



## Legislation Text

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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: October 7, 2020**

**DEPARTMENT:** Community Development

**AGENDA TITLE:**

**[Carson Variance - 4502 E. Moonlight Way (APN: 169-11-003E and 169-11-003D).  
Case No. BA-20-04]**

**A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-20-04, a request by Scott Carson, architect for property under contract at 4502 E. Moonlight Way; for three variances from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow a new single family residence to encroach into the front setback, 2) Article XXII, Hillside Development Regulations, to allow a new single family residence to encroach into Mountain Top Ridge Line limits, and 3) Article XXIV, Walls and Fences, to allow retaining walls to encroach into setbacks.

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

1. The Variance Request, prepared by Cosan Studio and dated Revised August 26, 2020 containing Site Photos, Site Plans, Maps, Criteria Narrative, Elevations, Wall Exhibits, and Engineering Plans sheets 1-25.

**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-20-04, a request by Scott Carson, architect for property under contract at 4502 E. Moonlight Way; for three variances from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow a new single family residence to encroach into the front setback, 2) Article XXII, Hillside Development Regulations, to allow a new single family residence to encroach into Mountain Top Ridgeline limits, and 3) Article XXIV, Walls and Fences, to allow retaining walls to encroach into setbacks.

### Reasons for Denial:

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

### BACKGROUND:

#### Request

The applicant requests three variances

1. A variance to the front setback from the required 40 feet to 5 feet, and
2. A variance to allow for the new residence to encroach into the Mountain Top Ridge Line (to develop within the 20-degree area below the ridge line), and
3. A variance to allow retaining and screen walls to encroach into the setbacks.

#### Lot History

The subject property consists of 3 parcels. The south parcel (parcel #1) is Lot 5 of the Clearwater Hills subdivision. The subdivision was platted in 1955 under Maricopa County jurisdiction and Lot 5 (parcel #1) remains under County jurisdiction. The north 2 parcels (parcel #2 and parcel #3) are metes and bounds parcels adjacent to Lot 5 and outside of the subdivision boundaries. In 1978 the owner of Lot 5 entered into a covenant with Clearwater Hills, that required the owner (and any successor owners) to treat Lot 5 (parcel #1) and the adjoining north parcel #2 as a single lot. Under this recorded agreement the two parcels can never be separated and only one single dwelling (and guest house) can ever be built on the combined parcels.

Parcel #3 was included in the original/current home plans and permits but it was not specifically covered by the Clearwater Hills covenant. Therefore, the Town would require any redevelopment plans to also include an application to combine parcel #3 with parcel #2 to have the entire site protected by the recorded covenant.

Prior to 1980, the north two parcels (parcel #2 and parcel #3) were annexed into the Town of Paradise Valley and zoned R-43. The following permits were issued by the Town of Paradise Valley:

- December 17, 1980. Building permit issued for current residence (listing setbacks of 40' front/rear and 20' sides).
- April 27, 1981. Building permit issued for pool & spa.
- February 1, 1982. Building permit issued for ramada.
- February 16, 1984. Certificate of Occupancy issued for current residence.
- 1984 Town of Paradise Valley adopted its first Hillside Ordinance
- April 28, 1986. Building permit issued for residence addition.
- February 10, 1987. Building permit issued for a detached storage building.

The current home was designed, permitted by the Town and built on these parcels treating the parcels as one. Simply stated, the home is built over the boundary line between the jurisdictions of Maricopa County and the Town on both Lot #5 and parcel #2 as shown on the variance plans (pages 6-8) submitted by the applicant. The current home does not meet the front building setback or site and retaining wall setback requirements for the two parcels (parcel #2 and parcel #3) which the Town has jurisdiction over. The Town has neither jurisdiction or plan review authority over the Lot #5 portion of the site.

### Lot Conditions

In 1980, when the current home was built, the Hillside Regulations and requirements for the protection of ridgelines were not in place. At that time the primary ridgeline was removed and site work consisting of cut & fill and grading occurred to create a flat pad for construction of the current home. In 1984 the Town adopted its first Hillside Ordinance and parcel #2 and parcel #3 were designated as Hillside. These two parcels are located within the Hillside Development Area above 1500 feet and technically the Town's Primary Ridge Line requirements now apply. It is not possible to replace the natural ridge. It is also not possible to comply with the Paradise Valley Primary Ridge Line requirements. Both the north slope of parcel #2 and the south slope of Lot #5 are very steep spill slopes which make them unsafe to build upon.

### **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 current owners of this property (as of 1/1/2020) want to remove the existing residential structure and build a new home on the lot utilizing the existing pad and staying within the existing disturbance limits. The current Paradise Valley hillside requirements did not exist when the pad was created, and the primary ridgeline was legally removed. The entire roof of the current home is above the historic natural ridge or natural grade; 17% of the proposed new home roof is below original natural grade. Building with the least amount of disturbance on a hillside lot meets the general intent of the Town's hillside regulations.

The unique fact that this development site straddles two different jurisdictions and three (3) parcels creates a hardship for meeting individual lot/parcel setbacks and a new comparable sized home is not buildable on any of the individual parcels. The surrounding Clearwater Hills neighbors are all in Maricopa County and are not required to comply with Paradise Valley hillside requirements.

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

The current residential structure is considered legally non-conforming. Instead of removing and rebuilding the applicant could remodel the current home up to 50% without the need for a variance. They could also request a fourth (4<sup>th</sup>) variance to allow for the modification of more than 50% of a non-conforming structure and remodel 100% the entire existing home and seek approval for the other 3 variances as requested.

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 current 40 year old home is in bad repair and more than 50% would need to be remodeled to adequately update the home. The current home already straddles the two parcels in two different jurisdictions and has challenging topography. Utilizing the existing pad site is logical but not possible without the requested variances. The recorded 1978 covenant with Clearwater Hills says that parcel #2 and Lot #5 are to be treated as a single parcel, the parcels are not to be separated and only 1 home with 1 guest house may ever be built on the site. The Town will require parcel #3 to be combined with parcel #2 so the entire site will be covered by this building restrictive covenant. If the Town had total jurisdiction over the development site there would be no need for a front yard setback variance. Therefore, it is the jurisdictional divide and not a mistake or misunderstanding on the applicant's part that is causing the need for the variance.

The only thing that can be done about the ridgeline variance is to reduce the visual impact that the height of a new building might cause adjacent neighbors, and, in this case, the proposed home lessens that impact by 17%.

**FOPs:**

Even though the requested encroachments are less than what already exists, the applicant might consider rebuilding a smaller home that fits within the setback parameters of the lot. However, any rebuilding would still require a variance from the Hillside Development Regulations. The applicant could also simply live with the structure as it exists and update the interior where feasible without the need for a variance

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 proposed new home would be situated entirely on parcel #2, no longer straddling the lot/parcel line, with a five (5) feet “front” setback between the two jurisdictions; which is more in harmony then currently exists. By constructing the 2<sup>nd</sup> story element on the east side rather than on the west side, as the current home does, the new home will reduce the encroachment into the ridgeline by 17.4%. By utilizing the existing pad site and containing all new development within the existing disturbance limits the applicant meets the general intent of the Hillside Development Regulations to develop in harmony with the topography (lessen the amount of disturbance). Because of the unique configuration and the topography of the lot the applicant has proposed a new home that is more in compliance with the Town's codes then the existing home. Overall the applicant's requests are in keeping with the General Plan policy of encouraging redevelopment that respects and responds to existing physical characteristics.

**FOPs:**

The house could be redesigned and moved further north to reduce the amount of front yard setback encroachment. However, due to the special circumstances associated with this site, the proposed improvements reduce, but do not eliminate, the amount of existing encroachments.

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 as the current home was legally permitted by the Town of Paradise Valley in December 1980. At that time the home was designed with a 40' front setback measured from the front of Lot #5 along Moonlight Way. The current property owners purchased the property in January 2020 and through conversations with the Town and Maricopa County determined that no one could explain how the home was permitted and allowed to be built over the lot/parcel line. As Lot #5 is in a separate jurisdiction it was determined that the building setback should be measured from the south edge of parcel #2. The current home encroaches into the 40' front setback of parcel #2 by 6,600 sf. The proposed home encroaches into that same 40' front yard setback of parcel #2 by only 4,400 sf (reduction of 2,200 sf). The building envelope size on parcel #2 after accounting for all setbacks (40' front & rear and 20'side) doesn't leave enough space to build a new house of typical size without some sort of setback variance. Given the presence of Lot #5 as a “visual front setback” the least intrusive variance is to the front setback on parcel #2.

In 1980 the primary ridgeline was legally removed and site work consisting of cut & fill and grading occurred to create a flat pad for construction of the current home. It wasn't until 1984 that the Town of Paradise Valley adopted its first Hillside Ordinance. It is not possible to replace the natural ridge. It is also not possible to comply with the Paradise Valley Primary Ridge Line requirements. A variance to the Primary Ridge Line regulations is necessary to build anything on the site.

There are several retaining walls that cross from one parcel to another and so are not in compliance with the current zoning code. Allowing the existing retaining walls to remain as is will keep the disturbance on the lot to a minimum. The minor retaining walls proposed in the front setback are necessary to limit disturbance on the lot and utilize the existing building pad. The minor retaining walls in the rear yard setback are being proposed for a raised outdoor living area that will be located within the existing limits of disturbance and they will replace the existing perimeter wall at the top of the spill slope. The minor retaining walls proposed within the side yard setbacks are retaining the cut slope and/or screening mechanical equipment.

**FOPs:**

The request is self-imposed since other options exist such as: do nothing to the property and live in it as is; improve the property but only landscaping and walls and new pool while maintaining the existing home; renovate up to 50%.

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 strict application of the zoning ordinance on the front setback will not allow the owners to construct a home on the property of the same size and caliber of homes in the surrounding neighborhood, depriving the owners the ability to develop the property in the same zoning district and surrounding neighborhood. The extent of the spill slope on the north side of parcel #2 in effect

makes most of this second lot unbuildable. Without relief from the front yard setback requirement there is not enough room on the lot to build a similar house on the existing pad.

The application of the Hillside Development Regulations and specifically the Mountain Top and Primary Ridge Line limits will deprive the owners total use of the entire site.

The steep slopes on the north and south sides of the combined parcels, along with the existing pad that straddles two parcels, are special circumstances unique to this property.

**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 1980, the current house is already built, and the site could be left as is.

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. They are seeking approval to maintain the historic disturbance limits and ridgeline encroachments with less visual impact from what currently exists on the property. The requested variances are the minimum necessary to preserve and modernize this property.

**FOPs:**

All other properties in the R-43 district must meet the current setback requirements and hillside regulations.

**COMMENTS:** Staff did not receive any support or opposition letters or comments regarding this request. Staff did receive one (1) phone inquiry on this request.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

- A - Vicinity and Aerial Maps
- B - Application
- C - Narrative & Plans Dated 8.26.20
- D - Notification Materials