

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: September 1, 2021

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

AGENDA TITLE:

**Baiamonte Variance – 5740 E Via Los Ranchos (APN 168-57-013)
Case No. BA-21-06**

MOTIONS

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-21-06, a request by Michael Baiamonte and Su-shien Cho, property owners of 5740 E. Via Los Ranchos; for a variance from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow: i. an attached garage addition and ii. a bedroom/hallway addition to house to encroach into the setbacks; and 2) Article V, (R-43) Single-Family Residential District and Article X, Height and Area Regulations, to allow a pickleball court and court light fixture to encroach into the setbacks. 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 – 33, titled “Variance for Michael Baiamonte and Su-shien Cho, 5740 E. Via Los Ranchos” prepared by Michael Baiamonte and Su-shien Cho;
 - b. The Topographic Surey/Site Plan, Sheet 1 of 2, prepared by Su-shien Cho and dated May 3, 2021; and
 - c. The Exterior Elevations Plan, Sheet 2 of 2, prepared by Su-shien Cho and dated May 3, 2021.

Reasons for Approval:

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

TOWN *Of* PARADISE VALLEY



STAFF REPORT

B. MOTION FOR DENIAL

I move for [denial] of Case No. BA-21-06, a request by Michael Baiamonte and Su-shien Cho, property owners of 5740 E. Via Los Ranchos; for a variance from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow: i. an attached garage addition and ii. a bedroom/hallway addition to house to encroach into the setbacks; and 2) Article V, (R-43) Single-Family Residential District and Article X, Height and Area Regulations, to allow a pickleball court and court light fixture to encroach into the setbacks.

Reasons for Denial:

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

BACKGROUND

Request

The applicant requests two variances:

1. Additions to the Main House. A variance to allow a garage addition to encroach into the west/side yard setback and to allow a bedroom/hallway addition to encroach into the east/side yard setback.
2. Pickleball Court. A variance to allow a pickleball court and one court light pole to encroach into the east/side setback.

Additions to the Main House

Section 1001 of the Zoning Ordinance requires a 20' side yard setback for the main house (measured from the property line to vertical plane of the structure). The garage addition encroaches 10' into the west/side yard setback and the bedroom/hallway addition encroaches 14' into the east/side yard setback. The improvements to the house will increase the floor area ratio from 9.22% to 12.75%.

Garage Addition. The applicant is proposing to add 865 square feet of garage to the west side of the house to create a four-car garage. The garage addition is setback 10' from the west side property line (with 200' square feet of encroachment into the setback), approximately 11'4" tall, and will be finished to match the house.

Bedroom/Hallway Addition. The applicant is proposing to add 680 square feet to the east side of the house to add a bedroom and hallway. The bedroom/hallway addition is setback 6' from the east side property line (with 200 square feet of encroachment into the setback), is approximately 13'4" tall, and will be finished to match the house.

Below is a comparison of the house additions with the Town Zoning Ordinance requirements:

TOWN *Of* PARADISE VALLEY



STAFF REPORT

Primary Residence		
	Zoning Ordinance	Main House Additions
Front Setback	40'	45'
West Side Setback	20'	10'
East Side Setback	20'	6'
Rear Setback	40'	60'
Height	24'	11'4" Garage/13'4" Bedroom/Hallway
Open Space Criteria Height	16' – 24'	11'4" Garage/13'4" Bedroom/Hallway

Pickleball Court

The applicant is proposing to add a pickleball court at the northeast part of the lot. Pickleball courts have a recommended court size of 64' long and 34' wide. The applicant is proposing a pickleball court that is 60' long and 30 wide. The pickleball court setbacks vary from: 5' to 40' measured from the east/side property line to the playing lines and 49' to 55' from the rear/north property line (with 85 sq ft of playing area encroaching into the setback). A portion of the pickleball court will also be placed in the drainage easement. This portion of court was deemed acceptable by the Town Engineering Department since the court should not impede flows. However, if the variance is granted, the applicant must provide a drainage report and grading plan verifying that this portion of court will not impede storm water flows during the building permit process.

The pickleball court will also be illuminated with four light poles. The light poles are 20' tall and one light fixture will encroach into the east/side yard setback. This one fixture will be setback 10' from the east/side property line. The light fixtures will comply with all other lighting requirements (e.g. height, light output, and hours of operation).

Setbacks for tennis courts and pickleball courts are measured from property lines to playing lines. Section 502 of the Zoning Ordinance requires a 32' setback measured from the side lines to the property line and a 41' setback measured from the end lines to the property line. Section 502 and 1023 of the Zoning Ordinance require a 20' side yard setback for tennis court and pickleball court lights.

The pickleball court encroaches 15' into the east/side yard setback (with 85 square feet of lined court area encroaching into the setback) and one light pole encroaching 10' into the east/side yard setback.

Below is a comparison of the pickleball court with the Town Zoning Ordinance requirements:

TOWN *Of* PARADISE VALLEY



STAFF REPORT

Pickleball Court		
	Zoning Ordinance	Pickleball Court
Side Lines to Property Line Setback	32'	5' to 40'
End Lines to Property Line Setback	41'	49' to 55'
Pickleball Light Poles		
Front Setback	40'	148'
Side Setback	20'	10'
Rear Setbacks	20'	91'
Height	20'	20'

Lot Conditions

The property is zoned R-43 and is approximately 43,729 square feet in size (1.00 acres in size). The lot is pie shaped and has a 40' wide drainage easement that encompasses the rear yard and northeastern part of the lot.

Lot History

The subject property is Lot 9 of the Via Los Ranchos subdivision, which was platted in 1972. The following list of permits is a chronological history of the subject property:

July 22, 1975	Building permit for a new single-family residence
November 3, 1975	Building permit for a fence
February 15, 1977	Building permit for a fence
February 22, 1978	Building permit for a pool

History

On June 2, 2021, the Board of Adjustment continued this application to the September 1, 2021 meeting. The applicant was unable to attend the June 2nd meeting and requested a continuance due to unexpected travel. The Board granted the continuance to September 1st by a vote of 5 to 0. As a courtesy, the property owner reposted the property identifying the September 1st hearing date.

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.

TOWN *Of* PARADISE VALLEY



STAFF REPORT

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 shape of the lot and drainage easement create an unusual building envelope. The applicant is trying to utilize existing conditions and maintain existing vegetation on site. The shape of the lot and the location of the house, pool, and drainage easement also limit where the additions and pickleball court may be placed on the property.

Findings Opposed (FOPs):

Although not ideal, the applicant may reconfigure and/or relocate the additions to the house to bring them into setback compliance. A smaller court may also be placed on the west side of the pool to bring the court into setback compliance and the court does not have to be illuminated (which would eliminate the light pole encroachment in the side setback).

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 location of the drainage easement is the result of how the property was originally platted. The placement of the existing house and the existing pool further limit the amount and location of buildable 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 preserve the visual openness with height and setback requirements. The request meets the intent of the Zoning Ordinance since the additions to the house and the pickleball court and court light should not obstruct any neighboring views. Only 200 square feet of garage and 200 square feet of bedroom/hallway additions encroach into the side yard

TOWN *of* PARADISE VALLEY



STAFF REPORT

setbacks. The additions are also low in height (with the garage at a height of 11'4" tall and the bedroom/hallway addition at a height of 13'4" tall). The pickleball court and light pole should also have limited visual impact since the court is at grade and since a standard light pole is approximately 4 to 6 inches wide.

FOPs:

The variance does not meet the intent of the Zoning Ordinance. Setbacks are designed to create consistent view corridors and to mitigate the impacts of outdoor uses. Placing additions into the setback will obstruct the view corridors. For instance, the line of sight is reduced when structures are placed closer to the property line. Also, placing the pickleball court and court light closer to the property line bring noise and light closer to the neighboring property.

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 is trying to utilize existing conditions. The shape of the lot, the location and size of the drainage easement, and the placement of the existing house and the existing pool limit the amount and location of buildable area. The applicant is trying to utilize existing conditions by placing the additions in accordance with the design/layout of the existing home. The applicant also reduced the size of the pickleball court to fit within the lot.

FOPs:

The request is self-imposed and other alternatives exist. The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, the additions to the house and the pickleball court and court light can be modified and/or relocated to meet setback compliance. For instance, one bay on the garage addition may be removed or the addition may be placed on the west side of the existing garage in order to comply with setback requirements. The bedroom/hallway addition may also be reduced in size and moved further north (closer to the pool) to reduce or eliminate the setback encroachment. Lastly, the pickleball court may be placed on the west side of the pool bring it into setback compliance and the court does not have to be illuminated (which would eliminate the light pole encroachment in the side setback).

TOWN *of* PARADISE VALLEY



STAFF REPORT

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 shape of the property, the existing drainage easement at the northern part of the lot, and the location of the house and pool limit the amount of buildable area. The property has a 40' wide drainage easement in the rear of the lot and the property varies in width from approximately 72' in the front to 397' in the back. The applicant is trying to place the additions and tennis court in locations which utilizes existing conditions.

FOPs:

There are no property hardships that prevent compliance. This appears to be a design hardship rather than a property hardship since other options exist. The drainage easement is 40' wide and matches most of the 40' rear yard setback for the house (with the exception of the portion of easement that turns at the northeast corner of the lot). As a result, the additions and pickleball court and court light may be redesigned and relocated to eliminate or reduce the setback encroachments. Alternatives include: 1) eliminating one garage bay or aligning the garage addition with the existing garage, 2) reducing the size and locating the bedroom/hallway addition closer to the pool (further north), and 3) reduce the size and relocate the pickleball court and court lighting west of the pool.

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 shape of the lot, the location and size of the drainage easement, and the placement of the existing house and the existing pool limit the amount and location of buildable area. The applicant is trying to utilize existing conditions by placing the additions in accordance with the design/layout of the existing home and reduced the size of the pickleball court to fit within the lot.

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

The home, with the proposed additions, will have 5,577 square feet of total floor area. This is smaller than the average sized home in Town, which is approximately 8,000 square feet of total floor area. The improvements should also have limited impact visual due to the low height of the house additions (ranging from 11'4" tall to 13'4" tall), the pickleball court being placed at grade, and only one court light pole located in the setback.

FOPs:

The request is a grant of special privilege since code compliant alternatives exist. 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 a location based upon views and/or design. The additions to the house and pickleball court and court light 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 two inquiries regarding this request. Both neighbors expressed concerns regarding the setback encroachments. An email from the one of the neighbors is enclosed expressing concern regarding drainage and storm water retention.

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. Public Comment 1
- C: Michael Baiamonte & Su-shien Cho (Applicants)
Case File BA-21-06