



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2019060 – Fisher Property

Hearing Date: February 20, 2020

Supervisor District: 2

Applicant: Jan Higgins

Property Owner: Louis McLane Fisher, Jr. & Sue Fisher

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

- 1) Proposed front setback of 16.4' where 20' is the minimum permitted per MCZO Article 604.1.a

Site Location: APN 219-43-595 @ 18738 E. Avenida Del Ray – Forest Rd. and McDowell Mountain Rd., in the Rio Verde area

Site Size: 10,724 sq. ft.

Current Use / Zoning: Single-family residence / R1-8 RUPD

Open Violation: **No Violation on property**

Citizen Support/Opposition: No known opposition

Findings: **The request meets the statutory test for variance approval**

Background:

1. **May 8, 1978:** The subdivision plat for Rio Verde Unit 5-A, which created the subject lot, was recorded (S1975001).
2. **October 27, 1993:** Current property owners purchased the property.
3. **December 27, 2019:** The applicant submitted for the subject variance request (BA2019060).

Reviewing Agencies Comments:

4. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated January 7, 2020.
5. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated January 17, 2020.

Existing On-Site and Surrounding Zoning/Land Use:

6. On-site: R1-8 RUPD/ Single-family residence
North: R-3 RUPD/Private golf course
South: R1-8 RUPD / Single-family residence
East: R1-8 RUPD/ Single-family residence
West: R1-8 RUPD / Single-family residence

Site Analysis:

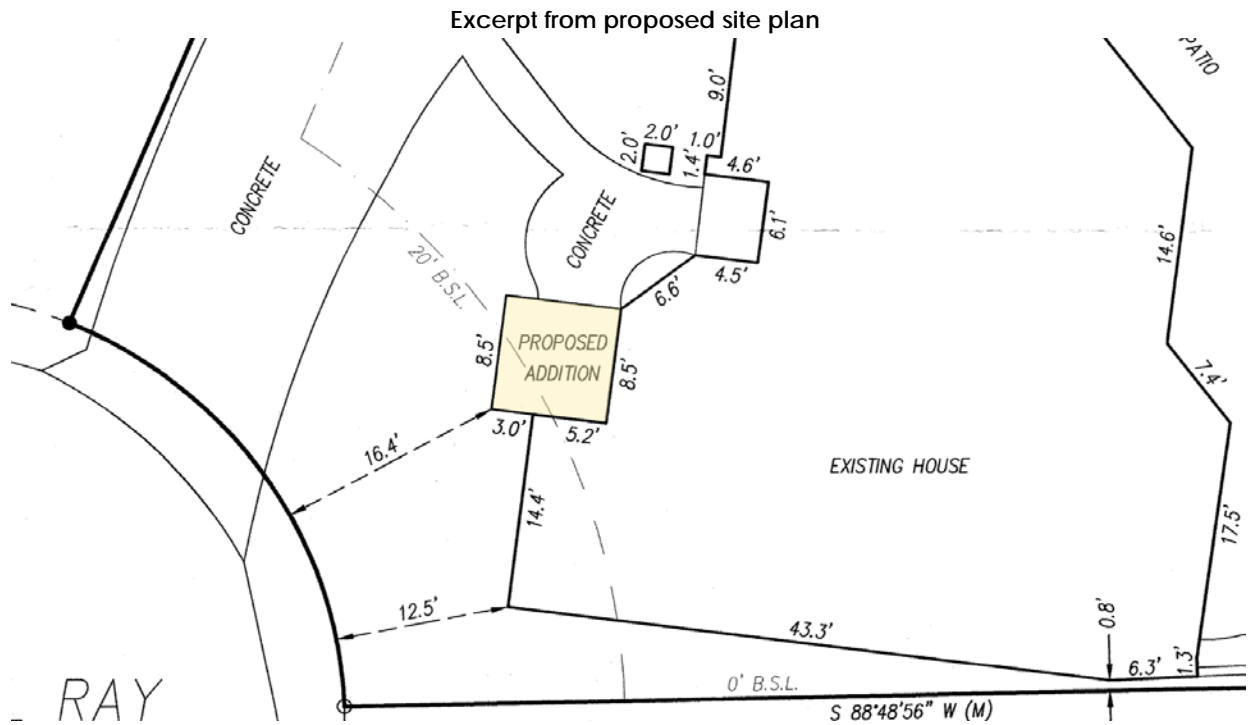
7. The subject property is located within the Rio Verde area located approximately 3,549 feet northwest of the northwest corner of Forest Rd. and McDowell Mountain Rd. The terrain of the site is flat and the lots shape is an irregular pentagon shape that is similar to the surrounding properties on this cul-de-sac. The majority of the surrounding lots are residential in nature and the lot to the north of the site is part of the Rio Verde Country Club Golf Course.
8. The existing 2,820 square foot residence was constructed in 1981, consisting of three bedrooms, two bathrooms and a two-car garage. Presently, the existing home encroaches 7½ feet into the front yard setback and 4½ feet into the westerly side yard setback. Although, the existing home is in both the westerly side yard and front yard setback, the residence was built prior to January 1, 2000, making the property legally non-conforming. Due to the curvature of the cul-de-sac and irregular shape of the lot as it relates to the positioning of a reasonably sized residence would encroach into both the front yard and westerly side yard setbacks. Thus, in considering this request, staff is of the opinion this request is supportable due the development history of the site and the physical hardship of the unusual lot configuration.
9. The applicant, on behalf of the property owners, proposes to add a 69 square foot new bathroom attached to an existing bedroom of the residence. The proposed addition will encroach into the 20 foot wide front yard setback by 3½ feet. Due to the irregular orientation of the home any addition to this particular bedroom would encroach into the front yard setback.

Aerial photo of subject site & surrounding environs



Recent Street-View of the subject residence





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	R1-8 RUPD Zoning District	Proposed Standard
Front Yard Setback	20-feet	16.4-feet**
Rear Yard Setback	20-feet	21-feet
Westerly Side Yard Setback	10-feet	5.4-feet*
South/Easterly Side Yard Setback	0-feet	0.8-feet
Maximum Height	30-feet	~14-feet
Minimum Lot Area	8,000-sq. ft.	10,724-sq. ft.
Minimum Lot Width	80-feet	66-feet*
Lot Coverage	35%	26.9%

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

* Legal Non-Conforming

** Existing 12.5' front yard setback is considered legal non-conforming

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.

"The peculiar condition on this property stems from the building originally being approved and recorded with the SW corner of the building 7.5 feet beyond the front B.S.L. This approval created an unnecessary hardship for any future value-added home additions on this side of the property. Original plan attached showing the original building location intent."

"The home owner is requesting a variance to allow a 69 SF bathroom to be added to the Second bedroom, (of which only 10 SF of this addition extends over the front 20' B.S.L.), located on the front of the home, to allow this bedroom to be utilized as a bedroom suite, with its own private bathroom, adding value to the home, and eliminating the daily delays being caused with two bedrooms utilizing the same bathroom."

"The addition is in a level area on the property and at its furthest most point is still 3.9 feet behind the originally approved and recorded 7.5 feet building point beyond the front B.S.L."

12. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar condition on the site created 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.

"When the building was originally built, it was recorded as acceptable, being 7.5 feet Over the front B.S.L. This created an unnecessary hardship for the current owner. When The current owners purchased this property 6 years ago, this hardship was not disclosed. One can only assume that this was unknown since the drawing on record at the HOA Office shows the building's SW corner was to be on the 20 foot B.S.L."

"The fact that the corner is actually 7.5 feet beyond the front 20' B.S.L. was found during the ground preparation and staking of the proposed addition. A survey was ordered to confirm the findings."

"Had this building been located as originally planned with the SW building corner located On the front 20' B.S.L., this bathroom addition would be 3.9 feet behind the form B.S.L., which would have been in compliance with the building codes and avoiding this process entirely."

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 this variance of extending 3.6 feet beyond the front 20 foot front B.S.L. does not cause a negative impact on the Zoning Ordinance intent because this location is less than the existing SW building corner approved and recorded encroachment of 7.5 feet of the same front 20 foot B.S.L. This home addition has been approved and is viewed as a positive property improvement by the Rio Verde Architecture Committee,

the Rio Verde Administrative Board, and the surrounding neighbors, with approval letters sent to the Rio Verde Administration Board Committee."

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.

"The submittal of the building permit has been put on hold until the variance request has been approved because we were informed by the MCP&D that all monies spent on the permit submittal process are non-refundable is the variance board did not approved the variance. Even though we feel the variance request is a fair request given the historical events that occurred, it is financially wiser to wait until written approval has been granted."

"Therefore, upon receiving written variance approval, the building permit submittal package will be turned into MCP&D to begin the permit process."

"The project will be completed within 120 days requested."

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 demonstrated that there is a peculiar condition facing the property in that the homes current legal non-conformance in relation to the setbacks and the residence's orientation in relation of the unorthodox shaped lot has already created a peculiar condition.
- The applicant has demonstrated applying the requirements of the MCZO to this property that has this peculiar condition an undue physical hardship exists that prevents any property improvement in that the unusual shape of the lot and orientation of the residence prevents the front yard setback of any addition to the front of the home.
- The applicant has demonstrated the peculiar condition / physical hardship is not self-created in the line of title since the residence was permitted 39 years ago in the homes present location on the lot and not in conformance with the required minimum front yard setback.

- The applicant has demonstrated that the general intent and purpose of the MCZO will be preserved despite the variance because the new addition will be placed 3.9 feet behind the southwest corner of the existing home which is already inside of the front yard setback and would be hardly noticeable from the street,

And further, staff offers the Board the following Conditions of Approval:

- a) General compliance with the site plan stamped received December 27, 2019.
 - b) All required building permits for 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 permits 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.
16. However, if the Board finds that any aspect of the statutory test has not been proven, Board must state on the record the basis for that determination in a motion to deny the relief sought.

Presented by: Martin Martell, Planner
Reviewed by: Darren V. Gérard, AICP, Planning Manager

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