



## Legislation Details (With Text)

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**File created:** 1/29/2019      **In control:** Board of Adjustment  
**On agenda:** 2/6/2019      **Final action:**  
**Title:** Nute Variance - 4517 E. Foothill Drive (APN: 169-11-069)  
Case No. BA-19-02

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Vicinity & Aerial, 2. Application, 3. Narrative & Plans, 4. Notification Materials

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

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

**DATE:** February 6, 2019

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Nute Variance - 4517 E. Foothill Drive (APN: 169-11-069)  
Case No. BA-19-02

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

I move for **[approval]** of Case No. BA-19-02, a request by Howard Nute, property owner of 4517 E. Foothill Drive; for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, to allow for unscreened roof mounted solar panels. The variance shall be in compliance with the submitted plans and documents:

1. The Variance Criteria Narrative, prepared by Sun Valley Solar Solutions LLC;
2. Sheet PV1, prepared by Sun Valley Solar Solutions LLC; and dated September 28, 2018;
3. Sheet PV2, prepared by Sun Valley Solar Solutions LLC; and dated October 10, 2018;
4. Sheet E1, prepared by Sun Valley Solar Solutions LLC; and dated September 28, 2018;
5. Sheet E2.1, prepared by Sun Valley Solar Solutions LLC; and dated October 10, 2018; and
6. Sheet E2, prepared by Sun Valley Solar Solutions LLC; and dated October 10, 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**

Case No. BA-19-02, a request by Howard Nute, property owner of 4517 E. Foothill Drive; for a variance from the Zoning Ordinance, Article XXII, Hillside Development Regulations, to allow for unscreened roof mounted solar panels

### **Reasons for Denial:**

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

## **BACKGROUND**

### **Request**

The applicant is proposing to place five unscreened roof mounted solar panels on the house. The house has a pitched roof and Section 2207.II.E of the Town Zoning Ordinance requires all solar panels to be hidden from the same or lower elevation:

Section 2207.II.E. Solar panels may be allowed if they are integrated into the building design and hidden from view when viewed from the same or a lower elevation and approved by the Hillside Building Committee by a Combined Review. Solar panels may be allowed on pitched roofs when screened from the same or a lower elevation by the adjoining hillside or hillside cut and approved by the Hillside Building Committee by a Combined Review.

Stealth solar technology may also be used on roofs and may not be required to be hidden from view. Stealth solar technology shall be limited to solar shingles and solar tiles that are integrated to blend in with the building design, do not have a shiny metallic finish, have a light reflective value of 38% or less, and must be approved by the Hillside Building Committee by a Combined Review.

Typically, roof mounted solar panels are placed on flat portions of the roof and screened by the adjoining roof parapets. Since the house does not have any flat roofed areas, the applicant is seeking a variance request to place unscreened solar panels on the pitched roof of the house.

### **Lot Conditions**

The property is zoned R-43 Hillside and is approximately 41,698 square feet in size (0.96 acres). The property is a square shaped lot and that is situated below Foothill Drive

### **Lot History**

The subject property is Lot 10 of the Tatum Canyon subdivision. The subdivision was platted in in the Town of Paradise Valley in 1974. The following is a chronological history of the property:

- June 29, 1994. Building permit issued for a new residence.
- November 23, 1994. Building permit issued for a pool and spa.
- May 17, 1996. Building permit issued for a driveway gate.
- February 25, 2010. Building permit issued for a bedroom/bathroom addition.

## **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 is the design of the house. Typically, roof mounted solar panels are placed on flat portions of the roof and screened by the adjoining roof parapets. Since the house does not have any flat roofed areas, the applicant is seeking a variance request to place unscreened solar panels on the pitched roof of the house. Placing a screen around the panels will shade the panels and reduce the efficiency of the system.

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

There is no property hardship that warrants the request and other alternatives exist. The size, shape, and topography of the lot do not prevent the solar panels from being screened or prevent the use of alternate options such as ground mounted solar panels or solar tiles (which do not have to be screened per code).

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 house was constructed without any flat roofed areas, which limits the options for solar panels.

### **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 hillside ordinance is to minimize the amount of disturbance to the hillside and to preserve the visual openness and the natural features of the mountain. The request meets the intent of the hillside ordinance since the roof mounted solar panels will not increase the amount of disturbance, will not obstruct views, and has limited off-site visibility. Since the house is situated below the street, the panels have limited visibility and meet the intent of the

code which requires the solar panels be hidden from the same or lower elevation. Also, placing the solar panels on the ground may result in additional disturbance to the hillside.

**FOPs:**

The request does not meet the intent of the code since other alternatives exist. Although not ideal, the applicant can use solar tiles (which are not required to be screened per code) or use ground mounted solar panels.

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 is trying to improve the house while utilizing existing conditions. The solar panels will not create additional disturbance to the hillside, will utilize the existing roof, and not will obstruct views.

**FOPs:**

Arizona Revised Statutes and the Town Code do not require the most optimal or profitable use of a property. The request is self-imposed since other options exist. The applicant can use solar shingles or ground mounted solar panels.

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 topography and location of the house on the hillside helps the solar panels meet the intent of the code. Since the house is situated below the street, the solar panels will have limited off-site visibility which meets the intent of code requirement to hide the solar panels from the same or lower elevation.

**FOPs:**

There is no property hardship that warrants the request. The size, shape, and topography of the lot do not prevent the applicant from using a code compliant solar option such as ground mounted solar panels and/or the use of solar shingles.

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 meets the intent of the hillside ordinance. The request does not increase the amount of disturbance to the hillside and has limited visibility. Since the house is situated below the street, the solar panels will have limited off-site visibility and should be hidden from

the same or lower elevation.

**FOPs:**

There does not appear to be other hillside properties in the area that have unscreened solar panels. Also, all other hillside properties must meet the solar requirements outlined the Zoning Ordinance.

**COMMENTS:** Staff received no comments regarding this request.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo  
Application  
Narrative and Plans  
Noticing Materials

C: Kaleina Eden (Applicant)  
Case File BA-19-02