

Zoning Administrator Hearing

Minutes



**John S. Gendron
Hearing Officer**

August 4, 2009 – 1:30 p.m.

View Conference Room, 2nd Floor
55 North Center Street
Mesa, Arizona, 85201

Staff Present

Jeff McVay
Mia Lozano-Helland
Lesley Davis
Tim Lillo
Wahid Alam

Others Present

Grace Giguere
Dan Magee
Judith Drayer
Ben & Laura Searle
Ken Reid
Ben Riding

CASES:

Case No.: ZA09-031

Location: 119 West 3rd Place

Subject: Requesting a variance to allow a garage addition to encroach into the required side yard setback in the TCR-1 zoning district.

Decision: Request denied

Summary: Mr. Gendron explained the required findings, by state law that must be in place to allow him to approve the variance. Jim Dunn, the owner, represented the case and gave a summary of the project and his assumptions regarding the property lines based on the driveway locations. Mr. Gendron asked if he hired a surveyor to make certain of the property lines, Mr. Dunn responded no and that he performed the construction work himself. Mr. Dunn explained that he was issued a building permit in 2000, but never completed a final inspection. Dan Magee, representing neighboring property owner Grace Giguere, explained that after having the property surveyed it was found that Mr. Dunn's project is actually 1' from the property line with the roof overhang over the property line. Ms. Giguere explained that she complained to the City that there was an encroachment problem in 2006 or 2007. Wahid Alam provided a brief staff report and recommendation noting the facts related to the case. Mr. Gendron denied the request based upon lack of special circumstances and sufficient justification not based on self-imposed hardships.

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Finding of Fact:

- 1.1** The subject property is located within the West 2nd Street Historic District in the Mesa Town Center Redevelopment area zoned TCR-1. The subject property/lot is 14,810 square feet in size and original house was built in 1930. The Town Center Residential District, TCR-1 for single residence requires minimum setback of 15 feet in front and rear and 5 feet on side.
- 1.2** In February 2000 the applicant received a building permit # 189072 to build a RV garage of 336 square feet (12'x28'x9'-6") and a semi-enclosed patio of 385 square feet (22'x17'-6"x 8'). The site plan submitted with the approved permit indicated an 8 foot side yard setback along the east property line.
- 1.3** At the time of construction it was determined that the 8-foot setback in reality was only 2 feet. Therefore the existing RV garage was encroaching into the required side yard for TCR-1 Zoning District. Due to the error in the site plan and the encroachment, the building permit never received a final inspection.
- 1.4** Since the construction of the RV garage, the City has received complaints regarding the encroachment. The applicant requested a variance to resolve the existing RV garage encroachment into the required side yard.
- 1.5** The applicant's primary justification related to a survey marker 8-feet west of the driveway apron that was mistaken as the property boundary. The justification also provided a history of the inspections that occurred for the addition without enforcement of the setback requirements. Further, the applicant provided evidence of a similar setback for a carport at 112 W. 3rd Place as evidence that such setbacks have been historically allowed.
- 1.6** The justification provided by the applicant for the request does not relate to a unique condition of the parcel, rather the justification relates to a self-imposed hardship (an error in site planning). While evidence was provided of similar setbacks, the granting of a variance for this reason constitutes the granting of special privilege. The subject property is 14,810 square feet in size and has sufficient area to construct a carport (attached or detached) consistent with the TCR-1 setback requirements.
- 1.7** Additionally, staff notes that the addition to this historic property, originally constructed in 1930, required historic clearance from the City for its appropriateness in scale, context and character.

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Case No.: ZA09-032

Location: 537 South Higley Road

Subject: Requesting a modification to a Special Use Permit and Substantial Conformance Improvement Permit to allow the expansion of an Assisted Living Facility in the O-S zoning district.

Decision: Approved with the following conditions.

1. *Compliance with the site plan and landscape plans submitted, except as modified by the conditions below.*
2. *The number, size and placement of trees and shrubs shall be consistent with the amount of landscaping required per §11-15-3 of the City of Mesa Zoning ordinance.*
3. *Compliance with all requirements of case Z09-012 and case DR09-013.*
4. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Summary: Ben Searle represented the case and provided a history of the project and stated that he has received calls of support from the adjacent property owners. Ms. Davis provided the staff report and recommendation. Mr. Gendron asked about compatibility with the surrounding neighborhood, parking requirements based upon the physical condition of the residents, number of employees and site plan requirements. After clarification of the items requested, Mr. Gendron approved the request with staff conditions.

Finding of Fact:

- 1.1** The request involves modifications to a previously approved Substantial Conformance Improvement Permit (SCIP) for an Assisted Living Facility. (ZA06-42) The previously approved modifications are a 10' setback along the north property line and a reduced building separation for an expansion of the facility, including a second building. The applicant submitted a revised site plan for the expansion, without full compliance of current development standards. The SCIP will accommodate an 836 s.f. addition to the existing 3,959 s.f. building, and a new 7,944 s.f. building. There will be a total of 27 bedrooms at completion. The request received site plan approval (Z09-12) and Design Review Board approval (DR09-013).
- 1.2** The project includes deviations in the building and landscape setbacks along the north property line and Higley Road. The project will maintain the previously approved 10' setback along the north property line. (ZA06-042) The current plan will shift the building to the east. This will move the new building closer to the homes, but still maintaining the required 20' building and landscape setback. The shift in building location allows conformance with the building separation requirement.
- 1.3** The new location of the trash enclosure creates an additional deviation to code not discussed as part of the previous cases. The enclosure encroaches 15' into the required 30' setback along

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Higley Road. There is a paved back-up space for the Solid Waste vehicle that encroaches into the setbacks. The paved area will encroach into the required 30' setback along Higley Road and the 15' setback along the south property line, where the paved area will be within one foot of the south property line. The location of the trash enclosure is an ongoing issue for this development. The applicant explored all other options with the Solid Waste and Transportation Departments and the location identified on the site plan, with the back-up area, is the only location that conforms to their department standards. Any other location will create a new non-conformity and will preclude this site from any expansion.

- 1.4** The Design Review Board reviewed this project and required that the pavement area in front of the enclosure including the back-up space be a colored or textured pavement to soften the impact. Also, at the direction of the Design Review Board, the design of the Solid Waste enclosure was enhanced and a new enhanced sign was designed to be placed in front of the enclosure to mitigate the visual impact of the Solid Waste enclosure at the entry to the development. (DR09-013).
- 1.5** The development does qualify for a Substantial Conformance Improvement Permit, as demolition of the existing building will have to occur to bring the site into full compliance. The applicant's improvements to the property, include updating the building and installing enhanced landscape areas along Higley Road and throughout the property providing the occupants with usable common areas and enhanced pavement treatments. The site improvements generally exceed that of adjacent properties. Further, the new landscaping, enhanced sign design and pavement treatments enhance the streetscape along Higley Road. As a result, the site plan, including the recommended conditions of approval, achieves substantial compliance .
- 1.6** The development is consistent with the General Plan designation of Medium-Density Residential 4-6 du/acre, and is an allowed use in the O-S zoning district subject to the granting of a Special Use Permit. The deviations are necessary to accommodate the development and are commensurate with previous approvals for the site. The project presents a reasonable use and has been designed to maintain a residential character while meeting the intent of the Design Guidelines. Consequently, the site plan, including staff recommended conditions of approval, represents compliance with the intent of the development standards of the Zoning Ordinance .
- 1.7** The applicant completed the Citizen Participation Process for the Planning and Zoning Board and for the Zoning Administrator Hearing. They also completed the neighborhood notification process required by the Design Review Board. Staff received one call from the Home Owner's Association President for the neighborhood to the east. He confirmed the specifics of the request, but did not raise any concerns with the proposal.
- 1.8** The buildings are one-story in height and are designed with a residential character and meet setback and landscape requirements adjacent to residences. The subject site, located on Higley Road, previously was approved for this use and will not generate a noticeable increase in traffic on Higley Road. Given the nature of the use, the noise impact is anticipated to be minimal. Consequently, the use will be compatible with and not detrimental to surrounding properties

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Case No.: ZA09-033

Location: 1019 East Nielson

Subject: Requesting a variance for a reduction of side yard setbacks to allow the construction of a carport and patio enclosure in the R1-6 zoning district.

Decision: Approval with the following conditions.

1. *Compliance with the site plan submitted except as modified by the.*
2. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Summary: Ken Reed, the contractor, represented the case. Mr. Gendron asked for the reason that a variance is being requested. Staff member Lillo responded that the property was built at a time when the side yard setbacks were reduced from the current code requirements and that the variance is a technical requirement. Ben Riding, representing the property owner residing directly to the rear of the subject property, objected to the property owner using the rear yard for the required 2 parking spaces. This is due to a future desire by neighbors to abandon the alley or to gate the alley from unauthorized. A discussion followed regarding the use of the 2 parking spaces in the rear and access to them by the owner. Mr. Gendron granted the variance with staff conditions.

Finding of Fact:

- 1.1 The side yard setbacks for this property when originally constructed were 6' and 7'. Current code requires a minimum of 5' and 10' for side yard setbacks.
- 1.2 The conditions are pre-existing and not self imposed.
- 1.3 The granting of this variance does not constitute a grant of special privilege. .
- 1.4 The carport/patio enclosure is located on the west side of the property and has a side yard setback of 5'. The property has access to the rear yard via an alley. A 20'x20' parking area will be provided in the rear yard to comply with parking requirements.

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Case No.: ZA09-034

Location: 1661 North Forest

Subject: Requesting a Variance to allow a fence to exceed the maximum permitted height in the required front yard in the R1-43 zoning district.

Decision: Application withdrawn

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There being no further business to come before the Zoning Administrator, the hearing adjourned at 2:12 p.m.

The cases for this hearing were digitally recorded and are available upon request.

Respectfully submitted,

John S. Gendron
Hearing Officer

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