



## Legislation Text

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**File #:** 19-038, **Version:** 1

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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:**

Tashman Variance - 6010 E. Hummingbird Lane (APN: 169-49-060)  
Case No. BA-19-01

**A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-19-01, a request by Fred Tashman, property owner of 6010 E. Hummingbird Lane; for a variance from the Zoning Ordinance, Article XXIII, Nonconformance, to allow nonconforming portions of the house to be modified. The variance shall be in compliance with the submitted plans and documents:

1. The Variance Criteria Narrative, prepared by Design Link Architecture and Planning, and dated January 8, 2019;
2. As-built Site Plan, Sheet A, prepared by Design Link Architecture and Planning, and dated January 15, 2019;
3. New Site Plan, Sheet A2, prepared by Design Link Architecture and Planning, and dated January 15, 2019;
4. New Floor Plan, Sheet A3, prepared by Design Link Architecture and Planning, and dated January 15, 2019;
5. Front Elevation, Sheet A4, prepared by Design Link Architecture and Planning, and dated January 15, 2019;
6. Nonconforming Neighborhood Properties, Sheet A5, prepared by Design Link Architecture and Planning, and dated January 15, 2019;
7. Tributary Area Calcs, Sheet A6, prepared by Design Link Architecture and Planning, and dated January 15, 2019;
8. Rendering, Sheet A7, prepared by Design Link Architecture and Planning, and dated January 15, 2019; and
9. Preliminary Grading & Drainage Plan, prepared by Hoskin-Ryan Consultants, Inc., and dated January 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-19-01, a request by Fred Tashman, property owner of 6010 E. Hummingbird Lane; for a variance from the Zoning Ordinance, Article XXIII, Nonconformance, to allow nonconforming portions of the house to be modified.

**Reasons for Denial:**

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

**BACKGROUND**

Request

The applicant requests a variance to modify the existing covered entry of the house (which encroaches into the front yard setback). Section 1001 of the Town Zoning Ordinance requires the house to be setback a minimum of 40' from the front property line and the existing house is setback 31'9" from the front property line.

The applicant is proposing to modify the entry of the house by squaring off the rounded corners and raising the roof height to 14' tall to help define the entrance to the home. Approximately 138 square feet of the modified entry will encroach into the setback (111 square feet of covered entry and 27 square feet of overhang). Per Section 2307 of the Town Zoning Ordinance, modifications to a nonconforming structure cannot result in an increase in setback nor an increase in height:

Section 2307. Structural alternations, refurbishing, or remodeling of existing Nonconforming Structures shall not result in an increase in any existing encroachment over current setbacks or result in an increase in the height of the reconstructed, refurbished, or remodeled structure over the actual height of the nonconforming portion of the existing structure or result in an increase in any other nonconforming aspect. Permissible alterations or additions to Nonconforming Structures shall vary based upon whether the alteration or addition is for a structural demolition or a new addition, as provided for below:

A. Structural Demolitions: When permits are approved for structural remodels, alterations, or repairs (excluding such nonstructural cosmetic items as painting, flooring, cabinets, or appliances), covered by a single or multiple building permits issued within a thirty ix (36) month period that together covers work which exceeds fifty (50) percent of the original square footage of an existing Nonconforming Structure, such Nonconforming Structure shall be made to conform to the requirements for new structures. For the purposes of this section, the term "Square Footage" means the aggregate of the area of all floors in a structure, whether at or above established grade, measured between the exterior faces of the exterior walls of the structure.

B. New additions: All new additions to the existing Nonconforming Structure shall be in compliance with all current Zoning Code provisions.

Since the modified entry will result in an increase in height (from approximately 9' tall to 14' tall), the applicant is seeking a variance for the proposed improvement.

### Lot Conditions

The property is zoned R-43 Hillside and is approximately 47,563 square feet in size (1.09 acres). The property is a square shaped lot that is situated below Hummingbird Lane.

### Lot History

The subject property is Lot 141 of the Mummy Mountain Park III subdivision. The subdivision was platted in 1956 and annexed into the Town in 1961. The following is a chronological history of the property:

- March 3, 1983. Building permit issued for a retaining wall.
- March 3, 1983. Building permit issued for a pool.
- March 25, 1988. Building permit issued for a fence.
- December 5, 1985. Building permit issued for a support beam at the carport.
- August 28, 1998. Building permit issued for a bathroom extension.
- December 16, 1988. Building permit issued for a remodel/addition.
- July 16, 1999. Building permit issued for a pool.

There is no building permit on file for the original construction of the house. Therefore, staff is unable to determine when the original home was constructed and if the house was built under the jurisdiction of Maricopa County or the Town of Paradise Valley. From Maricopa County aerial information, there was a home on this lot in a similar location at least as far back as 1969. Despite this lack of information, the existing house encroaches into the front yard setback and is setback approximately 31'9" from the front property line (adjoining Hummingbird Lane).

### **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 topography of the lot and the original development of the house located within the front yard setback. Due to the topography, the house has limited visibility from the street since it is situated below Hummingbird Lane. As a result, the entry of the house is difficult to identify.

The applicant is trying to improve the house while utilizing existing conditions. The entry improvements do not increase the amount of disturbance to the hillside, will have limited off-site visibility since the house sits below Hummingbird Lane, and will help direct guests to the front door when entering the property.

**Findings Opposed (FOPs):**

This is a design hardship and not a property hardship. The size, shape, and topography of the lot do not prevent the applicant from remodeling the entry without altering the height or setback of the structure. It appears that other alternatives may exist to help identify and direct guests to the front door of the house. The applicant may use hardscape improvements (such as using a different colored and/or a different textured walkway to lead guests to the front door) or using paint and accent improvements (such as different colors or different accent features like stone veneer) to help define the front entrance to the house.

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 slope of the lot is the result of its location on the hillside and the location of the house into the front yard setback is the result of the original construction of the home.

**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 raising the height of the entry does not increase the amount of disturbance and will have limited visual impact. The entry improvement is located within an existing disturbed area, is low in height at 14' tall, and will have limited off-site visual impact since the house sits below the street.

**FOPs:**

The request does not meet the intent of the code since other alternatives exist. Although not ideal, hardscape improvements and different paint colors may be used to help define the entry and direct guests to the front door.

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 improve the house while utilizing the existing conditions. The improvements to the entry will not create additional disturbance to the hillside, will utilize the existing footprint, and will maintain visual openness by preserving the single-story design of the house.

**FOPs:**

The request is self-imposed since other design options can be used to help the applicant

achieve the goal of identifying the entry to the house (such as using hardscape improvements to help identify the location of the front door).

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 hardship is the topography of the lot and the original development of the house located within the front yard setback. Due to the topography, the house is situated below the street and has limited off-site visibility. Also, the house is nestled up against the existing cut, which obscures the location of the front entry. The modified entry will blend in with the existing architecture of the house and will have limited impact. The modified entry will not obstruct views due to its low height of 14' tall and raises the height of only a small portion of the house (with approximately 138 square feet of the nonconforming portion of house being modified).

**FOPs:**

The size, shape, and topography of the property do not prevent the applicant from remodeling the entry. The entry may be remodeled without an increasing in height and other improvements may be made to help achieve the applicants goal of identifying and leading guest to the front door of the house.

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 entry improvements have limited visual impact since the house is situated below the road, is only 14' tall, is located within existing disturbed area, and affects only a small portion of the house. The request is also in character with the neighborhood since other homes in the area encroach into the setbacks.

The setback encroachment is not out of character with the neighborhood since several of the neighboring homes encroach into the setbacks (via the Maricopa County aerial photo, the applicant identified eight neighboring homes encroach into the setbacks).

Lastly, the request is also in character with the Zoning Ordinance since the intent of the code is preserve the hillside. The modified entry will not increase the amount of disturbance by utilizing the existing pad and all improvements will be reviewed by the Hillside Building Committee for Hillside Code compliance.

**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 two inquiries regarding this request. No comment was provided by

either neighbor.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo

Application

Narrative

Plans

Noticing Materials

C: Debra Weisberg (Applicant)  
Case File BA-19-01