

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:

**Pringlei Variance – 3320 E. San Miguel Place (APN 170-03-133)
Case No. BA-20-08**

MOTIONS

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-20-08, a request by Dr. Curt Hartmann/Pringlei LLC, property owner of 3320 E. San Miguel Place; for a variance from the Zoning Ordinance Article XXIII, Nonconformance and Article X, Height and Area Regulations, to allow nonconforming portions of the house to remain in the setbacks and to be modified. The variance shall be subject to the following stipulations:

1. The improvement shall be in compliance with the submitted plans and documents:
 - a. The Property Narrative, pages 1 – 7, prepared by Swartz Construction, Inc. and dated December 1, 2020;
 - b. Site Plan for Requested Variance, prepared by Swartz Construction, Inc. and dated October 22, 2020; and
 - c. Elevations Plan, prepared by Swartz Construction, Inc. and dated October 22, 2020; and

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-20-08, a request by Dr. Curt Hartmann/Pringlei LLC, property owner of 3320 E. San Miguel Place; for a variance from the Zoning Ordinance Article XXIII, Nonconformance and Article X, Height and Area Regulations, to allow nonconforming portions of the house to remain in the setbacks and to be modified.

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Reasons for Denial:

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

BACKGROUND

Request

The existing home encroaches into the front and side yard setbacks and the applicant requests a variance to allow the nonconforming portions of the house to remain. 340 square feet of the house encroaches into the setbacks. The setbacks vary from 28'10" to 32'1" measured from the front property line and 19'1" from the north side property line. The portions of the house which encroach into the setbacks are 14'11" tall (measured from the lowest natural grade below the house).

The applicant is proposing a major remodel/addition which utilizes and maintains the existing nonconforming portions of the home. The footprint and height of the nonconforming portions of the house will remain the same. Section 2307 of the Zoning Ordinance requires the nonconforming portions of a structure to be brought into setback and height compliance when affecting or remodeling more than fifty percent of the existing square footage. Section 1001 of the Zoning Ordinance requires the house to have a minimum setback of 40' from the front property line and a minimum setback of 20' from the side property lines. Since more than 50% of the existing square footage of the house is being affected or remodeled, the applicant is seeking a variance to maintain the nonconforming portions of the home which encroach into the front and side yard setbacks. The following is a comparison of the existing house setbacks compared to the setbacks required by the Town Zoning Ordinance:

	Existing House	Zoning Ordinance
Front Setback (West P.L.)	28'10' (minimum)	40'
Side Setback (North P.L.)	19'1"	20'

Lot Conditions

The property is zoned R-43 and is approximately 50,362 square feet in size (1.2 acres in size). The lot is pie shaped, has a curved frontage, and has a wash/public utility easement located in the rear of the property.

Lot History

The subject property is Lot 4 of the San Miguel Estates subdivision, which was platted in 1966. A lot line adjustment between this property and neighboring property Lot 3 was approved in 2005 as the San Miguel Estates I plat. Although the 1968 building permit for the house identifies it meets the setback requirements, the existing home encroaches into the front and north side setbacks (which may be a result of an incorrect survey and/or construction error when the house was originally built).

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A demolition permit was issued to remove interior walls and the roof of the house. The demolition plan showed the house was compliant with setbacks. However, when the applicant submitted plans for the building permit review, the grading and drainage plan identified that the house encroached into the front/west and side/north setback. Since more than 50% of the home is being remodeled (which triggers the requirement that any nonconforming portions of the house must meet current zoning requirements), the property owner is requesting a variance to maintain the nonconforming portions of the house which encroach into the front and side yard setbacks.

The following list of permits is a chronological history of the subject property:

January 1, 1968	Building permit for a new single-family residence
April 24, 1969	Building permit for a pool
July 7, 1983	Building permit for a fence
April 9, 1985	Building permit for a detached guest house
June 17, 2020	Demolition permit to remove interior walls and roof on 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.

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 a wash which creates an unusual building envelope. A wash/utility easement is in the rear of the property and encompasses approximately 22% of the lot. This pushes the building area toward the front of the property. Also, the pie shape of the lot results in a narrow frontage with a curved front yard setback. Due to the shape of the lot, the property is approximately 140' wide at the 40' front yard setback instead of 165' wide as compared to a standard/rectangular shaped lot.

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 can remove the nonconforming portions of the house.



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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 of the lot and the location of the wash/utility easement is the result of how the property was originally platted. The applicant is trying to remodel the existing home while utilizing the existing portions of the house that encroach into the setbacks.

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 preserve the visual openness with height and setback requirements. The request meets the intent of the zoning ordinance since the applicant is not changing the footprint nor the height of the nonconforming portions of the house. Also, the nonconforming portions of the house are low in height at 14'11" tall and do not appear to block any neighboring views.

FOPs:

The variance does not meet the intent of the code since the nonconforming ordinance was established to bring nonconforming structures into compliance with current zoning requirements. Although not ideal, the existing nonconforming portions of the house can be removed and the house 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 existing house was originally constructed in the required setbacks. The applicant is trying to update the home while maintaining and utilizing the nonconforming portions of the house. The footprint and height of the nonconforming portions of the house will remain the same. Also, there is limited amount of encroachment. Only 340 square feet of the



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existing house encroaches into the setbacks (with 249.6 square feet of the northwestern part of the house and 98.6 square feet of the southwestern part of the house encroaching into the setbacks).

FOPs:

The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, the applicant can remove the nonconforming portions of the house.

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 wash/utility easement in the rear yard and the shape of the lot 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 instead of constructing a new home. The wash/utility easement encompasses approximately 22% of the lot and the pie shape lot creates a narrow front yard. Also, the location of the existing casita and pool further limit the amount of buildable area.

FOPs:

The setbacks/location of the house was established during its original construction. The applicant is trying to update and maintain the house with a major remodel/addition. Despite these circumstances, Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. The wash easement 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 not a grant of special privilege. The wash/utility easement and pie shape of the lot limit the location and amount of buildable area on the property. These property hardships were prevalent with the original development of the home in the 1968 and are still prevalent today. The request meets the intent of the code since they are not increasing the amount of nonconformity by maintaining the footprint and height of the areas of encroachment.

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Furthermore, setback encroachments are not atypical for this neighborhood. The neighboring home at 3202 E San Miguel Place received a variance for a 5' setback in 2013. The remodeled home is also smaller than the current homes being constructed in Town. The remodeled home is approximately 6,500 square feet, which is less than the average home size 8,000 square feet.

FOPs:

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

COMMENTS: Staff received two comments from neighboring property owners regarding this request. One neighbor is opposed to the request. This neighbor noted that the Zoning Ordinance should be abided by and the applicant should check with the Town before any remodeling. The other neighbor is concerned that the improvements to the home will block the views of the Praying Monk on Camelback Mountain.

COMMUNITY IMPACT: Concerns from two neighboring property owners are noted in the "Comments" section above.

FISCAL IMPACT: None.

CODE VIOLATIONS: None.

ATTACHMENTS:

- A. Staff Report
- B. Vicinity Map & Aerial Photo
- C. Application
- D. Narrative & Plans
- E. Notification Materials
- F. Public Comment
- G. Sections 2307 and 1001 of Town Zoning Ordinance

C: Jan Swartz (Applicant)
Case File BA-20-08