



## Legislation Text

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**File #:** 18-186, **Version:** 1

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**TO:** Chair and Board of Adjustment

**FROM:** Paul Michaud, Interim Community Development Director  
Eva Cutro, Special Projects Planner

**DATE:** May 2, 2018

**CONTACT:**

Eva Cutro, 480-348-3522

**AGENDA TITLE:**

Verma Variance - 6823 E Lincoln Drive (APN: 174-63-008A)  
Case No. BA-18-01

**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-18-01, a request by Avtar Verma, property owner of 6823 E. Lincoln 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. The variance shall be in compliance with the submitted plans and documents:

1. Narrative, dated April 16, 2018 and prepared by Candelaria Design Assoc., LLC;
2. Architectural site plan, dated April 16, 2018 prepared by Candelaria Design Assoc., LLC;
3. Floor plan, dated April 16, 2018 prepared by Candelaria Design Assoc., LLC;
4. Architectural roof plan, dated April 16, 2018 prepared by Candelaria Design Assoc., LLC;
5. Architectural elevations, dated April 16, 2018 prepared by Candelaria Design Assoc., LLC;

**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-18-01, a request by Avtar Verma, property owner of 6823 E. Lincoln 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 at the southeast corner of Lincoln Drive and Mockingbird Lane. It is a metes and bounds lot that was annexed into the Town in 1961. The existing home was built in 1959, prior to annexation. The following is a chronological history of the property since annexation:

- December 19, 1964. Fence permit issued.
- February 2, 1972. Pool permit issued.
- February 23, 1972. Fence permit issued.
- March 17, 1989. Fence and frame and stucco addition permits issued.
- June 18, 2001. Fence permit issued.
- January 29, 2018. Fence permit issued.

### Request

The applicant is proposing to construct a new single family residence on an existing, three-sided lot. Section 1001 of the Zoning Ordinance requires a 40' rear yard setback for the primary residence. The applicant is proposing an encroachment of 1,996 square feet into the rear setback. All portions of the encroachment will be setback at least 20' from the property line. Since this is a three sided lot the applicant would like the Town to consider the side yard - 20' setback - rather than the rear yard - 40' setback along this property line. The plans list a main house and guest house; however, the guest house is actually a guest suite attached to and considered part of the 11,202 square foot home. The house is single story and meets all other height and area requirements. The rear yard encroachment is the only variance necessary.

### Lot Conditions

The property is zoned R-43 and is 45,369 square feet in size. The property is triangular in shape, and situated on Lincoln Drive, a major arterial. If a new home is constructed on this lot the applicant will be required to provide a 32' roadway easement to the Town along Lincoln Drive. Staff believes the shape and frontage of the lot on a major arterial create a hardship and is supportive of the setback encroachment.

## **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 frontage along a major arterial. This creates a restrictive building envelope that limits development.

**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 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 construction of a new home on this lot will allow the Town to receive the needed roadway easement along Lincoln Drive. It is anticipated that this easement will allow for a meandering sidewalk and landscaping in accordance with the Town’s General Plan. However, this 32’ wide easement requires the owner to design a home setback further from Lincoln Drive, hence the request to encroach into the rear yard setback.

**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.

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 creates a restrictive building envelope that limits development and the required roadway easement limits the buildable area to the north. The existing home, built prior to annexation, also currently encroaches into the rear yard setback.

**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 of the lot. The triangular shape creates a narrow and unusual building envelope that limits the buildable area.

**FOPs:**

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 setback encroachment is not out of character with the neighborhood since the adjoining property to the south also encroaches into the rear yard setback. In addition, the applicant is requesting an encroachment into the rear yard which is less visible from the street. A portion of the encroachment is for the attached guest suite. If this guest suite was detached from the home no variance would be necessary for this portion, as only a 20' setback is required in a rear yard for detached guest homes.

**FOPs:**

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

**COMMENTS:** Staff received one comment in favor of this application. No other comments were received.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT:** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Applicant's packet dated 4/16/18

Architectural site plan

Floor plan

Architectural roof plan

Architectural elevations

C: Mark Candelaria, applicant  
Case File BA-18-01

