

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: October 6, 2021

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

AGENDA TITLE:

Baiamonte Variance – 5740 E Via Los Ranchos (APN 168-57-013)

**Motion to Reconsider Approval of Pickleball Court/Court Light Setback Variance
Case No. BA-21-06**

SEPTEMBER 1, 2021 BOARD OF ADJUSTMENT REVIEW & ACTION

On September 1st Board of Adjustment meeting, the Board reviewed a request by the property owners, Michael Baiamonte and Su-shien Cho, to allow a variance for:

- 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.
- Pickleball Court. A variance to allow a pickleball court and one court light pole to encroach into the east/side setback.

During this meeting, the Board:

1. Denied the variance request for the garage addition setback encroachment,
2. Approved the variance request for the pickleball court and court light setback encroachment, and
3. Continued the variance request for the bedroom/hallway addition setback encroachment (to the October 6th meeting). A copy of the draft September 1st summary meeting minutes is attached for reference.

The next day, a neighboring property owner requested that the Board reconsider the actions on the variance for 5740 E Via Los Ranchos. In accordance with the 2020 Board of Adjustment Rules and Procedures (Procedure for Board Meetings Section F), a motion for reconsideration may be taken by the Board at the next meeting provided a Board Member notifies the Chair and Community Development Director within 15 days of the subject meeting.



STAFF REPORT

On September 3, 2021, Board Member Kile notified Chair Williams and Community Development Director Collins that she would like to make a motion to reconsider the action for approval of the pickleball court variance that was granted for 5740 E Via Los Ranchos. As a result, a motion to reconsider the action on the pickleball court and court light has been placed on the October 6th meeting agenda and a vote will be taken by the Board to see if the motion to reconsider passes or fails. If the motion passes, then the Board will have opportunity to take public comment and state its findings to maintain the approval or to deny the pickleball court and court light variance request.

MOTIONS

A. MOTION FOR RECONSIDERATION OF THE ACTION ON THE PICKELBALL COURT AND COURT LIGHT

I move to reconsider the action on 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, 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.

If the motion for reconsider passes, then the following motions apply:

B. 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, 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 Survey/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:



STAFF REPORT

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

C. 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, 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

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.

TOWN *Of* PARADISE VALLEY



STAFF REPORT

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

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.

Below are findings in favor and findings opposed that only address the variance for the pickleball court/court light setback encroachment.

DISCUSSION/ FACTS:

TOWN *Of* PARADISE VALLEY



STAFF REPORT

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 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 limit where the pickleball court may be placed on the property.

Findings Opposed (FOPs):

Although not ideal, 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).

TOWN *Of* PARADISE VALLEY



STAFF REPORT

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 pickleball court and court light should not obstruct any neighboring views. 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 the pickleball court and court light closer to the property line may 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 pickleball court and court lights within the undeveloped part of the lot. 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 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).

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*



STAFF REPORT

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 utilize existing conditions and place the pickleball court and lighting the remaining/undeveloped part of the lot.

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 pickleball court and court light may be redesigned and relocated to eliminate or reduce the setback encroachments. Alternatives include reducing the size and relocating 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 reduced the size of the pickleball court to utilize existing conditions and placed the pickleball court on the east side of the lot due to the location of the location of wash in the rear yard, the house and pool located in the center of the property, and the driveway on the west side of the lot.

FOPs:

The request is a grant of special privilege since code compliant alternatives exist. Arizona Revised Statues 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, design, and/or maintaining vegetation. The 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: In addition to the public comment given during the September 1st meeting, enclosed are written comments from two neighboring property owners.

TOWN *Of* **PARADISE VALLEY**



STAFF REPORT

COMMUNITY IMPACT: None.

FISCAL IMPACT: None.

CODE VIOLATIONS: None.

ATTACHMENTS:

- A. Staff Report
 - B. Vicinity Map & Aerial Photo
 - C. Application
 - D. Narrative & Plans – From September 1, 2021 meeting
 - E. Notification Materials – From September 1, 2021 meeting
 - F. Public Comment 1 – From September 1, 2021 meeting
 - G. Public Comment 2– From September 1, 2021 meeting
 - H. Motion to Reconsider Pickleball Court Email
- C: Michael Baiamonte & Su-shien Cho (Applicants)
Case File BA-21-06