

Board of Adjustment

Staff Report

CASE NUMBER: BA17-017 (PLN2015-00519)
STAFF PLANNER: Kaelee Wilson
LOCATION/ADDRESS: 1440 North Crismon Road
COUNCIL DISTRICT: Council District 5
OWNER/ APPLICANT: Mark and Debbie Schmuker

REQUEST:

- 1) a variance to allow detached accessory buildings and accessory living quarters to be placed in front of the front line of the primary dwelling;
- 2) (no longer required) a variance to allow the floor area of the accessory dwelling unit to exceed 30 percent of the roof area of the primary dwelling unit;
- 3) (Not Advertised – Recommended for Continuance) A variance to allow a fence in the required front yard to exceed the maximum permitted height;
- 4) a Special Use Permit (SUP) to allow detached accessory structures to exceed the maximum allowable area; and
- 5) (no longer required) a Special Use Permit (SUP) to allow the rental of the accessory dwelling unit and/or primary dwelling unit; all in the RS-43 District.

INTRODUCTION

This case has a lot of information, history and unusual circumstances to comprehend. There is information provided from the applicant in the narrative that does not pertain to the specific items germane to this Board of Adjustment case. The staff report summarizes the key facts pertaining to the requests before the Board. Any discussion or mention of items outside of the items advertised should not be evaluated as part of this request. Staff has created "Appendix A" as reference for any history on the site.

SUMMARY OF APPLICANT'S REQUEST

The applicant is requesting a variance allow detached accessory buildings to be placed in front of the front line of the primary dwelling. Upon further review, the variance request for the floor area of the accessory dwelling unit to exceed 30 percent of the roof area of the primary residence (Number 2, above) is no longer needed. Staff is recommending that particular request be withdrawn.

Examination of the applicant's site plan also notes that the aggregate roof area of all of the detached accessory buildings exceeds the maximum allowed. A SUP may be considered to authorize this larger than typical aggregate roof area. Also, a Special Use Permit (SUP) is requested to allow the rental of the accessory dwelling unit and/or primary dwelling unit; all in the RS-43 District. Due to recent legislation, state statute allows short term rentals of properties. The request for the rental is no longer needed.

The applicant has also noted a desire to have a front fence be taller than the allowable 3.5 feet along Crismon Road, which is the required front yard, by definition. However, this request was not noticed until after the advertising for this case was released to be published.

STAFF RECOMMENDATION

The following actions are recommended:

- A) Denial of variance request** to allow detached accessory buildings to be placed in front of the front line of the primary dwelling. Denial of these request would result in the following actions:
1. *All detached accessory buildings in front of the front line of the primary dwelling unit shall be removed.*
 2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permit(s) and/or demolition permit(s), as may be required.*
- B) Continuance** of part of the case to allow advertising for a variance to allow the front yard fence height to exceed the maximum allowed;

- C) Withdrawal** the variance to allow the floor area of the accessory dwelling unit to exceed 30 percent of the roof area of the primary dwelling unit, and a Special Use Permit (SUP) to allow the rental of the accessory dwelling unit and/or primary dwelling unit; and
- D) Approval with conditions** of a Special Use Permit (SUP) to allow detached accessory structures to exceed the maximum allowable area; with the following conditions:
1. Compliance with the site plan exhibit and narrative submitted unless modified by conditions below:
 2. Removal of all detached accessory buildings in front of the front line of the primary dwelling unit shall be removed.
 3. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.
 4. Compliance with the zoning development standards for the RS-43 district.
 5. Compliance with all requirements of the Zoning Ordinance for the placement of detached structures.
 6. The lots split (LS14-010) is rescinded and a written acknowledgement from the applicant shall be submitted by March 1, 2017.
 7. Any future land splits will require review and approval by the Planning and Zoning Board and City Council for a preliminary plat and a rezoning request for a Planned Area Development (PAD) overlay district.

SITE CONTEXT

CASE SITE: Existing single residence – Zoned RS-43
NORTH: Existing single residences- Zoned RS-43
EAST: (across Crismon Road) Existing single residence – Maricopa County
SOUTH: Maricopa County Flood Control District Floodway
WEST: Vacant parcel- Zoned RS-43

SITE INFORMATION

Acres: 4.66-ac
Primary dwelling: 7,346-sqft
Detached buildings: 7,307-sqft

- Ramada- 644 square feet (Permitted)
- Ramada- 400 square feet (Unpermitted – Permit required)
- Casita- 2,255 square feet (Unpermitted – Permit required)
- Detached garage #1- 2,880 square feet (Unpermitted – Permit required)
- Tack room- 168 square feet (Unpermitted – No permit required, unless electricity or plumbing is installed)
- Hay barn- 960 square feet (Unpermitted – Permit required)

Total Aggregate Roof Area: 14,653-sqft (based on the applicant's submitted site plan)
Roof Coverage of Lot: Approximately 8%
Lot Frontage: Crismon Road
Zoning District: RS-43
Date of Annexation: June 4, 1998

STAFF ANALYSIS

Four different requests were initially advertised for this case, and a 5th request is recommended to be added and considered at a future date. Staff is recommending that two of the 4 advertised requests be withdrawn, which leaves only two requests for the Board to consider at this time, and a third to be scheduled for hearing on a later date.

Request 1: Variance to Allow Detached Accessory Buildings and an Accessory Living Quarters to be Placed in Front of the Front Line of the Primary Dwelling

The first request would allow detached accessory buildings to be placed in front of the front line of the building designed as the primary residence. Although many of the buildings are currently present on-site, the Board should review the application as if the proposal was still a plan on paper, giving no additional value to the existence of the buildings already constructed, nor applying any penalty to the request because a building permit was not issued before the buildings were constructed.

Staff's summary of applicant's justification:

The applicant has provided the following as justification for the granting of the variance for the placement of the outbuildings: 1) three outbuildings were shown on the site plan submitted on the primary residence permit; 2) the accessory buildings generally relate to the livestock kept on site, and these buildings were placed closer to Crismon Road to allow additional privacy and reduce street noise for the primary dwelling; 3) there is a wash on the property, the location of which limits suitable placement options for the primary residence; 4) all of the properties in the area are horse properties, so the request will not grant special privilege because the accessory buildings relate to keeping of horses on the site; and 5) a previous lot frontage interpretation case was approved for the neighboring lot to the north to have an accessory building to be placed in front of the front line of the home.

Detached accessory buildings shown on the 2006 building permit site plan:

Case materials include a copy of the site plan from the building permit for the primary residence that shows the current "casita" and "garage" (labeled as "ex shed"). There are two detached accessory buildings shown, not three. The applicant believes these are legal non-conforming. The Zoning Ordinance defines legal non-conforming as, "Any legally established use, structure, or lot that is in existence on the effective date of this ordinance, or any subsequent amendment, but does not comply with all of the standards and requirements of this ordinance shall be considered legally nonconforming". Currently the buildings are not being used as sheds and the "garage" has been expanded since the time of the issuance of the 2006 building permit for the primary residence. It is also important to note that the building plan reviewer at that time could have considered these structures "legal non-conforming", as being built in Maricopa County. However, for these structures to legitimately benefit from a "legal non-conforming" status, they would have building permits issued by the County prior to annexation into Mesa. Even if they were considered legal non-conforming, the sizes and uses have changed; thus, losing their grandfathered status.

Applicants that submit building permits are responsible for providing truthful information for building permit submittal as Plan Reviewers do not have the time required to research the history of every parcel that submits for a permit. In the documents submitted for the permit there is no mention of the structures lacking a permit in the Maricopa County.

Wash on eastern end of property:

The detached accessory buildings are located within close proximity to the wash. The wash on the property is shown on the 2006 site plan and runs north and south through the property. It transects the east quarter of the property, and is cited by the applicant as a physical hardship condition on a property that is 4.66 acres. It should be noted that on a property of 4.66 acres, there are many other suitable locations for these outbuildings away from this wash. The applicant has stated the wash is a special condition on the property. Given the potential for flooding, it is generally considered that it is best to place structures away from the wash. The presence of the wash further legitimizes the need to move these buildings away from the wash, behind the primary residence.

Lot frontage interpretation case:

The home to the north, at 1502 N. Crismon Road, went through two Board of Adjustment processes. The first case involved a reinterpretation of the lot frontage to be to the west side of the property, instead of Crismon Road on the east. This was approved, which allowed the placement of the outbuildings along Crismon Road because the east side of the lot became the rear yard. The applicant indicated in their justification that the request was for a variance for the location of the detached accessory buildings, however, the case was advertised and considered as a reinterpretation of the lot frontage, not a variance for the detached building locations.

The applicant in the current case was given the same option of reinterpretation of the lot frontage off the Maricopa County Flood Control Access Road to the south but failed to acquire an easement. Therefore, the lot frontage for 1440 N. Crismon (this case site) is off of Crismon Road.

Staff analysis:

There is a special condition that applies to the land or building, and the special condition was pre-existing and not created by the property owner:

As the applicant has stated, there is a wash that runs through the property; therefore, they contend this wash serves as a special condition on the property. The current locations of the accessory buildings are closer to this wash than if they were placed in compliance with Code on the lot. In addition, the Board should consider that although a wash runs through the property, the lot is actually four times larger than a standard RS-43 lot. The size of the lot diminishes the impact made by the wash on building location options. If the lot was a smaller size, these options would be more limited. The estimate by staff is that approximately 3-acres of land is available for locating detached accessory buildings to the west of the wash, approximately 1-acre of which is behind the front line of the primary dwelling.

Strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district and the variance would not constitute a special privilege unavailable to other properties in the vicinity and the zoning district of the subject property:

Special privilege would be conveyed to this homeowner over other property owners in the vicinity because of the number of accessory buildings being placed in front of the front line of the home, four total (as shown on the site plan submitted by the applicant). As indicated above, the applicant was given the same opportunity as the neighbor to the north to have the lot frontage reinterpreted, but as of the date of this report, no easement has been granted by the Maricopa County Flood Control District. If the easement was granted, the number of buildings requiring a variance would be reduced from four to two. Granting of this variance would constitute a privilege to this property owner over other property owners that surround this property that have to comply with setback and accessory building location requirements. It is also important to note that this area of this case site is substantially larger than any other lots in "Cholla Estates" vicinity. The larger lot size already provides the owner more options than other properties in the area for building placement. Specifically, this case site 69,991 square feet **larger** than the second largest property within the "Cholla Estates", which happens to be the parcel to the north where the lot frontage was reinterpreted.

As to the applicant's claim regarding grandfathered conditions, the City of Mesa does not have building permit records for any of the accessory buildings that are subject to this variance request, and no records of building permits for these building exist with Maricopa County, either. A building can only be considered "legal non-conforming" or "grandfathered" if the structures were legal at the time of construction. Without evidence of a building permit, it is not possible to confer grandfathered status.

Request 2: Special Use Permit to Allow the Aggregate Roof Area of Detached Accessory Buildings to Exceed the Maximum

Based on staff research, this request is required for the detached buildings on the property. The applicant has denied the need for this request, given the structures shown on the site plan.

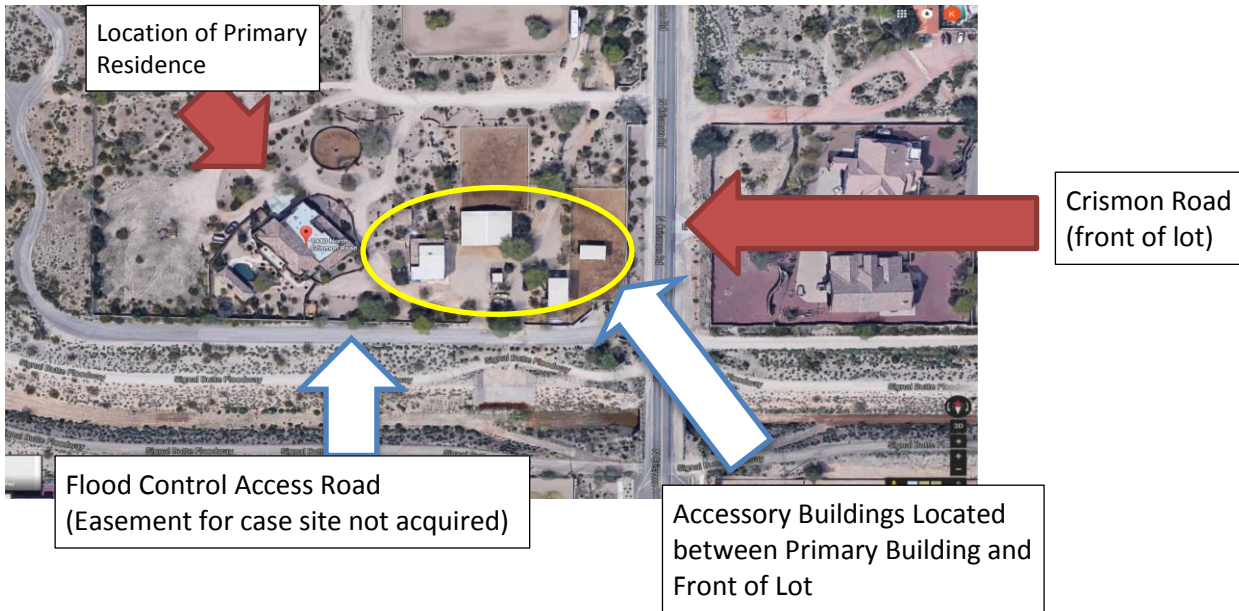
Primary residence roof area- 7,346 square feet

Detached Accessory Buildings: Aggregate Total: 7,307 square feet

- Ramada- 644 square feet (Permitted)
- Ramada- 400 square feet (Unpermitted – Permit required)
- Casita- 2,255 square feet (Unpermitted – Permit required)
- Detached garage #1- 2,880 square feet (Unpermitted – Permit required)
- Tack room- 168 square feet (Unpermitted – no permit required)
- Garage #2- 960 square feet (Unpermitted – Permit required)

A visit to the case site last December identified several additional shade structures not listed above, and these additional structures are not shown on the site plan submitted by the applicant. Although the size of the other structures do not appear to require a building permit if no electric, water or gas is within (as they appear to be under 200 square feet), the roof area of each is still included in the aggregate total used to determine the maximum roof area of detached accessory buildings for the property. Staff has provided pictures from a site visit from December 6th, 2016 and December 29th, 2016 that document these additional structures. The request complies with all of the required findings for the issuance of a Special Use Permit.

Aerial 1- Google Maps 2016 Aerial- Fewer Structures:



Aerial 2- Maricopa County Assessor 2016 Aerial showing Additional Structures:



Image 1-December 29th, 2016:



Image 2- December 9th, 2016:



Request 3: A Special Use Permit to Allow Rental of a Secondary Dwelling Unit on a Single Residence Lot

This request is no longer applicable due to recent State Statute allowing the short term rental of properties without any additional regulations from local municipalities.

Conclusion

The request for the roof area to exceed the maximum allowed is justified by the large size of the parcel. The variance request for the placement of all of the detached buildings in front of the front line of the home is not justifiable. Although the presence of a dry wash across a property has been recognized in past requests as a potential hardship somewhat unique to a specific site, in this case, the parcel size mitigates that hardship. There is significant land area (roughly 3-acres or so) available away from the location of the wash, which allows multiple options to have been considered regarding location of the primary dwelling, and subsequently the locations of the detached accessory buildings. The recommended action is based on the idea that any hardships related to the land are minor and are not of sufficient scale or scope as to warrant a deviation from standard requirements for the location of detached accessory buildings. It is also noteworthy to mention that if the applicant had followed standard process, and submitted for building permits for the detached accessory buildings in Maricopa County (before annexation) and the City of Mesa (after annexation), proper building placement would have been discussed, including options to develop the property in accordance with adopted standards.

FINDINGS

RE: A VARIANCE TO ALLOW DETACHED ACCESSORY BUILDINGS AND ACCESSORY LIVING QUARTERS TO BE PLACED IN FRONT OF THE FRONT LINE OF THE PRIMARY DWELLING

- 1.1 The property is zoned RS-43 and is 4.66 acres. The minimum lot size in RS-43 is 1 acre therefore the parcel is over 4-times the required minimum area.
- 1.2 The wash that runs through the property transects the eastern most quarter of the property. Roughly 3-acres is not affected by the location of the wash.
- 1.3 Placing the primary dwelling so far back on the lot does limit available location for detached accessory buildings. However, the primary dwelling's location does not inhibit acceptable detached building location entirely, and there are multiple locations for the detached buildings to be placed behind the front line of the primary dwelling unit.
- 1.4 The only special physical hardship on the land, the wash, does not prevent the construction of the subject detached buildings in permissible locations.
- 1.5 The site plan submitted in 2006 for the building permit application does not legitimize the location of the two detached accessory buildings as they were not permitted in Maricopa County.

RE: FINDINGS FOR A SPECIAL USE PERMIT (SUP) TO ALLOW THE AGGREGATE ROOF AREA OF ALL DETACHED ACCESSORY BUILDINGS TO EXCEED THE PERMITTED MAXIMUM

- 2.1 The parcel size is 4.3 acres, and the aggregate roof area of all buildings (including structures not shown on the submitted site plan) is roughly 15,000-sqft. This is a lot coverage of about 8%, and allows a significant degree of open space to occur between and around each of the buildings.

ORDINANCE REQUIREMENTS

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

RS-43 District – Front Yard: Minimum – Enclosed Livable Areas, Porches, Porte Cocheres 22’;

Front Yard: Minimum – Garage and carports 30’; Rear Yard: Minimum -30’; Side Yard: Minimum one side - 10’, both sides - 30’ (paraphrased from table found in Sec. 11-5-3)

Zoning Ordinance, Sec 11-31-3 : Accessory Dwelling Unit

One accessory dwelling unit is permitted on a residential lot in all Single Residence (RS) Districts. Accessory Dwelling Units may be detached, attached, or directly accessible from the primary dwelling unit and may be served by a single utility service, one which also serves the primary dwelling. Accessory dwelling units must also comply with the following provisions:

- A. *An Accessory Dwelling Unit that is attached to or part of the same structure as the primary dwelling unit must*

be provided a separate entrance and if facing the street, must be setback from the front façade and not visible from the public right-of-way.

- B. *The maximum floor area of an Accessory Dwelling Unit shall not exceed 30 percent of the roof area of the primary unit, except within the Town Center Redevelopment Area or within an Infill District (unless modified by Council through the approval of an Infill Incentive Plan for a specific Infill District), where Accessory Dwelling Units shall not exceed 50 percent of the roof area of the primary dwelling.*
- C. *Accessory Dwelling Units shall conform to all setbacks, height, lot coverage and other requirements applicable to the primary dwelling unit, based on the zoning district requirements.*
- D. *The architectural design, exterior materials and colors, roof pitch and style, type of windows and trim details shall be substantially the same as and compatible with the primary dwelling unit.*
- E. *Lease or rental of the Accessory Dwelling Unit, separate from the occupancy of the primary dwelling, shall require approval of a Special Use Permit. Evaluation of the SUP shall require the occupancy of the primary dwelling units by the owner of the property.*

Zoning Ordinance, Sec 11-70-5: Special Use Permit

- A. *Special Use Permit (SUP). A SUP is a discretionary permit issued by the Zoning Administrator or Board of Adjustment. Required findings:*
 - 1. *Approval of the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable City plan and/or policies.*
 - 2. *The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conform with the General Plan and with any other applicable City plan or policies;*
 - 3. *The proposed project will not be injurious or detrimental to the adjacent or surrounding properties in the area, nor will the proposed project or improvements be injurious or detrimental to the neighborhood or to the general welfare of the City; and*
 - 4. *Adequate public services, public facilities and public infrastructure are available to service the proposed project.*

Zoning Ordinance, Sec 11-30-17– Detached Accessory Buildings:

Design Objective: To aid in the comfort, convenience and enjoyment of a single residence lot or parcel by providing standards for the allowance and placement of non-residence accessory building(s) that place reasonable limitations on impacts to access of light, air and spacing of accessory buildings relative to adjacent lots and parcels.

- A. *Any individual tool or piece of equipment that is higher than 4 feet and in which the added aggregate measurements of the length, width and depth (length plus width plus depth) exceed 15 lineal feet, based on the extreme perimeter measurements, shall be placed or stored within an enclosed building. Equipment specifically designed and used for agricultural production practices, Utility Trailers and Watercraft as defined in Section 8-6-2 of the Mesa City Code, Recreational Vehicles as defined in Chapter 87 of this ordinance, and other motorized vehicles eligible for licensing by the State of Arizona for travel on public thoroughfares are excluded from this requirement. Recreational vehicle parking requirements are provided in Section 11-34-5(B) of this ordinance. Requirements for Parking and Storage of Watercraft and Utility Trailers are provided in Section 8-6-3 of the Mesa City Code.*
- B. ***Detached accessory buildings or structures*** *located on lots or parcels in AG, RS and RM districts are permitted subject to the following provisions. Detached accessory structures:*
 - 1. *May be located in the required side/rear yards provided that they are within the rear one-quarter of the lot and do not exceed 10 feet in height.*
 - 2. *May be located in the required rear yard but outside of the required side yard provided that they do not exceed 15 feet in height.*
 - 3. *May be located in the required side yard (outside of the rear ¼ of the lot), provided that they do not exceed 8 feet in height and 200 square-feet of roof area, and are not located in a side yard required for vehicular access.*

4. *May be located in any required side yard, and be closer to the primary residence than 6-feet, provided all of the following are present:*
 - a. *Does not exceed 7-feet in height (at the peak of the roof) and 120 square feet in roof area.*
 - b. *Has no permanent attachment to the ground or permanent foundation.*
 - c. *Shall not have any electrical or plumbing fixtures installed.*
 - d. *Shall drain all storm water back to the same lot or parcel as the accessory structure.*
5. ***Shall not be located in the required front yard or in the area between the front of the principal dwelling and the front property line.***
6. *Shall not be located in the required rear yard of a corner lot closer to the street than any dwelling on an adjacent key lot.*
7. *Shall not exceed 30 feet in height when located within any part of the buildable lot area.*
8. ***In the AG, RS-90, and RS-43 districts, shall not have an aggregate area of all such detached buildings greater than 100 percent of the roof area of the dwelling, unless a larger aggregate roof area is approved by Special Use Permit.***
9. *In the RS-35, RS-15, RS-9, RS-7, RS-6, DR-1 and DR-2 districts, and on lots in a multiple residence district with a single residence use, shall not have an aggregate area of all such detached buildings greater than 50 percent of the roof area of the dwelling.*
10. *Detached accessory structures in multiple residence districts shall not be located in any required yard when in conjunction with a multiple residence use.*

