

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

TO: Chair and Board of Adjustment

FROM: Lisa Collins, Community Development Director
Paul Michaud, Planning Manager
Loras Rauch, Special Projects Planner

DATE: June 2, 2021

DEPARTMENT: Community Development Department/Planning Division
Loras Rauch, 480-348-3595

AGENDA TITLE:

Sbiliris Variance – 8317 N Charles Drive (APN 168-70-016)
Case No. BA-21-03

MOTIONS

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-21-03, a request by Bill Sbiliris, property owner of 8317 N Charles Drive; for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, Section 2207 III Land Disturbance Standards (F) to allow a new single-family residence and the development of the property to exceed the allowable disturbed area. 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 – 10, prepared by SpaceLineDesign Architects LLC. and dated Rev 17 May 21;
 - b. Sheet 22 & 23, Key Plan of Drainage & Disturbance Area + Site Plan, prepared by SpaceLineDesign Architects LLC. and dated Rev 17 May 21; and
 - c. Sheet 31, Preliminary Grading & Drainage Plan, prepared by Land Development Group, LLC and dated April 29, 2021;
2. As part of the Native Plant Preservation Plan a separate Revegetation Plan shall be required to be submitted which shall provide plant location, species, size and quantity information for all areas where revegetation is required. The pre-existing disturbed area identified as 3,175 square feet adjacent to and containing the drainage swale that runs along the eastern property line shall be revegetated in addition to the 3,903 square-foot area consisting of the septic area and the construction zone area (as shown on Sheet 23). These plans shall be prepared by an AZ Registered Landscape Architect, an AZ Certified Nurseryman, or other qualified professional and are subject to Town review and approval.

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Reasons for Approval:

I find that there are special circumstances, applicable to the subject lot, meeting the variance criteria and that as stipulated represents the minimum variance necessary.

B. MOTION FOR DENIAL

I move for **[denial]** of Case No. Case No. BA-21-03, a request by Bill Sbiliris, property owner of 8317 N Charles Drive; for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, Section 2207 III Land Disturbance Standards (F) to allow a new single-family residence and the development of the property to exceed the allowable disturbed area.

Reasons for Denial:

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

BACKGROUND/DISCUSSION

Lot Conditions: The subject property was platted in 1956 and is Lot 36 of the Sunset Hills subdivision. The Sunset Hills subdivision was then annexed into the Town in 1963. The property is zoned R-43 Hillside and is approximately 45,583 square feet (SF) in size (1.04 acres in size). Technically, the front yard for this lot adjoins N. Charles Drive (the west property line) and the rear yard is along the eastern property line. This property is not accessible from N. Charles Drive since the roadway is chained off at the neighboring property to the south (8249 N. Charles Drive – Lot 35).

Lot 36 has remained vacant/undeveloped while all but 3 other lots in the Sunset Hills subdivision have been developed. Most of the lot slopes above 45% which makes for a challenging lot to build on. The site slope starts around 22% at the east property line, is 25% at the proposed home location, and continues up to 75% at the western property line. The site steepness necessitates the home to be located at the lower (eastern side) of the property and is accessed from the north off of Mockingbird Lane.

Access: Driveway access from Charles Drive was considered but found to not be feasible to construct. Cut banks and retaining walls would be well over 12' on each side of the driveway as the slope is 50-75% and would require switchbacks to get to a 25% grade where it would be suitable to build. Therefore, access for 8317 Charles Drive (Lot 36) is off Mockingbird Lane via a 25' access easement across the lower east boundary of 4511 E Mockingbird Lane (Lot 37). The two lots will also share a driveway. Where the shared driveway diverges to access Lot 36 a new driveway will be built directly over the existing disturbed area of Lot 37 so, it will not contribute further to that lot's present disturbed area calculations. At this divergent point, the driveway surface is approximately 36" above existing natural grade and has a proposed 4-foot retaining wall. Once within Lot 36, and near the pivot point of the driveway, the "downhill side" of the retaining wall reaches a maximum height of 8-foot.

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Fire Requirements: The proposed driveway has a moderately steep grade averaging around 15% before leveling off to the required 5% cross slope for emergency vehicle staging. A turn-around for the fire truck is required at the top of the driveway due to the overall driveway length being 300' to the street access point (170' on Lot 37 and 130' on Lot 36). A "Modified Wye" driveway turn-around design was approved for use by the Fire Department. This turn-around design causes less disturbance than other designs. The onsite accessible driveway for a fire truck requires disturbance of (4,498 SF). The location of the driveway can only take advantage of (850 SF) of the pre-existing disturbance from the neighbor's driveway spill. The rest of the pre-existing disturbance is from drainage cobble and the existing planters, which results in a net driveway disturbance of (3,648 SF).

Drainage: The upslope drainage field extends offsite up to the Phoenix Mountain Preserve ridgeline so the "Drainage Basin Area" that impacts this lot is 2.52 acres or over twice the size of this 1 acre. This upslope drainage field has been directed around the house with a 5-foot wide concrete swale (683 SF) and conveyed into the 6-foot wide drainage riprap or cobble (1,181 SF) along both sides of the home and down to the existing drainage swale (3,175 SF) at the lowest end of the property along the eastern property line. The required onsite retention has been designed using a series of catch basins in the patio area and conveyed into an underground retention pipe under the driveway and then released into the existing drainage swale along the east property line. As designed, this application complies with the Town's Watershed Drainage Requirements for the 100 year storm but the magnitude of the concrete and riprap around the upslope perimeter of the house adds 1,864 SF to the total disturbed area calculations.

Residence/Design: The building has been positioned within the buildable area of the lot at approximately the 25% slope line. The building is elongated across the lot from side yard setback to side yard setback and approximately at the same "front" alignment as the neighboring homes to the north and south. The back (west elevation) of the residence is built into the hillside with the first floor being a daylight basement and a maximum 15'-9" of backfill against the west structural wall of home. The "functional" front (east elevation) of the residence daylights both floors. The maximum overall height of the building is approximately 23'-10" from the highest point of the building to the lowest point of natural grade. The applicant has proposed only a 12' wide driveway with a two-car overhead garage door. The garage will have tandem parking for a total of 4 cars inside on the garage floor plus the possibility of two more using two double stack lifts inside the garage. The garage and driveway are set 3'-3" lower than the main living levels of the residence. There is a long narrow pool and patio area that follows the linear profile of the home and is only 9-feet wide in one point to minimize the amount of disturbed area. Because of the steep nature of the lot, this is the only outdoor living

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area. The pool utility room has been tucked underneath the patio slab to also conserve disturbed area and to be out of sight. This outdoor living space (pool, patio and entryway) is 3,379 SF. Near the corner of the garage on the “uphill side” of the driveway the retaining wall starts at a height of 8-feet and gets progressively shorter as it extends downhill along this side of the driveway. All retaining walls for the site are attributed to the driveway, entryway and outdoor living area (pool and patio). These walls vary in height from approximately 4-6 feet in height with two points along the driveway that reach the maximum of 8-feet.

DISTURBANCE CALCULATIONS:

Permitted Disturbance: Slope Category 25.41% allows 12.4% disturbance **(5,639 SF)**

Pre-Existing Disturbance:

- Lot 37 planter & driveway spill: (1,400 less 850 reused) 550 SF
 - Drainage swale on eastern property line: 3,175 SF
- 3,725 SF**

Proposed disturbance area calculations:

- Driveway & fire turn-around 4,498 SF
 - Stormwater drainage structures 1,864 SF
 - Outdoor area (pool, patio an entry) 3,379 SF
- 9,741 SF**

The lot to the north (Lot 37) has an existing planter and driveway embankment spill area that is nearly 100% on Lot 36 and has been there since 1972. This disturbed area is approximately 1,400 SF and is being retained ‘as is’ in order to preserve the integrity of the neighbors existing driveway as well as privacy for the neighbor. Over half (850 SF) of this will be covered over by Lot 36 new storm drainage & driveway, the rest of this disturbed area (550 SF) will remain ‘as is’ to preserve the neighbors existing driveway. The hedge will be trimmed down significantly to rebuild & stabilize the existing planter on the Lot 36 side of the property line.

The other area of pre-existing disturbance is a drainage swale that is approximately 3,175 SF and runs the length of the property along and just west of the eastern property line. This area was originally a rough road circa 1959, then converted to the present drainage/utility ditch around 1976. The drainage swale is still necessary per the Engineer’s calculations, but it has been partially revegetated by nature over the decades since the rough road was originally constructed there. Staff is suggesting that if the applicant were to do more to revegetate the “banks” of this swale without interfering with the necessary flows, then some amount of revegetation credit may apply. Per Section 2207, III (H) a legally pre-existing disturbed area may be excluded (100%) from the disturbed area calculations if restored and, Section 2207, III (I) on-site storm water retention shall be included in the allowable disturbed area (50%) if retaining

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walls are not used and the area is vegetated with native plant material.

If the applicant were to revegetate this drainage swale area, full or partial credit could be provided and the requested amount of total disturbance shown by the applicant as 13,466 SF for a variance request of 7,827 SF could be reduced as follows:

- 100% credit: $(9,741 + 550 = 10,291 \text{ SF total disturbance}) = \text{Variance of } 4,652 \text{ SF}$
- 50% credit: $(9,741 + 1588 = 11,329 \text{ SF total disturbance}) = \text{Variance of } 5,690 \text{ SF}$
- 0% credit: $(9,741 + 3,725 = 13,466 \text{ SF total disturbance}) = \text{Variance of } 7,827 \text{ SF}$

DISCUSSION ITEMS:

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 rugged terrain and steep slope of the lot which limits the total amount of disturbance permitted. The residence has been situated in the most buildable/most shallow portion of the lot, in-line with the adjacent homes and cut into the hillside rather than built on top of the hillside. The property is approximately the same size and with the same slope as the lots on either side of it and is proposing to disturb less. Lot 37 (north) has disturbed approximately 19,324 SF and Lot 35 (south) has disturbed approximately 14,614 SF (as shown in the disturbance area comparisons submitted by the applicant). The steep slope and the lack of access from N. Charles Drive necessitate the long driveway through the neighboring lot which in turn necessitates the extra disturbance attributed to the fire truck turn around at the top of the driveway. The uphill off-site storm basin and the pre-existing disturbance on the property also contribute to the hardship.

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 could eliminate the outdoor living area (pool, patio and entryway). However, the existing pre-disturbance area, the driveway requirements to accommodate a fire



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truck, and the necessary storm drainage improvements would still require a variance from the disturbance limit.

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 steepness of the lot and the existing drainage swale disturbance are the result of how the property was originally platted in 1956. Access to the lot has been compromised by the presence of the Phoenix Mountain Preserve and desire to block further access up the mountain. The applicant is trying to utilize existing conditions by placing the residence in the most buildable portion of the lot while still maintaining the required 40-foot setback from the eastern property line and accessing the lot at the lower elevations through the neighboring lot.

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 Hillside Development Regulations is to preserve the visual presence of the surrounding mountain preserves, prevent unnecessary grading, preserve drainage patterns, and require re-vegetation to maintain the natural landscape environment. The request meets the intent of the Hillside Development Regulations as it complies with the requirements for emergency vehicle access (80% of allowed disturbance) and storm water drainage (90% of allowed disturbance) on this steep site. The home is built into the hillside to reduce the amount of grading and designed with a modest outdoor living area that follows the linear profile of the elongated home to further minimize disturbance to the site.

FOPs:

The request is not the minimum amount needed to cure the hardship. The amount of disturbance may be reduced by revegetating the drainage swale area in order to receive full or partial credit. However, because of the steepness of the lot (severely limits disturbance), the lack of access to the site, and the stormwater regulations in place a variance would be required to build on this lot.

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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 applicant has a difficult lot to build on and is utilizing the existing site conditions by placing the building in the most buildable position and utilizing engineering and building design and techniques to further reduce the site disturbance. The outdoor living area is the only design factor which the applicant can control and that has been greatly reduced in comparison to other hillside homes within the same subdivision (as shown in the disturbance area comparisons submitted by the applicant).

FOPs:

Other alternatives exist. The amount of disturbance may be reduced by revegetating the drainage swale (in which the Zoning Ordinance gives full and/or partial disturbance credit for revegetating retention basins, drainage swales, and legal pre-existing disturbed areas).

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:

By following the strict application of the Hillside Development Regulations this lot (with a 25% steepness) would only be allowed 5,639 SF of total disturbed areas. Once the required drainage and driveway areas are subtracted the applicant is left with negative 723 SF of disturbed area remaining for all of the outdoor living (patio, pool and main entryway) as well as the existing disturbed areas. There is not adequate allowance in the Hillside Development Regulations to consider all these unique factors while allowing for a comfortable but modest patio (accommodating 4 deck chairs), a small children's play area, swimming pool and BBQ plus the main entry approach as shown.

FOPs:

This is not the minimum amount of disturbance needed to cure the hardship since the applicant could remove the outdoor amenities such as the pool and patio area and can receive full or partial credit for revegetating the drainage swale area.

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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:

This does not constitute a grant of special privilege, but rather would allow this property to offer the homeowner and family similar opportunity to enjoy typical privileges that adjacent hillside properties also have in enjoying a modest size outdoor living area for swimming pool, deck lounging, BBQ with beautiful views, in a quiet desert setting. The steep slope of the property results in a very limited amount of disturbance and the amount of requested disturbance is similar to the amount on the neighboring properties (as noted 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.

COMMENTS: Staff received two inquiry from neighbors directly adjacent to this lot but no comments regarding this request.

COMMUNITY IMPACT: None.

FISCAL IMPACT: None.

CODE VIOLATIONS: None.

ATTACHMENTS:

- A. Staff Report
- B. Vicinity, Zoning & Aerial Map
- C. Narrative
- D. Plans
- E. Disturbance Area Comparisons
- F. Notification Material

C: Jeffrey Page (Architect/Applicant)
Case File BA-21-03