

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Lisa Collins, Community Development Director
Paul Michaud, Planning Manager
George Burton, Senior Planner

DATE: June 2, 2021

DEPARTMENT: Community Development Department/Planning Division
George Burton, 480-348-3525

AGENDA TITLE:

Savage Variance – 6122 N 51st Place (APN 169-25-013)
Case No. BA-21-05

MOTIONS

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-21-05, a request by Susan Marie Savage, property owner of 6122 N 51st Place; for a variance from the Zoning Ordinance, Article V, (R-43) Single-Family Residential District, to allow a swimming pool and spa 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, pages 1 – 6, prepared by Lazarus & Silvyn P.C. and dated April 29, 2021;
 - b. Sheet A0.0, General Info + Site Plan, prepared by Rob Paul Architects LTD. and dated April 29, 2021; and
 - c. Sheet A1.0, Pool Plan, prepared by Rob Paul Architects LTD. and dated March 23, 2021;
2. The applicant must identify and verify the boundary of the wash/drainage easement prior to issuance of the building permit and no structures shall be placed in the wash/drainage easement.
3. The vegetation/landscaping adjoining the south property line (as generally illustrated on the aerial view in the project narrative) shall be maintained at a similar density to help screen the pool and spa.

Reasons for Approval:

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

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B. MOTION FOR DENIAL

I move for **[denial]** of Case No. Case No. BA-21-05, a request by Susan Marie Savage, property owners of 6122 N 51st Place; for a variance from the Zoning Ordinance, Article V, (R-43) Single-Family Residential District, to allow a swimming pool and spa to encroach into the setback.

Reasons for Denial:

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

BACKGROUND

Request

The applicant requests a variance to allow a swimming pool and spa to encroach into the side yard setback. The pool and spa will be setback approximately 15' from the side/south property line. Section 502.7 of the Zoning Ordinance requires a 20' side yard setback measured from the property line to the water's edge.

The pool/spa is approximately 14' wide by 36' long, with 130 square feet located within the south side setback. The pool/spa will meet all other setback requirement (from the front, rear, and north side) and will comply with the pool barrier requirements. The following is a comparison of the proposed pool/spa setbacks with the Town Zoning Ordinance requirements:

Swimming Pool Setback Requirements		
	Pool/Spa	Zoning Ordinance
Front Setback	55'	40'
North Side Setback	99'	20'
South Side Setback	15'	20'
Rear Setback	169'	20

The applicant identified the general boundaries of the wash on the site plan. However, if the variance is approved, the applicant must provide the Town Engineering Department with a drainage report to verify the boundary of the wash prior to issuance of a building permit. If the boundary of the wash is larger than what is shown on the site plan, the pool will be moved further north to accommodate the boundaries of the wash (please reference Stipulation No. 2).

Lot Conditions

The property is zoned R-43 and is approximately 33,977 square feet in size (0.78 acres in size). The lot is rectangular in shape, has a wash that bisects the property and runs along the south property line, and is approximately 128' wide.

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Lot History

The subject property was platted in 1953 and is Lot 13 of the Camelback Ranchos subdivision. The Camelback Ranchos subdivision was then annexed into the Town in 1961. The following list of permits is a chronological history of the subject property:

May 13, 1970	Building permit for a pool
Mach 5, 1971	Building permit for an addition to the house
July 27, 2006	Building permit to remodel the house
October 30, 2006	Demolition permit to remove a pool, steps, walls, roof, and walkways
October 30, 2020	Building permit to remodel the house
October 30, 2020	Demolition permit for demo of kitchen, bath, and bedroom

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 result of the narrow lot width, the small lot size, and the location of the wash on the property, which limit the placement of the pool/spa. The property is approximately 128' wide and the R-43 zoning district has a minimum lot width of 165' wide, resulting in a lot that is 37' narrower than required by code. The property is also 22% small than a standard R-43 zoned lot and has a wash which bisects the property and runs along the south property line as it exits the lot. These property hardships make it difficult to build on this lot and the applicant is trying to utilize existing site conditions by placing the new pool/spa between the existing house and the wash.

Findings Opposed (FOPs):

Arizona Revised Statues and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. Although not ideal, the applicant may eliminate or reduce the setback encroachment by placing the pool and spa

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closer to the house. The proposed pool/spa has a 15' separation from the house. However, engineering standards recommend that the depth of the pool determines the minimum separation between a pool and a structure. Since the pool is only 6' deep, the pool can be located closer to the house (with a minimum separation of 6' between the house and pool/spa).

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 narrow lot width, the smaller lot size, and the location of the wash are the result of how the property was originally platted in 1953. The applicant is trying to utilize existing conditions by placing the pool/spa between the house and the wash.

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 help buffer outdoor amenities, provide visual openness, and maintain view corridors. The request meets the intent of the Zoning Ordinance since the pool/spa will not obstruct any views, only 130 square feet of the pool/spa encroach into the setback, and the pool/spa will be screened from view by existing vegetation along the southern part of the property.

FOPs:

The variance does not meet the intent of the Zoning Ordinance since other alternatives exist. The pool/spa may be placed closer to the house or placed on the west side of the property to eliminate or reduce the setback encroachment.

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:

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The request is not self-imposed. The applicant has a difficult lot to build on due to the narrowness of the property, the smaller lot size, and the location of the wash. The property is 37' narrower and 22% smaller than a standard R-43 zoned lot and a variance request would not be needed if the lot were meeting the minimum width of 165' per code.

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 pool/spa may be redesigned, reconfigured, and/or relocated to a different part of the property to meet the 20' side yard setback.

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 narrow width of the property, the smaller lot size, the location of the wash, and the location of the existing house and septic system limit the where the pool/spa may be placed. The property is 37' narrower and 22% smaller than a standard R-43 lot and is divided by a wash.

Due to these property hardships, the development of the lot has been limited to the eastern part of the property (with the house located on the north eastern part of the lot and the "backyard" located on the southeastern part of the property). The applicant is therefore trying to utilize the existing "backyard" area by placing the pool and spa between the house and wash. The proposed location also helps preserve the desert environment on the west side of the wash while using the existing vegetation at the southern part of the property to screen the pool/spa.

FOPs:

Although not ideal, the pool/spa may be placed closer to the house or on the western part of the property to eliminate or reduce the 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:

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The applicant is trying to utilize existing conditions by placing the pool/spa between the house and the wash. The pool/spa will have limited visibility due to the mature vegetation on the site and limited impact due to the small amount of encroachment of 130 square feet. Also, setback encroachments are not atypical for this neighborhood. The applicant identified nine neighboring properties in the area which have pools that encroach into the setbacks (see page 5 in the applicant's narrative).

FOPs:

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. As a result, the Town Code does not guarantee an ideal or preferable location. The pool/spa may be redesigned, reconfigured, and/or relocated to meet setbacks. 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

C: Michelle Green (Applicant)
Case File BA-21-05