



## Action Report

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**File #:** 17-210

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**TO:** Chair and Board of Adjustment

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

**DATE:** June 7, 2017

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Moak Variance - 5211 E. Cheney Drive (APN: 169-06-099)  
Case No. BA-16-8

**RECOMMENDATION:**

Staff recommends Motion "A", a motion to deny the variance request to allow development for a new single family residence to exceed the allowable amount of disturbed area. The property is located at 5211 E. Cheney Drive.

**A. MOTION FOR DENIAL**

I move for **[denial]** of Case No. BA-16-8, a request by Steven & Deborah Moak, property owner of 5211 E. Cheney Drive; for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, to allow development for a new single family residence to exceed the allowable amount of disturbed area.

**Reasons for Denial:**

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

**B. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-16-8, a request by Steven & Deborah Moak, property owner of 5211 E. Cheney Drive; for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, to allow development for a new single family residence to exceed the allowable amount of disturbed area.

**Reasons for Approval:**

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

## **BACKGROUND**

### Request

The applicant is proposing to construct a single family residence on the property and requests a variance to exceed the allowable amount of disturbance. Since the property is a hillside lot, the amount of allowable disturbance is limited by the building pad slope (in which greater slopes are allowed less disturbed area per Section 2203 and 2207 of the Town Zoning Ordinance). The property has a building pad slope of 38.7%, which results in an allowable disturbance of 10% (or 4,499 square feet). The applicant is proposing a disturbance of 21.8% (or 9,832 square feet).

### Lot History

The subject property is Lot 11 of the Montana De Bonitas Casas subdivision. The property is an undeveloped lot and was platted in 1980.

### Lot Conditions

The property is zoned R-43 Hillside and is 44,998 square feet in size (1.03 acres). The lot is rectilinear in shape and has a building site slope of 38.7%.

Staff believes the steep topography of the lot creates a hardship; however, staff does not believe the proposed request is the minimum amount needed to cure the property hardship based upon the criteria of the Arizona Revised Statutes. If the variance is granted, the improvements will go thru the hillside review process.

## **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 hardship is the steep slope and topography of the property. In an attempt to preserve the hillside, the Town Code reduces the amount of allowable disturbance for steeper lots. Since the property has a slope of 38.7%, the amount of disturbance is limited to 10% of the net lot size. This results in 4,499 square feet of disturbed area for areas such as the driveway, patios, and the pool area. Also, if this property was platted today, it would require a minimum lot size of 5.2 acres based upon a slope of 38%. However, the subject property is only 1.03 acres in size.

**Findings Opposed (FOPs):**

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. Although there is a property hardship, the request does not appear to be the minimum amount needed to cure the hardship since the amount of disturbance can be reduced (such as restoring the area along the west side of the driveway, reducing the amount of auto court, and/or reducing the amount of the pool and spa area).

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 topography and steepness of the property is the result of its location on the hillside.

**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 proposed house is situated to minimize the amount of cut by placing the home parallel to the contours of the lot. Also, current code would require a property with this slope to have minimum lot size of 5.2 acres. The subject property is 1.03 acres in size.

**FOPs:**

The request does not meet the intent of the code as other alternatives exist. It appears that the improvements can be redesigned or shrunk in order to reduce the amount of disturbance (e.g. such as restoring the area along the west side of the driveway, reducing the amount of auto court, and/or reducing the amount of the pool and spa area).

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 hardship is the steep slope of the lot that results in a small amount of allowable disturbance.

**FOPs:**

The request is self-imposed since the amount of proposed disturbance may be reduced. The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although this is a difficult lot to build on, the amount of disturbance can be lessened by restoring the area around the driveway or reducing the amount of auto court or

pool area.

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 hardship is the steep slope and topography of the property. Since the property has a slope of 38.7%, the amount of disturbance is limited to 10% of the net lot size. This results in only 4,499 square feet of disturbed area for areas such as the driveway, patios, and the pool area.

**FOPs:**

The request is self-imposed since the amount of disturbance can be reduced. The proposed request does not appear to be the minimum amount needed to cure the property hardship since the house, driveway, and amenities can be redesigned to lessen the amount of disturbed area.

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 proposed improvements are in character with the neighboring properties. The home will meet all other requirements and is below the maximum allowable floor area ratio of 25% (with a proposed FAR of 21.7%). The applicant also performed a comparative analysis of the surrounding properties. The proposed home has approximately 6,300 square feet of livable space and 2,361 square feet of driveway/auto court. The neighboring properties have an average livable square footage of approximately 7,100 square feet and an average driveway/auto court area of 5,447 square feet.

**FOPs:**

All other hillside properties in the area must meet the disturbance requirements outlined in the Zoning Ordinance.

**COMMENTS:** Staff received three inquiries regarding this variance request. One expressed concern regarding the improvement, one expressed opposition to the variance, and the other simply inquired as to the scope of the request with no opinion.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

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**ATTACHMENTS**

Vicinity Map & Aerial Photo

Application

Applicant Narrative and Plan Set

Noticing Materials

C:       Braden Santarcangelo (Applicant)  
          Case File BA-16-8