



PLANNING DIVISION  
STAFF REPORT

Board of Adjustment

August 7, 2024

CASE No.: <b>BOA24-00411</b>	PROJECT NAME: <b>Landwehr Residence</b>
Owner's Name:	Leonard Landwehr
Applicant's Name:	Kevin Fulkerson
Location of Request:	3950 East McLellan Road Lot, 11. Located east of Val Vista Drive and south of McKellips Road.
Parcel No(s):	141-30-091
Nature of Request:	Requesting a Variance to allow detached accessory buildings to be located within the required front yard and in the area between the front of the principal dwelling and the front property line in the Single-Residence 35 with a Planned Area Development overlay (RS-35-PAD) District; a Variance to allow the aggregate area of all detached structures to be greater than 50 percent of the primary residence in the RS-35-PAD District; and a variance to exceed the maximum height in the required front yard setback in the RS-35-PAD District.
Zoning District:	Single Residence 35 with a Planned Area Development overlay (RS-35-PAD)
Council District:	2
Site Size:	1.3± acres
Existing Use:	Single Residence
Hearing Date(s):	August 7, 2024 / 5:30 p.m.
Staff Planner:	Tulili Tuiteleleapaga-Howard, Planner I
Staff Recommendation:	Approval with Conditions

**HISTORY**

On **November 4, 1978**, the City Council annexed 1,633± acres of land, including the project site, into the City of Mesa (Ordinance No. 1193).

On **July 16, 1979**, the City Council approved a rezoning request from Maricopa County Rural 35 to Single Family Residence 35 (R1-35) [equivalent to RS-35] for 340± acres including the project

site (Case No. Z79-063, Ordinance No. 1254).

On **July 31, 1995**, the City Council approved a rezoning on 19.7± acres of land, including the subject site, from R1-35 to R1-35 PAD for the development of a 19-lot single residence subdivision with private streets (Case No. Z95-050, Ordinance No. 3057).

## **PROJECT DESCRIPTION**

### **Background:**

The applicant is requesting a variance to allow detached accessory structures to be located in the front yard of a single residence home. Per Section 11-30-17(B)5 of the MZO, detached accessory structures shall not be in the required front yard or in the area between the front of the principal dwelling and the front property line. Driving this request is a pre-existing 847 square foot structure in the front yard the applicant is proposing to convert into a detached accessory dwelling unit (ADU). In addition to this, the applicant is proposing a future 720 sq. ft. shade structure in the front yard.

The applicant is also requesting a variance for the aggregate area of all detached structures on the site to be 111% of the primary residence. Per Section 11-30-17(B)9 of the MZO, the aggregate area of such detached structures may not exceed 50% of the primary residence. In addition to the existing detached buildings on-site and the aforementioned future 720 square foot shade structure, the applicant is proposing a future 725 square foot garage, the aggregate of which, when combined with all existing detached structures on the property, will exceed the required 50% of the primary residence.

Per Section 11-30-4(A)1.a of the MZO, no fence or freestanding wall within or along the exterior boundary of the required front yard shall exceed a height of 3.5 feet. As a means of addressing all final non-conformities on the subject property, the applicant is also requesting a variance for a fence in the front yard to exceed the required maximum height of 3.5 feet. This would permit a pre-existing 6-foot block wall surrounding the subject property and encroaching into the required front yard setback to remain.

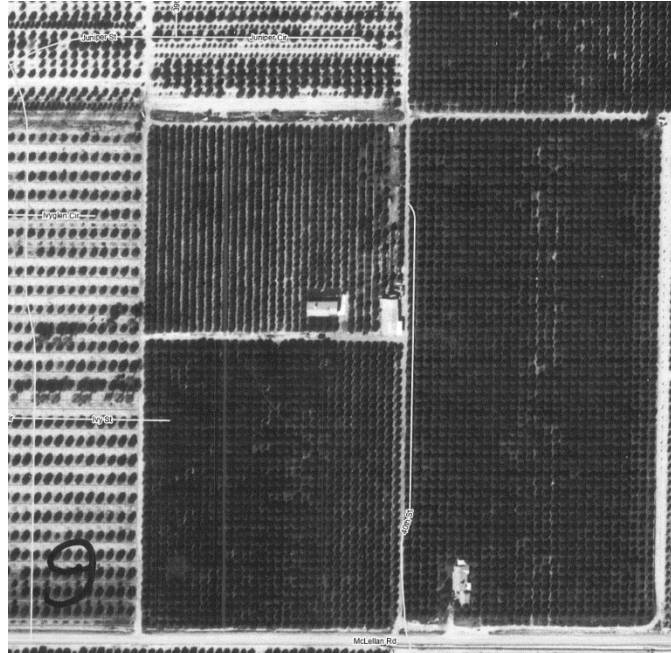
### **General Plan Character Area Designation and Goals:**

The Mesa 2040 General Plan character type designation on the property is Neighborhood. Per Chapter 7 of the General Plan, the primary focus of the Neighborhood character type is to provide safe places for people to live where they can feel secure and enjoy their surrounding community. Neighborhoods can contain a wide range of housing options and often have non-residential uses such as schools, parks, places of worship and local serving businesses. The proposed request complies with the intent of the General Plan character area.

Overall, the existing Single Residence conforms with the General Plan and the intent of the character area.

### **Site Characteristics:**

The subject property is located east of the northeastern corner of Val Vista Drive and McLellan Road. It is zoned Single Residence-35 with a Planned Area Development overlay (RS-35-PAD), and exists with a lot area of 58,127 square feet. Developed on the property is an existing primary residence of 4,121 square feet in size, 3,021 square feet of which is livable area. To the east of the primary dwelling, there is an existing 847 square foot garage located within the front yard setback. Due to its location on the site, the structure does not conform to the requirements of MZO Section 11-30-17. However, site photographs obtained from Maricopa County historic aerials reveal that both the primary residence and the existing front yard detached structure have existed since as early as 1976, prior to the subject site's annexation into the City of Mesa. Based on the historic data, the existing 847 square foot garage is considered legal non-conforming per MZO Section 11-36-2(B).



1976 Feb – 1976 April Maricopa County Historical Aerial Photography  
3950 E McLellan Road Lot 11, Mesa AZ 85205

Driving this project request, the applicant is requesting the conversion of this garage to an Accessory Dwelling Unit (ADU). Per Section 11-31-3 of the MZO, detached accessory dwelling units must comply with the same standards set forth for detached accessory buildings outlined in Section 11-30-17 except for standards specific to Section 11-31-3. Per Section 11-30-17, detached accessory buildings may not be located in the required front yard or in the area between the front of the principal dwelling and the front property line.

Main access to the site is provided via two separate access gates along the eastern property line from 40<sup>th</sup> Street, a private street that connects to McLellan Road to the south. There is an existing six-foot free-standing wall on the subject site's eastern property line.

Existing on the site are four other detached structures: a 130 square foot playhouse and a 128 square foot shaded horse corral in the northern side yard, and an existing 348 square foot shade structure and 442 square foot chicken coop located east of the primary residence, outside of the front yard setback.

The aggregate area of all existing detached structures, including the front garage, is 1,895 square feet. Per Section 11-30-17(B) of the MZO, in the RS-35 zoning district, the aggregate area of all detached buildings may not be greater than 50 percent of the primary residence. With a livable area of 3,021 sq. ft., the existing detached structures on the site make up approximately 63% of the primary residence. Combined with the proposed future shade structure of 720 sq. ft. and future detached garage of 752 sq. ft., the aggregate area of all detached structures is proposed for 3,367 square feet. Against the livable area, this amounts to 111% of the primary residence.

Although the proposed aggregate area of all detached structures on this site would be 111% of primary residence’s square footage, the combined building coverage of all existing and proposed improvements to the site would amount to approximately 13%. The maximum building coverage permitted for single residences in the RS-35 zoning district as provided in Section 11-5-3 of the Zoning Ordinance is 35%. The total proposed building coverage of this project is well within this development standard. Besides the restrictions placed on detached structures by the size of the existing home, the addition of the new proposed structures will not intensify the lot to the point of non-conformity from the development standards set forth in the MZO for the zoning district.

Additional to the site’s characteristics is the existence of an approximate 15,700 square foot citrus grove that encompasses almost the entirety of the property’s rear yard. The subject site is part of the Citrus Sub Area, a low-density residential sub area of the City of Mesa that is planned specifically for large-estate type residential development and the preservation of citrus trees. Per the Citrus Sub-Area Plan, citrus trees must be maintained along public and private streets and on individual lots within residential subdivisions. With the subject property having existed in its current configuration since the mid-70’s, the citrus grove contained onsite is pertinent to the surrounding area and a remarkable preservation of the community’s character. Where detached accessory structures are typically located within the rear and side yards of a property, this citrus grove comprises nearly 30% of the total lot area, leaving behind only the side and front yards of the site available for future development.

**Surrounding Zoning Designations and Existing Use Activity:**

<b>Northwest</b> RS-35-PAD Single Residence	<b>North</b> RS-35-PAD Single Residence	<b>Northeast</b> PS Gene Autry Park
<b>West</b> RS-35-PAD Single Residence	<b>Subject Property</b> RS-35-PAD Single Residence	<b>East</b> RS-35-PAD Single Residence
<b>Southwest</b> RS-35-PAD Single Residence	<b>South</b> RS-35-PAD Single Residence	<b>Southeast</b> RS-35-PAD Single Residence

**Mesa Zoning Ordinance Requirements and Regulations:**

**Zoning Ordinance, Section 11-30-17(B)(5) – Variance to allow detached accessory buildings or structures to be located in the required front yard or in the area between the front of the principal dwelling and the front property line.**

Per Section 11-80-3 of the City of Mesa Zoning Ordinance, the Board of Adjustment shall find upon sufficient evidence when making a decision on variances that:

1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings;

**The primary residence and existing front yard detached structure were both constructed prior to the creation of the 19-lot single residential subdivision as revealed and confirmed by historic aerials provided by Maricopa County. Since its annexation to the City of Mesa in 1979 and adoption of Mesa Zoning Ordinance, the detached structure has obtained a legal non-conforming status, having remained in its current configuration for the past 40+ years.**

**Furthermore, the subject site is located within the Citrus Sub Area, a low-density residential sub-area plan which requires the preservation and maintenance of citrus trees along public and private streets, and on individual lots. Within the subject property, approximately 15,700 sq. ft. of the western rear side of the lot holds a citrus grove maintained by the property owner. The property owner has expressed future plans of preserving this grove to the best of his ability, thus leaving only the side and front yards of his lot to develop on.**

***The proposal meets this criterion.***

2. That such special circumstances are pre-existing, and not created by the property owner or appellant;

**The construction of both the primary residence and front yard garage are pre-existing not only to the current owner's purchase of the property, but prior also to the subdivision of the surrounding neighborhood and the site's annexation into the City. Historic aerials provided by Maricopa County show the existing residence and accompanying accessory detached structure prior to the surrounding area's land split into its current 19-lot single-residential subdivision. It is evident that the front yard structure existed prior to the establishment of the subject site's property lines. This is a pre-existing condition that was not created by the property owner.**

***The proposal meets this criterion.***

3. 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;

**The primary residence and existing detached garage, as well as the orange grove located in the west end of the property, were developed prior to the subdivision of the**

neighborhood, and prior to annexation into the City of Mesa. Other properties in the area were developed later, with homes placed closer to the fronts of the lots, and with orange trees along the front and side yards, leaving space for accessory buildings to the side and rear of those residences. The strict application of the zoning ordinance would deprive this property of the ability to maintain the citrus grove, which is a valued amenity in the Citrus Sub-Area.

*The proposal meets this criterion.*

4. 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.

**With the primary residence and detached accessory structure having existed since 1976, the variance requested will not intensify the subject site to the point of inconsistency with development standards set forth in the MZO and will not be an exception to how other properties nearby and in the community have developed.**

*The proposal meets this criterion.*

**Zoning Ordinance, Section 11-30-17(B)(9) – Variance to allow the aggregate area of all detached structures to be greater than 50 percent of the primary residence.**

Per Section 11-80-3 of the City of Mesa Zoning Ordinance, the Board of Adjustment shall find upon sufficient evidence when making a decision on variances that:

1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings;

**The primary residence and existing front yard detached structure were both constructed prior to the creation of the 19-lot single residential subdivision as revealed and confirmed by historic aerials provided by Maricopa County. Since its annexation to the City of Mesa in 1979 and adoption of Mesa zoning standards, the detached structure has since obtained a legal non-conforming status, having remained in its current configuration for the past 40+ years.**

**In comparison to neighboring lots in this subdivision, the subject property is also substantially larger, with a lot size of 1.3 acres where surrounding properties range well below an acre. With a lot size of 58,127 square feet, the subject site is an appropriate fit for the Single Residence-43 (RS-43) zoning district, the minimum lot size of which is one (1) acre. Per Section 11-30-17(B)(8) of the MZO, the aggregate area of detached structures may be constructed up to 100% of the primary residence in the RS-43 District. Were the subject site more appropriately zoned for its size, the aggregate area of its existing detached structures would fall well below that of the primary residence – approximately 63%.**

Although two additional future structures are proposed on the site thus increasing that area to 111% of the primary residence, Staff finds that the proposed future 720 square foot shade structure – being open-air and unenclosed – will not intensify the building coverage of the lot to the point of non-conformity with the intent of development standards set forth in the MZO.

*The proposal meets this criterion.*

2. That such special circumstances are pre-existing, and not created by the property owner or appellant;

**The subject site was purchased by its current property owner in 2018, at the time of which all detached structures on the property were pre-existing, and not created by the property owner.**

*The proposal meets this criterion.*

3. 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;

**Strict application of the zoning ordinance would require the demolition and removal of multiple existing detached structures, the privilege of having which is enjoyed by other properties in the surrounding area and of the same zoning district. The existing residence has held its current configuration and preserved citrus orchard in the rear yard long before the development of the now-standing residential subdivision. Any existing and all future proposed improvements to the site must be conducted with these site limitations in mind, restricting the property owner of the same permissions granted to neighboring properties.**

*The proposal meets this criterion.*

4. 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.

**The requested variance will allow for the existing front yard accessory structure to remain in its current location, having existed in its configuration since as early as 1976. Vested in this same variance would also permit a future proposed shade structure in the area between the primary residence and front property line. However, due to the pre-existing configuration of the property facing the east, and the existing citrus grove in the rear yard to the west, Staff finds that the proposed future unenclosed shade structure in the front yard will not intensify the lot to the point of non-conformity with the intent of development standards in the zoning ordinance, nor will it grant special privileges inconsistent with such standards.**

*The proposal meets this criterion.*

**Zoning Ordinance, Section 11-30-4(A)(1)(a) – Variance to exceed the maximum fence height in the required front yard setback.**

Per Section 11-80-3 of the City of Mesa Zoning Ordinance, the Board of Adjustment shall find upon sufficient evidence when making a decision on variances that:

1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings;

**The property was purchased by its current owner in 2018, at the time of which the site was sold in its current configuration. There is no record of when the existing six-foot block wall was erected, though Maricopa County historic aerials suggest its existence since as early as 2000. Per historic aerials, the block wall appears to have been constructed along the east side yards of the adjacent properties to the north and south, and across the front of the subject site.**

**The maximum height for fences or freestanding walls within or along the exterior boundary of the required side or rear yard is six-feet. The property to the north fronts onto the north, with the 6-foot wall running along its side yard; the property to the south fronts onto the south, with the 6-foot wall also running along its side yard. Unlike its surrounding neighbors, only the subject property fronts onto the private street to the east, with the 6-foot wall running through the front yard. This variance request is to allow the existing six-foot wall to remain in the front yard (adjacent to 40<sup>th</sup> Street) which, per code, would not be permitted to exceed 3.5 feet.**

***The proposal meets this criterion.***

2. That such special circumstances are pre-existing, and not created by the property owner or appellant;

**As seen in Maricopa County historic aerials, the orientation of the residence has existed prior to the annexation of the site into the City, and the subsequent development of the surrounding residential neighborhood. The existing 6-foot block wall can be seen as having existed since as early as 2000. These conditions are pre-existing and were not created by the current property owner.**

***The proposal meets this criterion.***

3. 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;

**Strict application of the zoning ordinance would require the existing wall to be altered to reduce the height, or demolished. Because the subject property existed long before the development of its surrounding neighboring lots, it does not share the same orientation planning granted elsewhere. Where the block wall runs through**



**neighboring side yards and thus permitted by the zoning ordinance, the subject property was previously oriented in a manner that causes the block wall to run through its front yard: a circumstance that exists only for the subject property, deriving it from privileges enjoyed by other property owners.**

***The proposal meets this criterion.***

4. 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.

**The variance will allow a pre-existing six-foot block wall to remain without a non-conforming status and continue to blend in with the surrounding residential community. It is a necessary exception to how other properties nearby and the community has developed, and does not grant special privilege to remain in its existing configuration.**

***The proposal meets this criterion.***

Findings:

- A. The property was annexed into the City of Mesa in 1979.
- B. The property was constructed as early as 1976, prior to the site's annexation into the City of Mesa.
- C. Strict compliance with the MZO development standards for the RS-35 zoning district would deprive the property of privileges enjoyed by other properties of varying sizes in the subject neighborhood.
- D. Approval of the requested additions to the subject property will advance the goals and objectives of the General Plan for the Neighborhood character area designation and any other applicable City plan and/or policies.
- E. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the RS-35 zoning district where it is located and conform with the General Plan.

**Neighborhood Participation Plan and Public Comments:**

The applicant sent the required notification letters to all property owners within 150 feet of the site. As of this report, staff has not been contacted by any citizens to express support or opposition to the request.

**Staff Recommendation:**

Based on the application received and preceding analysis, staff finds that the request complies with the Mesa 2040 General Plan and meets the approval criteria outlined in Section 11-80-3 of the MZO; therefore, staff recommends approval with the following conditions:

**Conditions of Approval:**

1. Compliance with the final site plan as submitted.

2. Compliance with all City Development Codes and regulations.
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.

**Exhibits:**

Exhibit 1 – Staff Report

Exhibit 2 – Vicinity Map

Exhibit 3 – Narrative and Justification Statement

Exhibit 4 – Site Plan

Exhibit 5 – Power Point Presentation