



**PLANNING DIVISION
STAFF REPORT**

Board of Adjustment

December 1, 2021

CASE No.: **BOA21-00823**

CASE NAME: **Preston Residence Addition**

Owner's Name:	Bruce Preston
Applicant's Name:	Bruce Preston
Location of Request:	939 E. Kael Street
Parcel Nos:	136-08-035
Nature of Request:	Requesting a Variance from the required rear yard setback to allow for an accessory dwelling unit in a Single Residence-35 District with a Planned Area Development Overlay (RS-35 PAD).
Zone District:	RS-35 PAD
Council District:	1
Site size:	±0.8 acres
Existing use:	Single Residence
Hearing date(s):	December 1, 2021 / 4:30 p.m.
Staff Planner:	Josh Grandlienard
Staff Recommendation:	DENIAL

HISTORY

On **July 6, 1970**, the property was annexed into the City of Mesa as part of a larger 1,395± acre annexation and subsequently zoned RS-43 (Ordinance No. #672).

On **May 15, 1995**, City Council approved a request to rezone from R1-43 and R1-43 (conceptual C-2, O-S) to R1-35 PAD and R1-15 PAD and approved a 59-lot single residence subdivision (Z95-030).

PROJECT DESCRIPTION

Background:

The applicant is requesting a variance to allow for an addition to encroach into the required rear yard setback in the RS-35 Zoning District with a Planned Area Development Overlay. Per Table 11-5-3 of the Mesa Zoning Ordinance (MZO), the minimum rear yard setback in the RS-35 District

is 30 feet. Approval of the variance request would allow the applicant to construct an attached RV garage and accessory dwelling unit, three feet, eight inches (3' 8") from the southern property line.

The existing home was constructed in 1996 as a part of a 59-lot single residence subdivision titled Amberwood Estates II. The subject property is 36,961± square feet, with a horse pasture located on the east side of the property, an existing single residence located on the west side of the property, and an approximate 100 square foot detached accessory structure located in the southwest corner of the site. The proposed addition would connect the main residence with the existing detached accessory structure providing for a 1,350 square foot RV garage and a 542 square foot accessory dwelling unit.

General Plan Character Area Designation and Goals:

The property is located with the Neighborhood Character Area designation of the City of Mesa's General Plan. Single Residences are consistent with the character area designation and is supported by the Neighborhood General Plan goal of creating and maintaining a variety of great neighborhoods. The property is located within a residential neighborhood, where the Lehi Sub-area Plan bisects E. Kael Street. Areas to the north are located within the Lehi Sub-area, while the subject property is located outside of the Lehi Sub-area.

Site Characteristics:

The subject property is located 800± feet east of N. Horne and approximately 800± feet north of E. McKellips Road. The existing lot is 143.5 feet wide by 257.57 feet long and is approximately 36,961 square feet (0.85±). The subject property currently has an existing single residence, an existing horse pasture located on the east side of the property, and a detached accessory structures located to the south of the pasture. There is also an existing pool located within the rear setback of the property that has an associated accessory structure approximately 100 square feet in size located 3'-8" from the rear property line. Currently the subject lot and structures meet all required setbacks, lot size, and lot dimensions for the RS-35-PAD District.

Surrounding Zoning Designations and Existing Use Activity:

Northwest (Across E. Kael Street) RS-43 Single Residence	North (Across E. Kael Street) RS-43 Single Residence	Northeast (Across E. Kael Street) RS-43 Single Residence
West RS-35 PAD Single Residence	Subject Property RS-35 PAD Single Residence	East RS-35 PAD Single Residence
Southwest RS-15 PAD Single Residence	South RS-15 PAD Single Residence	Southeast RS-15 PAD Single Residence

Mesa Zoning Ordinance Requirements and Regulations:

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 surrounding;

The subject site does not have physical constraints nor display unique conditions that would justify the variance request. The site is relatively flat and has no special circumstances relating to the size, shape, topography, encumbrances, location, or surrounding area. The existing home currently meets setback requirements for the RS-35 District. There is space to the east of the residence where an addition can be constructed and meet the minimum garage standards and development standards required by the RS-35 District.

The proposal does not meet this criteria

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

The existing structures on the subject site meet the MZO development standards for the RS-35 District. The need for the variance is created by the property owner's design choices for the placement, orientation, and size of the proposed addition.

The proposed garage and accessory dwelling unit can be relocated and a secondary driveway provided, consistent with the RS-35 District standards, on the eastern portion of the site with minimal disturbance with the existing horse corral while maintaining the required rear and side setbacks.

The proposal does not meet this criteria

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

It is possible to construct an addition to the existing home and meet the MZO development standards for the RS-35 District without approval of a variance. Therefore, strict compliance with MZO development standards for the RS-35 District does not deprive the property of privileges enjoyed by other properties in the neighborhood.

Staff researched the list of example encroachments provided by the applicant and found that two of the 23 properties were approved with a variance and had special circumstances not related to the proposed case. Fifteen of the 23 properties were found to be in compliance with setback requirements and five properties that were not in compliance did not have permits. Based on this research, staff did not find precedence of the City supporting deviations from MZO requirements; , therefore approval of the variance would grant a special privilege to this property.

The proposal does not meet this criteria

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.

Based on the findings that there are no unique or unusual physical circumstances that would prevent the owner from constructing a new attached RV garage while meeting MZO development standards, the granting of this variance request constitutes a special privilege inconsistent with MZO development standards for the RS-35 District. Properties in the vicinity and within the RS-35 District have been able to construct additions onto the primary structure or construct detached accessory structured while maintaining the required setbacks for the RS-35 District. The lack of evidence of special circumstances applicable to this property and the granting of this variance would be a violation of this criteria and would grant a special privilege inconsistent with the surrounding area.

The proposal does not meet this criteria

Findings:

- A. The property as annexed into the City of Mesa in 1970.
- B. The property was platted as a part of the Amberwood Estates II, which was approved by City Council as a part of Z95-030 and met the development standards for the RS-35 District.
- C. The existing structures on the subject site meet the MZO development standards for the RS-35, including the 30-foot rear setback requirements. Since the existing pool equipment accessory structure is less than 200 square feet it can be located within the rear setback as required by Section 11-30-17(B).
- D. Special circumstances are not present on the subject property that would justify the variance on the property related to the size, shape, topography, location, or surrounding area.
- E. The need for the variance is created by the property owner's design choices for the placement, orientation, and size of the proposed RV garage and accessory dwelling unit.
- F. Strict compliance with MZO development standards for the RS-35 District does not deprive the property of privileges enjoyed by other properties in the neighborhood since it is possible to construct the addition and still meet the MZO development standards for the RS-35 District without approval of a variance.
- G. Granting of this variance request constitutes a special privilege inconsistent with MZO development standards for the RS-35 District.

Neighborhood Participation Plan and Public Comments:

The applicant provided notification to neighboring property owners within 150 feet of the subject site. As of the writing of this report, staff has not been contacted by any residents to express support or opposition to the request.

Staff Recommendation:

Based upon the application received and preceding analysis, Staff find that the requested variance does not meet the approval criteria outlined in Section 11-80-3 of the MZO; therefore, recommends **denial** of the request.

Exhibits:

Exhibit 1 - Vicinity Map

Exhibit 2 - Staff Report

Exhibit 3 - Narrative and Justification Statement

Exhibit 4 - Site Plan

Exhibit 5 - Elevations

Exhibit 6 - Floor Plans

Exhibit 7 - Maricopa County Assessor's "sketch"

Exhibit 8 – Related Structure Analysis