

Board of Adjustment

Staff Report

CASE NUMBER: BA17-006 (PLN2016-00862)
LOCATION/ADDRESS: 1144 E. 6th Avenue
COUNCIL DISTRICT: 4
PLANNER: Cierra Edwards, Planner I
OWNER/APPLICANT: Carlos Bustamante

REQUEST: *Requesting a Variance to allow a room addition and patio to encroach in the required rear yard in the RS-6 zoning district.*

SUMMARY OF APPLICANT'S REQUEST

The applicant is requesting to encroach 2' in the rear setback for a room and patio addition, whereas the rear yard setback in the RS-6 district requires 20'. This site currently has an existing illegal structure built on the rear of the house, which consists of proposed room addition and a patio addition.

STAFF RECOMMENDATION

It is recommended that the Board deny case BA17-006.

SITE CONTEXT

CASE SITE: Single Residence – Zoned RS-6
NORTH: Existing Multi Residence – Zoned RM-3
EAST: Existing Multi Residence – Zoned RM-3
SOUTH: (across 6th Avenue) Existing Multi Residence – Zoned RM-2
WEST: Existing Single Residence – Zoned RS-6

STAFF SUMMARY

The parcel is located in the general area south of Broadway Road and west of Stapley Drive, and specifically within the Temple Acres subdivision. The applicant is requesting a variance to encroach 2' in the rear setback. Mesa Zoning Ordinance (MZO) Section 11-5-3 currently requires a minimum rear setback of 20,' however section 11-5-7 (7) enclosed rooms to encroach up to 10' into the required rear yard for up to one-half of the width of the building for single residence. The house was originally constructed in 1945 and annexed in 1958. The current additions were built between 2002-2004. During the time of the construction no building permits were issued.

Timeline of Photos:

The photos below show snapshots of what the property looked like in 1949, 2002, and 2013. Since 1949 until now the house has continued to "add on" to the rear and side yard while encroaching into the setbacks.



February 1949-April 1949

December 2001-February 2002

September 2013-November 2013

As justification for the requested variance regarding the additional 2' into the required rear yard, the applicant has noted: 1) the lot is too small to meet the rear setbacks; 2) the previous owner added on the additions without obtaining a building permit.

The MZO typically requires a 20-ft deep setback in the rear yard in the RS-6 district. However, it further allows 10-ft deep encroachments into the minimum 20-ft setback for 'livable room' additions that are no more than one-half the width of the residence, and for open patios. The requested variance is for the encroachment of an additional 2' into the rear setback (a total of 12-ft into the 20-ft setback), to within 8-ft of the rear property line.

To approve the variance, the Board of Adjustment must find the following items are present:

- 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

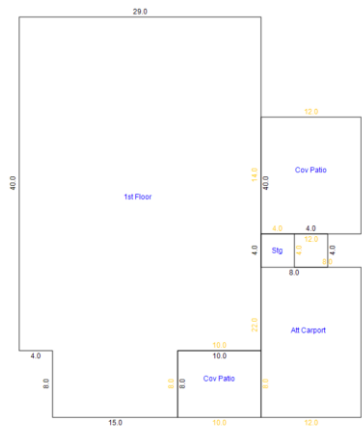
Staff was able to obtain a sketch of the site that Maricopa County has on file. The current floor plan indicates that there is now an additional bedroom, bathroom, and two patios within the single family residence. There have not been any building permits issued for this address to create additional living and outdoor space. While this investment is important to the property owner, the Board is advised to review the application without regard to that applicant's investment. Rather, the case should be reviewed as if the project was still a 'plan on paper'.

The subject parcel is consistent in size and shape to surrounding parcels within the neighborhood. The lot does not have an unusual shape, although it is slightly smaller than the minimum standard of 6,000-SF now required for lots in the RS-6 district. The parcel is 5,484-SF in total area, or 516-SF smaller than the minimum required.

The side yard setbacks are required as one side being set at 5' minimum, with both sides totaling 15'. At this time the site plan shows 4' to the west and 17'-10" to the east. The following table summarizes the minimum development standards required for RS-6 zoned lots in comparison to the setbacks indicated on the site plan:

	Minimum standards for RS-6	Existing for 1144 E 6 th Ave
Lot Size	6,000 SF	5,484 SF
Yard Setbacks		
Front	10' to livable 20' to garage	20' 7" to livable 20' 7" to garage
Side, Minimum	5'	5'
Side Aggregate of Two Sides	15'	21' 10"
Rear	20'	8'
Coverage	50% Maximum	41%

Sketch from Maricopa County Assessor



The lot is smaller than the minimum standards for RS-6, but the setbacks could have been met. The MZO allows a 10' rear setback for livable space if it is up to one-half the width of the building. While sensitive to the already constructed development to which has occurred on the property, the variance as proposed does not meet all requirements for granting of a variance.

The present request to encroach into the rear setback is not justified. The lot has a regular rectilinear shape, and complies with minimum width and depth requirements. There are no unusual topographic features on the lot, such as a steep slope or a dry wash. Without any special condition which relate to the physical property, the proposed variance would constitute a special privilege unavailable to other properties in the vicinity and zoning district. For this reason, it is recommended that the Board deny this application.

FINDINGS:

- 1.1 The house was built in the 1945 within the RS-6 zoning district.
- 1.2 The lot is not unique in shape. It is a standard rectangular lot oriented perpendicular to the abutting street (6th Ave).
- 1.3 The lot is surrounded by homes and lots of similar size and shape.
- 1.4 The existing lot is undersized for a standard RS-6 zoned lot. The parcel is 5,484 SF in total area. The lot is 516 SF smaller than the minimum lot area for a RS-6 lot.
- 1.5 The rear yard setback for livable space in the RS-6 zoning district is 20'. But in MZO may encroach by 10' into the required rear yard for up to one half the width of the building.
- 1.6 The property currently maintains a single carport.
- 1.7 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 rear yard setbacks requirement.
- 1.8 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.
- 1.9 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 Cochères; 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 (for a Variance):

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