



## Legislation Details (With Text)

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**Title:** Case No. BA-19-05 (Jellies Variance) Request by owner of 7016 East Vista Drive (APN 173-18-028) for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, and Article XXIII, Nonconformance for additions to an existing home

**Sponsors:**

**Indexes:**

**Code sections:**

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

Date	Ver.	Action By	Action	Result
5/1/2019	1	Board of Adjustment	Denied	Pass

**TO:** Chair and Board of Adjustment

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

**DATE:** May 1, 2019

**CONTACT:**

Paul Michaud, Senior Planner, 480-348-3574

### **AGENDA TITLE:**

Case No. BA-19-05 (Jellies Variance) Request by owner of 7016 East Vista Drive (APN 173-18-028) for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, and Article XXIII, Nonconformance for additions to an existing home

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

I move for **[approval]** of Case No. BA-19-05, a request by Richard Jellies, property owner of 7016 E Vista Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, and Article XXIII, Nonconformance, related to the property owner's proposed additions to this home. Two variances are proposed. These include 1) allowance of the property owner to enclose the existing carport as a garage that will maintain a similar existing setback/height encroachment from Vista Drive and 2) allowance of the setback/height encroachment of the existing home along 70<sup>th</sup> Place to remain since the proposed improvements exceed 50% of the original square footage of an existing nonconforming structure for all permits issued within a 36-month period. The variance shall be in compliance with the submitted plans and documents:

1. The Variance Criteria Narrative dated April 4, 2019;

2. Site Plan, Sheet 1 of 4, prepared by Babos Design Studio, L.L.C., dated April 4, 2019;
3. Existing Floor Plan, Sheet 2 of 4, prepared by Babos Design Studio, L.L.C., dated April 4, 2019;
4. Floor Plan, Sheet 3 of 4, prepared by Babos Design Studio, L.L.C., dated April 4, 2019; and
5. Elevations, Sheet 4 of 4, prepared by Babos Design Studio, L.L.C., dated April 4, 2019;

**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-19-05, a request by Richard Jellies, property owner of 7016 E Vista Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, and Article XXIII, Nonconformance, related to the property owner's proposed additions to this home. Two variances are proposed. These include 1) allowance of the property owner to enclose the existing carport as a garage that will maintain a similar existing setback/height encroachment from Vista Drive and 2) allowance of the setback/height encroachment of the existing home along 70<sup>th</sup> Place to remain since the proposed improvements exceed 50% of the original square footage of an existing nonconforming structure for all permits issued within a 36-month period.

**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, and Article XXIII, Nonconformance, to allow the property owner to enclose the existing carport as a garage that will maintain a similar existing setback/height encroachment from Vista Drive and 2) to allow the setback/height encroachment of the existing home along 70<sup>th</sup> Place to remain since the proposed improvements exceed 50% of the original square footage of an existing nonconforming structure for all permits issued within a 36-month period. The property is located at 7016 E. Vista Drive, zoned R-18A.

Code

The minimum lot size for R-18A is 18,000 square feet. Being a corner lot, the setbacks for the home are a minimum of 35' from 70<sup>th</sup> Place (front yard), 35' from Vista Drive (side with frontage), 35' to the west property line (rear yard) and 10' to the north property line (side yard). Section 1010 of the Zoning Ordinance allows for 2' of projection into required setbacks on features such as roof overhangs. The R-18A District prohibits two-story homes but allows for homes to be one-story 24' tall. The maximum allowable floor area ratio is 25%.

The Town created the R-18A District in 1995 to modify the standards for certain subdivisions that were already developed and later annexed into the Town. This included reducing the setbacks in several R-18-zoned subdivisions that were already developed and later annexed into the Town. This includes the Gross Point Two subdivision for this subject site. The setbacks were reduced in 1995 from 40' along the street frontage to 35' and the side setback was reduced from 20' to 10'. However, prior to 1991, the setbacks for R-18 which applied to this property were 35' along a street frontage

and 10' or 10% of the lot width for side setbacks.

### Existing Conditions

The site's shape is rectangular. The property is zoned R-18A and is approximately 20,262 square feet in size (0.47 acres). The existing home is 3,657 square feet total with a floor area ratio of 18.0%. The home was built in 1960 prior to annexation into the Town in 1961. The home was built at an angle on the lot.

The right-of-way width along 70<sup>th</sup> Place is 50'. The right-of-way width along Vista Drive is 60'. Both streets are designated local streets per the General Plan at a suggested right-of-way width of 50'. If Vista Drive was designed today, the property line of the subject site along Vista Drive would likely be 5' further south making the existing and proposed setback on this home into compliance.

633 total square feet of the home encroach into the 35' street setbacks. This encroachment comprises of 121 square feet for the carport, 145 square feet of the livable portion of the home and 367 square feet of roof overhang. The footprint of the existing home encroaches approximately 5' into the required 35' setback and encroaches almost 8' into the 35' setback to the roof overhang along the street fronts. The existing carport is setback from 70<sup>th</sup> Place (front yard) a minimum of 30'6" [27'11" to the roof overhang] and setback from Vista Drive (side with frontage) a minimum of 30'5" [28'10" to the roof overhang]. The livable portion of the existing home at the northeast corner is setback from 70<sup>th</sup> Place (front yard) a minimum of 29'10" [27'3" to the roof overhang]. The existing home complies with the rear yard setback to the west property line at 42'2" and with the side yard setback to the north property line at 23'1".

The existing home sits well below the maximum allowable height of 24'. The height of the existing home is approximately 13'2" from finished floor and 14'8" from natural grade. The height of the home in the portion of the setback encroachment is approximately 11'0" tall from finished floor and 12'6" from natural grade due to the roof slope.

### Proposed Conditions

The proposed renovations update the exterior of the home to match the architectural character of the homes in the neighborhood. The new total square footage will be 5,065 square feet with a floor area ratio to the maximum allowable of 25.0% (5,065 square feet for this lot). The additional area totals 1,408 additional square feet.

281 total square feet of the proposed home will encroach into the 35' street setbacks. This encroachment comprises of 44 square feet at the garage, 145 square feet of the livable portion of the home and 92 square feet for roof overhang. The proposed home will be remodeled more than 50% of the original square footage due to the roof modifications and changes in the floor plan. As such, pursuant to Section 2307 of the Zoning Ordinance, all existing encroachments must comply with current setbacks/heights unless granted a variance. The intent is to keep portions of the home in place. The entire slab will remain, any walls shown on Sheet 3 of the floor plan as hatched (masonry walls) will remain and any roof areas which extend into the setback will remain. The proposed home will reduce the total square footage of encroachment by approximately 40%, going from 633 square feet to 281 square feet. The proposed home results in further reduction of the encroachment from the street property line due to its smaller roof overhang compared to the existing home. The footprint of the proposed home encroaches approximately 5' into the required 35' setback like the existing home and encroaches 5' to 6' into the 35' setback to the roof overhang along the street fronts. The proposed garage is setback from 70<sup>th</sup> Place (front yard) a minimum of 35'8" [34'3" to the roof

overhang] and setback from Vista Drive (side with frontage) a minimum of 31'2" [30'3" to the roof overhang]. The livable portion of the existing home at the northeast corner is setback from 70<sup>th</sup> Place (front yard) a minimum of 29'10" [28'5" to the roof overhang]. The proposed home complies with the rear yard setback to the west property line at 37'10" and with the side yard setback to the north property line at 11'9".

The other component of the variance relates to height. The mass/height of the home does not comply with the allowable height since the height of a structure that encroaches into a setback is 0'. The proposed home sits well below the maximum allowable height of 24'. The height of the proposed home is approximately 19'6" from finished floor and 21'0" from natural grade. The height of the home in the portion of the setback encroachment is approximately 10'0" tall from finished floor and 11'6" from natural grade. The proposed home and the encroaching portions of the home complies with the Open Space Criteria (OSC) of the Zoning Ordinance. The OSC 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.

#### Lot History

The subject property is Lot 27 of the Grosse Pointe Two recorded subdivision recorded in 1958. The Town annexed this property in 1961. The following is a chronological history of the property:

- 1960. Estimated date home constructed
- September 11, 1973. Addition with utility improvements
- September 27, 1984. Construct pool
- May 28, 2009. Convert overhead utility to underground panel
- January 11, 2019. Demo pool and associated structures

#### **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 applicant's narrative states a hardship on this lot are the two 35' street setbacks as the subject site is a corner lot. The Town does not have many lots that are less than an acre. However, this existing subdivision was annexed into the Town and later granted R-18A zoning. R-18A has reduced setbacks from the typical R-43 setbacks of 40' to the street/rear property line and 20' to the side property line. The 0.47-acre lot is the same width and depth as the lots with a single street frontage in this subdivision. This circumstance reduces the buildable area on the corner lots by approximately 1,440 square feet. The variance is for a total encroachment of 281 square feet.

The applicant's narrative states a hardship on this lot is the condition that the existing home is angled. The home was built at an angle in 1960 prior to annexation into the Town.

The applicant is trying to improve the house while utilizing existing conditions, including enclosing the two-car carport into a two-car garage. A request for a two-car garage is a basic amenity in most homes across the valley and not an uncommon convenience. The property owner is also reducing the amount of garage encroachment by 77 square feet as the proposed garage encroachment is 44 square feet and the existing encroachment is 121 square feet. There is no change to the 145 square foot amount of encroachment for the main portion of the home.

**Findings Opposed (FOPs):**

The size, shape, and topography of the lot do not prevent the applicant from remodeling the home. Most of the home, pool and landscaping on the site will be removed to accommodate the proposed home. As such, options exist to modify the floor plan to comply with 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 mistake or misunderstanding. The design of the subdivision with single frontage and double frontage lots being the same size and the angle of the existing home occurred prior to annexation. Once annexed, the R-18 setback regulations applied to the lots in Grosse Pointe Two. These were the same standards as R-43 zoning but were reduced to the present standards as R-18A in 1995.

**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 purpose of the Zoning Ordinance is for securing adequate light, pure air, and safety from fire and other dangers; conserving the values of land and buildings through the Town of Paradise Valley; lessening or avoiding congestion in the public streets; and promoting the public health, safety, comfort, morals and welfare of the citizens of the Town of Paradise Valley, Arizona.

The applicant's narrative states the proposed home and the 281 square foot encroachment is in harmony as it seeks only to alleviate a hardship created unintentionally from the placement of the home on a corner lot the same size as a double street frontage lot. These conditions make it challenging to modify the home without a complete demolition.

The proposed home renovates an older neglected property with a design that complements the low roof lines and ranch style of the homes in this neighborhood. Ranch homes by design have their longest side facing the street. The length of many of the homes in this neighborhood range on average from 100' long to 130' long. The existing home is 100' long.

The proposed home is similar in length, but due to the master bathroom addition that complies with all code provisions, is 119' long and is in harmony with the other homes in this neighborhood.

**FOPs:**

The request does not meet the intent of the code since other alternatives exist. The home could be demolished and rebuilt at the allowable setbacks.

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 slab and several of the existing masonry walls. The applicant's narrative notes that the position of the existing home and the size of the lot is not a condition that was self-imposed by the current owner or its predecessors.

The right-of-way width along Vista Drive is 60'. This condition is not self-imposed. The Town's General Plan designates Vista Drive as a local street at a suggested right-of-way width of 50'. If Vista Drive was designed today, the property line of the subject site along Vista Drive would likely be 5' further south making the existing and proposed setback along Vista Drive on this home in compliance.

**FOPs:**

The request is self-imposed since the site and the existing home will be essentially returned to a pre-development condition that affords opportunity to comply with R-18A standards that include setbacks.

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 that most remodeled homes in the area were not complete demolitions. As such, the double frontage lot and the placement of the existing home at an angle create special circumstances. The double street frontage reduces the buildable area of corner lots like the subject site more than the single street frontage lots in Grosse Pointe Two.

As previously noted, the 119' length of the proposed home is similar in length to other homes in the neighborhood that varies between 100' long to 130' long. The 119' length will be in harmony with the other homes in this neighborhood.

The applicant provided an aerial of the neighborhood with street frontage setbacks for nearby homes. Analysis of these setbacks indicate that the average street setback in this neighborhood is 28.4', the minimum street setback is 11.7' and the maximum street setback is 41'. The proposed garage is setback from 70<sup>th</sup> Place (front yard) a minimum of 35'8" [34'3" to the roof overhang] and setback from Vista Drive (side with frontage) a minimum of 31'2" [30'3" to the roof overhang]. The livable portion of the existing home at the northeast corner is

setback from 70<sup>th</sup> Place (front yard) a minimum of 29'10" [28'5" to the roof overhang]. These proposed setbacks are above the average street frontage setback for this neighborhood. With the angle of this home, the setbacks are greater across the full street frontage creating more visual openness.

The proposed application will also reduce the amount of encroachment. The total square footage of encroachment will be reduced by approximately 40%, going from 633 square feet in the existing condition to 281 square feet in the proposed condition. The setback from the property line along the street to the roof overhang increases, reducing the amount of encroachment. The minimum roof overhang setback on 70<sup>th</sup> Place goes from 27'3" to 28'5". The minimum roof overhang setback on Vista Drive goes from 28'10" to 30'3".

**FOPs:**

The size, shape, and topography of the property do not prevent the applicant from adding onto the home or doing a complete demolition.

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 will not grant any special privilege as most of the homes in the Grosse Point Two subdivision do not meet the R-18A street setback of 35'. The proposed application reduces the amount of encroachment from the existing condition by almost 40% that will maintain visual openness on this corner lot and the entry into this neighborhood.

**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 no inquiries on this application.

**COMMUNITY IMPACT/ FISCAL IMPACT:** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity & Aerial  
Application  
Narrative & Plans  
Noticing

C: Applicant  
Case File BA-19-05