



Action Report

File #: 18-330

TO: Chair and Board of Adjustment

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

DATE: September 5, 2018

CONTACT:

George Burton, 480-348-3525

AGENDA TITLE:

Edwards Variance - 7001 E. Balfour Road (APN: 173-22-096)
Case No. BA-18-07

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-18-07, a request by Kareem and Mary Jo Edwards, property owners of 7001 E. Balfour Road; for a variance from the Zoning Ordinance, Article VII, (R-18 and R-18A) Single Family Residential District, to allow a pool/spa to encroach into the setback. The variance shall be in compliance with the submitted plans and documents:

1. The Variance Criteria Narrative;
2. The Stated Hardship Involved Narrative;
3. Site Plan, prepared by Presidential Pools & Spas; and
4. Sheet A0, Project Data, prepared by Fit Design and dated February 22, 2017;

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-18-07, a request by Kareem and Mary Jo Edwards, property owners of 7001 E. Balfour Road; for a variance from the Zoning Ordinance, Article VII, (R-18 and R-18A) Single Family Residential District, to allow a pool/spa 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-18A and is approximately 18,427 square feet in size (0.42 acres). The property is a pie-shaped lot with a 10' alley adjoining the western and southern property lines.

Request

The applicant is proposing to construct a new pool and spa behind the house. Section 702 requires a 40' front yard setback, 20' rear yard setback, and 20' side yard setback for pools and spas (with the setbacks measured from the property line to the water's edge of the pool/spa). The applicant is requesting a variance to allow a pool to be constructed at a setback of 15'6" from the west/rear property line (with approximately 162 square feet of the pool encroaching into the setback).

Lot History

The subject property is Lot 3 of the Gross Point subdivision. The subdivision was platted in 1957 and annexed into the Town in 1961. The following is a chronological history of the property:

- The original house was constructed under Maricopa County's jurisdiction.
- April 7, 1972. Building permit issued to enclose a patio.
- September 17, 2003. Building permit issued for a fence.
- August 8, 2016. Demolition permit issued to remove the house.
- June 21, 2017. Building permits issued for a new single-family residence and fence.

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 Town Zoning Ordinance creates the hardship. Pools and spas in the R-18A zoning district have the same setback as the R-43 zoning district. The subject property is 58% smaller (at 18,427 square feet) than a one-acre lot and must meet the same pool/spa setback requirements as a one-acre property (at 43,560 square feet). For comparison, an R-10 zoned property (at 10,000 square feet in size), has pool/spa setbacks of 20' from the front property and 7' from the side and rear property lines.

Findings Opposed (FOPs):

The size, shape, and topography of the property do not prevent the pool from meeting the setback requirements. The property is not undersized for its zoning classification at 18,427

square feet. This appears to be a design hardship instead of a property hardship; in which the location and size of the house limits the amount of buildable area for amenities and accessory structures.

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 pie-shape of the lot is the result of how the parcel was platted in Maricopa County and the setback requirements are the result of the property’s zoning designation.

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 help buffer outdoor amenities, provide visual openness, and maintain view corridors. The request meets the intent of the Zoning Ordinance since it adjoins a 10’ alley and since the applicant is constructing a 4’ tall CMU wall on the west side of the pool. The alley creates an additional buffer or setback, in which the pool is essentially located 25’6” away from the nearest property to the west. The 4’ CMU wall next to the pool will help mitigate any noise from pool activities. Also, the pool is hidden by the existing 6’ tall perimeter fence wall and will not obstruct any views.

FOPs:

The request does not meet the intent of the code since other alternatives exist. Although not ideal, the amount of encroachment can be reduced or eliminated by locating the pool and spa closer to the house. Typically, per engineering design, the depth of the pool determines the minimum setback a pool should be placed away from the house (e.g. a 5’ deep pool should be placed a minimum of 5’ away from the house). However, the pool and spa can be redesigned and re-engineered to be located closer to the house (thus reducing or eliminating the encroachment into the rear yard setback).

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 R-18A zoning requirements create the hardship. Even though the subject property is 58% smaller than a one-acre R-43 zoned lot, it must meet the same pool/spa setback requirements as a one-acre property. As a result, the R-18A zoning

ordinance does not provide reduced pool/spa setbacks in order to accommodate the smaller lot size.

FOPs:

The request is self-imposed since the applicant may redesign pool and spa in order to reduce or eliminate the amount of setback encroachment. Also, 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 pie-shape of the lot creates an unusual building envelope.

FOPs:

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. Also, the size, shape, and topography of the property do not prevent the pool from meeting the setback requirements. The property is not undersized for its zoning classification at 18,427 square feet and the hardship appears to be a design hardship instead of a property hardship. The location and size of the house (at approximately 4,406 square feet or 24.9% floor area ratio) appears to limit the amount of buildable area for amenities and accessory structures. Also, the pool and spa may be redesigned to reduce or eliminate the amount of setback 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:

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 pools encroach into the 20' setbacks (via the Maricopa County aerial photo, it appears that five neighboring Paradise Valley properties and one neighboring Scottsdale property have pools that are not setback 20' from the adjoining property line).

The request is also in character with the Zoning Ordinance since the intent of the code is to buffer the effects of outdoor amenities and maintain visual openness. The adjoining alley creates an additional buffer and the pool/spa will not obstruct any views. Since the alley is 10' wide, the pool is effectively setback 25'6" away from the western neighboring property.

FOPs:

All other properties in the area must meet the setback requirements outlined the Zoning Ordinance. Also, it appears that the pool can be redesigned and relocated to reduce or eliminate the setback encroachment (e.g. aligning the spa with the pool and moving the

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pool/spa closer to the house).

COMMENTS: Staff received one comment in support of the request. A copy of the letter is enclosed.

COMMUNITY IMPACT: None.

FISCAL IMPACT None.

CODE VIOLATIONS: None.

ATTACHMENTS

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

C: Kareem Edwards (Applicant)
Case File BA-18-07