

Board of Adjustment

Staff Report

CASE NUMBER: BA17-036 (PLN2017-00338)
LOCATION/ADDRESS: 648 E Lehi Road
COUNCIL DISTRICT: District 1
STAFF PLANNER: Charlotte Bridges, Planner I
OWNER/Applicant: Derrik B. Bagley

REQUEST: *Requesting variances to allow 1) a detached accessory structure to encroach into the required west side yard, and 2) an accessory dwelling unit to encroach into the required east side yard, and 3) deviation from the required minimum dimensions for covered parking in the RS-43 District.*

SUMMARY OF APPLICANT'S REQUEST

The applicant is requesting multiple variances to allow 1) a detached accessory structure to encroach into the required west side yard, 2) an accessory dwelling unit to encroach into the required east side yard, and 3) deviation from the required minimum dimensions for covered parking in the RS-43 District. (PLN2017-00338)

STAFF RECOMMENDATION

Staff recommends **approval** of case **BA17-036**, conditioned upon the following:

1. Compliance with the site plan and elevations submitted except as modified by the conditions listed below.
2. Compliance with all requirements of the Development Services Division with regards to the issuance of building permits.
3. **Modify the detached accessory building height to be no more than 10 ft. high measured at the mid-rise of the roof.**
4. **Issuance of a building permit for the addition to the home.**
5. **Issuance of building permits for all accessory structures.**
6. **Any future construction on the site must comply with Zoning Ordinance.**

SITE CONTEXT

CASE SITE: Single Residence – Zoned RS-43
NORTH: Existing single residence – Zoned RS-43
SOUTH: (Across Lehi Road) Existing single residence – Zoned RS-43
EAST: Existing single residence – Zoned RS-43
WEST: Existing single residence – Zoned RS-43

INTRODUCTION

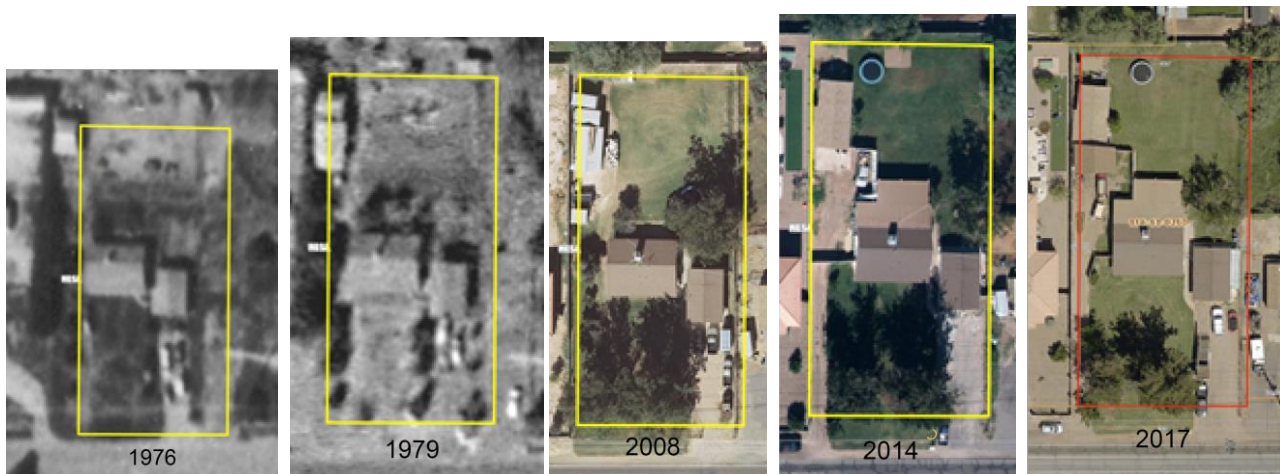
The parcel is located east of the northeast corner of Mesa Dr. and Lehi Road and is not within a recorded subdivision. The property was annexed into the City of Mesa in 1970 and historical aerial photos show a home and a detached accessory structure to the east of the home existing on the property at the time of annexation. In addition to the house, there are currently two accessory structures on the property, a 20' X 30' detached accessory dwelling unit located to the east of the main house and a ±22' X 61' detached accessory structure located northwest of the main house. Planning Staff was unable to find building permits for the detached accessory structure located northwest of the main house. The detached accessory dwelling unit located to the east of the house appears to be the accessory structure that existed prior to annexation of the property into the City of Mesa. Earlier this year, a code compliance complaint (COD2017-02428) was received for "building a detached structure in rear yard without a permit". The construction under question in the code compliance complaint was an addition to the rear of an existing detached accessory structure. Upon further investigation,

it was determined that a building permit had not been issued for the addition to the detached accessory structure, and that the 12.5' high building (measured at the mid-rise of the roof) encroached in the 20' side and 30' rear yard setbacks required by the RS-43 District. The applicant would like to keep the detached accessory structure without modifying it to meet RS-43 Zoning Ordinance requirements. Consequently, the applicant is requesting a variance to allow a 12.5' high detached accessory structure to encroach up to 17' into the required 20' side yard in the RS-43 District.

While researching the site, staff established the need for additional variance requests. A second variance is needed for the detached accessory dwelling unit east of the house. This building appears to have existed on the property for several decades and encroaches 1' into the required 10' side yard setback. The applicant's justification statement indicates that this "guest house" existed prior the purchase of the property. In addition, the Project Narrative states that the structure is old, and "needs to be taken down and removed" and that future plans include removing this building and constructing a garage, laundry room and family room addition to the main house. However, the applicant would like to keep the accessory dwelling unit for the time being since it contains the only laundry facility for their home. Consequently, an additional variance is requested to allow the accessory dwelling unit to encroach 1' into the 10' side yard required in the RS-43 District.

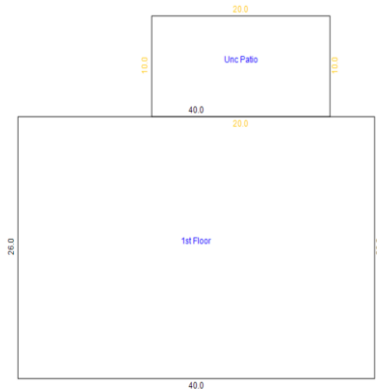
A third variance is needed to allow a deviation from the required minimum dimensions for covered parking in single-residential districts. The $\pm 17' \times 37'$ interior dimensions of the "garage/workshop" portion of the detached accessory structure do not comply with the minimum $10' \times 44'$ dimensions (for tandem parking) of the Mesa Zoning Ordinance (MZO) 11-32-4.F.3. The $\pm 37'$ -ft. depth, of the garage does provide for one covered parking space and almost enough depth for the second required covered parking space in a tandem configuration. As compensation, the applicant indicates that there is enough room behind the front plane of the house for several "uncovered" parking spaces.

Timeline of photos: Following are snapshots of historical aerial photos, which show changes to the roof configuration of buildings on the property in 1976, 1979, 2008, 2014 and 2017:



(The 2017 aerial photo was taken before the most recent addition to the rear of the detached accessory structure.)

Maricopa County Assessor Website Sketch



This property is in the RS-43 zoning district and is 105' X 230' (±0.55 acres). The accessory dwelling unit and a small detached accessory structure appear in the historical aerial photos in 1976. There are changes to the roof configuration of the detached accessory structure in the 1979 and 2008 photos. The 2014 photo shows another change to the roof configuration, as well as the concrete slab at the south end of the detached accessory structure where an awning was removed (refer to the project narrative). Finally, the 2017 aerial shows the 14-ft. X 22-ft. addition to the south side of the detached accessory structure, but it does not appear to show the 8-ft. addition to the north side and 8-ft. addition to the east side. The applicant provided floor plans of the accessory buildings and photos of the property. Also, Staff obtained a sketch of the buildings, which the Maricopa County Assessor website has on file for the parcel. The sketch does not include any detached buildings, only the home. Also, based on the

historical aerial photos and the Maricopa County sketch, it appears that additional square footage has been added to the home. Staff was not able to find any building permits for the addition to the home.

While maintaining his prior investment is important to the property owner, the Board is advised to review the application without regard to the applicant's investment. Rather, the case should be reviewed as if the project has not been constructed and is still a "plan on paper".

The following table compares the MZO 11-5-3 development standards for RS-43 Districts to the subject property:

Minimum standards for RS-43		Subject Property	
Lot Size	43,560 SF	25,709 SF	
Minimum Lot Width – Interior Lot (ft.)	150	105	
Minimum Lot Width – Interior Depth (ft.)	150	230	
Max. Lot Coverage	25% Maximum	±15% total, all structures	
Yard Setbacks		Existing Detached Accessory Structure	Existing Detached Accessory Dwelling Unit
Front	22' to livable 30' to garage	meets code	± 80-ft. to guest house ± 90-ft. to main house
Side, Minimum	10'	3-ft. (west side)	9-ft. (east side)
Side Aggregate of Two Sides	30'	12'	
Rear	30'	22-ft.	±129'
Area of detached buildings/roof area of dwelling	100%	±86%	
Floor area of Accessory dwelling/roof area of primary unit	30%	NA	±28%

STAFF ANALYSIS

Request 1: Variance to allow a Detached Accessory Structure to encroach into the required west side yard.

The first variance would allow a 12.5' high detached accessory structure to encroach up to 17' into the required 20' side yard. MZO 11-30-17.B allows:

- a detached accessory structure to encroach into the required rear yard (but outside of the required side yard) if it does not exceed 15-feet in height.

- a detached accessory structure to encroach in the required side/rear yards if it is within the rear one-quarter of the lot and does not exceed 10-ft. in height. This structure exceeds the allowed height, and extends 25.5' beyond the rear quarter of the (230'-deep) lot. Following is the applicant's justifications for this variance request.

Staff's summary of applicant's justification:

The applicant has provided the following as justification for granting a variance for the placement of the detached accessory structure: 1) They have lived at this residence for 9 years and a portion of the detached accessory structure existed prior to their ownership; 2) Even with the additions, the detached accessory structure follows the same plane along the west property line as the pre-existing building and does not encroach into the side yard setback any further than the original building; 3) The size of the property is big enough to accommodate the 1,236 sq. ft. detached accessory structure; 4) Many properties in the Lehi area, similar in size, have similar structures; 5) The view of the detached accessory structure is partially blocked by the house and by the structures on neighboring properties; 6) Adjacent neighbors have no negative comments about the detached accessory structure; 7) The detached accessory structure is needed for the applicant's small remodeling business.

Request 2: Variance to allow an Accessory Dwelling Unit to encroach into the required east side yard

MZO 11-31-3.C requires an accessory dwelling unit (ADU) to conform to all setbacks, height, lot coverage and other requirements applicable to the primary dwelling unit, based on the zoning district requirements. The RS-43 zoning district requires a minimum side yard setback of 10-ft. on one side, with an aggregate width of 30-ft. for both side yards. The side yard setback from the east property line to the wall of the ADU is 9-ft.

Staff's summary of applicant's justification:

The applicant has provided the following as justification for granting a variance for the placement of the detached ADU: 1) They have lived at this residence for 9 years and the detached ADU existed prior to their ownership; 2) The structure is old, and "needs to be taken down and removed" and that future plans include removing this building to construct a garage, laundry room and family room addition to the main house. Staff has added a condition of approval that future construction will be required to comply with standard required setbacks, and will not benefit from the current request for variance.

Request 3: Deviation from the required minimum dimensions for covered parking.

MZO 11-32-3.D.1. requires a single residence use to have a minimum of two parking spaces, and they must be covered. The requirement for covered parking was added in 2011. MZO 11-32-4.F establishes the minimum dimensions for a double-car garage as 20' x 22', or 10' x 44' for tandem parking. The floor plan of the detached accessory structure indicates the garage portion of the building is 37' deep, by 17' wide. It is 5' wider near the front. This provides enough room for one covered parking space. Additionally, the yard located to the west of the house, and behind the front plane of the house will accommodate more than two standard parking spaces within an enclosed, gated yard.

Staff's summary of applicant's justification:

The applicant has provided the following as justification for granting a variance for the deviation from the required minimum dimensions for covered parking in the RS-43 District: 1) The detached ADU was pre-existing and was not a garage when the property was purchased; 2) There was no covered parking when the property was purchased; 3) If they add area to the detached structure, its square footage may exceed the allowed area for total detached structures in the RS-43 district; 4) There is space available for uncovered parking to west and behind the front plane of the house. Covered parking was not an MZO requirement prior to 2011.

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 application of 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.*

Staff's Response to Main Points Within the Applicant's Justification for the Variance Request to allow a Detached Accessory Structure to encroach in the Required West Side Yard:

Question 1: Explain what special circumstances or conditions apply to this property that may not apply to other properties in this area or zoning districts.

There are special circumstances associated with this property. First, the property is in the Lehi area of Mesa. Many Lehi properties and homes were configured and constructed prior to the area's annexation in 1970, including this property and some of its structures. Next, the lot is smaller than the minimum 43,560 sq. ft. size required by the RS-43 District, it is only 25,709 sq. ft. Also, the lot dimensions are 105' wide X 230' deep. So, the property has less buildable area than a standard RS-43 lot, but it has depth. Planning Staffing concurs with the applicant's justification that the detached accessory structure is situated so far back towards the rear of the lot that the view of the structure from the public right-of-way is partially blocked by the house and by structures on the adjacent lots. In addition, Staff research indicates that a detached accessory structure has existed on the lot in this general location for several decades and that portions of the structure were constructed prior to the applicant's ownership of the property. Also, that the new additions to the structure follow the same plane of encroachment into the side yard as the original structure. Special circumstances such as these have led to several variances being granted in the Lehi area for similar requests.

Question 2: Explain how the special circumstances or conditions cited in Question #1 originated. Are these conditions pre-existing and not self-imposed?

Portions of the original detached accessory structure existed prior to ownership by the applicant and the applicant states that subsequent additions to the building were constructed in the same plane as the existing structure and do not encroach significantly further into the side yard than the original structure. The 12.5' tall addition to the front of the structure and the 12.5' tall addition to the rear of the structure constructed by the applicant increased the area and height, and therefore the nonconformity of the detached accessory structure. At any time, the owner had the opportunity to seek a building permit. The permit review process would have uncovered these issues, avoiding creation of new nonconformities.

Question 3: Explain how strict application of the Zoning Ordinance would deprive the property of uses or development options available to other properties in the same zoning district.

Staff acknowledges there are pre-existing conditions associated with this request, but the applicant's additions to the detached accessory structure intensified its noncompliance. The standard that allows such a structure to encroach into the required side and rear yards has two controlling factors: 1) The height of the structure is limited to 10' in the rear quarter of the lot (the north 58' of the lot), and 2) the height is limited to 8' outside the rear quarter of the lot. Staff is in support of allowing the structure to extend 25.5' forward of the rear quarter of the site. Since the accessory structure is still 147' behind the front property line, it can generally be considered to meet the intent of this standard. Staff finds that reducing the height of the structure, while allowing the current footprint would reduce the impact of this nonconforming structure. At the same time, it would limit the hardship imposed by requiring full compliance with Code.

Question 4: Explain why the requested variance will not grant special privilege or unusual favor to this property or development over other sites with similar circumstances.

As previously discussed, the Lehi area has many properties and homes that were configured and constructed prior to annexation into the City of Mesa in 1970 and that several variances have been granted in the Lehi area for similar requests as the applicant's. Also, Planning staff acknowledges that a detached accessory building existed on the property prior to the applicant's ownership. However, the applicant's additions to the structure intensified its noncompliance even if they were constructed in the same plane as the original building. Staff finds it necessary to bring the structure into closer conformance to avoid granting special privilege to this property. Reducing the height to meet Code, while granting a variance for the location of the structure would limit the hardship.

Staff's Response to Main Points Within the Applicant's Justification for the Variance Requests to allow a Detached Accessory Dwelling Unit to encroach into the Required East Side Yard:

The location of the detached ADU on the lot is pre-existing and not self-imposed and staff supports this variance request.

Staff's Response to Main Points Within the Applicant's Justification for the Variance Requests to allow a Deviation from the Required Minimum Dimensions for Covered Parking in the RS-43 District:

Staff supports this variance request since the requirement for a single residence to have two covered parking spaces wasn't add to the MZO until 2011. In addition, even though the garage/workshop portion of the detached accessory building does not meet the minimum MZO dimensions for two residential covered parking spaces, it does provide for one covered parking space, bringing the property into greater compliance with the current MZO requirements. Ample uncovered parking is available onsite.

FINDINGS:

- 1.1 The property was annexed into the City of Mesa in 1970 and historical aerial photos show a home and a detached accessory structure to the east of the home existing on the property at the time of annexation.
- 1.2 The lot is surrounded by homes and lots of similar size and shape.
- 1.3 The existing lot is undersized for a standard RS-43 zoned lot, but has a lot of depth (105' X 230') The parcel is 25,709 sq. ft. in total area. The lot is 17,851 sq. ft. smaller than the minimum lot area for a RS-43 lot.
- 1.4 A detached accessory structure existed on the property prior to the applicant's ownership and the additions to the building follow the same plane as the original building and do not encroach significantly further in the side yard setback.
- 1.5 The detached accessory structure is located \pm 147' behind the front property line.
- 1.6 The accessory dwelling unit existed prior to the applicant ownership.
- 1.7 One covered parking space and additional uncovered parking spaces exist behind the front yard setback.
- 1.8 There have been many variances granted in the Lehi area to address older buildings and properties that do not meet current MZO requirements.
- 1.9 Prior to 2011, the MZO required two parking spaces behind the front setback in Residential Single-Family zoning districts, but did not require the spaces to be covered.
- 1.10 In all RS Residential Single Dwelling Districts, the MZO 11-30-17.B.1 allows a non-residential (detached) accessory building to encroach into the required rear and side yards if it is within the rear one-quarter of the lot and does not exceed 10 ft. in height.
- 1.11 In all RS Residential Single Dwelling Districts, MZO 11-30-17.B.2 allows a non-residential (detached) accessory building to be located within the required rear yard but outside of the required side yard provide that the building does not exceed 15 ft. in height.
- 1.12 The MZO 11-31-3.C requires an Accessory Dwelling Unit (a secondary living quarters) to conform to all setbacks, height, lot coverage and other requirements applicable to the primary dwelling unit, based on the zoning district requirements.
- 1.13 The required aggregate side yard setback of 30' is achieved at various points within the site, but neither the 10' setback nor the 20' setback is consistently provided.

- 1.14** The ADU encroaches 1' into the required 10' side yard setback for 30 linear feet (or 13%) of the 230' deep lot.
- 1.15** The detached accessory structure encroaches up to 17 linear feet into the required 20' side yard setback for 61' (or 27%) of the 230' deep lot.

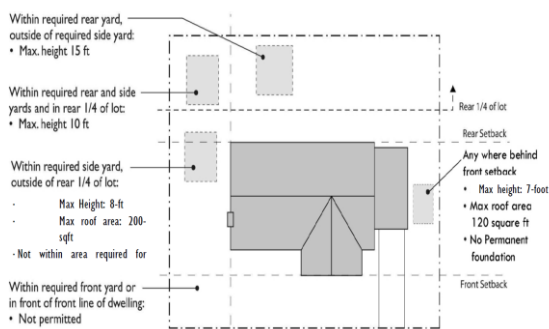
ORDINANCE REQUIREMENTS:

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 1/4 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 stormwater 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.

Figure 11-30-17: Detached Accessory Buildings



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 11-32-3: Parking Spaces Required:

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

Zoning Ordinance Sec 11-32-4.F: Parking Spaces Required:

- 1. A single-car garages 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 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

Zoning Ordinance, Sec. 11-86-2 Residential Use Classifications:

Accessory Dwelling Unit. A secondary living quarters, attached or detached from the primary dwelling, located on a single residence lot when authorized as described in Article 2, which may or may not have a second kitchen, and may function independently of the primary dwelling by means of separate access.

Zoning Ordinance, Sec. 11-87 Definitions:

Accessory Building or Structure: A detached subordinate building or structure, separated by at least 6 feet, the use of which is customarily incidental to that of the main building or to the main use of the land, and on the same lot or parcel of land with the main building or use.