



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2018062 – Swain Family Trust Property

Hearing Date: January 24, 2019

Supervisor District: 2

Applicant / Owner: Matthew & Sarah Robinson / Cheryl Swain

Requests: **Variance to the development standards of the Maricopa Zoning Ordinance to permit:**

- 1) Proposed lot width of 131.45', where 145' is the minimum required lot width per MCZO Article 503.5.2 and;
- 2) Proposed side yard setback of 11.4' where 30' is the minimum required

Site Location: APN 304-07-002S @ 17236 E. Melody Dr. – southeast of 172nd St. & Baseline Rd., in the Gilbert area

Site Size: 62,831 sq. ft. (1.44 acres)

Current Use / Zoning: Vacant / Rural-43

Open Violation: **No Violation on property**

Citizen Support/Opposition: No known opposition

Findings: **The request fails to meet the statutory test for variance approval**

Background:

1. **February 11, 2009:** The site was conveyed to the Swain Family Trust via Special Warranty Deed (20090115590).
2. **August 30, 2018:** The property owner applied for the subject Variance (BA2018062). However, staff commented that a lot combination of APN 304-07-002P, 304-08-012C, and a portion of 304-07-002N had to be completed prior to the Variance request could go forward.
3. **December 6, 2018:** A lot combination of 304-07-002P, 304-08-012C, and a portion of 304-07-002N was completed to create the current parcel, 304-07-002S.

Reviewing Agencies Comments:

4. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated September 28, 2018.
5. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated September 25, 2018.

Existing On-Site and Surrounding Zoning/Land Use:

6. On-site: Rural-43 / Vacant
North: Town of Gilbert jurisdiction / Commercial
South: Melody Dr. then Rural-43 / Single-family residence
East: Rural-43 / Single-family residence
West: Town of Gilbert jurisdiction / Single-family residence

Site Analysis:

7. The subject site is comprised of 62,831 sq. ft. The surrounding area is mostly developed, consisting of lot splits within the Rural-43 zoning district.
8. Per the Assessor's parcel history it is unclear when the original lot split occurred. However, the area was historically split in the late 1970s and early 1980s. The subject site was originally two lots that were purchased in 1999 by the landowner to the east. In an attempt to create a parcel that was closer to the minimum lot width, a lot combination of parcels 304-07-002P, 304-08-012C, and a portion of 304-07-002N was completed in December 2018 resulting in the current configuration. The residence on the parcel to the east was constructed circa 1975. The property to the east is within the same family trust, some additional acreage was taken from this parcel, however additional acreage is unable to be taken due to the location of existing fencing.

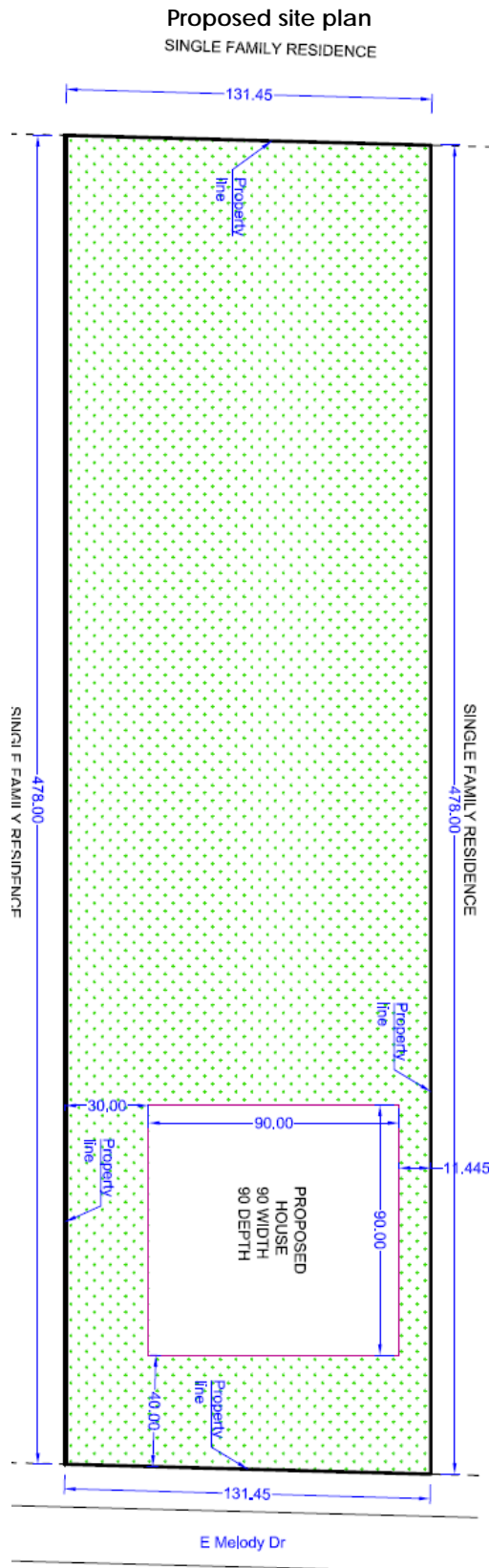
Aerial photo of subject site & surrounding environs



Aerial photo of subject site



9. The applicant is proposing a single-family residence, as shown on the site plan below. An additional variance for a side yard setback of 11.4' is also requested by the applicant. The side yard variance request is to the east, which is adjacent to the property within the family trust and not towards adjacent neighbors to the west. There is also an option to reduce the size of the home to meet the 30' setback.



10. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the owner (Note: changes to proposed standards are indicated in bold).

| Standard | Rural-43 Zoning District | Proposed Standard |
|--------------------------|--------------------------|--------------------|
| Front Yard Setback | 40-feet | 40-feet |
| Rear Yard Setback | 40-feet | 348-feet |
| Side Yard Setback (east) | 30-feet | 11.4-feet |
| Side Yard Setback (west) | 30-feet | 30-feet |
| Maximum Height | 30-feet | 30-feet |
| Minimum Lot Area | 43,560-sq. ft. | 62,831-sq. ft. |
| Minimum Lot Width | 145-feet | 131.45-feet |
| Lot Coverage | 25% | 25% |

Note: Standards indicated in **bold** do not meet base zoning standards

ARS § 11-816.B.2 and MCZO Article 303.2.2 states the Board of Adjustment may, "Allow a variance from the terms of the ordinance if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship and if in granting the variance the general intent and purposes of the zoning ordinance will be preserved."

State Statute / County Zoning Ordinance Tests:

11. **Statutory Test -1 Peculiar condition** – Discuss and explain what is/are the peculiar condition facing the property and include reference to the Maricopa County Zoning Ordinance Regulation or Development Standard to be varied. Explain the proposed use of the property with the variance request. Identify and explain all peculiar conditions on your property in regard to the following areas: slope, narrowness, shallowness, irregular shape, location, washes, vegetation, and easements, etc. Explain how enforcement of the Zoning Regulation or Development Standard would impose a hardship on the property.

"Proposed use of the property is to build a single family residence that is no larger than 90ft wide and 90 ft deep. Zoning regulation is Maricopa Rural-43 and present three hardships. Hardship 1 - width of parcel at 131.445 ft violates the regulation that property width be not less than 145 ft. Hardship 2 - proposed structure would violate setback regulation to setback east side of structure less than 30 ft from the property line. The proposed structure is set back no closer than 11.445 ft from the eastern boundary. Hardship 3 - additional land cannot be taken from parcel to east (304-07-002T) to widen parcel 304-07-002S as owner of 304-07-002T requires gate to access on the west side of that property."

12. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar condition on the site create with respect to existing Regulation and Standard of the Maricopa County Zoning Ordinance. Please discuss and explain that the unnecessary hardship facing the property is not self-created in the line of title.

"Unnecessary Hardship 1- the zoning regulation would prevent the building of a single family residence on the property because the width of the property is about 13.5 ft less than the regulation. Unnecessary Hardship 2 - the zoning regulation would prevent the

building of the proposed structure because the structure extends partially into the area of the 30ft setback on the eastern side. Unnecessary Hardship 3 - if parcel 304-07-002S was widened to 145 ft by taking land from parcel 304-07-002T, it would prevent the owners of 304-07-002T from having necessary gate access to that property."

13. **Statutory Test 3 – General Intent and Purpose of the Zoning Ordinance** - Discuss and explain how the granting of the requested variance would not cause a negative impact on the general intent and purpose of the Zoning Ordinance.

"Granting of both requested variances will not cause a negative impact on the intent and purpose of the ordinances. Both the width and setback regulations ensure sufficient space between structures and uniformity in the neighborhood. The proposed parcel width of 131.445 ft is within 91% of the width regulation. Other properties in the neighborhood vary in width and some are very close to the size of this property. Therefore, granting of the width variance will not be inconsistent with the area. With respect to the setback variance on the eastern boundary, the intent of the setback regulation is to ensure 60ft between structures on adjacent properties. The proposed structure, built 11 .445 ft from its eastern boundary will still be 85ft from the existing structure to its east, thus maintaining the intent of the setback regulation."

14. **Per MCZO – Evidence of the ability and intention of the applicant to proceed with construction work within 120 days after variance decision by the Board of Adjustment.**

Provide evidence of the ability and intention to proceed with construction work within 120 days (4 months) after Board of Adjustment decision. Discuss if there are building permit or as-built permit currently filed with Planning and Development Department and the current review status. Specify the permit number. If no permit have been filed, please provide a timeline for building permit submittal and projected timeframe for construction. Conversely, indicate if the variance request is/are not related to a specific development proposal.

"Matthew and Sarah Robinson have the ability to and intend to build a single family residence on the property. Building plans are being developed, but are contingent upon the board decision regarding these variances. Once variances are granted, they intend to build the structure as soon as possible."

Findings:

15. The applicant has the burden of proving that, in accordance with ARS §11-816.B.2 and MCZO, Art. 303.2.2, the property is entitled to receive a variance. To do so, the applicant must present evidence that, due to a peculiar condition related to the land, that being something that is not a common condition of other properties, applying the requirement of the MCZO as written to this particular property would work an undue hardship on the property. In addition, the applicant must demonstrate that the granting of the variance would preserve the general intent and purpose of the MCZO.

Based upon what the applicant has submitted and the staff analysis in this report, staff offers the following findings:

- The applicant has failed to demonstrate that there is a peculiar condition facing the property because the unregulated lot split appears to have occurred after the 1969 adoption of the Maricopa County Zoning Ordinance, and requirement of a 145' minimum lot width in the Rural-43 zoning district.

- The request for the side yard setback is a result of the lot width not meeting the zoning district standards, which itself can be considered a peculiar condition warranting the site setback variance. However there are alternative options like reducing the size of the home to meet the 30' setback.
- The adjacent property is under family ownership and if consolidated would create a conforming lot. However, through discussions with the applicant it is their wish to build on a separate lot and not consolidate the lot and build an accessory dwelling unit.

16. However, if the Board finds that the applicant has proven entitlement to the variance; then, the Board must state on the record the basis for that determination with findings and conclusion in a motion to grant the relief sought.

In such event staff would offer the Board the following Conditions of Approval:

- a) General compliance with the site plan stamped received December 12, 2018.
- b) All required building permit for the proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

Presented by: Jaclyn Sarnowski, Planner
Reviewed by: Darren V. Gerard, AICP

Attachments: Case Map (1 page)
Vicinity Map (1 page)
Application / Supplemental Questionnaire / Narrative (4 pages)
Site Plan (1 page)
Engineering Comments (1 page)
MCESD Comments (1 page)