code requires lots to be a minimum size of 43,560 square feet and rectilinear in shape. The subject lot is 36,073 square feet in size and is triangular in shape. Also, the remodeled home is smaller than the average sized Paradise Valley home. The remodeled house is 5,908 square feet in size while the average size home in Paradise Valley is approximately 8,000 square feet.

FOPs:

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. The size and shape of the lot do not prevent the existing encroachments from being removed to meet setback requirements.

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:

The request is in character with the Zoning Ordinance. The small size and triangular shape of the property creates an unusual and restrictive building envelope. The property is 17% smaller than a standard R-43 zoned lot and is triangular in shape, which results in an oddly shaped and narrow building envelope. The existing encroachments will also have a limited impact since the applicant is not altering the height or footprint of the non-conforming portions of the house (with a total of 132 square feet encroaching into the setback and the low and existing height of 16’ tall).

FOPs:

All other properties in the area must maintain their non-conforming structures in accordance with the Zoning Ordinance.

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COMMENTS: Staff received two inquiries regarding this application. Neither was opposed to the request.

COMMUNITY IMPACT: None.

FISCAL IMPACT None.

CODE VIOLATIONS: None.

ATTACHMENTS

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

C: Doug Jorden (Applicant)
Case File BA-17-01