

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)
Continued Variance Request for Addition to East Side Setback Encroachment
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 an addition to the east side of the house 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 – 4, titled “Variance Addendum for 5740 E. Via Los Ranchos. Alternate bedroom/hallway addition to main house” 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:

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. 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 an addition to the east side of the house to encroach into the setback.

Reasons for Denial:

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

BACKGROUND

September 1, 2021 Board of Adjustment Review

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.

Request

The applicant is proposing to place a bedroom/hallway addition to the east side of the house. During the September 1st meeting, several Board Members identified that they were supportive of the alternate bedroom addition location as illustrated in Figure 10 in the application packet. In response to the continuance and direction from the Board, the applicant redesigned the proposed addition. The proposed addition has a slightly different configuration but is in substantial compliance with Figure 10 of the original packet. This modified addition resulted in a reduced setback from the east side property line and has reduced the amount/square footage of proposed setback encroachment.

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Addition 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 applicant is proposing to add 732 square feet bedroom/hallway addition to the east side of the house. The addition is 13'4" tall, has two areas of encroachment which are setback 14'6" and 17' from the east side property line (with a total of 40 square feet encroaching into the setback), will be finished to match the house, and will increase the floor area ratio from 9.21% existing to 10.89% proposed (with a maximum allowable floor area ratio of 25%). Although the applicant modified this addition based upon input from the Board of Adjustment at the last meeting, the applicant prefers the original design/location and offer this option as an alternative.

Below is a comparison of the bedroom/hallway addition with the Town Zoning Ordinance requirements:

Primary Residence			
	Zoning Ordinance	Alternate/Current House Addition	Previous/Original Addition
Front Setback	40'	60'	60'
West Side Setback	20'	120'	120'
East Side Setback	20'	14'6" & 17'	6'
Rear Setback	40'	90'	110'
Height	24'	13'4"	13'4"
Open Space Criteria Height	16' – 24'	13'4"	13'4"
Amount of Encroachment	0 sq ft	40 sq ft	200 sq ft

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

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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 reviewed the variance requests at the September 1st meeting and took the following actions: denied the variance request for the garage addition setback encroachment, approved the variance request for the pickleball court and court light setback encroachment, and continued the variance request for the bedroom/hallway addition setback encroachment (to the October 6th meeting). As a result of the continuance, the Board will be reviewing the variance request to allow the bedroom/hallway addition to encroach into the east side yard setback.

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 shape of the lot and drainage easement create an unusual building envelope which limit where the addition can be placed. The lot is triangular and varies in size from approximately 72' in the front to 397' in the back. As a result, the applicant is trying to appropriately place the addition while utilizing the existing conditions.

Findings Opposed (FOPs):

Although not ideal, the applicant may reconfigure and/or relocate the house addition to bring it into setback compliance by moving it closer to the pool and modifying the footprint. The addition is placed in a part of the lot is approximately 165' wide, which is the minimum lot width required by code when subdividing or creating a lot.



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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 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:

Pie shaped lots are not uncommon and 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 addition to the house should not obstruct any neighboring views. The addition is low in height at 13'4" tall and only 40 square feet of the addition encroaches into the setback.

FOPs:

The variance does not meet the intent of the Zoning Ordinance. Setbacks are designed to create consistent view corridors and placing the addition into the setback will obstruct the view corridors.

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 addition in accordance with the design/layout of the existing home and the limitations of the lot.

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FOPs:

The request is self-imposed since other alternatives exist. The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, the addition to the house can be modified and/or relocated to meet setback requirements. The bedroom/hallway addition may be reduced in size and moved closer to the pool to eliminate the proposed setback encroachment.

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 addition in location 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 bedroom/hallway addition may be redesigned and relocated to eliminate the setback encroachment. Also, the location of the addition is placed in an area of the lot that is approximately 165' wide (which is compliant with the Town's minimum lot width standards).

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 addition in accordance with the design/layout of the existing home.

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Also, the home will have total floor area of approximately 4,764 square feet. This is smaller than the average sized home in Town, which is approximately 8,000 square feet of total floor area. The addition should have limited impact visual due to its low height of 13'4" tall.

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 bedroom/hallway addition may be redesigned, reconfigured, and/or relocated to meet setback requirements. 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.

COMMUNITY IMPACT: None.

FISCAL IMPACT: None.

CODE VIOLATIONS: None.

ATTACHMENTS:

- A. Staff Report
- B. Vicinity Map & Aerial Photo
- C. Application
- D. Narrative & Plans – Alternate/Updated for October 6, 2021 meeting
- E. Narrative & Plans – From September 1, 2021 meeting
- F. Notification Materials – From September 1, 2021 meeting
- G. Public Comment 1 – From September 1, 2021 meeting
- H. Public Comment 2– From September 1, 2021 meeting

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