

# **TOWN** *Of* **PARADISE VALLEY**

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## **STAFF REPORT**

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**TO:** Chair and Board of Adjustment

**FROM:** Lisa Collins, Community Development Director  
Paul Michaud, Planning Manager  
George Burton, Senior Planner

**DATE:** November 3, 2021

**DEPARTMENT:** Community Development Department/Planning Division  
George Burton, 480-348-3525

**AGENDA TITLE:**

**Az Property Holdings LLC Variance – 5712 E Glen Drive (APN 169-55-026A) Variance for new Single-Family Residence. Case No. BA-21-11.**

This application includes four variance request and staff recommends denial on one of the requests and approval on the remaining three requests:

**RECOMMENDATION A**

Motion For Denial

It is recommended that the Board of Adjustment [**deny**] Case No. BA-21-11, a request by Az Property Holdings LLC, property owner of 5712 E Glen Drive; for a variance from Article XXII, Hillside Development Regulations to allow the new single-family residence to exceed the 24' height limit.

Reasons For Denial:

Staff finds that the requested variance for height encroachment is a design hardship and not a property hardship. There are no special circumstances applicable to this property that warrant a variance for height encroachment and the granting of this variance would serve as a convenience to the applicant. Based upon these reasons, staff believes that the request to exceed the height limit does not meet all six variance criteria.

**RECOMMENDATION B**

Motion For Approval

It is recommended that the Board of Adjustment [**approve**] Case No. BA-21-11, a request by Az Property Holdings LLC, property owner of 5712 E Glen Drive; for a variance from Article XXII, Hillside Development Regulations and Article X, Height and Area Regulations, to allow: 1) a raised outdoor living area/patio to encroach into the front yard setback and exceed the 8' height limit measured from natural grade, 2) modify and maintain a nonconforming spill slope, and 3) allow a portion of the new single-family residence to encroach into the side yard setback.

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### Reasons For Approval:

Staff finds that the unusual shape, steep slope, and topography of the lot warrant the requested variances for the house and patio setback encroachments, raised patio height encroachment, and spill slope maintenance and modification. Based upon these property hardships, staff believes that the request for setback encroachments, patio/retaining wall height encroachment, and spill slope maintenance/modification meets all six variance criteria.

### **BACKGROUND/DISCUSSION**

#### Request

The applicant requests four variances:

1. New single-family residence. The applicant requests a variance to allow four portions of the house (i.e. the bedroom parapet wall, the bedroom roof, the living room chimney, and the roof deck railing) to exceed the 24' height limit (measured above natural grade).
2. New single-family residence. The applicant requests a variance to allow portions of the bathroom to encroach into the east side yard setback.
3. Raised patio deck. The applicant requests a variance to allow a raised patio deck/raised outdoor living area to encroach into the 40' front yard setback and allow the patio retaining walls to exceed the 8' height limit (measured from natural grade).
4. Maintain and modify the existing spill slope. The applicant requests a variance to maintain an existing nonconforming spill and to modify/reduce it by 20%.

#### Scope of Request

1. Single Family Residence (SFR) Height Encroachment. Section 2207.II.A of the Zoning Ordinance limits the height of the primary residence to a maximum height of 24' above and parallel to the natural grade. The proposed home encroaches into the 24' height limit in four areas. The bedroom parapet wall extends 1'5" above the height limit (with a total of 14 square feet encroaching into the 24' limit), the bedroom roof extends 6" above the height limit (with a total of 8 square feet encroaching into the 24' limit), the living room chimney extends 3'8" above the height limit (with a total of 40

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square feet into the 24' limit), and the roof deck railing extending 2'6" above the height limit (with a total of 50 square feet into the 24' limit).

Single Family Residence Height	
Zoning Ordinance	New SFR
24' Height Limit (Above/parallel to natural grade)	<b>25'5"</b> - Bedroom Parapet Wall (1'5" above limit with 14 sq ft of encroachment)
24' Height Limit (Above/parallel to natural grade)	<b>24'6"</b> - Bedroom Roof (6" above limit with 8 sq ft of encroachment)
24' Height Limit (Above/parallel to natural grade)	<b>28'8"</b> - Living Room Chimney (3'8" above limit with 40 sq ft of encroachment)
24' Height Limit (Above/parallel to natural grade)	<b>26'6"</b> - Roof Deck Railing (2'6" above limit with 50 sq ft of encroachment)

2. Single Family Residence (SFR) Setback Encroachment. Section 1001 of the Zoning Ordinance limits the primary residence to a 20' side yard setback. The proposed home encroaches 2' into the east side yard setback to accommodate a portion of a bathroom. This portion of the bathroom is approximately 9' tall and is cantilevered (with 8 square feet located in the setback).

Single Family Residence Setbacks	
Zoning Ordinance	New SFR
40' Front	40' Front
40' Rear	40' Rear and 35' & 27' rear setback from previously approved Variance Case BA-16-6
20' East Side	<b>18'</b> Side (8 sq ft of encroachment)
20' West Side	230' (+/-)

3. Raised patio deck. Section 2207.II.B.5.C of the Zoning Ordinance requires raised outdoor living areas/patios at or above 3' tall to be setback of 40' from the front property line and setback of 20' from the side and rear property lines. This section and Section 2207.VI.1 of code also limits the height of the patio and patio retaining walls to a maximum of 8' tall (measured from natural grade). The applicant requests a variance to allow a raised patio deck/raised outdoor living area to encroach into the 40' front yard setback and allow the patio retaining walls to exceed the 8' height limit (measured from natural grade).

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Since the Zoning Ordinance measures the raised patio height from natural grade, the height of the patio is technically taller than what will be visible since the proposed finished grade is higher than natural grade. As a result, the raised patio varies in height from 10'6" tall to 13'6" measured from natural grade, is approximately 1,900 square feet, with 1,220 square feet of patio encroaching into the front yard setback. Since the applicant is proposing to utilize and modify the existing spill slope (see variance request No. 4 below), the patio retaining wall heights will vary from 3' tall to 6'8" tall measured from the proposed finished grade.

Raised Patio	
Zoning Ordinance Setback	Patio
8' Max Height (from natural grade)	10'6" to 13'6" tall (from natural grade) (3'2" to 6'8" tall from finished grade)
40' Front	15'9" to 29'7" Front (1,220 sq ft encroachment)
40' Rear	120' Rear
20' East Side	27' Side
20' West Side	230' (+/-)

- Maintain and modify the existing spill slope. Section 2207.V.C of the Zoning Ordinance limits veneered rock slopes to a maximum slope of one to one (or 45 degrees). The applicant is proposing to maintain and modify the existing spill slope. Approximately 9 areas of the existing spill slope exceed the 45-degree limit. The existing spill slope is unvegetated and is 10,600 square feet in area. Also, the applicant will remove 2,200 square feet of the existing spill in order to lower the existing building pad an additional 9'. The remaining spill slope will be enhanced with native vegetation. Although 7 areas of the remaining spill slope will still exceed 45 degrees, it will have an average slope of 34 degrees.

Spill Slope	
Zoning Ordinance	Modified Slope
Veneered Slope	Veneered & Vegetated Slope
1 to 1 (or 45 degree) Max Slope	9 existing areas exceed 45-degree slope 7 areas exceed 45-degree slope Average slope of 34-degrees

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### Lot History

The subject property is located in Tract A of the Club Estates 2 subdivision. The subdivision was platted in 1960 and annexed into the Town in 1961. The following is a chronological history of the property:

July 17, 1973	Grading permit issued
October 29, 1973	Building permit for a single-family residence
October 30, 1974	Building permit for a single-family residence

All three permits are labeled as “expired.” Via historical aerial photos, it appears that a house was never constructed. Also, a pad was created on the east side of the lot; however, it is difficult to discern from the historical aerial photos when that pad was created (possibly created in the late 1970’s to mid-1980’s).

Also, on May 3, 2017, the Board of Adjustment approved Variance Case BA-16-6 which allows a single-family residence to encroach into the rear yard setback (with portions of the house at a rear setback of 20’ and 35’). The applicant’s design incorporates and utilizes this approved variance/rear setback encroachment.

### Lot Conditions

The property is zoned R-43 Hillside and is 42,839 square feet in size (0.98 acres). The property is a corner lot, triangular in shape, and situated around an existing water tank. Staff believes the shape, topography, and dual frontage of the lot create a hardship and is supportive of the house setback encroachment, raised patio setback and height encroachments, and maintaining and modifying the existing spill slope. If the variance is granted, the improvements will go through the hillside review process.

## 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 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:

SFR Height Encroachment. Staff recommends denial on this variance request since there are no property hardships that warrant the height encroachment. The



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size, shape, and topography of the lot do not prevent the house from meeting the 24' height limit. The applicant is lowering the existing building pad an additional 9' to accommodate the house and can redesign the four portions of the home to meet the height requirements. For instance, height compliance may be achieved by: 1) using a direct vent instead of a formal chimney 2) eliminating the bedroom parapet and pulling the bedroom further back so neither roof structure penetrates the 24' height limit, and 3) reducing the size of the patio roof deck so it meets the height limit.

SFR Side Yard Setback Encroachment. Staff recommend approval of this variance request since the shape and topography of the lot create a restrictive building envelope. The shape of the lot limits development to the eastern half of the property and the buildable area is further reduced since the existing hillside/cut encompasses approximately one third of the building envelope. As a result, only a third of the lot is buildable and is limited to the eastern portion of the property. To mitigate these property hardships, the applicant is utilizing the existing pad and placing 8 square feet of the bathroom in the side yard setback.

Raised Patio Deck. Staff recommend approval of this variance request since the shape and topography of the lot create a restrictive and difficult building envelope. The shape and steep slope of the lot (with a building pad slope of 50%) limit development to the eastern part of the property. If platted today, the lot would require a minimum depth of 205' and the buildable portion of the lot is 120' deep. Due to the slope of the lot and limited building envelope, the proposed patio encroaches into the front yard setback and exceeds the 8' height limit. To mitigate these property hardships, the applicant is utilizing the existing pad and much of the existing spill slope. Since the finished grade of the spill slope is higher than natural grade, it results in shorter (and less visible) patio retaining walls.

Maintain and Modify the Existing Spill Slope. Staff recommends approval of this variance request due to the steep slope of the lot, the reduction in the nonconformity of the existing spill slope, and the request meeting intent of the Zoning Ordinance. Utilizing, reducing, and vegetating the existing spill slope results in a shorter raised patio deck since finished grade is higher than natural grade. The vegetation of the remaining spill slope will also screen the raised patio better than a potentially rocky natural grade and removing twenty percent of the spill slope brings it more into conformance with Code by eliminating two areas that exceed the 45-degree limit (which results in an average spill slope of 34%).



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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)).*

Staff Analysis:

SFR Height Encroachment. There is no mistake or misunderstanding. There are no property hardships that warrants the height encroachment and the house design can be modified to comply with the 24' height limit.

SFR Setback Encroachment, Raised Patio Deck Encroachments, and Modified Spill Slope. There is no mistake or misunderstanding. The shape and steep slope of the lot create a restrictive building envelope that warrant these variance requests and they are the result of how the property was platted in 1961. The applicant is trying to utilize existing conditions to accommodate the new home and limit the amount of disturbance and impact to the hillside.

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:

SFR Height Encroachment. The height encroachment variance does not meet the intent of the Zoning Ordinance. One of the goals of the Zoning Ordinance is to “require building massing to adapt to the natural hillside topography.....” Although not ideal, the four portions of the house can be redesigned to comply with the 24' height limit.

SFR Setback Encroachment, Raised Patio Deck Encroachments, and Modified Spill Slope. The request for the house and raised patio setback encroachments, the height of the raised patio, and the modified spill slope meet the intent of the Zoning Ordinance. The intent of the Zoning Ordinance is to minimize the amount of disturbance to the hillside, preserve the visual openness, and preserve the natural features of the mountain. The applicant is utilizing the existing pad and most of the existing spill slope. The house and patio setback encroachments are in response to the shallow depth and steep slope of the property and these improvements should not obstruct views. The use and vegetation of the existing spill slope will also help screen the patio, reduce the height of the patio retaining walls, and removing part of the existing spill slope reduced the amount of nonconforming spill.





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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).*

Staff Analysis:

SFR Height Encroachment. The height encroachment for the house is self-imposed since there are no property hardships that warrants the height encroachment. The house design can be modified to comply with the 24' height limit. For instance, height compliance may be achieved by: 1) using a direct vent instead of a formal chimney 2) eliminating the bedroom parapet and pulling the bedroom further back so neither roof structure penetrates the 24' height limit, and 3) reducing the size of the patio roof deck so it meets the height limit.

SFR Setback Encroachment, Raised Patio Deck Encroachments, and Modified Spill Slope. The request for the house and raised patio setback encroachments, the height of the raised patio, and the modified spill slope are not self-imposed. The applicant is trying to utilize existing conditions and the shape and topography of the lot create a restrictive building envelope which limits development to only a third of the lot. The property has a steep building pad slope of 50% and has a shallow depth (the minimum required depth for an R-43 zoned lot is 205' deep and the subject property is 120' deep). These property hardships warrant the setback, patio height, and spill slope encroachments. Also, the utilization and re-vegetating the existing spill slope results in a shorter raised patio deck since the finished grade is higher than natural grade and will help screen the raised patio better than a potentially rocky natural grade.

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:

SFR Height Encroachment. There are no property hardships that warrant the height encroachment. The size, shape, and topography of the lot do not prevent the house from meeting the 24' height limit. The applicant is lowering the existing building pad an additional 9' to accommodate the house and can redesign the four portions of the home to meet the height requirements.





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SFR Side Yard Setback Encroachment. Staff recommend approval of this variance request since the shape and topography of the lot create a restrictive building envelope. The shape of the lot limits development to the eastern half of the property and the buildable area is further reduced since the existing hillside/cut encompasses approximately one third of the building envelope. As a result, only a third of the lot is buildable and is limited to the eastern part of the property. To mitigate these property hardships, the applicant is utilizing the existing pad and placing 8 square feet of the bathroom in the side yard setback.

Raised Patio Deck. The shape and topography of the lot create a restrictive building envelope which is limited to the eastern part of the property. If platted today, the lot would require a minimum depth of 205' and the buildable portion of the lot is only 120' deep. Due to the slope of the lot and limited building envelope, the proposed patio encroaches into the front yard setback and exceeds the 8' height limit. To mitigate these property hardships, the applicant is utilizing the existing pad and much of the existing spill slope. Since the finished spill slope grade is higher than natural grade, it results in shorter and less visible patio retaining walls.

Maintain and Modify the Existing Spill Slope. The steep slope of the lot and the limited building area substantiate the need to use the existing spill slope. Utilizing, reducing, and vegetating the existing spill slope results in a shorter raised patio deck since finished grade is higher than natural grade. Also, the vegetation on the remaining spill slope will screen the raised patio better than a potentially rocky natural grade and removing twenty percent of the spill slope brings it more into conformance with Code by eliminating two areas that exceed the 45-degree limit (resulting in an average spill slope of 34%).

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 request for additional height on the house is a grant of special privilege since it is a design hardship and not a property hardship. However, steep slope, odd shape, and shallow depth of the lot prohibit setback compliance for the house and raised patio. The applicant is trying to utilize the existing pad in order to limit the amount of disturbance to the hillside. Also, the reduction and vegetation of existing spill slope reduces the amount of nonconforming spill and reduces the height of the patio retaining walls.

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### **REQUIRED ACTION**

The Board must consider the facts and determine if the variance requests meet all six variance criteria. The Board may take the following actions:

1. Deny the variance requests (either individual variance requests or all the variance requests).
2. Approve the variance requests (either individual variance requests or all the variance requests), subject to the following stipulations:
  - a. The improvements shall be in compliance with submitted plans & documents:
    - i. The Plans and Narrative, with title page 5712 E Glenn Drive Paradise Valley Arizona Variance Request, pages 1 – 32, and prepared by Cosan Studio;
  - b. The applicant must obtain Hillside Building Committee approval;
  - c. The applicant must obtain the required building permits and inspections from the Building Department and Engineering Department; and
  - d. The applicant must provide documentation from a registered Geotechnical Engineer certifying the stability of the spill slope. This documenting must be reviewed and approved by the Town Engineering Department prior to issuance of building permit.
3. Continue the application for further review.

**COMMENTS:** Staff received no comments nor inquiries regarding this request.

**COMMUNITY IMPACT:** None.

**CODE VIOLATIONS:** None

### **ATTACHMENTS:**

- A. Staff Report
- B. Vicinity Map & Aerial Photo
- C. Application
- D. Narrative & Plans
- E. Notification Materials

C: Scott Caron & Nick Peterson (Applicant)  
Case File BA-21-11