



## Legislation Text

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**File #:** 19-254, **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:** June 5, 2019

**CONTACT:**

George Burton, 480-348-3525

**AGENDA TITLE:**

Norquist Variance - 8200 N. Charles Drive (APN: 168-70-014)  
Case No. BA-19-06

**A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-19-06, a request by Craig and Laura Norquist, property owners of 8200 N. Charles Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to an existing residence to encroach into the setbacks and Article XXIII, Nonconformance, to allow existing nonconforming portions of the house to remain.

The variance shall be in compliance with the submitted plans and documents:

1. The Zoning Adjustment Case Narrative, prepared by Biegner-Murff Architects;
2. Boundary & Topographic Survey Map, Sheet 1 of 1, prepared by Land Development Group, and dated December 12, 2018;
3. Proposed Site Plan, Sheet 01, prepared by Biegner-Murff Architects, and dated March 15, 2019;
4. Proposed Design, Sheet 02, prepared by Biegner-Murff Architects, and dated March 15, 2019;
5. Elevations Plan, Sheet 03, prepared by Biegner-Murff Architects, and dated March 15, 2019;
6. Elevations Plan, Sheet 04, prepared by Biegner-Murff Architects, and dated March 15, 2019;
7. Grading & Drainage Plan, Sheet C-1, prepared by Land Development Group, and dated April 23, 2019; and
8. Grading & Drainage Plan, Sheet C-2, prepared by Land Development Group, and dated April 23, 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-19-06, a request by Craig and Laura Norquist, property owners of 8200 N. Charles Drive; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to an existing residence to encroach into the setbacks and Article XXIII, Nonconformance, to allow existing nonconforming portions of the house to remain.

### **Reasons for Denial:**

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

## **BACKGROUND**

### **Request**

The applicant requests two variances:

1. Replace an existing nonconforming garage (that encroaches into the setbacks) with a new garage that will also encroach into the setbacks.
2. Allow a nonconforming and existing stairwell and fireplace that are attached to the primary residence to remain at their current location and setback.

The first variance request is to replace the existing garage with a new garage that encroaches into the setbacks. Section 1001 of the Town Zoning Ordinance requires the house to be setback a minimum of 40' from the front property line and a minimum setback of 40' from the rear property line. The new garage will be setback 27'7" from the front property line and 32'6" from the rear property line. A total of 396 square feet of the new garage will encroach into the front and rear setbacks. Below is a summary and comparison of the existing and proposed garage encroachments:

<b>Existing Garage</b>	<b>Proposed Garage</b>
▪ Front Yard Setback: ○ 32' to garage wall ○ 26'11" to overhang ▪ Rear Yard Setback: ○ 34' to garage wall ○ 25'8" to overhang ▪ Amount of Encroachment: ○ 442 sq ft (142 sq ft of garage and 300 sq ft of overhang)	▪ Front Yard Setback: ○ 27'7" to garage wall ○ 24'1" to overhang ▪ Rear Yard Setback: ○ 32'6" to garage wall ○ 28'10" to overhang ▪ Amount of Encroachment: ○ 396 sq ft (248 sq ft of garage and 148 sq ft of overhang)

The second variance request is to keep an existing nonconforming enclosed stairway/stairwell and existing nonconforming fireplace that encroach into the front yard setback. The fireplace and enclosed stairwell are attached to the house and are setback 30'7" from the front property line. The fireplace and stairwell will not be modified and will remain. Per Section 2307 of the Town Zoning Ordinance, a remodel of more than 50% of the existing square footage of the house will require any nonconformities of the structure to meet current setback, height, and/or floor area requirements:

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.

The applicant anticipates that the remodel will affect less than 50% of the house. However, during the remodel process, there may be unknown areas of the house that have to be brought up to current building codes, which may increase the amount of affected square footage of the existing home and push the project over the 50% limit outlined in Section 2307 of the Town Zoning Ordinance. As a result, the applicant requests a variance from this section of code to allow the existing/enclosed stairway and existing fireplace to remain (should the remodel exceed the 50% limit noted above).

#### Lot Conditions

The property is zoned R-43 Hillside and is approximately 46,690 square feet in size (1.07 acres). The property is a triangular shaped lot with Charles Drive adjoining the front and rear property lines. The existing house is also situated near the southwestern part of the lot (near the toe or corner of the lot).

#### Lot History

The subject property is Lot 34 of the Sunset Hills subdivision. The subdivision was platted in 1956 and annexed into the Town in 1963. The following is a chronological history of the property:

- April 18, 1972. Building permit issued for a single-family residence.
- May 30, 1972. Building permit issued for a pool.
- March 23, 1978. Building permit issued for master bedroom addition.
- May 9, 1978. Building permit issued for work shop addition.
- December 19, 1980. Building permit issued for a spa.

#### **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 hardship is the shape of the lot. The property is burdened with a triangular

shape which results in a restrictive building envelope. The existing garage encroaches into the setback and is located at the narrowest part of the lot. The applicant is proposing to replace the existing garage with a new garage and reduce the amount of encroachment (from 442 square feet of existing encroachment to 396 square feet of proposed encroachment).

Under current platting standards, the Town Code requires lots to be orthodox in shape (e.g. a square or rectangular shape). Also, the Town Code requires a minimum lot width of 165' wide. The shape and narrow width create an unusual and difficult building envelope. The subject property is triangular in shape and has a varying width of approximately 87' wide to 137' at the garage area.

The applicant is also trying to improve the house while utilizing existing conditions. The new garage, existing stairwell, and existing fireplace will not create additional disturbance to the hillside: 1) the new garage is located on the existing pad, and 2) the existing stairwell/fireplace will not be modified and will remain in their current locations.

**Findings Opposed (FOPs):**

The hardship is self-imposed as other alternatives exist. Although the new garage will reduce the amount of encroachment by 46 square feet, the new garage will encroach further into the front and rear yard setbacks (from a front yard setback of 32' for the existing garage to a setback of 27'7" for the new garage and from a rear yard setback of 34' for the existing garage to a setback of 32'6" for the new garage).

Also, the remodel of the home can be limited to 50% or less of the existing square footage of the house; which will enable the applicant to keep and maintain the non-conforming stairwell and fireplace to avoid the variance request.

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 shape of the lot is the result of how it was platted in 1956. The garage, stairwell, and fireplace encroachment are existing nonconforming encroachments that probably resulted of the original construction of the house in 1972.

**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 proposed improvements will not create additional

disturbance to the hillside. The new garage will be placed on the existing pad/disturbed area and the existing stairwell and fireplace will remain and will not be modified.

The new garage also meets the intent of the code by reducing the amount of encroachment (from 442 square feet of existing encroachment to 396 square feet of existing encroachment) and will not obstruct neighboring views due to its low height of 11' tall.

**FOPs:**

The intent of the Code is to encourage compliance and the request does not meet the intent of the Code since the new garage encroaches further into the setbacks (from a front yard setback of 32' for the existing garage to a setback of 27'7" for the new garage and from a rear yard setback of 34' for the existing garage to a setback of 32'6" for the new garage).

Although not ideal, the applicant can also keep and use the existing garage and limit the remodel below the 50% threshold to maintain existing stairwell and fireplace.

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. Due to the shape of the property, the applicant has a difficult lot to build on and is trying to improve the house while utilizing the existing conditions. The new garage and existing stairwell/fireplace will not create additional disturbance to the hillside. Also, the new garage will reduce the amount of encroachment (from 442 square feet of existing garage encroachment to 396 square feet of proposed garage encroachment).

**FOPs:**

The request is self-imposed since other options exist. The applicant can keep and use the existing garage and can limit the remodel to 50% of the existing square footage of the house to keep the nonconforming stairwell and fireplace.

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 shape of the lot and the original development of the house located within the front and rear yard setbacks. The triangular shape of the property creates a narrow and odd shaped building envelope. The applicant is using the existing pad for the new garage addition and seeks to maintain the existing stairwell and fireplace.

Current Code requires lots to be orthodox in shape (e.g. a square or rectangular shape) and to maintain a minimum lot width of 165' wide. Much of the existing house is located at the

narrowest part of the lot, which is substandard and varies in width approximately 87' wide to 137' at the garage area.

The neighboring view will not be altered or obstructed. The new garage will not obstruct views due to its low height of 11' tall. Also, keeping the existing stairwell and fireplace will maintain current view corridors.

**FOPs:**

The applicant can utilize the existing garage and limit the remodel to 50% or less of the existing footprint to avoid a variance.

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 new garage and existing stairwell/fireplace will have limited visual impact. The garage is low in height at 11' tall and will not obstruct neighboring views. The stairwell and fireplace will not be modified and will therefore not alter any existing views.

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 four neighboring homes that encroach into the setbacks).

Lastly, the request is in character with the Zoning Ordinance since the intent of the Code is preserve the hillside. The new garage and existing stairwell/fireplace will not increase the amount of disturbance. The new garage will be placed on the existing pad and the existing stairwell/fireplace will not be modified and will remain at their current locations. All improvements to the property 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 no comments or inquiries regarding this request.

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

Vicinity Map & Aerial Photo

Application  
Narrative  
Plans  
Notification Materials

C: Susan Biegner (Applicant)  
Case File BA-19-06