



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

<b>Chairperson Paul Ryan</b>	
<b>Vice Chairperson Nick Sehman</b>	<b>Boardmember Heather Swanson</b>
<b>Boardmember Erik Hansen</b>	<b>Boardmember John Weimer</b>

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

**WHEN: THURSDAY, OCTOBER 16, 2025**

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

Members of the Town of Fountain Hills Board of Adjustment will attend either in person or by telephone conference call; a quorum of the Town’s Council, various Commission, Committee or Board members may be in attendance at the Commission meeting.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Commission are audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.

**REQUEST TO COMMENT**

The public is welcome to participate in Board meetings.

**TO SPEAK TO A CONSENT OR REGULAR AGENDA ITEM**, complete a Request to Comment card and hand it to the Clerk prior to discussion of that item. Include the agenda item NUMBER on which you wish to comment. A separate submission is required for each agenda item. Request to Comment cards will not be accepted once the Board deliberations begin. Submit a Request to Comment card prior to a public hearing agenda item.

**TO COMMENT ON A CONSENT OR REGULAR AGENDA ITEM IN WRITING ONLY**, complete a Request to Comment card, indicating that it is a written comment, check the box on whether you are FOR or AGAINST a consent or regular agenda item, and hand it to the Clerk prior to discussion on that item. A separate submission is required for each agenda item.

**TO SPEAK TO CALL TO THE PUBLIC**, complete a Request to Comment card and hand it to the Clerk. Speakers will be allowed three contiguous minutes to address the Board. Verbal comments should be directed through the Presiding Officer and not to individual Boardmembers.

This Request to Comment card, and any information you write on it, is a public record subject to public disclosure.

**1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

**3. STATEMENT OF PARTICIPATION**

Anyone wishing to address the Commission regarding items listed on the agenda or under “Call to the Public” should fill out a Request to Comment card located in the back of the Council Chambers and hand it to the clerk prior to consideration of that agenda item. Once the agenda item 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. Please limit your comments to three minutes. It is the policy of the Board to not 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. It is also requested that applause be kept to a minimum to avoid disruption of the meeting, to maintain decorum, and provide for an equal and uninterrupted presentation.

**4. CALL TO THE PUBLIC**

Pursuant to A.R.S. §38-431.01(H), public comment is permitted (not required) on matters NOT listed on the agenda. Any such comment (i) must be within the jurisdiction of the Board, and (ii) is subject to reasonable time, place, and manner restrictions. The Board will not discuss or take legal action on matters raised during Call to the Public unless the matters are properly noticed for discussion and legal action. At the conclusion of the Call to the Public, individual board members may (i) respond to criticism, (ii) ask staff to review a matter, or (iii) ask that the matter be placed on a future Board agenda.

**5. CONSENT AGENDA**

All items listed on the Consent Agenda are considered to be routine, noncontroversial matters and will be enacted by one motion of the Board. All motions and subsequent approvals of consent items will include all recommended staff stipulations unless otherwise stated. There will be no separate discussion of these items unless a board member or member of the public so requests. If a board member or member of the public wishes to discuss an item on the Consent Agenda, he/she may request so prior to the motion to accept the Consent Agenda or with notification to the Development Services Director or Chairperson prior to the date of the meeting for which the item was scheduled. The items will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- a. **CONSIDERATION AND POSSIBLE ACTION:** Approving the meeting minutes of April 17, 2025.

**6. REGULAR AGENDA**

- a. **CONSIDERATION AND POSSIBLE ACTION:** Request for a variance to reduce the front yard setback from 40' to 20' in the R1-35 zoning district at 16512 E. Trevino Drive (north side of Trevino Dr., west of side of Nelson Dr.).
- b. **CONSIDERATION AND POSSIBLE ACTION:** Request for a variance to reduce the rear yard requirement from 25 feet to 10 feet in the R1-8 zoning district at 17324 E Baca Drive.

**7. ADJOURNMENT**

Dated this 2 day of October, 2025.



Paula Woodward, Executive Assistant

print format. Supporting documentation and staff reports furnished to the Council with this agenda are available for review in the Clerk's Office.



# TOWN OF FOUNTAIN HILLS

## STAFF REPORT

**Meeting Date:** 10/16/2025  
**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

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### Request to Town Council Regular Meeting (Agenda Language)

**CONSIDERATION AND POSSIBLE ACTION:** Approving the meeting minutes of April 17, 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 approving the meeting minutes of the regular meeting of the Board of Adjustment April 17, 2025.

### Suggested Motion

MOVE TO APPROVE the regular meeting minutes of the Board of Adjustment April 17, 2025.

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### FISCAL IMPACT

**Fiscal Impact:**

**Budget Reference:**

**Funding Source:**

### ATTACHMENTS

- |  |
|--|
| 1. BOA 250417 Summary Minutes and Verbatim Transcription |
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TOWN OF FOUNTAIN HILLS  
MINUTES OF THE REGULAR MEETING  
OF THE FOUNTAIN HILLS BOARD OF ADJUSTMENT  
APRIL 17, 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; Boardmember Hansen;  
Boardmember Sehman; Boardmember Swanson; Boardmember Weimer

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



**TOWN OF FOUNTAIN HILLS  
SUMMARY MINUTES OF THE REGULAR  
MEETING OF THE BOARD OF ADJUSTMENT  
APRIL 17, 2025**

**1. CALL TO ORDER, PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE**

Chairperson Ryan called the Regular Meeting of the Fountain Hills Planning and Zoning Commission held on January 13, 2025, to order at 5:30 p.m.

**2. ROLL CALL**

Boardmembers Present: Chairperson Paul Ryan; Boardmember Hansen; Boardmember Sehman; Boardmember Swanson; Boardmember Weimer

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

**3. CALL TO THE PUBLIC**

None

**4. CONSIDERATION AND POSSIBLE ACTION:** Approval of the regular and special meeting minutes of the Board of Adjustment June 15, 2023.

**MOVED BY** Boardmember Hansen **SECONDED BY** Boardmember Sehman  
Vote: 5/0 Unanimously

**5. CONSIDERATION AND POSSIBLE ACTION** of Appointing a Chairperson to the Board of Adjustment.

**MOVED BY** Boardmember Sehman to nominate Paul Ryan as Chairperson to the Board of Adjustment. **SECONDED BY** Boardmember Weimer. Vote: 5/0 Unanimously

**6. CONSIDERATION AND POSSIBLE ACTION:** Appointing a Vice Chairperson to the Board of Adjustment.

**MOVED BY** Chair Ryan to nominate Nick Sehman as Vice Chairperson to the Board of Adjustment. **SECONDED BY** Boardmember Weimer. Vote: 5/0 Unanimously

**7. REVIEW** the duties and role of the Board of Adjustment and Section 2.07, Appeals and Variances.

Development Services Director, John Wesley, reviewed in detail Ordinance 24-20, passed by Town Council on November 14, 2024. The ordinance amended Zoning Ordinance Section 2.07, Appeals & Variances.

**8. BOARD DISCUSSION/REQUEST FOR RESEARCH** to staff.

**9. SUMMARY OF BOARD REQUESTS** from Development Services Director.

**10. REPORT** from Development Services Director.

**11. ADJOURNMENT**

Chairperson Rayn adjourned the Regular meeting of the Fountain Hills Board of Adjustment held on April 17 2025, at 6:03 p.m.

Post-Production File

**Town of Fountain Hills  
Board of Adjustment Meeting  
April 17, 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.

\* \* \* \* \*

**-Gap in recording due to technical difficulties-**

RYAN: -- just doing things and you forget what the routes are. And so we'll just kind of go through what the duties are as established in the Town code and then talk a little bit about the variance process and what those requirements are. So here is what is in the Town code and 2A-24 about what your duties are, and they are primarily to hear appeals and variances.

So -- appeals. When I, as a zoning administrator, am approached with how to interpret and apply the ordinance, Zoning Ordinance, there are times or could be times -- and we have experienced many of them, where somebody, the applicant, just totally just disagrees how I'm applying the code. No, you're wrong; it says this, not that. And if we can't come to an agreement, then they can appeal that interpretation of the code to you, and then you decide who's right, or maybe we're both wrong and come up with something else. But that's what the appeals are.

And what we do get from time to time are the variances. So the Zoning Ordinance sets out certain standards, set back, and lot coverages, and you can't put a patio on the front yard kind of things, whatever. And there could be situation where, for various reasons, the zoning code just makes it impossible to develop because of its rules. And so they can apply for a variance to get that deviation from the codes. Usually, it's -- you think of the (indiscernible) Hillside lots, and they're just so difficult to build on. You'd apply the setbacks, and well, that's where the steepest hill is. And so we've got to move it someplace else. So let's look at -- a variance to that is the type of thing that that's for. And then, there's some things you can't do that maybe sometimes you want to do. Sometimes, somebody wants to put in business, whatever, that isn't allowed in that zoning district. They want to put in a retail commercial in office zone.

They want to apply for a variance to do that, because it seems like a great place to do that. No, you can't vary the uses that are allowed and the code, or other basic standards of the code.

It requires a public hearing to resolve where you can grant a variance, and you have to go through a hearing to rezone. That's a basic standard process. You can't do that. You

can't make changes to the zoning map itself. Again, that's a rezone process.

And then, you may not grant a variance if there's a special circumstance. The property owner creates and issues; you can't grant it for something they've created themselves. I've put this here, so now I can't do that, sorry.

Basic duties, any questions about what those duties are or responsibilities here?

One thing I've put in the report that I didn't include here is if you're on the Planning Zoning Commission, or if you're on the Town Council, the applicants in a case can come ahead of the meeting and try to lobby you, and convince you of their position, and take you out to lunch, or whatever they might try to do with the Board of Adjustment. As a (indiscernible) judicial body, you're not to be lobbied. And so if somebody tries to do that before something comes before you, can't do it. We'll hear it at the hearing. You are a little bit different in that regard, which I think is mostly nice. But maybe, in some cases, you wish you could get that other information.

Again, any question about the duties and responsibilities?

Okay. Yes?

HANSEN: That's a great point you bring up. I won't say it's happened in the past, but the potential is pretty high on high profile issues, and somebody just wants to chat with you. And I guess the rule we've always kind of followed here is it doesn't matter really the rationale behind it. You are part of a quasi-judicial body. That's unique in the Town.

WEIMER: Right.

HANSEN: And so, therefore, when John and I want to go have a cup of coffee, it's probably okay. There's just two of us. First off, it's not a quorum. But if John, and Nick, and I want to go have a cup of coffee, that's a little different ball game – or Erik wants to come and have a -- that conversation about anything to do with this Board, or the potential, to be honest with you, can get yourself in a whole lot of trouble.

WEIMER: Right.

HANSEN: Even all the old Boards we want to plan Christmas parties, we plan – it can't happen. You really can't have them because somebody would come along and say, well, I know you guys had a Christmas party at Paul Ryan's house. It's a nice house by the

way. So that's the kind of thing you got to be really careful is the motivation of the person approaching you may be completely different than just having a chat with somebody in the public. Erik knows that, because he was on Planning and Zoning, same kind of rules apply, but it's even stricter here.

WEIMER: Yes.

HANSEN: Because of the judiciary role. The only people that can really take us to town on decision is a court.

WEIMER: Right.

HANSEN: With the exception of some rare instances, locally, we had. It's kind of like something where you really got to understand the judicial part of your job is we can't have a chat. We can have it in this room with a camera on, and we can even have executive sessions to be honest with you. Pretty rare in our case, but those are -- take that very seriously. Usually, the Town already has an annual meeting where the members of all the committees are in, go to one of those. At least one of those.

WEIMER: Right.

HANSEN: And have him kind of give you the rules of the game. It's really -- every, kind of, five years, kind of go and get refreshed because they can change, rules can change. But take it very seriously because it is something you can really get nailed on.

WEIMER: Yeah, so I'm glad you brought that up. I didn't think about putting it in a here because the Town attorney and Town clerk do offer annually the open meeting law and conflict of interest training and background. But that is very important. You can't think, well, I'm just going to -- Erik's going to -- hey, Heather what do you think about this? Then Heather decides to John, what about this? Now you've got three people talking about the same people, so it's just best not to do it at all.

HANSEN: Right. Best not to do it at all; that's right. Okay. Good.

WEIMER: This slide summarizes the responsibilities with regard to variance. I didn't bring anything more on the appeals. Again, we haven't gotten any. It's really pretty straight forward. It's the variances we get from time to time, and the criteria that are in the ordinance for consideration and approval of a variance. And for those of you who

have been on before, you're somewhat familiar. I'm sure you would read it periodically, Section 207 of the Zoning Ordinance. But we rewrote it a few months ago, been updating all that chapter of the Zoning Ordinance one section at a time. So when we did this section, as it was structured previously, these criteria were somewhat scattered through that section. And so that made it kind of complicated to explain to an applicant and for us to use sometimes here. So I said no, let's put them all in one spot, and make it real clear these are the criteria and what it takes for the Board to approve a variance. And so this is exactly out of that section now.

So a variance shall not be granted unless the Board finds sufficient evidence to make a termination (indiscernible). And these are kind of in a hierarchical flow too. If you can't get the first one, if there's not special circumstances on the property, you don't really even need to go to the next one because they haven't even passed that first basic hurdle and so forth as you go down those. And you do have to make a determination on all of them in order to grant the variance.

But I'll tell people as we do talk. We have people come in from time to time with some development project and thinking well gee, what about a variance. Okay. You're welcome to apply. Here's the criteria. And here's where you may have some challenges with what you're doing. You might want to look at some other options. First of all, is there really anything special about the property that's causing this situation? And usually, there is not. And then, we can kind of create this yourself because you already did X, Y, or Z on the property. Well, yeah, anyway.

We, kind of, step them through these to help them kind of determine if they really want to go through the time and expense, and most people do figure out yeah, they're probably not going to meet the criteria. But we do also tell them if it were that cut and dry, they'd just let me decide or whatever.

But it's not always that cut and dry; that's why there's a group of five citizens of this town that's called upon to review the facts and make your independent determination. Because there are different ways to maybe look at the same thing, and you can see it a little bit differently. And so we don't want to overly discourage people from taking

advantage of what's in the code to be here. But again, most times, folks have looked at it and said, yeah, probably not worth the time and the money to do that, so I'll figure out another way around that.

We'll mention I guess right now, that I did talk to a person today who may -- well, in September, he's going out of Town for the summer, filed for a variance for an addition they want to put in their back yard that's not quite meeting the codes. And there maybe -- we kind of talked through it, and there may be a unique circumstance there that wasn't their doing. They built the house originally, kind of created the situation, so you may see an actual case. And I'll cover. We'll see.

HANSEN: They're all interesting.

WEIMER: So Chair, you might want to talk from your perspective. You're doing these so many years with this criteria and kind of how it's worked with the Board and stepping through these, or if you have any questions as they've been kind of rewritten here.

RYAN: Yeah, I've struggled with it once in a while. Nothing in life is quite as perfect as rules. So I just thought of one while you were speaking. Number two says such special circumstances are preexisting and not created by the property owner or appellant.

What's an appellant in this case legally? I know what a property owner is.

WEIMER: Yeah, so that's maybe a word I should have changed in here too. I think I just copied it over from L code.

RYAN: Yeah.

WEIMER: Because the way the code was written it talked about appeal for a variance. And to me, that was confusing with the appeals piece. And so I tried to drop appeal out of this section.

RYAN: Okay.

WEIMER: And I guess maybe I kind of overlooked one. That's what it is. It is the person appealing the situation or the code.

RYAN: So what if it was done outside of the code by the previous owner? He just built a 16 tower dog house or something. And it doesn't -- it violates obviously some of the codes. Does that person -- can he keep it, covert it to a different -- what are the rights

of the property owner where he didn't create the circumstance and he probably could get turned down?

WEIMER: Yeah, so as far as that structure itself, we'd probably consider it a legal non-conforming –

RYAN: Okay.

WEIMER: -- situation or maybe even an illegal non-conforming, but if that current person didn't create it --

RYAN: Does it apply though, John, once you buy a house and you didn't create that?

WEIMER: Right.

RYAN: You can't -- the Town can't make you take it down; you didn't build it. Or can they?

WEIMER: I think we can.

RYAN: Okay.

WEIMER: It gets tricky.

RYAN: Yeah.

WEIMER: And there's certain laws with regard to how far we can push some of those things. But it was illegal construction to begin with.

RYAN: Yeah.

WEIMER: Then yes, we can say no, you've got to fix it.

RYAN: I'm sorry, I threw a test balloon out there. It's just, kind of, as I was going through that rule, I went well, what happens if you didn't? Because it's all targeted to the current owner doing something. All right. And then, on the piece of -- there's a second piece of that code that we kind of look at a lot which is -- I think the second half of that rule has to do with the may not part. Is that what this is?

WEIMER: All right. Here's the next piece here. Yes.

RYAN: Oh, there you go. Yeah, there you go.

WEIMER: So it's not really one of the tests per say, but it's still part of your considerations that you can't -- just because the guy next door has something that was wrong or variances, you can't use that now to justify this.

RYAN: Got you.

WEIMER: It's strictly based on that property or that situation.

RYAN: Yeah, okay. Even if the majority of the neighborhood has it? It could be an interesting case. I don't know if I want to have that hearing. Okay.

WEIMER: That's what the code says.

RYAN: It's kind of the principals of these rules are you're being denied something the neighbors have. Right? I mean, that's kind of one of the (indiscernible)?

WEIMER: In this case, it could be. If somebody else was able to justify it on their property but -- Erik will remember from his day on the P and Z Commission, when you rezone something or you approve a site plan you kind of set a precedent.

HANSEN: Yeah.

WEIMER: With variances we don't set precedents.

HANSEN: Right.

WEIMER: It's all based on that unique property.

So these are the criteria that you will use and before when we submit the staff report. We'll go through each of these and give our analysis and whether we think it's met or not. And when we have a hearing, then we'd present our case. The applicant would get their chance why they think it does. The Board would then ask questions, and then you make your independent determination. Is there evidence, sufficient evidence? And that's whatever you believe is appropriate evidence.

RYAN: You guys do a great job for lay members, like we are on this commission of explaining, in a very neutral way, I think, what the Town's view is because you then explain what the persons argument is that should be allowed, right?

And you're very good about staying neutral in that, you really don't say well the Town would never, there's no subjective statements in those analysis. So that -- just as the new members, I think you guys are going to need to understand, you're going to look at a pretty good description that's very neutral, and you're going to get the facts. And then, John will explain what the Town thinks the violation could be or would be if you did certain things.

You do a great job at that Johnny [sic]. I seriously mean that. I haven't been here for almost two decades. It's the best I've ever seen because you don't interject your preference. You interject facts.

WEIMER: Right.

RYAN: And then, typically, what you guys see in here is a lawyer, the homeowner, you see a lawyer, and there's some interested citizens, right? Everybody gets to speak a little bit. So John gets asked a lot of questions about the interpretation of the Town by the Board, but also by the plaintiff and their attorneys too. So it's interesting, but you do get a pretty full picture of what it's like because it's even more of a quasi-judiciary. We don't get so technical about it. I don't even care if you don't call me. Mr. Chair to be honest with you. In some way, I'd rather not; just say Paul, I've got something here. And just go because I'm not a big Robert's Rules of order kind of guy. But I'm also not into chaos. So they're orderly, but I think the conversation -- I'd call it conversation we have with you guys rather than a legal conversation. It's very much go find out the facts and what the neighbors think -- and what the neighbors think and what the people think and why they think their special or case is different.

WEIMER: Right.

RYAN: So I just want to give you that background.

WEIMER: Thank you, Chair. And so we do try to be neutral and comprehensive in looking at both sides and explaining different ways. We do come down to recommendation. Recommend, denial, or not, or approval. So we're not just totally leaving it out there, open. But we do understand there are different ways to look at the same thing and try to give you as much information as you need to make a decision.

RYAN: Yes, I do, and you said recommendation. But what happens when it's four to one, the determination has been made, and the people still are not satisfied? What is the next step? Where do they go? Is there a next step?

WEIMER: District Court. We've had the lawyers for them there. We've had the lawyers for the plaintiff's for the person applying for the variance say, well, I guess I'll see you in court. And we would say, well, we welcome the opportunity. Because that have that

right to go. It's not that I'm being a smart cookie. I'm just saying that's fine; that's your right to go see it. But there's nothing wrong with that. We feel like we're making a decision that's legally defensible. Most of the time, it's like -- I feel like 100 percent. I may disagree even what we decide as far as a person. I would have loved to have that too. But I think we're very careful about doing something that really the law is very clear about it in many cases, right? If there's a -- there's also wording in here though that gives us wiggle room, right? There are determinations we make where we have a modification to the variance a little bit by a yard, two yards. I mean, it's not black and white to us. As a matter of fact, I'm very proud of the fact we don't look at the law in black and white. We kind of do a lot of eye contact with John going, what happens if? We do a lot of what iffing in some of these hearings.

WEIMER: Right. So they may be asking for (indiscernible) variance, and you may say we can approve eight, or that type of thing could happen?

RYAN: Yeah, yeah.

WEIMER: But also, it's important then that you go through your discussions then -- or your decision that you do state for the record what the facts were that led to --

RYAN: Yeah, and why you led to --

WEIMER: Because that's what we'll need if we do go to court.

HANSEN: Chairman, I have a question.

RYAN: Sure.

HANSEN: And John, this is for you. Are the applicant's encouraged to address those thresholds --

WEIMER: Yes.

HANSEN: -- line by line? I felt like the last hearing we had, they were just kind of scattered a little bit and it made it harder for us to -- because you guys do a great job of providing a report that goes -- that uses those thresholds and talks to them line by line. Whereas the previous meeting we had, it was just a very general this is why. I think it would benefit the applicant if they directly addressed those thresholds, and it would give them a better change of stating their argument, I feel.

WEIMER: So if you'll indulge me for a moment here. I'll actually get that up so you see what we point them to. So here's a section on variances, application. And so right here, we asked them to prepare this narrative. And then, we also point them down to the findings section. So here's what the Board is going to have to find, so make sure you've addressed those up here in this narrative. Some people are more sophisticated and able to do it compared to others.

Chair, if you don't mind just a second.

RYAN: Yes.

WEIMER: We'll try to coach them any way we can.

RYAN: Yeah.

WEIMER: We're not going to write it for them. And at some point we have to say okay, that's the best we're going to get.

RYAN: I figure that case, Erik, the only thing I remember back then is I think they had already determined in their own mind in talking to John that they had no grounds at all to ask for a front patio that violated. I mean, Jay Slums (ph.) is not exactly a rookie at this when it comes to all this; neither is his lawyer. But I think they also knew they were trying to get a neighborhood front saying, listen in everybody, in a one mile radius of my home, thinks this is the greatest idea, they all come to my house for parties, isn't this an okay thing. Yes, they were not going on the facts of the matter. And so they spent their time on that. Ergo, we spent our time on trying to understand a little bit why that would overcome any of the rules and variance we had.

Again, I think yes, we decide on going by a little bit a field from the formula, but I think we all kind of knew, at that time, he didn't have a leg to stand on. We were trying to get him to have a chance to have a leg to stand on, if he could find a new leg. But he couldn't do that. So we gave our opinion, I think, correctly. But I mean, you're right. We go a little bit a far, but I think we can be guilty of overstepping a little bit in the defense of the citizen trying to have his day in this hearing.

I don't know if that's good or bad by the way, but I think it covers the area of fairness about as far as you can go as a board. And that's one of the principals that we have.

WEIMER: So that's what I had for you this evening to kind of orient the new folks and take care of the requirement we need for electing the chairs and getting the minutes approve. I'm glad to answer any other questions any of you may have, and --

RYAN: No? Good. Thank you, John.

WEIMER: Okay. You're welcome.

RYAN: I appreciate that. So is the next issue I see, adjournment?

Oh, 8, 9, and 10. I don't want to forgot those three. Oh. Board discussion, request for research. I think we just kind of completed that. So summary of Board request from the Development Services Director.

Do you have any requests of us, Chairman?

RYAN: All right, then we've complied with that. Report from Development Services Director. I think you just completed that.

So adjournment, is that right, Paul? Is that what you have? Okay. So do I have a motion to adjourn our meeting?

A motion was made to adjourn by (indiscernible) and seconded by Board Member Hansen.

Meeting is adjourned.

Having no further business, Chairperson Ryan adjourned the Regular Meeting of the Board of Adjustment held on April 17, 2025, at 6:03 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 17 of April 2025. I further certify that the meeting was duly called and that a quorum was present.

DATED this 16 Day of October 2025.

\_\_\_\_\_  
Paula Woodward, Executive Assistant





# TOWN OF FOUNTAIN HILLS

## STAFF REPORT

**Meeting Date:** 10/16/2025  
**Meeting Type:** Board of Adjustment Regular Meeting  
**Submitting Department:** Development Services  
**Prepared by:** John Wesley, Development Services Director  
**Staff Contact Information:** Phone: 480-816-5138  
 Email: jwesley@fountainhillsaz.gov

### Request to Town Council Regular Meeting (Agenda Language)

**CONSIDERATION AND POSSIBLE ACTION:** Request for a variance to reduce the front yard setback from 40' to 20' in the R1-35 zoning district at 16512 E. Trevino Drive (north side of Trevino Dr., west of side of Nelson Dr.).

### 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 = R1-35**  
**Required Building Setbacks**  
**Front = 40'**  
**Side = 20'**  
**Street Side = 20'**  
**Rear = 40'**

**Background**

In 1995 the owner of Lot 4, Block 7 of Plat 403-B requested and received approval of a replat of the lot to divide it into two parcels, Lots 4A and 4B. Lot 4A contains the house that was on the original lot. Lot 4B is an oddly shaped corner lot. With corner lots, the street with the shorter dimension is considered the front for setback purposes. Therefore, the Trevino side is considered the front yard and buildings constructed on the property are

required to meet the front setback requirement along this street frontage.

This lot is zoned R1-35. The total lot area is 37,713 square feet.

The current owner of Lot 4B, who was not involved in the previous replat to create the lot, is ready to build a home on the property. The lot that was created has a very odd shape and is impacted by the steep topography as the lot slopes down from Trevino to Nelson. The buildable area that was provided on the lot is along Trevino.

A review of the topography prior to the development of the subdivision shows that when the property was platted and initially developed, the land along Trevino was graded to provide buildable areas for each lot. This was done for Lot 4 as a whole, but not for the subsequently plated Lot 4B.

### **Variance Request**

The applicants have requested the Board of Adjustment grant a variance to the required front yard setback for the R1-35 zoning district. The zoning ordinance required front yard setback in this zoning district is 40', the applicant is asking for a 20' setback, a reduction of 20'.

### **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 in their attached narrative. Staff's findings are noted below:

**1. There exist special circumstances or conditions regarding the land, building or use referred to in the application which does not apply to other properties in the district.**

Staff: There are three special circumstances or conditions for this lot that do not apply to other properties in the area.

First, is the way this lot was created. In the original platted subdivision for this area, this lot and the one to the west were platted as one lot and a development pad created for the home that was built. Subsequently, the owner of Lot 4 subdivided this large lot into the configuration today. This lot, Lot 4B, did not have the benefit of having a pad area prepared during the subdivision. In fact, it appears as if some additional dirt was piled in the front of the lot along Trevino creating a rise adjacent to the street.

Second, is the topography. There is a lot of steep property in Fountain Hills, including some of the surrounding lots. The Town's zoning ordinance includes a provision which allows buildings on lots with a slope of 30% or more to be brought to a 10' setback. Much of this lot meets this standard. The ordinance is written, however, that the measurement for the slop starts at the curb. Because of the mound in the front of the property, this lot does not meet the specific requirements to use this provision.

Third, is the shape of this corner lot. This lot has a very unique shape with its long, narrow frontage on Nelson, which is actually an exterior side yard. While the lot is big, over 37,000 square feet, much of it is unusable. The curve of Nelson significantly limits the buildable area behind the home. Staff finds there are special circumstances and conditions applicable to this property.

**2. Such special circumstances or conditions are preexisting and are not created by the owner or appellant.**

Staff: The lot shape and topography were not created by this property owner. A review of the contour lines from 1969 (prior to the development of this subdivision) compared to current contours shows that Lot 4 was graded to provide for the pad for the existing home on Lot 4A and that the slope on the buildable area of what became Lot 4B was slightly increased making it more challenging to build on.

Staff finds the circumstances and conditions were preexisting and not created by the owner or applicant.

**3. 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.**

Staff: The Town's zoning ordinance recognizes that the steep terrain in various areas of the Town does create a hardship to the use and development of property and allows for front yard setbacks to be reduced to 10' in certain circumstances. The slope on this lot is close to meeting those requirements. However, the fill that was added to the front of the lot at the time the subdivision was built disqualifies the lot for this zoning exception. Therefore, the owner has applied for this variance. Portions of the lot within the buildable area does meet the 30% slope criteria.

The Town has multiple objectives, some of which might be in conflict with each other. In addition to the setback and slope rules, the Town has a desire to minimize disturbance to the natural terrain and to minimize the use of retaining walls. Allowing the house to be moved toward the

southwest corner of the lot (i.e. toward Trevino) where the terrain is flatter will minimize the disturbance to the property and the need for retaining walls.

The previous owner has been working on plans for a home on this property. It has taken some time to come up with a plan that works within the setback using the previously approved variance to a 20' setback. It would have been far more challenging to accomplish a plan with the 40' setback. The plan that has been developed includes a parking area in front that will accommodate four vehicles in addition to the garage parking.

Staff finds that strict application of the zoning ordinance to this property will deny this property owner of privileges enjoyed by other property owners in the area.

4. **The 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.**

Staff: One concern with approving the variance would be the potential impact on the sight distance for drivers on Nelson trying to turn left onto Trevino. The existing topography makes this challenging. From the information provided, it appears that motorist stopped at the stop sign would still look in front of a house even with the desired setback.

One impact of reducing the setback along Trevino will be on the adjacent home to the west. If the variance is approved, the new home will sit in front of the existing home. It will not, however, create an impact on the side of the home that looks to the mountain views to the north and east.

Not granting the variance will require the house to be pushed closer to Nelson which will impact the setting along this street and increase the need for multiple retaining walls and encroachment into the natural desert.

Staff finds that approval of the variance will not constitute a grant of special privileges inconsistent with other properties in the vicinity.

#### **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 – Front Yard  
Zoning Ordinance Section 2.07.B – Variance  
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 that the Board of Adjustment FIND that of 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 front yard setback to 20' be APPROVED.

#### **Suggested Motion**

Move to adopt the findings outlined in the staff report and APPROVE the applicant's requested Variance from the provisions of Zoning Ordinance, Section 10.09 and allow a front yard setback of 20'.

OR

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

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#### **FISCAL IMPACT**

**Fiscal Impact:**

**Budget Reference:**

**Funding Source:**

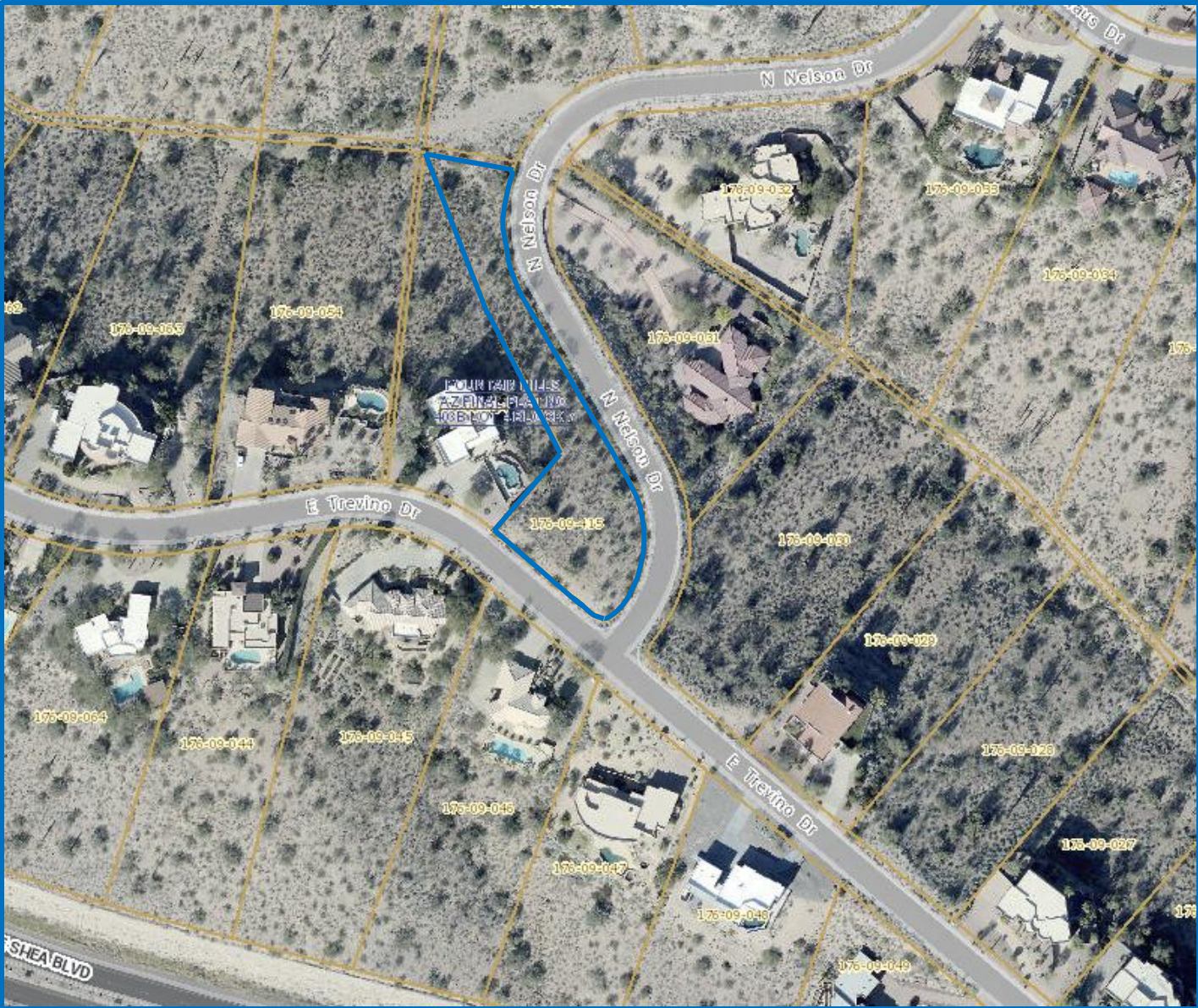
#### **ATTACHMENTS**

- |    |                                |
|----|--------------------------------|
| 1. | Trevino Case Details           |
| 2. | Variance for Trevino Narrative |



# Board of Adjustment Vicinity Map

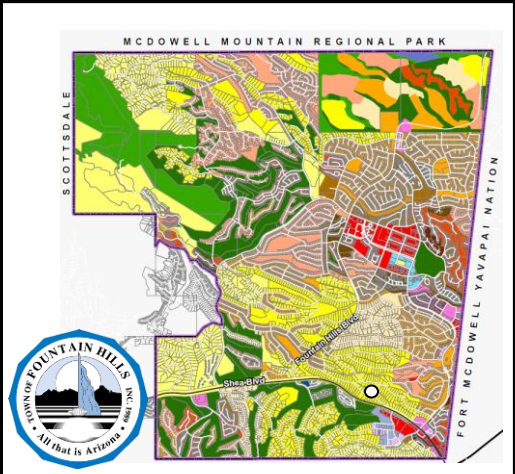
# Case Details



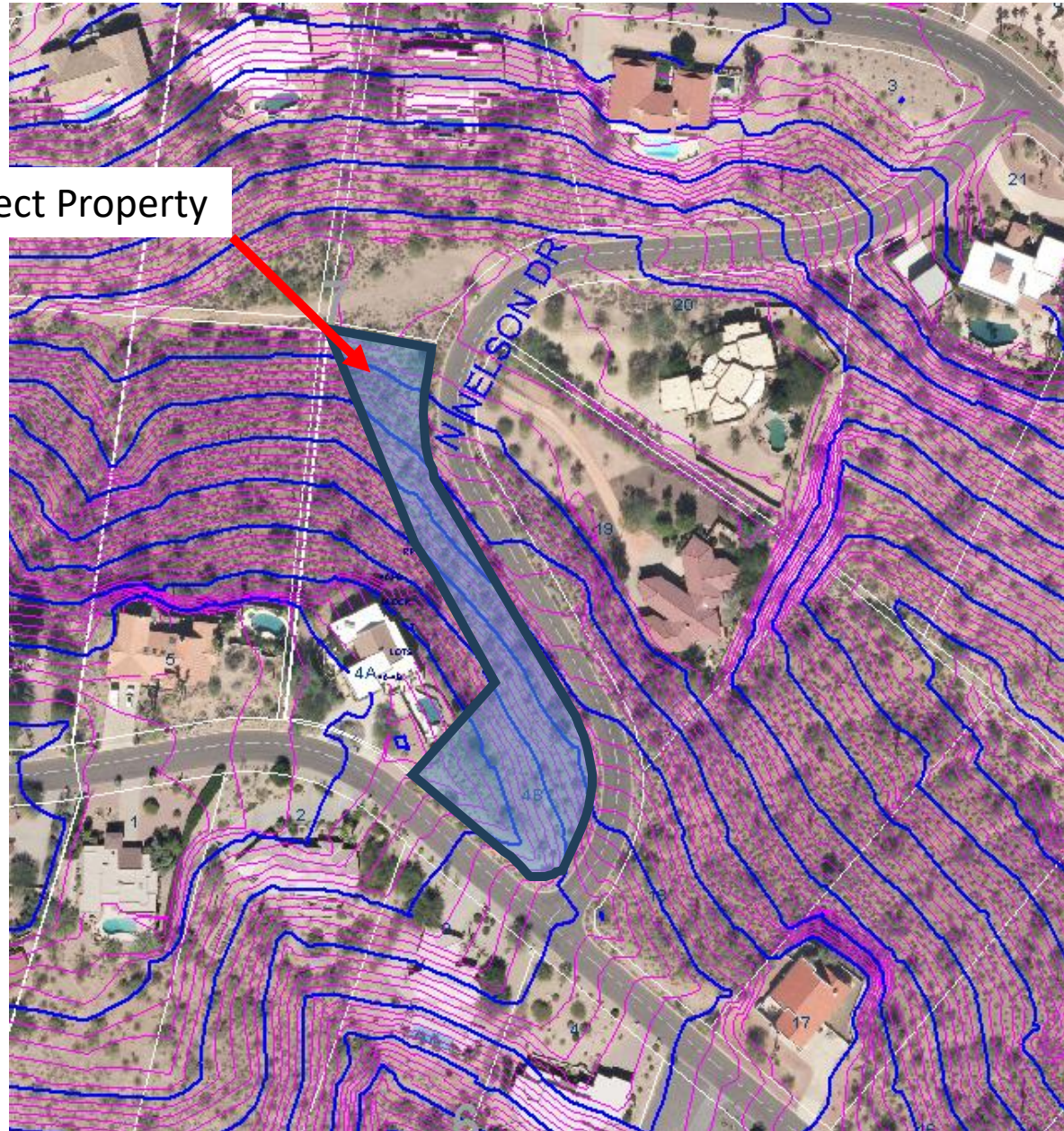
**CASE:**  
VAR25-000001  
**SITE / ADDRESS:**  
16512 E. Trevino  
APN #176-09-415

**REQUEST:**  
A variance to the required front yard setback, reducing the setback from 40' to 20' along Trevino Drive.

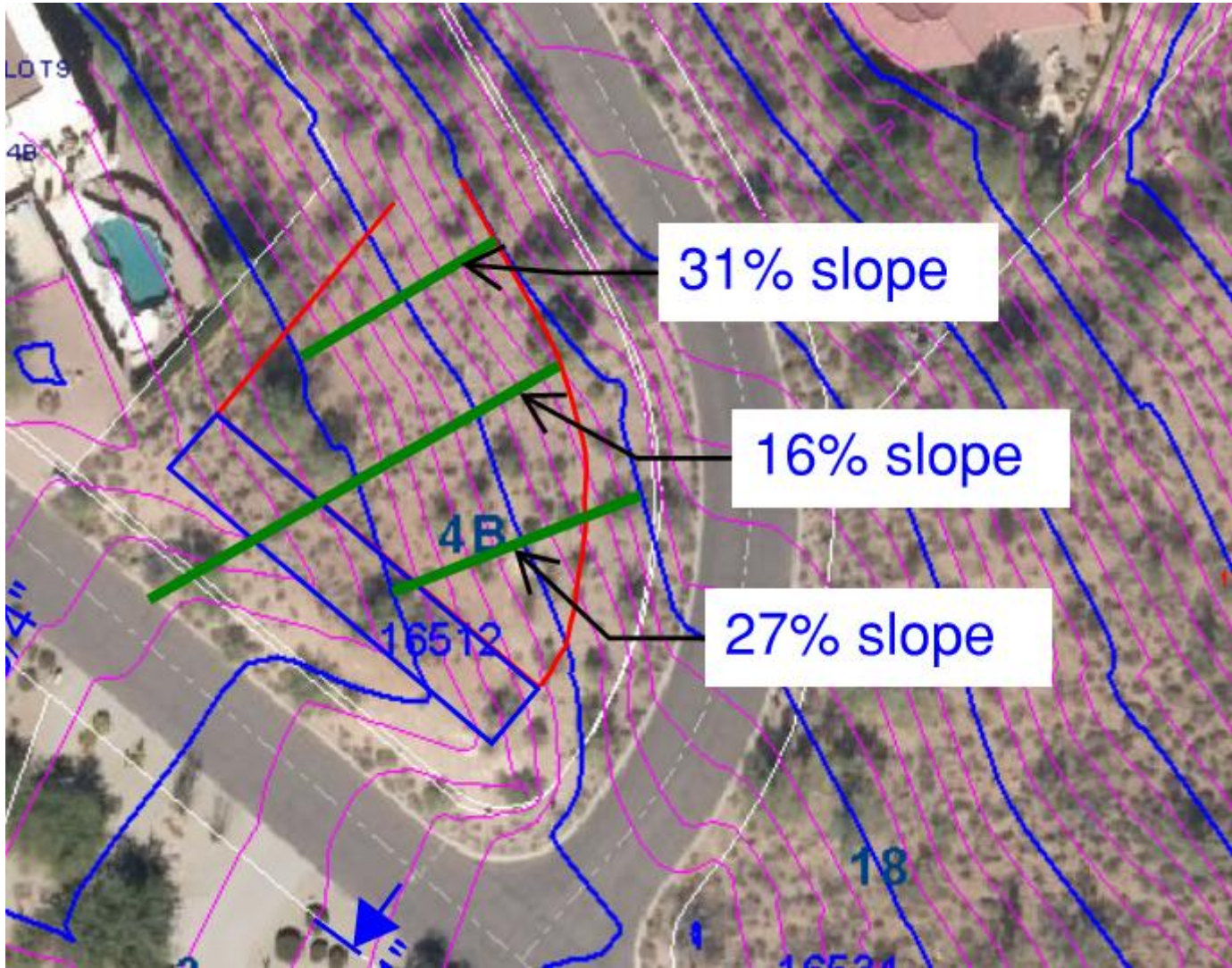
 Site Location

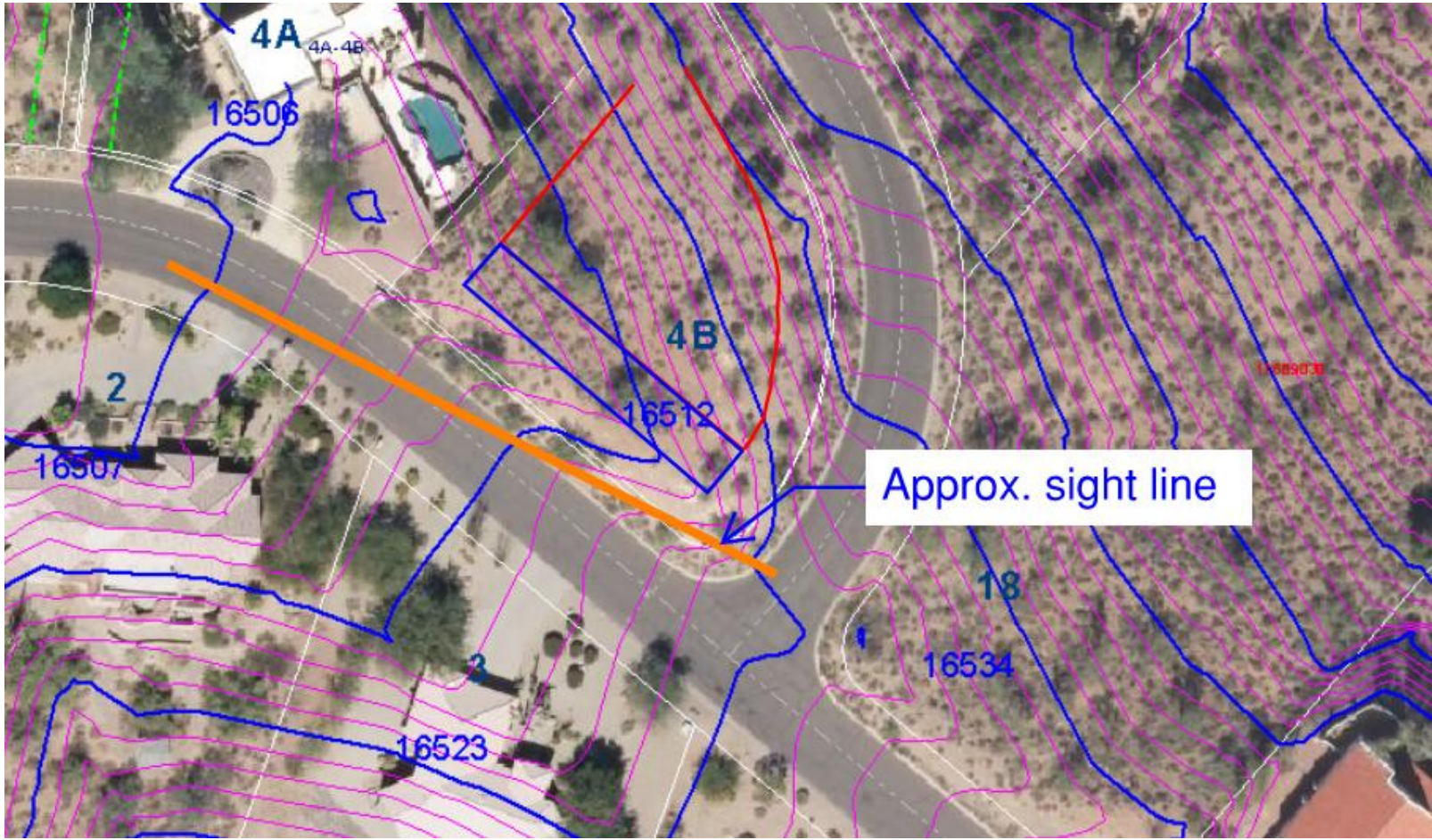


Subject Property









**Date:** September 11, 2025  
**Attention:** Town of Fountain Hills Planning and Zoning Department  
**From:** Jeremy Bell and Jamie Lando  
**RE:** Variance request for a 20' setback along Trevino Dr.  
16512 E. Trevino, Fountain Hills (APN: 176-09-415)

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This variance is requested to reduce the required front yard setback along Trevino Drive from 40' to a minimum of 20' in the R1-35 zoning district for property located at 16512 E. Trevino Dr. This variance was previously approved at the October 17<sup>th</sup>, 2019, Board of Adjustment meeting at the request of Thomas and Debra Garcia. (Prior approved Case #V2019-11).

The current owners, Thomas and Debra Garcia, had this variance approved in 2019, but since then they decided to sell the lot. We have a contract and are in escrow to purchase it. To build a single-story home, which is required because of the deed restriction placed on the lot, as the new purchasers, we were informed that we would have to submit the same variance request that was already approved for Thomas and Debra Garcia.

Without the approved variance remaining, the lot is not buildable due to the grade, slope, and the way it was previously split from the neighboring lot. In addition, the deed restriction recorded for this lot places a maximum height requirement for the home. The 20' setback is a reasonable request, evidenced by the previous approval by the Board of Adjustment in 2019, understanding that the variance request was (and still is) necessary for the lot to be built on. To note, there are no circumstances that have changed other than who is applying for the variance.

Please find below the specific findings which qualified this variance approval in 2019.

1. Special circumstances or conditions exist regarding the land, building, or use referred to in the application, which do not apply to other properties in the district.  
FINDING: MET
2. The above special circumstances or conditions are pre-existing and are not created or self-imposed by the owner or applicant.  
FINDING: MET
3. The variance is necessary for the preservation of substantial property rights. Without a variance the property cannot be used for purposes otherwise allowed in the district.  
FINDING: MET

4. The authorizing of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.

FINDING: MET

### **Explanation:**

In 1995 the owner of Lot 4, Block 7 of Plat 403-B requested and received approval of a replat of the lot to divide it into two parcels, Lots 4A and 4B. Lot 4A contains the house that was on the original lot. The subject lot, Lot 4B is an oddly shaped corner lot.

As a result of the lot split, the creation of the odd shaped lot as well as the deed restriction on maximum allowed building height, deems a single-story home is necessary. With a 40' setback requirement, the lot is negatively impacted and unable to adhere to the deed restriction. The granting of the variance in 2019 to Thomas and Debra Garcia reducing the 40' setback to a 20' setback allowed the lot to accommodate a single-story home thus meeting the burden of the existing deed restriction in place. Without the variance approval in 2019, the lot most likely would not be feasible for building. Therefore, the granting of the variance to Thomas and Debra Garcia, provided the ability for the lot to be designed with a single-story home. All we are requesting is that we be granted the same variance of a 20' setback requirement.

In 2019, Thomas and Debra were able to show the variance was necessary due to the following:

1. Creates a more suitable building envelope on the property.
2. Creates a superior spot for a single level home.
3. Reduces the impact on earth work required for a pad location.
4. Reduces the need for additional unnecessary retaining walls,
5. Creates a more seamless blending into the natural desert environment.
6. Reduces the effected disturbance into additional NAOS (Natural Area Open Space)

Note: All points above were confirmed by a professional grading professional contractor.

With corner lots, the street with the shorter dimension is considered the front for setback purposes. Therefore, the Trevino side is considered the front yard and buildings constructed on the property are required to meet the front setback requirement along this street frontage.

This lot is zoned R1-35. The total lot area is 37,713 square feet.

The lot that was created has a very odd shape, has building height deed restrictions put in place for the benefit of Lot 4A, and is impacted by the steep topography as the lot slopes down from Trevino to Nelson. The buildable area that was provided on the lot is along Trevino.

A review of the topography prior to the development of the subdivision shows that when the property was platted and initially developed, the land along Trevino was graded to provide buildable areas for each lot. This was done for Lot 4 as a whole, but not for the subsequently plated Lot 4B.

The approval of the variance in 2019 was at the recommendation of staff requesting that the Board of Adjustment find that the special conditions exist do not apply to other property, that the special conditions were pre-existing, that the variance is necessary to preserve property rights, and that the variance will not be materially detrimental to persons residing in the area.

As a result of all conditions still being met (no change since the variance was requested and granted in 2019), we respectfully request that the Board of Adjustment approve our variance request which is the exact same variance approval that was provided to Thomas and Debra Garcia.

## **Town of Fountain Hills Board of Adjustment meeting Oct 17, 2019.**

FINDING: Variance was approved for 20' setback from Trevino Dr.

**Zoning District = R1-35**

**Required Building Setbacks**

**Front = 40'**

**Side = 20'**

**Street Side = 20'**

**Rear = 40'**

**Staff Summary** (background):

In 1995 the owner of Lot 4, Block 7 of Plat 403-B requested and received approval of a replat of the lot to divide it into two parcels, Lots 4A and 4B. Lot 4A contains the house that was on the original lot. Lot 4B is an oddly shaped corner lot. With corner lots, the street with the shorter dimension is considered the front for setback purposes. Therefore, the Trevino side is considered the front yard and buildings constructed on the property are required to meet the front setback requirement along this street frontage.

This lot is zoned R1-35. The total lot area is 37,713 square feet.

The current owner of Lot 4B, who was not involved in the previous re-plat to create the lot, is ready to build a home on the property. The lot that was created has a very odd shape and is impacted by the steep topography as the lot slopes down from Trevino to Nelson. The buildable area that was provided on the lot is along Trevino.

A review of the topography prior to the development of the subdivision shows that when the property was platted and initially developed, the land along Trevino was graded to provide buildable areas for each lot. This was done for Lot 4 as a whole, but not for the subsequently plated Lot 4B.

### **Request for Variance from Zoning Ordinance Section 10.09, Front Yard Setback in R1-35:**

The applicants have requested the Board of Adjustment grant a variance to the required front yard setback for the R1-35 zoning district. The zoning ordinance required front yard setback in this zoning district is 40', the applicant is asking for a 10' setback, a reduction of 30'.

**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 exist special circumstances or conditions regarding the land, building or use referred to in the application which does not apply to other properties in the district.**

Staff: This lot was created after the subdivision was built and a house was built on a portion of the original lot. The topography of the property is very steep as it first rises from Trevino and then slopes down toward Nelson. While there is enough of a low slope area next to Trevino to keep the lot from qualifying for the hillside exception in Section 5.10 of the Zoning Ordinance, much of the lot within the building setback area is near or over the 30% slope criteria which would allow a 10' setback.

The shape of this lot is very unique with its long frontage on Nelson which is actually an exterior side yard. Given the development pattern in the area, keeping houses pushed back from Nelson would help maintain the open view and natural topography and landscaping along this street.

**2. The above special circumstances or conditions are preexisting and are not created or self-imposed by the owner or applicant.**

Staff: The lot shape and topography were not created by this property owner.

A review of the contour lines from 1969 (prior to the development of this subdivision) compared to current contours shows that Lot 4 was graded to provide for the pad for the existing home on Lot 4A and that the slope on the buildable area of what became Lot 4B was slightly increased making it more challenging to build on.

**3. The Variance is necessary for the preservation of substantial property rights. Without a Variance the property cannot be used for purposes otherwise allowed in this district.**

Staff: The Town's zoning ordinance recognizes that the steep terrain in various areas of the Town does create a hardship to the use and development of property and allows for front yard setbacks to be reduced to 10' in certain circumstances. The slope on this lot is close to meeting those requirements, but does not fully. Therefore, the owner has applied for this variance. Portions of the area within the buildable area does meet the 30% slope criteria.

The Town has multiple objectives, some of which might be in conflict with each other. In addition to the setback and slope rules, the Town has a desire to minimize disturbance to the natural terrain and to minimize the use of retaining walls. Allowing the house to be moved

toward the southwest corner of the lot (i.e. toward Trevino) where the terrain is flatter will minimize the disturbance to the property and the need for retaining walls.

4. **The authorizing of the Variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.**

Staff: One concern with approving the variance would be the potential impact on the sight distance for drivers on Nelson trying to turn left onto Trevino. The existing topography makes this challenging. From the information provided, it appears that motorist stopped at the stop sign would still look in front of a house even with the desired setback.



One impact of reducing the setback along Trevino will be on the adjacent home to the west. If the variance is approved, the new home will sit in front of the existing home. It will not, however, reduce the impact on the side of the home that looks to the mountain views to the north and east.

Not granting the variance will require the house to be pushed closer to Nelson which will impact the setting along this street.

**Compliance with State Law:**

Staff recommends that the Board of Adjustment FIND that the special conditions exist that do not apply to other property, that the special conditions were pre-existing, that the variance is necessary to preserve property rights, and that the variance will not be materially detrimental to persons residing in the area and approve the requested variance.

**Risk Analysis** (options or alternatives with implications): NA

**Fiscal Impact** (initial and ongoing costs; budget status): NA

**Staff Recommendation(s):**

Staff recommends that the Board of Adjustment FIND that of 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 be APPROVED.



# TOWN OF FOUNTAIN HILLS

## STAFF REPORT

Meeting Date: 10/16/2025  
 Meeting Type: Board of Adjustment Regular Meeting  
 Submitting Department: Development Services  
 Prepared by: John Wesley, Development Services Director  
 Staff Contact Information: Phone: 480-816-5138  
 Email: jwesley@fountainhillsaz.gov

### Request to Town Council Regular Meeting (Agenda Language)

**CONSIDERATION AND POSSIBLE ACTION:** Request for a variance to reduce the rear yard requirement from 25 feet to 10 feet in the R1-8 zoning district at 17324 E Baca Drive.

### 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 = R1-8**  
**Required Building Setbacks**  
**Front = 20'**  
**Side = 7'**  
**Street Side = 20'**  
**Rear = 25'**

**Background**

This area of Fountain Hills was platted in 1972 as Final Plat No. 431. Most of the lots in this portion of the plat are a consistent 85' wide by 125' to 134' deep. The area zoned R1-8 which requires a minimum lot size of 8,000



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

Staff: The placement of the house on the lot creating the nearly unbuildable rear yard was not created by this property owner.

The property owner does have room in the front yard for a gazebo, but that area lacks the desired privacy and does not relate well to the functioning of the house.

Staff finds the current owners did not create the situation, 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.**

Staff: In most cases, homes are built closer to the front setback for cost and ease of building, leaving the rear yards for the use and enjoyment of the homeowners. Other homes in this same area with the same zoning district that do not have the homes pushed so far back on the property have accessory structures in their rear yards. The lots on the opposite side of Baca are the same size as this lot but typically have rear yards in excess of 50', leaving penalty of room for accessory structures in the rear yard.

Staff finds that other properties in the area with similar sized lots with the same zoning are able to add usable accessory structures in their rear yards.

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.**

Staff: There are other homes along the north side of Baca Drive that are pushed to the rear of the lot, leaving little to no room for backyard amenities. Staff is not aware of any other requests for similar variances along this street. 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.

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

#### **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**

#### **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 10' 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 an accessory structure on 10'.

OR

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

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#### **FISCAL IMPACT**

**Fiscal Impact:**

**Budget Reference:**

**Funding Source:**

**ATTACHMENTS**

- |   |
|---|
| <ol style="list-style-type: none"><li>1. Baca Case Details</li><li>2. WrittenStatementVarianceRequest</li></ol> |
|---|

# Board of Adjustment Vicinity Map

# Case Details

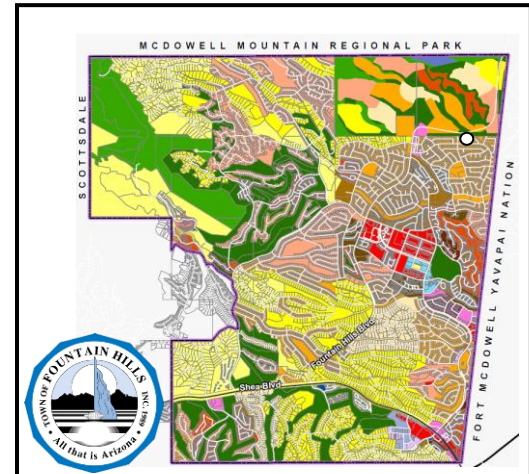


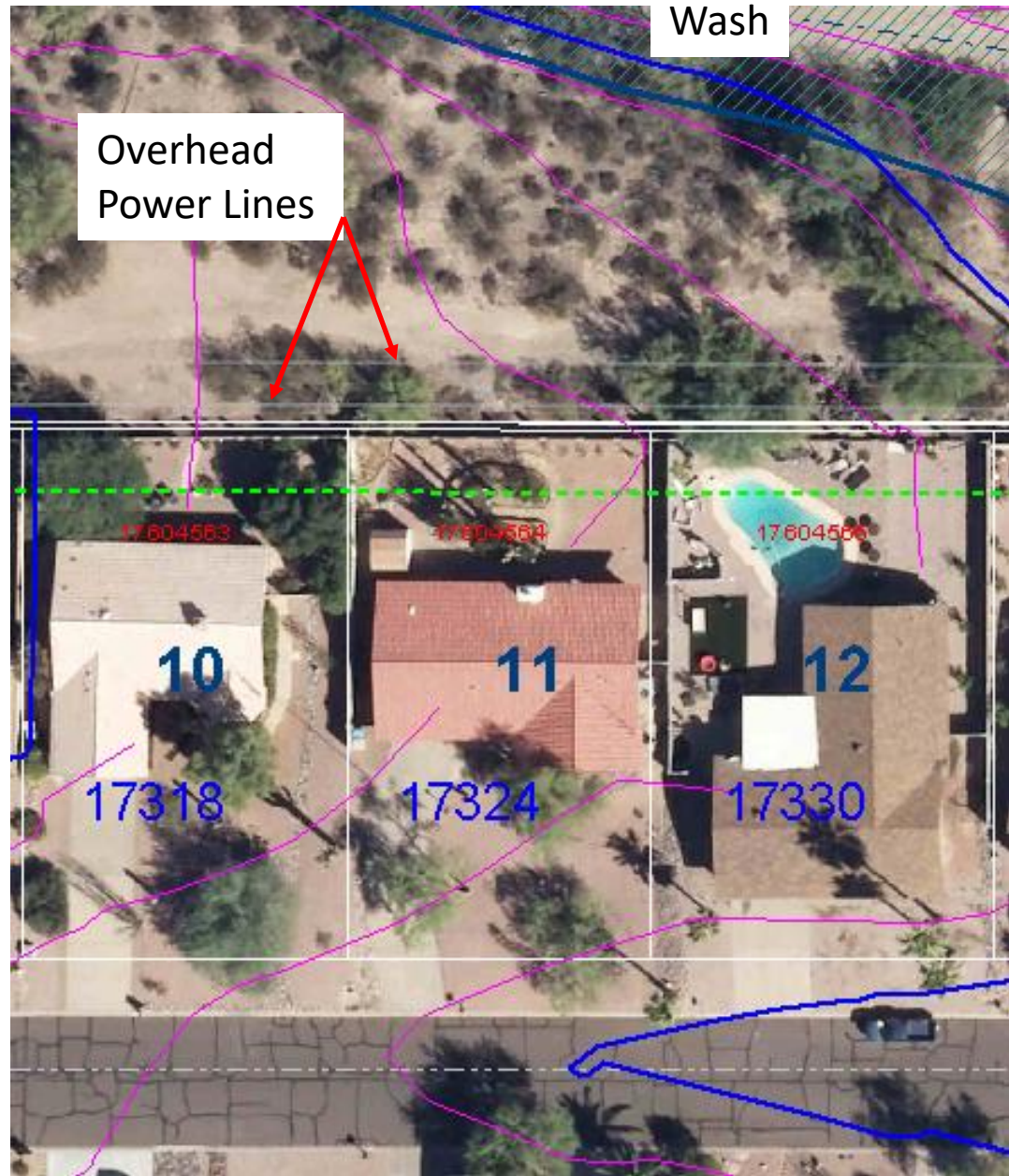
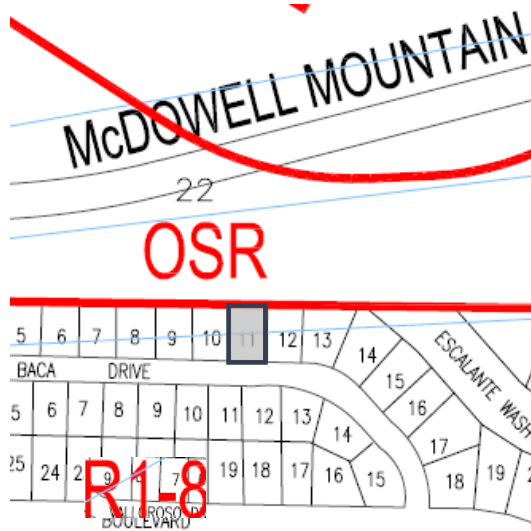
**CASE:**  
VAR25-000002

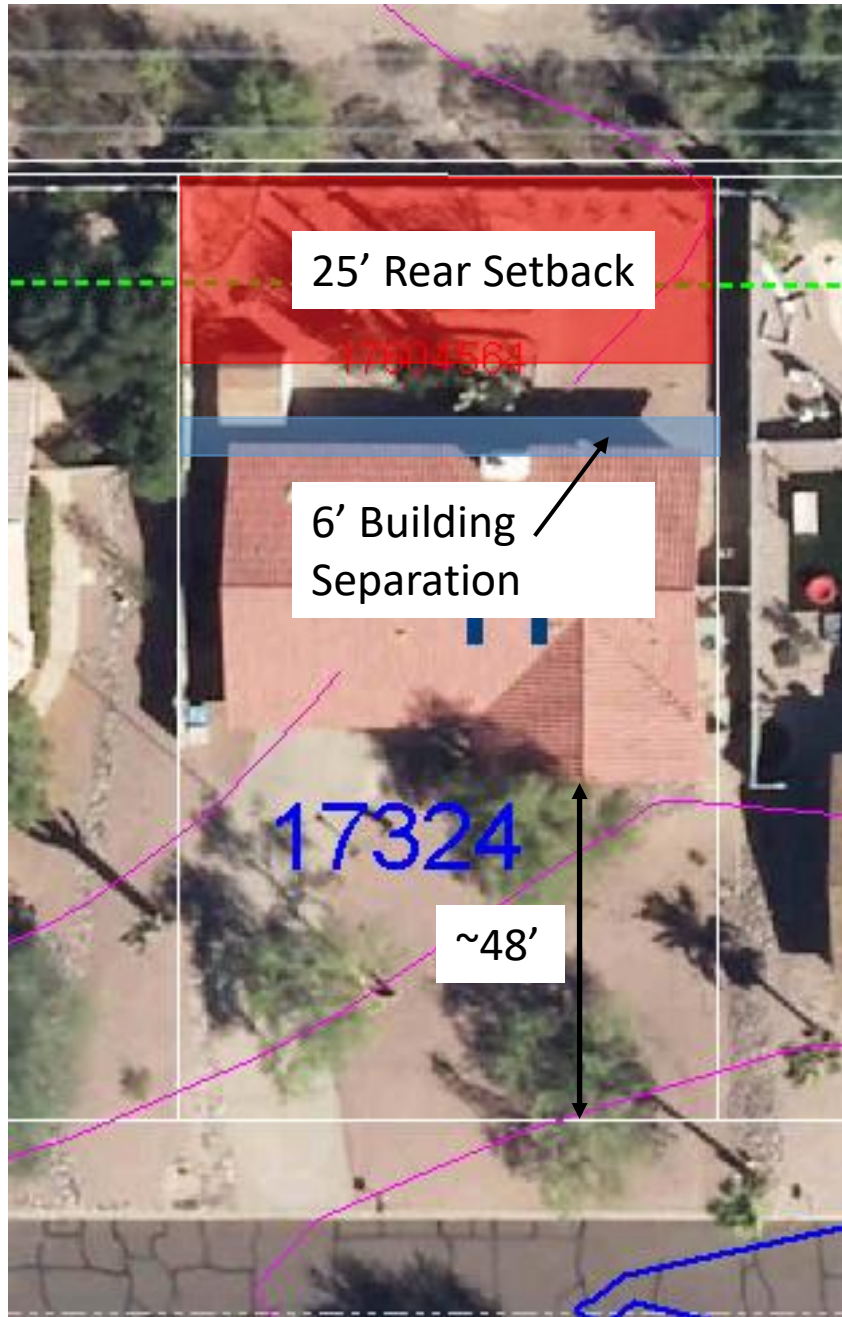
**SITE / ADDRESS:**  
17324 Baca Dr.  
APN #176-04-564

**REQUEST:**  
A variance to the required rear yard setback, reducing the setback from 25' to 10'

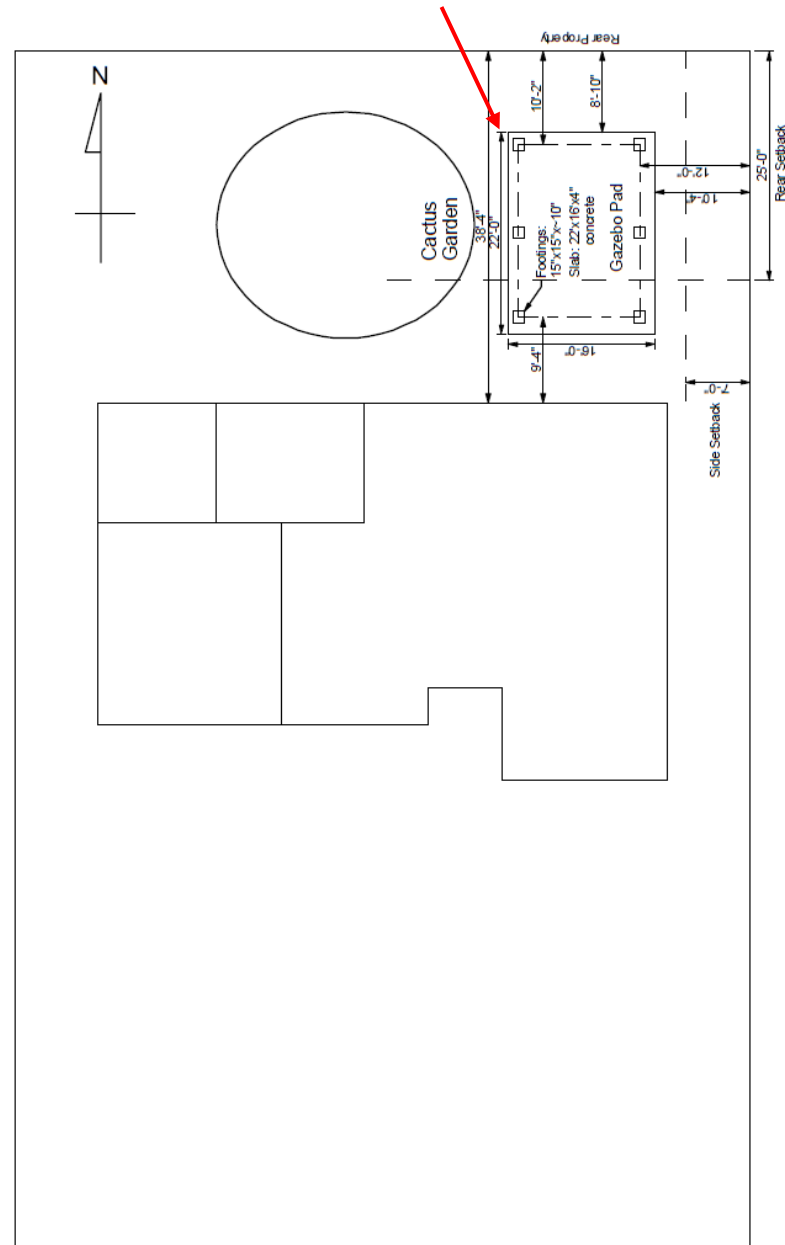
 Site Location







## Requested Development



**Zoning Variance Request Application:**

**Permit # B25-000259, 17324 E BACA DR.**

**2. Application.**

**a. Application.** Applications for a variance shall be filed electronically on the Town's website by an owner of real property impacted by the application of the Zoning Ordinance using the process established by the Director for such applications. All such applications shall include the information required in this section.

**b. Project Narrative.** A written statement which includes:

**i. A narrative describing:**

**(1) The existing and proposed use of the property;**

*The property's current and proposed use is for owner-occupied residential purposes. The owners are proposing the installation of a backyard gazebo, 13'2" x 18'10" in size, that will be offset 10'-2" from the rear (north) boundary of the property and offset 12'-0" from the side (east) property boundary.*

**(2) The Zoning Ordinance provision that prohibits the desired development;**

*Section 5.06 G of the zoning ordinance specifies the gazebo, a large accessory structure, must meet the same setback requirements as the principal structure, which is zoned R1-8 and requires a rear setback of 25'.*

**(3) The hardships that will occur if a variance is not granted; and**

*If the variance is not granted, the home owners, through no fault of their own, will be deprived of enjoyment of the many year-round, daytime and nighttime, outdoor activities that require covered shelter, such as hosting meals and/or cards for their neighborhood social circle. The primary residence was constructed with an atypically large 51-57' front offset, which resulted in shallow backyard that is only 38'-4" deep. Once the rear (25') and dwelling (6') setback allowances are subtracted, there is effectively no space to construct a large accessory structure capable of hosting the gathers we enjoy at other neighbors' backyards.*

*Furthermore, without the variance the owners cannot utilize the 15' of backyard depth requested in the variance without exposing themselves to a measurable electric field from the power lines adjacent the rear property boundary, which is something that owners whose property is not next to power lines enjoy. The owner measured radio frequency (RF) levels at the rear property boundary at 1,000 V/m that tapered off at 25'. The petitioners understand there are no established U.S. safety guidelines for power line RF exposure that would deem these level*

*harmful, but the petitioners prefer to error on the side of caution and a metal gazebo acts as a Faraday cage that effectively blocks the electric field.*

**(4) The relief sought by the variance.**

*The petitioners seek 15' (14'-10") of relief from the required 25' rear setback.*

**ii. A map or other illustration or documentation showing the nature of the property, the proposed development and/or other conditions justifying the variance request.**

(separate file: VarianceSite\_V1.pdf)

**c. A list of names and addresses for all property owners within three hundred (300) feet of the exterior boundaries of the property for which an application is made.**

(separate file: VarianceMailingList.pdf)