



## Legislation Text

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**File #:** 19-143, **Version:** 1

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**TO:** Chair and Board of Adjustment

**FROM:** Jeremy Knapp, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** April 3, 2019

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Hayden Variance - 4202 E Desert Crest Drive (APN: 169-19-005B)

Case No. BA-19-03 a variance to Article X of the Town of Paradise Valley Zoning Ordinance to allow for an addition to encroach on height and into the rear setback

**A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-19-03, a request by the Hayden Family Trust, property owner of 4202 E Desert Crest Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to an existing residence to encroach into the setbacks and to encroach into the height limitation and 2) allow an existing detached garage to be attached to the primary residence and encroach into the setback. The variance shall be in compliance with the submitted plans and documents:

1. The Variance Criteria Narrative, prepared by 180 degrees a design + build company, dated March 18, 2019;
2. Site Plan, Sheet a1.11, prepared by 180 degrees a design + build company, dated March 18, 2019;
3. Building Elevations, Sheet a2.01, prepared by 180 degrees a design + build company, dated March 4, 2019;
4. Floor Plan, Sheet a141, prepared by 180 degrees a design + build company, dated February 15, 2019;
5. Roof Plan, Sheet a1.41, prepared by 180 degrees a design + build company, dated March 4, 2019; and
6. Topographic Survey, prepared by Alliance Land Surveying LLC, date sealed by G. Bryan Goetzberger on August 7, 2018.

**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-19-03, a request by the Hayden Family Trust, property owner of 4202 E Desert Crest Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to an existing residence to encroach into the setbacks and to encroach into the height limitation and 2) allow an existing detached garage to be attached to the primary residence and encroach into the setback.

### **Reasons for Denial:**

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

## **BACKGROUND**

### **Request**

The applicant requests a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to an existing residence to encroach into the setbacks and to encroach into the height limitation and 2) allow an existing detached garage to be attached to the primary residence and encroach into the setback.

Section 1001 of the Town Zoning Ordinance requires the house to be setback a minimum of 40' from the rear property line. The variance itself relates to the expansion of the existing garage and its attachment to the home. The detached garage currently complies with the 16' maximum height and 20' rear yard setback for an accessory structure. By incorporating the existing garage with the new home addition onto the existing house there will be approximately 339 square feet of the proposed garage addition within the 40' rear yard setback. This includes 257 square feet for the garage and 82 square feet for the roof overhang. The rear yard setback is 30'2" to the garage and 28'4" to the roof overhang.

Almost half of the existing home encroaches into the 40' rear yard setback. The rear yard setback of this existing home varies to a minimum of 19'9" to the house and 15'8" to the roof overhang. The applicant's narrative states that the proposed renovations are 40% of the existing square footage. As such, the existing home encroachment may remain pursuant to Section 2307. The proposed variance acknowledges that these existing encroachments exist.

*Section 2307. Structural alternations, refurbishing, or remodeling of existing Nonconforming Structures shall not result in an increase in any existing encroachment over current setbacks or result in an increase in the height of the reconstructed, refurbished, or remodeled structure over the actual height of the nonconforming portion of the existing structure or result in an increase in any other nonconforming aspect. Permissible alterations or additions to Nonconforming Structures shall vary based upon whether the alteration or addition is for a structural demolition or a new addition, as provided for below:*

*A. Structural Demolitions: When permits are approved for structural remodels, alterations, or repairs (excluding such nonstructural cosmetic items as painting, flooring, cabinets, or appliances), covered by a single or multiple building permits issued within a thirty ix (36) month period that together covers work which exceeds fifty (50) percent of the original square footage of an existing Nonconforming Structure, such Nonconforming Structure shall be made to conform to the requirements for new structures. For the purposes of this section, the term "Square Footage" means the aggregate of the area of all floors in a structure, whether at or*

*above established grade, measured between the exterior faces of the exterior walls of the structure.*

*B. New additions: All new additions to the existing Nonconforming Structure shall be in compliance with all current Zoning Code provisions.*

The other component of the variance relates to height. This is the circumstance that the garage encroachment into the rear setback is the volume of the building. The other height variance relates to the west end of the home addition that penetrates the Open Space Criteria (OSC) of the Zoning Ordinance. The OSC criterion maintains view corridors around the perimeter of a lot by further limiting building height near property lines. Maximum allowable structure height shall not exceed a plane beginning at 16' above the natural grade, at 20' setback from all property lines and sloping upward at a 20% angle, perpendicular to the nearest property line. The proposed encroachment is approximately 1.2' at 22 square feet of horizontal encroachment. A visual is shown on the south elevation of Sheet a2.01.

The variance notice included a variance request from Article XXIV, Walls and Fences, to allow existing terraced retaining walls to remain and exceed the minimum separation requirements. This variance related to the existing retaining walls south of the pool. However, after additional survey information was provided on the 10' wall separation, it was determined these walls comply with the Zoning Ordinance. There is no variance request regarding these walls.

#### Lot - Building Height Conditions

The property is zoned R-43 and is approximately 52,282 square feet in size (1.2 acres). The property is four sided, with the street side at an angle that reduces the lot depth on the west side of this lot. The building area depth on this lot along the west is 83' as compared to 208 feet along the east side of this lot. A typical building area depth is approximately 180 feet. The subject site is not hillside, but the adjoining lots to the west and north are designated as hillside.

The existing square footage under roof is 7,303 square feet, including roof overhangs. The proposed home will be 10,676 square feet under roof, including roof overhangs. The existing and proposed home with renovations will remain single story. The building height measured from grade is 17'2". The Town measures height from the lowest natural grade underneath the home to the top of the finished roof. Due to the sprawling nature of this home, the maximum height is 23'5 3/8". This maximum height is under the maximum allowable height of 24'.

#### Lot History

The subject property is not within a recorded subdivision. The Town annexed this property in 1982. The following is a chronological history of the property:

- October 10, 2014. Building permit issued for gas line.
- May 14, 2014. Building permit issued for gas line to fireplace.
- May 11, 2005. Building permit issued for gas line.
- February 13, 2004. Building permit issued, work not noted on the permit.
- November 21, 2003. Building permit issued for masonry wall.
- November 19, 2003. Building permit issued for retaining walls.
- July 21, 1998. Building permit for interior remodel.
- November 6, 1986. Building permit issued for addition.

- August 25, 1986. Building permit issued for addition.
- June 9, 1982. Electrical permit issued.
- May 6, 1982. Building permit issued for addition and remodel.

There is no building permit on file for the original construction of the house. The Maricopa County Assessor lists the house construction as 1985. However, this is likely due to the additions finished in 1986. Historical aerials show a house at similar setbacks as far back as 1969. The applicant's narrative states the home was originally built in 1962.

### **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 hardship was placed on the existing residence when the R-43 District was applied to this property many years after the existing home was built and later annexed into the Town of Paradise Valley. The footprint of the existing home has been relatively the same since the home was originally built in 1962.

The applicant is trying to improve the house while utilizing existing conditions, including having direct access from the garage to the home instead of its existing configuration as a detached structure. Only 339 square feet of the total 3,373 square feet of the new addition to this home requires a variance. The variance is to expand the existing 2-car garage to a 4-car garage. 4-car garages are a common amenity on Paradise Valley homes.

The location of the existing driveway, existing garage entry at the rear yard and existing rear yard encroachments of the home are not changing. This existing driveway condition and existing rear yard encroachments of the home limit options to expand the garage. Additionally, the finished floor of the existing garage is 1,447' and the slope of the land south of the garage to add an addition drops to 1,441' as the lot continues to slope downward toward Desert Crest Drive. As described in the applicant's narrative, shifting the addition further south will impact the lowest natural grade underneath the home likely resulting in requiring a variance to exceed the 24' maximum height from natural grade.

Similarly, the small encroachment into the OSC is impacted by the site slope. The applicant's narrative states this slope limits placement of the new addition and the nonconforming aspects of the home do not allow for the new bedroom to be placed in a reasonable and accessible location.

#### **Findings Opposed (FOPs):**

The size, shape, and topography of the lot do not prevent the applicant from remodeling the home. Options exist to reduce the proposed addition to either move the garage addition further south or keep the addition to the current detached garage as an accessory structure. As an accessory structure this changes the allowable rear yard setback from 40' to 20' and reduces the overall area underneath the structure in measuring height from natural grade. However, as an attached structure to the home, moving the garage addition further south to comply with a 40' rear yard setback would likely require retaining walls due to the slope of this lot near the garage and may require reducing the size of the addition to avoid exceeding the 24' height measured from natural grade underneath the structure.

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 reduced building area depth of this lot along the west half of this property, the slope of the property, the existing driveway configuration to the rear yard and existing rear yard setback encroachments of the home are not the result of any misunderstanding or mistake.

**FOPs:**

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 provide visual openness, limit visual impact to the natural landscape and maintain view corridors. The applicant points out that the area of the proposed encroachment is on the northern side of the existing residence and the addition will have limited visual impact from the street. The adjoining residential lots to the north are at a higher elevation and maintain clear views to the south as the home will maintain its single level height. The proposed garage encroachment will not exceed the rear yard setback of the existing garage.

**FOPs:**

The request does not meet the intent of the code since other alternatives exist. The proposed addition can be reduced in size to either move the garage addition further south or keep the addition to the current detached garage as an accessory structure that has an allowable rear yard setback of 20'

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 property owner is trying to improve the house while utilizing the existing conditions. The west portion of the property is more impacted than other similar lots on buildable area depth. Challenges exist in adding onto the 2-car garage utilizing

the existing driveway and garage located in the rear yard. The applicant's narrative notes that the home was built in 1962 before annexation and application of the zoning limitations on this site.

**FOPs:**

The request is self-imposed since other design options can be used to help the applicant achieve the goal adding onto the home and expanding the garage.

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 applicant's narrative states the special circumstance of the pre-existing setback encroachment, existing orientation of the existing home, access and limited buildable area require minimal encroachment into the setback and related height restrictions.

The subject site is not hillside. The slope of this site is close to the 10% slope used to define a hillside property. The slope of the subject site varies 8% to 9%. This change in grade plus the circumstances in maintaining the driveway, garage location and existing house configuration create special circumstances that maintains visual openness for adjoining property owners.

**FOPs:**

The size, shape, and topography of the property do not prevent the applicant from adding onto the home. The proposed addition can be reduced in size to either move the garage addition further south or keep the addition to the current detached garage as an accessory structure that has an allowable rear yard setback of 20'

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 garage encroachment and OSC encroachment have limited visual impact since the house is situated lower than the homes behind it and setback further from the street than the minimum setback of 40'. The request is also in character with the neighborhood since other homes in the area encroach into the setbacks as shown in the aerial map provided by the applicant.

**FOPs:**

Arizona Revised Statutes and the Town Code do not require the most optimal or profitable use of a property. Also, all other properties in the area must meet maintain or improve their nonconforming structures in accordance with the Town Zoning Ordinance.

**COMMENTS:** Staff received one inquiry from the neighbor south of this property. Attached is an e-mail summarizing his comments.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo  
Application  
Narrative and Plans  
Noticing Materials

C: Jerry Park (Applicant)  
Case File BA-19-03