



Legislation Details (With Text)

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Title:	Hogan Variance - 5434 E. Lincoln Drive No. 49 (APN 169-28-060). Case No. BA-20-03				
Sponsors:					
Indexes:					
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Attachments:	1. A - Vicinity Map & Aerial Photo, 2. B - Application, 3. C -Narrative & Plans, 4. D - Noticing Materials				

Date	Ver.	Action By	Action	Result
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TO: Chair and Board of Adjustment

FROM: Paul Michaud, Planning Manager
George Burton, Senior Planner
Loras Rauch, Special Projects Planner

DATE: September 2, 2020

DEPARTMENT: Community Development

AGENDA TITLE:

Hogan Variance - 5434 E. Lincoln Drive No. 49 (APN 169-28-060).
Case No. BA-20-03

MOTIONS

A. MOTION FOR APPROVAL

I move for **[approval]** of Case No. BA-20-03, a request by John and Diane Hogan, property owners of 5434 E. Lincoln Drive No. 49; for a variance from the Zoning Article X, Height and Area Regulations, to allow a new single-family residence to encroach into the setback.

The variance shall be in compliance with the submitted plans and documents:

1. The Project Narrative, pages 1 - 3, prepared by Drewett Works/Architecture;
2. Architectural Site Plan, Sheet A1.1, prepared by Drewett Works/Architecture and dated July 22, 2020;
3. Floor Plan -Main, Sheet DR202, prepared by Drewett Works/Architecture and dated July 22, 2020; and
4. Exterior Elevations Plan, Sheet A6.1, prepared by Drewett Works/Architecture and dated July 22, 2020;

Reasons for Approval:

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

B. MOTION FOR DENIAL

I move for **[denial]** of Case No. BA-20-03, a request by John and Diane Hogan, property owners of 5434 E. Lincoln Drive No. 49; for a variance from the Zoning Article X, Height and Area Regulations, to allow a new single-family residence to encroach into the setback.

Reasons for Denial:

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

BACKGROUND

Request

The applicant is proposing to construct a new home on the property and requests a variance to allow the house to encroach into the rear yard setback. An 18' rear yard setback is required by Town Code and the applicant is proposing an 8' rear setback (with 715 square feet of house encroaching into the setback).

The property is zoned R-10 and Section 1001 of the Town Zoning Ordinance identifies that front, side, and rear yards shall meet the requirements as indicated in the Code, or as shown on a recorded plat, or as existing at the time of annexation. This means that the applicant may use either the setback of what is shown on the recorded plat, what existed at time of annexation, or what is shown in the Town Code. This applies to each yard setback (front, rear, and each side).

Based upon the location of the existing house, the building envelope shown on the subdivision plat, and the setbacks outlined in the Code, the setback for the main house on this property are:

- 6' - Front Yard/West Setback
- 18' - Rear Yard/East Setback
- 4.7' (but effectively a 10' setback due to an access easement) - Side Yard/North Setback
- 11' - Side Yard/South Setback

Lot Conditions

The property is zoned R-10, is approximately 10,550 square feet in size (0.24 acres), and is square in shape.

Lot History

The subject property is Lot 49 of the Stone Canyon subdivision. The property was platted in 1955 and annexed into the Town in 1992. The original house was constructed under Maricopa County's jurisdiction. The following list of permits is a chronological history of the subject property:

January 5, 1999	Building Permit to Enclose Porch and Relocate Bathroom
July 11, 2003	Building Permit for Pool
July 13, 2004	Building Permit for Site Wall

July 13, 2004	Building Permit for Bedroom/Bathroom Addition
December 26, 2007	Building Permit for Bedroom Addition
February 28, 2008	Building Permit for Closet Addition
February 20, 2020	Demo Permit for House and Pool

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 Homeowner's Associate (HOA) approved a different rear yard setback than the Town Zoning Ordinance allows. Also, the new home matches the alignment of the homes to the south and east, which also have an 8' rear yard setback. The applicant provided a letter of approval from the Colonia Miramonte Design Review Board which authorizes the proposed rear setback of 8'.

Findings Opposed (FOPs):

There are no property hardships that warrant the request and prevent setback compliance with the Town Codes. The property is square in shape and is not burdened with any adverse topographical features that prohibit compliance. The house can be relocated 10' to the west, which would bring the home into setback compliance with the Town Zoning Ordinance.

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 HOA approved a setback different than that allowed by the Town Zoning Ordinance.

FOPs:

The applicant should be aware of all special circumstances on the property and plan any designs accordingly. There are no property hardships that prohibit setback compliance.

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 Town Zoning Ordinance is to provide visual openness, limit visual impact to the natural landscape, and maintain view corridors by creating a consistent setback. This is met since the proposed house matches the alignment of the homes to the south and east.

FOPs:

The request does not meet the intent of the code since other alternatives exist. Although not ideal, the house can be moved 10' west and meet the Town's setback requirements.

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 Homeowner's Associate (HOA) approved a different rear yard setback than the Town Zoning Ordinance allows. The applicant provided a letter of approval from the Colonia Miramonte Design Review Board which authorizes the proposed rear setback of 8'.

FOPs:

The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, the house can be moved 10' west and meet the Town's setback requirements and/or seek HOA approval for a setback that is compliant with the Town's requirements.

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 proposed rear setback is consistent with the neighboring properties to the south and east. Also, the encroachment should have limited impact on neighboring properties due to the low height of the house at 14' tall and only 715 square feet of the house located within the rear setback.

FOPs:

There are no property hardships that warrant the variance. The lot is not undersized for its zoning classification, the lot is not oddly shaped which creates an unusual building envelope, and there are no adverse topographic features that prohibit setback compliance. The proposed home can be relocated to meet the Town's setback requirements.

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 proposed home matches the alignment of the adjoining properties to the south and east. Also, the Colonia Miramonte HOA approved the propose setback.

FOPs:

All other properties in the area must meet requirements outlined in the Town Zoning Ordinance. Also, Arizona Revised Statues and the Town Zoning Ordinance do not require the most optimal or profitable use of a property.

COMMENTS: Staff received one inquiry from a neighbor asking about the scope of the request. No comment of support or opposition was given.

COMMUNITY IMPACT: None.

FISCAL IMPACT None.

CODE VIOLATIONS: None.

ATTACHMENTS

A - Vicinity Map & Aerial Photo

B - Application

C - Narrative & Plans

D - Notification Materials

C: Rob Banach (Applicant)
Case File BA-20-03