



**NOTICE OF REGULAR MEETING
OF THE BOARD OF ADJUSTMENT**

Chair Paul Ryan	
Vice Chair Nick Sehman	Boardmember Erik Hansen
Boardmember Heather Swanson	Boardmember John Weimer

TIME: 5:30 PM - REGULAR MEETING
DOORS OPEN 15 MINUTES PRIOR TO THE START OF THE MEETING

WHEN: THURSDAY, JUNE 18, 2026

WHERE: FOUNTAIN HILLS COUNCIL CHAMBERS
16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, ARIZONA

PARTICIPATION IN PUBLIC MEETINGS

Request to Comment Cards
To speak or submit written comments, a **Request to Comment** card is required. **Cards must be completed and submitted to the Clerk before the meeting begins. Late or incomplete cards will not be accepted.** A separate card is required for each agenda item.

Agenda Items (Consent or Regular)
Request to Comment cards must include the **agenda item number**, whether the speaker is **FOR** or **AGAINST** the item, and whether the individual wishes to speak or submit written comments.

Call to the Public requests are accepted in person only. Request to Comment cards must be submitted prior to the meeting commencing.

Speaking Rules
Speakers may speak only when recognized by the Presiding Officer and are limited to **three (3) minutes**. All comments must be directed through the Presiding Officer, not to individual board members or staff.

Request to Comment cards and submitted information are public records subject to public disclosure.

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**
2. **MOMENT OF SILENCE**
3. **ROLL CALL**
4. **STATEMENT OF PARTICIPATION**

Anyone wishing to address the Board regarding items listed on the agenda or during Call to the Public must completely fill out a Request to Comment card located in the back of the Council Chambers and hand it to the Clerk prior to the start of the meeting. Once the meeting has started, late requests to speak cannot be accepted. When your name is called, please approach the podium, speak into the microphone, and state your name and if you are a resident for the public record. Comments may not exceed three minutes. It is the policy of the Board not to comment on items brought forth under "Call to the Public." However, staff can be directed to report back to the Board at a future date or to schedule items raised for a future Board agenda. To avoid disruption of the meeting, to maintain decorum, and provide for an equal and uninterrupted presentation, applause is not permitted, except during Proclamations, Awards, and Recognitions. All meeting participants must maintain proper decorum as specified in Section 6 of the Council Rules of Procedure.

5. **SUMMARY OF CURRENT EVENTS BY DIRECTOR**

6. **REGULAR AGENDA**

- a. **CONSIDERATION AND POSSIBLE ACTION:** Approving the regular meeting minutes of the Board of Adjustment, October 16, 2025.
- b. **CONSIDERATION AND POSSIBLE ACTION: Variance** to reduce the 40' minimum rear yard building setback to 30' for a single family home on an approximately 1.95-acre lot, located at 14522 E. Desert Tortoise (APN#217-76-007) in the R1-43 Single Family residential zoning district.

7. **CALL TO THE PUBLIC**

Pursuant to A.R.S. §38-431.01, or as prescribed by state law.

8. **BOARD DISCUSSION/DIRECTION TO THE DIRECTOR**

9. **FUTURE AGENDA ITEMS**

10. **ADJOURNMENT**

Dated this 11th day of June 2026.



Paula Woodward, Executive Assistant

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call (480) 816-5100 (voice) or AZRelay 7-1-1 the Thursday prior to the meeting to request reasonable accommodation.



TOWN OF FOUNTAIN HILLS

STAFF REPORT

Meeting Date: 6/18/2026
Meeting Type: Board of Adjustment Regular Meeting
Submitting Department: Development Services / Planning
Prepared by: Paula Woodward, Executive Assistant
Staff Contact Information: Phone: 480-816-5122
 Email: pwoodward@fountainhillsaz.gov

Request to Town Council Regular Meeting (Agenda Language)

CONSIDERATION AND POSSIBLE ACTION: Approving the regular meeting minutes of the Board of Adjustment, October 16, 2025.

Staff Summary (background)

The intent of approving meeting minutes is to ensure an accurate account of the discussion and action that took place at the meeting for archival purposes. Approved minutes are placed on the town's website and maintained as permanent records in compliance with state law.

Related Ordinance, Policy or Guiding Principle

Risk Analysis

Recommendation(s) by Board(s) or Commission(s)

Staff Recommendation(s)

Staff recommends approval of the minutes of the regular meeting minutes Board of Adjustment October 16, 2025.

Suggested Motion

MOVE TO APPROVE the Board of Adjustment regular meeting minutes October 16, 2025.

FISCAL IMPACT

Fiscal Impact:
Budget Reference:
Funding Source:

ATTACHMENTS

- | |
|--------------------------|
| 1. BOA 2025 1016 Minutes |
|--------------------------|

TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR MEETING
OF THE FOUNTAIN HILLS BOARD OF ADJUSTMENT
OCTOBER 16, 2025

A Regular Meeting of the Fountain Hills Board of Adjustment was convened at 16705 E. Avenue of the Fountains in open and public session at 5:30 p.m.

Members Present: Chairperson Paul Ryan Vice Chairperson Nick Sehman;
Boardmember Erik Hansen; Boardmember Heather Swanson; Boardmember
John Weimer

Staff Present: Development Services Director John Wesley and Executive
Assistant Paula Woodward.



Post-Production File

**Town of Fountain Hills
Board of Adjustment Meeting Minutes
October 16, 2025**

Transcription Provided By:
eScribers, LLC

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Transcription is provided in order to facilitate communication accessibility and may not be a totally verbatim record of the proceedings.

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RYAN: Thank you. Thank you. So good evening, everyone. Welcome to the Board of Adjustments. First, we're going to have a call to the order, which is what I'm saying now. And then we're going to have a pledge allegiance to the flag. So if we could all stand for that, that would be great.

Oh, thank you.

WOODWARD: Are we good?

ALL: I pledge allegiance to the flag of the United States of America and to the Republic for which it stands. One nation under God, indivisible, with liberty and justice for all.
Thank you.

RYAN: A moment of silence for, I think, our sheriff's office, which, I think, has done a tremendous job all these years. This has been a town, a marvelous group of men and women. So thank you very much.

All right. First order is the roll call. So Paula, if you could do that, it'd be great.

WOODWARD: Boardmember Hansen?

HANSEN: Here.

WOODWARD: Boardmember Swanson?

SWANSON: Here.

WOODWARD: Boardmember Weimer?

WEIMER: Here.

WOODWARD: Vice Chair Sehman?

SEHMAN: Here.

WOODWARD: Chair Ryan?

RYAN: Here.

So after that, we have a call to the public. There are no speakers scheduled?

WOODWARD: No, Chair.

RYAN: Okay. Thank you.

So I think the next thing is the minutes from the previous Board of Adjustment. And so if I could -- if you've read them all, but if I could get a motion to pass those, that would be great.

Anybody?

HANSEN: I move to pass the -- the minutes from the previous meeting.

RYAN: And the second?

SEHMAN: I'll second.

RYAN: So I if we could have a voice vote on that, it'd be great. All in favor?

ALL: Aye.

RYAN: All against, nay? Okay. The motion is passed.

Let's see. So I think it's on to the subject matter, John. If you could introduce those, that'd be great.

WESLEY: Yes, Chair, Boardmembers, good to see you again, after a bit of a break from having any of these cases. We've got two for you this evening. The first one is a front yard variance on Trevino. And for those who have been on the Board for a little while, you may recognize this. We had this case back in 2019 --

RYAN: Yeah.

WESLEY: -- under a different owner. So just some quick background on this, property is zoned R1-35, originally platted in 1972, is Lot 4 in the subdivision. In 1995, there's a replat, and you can see on the roof of the house next door there to the west of 4A, this is Lot 4B, that larger lot was split into these two lots. Just as a side note to staff, we call this the saxophone lot. Has its own name. Not many lots have their own name. So this has front and rear setbacks of 40- and 20-foot side yard setbacks and a maximum 20 percent lot coverage.

As we look at this lot, here, in some pieces, looking at the northern end, when you apply those setbacks on the sides, you can see there's very little developable area down the middle of this lot. And then some easements here on the north end that also limit any development on that piece.

So on the main part of the lot here, at the top, along Trevino, at the intersection with Nelson, again, these are the setbacks as they exist today. And it shows you what that developable area is within the lot. Provides the contours. And so you can see it is a fairly steep lot overall. There is a provision in the town zoning ordinance that if you

draw a line from the back of curb through the building area, and that line -- the slope exceeds -- meets or exceeds 30 percent, then you can have a 10-foot setback. Because of the hill that's in the front of this property, even if it doesn't meet that, it's actually a fairly modest slope, at that point, is 16 percent overall, so it doesn't meet that criteria, even though most of the lot behind that right-of-way is closer at that slope.

So the request this evening is to reduce the front yard setback from 40 feet to 20 feet, so the house can be moved a little further up that hill and improve the developable area, and reduce the impact on the slope further down the hill.

We did provide notice to the public, as is typical with these. We posted the site. We mailed notice to all properties -- property owners within 300 feet, and did a newspaper publication. I had two inquiries and one email of opposition or concern that I did share with the board. Hopefully you've had a chance to read that. One of the concerns that was expressed is once you reduce that front setback and move a house potentially closer to the street, that it can create some site visibility issues from that intersection, and that reduces the depth of any driveways, since they might have people parking in the street, and also then creating some conflicts and hazards at that location.

And so, Chair, with that, before we get into the details here, I think it would be appropriate to hear from the applicant so they can explain their reasoning and why they're requesting this variance and the trouble they've had in designing the lot. And then you may also, I believe, have some citizens here. So maybe be good to go ahead and hear from the citizens also before we get into these details.

RYAN: That'd be great. Yeah. We could call them up. That'd be great.

Good evening. So if you could tell us what you have as prepared remarks for this variance, that'd be wonderful.

LANDO: Good evening, Chair and Boardmembers. Thank you for your time this evening. Jeremy and I, out of our passion and love for Fountain Hills, have been searching for a lot. And through divine intervention, we actually got the lot from the current owners. We are under contract to purchase this lot with the beautiful home that they have poured their heart and soul into designing on this lot. We absolutely fell in love with it.

The views, and of course, we absolutely wanted to stay in Fountain Hills and build our dream home. First home we would be building, and it's been our dream. So we have requested the variance, which is the same variance that the current owners, Debbie (ph.) and Tom (ph.) requested and received in 2019. No circumstances have changed since then, and based on the facts that you've seen in the staff report and the recommendations. We are requesting to be afforded the same variance that they have already received on the lot, so that we can build the single-story home that has been designed.

Which I'd like to address the concern that was brought up about the line of sight based on moving the home closer to Trevino. And there has been designed ample parking within the property, so that any guests that might come to visit would be parking in the additional parking spaces on site.

And further, we feel, based on our extensive review of the lot and the obstacles that this lot has, is that the town did approve the split and this is the lot shape that we're left with, with the slopes and everything, and we feel that it's not an unreasonable request to be able to be afforded the same variance that was approved for Tom and Debbie Garcia, the current owners.

And we are also required to meet other items, such as height restrictions and things based on a deed restriction placed on the property as well. So this property does have obstacles, yet it's going to be the most amazing, beautiful home. And I think all the neighbors, as well as the town, would be proud to have it as an addition to the neighborhood.

Did you have anything to add?

BELL: I just wanted to say that there's, as you probably know, and as you saw from the staff report, there's just some difficulties. We've been struggling with and if we had to do the 40 foot, it makes the lot very unbuildable. And I know Jamie covered that. Just wanted to reiterate that. And I think that's why it was approved previously. But yeah, that's all I had to add. Thank you.

RYAN: So just as a full disclosure, I was on the panel. I may affect, I'm probably the only

one left on the board that was on the panel six, seven years ago. So I'm pretty familiar. But I know in talking to my colleagues, they do a great job of studying, not only the previous decision, but I think the actual -- the lot the way it is now. And we all did get a letter from one of the neighbors. So I think we'll discuss that. If they're here, that's fine. Very articulate, by the way, young lady. I mean, your presentation was great. I think we all share the love of Fountain Hills on this panel. So I'm glad you're coming into it with that kind of -- I think most people move here, do that because they fall in love with the place, and they should. And it's a great place to live, so.

Okay. Thank you very much. I appreciate it.

Any other comments? Okay.

BELL: Thank you.

LANDO: Appreciate your time.

RYAN: Good. Thank you.

LANDO: Thank you very much.

RYAN: Anybody in the public would like to speak about this variance request?

WOODWARD: We have two call-the-public cards. The first speaker is Larry Meyers.

After Larry Meyers will be Joanne Meehan.

MEYERS: Commission Chair, Paula, John. So I spoke on this in 2019, and I'm going to -- I spoke more globally about Fountain Hills since I've been here for 44 years than I do about individual parcels of land. So one of -- the history of Fountain Hills, if you're new to Fountain Hills, is that we make rules. Then somebody can't make the rules work. Then the money becomes a factor, and then we change the rules so that someone can make some money. Happens more than you know. Or I can -- if you give me another 10 minutes, I'll list them all out for you for the last 20 years.

Anyway, on this parcel, number one, it should have never been subdivided in the first place, because it's a very difficult lot. So that aside, difficulties don't mean we hand over to someone else favors, so that they can turn a profit. That's my global speech. This particular lot, what you're essentially doing is re-zoning one parcel amidst all of the R1-35s, which all live with the 40-foot setback and the 10-foot town easement. And

you're giving this lot the same provisions as the lots at the other end of Trevino, which are R1-8s.

If you go to the other end of Trevino, you will see that there is no way on God's green earth, promises, promises, that when there is guests or even residents themselves who don't want to block themselves into their own driveway, they park on the street. You park cars on this street, at that intersection, for the people coming up Nelson Drive; they will not see the cars coming down Trevino towards Saguaro. Absolutely will not. So the first thing I would say, before you do this again, nobody required an engineering traffic study. I say require it because if you can prove to me that cars parked on that street will not block the view and that you will never have one parked there, then maybe I'll consider the 20-foot setback that the R1-8s have. The rest of us lived with 40 feet.

Now on the plans, I see the pool is actually in the backyard is proposed to jut into the rear setback. Well, I tried to turn my house and put a little triangle within my 40-foot setback in 1995, and guess what I was told, pound sand.

RYAN: Mr. Meyers --

MEYERS: And I -- I didn't even have any neighbors.

RYAN: Mr. Meyers, I'm sorry to interrupt you. Are you talking about both variants hearings tonight? One's a pool in the backyard, and one --

MEYERS: Well, I'm just pointing out that the design of this that will be coming before you, you will see that the pool goes into the 20-foot setback in the rear. And I don't really have -- like I said, this is not a -- this is a global perspective of Fountain Hills where we make rules, we zone parcels, and then we make exceptions because things are difficult. And so I view this as just another -- I feel for the people, but they bought it.

RYAN: Um-hum.

MEYERS: And difficulties -- it's not the town's obligation or the neighbor's obligation to help you through your difficulties.

RYAN: Okay.

MEYERS: It's --

RYAN: So you -- I'm sorry, the time --

MEYERS: Yes.

RYAN: -- allocated is up.

MEYERS: Yeah, okay.

RYAN: But if you could finish, that'd be great.

MEYERS: Okay. That's it. Thank you.

RYAN: Okay. Thank you very much. Appreciate that.

Anyone else wish to speak?

WOODWARD: Joanne Meehan.

RYAN: Good evening. How are you doing?

MEEHAN: Fine.

RYAN: Good.

MEEHAN: How about yourselves?

RYAN: Excellent.

MEEHAN: Thank you for giving us the time. I own the property adjacent to this parcel. And I've been a resident of Fountain Hills for close to 50 years. I've talked to Larry, and there have been numerous accidents at that curve and that bend. To grant a variance, just this one variance should be on all your consciences if anyone is injured. It is not workable. It's not doable. The property should never have been subdivided. Not my fault, but I ask you to give it serious consideration. Very serious consideration. Thank you.

RYAN: Thank you very much.

So I will assure you that this panel, and I've been here, I don't know how many years, Paula, probably 15, 16 years, always gives serious consideration and always, I think, debates a lot of the variances from all sides. We've been known as a very open panel that way. So I take your -- take note of what you're asking, and I just assure you that we actually do think of these things not only as neighbors, but I think in the safety of the neighborhood and et cetera, et cetera.

And one of the things that John is chartered with when he writes these variances up is

to take a global view of that lot, kind of where it's located, if there are certain problems of that. He's very good. His staff's very good at being very thorough. So we have a 20 -- no, 47 page write up in front of us. So they're extremely thorough, and I can assure you of that.

So I've been around a few years. I'm probably older than you are, young lady. And I'm just going to tell you, I've never seen the, like of the kind of work they do in this town as far as the exactness of their data is extremely, really good. So I'm just going to say that about -- I'm going to assure you that we actually do take that highly a lot in consideration on all these hearings. So thank you for your comments.

Okay. John, you got -- what's the next thing on the agenda? Thank you both for your comments, by the way.

WESLEY: So Chair, at this point, we can move through then the ordinance requirements for consideration of a variance. And then if you have questions of me or the applicant or any of the neighbors as we go, you're certainly welcome to --

RYAN: Okay

WESLEY:- to go to those. So you have before you Section 2.07(C)(6)(a) of the zoning ordinance, which lists the criteria that you need to consider in granting a variance. We reworked this a couple of years ago. I think this is your first chance to consider variance since we did rework these. And you'll notice each one ends with "and." Each of those statements there. So you really have to meet all of these in order to grant the variance.

RYAN: Um-hum.

WESLEY: And they're also kind of hierarchical, starting with the most important if looking at are there unique circumstances. And if you can't find a unique circumstances, then there's no need to go to the rest of them. So we'll be stepping through them in that order.

There's also a provision in the Code that comes up sometimes in terms of if you -- there's something around there that's nonconforming or has been granted in the past, it's not grounds for granting a variance. You're looking at this lot on its own. So with that in mind, the first one, are there any special circumstances that are

applicable to this property? And so we've been through those in looking at the property already, and what you've heard from the -- from the applicant and from the -- the neighbors there. One is how this lot was created. It wasn't part of the original subdivision, so it didn't benefit from having some of the grading and preparation that a lot would normally have through the creation of a subdivision. It was subdivided later and left with some rather challenging characteristics, one of which is the steep slope that's on this lot.

And you know, falls just short of being able to get the ten-foot setback by right in the code, because it has that mound right in front that affects that overall slope of the property. And then we have the odd shape of this lot. You saw the long, narrow piece. It's a big lot, but it has a long, narrow piece. It's really just is not buildable. There's no room on that. You've got the front part that has the large setbacks on the two sides as well as the front.

And so as staff has looked at it, we have felt that there are special circumstances that exist on this lot that aren't generally applicable on other properties. And feel like you could make that finding. But now it's your turn to give your consideration of that. Again, Chair, if you don't feel like you have support that it meets this finding, then there's probably not much point in going on, so.

RYAN: So I'm going to ask a question about that because I sort of remember the hearings before in other hearings. You -- you note in here that it comes very close to actually qualifying for a ten-foot setback. And I think that was sort of the debate in the other hearing was, you know, can we do that? So I think the request last time was ten. It came very close to that. And I think what happened is the 20 got established as a reasonable compromise, if you will, between forcing a 10-foot and having something that was more reasonable, like a 20. And I think that's how the 20 evolved. And I think that was --

RYAN: Gerry, that's correct.

RYAN: Okay. That's accurate. Good. So I think that the folks here, including the potential buyers, need to understand that has been -- you -- it came close to a ten-foot

setback, I guess is my point. And I think the audience needs to understand how close that is. It was pretty close. So 20, I think in that particular case was the answer that the previous panel found. Okay. I just want to make sure I was right about that.

WESLEY: Any other discussion from the board? Do we feel like this request meets this standard?

RYAN: You want to go through the other criteria, or shall we? We have it in writing and I think they've all reviewed it, so -- the other three points.

WESLEY: Again, Chair, we can do it either way that you would like. Part of my thought was there's not a whole lot of point in going through the other ones if you're going to reject it on the first one.

SEHMAN: In a -- for a point of discussion, I'd say that my feeling is that the first one -- the first point is met in that this -- and I think that's pretty commonly accepted. I maybe speak on -- I'm not trying to speak on behalf of anyone else on the board, but how the lot was created is an unusual circumstance and creates a very unusual circumstance for building on this lot.

RYAN: Okay. Any other questions?

UNIDENTIFIED SPEAKER: I agree.

RYAN: Okay. Ready to move on then?

UNIDENTIFIED SPEAKER: Yep.

RYAN: Okay.

WESLEY: So the next one, were those conditions pre-existing and not created by the property owner. So again we're talking about the existing topography that's been there. The previous owners that subdivided the tract and created this odd shaped piece. The applicant mentioned a moment ago a deed restriction, also that's on the property that I hadn't been aware of before, that limits the height of buildings. So those, again, are all things that are preexisting on the land. I think it was Mr. Meyers mentioned -- one of them mentioned that, well, they bought it this way. And so come in with your eyes wide open.

RYAN: Yeah.

WESLEY: So you know, maybe you can't put too much weight on that. But those are pre-existing. They didn't create them.

RYAN: Okay.

WEIMER: Anything --

RYAN: Any other questions for John on that point?

WEIMER: I think I have a question for you, John. When the lots were originally split into lot A and lot B, I understand that lot -- the one lot was buildable, but was the other lot ever graded up to accommodate a single-story building?

WESLEY: Chair, Commissioner, Boardmember. I don't have maybe as complete a history of that as I would like, because it is quite old. But see which one of these might be the best one. I guess I don't have a good one to look at to see the other lots in context, but you can, as you look at these adjacent lots and how they sit on the lot, it would appear at least there were some preliminary work as they built the street and built the subdivision to establish where homes could be built on each of those lots. Since this was one lot that was done primarily on this west side, and this mound that's in front might have even been added. I don't know, it might have already been there. But nothing was done to actually go ahead and prepare it upfront for a separate building.

WEIMER: So the lot that's available right now is what was present when they created these lots, has never been approved by any of the -- any of the owners or the developer, for that matter.

WESLEY: I believe that's true.

RYAN: Well, the other the point to that, though, John, is when you split lots, that's taken into consideration. Am I right about that? I mean, you can't like, parcel it up where it's got two feet all the way down the lot, right? When you do lots, but you have to have some buildable area.

WESLEY: Correct.

RYAN: Okay. So that's considered when you do the lot. They won't even split it if you don't have some ability to build on that lot. It's kind of a fundamental. The fact that it's not -- the fact it's not leveled by, you know, tractors and gotten down to where it's a

building pad is really not a consideration for splitting that I've ever heard, so.

WEIMER: So the deed restrictions, though, is what's prohibiting it at this point, right?

RYAN: Yeah, I mean it it's a lot. They're allowed to build on that lot. So it may take a lot of digging to do it, but that's kind of the consideration of when you split a lot. It's just has to be able to be built on at some point.

WESLEY: Okay. So again, without -- I don't want to get into too much speculation here. The applicant or Mr. Garcia could maybe talk to us a little bit more, but in order to get the square footage home that you might want --

ALL: Yeah.

WESLEY: -- you can't go up to get it. So you have to go out, and you're dealing with a steep slope when you do that.

RYAN: Okay. Any other questions about that point? Okay.

WESLEY: Okay. So strict application of the code will deprive the property owner of privileges enjoyed by others. So given the constraints on this property, if we don't allow the variance, it will make it more challenging, at least, if not impractical, to construct a home on this. You move down that slope, further, you're dealing with a more extreme slope, which means more retaining walls, more disturbance of the desert further down the hill, more costs that can make it at least very difficult, if not impractical. Cost is not a factor directly that is considered in granted variance. But there are impacts, again, on the property and the surrounding properties by how that might look and how that might have to fit on the property.

WEIMER: Okay. All right. One more quick question is have the owners drawn a set of -- is there a set of working drawings for the home that they wish to build?

WESLEY: So Chair, Boardmember, yes. The owner -- the current owner who is selling the property to the ones that have it under contract, was very close to applying for a building permit for the property when they had the opportunity to sell. It's my understanding from them -- you can follow up by asking them directly, it's their intent to also purchase and use those same plans --

SEHMAN: Yeah.

WESLEY: -- on the property, with some slight modifications, but essentially the same.

WEIMER: Have those plans have been submitted --

WESLEY: No.

SEHMAN: -- for --

WESLEY: I've seen them. We've been having discussions about them. They've not been formally submitted.

WEIMER: Gotcha. Okay.

RYAN: All right. Next point, unless there's other questions. That's a good question, Johnny.

WESLEY: And then the last one is approval not constitute a grant of special privileges. Again, not approving it would mean pushing the house further down the hill, which means more retaining walls, more disturbance of natural desert. Granting the variance will allow homes of similar size and design as those around it. There are no other lots in the neighborhood that really have the same configuration. Even the one you could say, well, across the street on the other side of Nelson, there's one that fronts on Trevino Nelson, but it's still a more typical rectangular lot. It doesn't have the odd shape, so it has plenty of room to move around on the lot that this one really doesn't.

RYAN: Okay. Any more questions from the panel? No. Good. All right. Thank you. John?

WESLEY: Okay. So again, where we're getting down to is if the Board feels that the tests have been met, staff would support or recommend that the Board approve the 20-foot variance. The Board can, as stated, look at imposing conditions and safeguards. So you may want to consider adding to that, because we've had a concern about it, that the design must include space for at least four vehicles to park off-street. And otherwise not create any corner sight obstructions.

RYAN: Okay.

SEHMAN: Chairman, if I if I can ask through --

RYAN: Sure.

SEHMAN: John, that last point, the required design not to create corner sight

obstruction, is that a quantifiable -- I mean, is that essentially it would be those visibility triangle at that corner, and that would be something that would be sort of overlaid on to --

WESLEY: Yes, that was what was intended. I've thought about that a little bit more since I put that on here and heard the discussion. I've included in your packet illustration of that sight visibility. I didn't think of it when I was putting this together, so I can't pull it up immediately, although I could go to it if we need to see it. It shows that, as far as the building itself, even with the reduced setback, it's still well out of the sight triangle, but there is an issue with anything parked along the street. It will block that visibility on up the street. Today, anybody could park on that street, unless it's signed for north parking. I don't believe it is. So anybody could create that problem today if they chose to park there. If this house gets built again, anybody in the public, it's a public street, could park their vehicle in that location unless it gets signed as no parking. Again, it's not likely to happen, but it could.

SEHMAN: Okay. Thank you. Okay. Thank you. Yeah.

RYAN: So do I hear a motion to allow the variance or the other way to not allow the variance? Somebody want to make a motion one way or the other?

SEHMAN: If I may, I'd like to -- and John, if you don't mind, maybe going back to that last slide, I'd like to make a motion. And maybe just ask the proper way to do this. But to the two requirements that were listed there for onsite parking and the corner obstruction. I do think those are things that we should write into -- I would move to approve this variance, but with those two stipulations in place to help mitigate and address some of the concerns that have been brought up that are legitimate concerns, but that I do believe are mitigated by having those two stipulations in here. So can I move to approve with those two stipulations added?

WESLEY: Yes, you could. As stated here, you do need to adopt the findings in the report and/or state other findings as part of approving a variance.

RYAN: Yeah, I think I think what will probably the easiest way is just approve those changes first. And then if it's adopted, it's automatically in.

WESLEY: Right.

RYAN: And I think first we'll see if the panel agrees with you. So let's have a motion to consider Nick's presentation of both.

John, if you could put those back up. There's two of them. Yeah. The four parking spaces and the --

WEIMER: I did have one more --

RYAN: -- sight --

WEIMER: -- question.

RYAN: Those are the two -- those two.

Go ahead, John.

WEIMER: It was alluded to earlier that there's been quite a number of traffic accidents on that circle. Is that because cars are -- don't have a place to park on the -- in the driveways, or there's just an excess parking problem, where all those traffic accidents because of illegally parked cars.

WESLEY: Chair, Boardmember, I have no information about those accidents. If you've been to the site, you've seen as you come up Nelson to Trevino, it is a steep slope. There's vegetation currently on the site because it's not being maintained, being undeveloped, and you have the traffic coming down Trevino around the curve. So it is a little bit of a challenge today. I understand that, but how many accidents have really been or what's the cause? I really have no information.

RYAN: So John, I would make a comment though. I think what Nick was getting at is if they meet that last requirement, that's a safety check. So what Nick's proposing is somebody from the town has to go out and validate that that is -- that that setback is going to be a valid one --

WEIMER: I see.

RYAN: -- for safety. So the fact that there are accidents I don't have any evidence of, John doesn't have. I think we have to be careful about just assuming there are lots of accidents. We don't have a factual basis for that.

WEIMER: Understand.

RYAN: But I think the point that Nick is covering is -- avoids that coincidence from happening where you have a lot of accidents, because the Board didn't consider a legitimate concern, which is a safety check at that corner.

WESLEY: So Chair and --

RYAN: Good point, thank you.

WESLEY: -- Boardmembers and coming back to your comment. In that particular stipulation, what I was considering at the time was this sets a new setback for a building. And if you look at the drawing that I had of the site triangle that goes from here and up this way. So the building itself, we don't see as being a problem with that site triangle, but there may be other things that happen out here as they put in that driveway and maybe put in retaining walls or plant a tree or whatever that might be. That's more of what that would apply to, is other things that can go into that setback that those don't also create an obstruction.

RYAN: All right. So I'm going to move that we adopt Nick's proposal to put those in our finding the two bottom items resigning the for parking vehicles, and also the -- and most importantly, actually, the corner site distraction, I think is legitimate.

Eric?

HANSEN: You know, I agree with by creating a 20-foot setback instead of a 40-foot setback, you might create some issues with regards to line of sight. But the vehicle restrictions, like I feel like you're creating a -- if this lot was zoned or this lot was a more conventional lot, like you could just build there and you wouldn't impose any restrictions on anyone. So I feel like it's kind of creating an undue burden on the applicant to impose that upon them.

RYAN: No, that's fair. You agree with that, Nick? It's your amendment.

SEHMAN: So I completely hear where you're coming from and agree with it in a lot of ways. The issue, I think, would be to propose a mitigation to the street parking that -- and this is an assumed issue. I would also acknowledge that there's no evidence to say that if this lot is developed, that there will be street parking because of it. But I think that it would be a way of mitigating the effect of decreasing the amount of driveway

space. That would be -- that would otherwise be created with the 40-foot setback by requiring the four vehicles.

Point of discussion, if that is a point that keeps this from moving forward, I would definitely discuss that further by all means. But I think that the for vehicle parking on site is a fair balance to the proposal.

RYAN: Any response? No? Okay. I'm going to do this because I think it's easier, maybe to separate them. Take a vote on each one. Because I think they're valid points on both sides. So let's vote for the one, I think it's got more general agreement, a design not to create a corner sight obstruction. In other words, John's folks have to take a look at that and see if it does, when they build it.

I'll make that proposal. Anybody second that?

WEIMER: I would second that.

RYAN: All right. So let's vote on that one stipulation. All the ayes? So we'll do it by voice vote.

HANSEN: Aye.

SEHMAN: Aye.

WEIMER: Aye.

SWANSON: Aye.

RYAN: Aye.

RYAN: Any nays? No. So Paula, the required design to create a corner sight objection is stipulated there. Somebody's going to check on that from the town.

The second one is the required to provide four spaces on site. My own feeling is I think I agree with Eric on it, to be honest with you. I think it's a little segmented to one property on a street that's common to everyone. So you're kind of making a rule for one lot that doesn't apply to the rest. And I think that may be kind of the reverse of that.

WESLEY: If I -- if I may --

RYAN: Yeah. Sure.

WESLEY: interrupt that? So if you look at the standard setback of 40 feet, and even if

you just had a driveway that went straight from the street to the garage 40 feet, you can typically park four cars.

RYAN: No --

WESLEY: -- there.

RYAN: -- I say normally.

WESLEY: And so now you've shortened that by one car length by reducing it to 20. So to keep that same standard that we would typically see in a 40-foot setback, if you can park four cars, that's kind of where that came from.

RYAN: Okay. Well, we passed the right thing. And on this -- on the four vehicles, is there anybody who wants to make a motion for that particular one to be voted on? No.

SEHMAN: Well, I would move to say that we vote on that one.

RYAN: Okay. Good. Then we'll have a vote. On the four vehicles on site, all in favor of that requirement being added to this variance stipulation, say aye.

HANSEN: Aye.

WEIMER: Aye.

SWANSON: Aye.

SEHMAN: Nay.

RYAN: Nay.

RYAN: That's three. And then I'd say no. No? Two no. Okay. So it's passed, three to two on it. Okay. Good.

So now let's vote on the actual variance itself, unless anybody has other discussable items. Okay. So the variance -- should I read it out? I think everybody understands what it is. So the variance that has been presented in front of us, let's have a vote on that. So the variance votes, do I hear a second to have the vote?

HANSEN: I'll second.

RYAN: Take it? Thank you. All right. So all in favor of approving the variance, say aye.
Aye.

HANSEN: Aye.

SEHMAN: Aye.

WEIMER: Aye.

SWANSON: Aye.

RYAN: Aye.

RYAN: Anybody opposed, say no. None. So five to nothing.

WESLEY: Mr. Chair, to be clear for the record, too --

RYAN: Yes.

WESLEY: -- that you adopted the findings as a part of that motion.

RYAN: Yes. I'm sorry, the amendments that we voted on -- or the amendment we voted on, I guess both go on to that variance as well. Okay. Thank you, John.

All right. Are you ready for the next variance request?

WESLEY: I am.

RYAN: Okay.

WESLEY: So now, Chair, we're moving to the north end of town from the south side upon Baca -- 17324 Baca and moving from a front yard variance to a rear yard variance. So here we have a property that's zoned R1-8, also platted in 1972. We have setbacks front 2025 rear and seven sides and a maximum 35 percent lot coverage in this case. So when you apply those setbacks, here is the property with those setbacks. And in this situation we back up to state trust land, is zoned OSR which is an open space zoning district. There is a power line immediately north of the property and a wash that runs behind the property. All those conditions suggest that we're never going to see any development on this property immediately behind. It should remain open and vacant into the future.

So the property has a slight slope down towards the street from the northwest corner, down to the southeast corner. It's about a 4-foot drop in front. The house, even though it has a 20-foot front yard setback requirement or minimum setback was actually built about 48 feet behind the front property line, so pushed pretty far back on the lot, which then once you take that rear yard setback, and for any detached structures that must be separated by at least six feet from the primary structure, you've got a very narrow strip that's left there for development on this property.

When we look down the street on the north side, we see several of the homes, for whatever reason, was the standard that they used here. There was some slope in that front yard, not a lot compared to what we see elsewhere, but maybe that was a contributing factor that a lot of those homes got pushed to the rear.

When we look across the street and into the street to the south, the homes are at that setback like you typically see, leaving them larger rear yards where they can go back there and have their private spaces and have their accessory structures conform it to code.

So the applicant here is looking to improve some things in the rear yard. They'd like to add a gazebo backed by their cactus garden. But to put it where they want it requires encroaching into that rear yard setback. They have some concerns that they'll get their chance to speak to here in a moment, with the power lines and some protection from that and so forth, kind of also played into their, their siding of that.

So again, we provided notice to the public with posting and mailed and newspaper publication. The time I did this, I'd had one inquiry from a person who lived -- I think whatever the next street is south of Baca, if that's El Pueblo or whatever, somebody lived over there and gotten a notice and called. This afternoon, I had one other person call who was maybe going to be here, but I don't see her, so I guess she didn't. She had some concern. I think she also lives on the north side of Baca, down there someplace, and said, well, gee, I was told when my house was so far back I couldn't do anything in my backyard. And so wants to maintain that standard was basically what she was saying.

So with that introduction again, and I think I'll go back to this one.

Chair, if it's okay, I suggest that the applicant come up and let them explain to you their needs and justifications for this, and we can go on --

RYAN: Yeah.

WESLEY: -- through the criteria.

RYAN: That'd be great. Thanks, John.

Good evening.

GOERTZ: Good evening, Mr. Chair --

RYAN: You're welcome.

GOERTZ: -- and Boardmembers. Thank you for hearing our case. We appreciate --

RYAN: Thank you.

GOERTZ: -- your time. So we -- pardon me? Okay. My name is Alan Goertz. This is my wife, Debra. We've lived at the property. We're snowbirds. We're gradually moving to retire down here. We've had the property since 2016, and we love the neighborhood. We have groups of neighbors, and we go from house to house, and we have social gatherings. We play cards and things, except we can't entertain them because we don't have the facilities out back to do that. So that's really one of the primary motivations of doing this.

And also the cactus garden that we have there, it's mature. It's got a huge like a hundred year old saguaros. It's got four saguaros in there. It's really beautiful, a showpiece. And by having that gazebo out there, we can sit out there and enjoy it a little more than looking at it from the house. Yeah, it's a nature. It's really an extraordinary garden. House was built in '79, and I'm sure that a lot of that vegetation is like 40-years-old.

The other thing is we have the power lines back there, and having the gazebo as close to the back as we can get, it gives us some relief from the power lines, both visually and any of the EM waves that might come down. The gazebo protects it, as Mr. Wesley had said. That property will never be developed back there. I doubt that it would be, you know, moving the power lines, the wash, and everything. So we don't feel that we're going to be imposing on any neighbors ever with that. And so with that, we appreciate you considering our request.

RYAN: Does --

GOERTZ: (Indiscernible) a backyard.

RYAN: Yeah.

GOERTZ: One other thing --

RYAN: That's a reasonable request.

GOERTZ: Since this is a gazebo, it looks see-through, basically, it's --

RYAN: Yeah.

GOERTZ: It's just sticks and -- sticks and so -- probably put some curtains up around for -- that's what we do in wintertime. We play cards on the neighbors. It's nice just to walk across the street when you're done and go home. We love Fountain Hills, too, what can I say? Nice people.

RYAN: That's great. Thank you very much. I appreciate that.

So John, if you want to take us through the magic four. Okay.

WESLEY: So again, here are the criteria and reminder, again, this may be a little bit more important than this one because of some of the setting. Is that just because somebody else has done something similar or whatever has been granted around there, it's not germane. We're looking at this property and its characteristics.

So are there special circumstances that are applicable to the property? The home when it was built was pushed back, for whatever reason, leaving the small rear yard. The combination of setback requirements and building separations do significantly limit the buildable area in the backyard compared to what others might be able to do on their property. And the fact that the property of the North very unlikely that will ever be developed. So any loss of open space on this property is made up by that open area behind it. So those are the special circumstances. Are they sufficient? That's, I guess, for you all to say.

RYAN: Yeah. Is there any knowledge you've had -- just as you look down the street, the whole thing looks, as you say, pushed back, which makes zero sense in having a backyard. Was there a different -- was it a county property then before the town came, or were there a different setbacks in these age of homes?

WESLEY: So Chair, yes, it would have been done in the county and by their zoning ordinance. I haven't memorized the county code from back then, but I have looked at it several times. So no, as I recall, front yard setbacks were the same. They had some deviations in side yard setbacks, but they were actually less.

RYAN: Yeah.

WESLEY: But no front yard setbacks. I'm pretty sure were all the same.

RYAN: Wow. Interesting. Okay. I don't have any other -- anybody have any other questions for John on this point?

Okay. Go ahead, John.

WESLEY: So pre-existing conditions not created by the owner? No, they weren't created. They're come into this. But as we kind of talked about on the last case, they did buy the property, maybe without full knowledge of what setbacks are and what the limitations are, but they were in the Code. They were easily understandable. And there are some options. The gazebo, if it were turned 90 degrees and put up right up next to the house, would fit. Or it could go in the front yard. And so there are some choices being made by the owner that are leading to this request.

RYAN: Any questions about this particular condition that the staff has presented? Okay. All right, John.

WESLEY: Well, strict application by the property owner privileges enjoyed by others. So again, as we look along the north side of Baca -- well, maybe it kind of does because everybody else is pushed back and has -- not everybody, but several of them are pushed back --

RYAN: Yeah.

WESLEY: -- and have a similar challenge with doing anything in their backyard. But when you look across the street the other way, everybody has a more typical. And so they are being denied the privileges of other people on the other side of the street that have, again, a more typical rear yard. While variances don't set precedence, I think in this case, if somebody else were to come in along the street with the same situation, if you grant it here, I think would probably be coming up with the same findings on those other ones and be in a position to recommend approval there also.

RYAN: I mean, just from the aerial photos it doesn't look very uncommon that people have a setback as per the zoning ruling now. So I know it doesn't influence us, but it sure sticks out like a sore thumb that along that fence, most people -- most, I think are into the setback. So I think it's been probably a reaction to the properties being pushed

back run into the same problem these folks do.

WESLEY: Correct.

SEHMAN: I'm just going to make that comment, but I think it looks pretty obvious.

WEIMER: Okay.

SEHMAN: Okay. Thank you.

WEIMER: Would this grant special privileges inconsistent with other properties? So most lots in this district, you can see the lots are all very rectilinear. They're very much the same size. And have rear yards that they can use. And so granting some use of rear yard here, again, given the overall context with the likelihood that nothing would be built behind it, this would then impose upon, I don't see this as granting --

RYAN: Power lines --

RYAN: Yeah.

WESLEY: Yeah.

RYAN: And while practicalities stop that. Okay.

Does anybody have questions on this particular point with John? No. Okay. Thanks, John.

WESLEY: So again, if you find that this has met the test, you could grant the variance for the ten-foot setback. Again, you can put stipulations on it. You could determine that maybe it ought to be a 15-foot or 20-foot. Some compromise between the two. But otherwise, here's a couple of options for motion, one, to adopt the findings and approve the ten-foot or some variant of that. Or two, is to adopt findings that they don't meet the criteria and deny the request.

RYAN: Okay. Let me just ask the question. Anybody want to make a motion that we adopt the variance, at this time? Has there been any other conditions we want to put on there?

HANSEN: I'd motion to adopt as is.

RYAN: As is. Okay.

Heather, you, the second that or --

SWANSON: No.

RYAN: No.

SWANSON: No.

RYAN: Okay. Go ahead.

SWANSON: This is only my thought on this. I do think that there is reason to give a variance. I don't know, given the orientation, the layout, and some of the other things, that it is not necessary to go from 25 to 10. So that's my only -- I would perhaps be more inclined to a lesser variance, but it's still a variance.

RYAN: Gotcha. Okay.

SWANSON: So --

RYAN: But the degree of it.

SWANSON: Correct.

RYAN: Okay. John, Nick?

WEIMER: Well, I have to agree with her. Basically, a ten-foot backyard is -- that's not a backyard. That's a patch of grass. It seems very small. And a footnote, by the way, you're talking about nobody else being able to build behind you because of the power lines. Power lines come with a hundred foot easement, 50 foot either side of a right -- either side of the center line, so you'd be protected from people building behind you. But yeah.

WESLEY: Chair, one clarification that I probably should have put in here and would hope that you would include in the motion, is that the variance would be for building an accessory structure. I don't think we want to grant a blanket variance at whatever distance. So a primary structure could be extended back that far. But for a detached accessory structure.

RYAN: Okay. That's a good difference. It's a gazebo not --

SEHMAN: I've got one question, I guess, John, that maybe I should have asked earlier on in your first presentation. And it's regarding the accessory structure idea. Isn't there something in Code that allows accessory structures to be located in a rear setback, but with -- is it height limitations or something? And does this not meet that?

WESLEY: So Chair, Boardmember, so yes. And that would be another way to look at this

variance. We could have applied for a different variance. And that is if the structure is 120 square feet or less, then it could be within three feet of the rear yard. And so maybe their variance request isn't for the setback, but it's to allow a larger structure than 120 square feet in the setback. Either way, it's a variance request, though.

RYAN: Okay. Does that answer your question, Nick? I don't know.

RYAN: Okay. Yeah. Thank you. All right. So if somebody wants to make a motion to adopt the variance or deny it either way. Anybody want to make a motion? No, yes?

SEHMAN: Can we maybe discuss for just one second here --

RYAN: Sure.

SEHMAN: -- the variance and knowing that this doesn't set precedent, but that there would be the chance that we would see a very similar request at some point in the future if people want to do something like this because it's very -- this layout's very common on this street. And kind of to your point, like what -- just thinking of the future, what would be a way to allow for this kind of a structure in the backyard? I think, you know, this sort of thing. And enjoying property rights to the backyard is important. And I agree the variance should be granted in some form. But, the point of it being specifically for an accessory structure, or that we would potentially approve it to be a larger accessory structure, and then the setback wouldn't be the issue. I just I wonder if anybody has any thoughts on if there would be a way to address this and --

RYAN: Still be addressing this.

SEHMAN: -- in a way that would grant all or most of what this request is looking for but also might set up the way that we would want to review other things in the future if they came up.

RYAN: Well, let me ask, John. The variance of this is not stuck in gold, right? There's no exact wording variance that goes into our decision is it's a variance application based on their request to build into essentially a setback area on this particular case.

WESLEY: Right.

RYAN: And I think Nick's question is valid. Can you word that so that it's acceptable for everybody in this area? I don't think so. I think you can't, like, pick a street or a

neighborhood, right?

WESLEY: No.

RYAN: And what's bothering me about this little bit is if I look at this and I think I was talking to Eric before, I think he agreed with me. If you look at that back line that's under the power line, the majority of the picture I saw is into their setbacks, whether it's a pool, plants -- I mean, they're not plants, but other structures of smaller structures, not part of the house.

And so my first reaction is there is a common sense that comes in at least to an element of discussion, that we look at their surrounding neighbors, see them all, you know, putting things back in that setback. And it could have been when it was a county, no doubt in my mind about it, but it exists. So now, to my mind, burden them with that rule that nobody else is kind of adhering to. And I know that's not normally a reason, but I think it's a common-sense reason. If you've got everybody else in the neighborhood doing it because historically it was built in, then I think they have a legitimate point. That's my view. So I find it, it would be -- in the reverse in my mind, it would be something where we're taking away something that all the neighbors have, essentially.

WESLEY: So Chair, I guess I understand in that common sense perspective that you're looking at. I think that is covered, though, in this statement here that --

RYAN: No, I know.

WESLEY: nonconforming -

RYAN: I got it.

WESLEY: -- things on adjacent lots --

RYAN: Oh, yeah, no, I --

WESLEY: :- aren't grounds for.

RYAN: I know it. Yeah. I see it, but I think the special circumstance to me is their enjoyment of that is what they're asking in the variance.

WESLEY: Right.

RYAN: Right? So I'm saying common sense tells me that variance that they're asking for

makes sense in the surroundings they live in. And I realize most of those properties would be out of the -- you know, their setback zone. But the reality is, I think these folks are asking to enjoy essentially the same thing their neighbors had, and I could be very wrong. But that's the way I feel about it.

HANSEN: John, if I may ask, that's a SRP row right away, right behind them, right? Is that --

WEIMER: I believe would be SRP, but I didn't investigate that to know for sure whose it is.

HANSEN: You know, I think, you know, given the circumstance where there's not going to be anyone developed right behind them. You know, I understand the point of view with regards to, we'll maybe negotiate 15 or 20, but you know, there's also -- there's going to be no one behind them, you know, at the same time. So I think maybe taking that into account, as well, you know, it's not unreasonable what they're asking.

RYAN: Okay. I think that's valid.

Any other comments before we vote? Okay.

SEHMAN: So I'll maybe just say one more thing. I completely agree with what you're saying. And then in that case, maybe would we just add or stipulate that this is approved as an accessory structure just to make sure and get that language in there so that, if in the future we're not talking about --

RYAN: Yes, (indiscernible) --

WEIMER: -- actual --

RYAN: -- (indiscernible) something.

WEIMER: Yeah, exactly.

RYAN: Full building. Yeah.

WEIMER: That's good. I like that.

SEHMAN: And so Boardmember Hanson made a motion. I'm not sure we ever actually got a second to it. So we need to clarify if we had a second to that motion or if we're still looking.

RYAN: Oh, did you make a motion? No, I think he made a comment.

HANSEN: Motion to approve.

RYAN: Motion to approve which Nick's -- in other words, we add a stipulation like we did in the first one. There has to be a --

HANSEN: With the stipulation that it is an accessory unit.

RYAN: Yeah.

HANSEN: Perfect.

WESLEY: And adopting the findings.

HANSEN: And adopting the findings.

RYAN: Okay. Yeah. So I second the motion on a vote on that. All ayes say aye, all the nays say nay. So ayes first. Everybody in favor?

SEHMAN: Aye.

WEIMER: Aye.

HANSEN: Aye.

RYAN: Aye.

SWANSON: Aye.

RYAN: Five nothing. And then -- so there are no nays.

And now for the actual variance. Anybody want to make a motion for that variance with the stipulation that --

WEIMER: I make a motion.

RYAN: Thank you, John.

Anybody second?

HANSEN: Second.

RYAN: Thank you. So on the variance itself with stipulation that -- all the ayes please say aye.

SEHMAN: Aye.

SWANSON: Aye.

RYAN: Aye.

HANSEN: Aye.

WEIMER: Aye.

RYAN: And there are no nays. So five nothing. Again, Paula, thank you.

So it concludes the congratulations.

UNIDENTIFIED SPEAKER: Thank you very much.

RYAN: It was good to approve. It's good to talk to you, too, thank you.

All right. I've lost in my list here. So are there any other orders of business we have? If anybody from the public wants to speak, it would be my dear wife in the audience.

She's the only one left. So no? Okay.

So at this point, I'm going to adjourn the Board of Adjustment. Thank you all for participating.

Having no further business, Chair Ryan adjourned the Regular Meeting of the Board of Adjustment held on October 16, 2025, at 6:32 p.m.

TOWN OF FOUNTAIN HILLS

Paul Ryan, Chairperson

ATTEST AND PREPARED BY:

Paula Woodward, Executive Assistant

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting held by the Board of Adjustment of Fountain Hills in the Town Hall Council Chambers on the 16th of October 2025. I further certify that the meeting was duly called and that a quorum was present.

DATED this 18th Day of June 2026.

Paula Woodward, Executive Assistant





TOWN OF FOUNTAIN HILLS

STAFF REPORT

Meeting Date: 6/18/2026
Meeting Type: Board of Adjustment Regular Meeting
Submitting Department: Development Services / Planning
Prepared by: Farhad Tavassoli, Senior Planner
Staff Contact Information: Phone: 480-816-5139
 Email: ftavassoli@fountainhillsaz.gov

Request to Town Council Regular Meeting (Agenda Language)

CONSIDERATION AND POSSIBLE ACTION: Variance to reduce the 40’ minimum rear yard building setback to 30’ for a single family home on an approximately 1.95-acre lot, located at 14522 E. Desert Tortoise (APN#217-76-007) in the R1-43 Single Family residential zoning district.

Staff Summary (background)

Applicable Ordinance Requirements

Town Code

Article 2-8 BOARD OF ADJUSTMENT

Section 2-8-4 Duties

B. It shall be the duty of the board of adjustment to hear and decide appeals for variances from the terms of the zoning code only, if because of special circumstances applicable to the subject property, including its size, shape, topography, location or surroundings, the strict application of the zoning code will deprive such property owner of privileges enjoyed by owners of other property of the same classification in the zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

C. The board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, make any changes in the terms of the zoning code or make changes to the zoning map, provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.
2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

Zoning Ordinance

Chapter 2 PROCEDURES

Section 2.07 Appeals and Variances

C. Variance.

1. Purpose. Any aggrieved person may apply to the Board of Adjustment for a variance from the terms of the Zoning Ordinance if, 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 owner of privileges enjoyed by owners of other property of the same classification in the same Zoning District. Nothing herein contained shall be construed to empower the Board to change the terms of this section, to authorize uses which violate any other Town ordinance, to effect changes in the zoning map,

or to add to or change the uses permitted in any zoning district.

6. Findings.

a. A variance shall not be granted unless the Board finds sufficient evidence to make a determination that:

- i. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings; and
- ii. Such special circumstances are preexisting and not created by the property owner or appellant; and
- iii. 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; and
- iv. Any variance granted will ensure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

b. No nonconforming use or violations of this section with respect to neighboring lands, structures, or buildings in the same zoning district, and no permitted use of lands, structures or buildings in other zoning districts, shall be considered grounds for granting a variance.

7. Action. In granting a variance, the Board may impose such conditions and safeguards as are appropriate to ensure that the purpose and intent of this section remain intact. Every variance shall be personal to the applicant therefor and shall be transferable and shall run with the land only after completion of any structure or structures authorized thereby.

Chapter 5 GENERAL PROVISIONS

Section 5.06 Yard, Lot, and Area Requirements

Sub-Section B. Application

No building shall be erected, nor shall any existing buildings be altered, enlarged, moved, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

Chapter 10 SINGLE FAMILY RESIDENTIAL ZONING DISTRICTS

Section 10.09 Density, Area, Building and Yard Regulations

Zoning Ordinance Summary Chart

Town of Fountain Hills Zoning Ordinance
Chapter 10
FOUNTAIN HILLS
ZONING ORDINANCE SUMMARY
SINGLE FAMILY DISTRICT

DISTRICT	AREA (SQ. FEET)	WIDTH (FEET)	BLDG HEIGHT (FEET)	MINIMUM YARD SETBACKS				LOT COVERAGE	DISTANCE BETWEEN BLDGS (FEET)
				FRONT	SIDE	STREET SIDE	REAR		
				R1-190	190,000 f	300g	30		
R1-43	43,560 f	145 g	30	40	30	40 d	40	20%	6
R1-35	35,000 f	145 g	30	40	20	20	40	20%	6
R1-35H	35,000 f	145 g	30	20	20	20 d	40	20%	6
R1-18	18,000 f	120 g	30	20	10	20 d	30	25%	6
R1-10	10,000 f	80 g	30	20	7	20 d	25	30%	6
R1-10A	10,000 f	80 a.g	30	20	7	20 d	20	40%	6
R1-8	8,000 f	80 g	30	20	7	20 d	25	35%	6
R1-8A	8,000 f	80 a.g	30	20 b,d,e	7	20 d	20	40%	6
R1-6	6,000 f	60 g	30	20	5	20 d	25	40%	6
R1-6A	6,000 c,f	60 a.g	30	20 b	5	20 d	10	50%	6

Zoning District = R1-43
Required Building Setbacks
Front = 40'
Side = 30'
Street Side = 40'
Rear = 40'

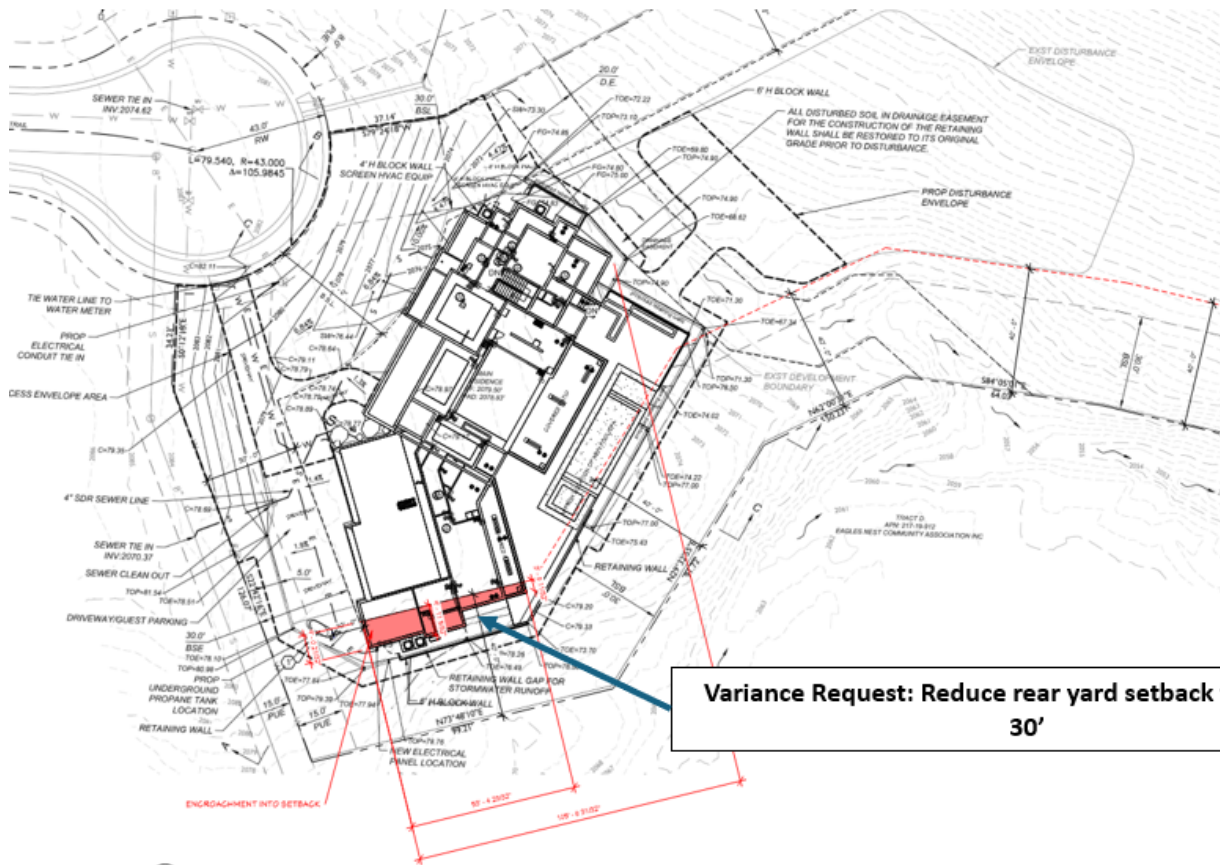
Background

This area of Fountain Hills was platted in 2004 as Eagles Nest Parcel 7. Lots within this portion of the subdivision are generally uniform in width at approximately 145 feet, with depths ranging from about 157 to 500 feet. The subject property is irregularly shaped, featuring multiple angles. The majority of its boundaries adjoin an open space tract associated with neighboring Parcel 8, which also serves as a drainage easement and is owned by the Eagles Nest Community Association. The remaining boundary is shared with a vacant residential lot to the north.

The lot is located at the end of a cul-de-sac and is notably elongated, extending approximately 400 feet from the front property line to the furthest point along the rear. A 20-foot-wide linear drainage easement runs through the center of the property. The portion east of the easement, which comprises the majority of the site, features steep slopes of at least 20 percent descending to the west. In contrast, the area west of the easement, closest to the cul-de-sac, has more moderate topography and is intended as the building site for the proposed single-family residence.

As noted above, the minimum required rear yard setback is 40 feet. Due to the irregular configuration of the lot, there are multiple rear yard lot lines, including the southern boundary, which is adjacent to the open space tract. It can be difficult with these irregular lot shapes to understand how the setback standards are applied. The applicant believed this southern property line to be a 30' side yard and designed the home accordingly. Staff review of the building plans identified the correct setback requirements. The applicant is requesting a reduction of the required rear yard setback along this portion of the property, from 40 feet to 30 feet.

Variance Request



FINDINGS:

The four findings which must be made by the Board of Adjustment in order to grant a variance are listed below. The applicants have provided their written justifications for each criterion in their attached narrative. Staff’s responses are noted below:

1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings.

Applicant: (a) The lot has a long irregular shape with many sides; (b) The rear yard is substantially longer than the front yard along /adjacent to cul-de-sac; (c) There is an existing drainage easement record on the lot.

Staff: The subject property is not only substantially longer than typical lots within Eagles Nest, but also characterized by significant areas of steep grading, particularly east of the drainage easement. While this portion of the site could be considered an optimal location for constructing a residence of this size under different circumstances, doing so would require substantial alteration of the natural terrain. The applicant’s selected building location minimizes the need for excessive grading and helps preserve existing topography and natural drainage patterns, thereby maintaining the site’s natural features and supporting the Town’s environmental objectives. A limited encroachment into the minimum required rear yard setback is necessary to achieve this outcome, allowing the residence to be sited in the most suitable area while minimizing disturbance to the surrounding landscape.

2. Such special circumstances are pre-existing and are not created or self-imposed by the owner or appellant.

Applicant: The lot was platted in the long narrow configuration without enough area to build a home of similar size to those in the area.

Staff: The lot was platted in 2004. The current owners purchased the property in 2025. The irregular shape and usually long length of the lot was not created by the property owner. Staff finds that the owners did not create the situation and therefore the circumstances are not self-imposed.

3. The strict application of the Zoning Ordinance will deprive such property owner of privileges enjoyed by other property of the same classification in the same zoning district.

Applicant: a. The irregular shape of the property and the rectangular nature of building construction, causes the new structure to encroach into the 40' setback slightly with the structure (total of 200' square feet). More than a majority of the proposed structure is setback beyond required 40'.

Staff: With one exception, the lots within Eagles Nest Parcel 7 are generally not irregularly shaped to this degree, and the same is true for the broader Eagles Nest development. Although the applicant's lot is relatively large, it is significantly constrained by a drainage easement and variable topography. A modest reduction in the minimum rear yard setback from 40 feet to 30 feet along the southern boundary would allow for a home comparable in size to others in the neighborhood while helping to preserve natural features and existing drainage patterns. Furthermore, because the property adjoins open space to the south and east, the proposed 10-foot encroachment will not affect neighboring residents' views.

4. Any variance granted will ensure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

Applicant: a. The construction of this new home will add value to the area and building a similar-sized home will further enhance the value of the area. The area where variance could be approved is less than 20% on the length of total defined rear yard.

Staff: Staff finds that granting a variance will not constitute a grant of special privilege.

Numerous irregularly shaped parcels with multiple angles exist throughout the town, many of which appear to have been developed without strict adherence to standard zoning requirements. In several instances, structures have been positioned toward a particular portion of the lot to minimize impacts on natural features. There is little indication that these configurations were achieved through the formal variance process; rather, they were likely approved administratively. In this case, staff believes the applicant presents a well-founded argument for undue hardship and has appropriately pursued a variance as the proper mechanism to obtain this entitlement.

While variances are site specific and are not intended to set a precedent, in this case, should the variance be granted, the Board would be hard-pressed to not come to the same findings for many of the other lots. Given that development of the property behind this lot is unlikely, reducing the rear yard will not have a negative impact on other properties.

Related Ordinance, Policy or Guiding Principle

- Town Code Article 2-8-4 Board of Adjustment Duties
- Town Code Article 2-8-6 Variances
- Zoning Ordinance Section 1.12 Definitions - Rear Yard
- Zoning Ordinance Section 2.07 C Variances
- Zoning Ordinance Section 5.06 B Yard, Lot, and Area Requirements
- Zoning Ordinance Section 10.09 Density, Area, Building and Yard Regulations
- Arizona Revised Statute 9-462.06 Board of Adjustment

Risk Analysis

N/A

Recommendation(s) by Board(s) or Commission(s)

N/A

Staff Recommendation(s)

Staff recommends the Board of Adjustment FIND that the required four criteria for granting a zoning variance have been met and that the requested variance from the provisions of Zoning Ordinance Section 10.09 to reduce the rear yard to 30' for the area shown on the building plans with the encroachment be approved.

Suggested Motion

Move to adopt the findings outlined in the staff report and approve the applicant's requested variance to the provisions of Zoning Ordinance Section 10.09 and allow a rear yard setback for a single-family home from 40' to 30' for the area shown on the building plans where an encroachment occurs.

OR

Move to find that the applicant has not met the established criteria and DENY the requested Variance.

FISCAL IMPACT

Fiscal Impact:

Budget Reference:

Funding Source:

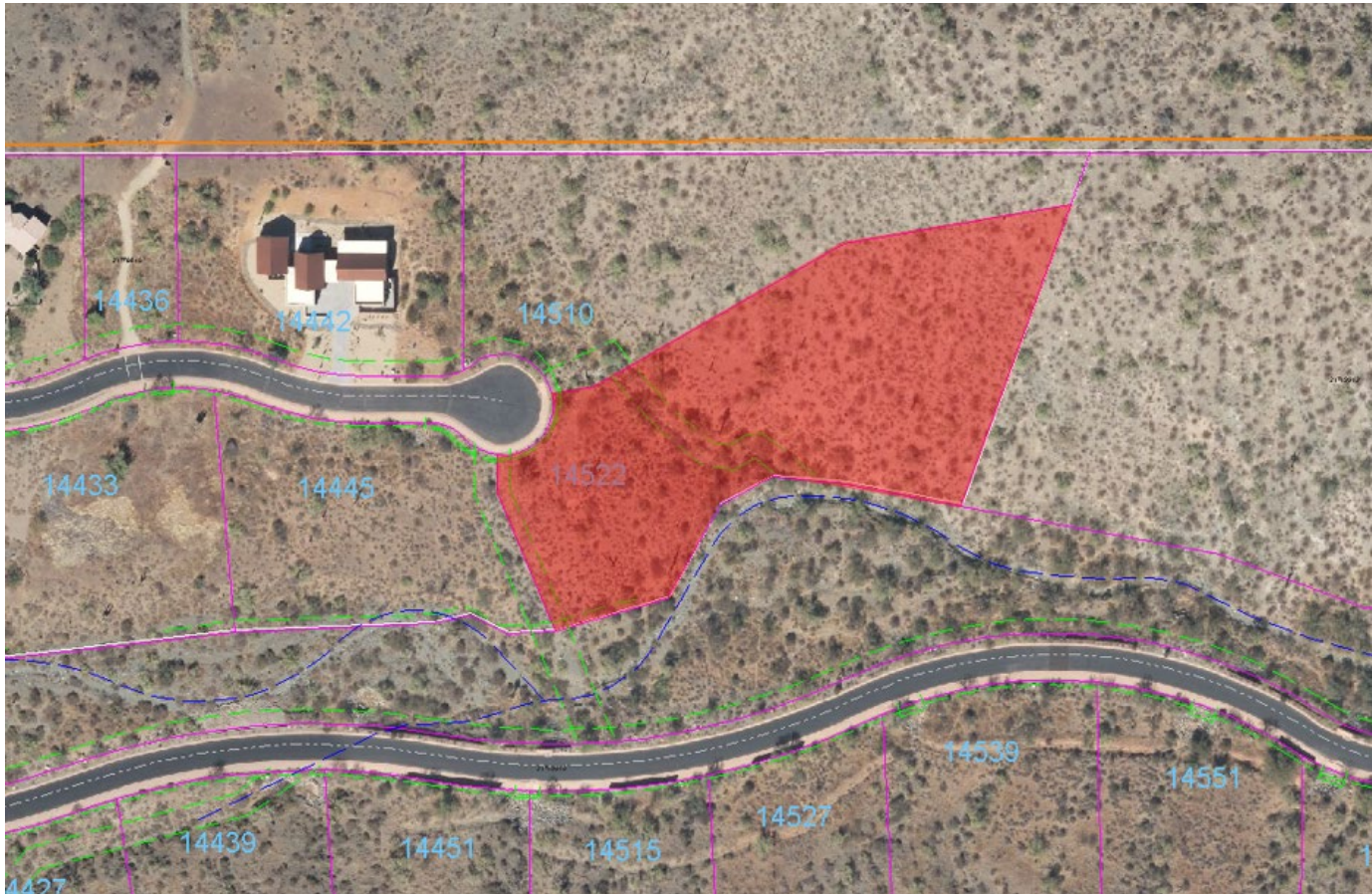
ATTACHMENTS

- | |
|---------------------|
| 1. Case Details Map |
|---------------------|

2. Site Plan
3. Applicant Narrative

Board of Adjustment Vicinity Map

Case Details



CASE:

VAR26-000001

SITE / ADDRESS:

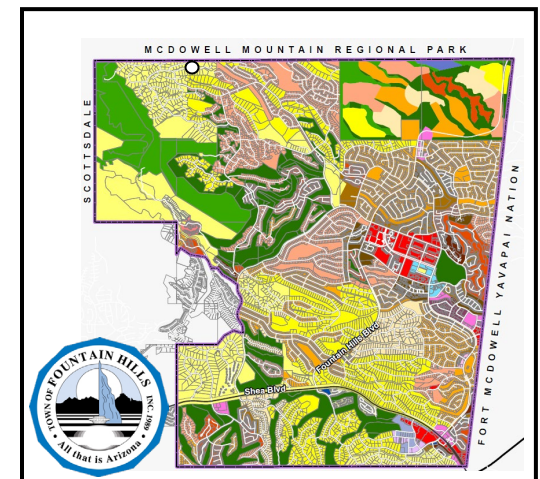
14522 E. Desert Tortoise Trail
APN #217-76-007

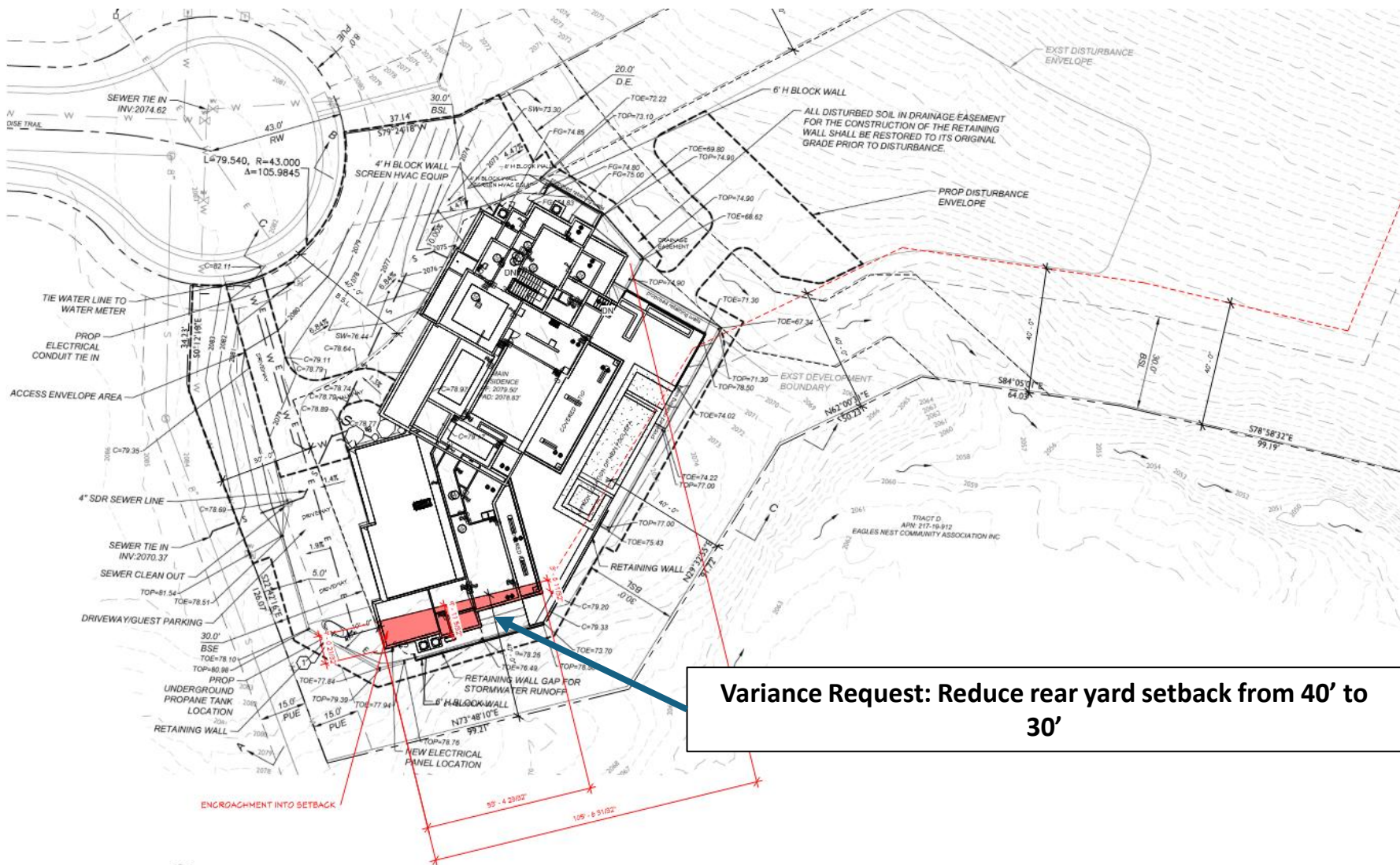
REQUEST:

A variance to the required rear yard setback, reducing the setback from 40' to 30'



Site Location





Variance Request: Reduce rear yard setback from 40' to 30'

1 SITE PLAN
A03 1" = 20'-0"





Richert & Associates 7525 E. Gainey Ranch Rd. #147, Scottsdale AZ 85258

Date 5/11/2026.

John Wesley, Planning and Development Director, City of Fountain Hill AZ
Fountain Hills, AZ 85268

Re: Request for a Variance approval for property located at 14522 E. Desert Tortoise Trail

Dear Mr. Wesley,:

The purpose of this letter is to request approval of a variance to reduce the required rear yard setback from 40' to 30' in a small area along the rear yard. See attached Diagram in red. This variance, if approved will be applied to the new construction of the home. The Town's definition of how to measure a rear yard setback is different than most Phoenix Metro cities and more restrictive. .

To justify this minor variance, we believe there are several conditions that exist to support an approval and they are as follows:

1. There needs to be special circumstances or conditions:

- a. The lot has a long irregular shape with many sides.
- b. The rear yard is substantially longer than the front yard along /adjacent to cul du sac..
- c. There is an existing drainage easement record on the lot.

2. The special circumstances are not self-imposed or created by the property owner.

- a. The lot was platted in the long narrow configuration without enough area to build a home of similar size to those in the area.

3. Authorization of the variance is necessary for the owner to enjoy reasonable and substantial use property rights.

- a. The irregular shape of the property and the rectangular nature of building construction, causes the new structure to encroach into the 40' setback slightly with the structure (total of 200' square feet) . More than a majority of the proposed structure is setback beyond required 40'

4. The variance will not be materially detrimental to persons residing in the area.

- a. The construction of this new home will add value to the area and building a similar sized home will further enhance the value of the area. The area where variance could be approved is less than 20% on the length of total defined rear yard.

In conclusion, we believe the approval of the variance is minor, supported by the facts offered and requires the Towns of Fountain Hills to approve the 10' variance as depicted on the site plan.

Sincerely

David E. Richert

