



## Legislation Details (With Text)

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**On agenda:** 5/3/2017      **Final action:**  
**Title:** Burks Variance - 5712 E. Glen Drive (APN: 169-55-026A)  
Case No. BA-16-6

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Report, 2. Vicinity & Aerial, 3. Application, 4. Plans & Narrative, 5. Public Comment, 6. Noticing Materials

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

**FROM:** Eva Cutro, Community Development Director  
Paul Michaud, Senior Planner  
George Burton, Planner

**DATE:** May 3, 2017

**CONTACT:**  
George Burton, 480-348-3525

**AGENDA TITLE:**  
Burks Variance - 5712 E. Glen Drive (APN: 169-55-026A)  
Case No. BA-16-6

**RECOMMENDATION:**  
Staff recommends Motion "A", a motion to approve the variance request to allow a single family residence to encroach into the rear yard setback.

### **A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-16-6, a request Ron Burks (Trustee of the Rose Garland Revocable Trust), property owner of 5712 E Glen Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow a single family residence to encroach into the rear yard setback.

### **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-16-6, a request Ron Burks (Trustee of the Rose Garland Revocable Trust), property owner of 5712 E Glen Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow a single family residence to encroach into the rear yard setback.

### **Reasons for Denial:**

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

## **BACKGROUND**

### **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 issued for a single family residence.
- October 30, 1974. Building permit issued 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 or mid-1980’s).

### **Request**

The applicant is proposing to construct a single family residence on the existing pad. Section 1001 of the Zoning Ordinance requires a 40’ rear yard setback for the primary residence and three portions of the proposed home will encroach into the rear setback. One portion of the main level and two portions of the upper level of the house will encroach into the setback. 410 square feet of the main level of the house will encroach at a setback of 20’ from the rear property line. 245 square feet of the upper level of house will encroach at a setback of 27’ and 35’ from the rear property line. This results in a total encroachment of 655 square feet into the rear setback.

### **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 setback encroachment. If the variance is granted, the improvements will go thru the hillside review process.

### **Board of Adjustment Discussion**

During the April 5<sup>th</sup> Board meeting, the applicant requested a continuance due to a conflict of schedule. The Board of Adjustment continued this variance application to the May 3, 2017 meeting.

## **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 property is burdened with an odd shape and dual frontage which create a narrow and restrictive building envelope that limits the development to the east side of the property. Also, the improvements will not create additional disturbance to the hillside since the house is located within an existing disturbed area.

**Findings Opposed (FOPs):**

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. Although not ideal, the size of the house may be scaled down or redesigned in order to comply with the setback requirements.

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 triangular shape and dual frontage of the lot is the result of how the parcel was platted in Maricopa County.

**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 code is to minimize the amount of disturbance to the hillside, preserve the visual openness, and preserve the natural features of the mountain. The request meets the intent of the Zoning Ordinance since the new house will not increase the amount of disturbance and will have limited visual impact. The house will not create additional disturbance since it will be placed on an existing pad and it will have limited visual impact since the encroachments are limited to the rear of the lot (which will be partially screened by the hillside).

**FOPs:**

The request does not meet the intent of the code as other alternatives exist. The orientation of the house may be reconfigured or the size of the house may be reduced to comply with the setback requirements. However, a different design may result in additional disturbance to the hillside.

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 applicant has a difficult lot to build on and is trying to design a house that utilizes the existing site conditions. The triangular shape and dual street frontage create a restrictive building envelope that limits development to the east side or east half of the lot. Also, the proposed house will not create additional disturbance to the hillside since the home will be placed on an existing pad.

**FOPs:**

The request is self-imposed since the applicant may redesign a house that meets setbacks. The applicant should be aware of all special circumstances on the property and plan any designs accordingly.

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 property hardship arises from the odd shape and dual frontage of the lot. The triangular shape creates a narrow and unusual building envelope that limits the buildable area to the east side of the property. The applicant is trying to limit the amount of disturbance by utilizing and orientating the house on the existing pad.

**FOPs:**

Dual street frontage is not atypical. Also, Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property.

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 request is in character with the neighborhood and the Zoning Ordinance. The setback encroachment is not out character with the neighborhood since several of the neighboring homes encroach into the front yard setback (via the Maricopa County aerial photo, it appears that three of the neighboring homes encroach into the front yard setback). Conversely, the applicant is requesting an encroachment into the rear yard which is less visible from the street.

The request is also in character with the Zoning Ordinance since the intent of the code is preserve the hillside and preserve visual openness. The new house will not increase the amount of disturbance by utilizing the existing pad/disturbed area and will have limited visual impact since the setback encroachment is restricted to the rear of the lot and partially screened by the hillside.

**FOPs:**

All other properties in the area must meet the setback requirements outlined the Zoning

Ordinance.

**COMMENTS:** Staff received three comments regarding this application. One comment was in favor of the variance request and the other two were opposed to the request. A copy of the public comment is enclosed.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo  
Application  
Narrative and Plan Set  
Public Comment  
Noticing Materials

C: Doug Jorden (Applicant)  
Case File BA-16-6