



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2018084 – Bakerson Property

Hearing Date: January 24, 2019

Supervisor District: 2

Applicant: Bruce Wuollet

Property Owner: Bakerson, LLC

Request: **Variance to the development standard of the Maricopa Zoning Ordinance to permit:**

- 1) Proposed street-side setback of 38' where 53' is the minimum required per MCZO Article 503.4c

Site Location: APN 216-67-147B@ 31206 N. 65th St. – Scottsdale & Lone Mountain Roads in the Cave Creek area.

Site Size: 58,719 sq. ft.

Current Use / Zoning: Single-family residence / 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. **August 29, 1988:** Subject parcel was created via lot split.
2. **Circa. 1989:** Primary residence constructed.
3. **November 27, 2017:** Current owner took possession of the property with Deed No. 170889412.
4. **September 25, 2018:** Building permit application for room addition submitted for review under **B201808815**.
5. **December 17, 2018:** Subject variance request submitted for review.

Reviewing Agencies Comments:

6. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated January 14, 2019.
7. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated January 2, 2019.

Existing On-Site and Surrounding Zoning/Land Use:

8. On-site: Rural-43 /Single-family residence
North: Rural-43 /Single-family residence
South: Rural-43 /Single-family residence
East: Rural-43 /Single-family residence
West: Rural-43 /Single-family residence

Site Analysis:

9. The subject property is a 58,719 sq. ft. rectangular shaped lot located in a gently sloping area south of the Town of Cave Creek. The property contains a 2,534 sq. ft. residence and is located about 520 feet south of Loan Mountain Road, west of 65th Street. The vicinity consists primarily of similar single-family residential lots of at least one acre within a county island of about 4.5 square miles. The island is located between the jurisdictions of Phoenix, Scottsdale, and Cave Creek.

Aerial photo of subject site & surrounding environs



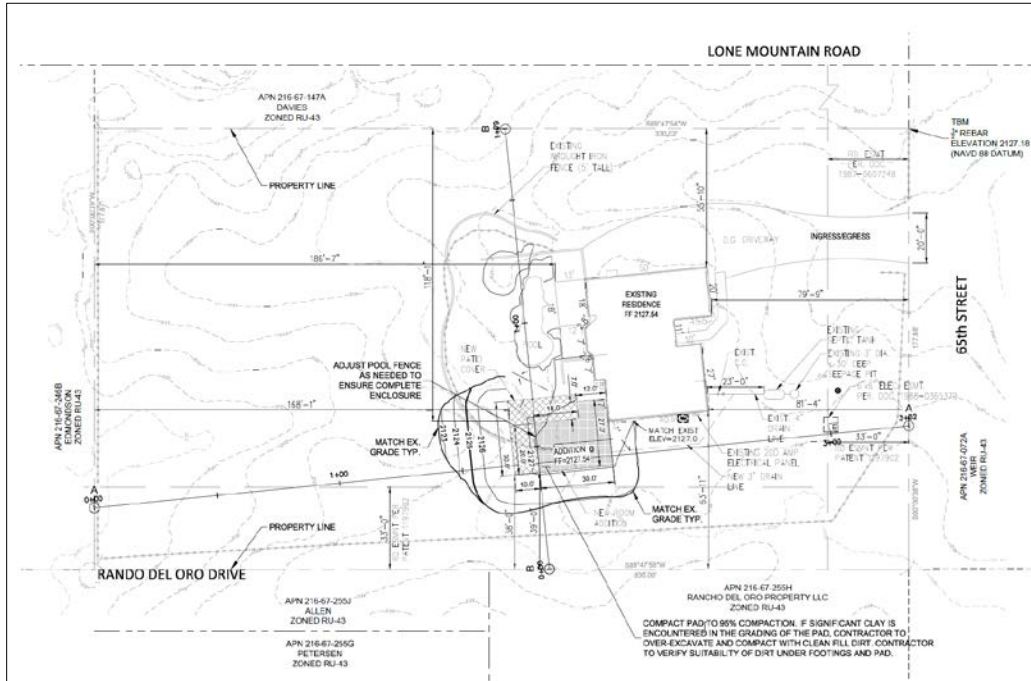
10. Although 65th Street provides legal access to the property, as well as other properties in the area, it is not a county-maintained right-of-way. Most properties in the county island, including the subject property, are encumbered by a Federal Patent Easement, which provides local access to the general public and potential for future roadways.

Aerial photo of subject site

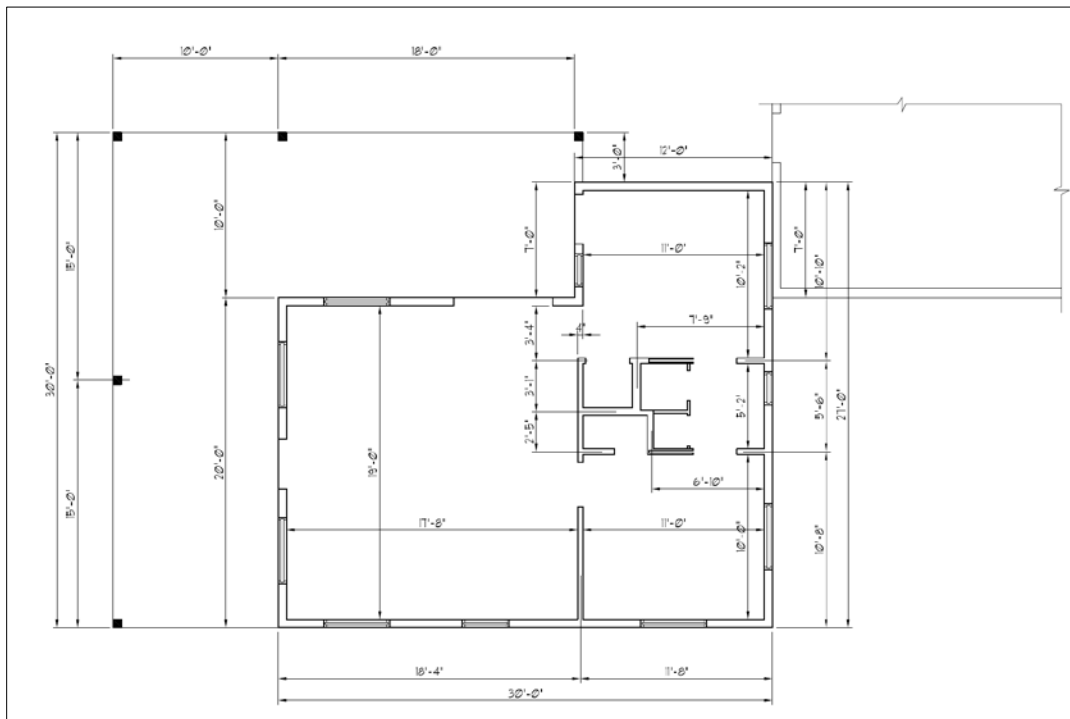


11. The patent easement on the subject property is 33-foot wide and runs immediately north of the southern property line. The applicant wishes to construct a 669 sq. ft. addition to the primary residence, 5 feet north of the patent easement. Since the street side building setback must be measured from the edge of the easement, the subject property has a required side-yard building setback of 53 feet. Patent easements, due to their excessive width for a local street, have historically been considered grounds for setback variances.

Proposed site plan



Floorplan of addition, showing no access to primary residence



12. 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	79.75-feet
Rear Yard Setback	40-feet	168.083-feet
Side Yard Setback (north)	20-feet	55.83-feet
Side Yard Setback (south)	53-feet* (33' patent easement + 20' street side setback)	38-feet*
Maximum Height	30-feet	14-feet
Minimum Lot Area	43,560-sq. ft.	58,719-sq. ft.
Minimum Lot Width	145-feet	177.9-feet
Lot Coverage	15%	6.4%

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

* Includes easement/right-of-way

13. In order to alleviate the need for this request, the proposed addition could be located elsewhere on the site so that the zoning requirements can be met. Furthermore, the applicant could also apply for abandonment of the patent easement. However, there is also argument for a variance in that the patent easement, in addition to the existing pool and the wash to the north, significantly limits the building envelope for the proposed addition.

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:

14. **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.

"There is a 33' easement with a 20' building setback totaling a total of 53' from the south property line. Typically, these easements have been split between one property and the neighboring property. In this case, it is solely on this parcel. We propose to allow to build within the 20' setback. Not allowing this would limit our ability to build an attached addition."

15. **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.

"There is a SLM easement on south side of property inhibiting permission to add to the property. North side has a wash, east side has septic and west side has a pool. This leaves the south side as the only reasonable portion for an addition. Our request is to build within the setback and not encroach the easement itself."

16. **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.

"To date, this easement has not been used. And, in the future the easement could still be used if required and there would be no restriction for its use."

17. **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.

"Reference building permit #B201808815 has been passed outside of this request for setback variance."

Findings:

18. 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 area within the building setback lines does not present any topographical constraints.
- The applicant has failed to demonstrate that the strict application of the MCZO to the applicant's property has caused undue physical hardship that prevents the development of the property. There are alternatives available to the property, such as exhausting all efforts to abandon the patent easement, thus variance is not warranted. The addition can be located to meet all setback requirements.
- The applicant has failed to demonstrate the peculiar condition / physical hardship is not self-created in the line of title in that the proposed addition would simply be

designed according to the owner's preferences in relation to the lot's existing conditions. The addition can be redesigned to meet all setback requirements.

- The applicant has failed to demonstrate that the general intent and purpose of the MCZO will be preserved with the variance in that the ordinance language is clear and certain.

19. 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 17, 2018.
- b) Failure 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: Farhad Tavassoli, AICP, CFM
Reviewed by: Darren V. Gerard, AICP, Deputy Director

Attachments: Case Map (1 page)
Vicinity Map (1 page)
Application / Supplemental Questionnaire (3 pages)
Site Plan (1 page)
Engineering Comments (1 page)
MCESD Comments (1 page)