



## Legislation Text

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File #: 20-323, Version: 1

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**TO:** Chair and Board of Adjustment

**FROM:** Paul Michaud, Planning Manager  
George Burton, Senior Planner  
Loras Rauch, Special Projects Planner

**DATE:** September 2, 2020

**DEPARTMENT:** Community Development

**AGENDA TITLE:**

**Kelley Variance - 5235 E. San Juan Ave. (APN 172-47-035).  
Case No. BA-20-01**

**MOTIONS**

**A. MOTION FOR APPROVAL**

I move for **[approval]** of Case No. BA-20-01, a request by Bruce and Mary Ann Kelley, property owners of 5235 E. San Juan Avenue; for a variance from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow a new single family residence to encroach into the setbacks, 2) Article V, (R-43) Single-Family Residential District, to allow a pool and pool deck to encroach into the setbacks, 3) Article XXII, Hillside Development Regulations, to allow new and existing retaining walls to exceed the allowable height limit, and 4) Article XXIV, Walls & Fences, to allow existing nonconforming retaining walls to remain and to be modified.

The variance shall be subject to the following stipulations:

1. The improvement shall be in compliance with the submitted plans and documents:
  - a. The Property Narrative, pages 1 - 10, prepared by AIR Architecture Infrastructure Research Inc;
  - b. Site Plan, Sheet A-02, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
  - c. Enlarged Site Plan - Mail Level, Sheet A-03, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
  - d. Enlarged Site Plan - Plan Lower Level, Sheet A-04, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
  - e. Previous vs. Proposed, Sheet A-05, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
  - f. Zoning Analysis, Sheet A-06, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;

- g. Existing vs. Typical, Sheet A-07, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
- h. Elevations, Sheet A-09, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
- i. Elevations, Sheet A-10, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
- j. Cross Sections, Sheet A-11, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
- k. Retaining Wall, Sheet A-12, prepared by AIR Architecture Infrastructure Research Inc and dated June 8, 2020;
- l. Preliminary Grading & Drainage Plan Cover Sheet, Sheet C-1, prepared by Land Development Group and dated July 27, 2020
- m. Preliminary Grading & Drainage Improvement Plan Cross Sections Details, Sheet C-2, prepared by Land Development Group and dated July 27, 2020
- n. Preliminary Grading & Drainage Plan Aerial Exhibit, Sheet C-3, prepared by Land Development Group and dated July 27, 2020
- o. Topographic Survey, Sheet A-01, prepared by Global Land Surveying LLC and dated August 15, 2018.

- 2. If the existing retaining wall is not structurally sound and needs to be reconstructed, it shall be rebuilt in the same location and at the same heights as the existing retaining wall (in accordance with the approved plans).

#### **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-20-01, a request by Bruce and Mary Ann Kelley, property owners of 5235 E. San Juan Avenue; for a variance from the Zoning Ordinance: 1) Article X, Height and Area Regulations, to allow a new single family residence to encroach into the setbacks, 2) Article V, (R-43) Single-Family Residential District, to allow a pool and pool deck to encroach into the setbacks, 3) Article XXII, Hillside Development Regulations, to allow new and existing retaining walls to exceed the allowable height limit, and 4) Article XXIV, Walls & Fences, to allow existing nonconforming retaining walls to remain and to be modified .

#### **Reasons for Denial:**

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

#### **BACKGROUND**

##### **Request**

The applicant is proposing to redevelop the site and construct a house on the property. The new home, new pool, and new pool deck will encroach into the front yard setback. The existing home was demolished and an existing retaining wall currently remains on the property. The applicant is proposing to keep and use part of this existing retaining wall. Also, due to the grade of the lot, a new driveway retaining wall will exceed the maximum allowable height limit. As result of these proposed improvements, the applicant requests four variances from the Town Zoning Ordinance:

1. Allow a new single-family residence to encroach approximately 18' into the front yard setback (with a minimum setback of 22'10" measured from the front property line);
2. Allow a pool and pool deck to encroach approximately 20' into the front yard setback (with a minimum setback of 20' measured from the front property line);
3. Allow new and existing retaining walls to exceed the 8' height limit (with the new driveway retaining wall at a 12' maximum height and to maintain the existing retaining wall at a maximum height of 11'8" tall); and
4. Allow a portion of the existing nonconforming retaining wall to remain.

The first variance request is to allow the new home to encroach into the front yard setback. Section 1001 of the Town Zoning Ordinance requires a 40' front yard setback for the primary residence. Due to the curvature of the front property line and the design of the house, the setback varies from 22'10" to 39'6" measured from the front property line (with approximately 1,643 square feet of the house encroaching into the setback).

The second variance request is to allow a new pool and pool deck to encroach into the front yard setback. Section 502 and Section 2207 of the Zoning Ordinance requires a 40' front yard setback for the pool and raised pool deck. Due to the curvature of the front property line and the design of the pool, the setback varies from 20' to 39' measured from the front property line (with over three quarters of the pool and approximately half of the pool deck encroaching into the setback).

The third variance request is to allow a new and existing retaining wall to exceed the 8' height limit. Section 2207.VI of the Town Zoning Ordinance limits retaining walls to a maximum height of 8' tall. The new driveway retaining wall follows the adjoining grade and varies in height to a maximum of 12' tall. The applicant is also proposing to keep approximately half of the existing retaining wall. 41 lineal feet of the retaining wall is on the property and 23 lineal feet of the retaining wall is in the right-of-way. The portion of the wall that is located on the property holds the pads for the house and will tie into the new pool. This portion of retaining wall has a maximum height of 11'8" tall. Staff has concerns that the existing wall may not be structurally sound. As a result, staff added a stipulation identifying that if the variance is granted and the wall is not structurally sound, it must be rebuilt at the same location and same height. Also, the applicant has been informed that an encroachment permit and insurance is required in order to maintain the portion of retaining wall which is located in the Town's right-of-way.

The fourth variance request is to allow the applicant to retain a portion of the existing retaining wall. Section 2415 states that all fence walls must meet current setback and height limits when permits are issued for a new home. As noted above, the applicant is proposing to keep and utilize 41 lineal feet of existing retaining wall. This wall varies in height and has a maximum height of 11'8" tall. The existing retaining wall will be used to help retain the building pad.

#### Lot Conditions

The property is zoned R-43 hillside and is approximately 98,500 square feet in size (2.6 acres in size). The lot is partially rectangular square in shape, has a curved frontage, has a side yard that partially adjoins a street (52<sup>nd</sup> Place), has a building pad slope of approximately 23%, and is encompassed with large rock formations from Camelback Mountain (through most of the property).

### Lot History

The subject property is Lot 35 of the Stone Canyon subdivision. The property was platted in 1955 and annexed into the Town in 1961. The property was developed and the original house constructed under Maricopa County's jurisdiction. The original home also encroached into the 40' front-yard setback and was setback approximately 8' from the front property line. The following list of permits is a chronological history of the subject property:

February 17, 1976	Building permit for a remodel
September 22, 2004	Demolition permit to remove the house

### **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 topography of the lot. Approximately eighty percent of the property is encompassed with a large rock formation from Camelback Mountain; which limits the building area towards the front of the lot. Due to the topography, the property was originally developed with the previous house and pool encroaching into the front yard setback.

The applicant has a difficult lot to build on and is trying to utilize existing site conditions by placing the new house and pool on the existing pad. The new home is reducing the amount of encroachment since the original home was setback approximately 8' from the front property line and the new home is setback approximately 22' from the front property line. Due to the topography of the lot and the limited amount of buildable space, a portion of the new driveway retaining wall exceeds the 8' height limit. The driveway retaining wall follows the grade of the site with approximately 25 lineal feet of the wall over 8' tall (with a maximum height of 12' tall).

Lastly, the applicant is proposing to keep a portion of the existing retaining wall. This wall holds up part of the existing pad and adjoins part of the original driveway. Approximately 41 lineal feet of this wall will remain in order to utilize the existing building pad. The existing driveway in this area will be removed and covered with fill to reduce the visibility of the wall. The applicant is trying to use the existing conditions which helps limit the amount of new disturbance to the hillside.

#### **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, a smaller house may be constructed and/or

additional cut to the hillside may be done in order to reduce the amount of setback encroachment. Also, the existing retaining wall may be removed and the existing pad regraded to reduce the amount of encroachment or to bring the retaining walls into compliance with the height limitations. Lastly, the pool and pool deck may be removed or replaced with a spa in another location that meets 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 topography of the lot is the result of how the property was platted and situated on the hillside in 1955. As a result, approximately eighty percent of the lot is encompassed with a large rock formation.

**FOPs:**

The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, other options exist such as a building a smaller and setback compliant house, removing of the pool, and reconfiguring the pad and grades for height compliant retaining walls.

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 new improvements utilize much of the existing building pad which minimized the amount of new disturbance to the hillside. The house also reduces the amount of encroachment since it has a greater setback than the original home (with the original home at an 8' setback from the front property line and the new home at a minimum setback of 22'10" from the front property line).

There is also variation in the architectural design to help reduce the massing of the home while utilizing the existing pad. The property also has a steep building pad slope of 23 percent, which results in a portion of the new driveway retaining wall and the existing retaining wall exceeding the 8' maximum height limit.

**FOPs:**

The request does not meet the intent of the code since other alternatives exist. A smaller house may be constructed in order to reduce the amount of encroachment or meet the front yard setback. Also, the existing retaining wall may be removed and the existing pad regraded to reduce the amount of retaining wall height encroachment. Lastly, the pool and pool deck may be removed or replaced with a spa in another location that meets 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. Due to the topography and shape of the property, the applicant has a difficult lot to build on and is trying to improve the site while utilizing the existing conditions. Approximately eighty percent of the property is encompassed with a large rock formation from Camelback Mountain; which limits the building area towards the front of the lot.

**FOPs:**

The applicant should be aware of all special circumstances on the property and plan any designs accordingly. Although not ideal, other options exist such as a building a smaller and setback compliant house, removing of the pool, and reconfiguring the pad and grades for height compliant retaining walls.

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 and shape of the lot. The large and steep rock formation encompasses nearly eighty percent of the lot; which limits the buildable area towards the front of the property. The curved frontage and adjoining street along the south side also result in an odd shaped and smaller building envelope. Per Sheet A-06 of the applicant’s plans, the average building envelope on a standard R-43 zoned property is rectangular in shape and 10,890 square feet in area. However, the topography and shape of the subject lot create the building envelope that is triangular and 9,899 square feet in area.

**FOPs:**

Arizona Revised Statutes and the Town Zoning Ordinance do not require the most optimal or profitable use of a property. Other options exist such as building a smaller house, removing the pool, and modifying the pad and grades to bring the retaining walls into compliance with the 8’ height limit.

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 is not a grant of special privilege. The topography and shape of the lot limit the location and amount of buildable area on the property. These property hardships were prevalent with the original development of the home in the 1950s and are still prevalent today. The original home and pool were developed with setback encroachments in the front yard and the many of the original retaining walls exceeded the 8’ height limit. Due to these property hardships, a variance is needed to redevelop the property (with the new house, pool, and pool deck encroaching into the front yard setback and a portion of the new driveway retaining wall and the existing retaining wall exceeding the 8’ height limit due to grade and steepness of the lot).

The request meets the intent of the code and is limiting the amount of new disturbance by utilizing much of the existing pad. The new home also reduces the amount of encroachment since it has a greater setback than the original home.

Furthermore, setback encroachments are not atypical for this neighborhood. The applicant identified seven other homes in the area that encroach into the setbacks (see Sheet A-15). The home proposed home is also smaller than the current homes being constructed in Town. The new home is 7,043 square feet, which is less than the average square footage 8,000 square feet.

**FOPs:**

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

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

**COMMUNITY IMPACT:** None.

**FISCAL IMPACT** None.

**CODE VIOLATIONS:** None.

**ATTACHMENTS**

- A - Vicinity Map & Aerial Photo
- B - Application
- C - Narrative & Plans
- D - Notification Materials

C: Daran Petrucci & Joe Pritchard (Applicant)  
Case File BA-20-01