# mesa az

# **Board of Adjustment**

Staff Report

CASE NUMBER: BA16-039 (PLN2016-00520)

LOCATION/ADDRESS: 636 E 2<sup>nd</sup> St

COUNCIL DISTRICT: 4

PLANNER: Lisa Davis

OWNER/APPLICANT: Marisela Contreras

**REQUEST:** Requesting a Variance to eliminate the minimum parking requirements to allow

for an addition to the house in the RS-6 zoning district.

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

The applicant is requesting a variance to eliminate the minimum parking requirements for the single residence. The Mesa Zoning Ordinance (MZO) currently requires two covered parking spaces for a single detached residence. However, this site has an existing legal non-forming single car garage that is considered "grandfathered" unless the garage structure is modified. The variance request to eliminate the parking requirements will allow the existing single car garage to be converted into a 178 square feet (SF) expansion of livable area to be used as a master bedroom and bathroom.

#### **STAFF RECOMMENDATION**

Staff recommends **denial** of case BA16-039. However, should the Board determine that the case be approved, staff recommends that it be conditioned upon the following:

- 1. Compliance with the site plan, narrative and exhibits submitted.
- 2. Compliance with all requirements of the Development Services Division in the issuance of building permits.

#### **SITE CONTEXT**

**CASE SITE:** Single Residence – Zoned RS-6

NORTH: Existing parking for the church – Zoned RS-6
EAST: Existing Single Residence – Zoned RS-6

**SOUTH:** (across 2<sup>nd</sup> Street) Existing Single Residence – Zoned RS-6

**WEST:** Existing Single Residence– Zoned RS-6

# **STAFF SUMMARY**

The parcel is located in the general area south of University Drive and east of Mesa Drive, and specifically identified as lot 4 of Easton Place. The applicant is requesting a variance to eliminate the minimum parking requirements for a single residence house. Mesa Zoning Ordinance (MZO) Section 11-32-3 currently requires a minimum of two covered parking spaces for all detached single residence dwelling units. The house at 636 E 2<sup>nd</sup> Street was originally constructed in 1949 with a single covered carport. In 1993, a building permit was issued to enclose the carport into a single car garage with manual opening double doors at the front of the house. Refer to the 2011 MLS sheet provided by the applicant shows a picture of the house with the garage door. It is important to note that the existing single car garage would be considered as a legal non-conforming structure and would

1951 aerial photo showing the house

not be required to be increased to a 2 car garage. Unless the addition or remodel modifies the existing garage structure.

The current owner purchased the house in 2011 and states that the garage was already converted to livable space. In discussions with staff she stated that she had a lot of money spent with plumbing supplies for the bathroom, so additional upgrades were made after the purchase of the home. It appears the bathroom was added after the purchase as the MLS listing from 2011 indicated that the house had only one bathroom.

When the house was originally constructed in 1949, the 1939 Mesa Zoning Ordinance was in place. There were no minimum parking requirements for a single residence dwelling unit in the 1939 Ordinance. The 1958 zoning ordinance revised the requirement to one 8' x 18' parking space outside of the required front yard. Most of the houses in the area of the applicant's house were constructed in the 40's and 50's.

As justification for the requested variance regarding elimination of the minimum parking requirements, the applicant has noted: 1) the lot is too small to accommodate the required 2 covered parking spaces; 2) the rear of the lot cannot be accessed as the existing side yards are 8' to the west and 5' to the west; 3) the MLS indicated no garage and no carport; and 4) the house was purchased "as-is" not knowing that conversion of the garage to livable space occurred without a permit. The property owner has also provided pictures and maps of six houses on 2<sup>nd</sup> Street that show that this proposed structure would be consistent with conditions that are common throughout this neighborhood.

As proposed, the elimination of the minimum parking requirements would require the granting of a variance. The Board of Adjustment must find the following items are present to approve a variance:

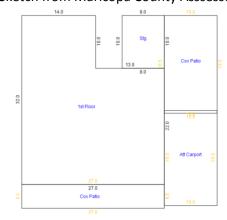
- a) There are special conditions that apply to the land or building.
- b) The special condition was pre-existing and not created by the property owner.
- c) That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
- d) The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

#### **ANALYSIS**

The MLS provided by the applicant identifies that the house had no carport or garage, the house is 734 SF with one bathroom. Staff was able to obtain the structures for the site that Maricopa County has on file. The current floor plan indicates that there is now 2 bathrooms and 3 bedrooms a large kitchen and dining room are also indicated. There have not been any building permits issued for this address to enclose the garage or patio into livable space.

The subject parcel is consistent in size and shape to surrounding parcels within the neighborhood. The lot does not have an unusual shape; the parcel is 4,487 SF in area and dimensions are 50' x 90'. It is smaller than the minimum required RS-6 lot size of minimum 55' wide, 90' in length and 6,000 SF in area. It is 5' narrower and 1,537 SF smaller than the minimum lot area for a RS-6 lot.

Sketch from Maricopa County Asssessor



The side yard setbacks are required at 5' minimum with both sides totaling 15'. At this time the site plan shows 5' to the east and 8' to the west therefore is an existing condition. The following table summarizes the minimum development standards required for RS-6 zoned lots and compares them to the setbacks indicated on the site plan:

	Minimum standards for RS-6	Existing for 636 E 2 <sup>nd</sup> St
Lot Size	6,000 SF	4,487 SF
Lot Width	55'	55′
Lot Depth	90'	90'
Yard Setbacks		
Front	10' to livable 20' to garage	27' to livable 23' to garage
Side, Minimum	5′	5′
Side Aggregate of Two Sides	15'	13'
Rear	20'	30'
Coverage	45% Maximum	31%

The lot is smaller than the minimum, but there is ample space in the front and rear within the buildable envelope to allow for addition of livable area. The MZO allows a 10' front setback for livable space and the site plan indicates that the livable area of the house is setback 27' from the front property line. There is also space at the rear of the house for an addition to the house to extend an additional 10'. This could be done while maintaining the existing single car garage.

The applicant has provided pictures showing no covered parking spaces provided on 6 parcels on 2<sup>nd</sup> street. Pulling information from Maricopa County, three of the houses (757 E 2<sup>nd</sup> Street, 731/733 E 2<sup>nd</sup> Street, and 653 E 2<sup>nd</sup> Street) were constructed in the 1940's without covered parking spaces are considered legal non-conforming. Just as the existing single car garage on this site is considered as a legal non-conforming structure and would not be required to be increased to a 2 car garage. Unless the addition or remodel modifies the existing garage structure.

While sensitive to allowing for improvements to occur at the property, the variance as proposed does not meet all requirements for granting of a variance. The present request to eliminate minimum parking requirements is not justified. As proposed, this variance will constitute a special privilege unavailable to other properties in the vicinity and zoning district. The property owner could maintain the single car garage and add to the front or rear of the house as there is ample area on the lot.

Due to the degree of deviation requested and the options available to the homeowner to add onto the front or rear of the house with livable space. The applicant has not provided sufficient justification to merit approval of the requested variance to eliminate the minimum required parking for the lot.

#### **FINDINGS:**

- **1.1** The house was built in the 1949 with a single car carport.
- **1.2** The lot is not unique in shape. It is a standard rectangular lot oriented perpendicular to the abutting street.
- **1.3** The lot is surrounded by homes and lots of similar size and shape.
- **1.4** Based on the 1939 Mesa Zoning Ordinance that was in place at the time of construction, no on-site parking space was required at that time.
- 1.5 The existing lot is undersized for a standard RS-6 zoned lot. The parcel is 4,487 SF in area with dimensions of 50' x 90'. The lot is 5' narrower and 1,537 SF smaller than the minimum lot area for a RS-6 lot.

Board of Adjustment Staff Report Board Hearing Date: September 7, 2016 BA Case No.: BA16-039

- 1.6 Since 1958, a minimum of one-8' x 18' parking space outside of the required front yard has been required for a single residence dwelling unit. Two on-site parking spaces have been required since 1970. The two parking spaces were required to be covered in 2011.
- 1.7 A permit was issued in 1993 to convert the single car carport into a single car garage. It is considered a legal, but non-conforming standard, unless the garage is modified from its parking function into livable area.
- **1.8** The front yard setback for livable space in the RS-6 zoning district is 10'. There is sufficient space for an addition of livable space at the front of the house.
- 1.9 There is not sufficient space to allow vehicular access to the back yard for covered spaces to be provided in the rear of the house.
- 1.10 The lot does have unique conditions related to the site in the form of the smaller lot area and smaller width and depth of the lot. This smaller area makes it difficult to add livable area and comply with the covered parking requirement. However, the revision to the zoning ordinance which added the two-car covered parking requirement also proved additional building area on the lot in the form of reduced setbacks for livable are in the front and rear yards (from 20-ft to 10-ft in the front, and a 10-ft encroachment into the rear yard for 50% the width of the residence), and increased lot coverage (from 40 to 50% of the area of the lot).
- **1.11** Because there are options available to building livable area in the front or rear yards without variance, the applicant has not provided sufficient justification related to the land, which would justify the degree of the requested variance.
- **1.12** Further, strict compliance with Code would not completely deprive the property of the ability to construct livable additions at the front of the house and/or at the rear of the house.

#### **ORDINANCE REQUIREMENTS:**

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

RS-6 District – Front Yard: 10' Minimum to enclosed Livable Areas, Porches, Porte Cocheres; Front Yard: 20' Minimum front yard to garage and carports; Rear Yard 20' minimum; Side Yard: minimum one side 5' and both sides must total 15' (paraphrased from table found in Sec. 11-5-3)

#### Zoning Ordinance Sec 11-32-3: Parking Spaces Required:

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

# Zoning Ordinance Sec. 11-80-3: Required Findings:

A variance shall not be granted unless the Zoning Administrator, when acting as a Hearing Officer, or Board of Adjustment shall find upon sufficient evidence make a determination:

- A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, and
- B. That such special circumstances are pre-existing, and not created by the property owner or appellant; and
- C. 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
- D. Any variance granted 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