

TOWN
Of
PARADISE VALLEY



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Jill B. Keimach, Town Manager
Lisa Collins, Community Development Director
George Burton, Senior Planner

DATE: January 6, 2021

DEPARTMENT: Planning Department
George Burton, 480-348-3525

AGENDA TITLE:
Left Turn LLC Variance – 5901 E. Sanna Street (APN 168-37-018)
Case No. BA-20-09

MOTIONS

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-20-09, a request by Jim Ransco/Left Turn LLC, property owner of 5901 E. Sanna Street; for a variance from the Zoning Ordinance, Article XXIV, Walls & Fences, to allow an outdoor fireplace to encroach into the setback. The variance shall be subject to the following stipulations:

1. The improvement shall be in compliance with the submitted plans and documents:
 - a. The Narrative & Plans, pages 1 – 10, prepared by The Green Room Landscape Architecture and dated December 7, 2020.

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-20-09, a request by Jim Ransco/Left Turn LLC, property owner of 5901 E. Sanna Street; for a variance from the Zoning Ordinance, Article XXIV, Walls & Fences, to allow an outdoor fireplace to encroach into the setback.

Reasons for Denial:

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



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BACKGROUND

Request

The applicant requests a variance to allow an outdoor fireplace to encroach into the front yard setback. The fireplace is 6' tall and 6' wide, will be finished to match the site architecture, and will be in a new courtyard area which is enclosed with a 3' tall fence wall and gate.

The height of the outdoor fireplace determines the required setback. Section 2404 of the Zoning Ordinance requires a 6' tall fireplace to have a 40' setback measured from the front property line. However, the applicant requests a variance to allow the fireplace at a 27'6" front yard setback. The following is a comparison of the proposed fireplace setback with the setback required by the Town Zoning Ordinance:

Front Yard Setbacks		
	Outdoor Fireplace	Zoning Ordinance
6' Tall	27'6"	40'
3' Tall	N/A	10'

Lot Conditions

The property is zoned R-43 and is approximately 54,893 square feet in size (1.3 acres in size). The lot is rectangular in shape and has a drainage/golf course easement located in the rear of the property. The drainage/golf course easement encompasses approximately 60% of the lot.

Lot History

The subject property is Lot 63 of the Camelback Country Estates Unit II subdivision, which was platted in 1979. The following list of permits is a chronological history of the subject property:

May 7, 1985	Building permit for a new single-family residence
July 2, 1985	Building permit for a pool and spa
September 27, 1993	Building permit for a remodel/addition to the main house

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.



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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 hardship is due to the drainage/golf course easement that encompasses the lot. Approximately 140' of the rear yard is covered by the easement (encompassing nearly 60% of the property). Since structures cannot be placed in the easement, development is limited to the front part of the lot. As a result, the easement essentially turns this oversized property into a 21,000 square foot lot (which is the 40% of the property located outside the easement).

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 applicant may construct a code compliant fire pit/fire feature instead of an outdoor fireplace.

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 location of the drainage/golf course easement is the result of how the property was originally platted. Also, the placement of the existing house and the pool further limit the amount and location of building area.

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 Zoning Ordinance is to encourage the visual openness and the preservation of the natural environment. The request meets the intent of the Zoning Ordinance since the outdoor fireplace is relatively small (at 6' tall and 6' wide) and will not obstruct any neighboring views. Also, the fireplace will appear to have a greater setback from the street since there is 6' of right-of-way between the curb and the property line.

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FOPs:

The variance does not meet the intent of the Zoning Ordinance since other alternatives exist. The outdoor fireplace will be in a newly created courtyard area that is enclosed with a 3' tall wall. As a result, the fireplace may be replaced with a code compliant fire pit/fire feature and/or it may be relocated closer to the house in order to reduce the amount of setback encroachment (e.g. relocate it toward the east side of the new courtyard or attached to the northeastern part of the house).

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 location of the drainage/golf course easement limits the amount and location of the buildable area towards the front of the lot. The applicant is trying to utilize existing conditions to create more usable/outdoor space.

FOPs:

The request is self-imposed. The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, the fireplace may be replaced with a code compliant fire pit/fire feature and/or it may be relocated closer to the house in order to reduce the amount of setback encroachment.

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 drainage/golf course easement in the rear yard limits the buildable area to the front of the property. The applicant has a difficult lot to build on and is trying to work with existing conditions to create more outdoor living space. The drainage/golf course easement encompasses approximately 60% of the lot and the location of the house and pool further limit the amount of buildable/usable area.

FOPs:

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Other options exist. The outdoor fireplace can be replaced with a code compliant fire pit/fire feature and the amount of setback encroachment may be reduced by relocating the fireplace closer to the house.

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 not a grant of special privilege. The location of the drainage/golf course easement limits the amount and the location of the buildable area towards the front of the lot. The request also meets the intent of the code since the fireplace will not obstruct views.

Furthermore, setback encroachments are not atypical for this neighborhood. The applicant identified two neighboring properties in the area which have fence walls encroachments into the front yard setback (see Examples A & B in the applicant’s narrative).

FOPs:

The request is a grant of special privilege since code compliant alternatives exist. The applicant can construct a 3’ tall fire pit instead of a 6’ fireplace. Also, all other properties in the area must meet requirements outlined in the Town Zoning Ordinance.

COMMENTS: Staff received no inquiry nor comments regarding this request.

COMMUNITY IMPACT: None.

FISCAL IMPACT: None.

CODE VIOLATIONS: None.

ATTACHMENTS:

- A. Staff Report
 - B. Vicinity Map & Aerial Photo
 - C. Application
 - D. Narrative & Plans
 - E. Notification Materials
 - F. Sections 2404 of Town Zoning Ordinance
- C: Zachery Pekala (Applicant)
Case File BA-20-09