



Legislation Details (With Text)

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**Title:** Rauch Variance - 5230 E. Palo Verde Place (APN: 169-29-015)  
Case No. BA-20-02

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Vicinity Map & Aerial Photo, 2. B -Application, 3. C - Narrative & Plans, 4. D- Notification Material, 5. E - Public Comment

| 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 Project Planner**

**DATE: September 2, 2020**

**DEPARTMENT:** Community Development

**AGENDA TITLE:**

**Rauch Variance - 5230 E. Palo Verde Place (APN: 169-29-015)**  
**Case No. BA-20-02**

**A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-20-02, a request by David and Julie Rauch, currently under contract to purchase the property at 5230 E. Palo Verde Place; for two variances from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow an addition to the primary residence to encroach into the setback and, 2) Article XXIII, Nonconformance, Sec 2307, to allow existing nonconforming portions of the primary residence to remain and to be modified.

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

1. The Zoning Adjustment Case Narrative, prepared by Rose Law Group and dated Revised July, 2020;
2. Site Plan, Sheet A1.1, prepared by Matthew Thomas Architecture and dated July 9, 2020; and
3. Exterior Elevations, Sheet A2.1, prepared by Matthew Thomas Architecture and dated July

9,2020.

**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-20-02, a request by David and Julie Rauch, currently under contract to purchase the property at 5230 E. Palo Verde Place; for two variances from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow an addition to the primary residence to encroach into the setback and, 2) Article XXIII, Nonconformance, to allow existing nonconforming portions of the primary residence to remain and to be modified.

**Reasons for Denial:**

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

**BACKGROUND:**

Request

The applicant requests two variances

1. A request for variances to the rear setback of 28.14 feet where 40 feet is required and the side setback of 14.99 feet where 20 feet is required, and
2. Allow existing nonconforming portions of the primary residence to remain while also being allowed to be modified.

The first variance is to allow for the existing legally nonconforming setbacks to be retained and allowing for one (1) of three (3) small additions to partially encroach within the existing legally nonconforming rear setback. This small addition (148 SF) encroaches into the Town's 40-foot rear yard setback but seeks to maintain the same rear setback (28'-2") of the house which has been in place since the construction of the home; so it does not increase the overall deviation. The master bedroom addition which will encroach into the rear yard setback is 20 feet tall measured from the lowest natural grade (LNG) and is compliant with the Town's height limits. The Town Code limits the primary residence to a maximum overall height of 24 feet tall measured from LNG and the Town's Open Space Criteria. The Open Space Criteria is an imaginary tent that is placed over the home in which the 24' height limit cannot be utilized until 60 feet away from all property lines.

The second variance is for the remodeling the applicant will conduct post-purchase that will surpass the fifty (50%) percent threshold of the existing square footage per Article XXII, Section 2307. The substantial remodel and improvements will raise the entire roof height by two (2) feet to a total of 16 feet; including those portions that are within the existing nonconforming setbacks. As proposed, the raised roof height of up to two (2) feet will still be well within the allowable building height restrictions and will not encroach into the required Open Space per Sec 1001.

Lot Conditions

Lot 15, Paradise Valley Estates, is approximately 45,231 square feet and is not square but rather trapezoidal with the width at the street being 150 feet and the rear 170 feet. The Town's current minimum lot width standards are 165 feet. The property is longer and narrower than a standard square lot might be. The property has a wash that runs through it at an angle and incumbers

approximately 8720 SF or about 19% of the total lot coverage. The wash does not currently have a drainage easement established but per the “case narrative” the applicant will comply with the Town Code Sec. 5-10-7(C) and dedicate such easement prior to any permit being issued; if deemed necessary by the Town Engineer.

### Lot History

The subject property is Lot 15 of the Paradise Valley Estates subdivision. The subdivision was platted in 1954 and the home was constructed in 1958 under Maricopa County jurisdiction. The property was annexed into the Town in 1982 and zoned R-43. The following permits were issued by the Town:

- August 17, 1984. Building permit issued for a guest house.
- May 5, 1986. Building permit issued for an addition to the main house.
- June 5, 1986. Building permit issued for a retaining wall.
- July 29, 1986. Building permit issued for a pool and spa.
- May 10, 2000. Building permit issued for a new roof and relocate the front door.

The existing home was built with a 28.14 feet rear setback and a 14.99 feet side setback which are legally nonconforming setbacks. The applicant is seeking to maintain these existing setbacks while proposing three (3) small additions as they update this older home to bring it up to modern standards. The additions are: a new covered entry (96 SF) on west elevation; a kitchen area (201 SF) at southeast corner of house; and, a small addition (190 SF) to accommodate a closet in the master bedroom at the rear of the house. A portion (148 SF) of this addition to the master bedroom encroaches into the existing legally nonconforming rear setback but only to the same point as the existing home already does and it will adhere to the twenty (20) foot side setback as currently required by the Town.

The current design of the house is that of a 1950's ranch style and has both low gable and shed style roofs. The proposed heightened roof will provide modernization for the interior of the home, unify the roof elements by eliminating the shed roofs and still maintain the historic ranch character for the surrounding neighborhood.

There are no changes proposed at this time to the existing guest house (just paint) or pool which are also both legally nonconforming uses (nonconforming setbacks). The applicant has been made aware that should changes be proposed to either of these in the future, they would need to either conform to the development standards or go through the variance process.

The current property owner, Susan French, authorized the applicant to submit the variance application. A copy of the letter of authorization is included in Attachment B.

### **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 are 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 property hardship is the wash that traverses the property and reduces the developable area of the lot by approximately 19%. Additionally, the lot frontage is narrower, and the wash covers a large portion of the front of the property, so the buildable area of the lot was pushed further back into the lot and more to the east side of the lot. The existing home conformed to the setbacks that were in place at the time of construction in Maricopa County; which are not compliant with the Town’s R-43 rear yard setback requirement. The home is 4,402 SF, (5,302) including the guest house, which is less than the typical square footage of homes in Paradise Valley (of approximately 8,000 square feet).

**Findings Opposed (FOPs):**

Instead of requesting a variance the applicant could demo those portions of the home that encroach into the setback (portions of the existing garage and master suite) eliminating the nonconformity issue and since they are already raising the roof, they could build a larger two-story home on the lot that conforms to the current setbacks.

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 misunderstanding or mistake. The reduced buildable area of the front portion of the lot was caused by the presence of the wash traversing the property and how the lot was platted. This necessitated that the home be located further back from the road than other homes in the neighborhood; yet still in conformance with the setbacks at the time the home was constructed.

The applicant is doing their due diligence prior to purchasing the property and is seeking clarification as to the permissibility of maintaining the existing legal nonconforming setbacks while trying to modernize a decades old home to today’s standards. Retaining and modernizing existing housing stock rather than tearing down and rebuilding helps maintain the historic character of the neighborhood and is a benefit to the community.

**FOPs:**

Even though the encroachment is no more than already exists the applicant might consider other alternatives than to construct a master bedroom closet at that location (Variance #1). The applicant also could choose to raise not more than fifty (50%) percent of the roof area and add a second story to the home (a whole new master suite) rather than raising 100% of the roof just two (2) feet to maintain a single-story home in the historic character as currently exists (Variance #2).

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:**

Because of the unique circumstances of the lot, both the primary residence and the guesthouse are set back further from the street than is required by code. This provides a large open feel to the street

which is a goal of the Town. Additionally, the applicant is endeavoring to maintain the single-story design and historic architectural character of the home while modernizing it with the least possible impact to the neighborhood. This is in keeping with the General Plan policy of encouraging redevelopment that respects and responds to existing physical characteristics that contribute to the overall character and livability of the neighborhood.

Rather than creating a very modern looking home with a flat cantilevered roofline and metal design the applicant is seeking to raise the roof by two (2) feet to provide more light and air to the interior of the home but maintain the gable roof style that is in keeping with the historic character for the neighborhood.

The application has seven (7) letters of support for their request from neighbors; all whom believe this proposal to be a positive impact to the neighborhood.

**FOPs:**

The variance does not meet the intent of the Code. Raising the roof and remodeling the house will extend the life of the nonconforming portion of the house. Also, the new master closet addition increases the nonconforming aspect of the house by placing additional structure into the rear yard setback.

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. Due to the wash that traverses the lot and the shape of the lot, the applicant has an existing home that was built in the back of the lot. The home is on septic with the septic tank located in the front yard and out of the wash which only further reduces the buildable area in the front portion of the lot. The existing home is smaller than typical homes in Paradise Valley and the applicant is trying to modernize an existing 1960's home while maintaining the historic character and matching the existing setback conditions.

**FOPs:**

The request is self-imposed since other options exist such as: do nothing to the property and let it continue to age; improve the property but only cosmetically and not entirely up to current market demands or design trends; or demolish the home and build a new bigger and better home.

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 wash and size of the lot limit the buildable area to the rear of the property. The applicant has a difficult lot to build on and is trying to work with existing conditions rather than diverting the wash to create more buildable area. This wash appears to run in its natural course and simply traverses the property from the northeast corner through to the southeast encumbering a good deal of the buildable portion of the lot. Being one of the first homes built in this subdivision, the original owner simply built the residence further back on the lot and away from the wash. Subdivision development practices have changed over the decades and it might be fair to say that newer developments with

similar wash impacts would be engineered in a manner that would provide lots with more unencumbered buildable area than this lot was afforded. However, the Town Code also encourages the maintenance of washes in their natural state. By working with the existing conditions of the site, the applicant is able to help maintain the wash in accordance with the Code.

Additionally, the applicant may be required to dedicate a drainage easement for this wash which would also include a five (5') foot buffer beyond the wash boundaries for maintenance. This would further reduce the useable area of the lot.

**FOPs:**

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. The use of the property was established around 1959, the house is already built, one of the variances seeks to maintain the existing legally nonconforming setbacks and the other variance seeks allowances to modernize more than 50% of the residence. Despite these circumstances, other alternatives exist such as the house could be left as is or change the scope of the remodel to meet current codes.

- 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:**

Other properties in Paradise Valley have been torn down and rebuilt with larger more updated homes. This applicant is seeking to maintain the existing home rather than tear it down and rebuild. They are seeking approval to maintain the historic setbacks and to modernize it with minimal visual impact and in keeping with the historic character of the neighborhood.

The requested variances are the minimum necessary to preserve and modernize this old home which in turn will further enhance the existing neighborhood.

**FOPs:**

All other properties in the R-43 district must meet the current setback requirements. It is the encroachment into these current setbacks that create the nonconforming circumstances for this property. If the setbacks were compliant with current code, the applicant would be free to remodel 100% of the home and there would be no need for the second variance request.

**COMMENTS:** Staff received seven (7) letters of support for the variance from neighbors. Staff did not receive any opposition letters, comments or inquiries regarding this request.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

- A - Vicinity Map & Aerial Photo
- B - Application
- C - Narrative & Plans

D - Notification Materials

E - Public Comment