

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: October 6, 2021

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

AGENDA TITLE:

**Thomas Residence Variance – 5301 E. Paradise Canyon Rd (APN 169-06-018)
Case No. BA-21-08**

RECOMMENDATION

Motion For Denial

I move for **[denial]** of Case No. Case No. BA-21-03, a request by Toby & Jennifer Thomas, property owners of 5301 E. Paradise Canyon Road; for a variance from the Zoning Ordinance, Article XXIII, Nonconformance, Section 2307, Structural Alterations or Additions to Nonconforming Structures, to allow existing nonconforming portions of the primary residence (encroachments of 133 sf) to remain and to be modified by adding height from 11'-0" to 14'-2" caused by reconstruction of the roof and including a request for variances to maintain the existing side yard setbacks of 13'-6" and 19'-6" (where 20 feet is required).

Reasons For Denial:

I find that the variance requested is a design hardship not a property hardship and therefore does not meet the necessary variance criteria. There are no special circumstances applicable to this property that warrant a variance and the granting of this variance would serve merely as a convenience to the applicant. The hardship arises from a mistake on the applicant's part due to their neglect to get consultation or permits from the Town.

BACKGROUND/DISCUSSION

History

The subject property is Lot 10 of the Paradise Canyon Foothills subdivision. The subdivision was platted in 1971 and the existing home was constructed under Maricopa County's jurisdiction in 1974. The lot was then annexed into the Town in 1982 and the hillside code was adopted by the Town in 1984. The following is a chronological history of the property:

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- July 3, 1984. Building permit issued for an addition to the residence.
- November 11, 2015. Demolition permit was issued to remove interior/exterior walls and the roof – no inspections were ever made by the Town.
- April 6, 2016. Variance was granted to allow non-conforming retaining walls to remain and exceed the height and stacking requirements.
- June 9, 2016. Hillside Building Committee approval was obtained for a major remodel and 2nd story building addition.
- December 12, 2017. Building permit application made for a residential addition – the application expired, a permit was never issued, and the addition never built.
- August 29, 2019. The Town's Code Enforcement Officer received a complaint, conducted a roadside inspection, and found that sometime between 2018 – 2019 exterior stucco work was done, and the roof was reconstructed from a flat roof to a pitch roof without Town approval.

In April 2016 a variance was granted to be allow the existing non-conforming site retaining walls to remain. Staff determined that variance remains in effect and the existing rear yard retaining walls which exceed the 8' height limit and the stacking requirements are able to remain without further variance requirements.

In June 2016 a proposed major remodel/addition was approved by the Hillside Building Committee for this property. That specific plan was for a 2nd story addition and a slightly expanded footprint at the front of the house. That approved plan removed the non-conforming carport on the east side of the house and the non-conforming portion of the west side of the house and brought these areas into setback compliance. The remodeled home would have met all current Town setbacks and building height requirements. The current residence is not as previously requested or approved (by Board of Adjustment &/or Hillside Building Committee) and was constructed without the Town's approval or inspections. The flat roof of the structure was removed and totally reconstructed with a pitched roof and those portions of the structure that encroached into the side yard setbacks were not removed.

Zoning Ordinance Requirements

The property is zoned R-43 Hillside and is 44,110 square feet in size (1.01 acres). The lot is rectilinear in shape and has a building site slope of 11%.

- Section 1001 & Table 1001-A1 requires minimum side yard setbacks of 20 feet.
- Section 2307 states, Structural alternations, refurbishing, or remodeling of existing nonconforming structures shall not result in an increase in the height of the structure over the actual height of the nonconforming portion of the existing

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structure. Also, when permits are approved for structural remodels, alterations, or repairs that covers work which exceeds fifty (50) percent of the original square footage of an existing nonconforming structure, the nonconforming structure shall be made to conform to the requirements for new structures.

Current Request:

The applicant is requesting a variance to allow the existing raised roof and the existing non-conforming setbacks to remain. The existing encroachment of 0'-6" in the east side yard setback could be resolved and the building footprint remain as it is today through Section 2-5-3 E. Administrative Relief. This minor encroachment represents less than ten (10%) of the development standard. The existing encroachment of 3'-10" to 6'4" exceeds the allowances for an Administrative Relief and requires either a variance be granted or removal of that portion of the structure.

Since the applicant modified the residential home and roof structure by more than 50% the following options apply:

1. Remove the section of the building that encroaches into the required side yard setback and bringing the entire structure into conformance, or
2. Secure a variance for the side yard setback encroachment and expansion of the non-conformant building.

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 the applicant's statement and staff's analysis with regard to the 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).

Staff Analysis: It is true that the house footprint is existing and will not further encroach into the setback. However, this is a variance of convenience for the applicant. Had the applicant approached the Town and secured approvals and permits, staff would have informed the applicant of the applicable codes and options.

2. *The "special circumstances, hardship, or difficulty [do not] arise out of misunderstanding or mistake..."* (Town Code Section 2-5-3(C)4(b)).

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Staff Analysis: The applicant should be aware of all special circumstances on the property and plan any designs accordingly. This variance is a direct result of how the home was originally constructed and the applicant not obtaining the required approvals and permits from the Town for a major remodel and full reconstruction of the roof by the applicant.

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).*

Staff Analysis: The applicant would have been allowed to modify up to 50% of the roof and still maintain the existing footprint of the structure. The site redevelopment that the applicant is proposing to do would be required regardless of the variance outcome as the wrought iron fence that is in the public right-of-way must be removed and the proposed new garage and auto court area would require reconfiguring the required on-site retention to meet code requirements. Also, the request does not meet the intent of the code since the improvements not only maintain the nonconforming setbacks but increase the nonconformity by raising the height of those portions of the house

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).*

Staff Analysis: Although the existing structure was developed by a previous owner while in the county per setback regulations in place at the time, the Town's regulations apply to this property. There are no special circumstances or property hardships that warrant the variance. The applicant through their actions of building without approvals and permits only compounded and self-imposed the present hardships they outline.

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)).*

Staff Analysis: The size, shape and topography of the lot do not prevent the lawful construction of or modification to a residence on this lot and there are no property hardships that warrant the variance. The property is compliant with the Town's minimum lot width of 165' and the slightly smaller lot size of 41,318 sq ft does not

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prohibit setback compliance. The applicant is seeking a variance for a “design hardship” as this is not a property hardship.

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)).*

Staff Analysis: The adjacent and neighboring properties were likewise built in the early to mid-1970’s under county regulations. Several have sought Hillside Building Committee approval and the necessary building permits for interior remodels and patio/ entryway additions. The fact that this applicant did not follow proper procedure should not grant them special privileges which would be inconsistent with their neighbors.

Adjacent Conditions Argument by Applicant:

The applicant has submitted four (4) examples for neighboring properties that have buildings within the setbacks as required today by the Town of Paradise Valley:

- A. 5315 E. Paradise Canyon Road: constructed in 1974 under county rules
- B. 5334 E. Paradise Canyon Road: constructed in 1974 under county rules
- C. 5318 E. Paradise Canyon Road: constructed in 1972 under county rules
- D. 5302 E. Paradise Canyon Road: constructed in 1972 under county rules

ACTIONS

In conclusion, the decision about whether the criteria have been met is for the Board to make after hearing all the evidence at the hearing. The Board can take the following actions:

1. Deny the variance request
2. Approve the variance request, subject to the following stipulations:
 - a. Obtain approval from the Hillside Building Committee
 - b. Obtain building permits and inspections from the Building Department; and
 - c. The variance request to maintain the modified nonconforming portions of the house shall be in compliance with following submitted plans & documents:
 - i. The Narrative, dated July 28, 2021, prepared by Chavez AIA.
 - ii. Site Plan page A1, dated June 21, 2021, and prepared by Chavez AIA ; and
 - iii. Exterior Elevations Plan page A5, dated June 21, 2021, and prepared by Chavez AIA.
3. Continue for further review.

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

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COMMUNITY IMPACT: None.

CODE VIOLATIONS:

1. Major Remodel/Addition without a building review, permit or inspections.
2. Major Remodel/Addition without Hillside Building Committee review or approval.
3. Wrought iron fencing in the public right-of-way

ATTACHMENTS:

- A. Staff Report
- B. Zoning & Hillside Map
- C. Narrative
- D. Plans
- E. Notification Material

C: Edward Chavez (Architect/Applicant)
Case File BA-21-08