

## Board of Adjustment

### *Staff Report*

**CASE NUMBER:** BA16-040  
**STAFF PLANNER:** Kaelee Wilson  
**LOCATION/ADDRESS:** 2222 North Val Vista Drive #9  
**COUNCIL DISTRICT:** Council District 1  
**OWNER:** Scott and Sarah Johnson  
**APPLICANT:** Kendall Baxley

**REQUEST:** *Requesting Variances to allow: 1) a detached accessory dwelling unit, and 2) a detached garage, both to encroach into required side and rear yard setbacks, and to exceed the maximum building height of detached structures in the RS-35 PAD zoning district. (PLN2016-00555)*

#### **SUMMARY OF APPLICANT'S REQUEST**

The applicant is requesting two variances to allow a detached garage to encroach into the side yard setback and an existing detached accessory living quarters to encroach into the rear and side yard setbacks. A variance to allow the detached buildings to exceed the maximum height was advertised but based on additional research, is not applicable.

#### **STAFF RECOMMENDATION**

Staff recommends **denial with enforcement notations** of case BA16-040.

1. *The oven and stove shall be removed within the detached accessory building.*
2. *A building permit shall be issued and completed for the detached accessory building and the ramada.*

#### **SITE CONTEXT**

**CASE SITE:** Existing single residence – Zoned RS-35PAD  
**NORTH:** Existing single residence – Zoned RS-35PAD  
**EAST:** Existing community tennis courts – Zoned RS-35PAD  
**SOUTH:** Existing single residence – Zoned RS-35PAD  
**WEST:** Existing single residence – Zoned RS-35PAD

#### **STAFF ANALYSIS**

The applicant is requesting to construct a detached, side entry garage within the side setback on the east end of the property. In researching the case, it was discovered the detached accessory living quarters in the western end of the rear yard that encroaches within the rear and side setbacks was not permitted. The existing detached accessory living quarters is approximately 10' from the west side property line and 3' from the rear property line. These setbacks would be sufficient given the building did not contain livable space. The distinction between a casita and pool house is based on the addition of an oven and/or cooktop. In this circumstance, the building contains a cooktop, defining the building as a casita.

In doing additional research, there was a permit application submitted in 2004 by the current property owner for the detached accessory building "pool house" and the ramada. The plans were reviewed and approved, but the

permit was never completed and has since expired. At some point in time additional appliances were added to the detached building that reclassifies the building as a casita. Detached buildings that are used as living quarters are required to meet all the building setbacks of the zoning district; however, detached accessory buildings are allowed to encroach into setbacks given height and size requirements. The detached accessory living quarters meets the setbacks for a detached accessory building with no livable space. Staff does not feel that the request for this building to encroach into the rear setback is justified. The conversion on the pool house into a casita and not following through on the completion of the permits is a self imposed hardship. Staff is recommending denial of this request with enforcement notations that the building permit be completed.

Detached buildings that exceed 10 feet in height are required to meet side setbacks but are allowed to encroach into the rear setback. Since the detached building is existing and is over ten-feet in height, the building establishes the west side setback at 10 feet. If the west side yard setback is 10 feet, the minimum required east side setback is 20 feet based on the established PAD standards for Avalon Groves. The applicant is requesting a detached garage to be setback 7 feet from the east side property line, a 13-foot encroachment. The applicant has noted the following as justification: 1) the lot is irregular shape and is smaller than surrounding lots; 2) the current configuration of the home would not allow the attachment of the garage which would prevent accesses; 3) a tandem garage is not practical; 4) the small lot size is not self-imposed; 5) without the garage addition, the owner's children will have no place to park except in the street which isn't allowed by the HOA; 6) the neighborhood tennis courts are adjacent to the east property line so there wouldn't be a negative visual impact; and 7) the HOA is in support of the request.

The applicant has noted the small lot size as justification of the variance request. The lot is standard size for the subdivision. There are lots within Avalon Groves that are smaller and some that are larger. The subject lot is over 100' wider than required of RS-35 zoning district lots. The lot depth is approximately 50' shorter. Given the requested variance to encroach into the side yard, the subject property already has an advantage over other RS-35 lots given the additional width.

The Board of Adjustment must find the following items are present to approve a variance:

- a) *There are special conditions that apply to the land or building.*
- b) *The special condition was pre-existing and not created by the property owner.*
- c) *That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.*
- d) *The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.*

***There are special conditions that apply to the land or building and the special condition was pre-existing and not created by the property owner:***

The home is part of the Avalon Groves subdivision that is zoned RS-35 PAD. The PAD overlay allowed for the private drives and variation and deviations in lot sizes and dimensions. The subject property is 31,065 square feet and approximately 250' wide and 100' deep. The Zoning Ordinance requires all RS-35 lots that are not part of a PAD to be a minimum of 35,000 square feet, 130' wide and 150' deep. The "irregular" shape of the lot works to the benefit of the property owner because it gives the lot an additional 120 feet in width over other RS-35 lots. It is also important to note the wide, shallow lots are common within the Avalon Subdivision. The Avalon Groves CC&Rs restrict front entry garages and requires side entry; however, CC&R's are not a special condition.

***Strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district:***

The applicant has an existing garage that is attached to the home. The applicant has the option of extending the garage to create a tandem garage. Although the applicant has identified within the justification and compatibility statement that a tandem garage is not practical, it is a viable option to have additional covered parking spaces that comply with the required 20' side setback. The applicant also noted the homeowner's children will have no place to park except on the street, which is not allowed per the CC&Rs. Even without the granting of the variance, there is available parking on the driveway.

***The variance would not constitute a special privilege unavailable to other properties in the vicinity and the zoning district of the subject property:***

The granting of this variance would constitute special privilege to the property that is unavailable to other properties within the vicinity and the zoning district. As stated previously, the lot is much wider than allowed by the Zoning District. The homeowner established the 10-foot side yard with the construction of the detached building on the west side of the home, which by default, established the 20-foot side setback on the east side of the property. The subject lot is not the smallest lot in the subdivision and the configuration of the lot is common in Avalon Groves.

**FINDINGS**

1. The granting of this variance would constitute a privilege to this homeowner over other properties in Avalon Groves and RS-35 lots.
2. There are not special conditions that were preexisting that exist on the property.
3. Strict compliance of the Zoning Ordinance does not deprive the property owner of other privileges enjoyed by other property owners.
4. The homeowner has the option of extending the existing garage into a tandem garage.
5. The detached "pool house" that was illegally converted to a casita will need to be converted back to a pool house through the permitting process and the removal of the cooktop.

## **ORDINANCE REQUIREMENTS**

### Zoning Ordinance, Sec 11-5-3: Development Standards for the RS District

**RS-6** – Front -10', Front Garage-20', Sides – 10' & 5' and Rear-10'

### Zoning Ordinance, Parking Spaces Requirements (summarized from Sec. 11-32-3)

#### **D. Covered Spaces. Covered parking spaces shall be provided as follows:**

1. Single-residences shall provide a minimum of 2 covered parking spaces per unit.

### Zoning Ordinance, Parking Area Design (summarized from Sec. 11-32-4)

#### **F. Minimum Dimensions for Residential Enclosed Garages.** Enclosed garages serving residential uses shall be constructed to meet the following minimum inside dimensions.

1. A single-car garage shall be at least 10 feet wide and 22 feet long.
2. **A double-car garage shall be at least 20 feet wide and 22 feet long.**
3. A garage for tandem parking shall be at least 10 feet wide and 44 feet long.

### Zoning Ordinance, Building Form (summarized from Sec. 11-5-3)

#### **E. Building Form- Garage Frontage and Location:**

1. Where garage doors are oriented parallel or within 10 degrees of parallel to the front property line of the lot, the aggregate width of garage doors attached to a primary residence and facing the front of the lot shall not exceed 50 percent of the aggregate width of those elevations of the building that face the front of the lot. **Garages oriented parallel or within 10 degrees of parallel to the front of the lot, shall be located at least 3-feet behind the primary wall facing the street, and never less than the required garage setback.**