

Mesa Council Chambers Lower Level – 20 E. Main Street, Room 170

Date: December 1, 2021 Time: 5:30 p.m.

MEMBERS PRESENT:

Chair Alexis Wagner
Vice Chair Nicole Lynam
Boardmember Adam Gunderson
Boardmember Chris Jones
Boardmember Heath Reed
Boardmember Troy Glover

MEMBERS ABSENT:

Boardmember Ethel Hoffman

(*Boardmembers and staff participated in the meeting through the use of audio conference equipment)

STAFF PRESENT:

Margaret Robertson
Rachel Prelog
Michelle Dahlke
Alexis Jacobs
Jennifer Gniffke
Sean Pesek
Joshua Grandlienard

OTHERS PRESENT:

1 Call meeting to order.

Chair Wagner declared a quorum present, and the Public Hearing was called to order at 5:30 p.m.

2 Take action on all Consent Agenda items.

A motion to approve the Consent Agenda was made by Boardmember Gunderson as read by Vice Chair Lynam and seconded by Boardmember Jones.

Items on the Consent Agenda

3 Approval of the following minutes from previous meeting:

***3-a Minutes from November 3, 2021 Study Session and Public Hearing.**

Vote: 6-0 (Boardmember Hoffman- absent)
Upon tabulation of vote, it showed:
AYES – Wagner-Lynam-Jones-Gunderson-Reed-Glover
NAYS – None
ABSENT – Hoffman
ABSTAINED – None

4 Take action on the following cases:

***4-a Case No.: BOA21-00787 (Approved with Conditions)**

Location: District 2. Within the 3900 block of E. University Drive (south side). Located west of N. Greenfield Road

Subject: Requesting a Development Incentive Permit (DIP) to allow deviations from certain development standards for an apartment complex in the Multiple Residence (RM-4) District

Decision: Approved with Conditions

Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA21-00787 was made by Boardmember Gunderson as read by Vice Chair Lynam, with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Jones to approve the following conditions:

1. Compliance with the final site plan as submitted.
2. Compliance with all City development codes and regulations, except as identified in Table 1 of this report.
3. Compliance with all requirements of ZON21-00788 for site plan approval.

The Board's decision is based upon the following Findings of Fact:

- A. The subject property is 1.02± acres and has been in its current configuration for more than 10 years.
- B. The subject property is served by, or has direct access to, existing utilities.
- C. The total developable land area within 1,200 feet of the subject property is not more than 25 percent vacant.
- D. Greater than 50 percent of lots within 1,200 feet of the subject property have been developed for more than 15 years.
- E. This requested deviations through the DIP will allow for the development of a bypassed parcel.
- F. The proposed development is consistent with the General Plan's Neighborhood character area designation.
- G. The requested modifications will result in a development that is commensurate with existing development in the vicinity.
- H. The proposed development meets the intent of the Design Standards of this Ordinance and will be reviewed by Mesa's Planning and Zoning Board at the December 15, 2021 Study Session.

Consent Agenda Approved

Vote: 6-0 (Boardmember Hoffman - absent)

Upon tabulation of vote, it showed:

AYES – Wagner-Lynam-Jones-Gunderson-Reed-Glover

NAYS – None

ABSENT – Hoffman

ABSTAINED – None

- *4-b Case No.: BOA21-01021 (Approved with Conditions)**
Location: District 3. 2245 S. Dobson Rd
Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow deviations from certain development standards for an automobile/vehicle sales and leasing facility.
Decision: Approved with Conditions
Summary: This item was on the consent agenda and not discussed on an individual basis.

A motion to approve case BOA21-01021 was made by Boardmember Gunderson as read by Vice Chair Lynam, with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Jones to approve the following conditions:

1. Compliance with the final site plan and landscape plan as submitted.
2. Compliance with all City Development Codes and regulations, except as identified in Table 1 of this report.
3. Compliance with all requirements of the Development Services Department regarding

The Board's decision is based upon the following Findings of Fact:

- A. The site is zoned LI and was developed in the early 1970's.
- B. In 2008, the occupancy of the building changed to an air conditioning parts warehouse facility.
- C. The subject property has been vacant since 2019.
- D. Section 11-33-1(B)(2) of the Mesa Zoning Ordinance (MZO) states when there is a change in the building occupancy designation after the effective date of the MZO, the landscape standards of Chapter 33 are applicable.
- E. The existing site does not meet current MZO development standards and is therefore legal non-conforming.
- F. Full compliance with current MZO would require significant alterations to the site including removal of parking spaces and alterations to the building and on-site circulation.
- G. Improvements to the existing site include new landscape islands with trees and shrubs and an increased foundation base to accommodate a five-foot-wide sidewalk and addition foundation base landscape area.
- H. The modifications requested along with the proposed improvements are consistent with the degree of change associated with the change of use and bring the site into a closer degree of conformance with current MZO standards.
- I. The proposed improvements will not create any new non-conformities.
- J. The proposed improvements will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods.

Consent Agenda Approved

Vote: 6-0 (Boardmember Hoffman- absent)

Upon tabulation of vote, it showed:

AYES – Wagner-Lynam-Jones-Gunderson-Reed-Glover

NAYS – None

ABSENT – Hoffman

ABSTAINED – None

- *4-c Case No.: BOA21-01027 (Approved with Conditions)**
Location: District 1. Within the 400 to 600 block of West Brown Road (north side)
Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow deviations from certain development standards for the conversion of an existing medical office into apartments in the Multiple Residence 4 (RM-4) District.
Decision: Approved with Conditions
Summary: This item was on the consent agenda and not discussed on an individual basis

A motion to approve case BOA21-01027 was made by Boardmember Gunderson as read by Vice Chair Lynam, with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Jones to approve the following conditions:

1. Compliance with the final site plan and landscape plan as submitted.
2. Approval of the Site Plan and Design Review requests, and compliance with those conditions of approval for ZON21-00923 and DRB21-00977.
3. Compliance with all City Development Codes and regulations, except as identified in Table 1 of this report.
4. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.

The Board's decision is based upon the following Findings of Fact:

- A. The site is zoned RM-4, and the medical office use was established in the early 1980's.
- B. The subject site does not meet current MZO development standards and is therefore legal non-conforming.
- C. Full compliance with current MZO would require significant alterations to the site including demolition of portions of the existing building and alterations to the on-site circulation.
- D. Improvements to the existing site include landscape improvements around the perimeter or the site, within the parking field, and the foundation base areas adjacent to the building elevations, as well as new amenity areas between the buildings and recreational paths along the west and north property lines.
- E. The modifications requested along with the proposed improvements are consistent with the degree of change requested to improve the site and to bring the site into a closer degree of conformance with current MZO standards.
- F. The proposed improvements will not create any new non-conformities.
- G. The proposed improvements will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods.

Consent Agenda Approved

Vote: 6-0 (Boardmember Hoffman- absent)

Upon tabulation of vote, it showed:

AYES – Wagner-Lynam-Jones-Gunderson-Reed-Glover

NAYS – None

ABSENT – Hoffman

ABSTAINED – None

Items not on the Consent Agenda

5 Take action on the following case:

- 4-a Case No.: BOA21-00823(Approved with Conditions)**
Location: District 1. 939 E Kael Street
Subject: 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).
Decision: Approved with Conditions
Summary: Staff member Josh Grandlienard presented case BOA21-00823 to the Board

Staff member Josh Grandlienard: Thank you, Chair and members of the Board. This is BOA21-00823. Located at 939 east Kael Street. It is located north of McKellips Road and east of Horne. The general plan designation is neighborhood for safe place to live as well as provide for a variety of housing. The PAD overlay for the RS-35, Planned Area Development. is to allow for horse uses on a smaller than a typically permitted lot size, and that is consistent with the originally proposed case. And their request is for a variance for a reduced rear setback from 30 feet to 15 feet per the new revisions provided by the applicant. This is request for an addition to the existing home. Here's a site photo looking south from Kael. The proposed site plan excludes the existing pool equipment for a 15-foot setback from the rear porch. It is for a RV garage as well as an accessory dwelling unit. Here's an image of the elevations including the RV garage at a plate line height of four feet. Per 11-80-3 of the Mesa Zoning Ordinance, a variance requires special circumstances to apply to the site. Per staff's interpretation, this site does not apply, as well as for special circumstances to be preexisting, not created by the owner. Strict application of the MZO would not deprive privileges experienced by other properties in the area and approval would grant a special privilege inconsistent with the MZO. And based off of that staff is recommending denial.

Applicant Allison Preston: Good evening board. My name is Alison Preston myself along with my husband Bruce here, we are the applicants for the zoning case. It is a pleasure to see those of you again who we saw back in October. The address is 939 E Kael Street. Thank you anything else I missed. Alright, I want to thank you, Mr. Grandlienard, for the work that you've done. We respectfully disagree with your findings; we believe we meet all four of the variance criteria here. And I understand I have three minutes I want to be respectful,

Chair Wagner: You actually have 10 for the presentation.

Applicant Allison Preston: Well, that makes this a lot easier. I was going to say I want to be respectful of everyone's time and I will stick with that. Actually, Boardmember Reed you helped us out with respect to the first requirement for a variance. Would it be alright if I sat? Alright, so the first requirement for a variance is a finding of special circumstances. Under the code are special circumstances it can be related to our property, the size, the shape, the topography, the location, and the surroundings The basis of our belief is that we are entitled to a variance and that we meet the variance criteria. Criteria A. deals with our unique location and our surroundings. In the materials we submitted back in October and then updated again for today's meeting, we went into the history of the Lehi sub area and the development of the Amber Woods Estates II and there are seven of these RS-35 homes on the north end of Amber Woods Estates II that were specifically developed to be an agricultural buffer between the RS-43 Lehi sub area lots and the RS-15 balance of the 53 Lots of the Amber Woods Estates II. It was important to both the developer as well as the City of Mesa to

maintain this agricultural feel. With the exception of one of those seven lots, all the original residences were built off to the side of the lots so that we could have horse corrals and pastures and have our citrus trees, our mini orchards and grass for irrigation for SRP irrigated lots. This is a unique location, there is, I don't know, maybe there are. But the bridge between the Lehi sub area and what I call Mesa proper is a unique location, we're helping, our lots to ease that transition. And back in the 90s, when this area was developed, and even today, it's still important to maintain that transition. In fact, we have a neighbor, RS-43, across the street, who is doing a complete remodel of his property. And as part of his case, the city requested streetlights, that's not Lehi, we have streetlights on the south side, three to be exact. And that's intentional because we don't want to take away that agricultural feel. And so, we didn't get any more on the north side. It's if you haven't been out there, come out and see it. It's a unique location. It is the surroundings of the Lehi area, the farmland that is still there, those are our special circumstances. And we are trying to preserve that, by placing our addition on the west side of the property, we could ask suggested we did look into this relocated to the east side, the problem with that, not part of the variance application, but we're also doing a little residential addition, we need some more bedrooms with more kids. So, we're already expanding 15 feet out, moving this beyond that, that's 3000 square feet. And it's bigger than what we've proposed now, because then we have to put in a new driveway, and we have to put an access way additional access way to that mother-in-law suite. So, it's a huge disturbance that takes up 30% of our agricultural space. And it takes out 70% of the citrus trees, mature citrus trees that we currently have. We don't want to lose that. We want to preserve the unique location of our property. And we have the support of our neighbors with this project. We went out and included in the packet is a petition signed by all of our neighbors, and 150-foot radius, in particular, the two immediately behind us, they all support this project and understand the importance.

Applicant Bruce Preston: I'm going to stop you right there. I met with each of our adjacent side neighbors and our three adjacent rear neighbors and had sat down with drawings with each one of them to go through the proposed plan, and told them what our options were, what we were looking at, in our two neighbors in the rear that it would affect them most, as far as encroaching and they are are probably two of the biggest supporters of developing that property. They understand what we're trying to do and what we're trying to preserve in the Lehi area. When people ask us where we're from, we say Lehi, we, I was born and raised in Mesa, but I associate with Lehi being on the south side of Kael, not necessarily Mesa. You know, that's just the feel that we have, Boardmember Reed, when you were talking about the depth of the lots, you made a good point when, when Rachel looked that up, it clicked in my head that the minimum depth of the lot is 150 feet and we're 143.6. If we had six and a half more feet, the five-foot variance we are asking for in the rear, we wouldn't even be here.

Applicant Allison Preston: So, as I started to say, and I got sidetracked with the location in the surroundings. But our size is a special circumstance. And we didn't know that until tonight. So, thank you, we need to be a minimum under the Code of 150 feet. And we're shy of that. If we had that extra six and a half feet, we would have 20 feet between that rear property line and the rear wall of the addition and we wouldn't be here tonight. So, we believe we more than meet the special circumstances criteria. The next one is that these special circumstances have to be pre-existing. There can't be special circumstances that we created. In considering we moved in in 2014. After the community was established and developed, we didn't choose the location of the property. We didn't set up its role as this agricultural buffer. So, we did not create these special circumstances we're just trying to preserve that to maintain that field. The third criteria are a strict application of the zoning ordinance would deprive us of privileges enjoined by other properties. And this is really why we're back here tonight. With the first go round, we had provided a list of 23 properties with additional structures whether they are detached accessory or detached accessory structures or additional

dwelling units, accessory dwelling units or they're additions to the primary residence. There are a number of these in the Amber Estates II community that have encroachments and Mr. Grandlienard did his due diligence and went through all of those properties and wrote city comments. But again, we respectfully disagree with the finding on a number of them that they meet city code. And what we need in on and I don't know if you saw my response comments was to yes, you can take advantage for detached accessory structures of the side or rear yard setbacks. But there are some qualifications to be in that side yard setback, you can't be over 10 feet in height. And please correct me if I'm mistaken in the code to be in that rear yard setback, you can't be over 15 feet in height, we went back through and looked at the heights and went, well, we still don't meet code because we're still over the height. So again, it's our position that there are, I think our updated list, we include 15 particular properties that don't meet codes that are encroachments that were either, you know, impliedly or expressly approved by the City of Mesa, whether through you didn't know about it, or it wasn't caught or whatever the circumstances were. So other properties in our community have the same or similar encroachments that we are asking for.

Applicant Bruce Preston: So specifically, three properties would be property J, property T, and property W. We will start with J and I believe, I don't have that right in front of me. But I believe that is not permitted structure is built in front, side and rear setback. And there are no provisions in the code for front setback encroachments so it should have gone through a variance. But even with the side and rear setback, and looking at where he could place the structure, you can easily place it on the left side of his property and still had plenty of room to do what he needed to do. Staff is recommending that we take our addition and place it on the opposite side of our property because we got a permit. We are actually trying to maintain our agricultural buffer space within and that property does not have an agricultural buffer space, he has a basketball court on the opposite side. So, property T, that property is in the rear setback, I don't believe it has a side setback variance, but it does. It's three-foot to 10 foot because it has got a 10-foot setback, because it's on the street side. Instead of a seven-foot setback, because it's on a street adjacent, the side setback becomes 10 foot, again, could have been relocated, but it wasn't, but most importantly, to show the encroachment of how it sits like three feet off the rear property line. And that's obtrusive for the rear neighbor in the street. And then the last one is W which is right across the street. That original property was built as a garage and then turned into an accessory dwelling unit. We believe based on kind of doing some homework and research. But again, it exceeds the 15-foot height. It's right off the street of Hore and it's you know, pretty tall, again, that RV garage or the accessory dwelling unit could easily have been moved forward to stay out of the rear setback and continue to take over 15 feet and that all the requirements, none of those got variances. And we believe that whether the city knew about it or didn't code enforce it that whether it was expressly or turned a blind eye, it was implied that those have now been very, you know, approved variances. And so, by letting them have their properties like this and denying our opportunity to do something similar, you have now created a special circumstance in strict zoning requirements actually hinders us.

Applicant Allison Preston: So, for the last criteria for the variance, it deals with the grant, your grant of our requested variance will not constitute the right of special privileges inconsistent with limitations imposed on other properties. And this ties into T the one Bruce just finished up discussing these other properties with these encroachments. They're not limited. They weren't required to build their structures where they built them in the side and rear yard encroachments. Those are owners design choices; they could easily move them forward move them sideways and move them to different parts of their yard. There are no specific limitations to any of those laws that said, yes, this must go there, we do have a one, just a couple years back in our community that had special circumstances because it is right along Horne Street. It is right on the edge of the entrance to

our community. And it has to contend with the monument sign into the community, it had a unique situation, it had limitations for what it wanted to do. So, it was granted that variance here. So, so denying us it's not granting us special privileges that can't be granted to other properties, because these limitations don't exist. And to piggyback what Bruce was saying, it actually treats our neighbors and gives them special privileges to the detriment in strict application of the zoning ordinance to us. And I think that the thing that stands out to me, is unequal enforcement, I'm an attorney, I represent community association. So, I'm the bad guy who's suing people over pink and purple houses, I hear all the time. His house is pink, why can't my house be pink? Well, you don't know what's going on here. This is a situation you don't know what we're enforcing over here. And we're now just enforcing against you. This is a situation where so much of this has gone on over time, that it is a disparate impact, it is treating us unfairly. And I know I know, there's not just one other house and I'm trying to compare myself to this one other house, I have 15 other houses. And at some point, what's good for the majority, you can't single out the minority.

Applicant Bruce Preston: In our professional careers, I'm a licensed architect in multiple jurisdictions. And we are going the right way about it by applying for this variance, where some of these properties, as you can see don't have permits, and just built anyways, we are professionals trying to do the right thing, and trying to, you know, go about it the right way, because we know the ramifications or what should be enforced but they haven't been enforced.

Applicant Allison Preston: Well, we now put the spotlight on our community. So, to kind of wrap things up. For the reasons we've discussed tonight, and we're happy to address any questions. For the reasons we put forth in our materials, we strongly believe we meet all four criteria for the variance. And Boardmember Jones, as you pointed out, there is a 10-foot allowance. If we didn't have that additional five feet, we wouldn't be here today. So really, it's a five-foot variance. So, we're asking, we understand that the plans submitted and presented still included that pool house structure, we would ask for a conditional variance with the condition being that we do remove that pool structure and that wasn't included on the plans. Alternatively, if you question, if you want more information, if you want to come on out and view the property, walk the community, we would ask for continuance. So, you can do that fact finding and really understand already reported what's going on here. With respect to the conditional variance, if that's something you cannot do, we would again ask for a continuance so that we can submit plans with that pool house removed so you had a very clear as to what it is you're approving so thank you, we appreciate your time.

Boardmember Reed: Did you guys look at detaching the addition? I'm looking at it and we've got our setback requirement issues on site and everything, but did you guys look at that?

Applicant Bruce Preston: Yes. We've looked at probably close to 15 different scenarios. And ultimately, depending on how this variance request goes. I have talked to both my rear neighbors and the guesthouse; the mother-in-law suite is 15 feet in height. So, I can actually detach that it does not meet, it's not a side setback. So, I'm going to maximize the 15-foot height. I can slide that all the way up to the fence line to be more intrusive, and instead I'm trying to be less intrusive, and keep it attached and asked for the five-foot variance which my two rear neighbors would mostly appreciate if I kept it further away from my current pool house is three foot eight off the property line. There's nothing they can do about that. But they're happy for me to remove that and kind of get a little bit more space. But yes, there is a possible way that I can meet the code as is, like detaching it I will be greater than six feet, but I will maximize the property and I built it as close to the property line as I can.

Boardmember Reed: And we said all the neighbors around you were all in support was there outside of that area, and those are the ones are going to be most affected by this outside view. Were there other people that were, you know, neutral, or...

Applicant Bruce Preston: There's nobody that's in opposition within our neighborhood that I've spoken to. Now I will say that outside of the 12 people that I had to identify, there's 1,2,3,4; 4 people in our neighborhood, I've talked about these plans, one of them being the recent applicant last year, they went through the BOA zoning adjustment on the corner of Kramer and Horne. Yeah, Justin, he's in full support. But in the Lehi area, talking with some of the people that live on Lockwood, we've also you know, my kids play T-ball in that area, one of the owners that owns you'll notice that there's a Lockwood address on there, but he owns a property on Kael, his brother is actually moving into our neighborhood, we're going to have new residents that would be moving right next door to us. There in support of it. They're in support of us trying to build what we want to build as a community because we put money into this house as a 20 year. You know, this is a long-term house for us. We want our kids to go to high school here in Mesa and graduate.

Applicant Allison Preston: I plan on moving into the mother-in-law suite. And having one of my kids take the house.

Applicant Bruce Preston: But ultimately what our neighbors are concerned with if we don't get it is someday that we can sell our house for a premium. They'll knock it down like other people have been doing and put in a monstrosity and get rid of the horse privileges. And they don't want that. That's been some of the comments have been back to me not to have conflict of interest. I have had a conversation with Vice Mayor Freeman as he lives on Lockwood the next street, and it I talk to him about the property he can neither support or deny or oppose anything, so he is neutral. That's the only neutral because of his position.

Boardmember Glover: Do you know the approximate height of that existing little house structure?

Applicant Bruce Preston: The highest point is just under 10 feet. And in the highest point actually is at the property line three foot off the property line and slopes back towards my property.

Applicant Allison Preston: It's ugly, so it can go.

Chair Wagner: I have a clarification on some of the properties that were called out specifically, the three that we looked at as a group. These are all RS-15 are the requirements for these specific variances or I guess there not variances because they are not permitted. How would those be allowed in the RS-15 versus the RS-39.

Assistant Planning Director Rachel Prelog: Chair Wagner, So the requirements for detached accessory structures are the same for all the RS districts.

Chair Wagner: Thank you, any further questions? Alright then we will close the public hearing portion and open for Board discussion.

Boardmember Jones: I am going to go out on my own here for a second. So, bear with me as I go through here. Just to maybe put my thoughts on the table and where I'm at. Maybe just give my overall thoughts. First of all, thanks for your time and information. I love the packet. I wish we could get more of those especially from the applicant that really deals with the specific criteria that we have at hand.

I think I have very rarely have seen that. The other thing that I was going to note, this is one of the greatest things I love about living in the city of Mesa, right. We have a great City, we've got great staff, they do a wonderful job. Always, always do a wonderful job and I always appreciate that. But the thing that I love about this Board is the ability for us to be to get these variances for those unique situations. And I would tell you right now, I think that we have one of those right here That's just that's my opinion. But I want to throw it out. I think it's ironic that we just approved a few reduced setbacks. And we tend to do that all the time. And I kind of chuckled as we were doing that it's the challenge, I think it's a challenge that the city has to deal with, of maintaining some integrity in the city. But also, the benefit of the board is to also kind of flex where we need to flex a little bit on unique things that come up. And so that's overall kind of a general statement. Obviously, I'm familiar with that area, I reside in the Lehi area, I have not spoken with the applicant, I don't even know the applicants. But I am familiar with those lots. And so, as I go through the criteria, as I've analyzed this, and as in preparation, you know, the first one right here, I would argue that I think that there are some special circumstances surrounding the lot size, those seven lots, they're unique, they're different. They're long, I think I saw in the past minutes, the rectangular, clearly the size, I actually looked that up to see what the size are. And I thought where we were, they're shorter than what your typical width is. And so that to me, I would tell you, I think that we have a unique lot size. And so even with that, we don't really even need to go on the other ones. But just for sake of conversation I'm going to go through, I would argue with the applicant on the second one, I agree with the city. I mean, I think that this is this preexisting that, I would argue with that one, the third one that I would say I think that there's something they are doing it the right way. And I believe that although I argue with the way that the others have done it without going to get a right permit. I think that's that I don't work that way, either professionally or whatever. I just I disagree with that. And so, I like it when we try and do in the same way that the appropriate ways and going through the appropriate methods here. But I do believe that it would deprive them of a gazillion different examples here of lots in that area that have done something. And so, I, I think that the number three would be met. And then the other one is the fourth one kind of falls in line with that one. I mean, you could probably argue this on both ways. But I think that one and three, in my opinion, I think are, are enough to get a variance and you're talking five feet. That's we're not talking, they're getting rid of the pool house, that little pool thing, which I never noticed that change until I saw this right now. So, I would be okay with doing an approval.

Boardmember Gunderson: Just to clarify, you said that you didn't agree with the applicant on the second, we have to find that we agree with the applicant on all 4.

Boardmember Jones: But I think you could argue it.

Boardmember Gunderson: But if A. is a special circumstance, then B. is whether or not the applicant created that special circumstance. And if I understand you're correct, but you're saying there is a special circumstance that preexisted.

Boardmember Jones: The other thing is, I'm just going to add this as I get older, I value it more and more. And I noticed there's a feeling, but I value the open space. And I think that is something that's going away and so that have the applicant move it to the other side, I think it's safe to ask them. I mean, to me, they've got the space over there. You can attach it; you can encroach in the backyard. There's other things he can do. But what he's trying to do is not I don't believe it's unreasonable.

Boardmember Gunderson: I agree with Boardmember Jones, I was even just considering the location and surrounding. I think those are unique enough that this might justify it. But once we

determined that the size of the lot is insufficiently deep for what the zoning requires. I think if there's like the applicant pointed out, if this lot size was as deep as it's supposed to be under the rules, we wouldn't even be here today, they be able to build that far back from the existing structure. I think that kind of even made it that much clearer. I don't think any of those things besides the location or the surrounding were created by the property owner. So, I think we meet one and two. I also don't think we're providing any privileges that aren't already enjoyed by others in the area or others that are on the RS-35 that are allowed to build out that much further. And so, the last criteria whether or not this constitutes a grant of special privileges? I don't think it does. I'm also in favor of granting the variance with the update and I think we might need to update the numbers a little bit, right, because right now the staff report and plans still include that pool house. So, they're trying to build within three feet 8 inches and so we need to update those numbers. But if we can update the number to match what was presented today, I would be in favor

Assistant Planning Director Rachel Prelog: Chair and Boardmember I would just remind you that our state stature, regardless of where a property is located within the City or area, the zoning has to be treated equally, regardless of that, so the development standards have to be applied equally no matter if it is in a sub area, no matter if it's in northeast Mesa versus southeast Mesa. So just from applicability standpoint.

Chair Wagner: I definitely agree with what you guys are saying. But in respect to the zoning ordinances, I would agree with the staff on denying this just based off of specifically not giving them special privilege over others just because of where they are in the city. That that's my that's my preference, it actually reminds me of a separate case that we've seen in the past. But that's, that's where I'm standing is I think that the city, the city staff denial, showing that they don't have special circumstances that granting this would give them special privileges over others.

Vice Chair Lynam: I think the special circumstance, like it says is that property difference if it was the 150 feet, there won't even need to be a variance for them to do exactly what they want to do and that would give them the space that they need. So, the fact that it is shorter than what it shouldn't be. As far as the other cases and around the surrounding areas, I don't think those really apply to what we're doing at all because they're not permitted. They weren't approved. I don't think we're comparing the same things. A lot of them are detached structures, as opposed to attached structures which have different requirements. But they weren't ones that were approved by the city. So, I don't think we can kind of use that as an even comparison of what you'd let these guys do. Because they didn't let them do it. They may go on. For all we know, they may be going through and putting notices up that were asked that we tear down their structures that are compliant. We don't know all of that, like you said there. So, I don't think we could take those non-compliant ones, which they may have been built before earlier to reports on changes and stuff like that, too. But yeah, I think the special circumstance on this one really, is that difference in the property depth on it that does make it shorter. And if the property dimensions did meet that zoning, we wouldn't be here. So that's kind of got me leaning into the direction of a favorable?

Boardmember Reed: I appreciate staff. You know, from our last meeting, we asked to do some additional research which, which was provided, which is very helpful. We're trying to make decisions. I was sharing with Vice Chair here before trying to prepare for this meeting was hectic with kids, business calls, just couldn't get through everything. Like it was just choppy anyways. But thank you for answering a lot of the questions I had just to make sure that I was looking at this application correctly. And also, thank you for providing this - this is this is really good information. I wish I would have had a little earlier. So, I can really study and highlight a bunch of stuff just that additional

questions or clarifications, but very good stuff. I always like to put on my planning hat and then my private sector hat and look at it and argue from different sites. I can see the staff's recommendation and why they're recommending denial for this because there are I think there's holes and it's gray. It's not absolute in either way, when I look at it with the state statute. I think there is a little bit of special circumstance but it's not the some of the projects we've had them come to the board who've been very glaring. But is this enough to put me over? I'm leaning that way, but you know, I feel there are these ordinances there to help guide development, rules are there to see what it is we try to fit development within those, those boxes. But also, what Boardmember Jones says is exactly the first thing I wrote down on my notes on here is we'll have someone who wants to do the right thing. You know, they're going to do something that's not allowed by the code, but then we want to have infill projects. And we have all these reduce parking and landscaping or setbacks. Alright, we're good with that. It's a difference.

There is not comparing apples to apples, but it was a, it was a thought I did come across. And that's where I'm at right now.

Boardmember Glover: Okay, I'll take my turn. So, my general thoughts are, again, I appreciate that the applicant is trying to do the right thing and that that goes a long way, in my book. And when I look at the approval criteria, we can discuss and kind of debate back and forth whether they qualify for each and every one and to what degree they qualify. Upon learning, and I'm assuming that this is accurate, that if they were to do a detached structure, that the setback requirement, there would be less than what they're proposing with this accurate or not.

Assistant Planning Director Rachel Prelog: Boardmember Glover, can you clarify your question?

Boardmember Glover: Okay. The applicant was asked a question about a detached structure, did they explore doing a detached structure? And the response was that the setback, the rear setback would be something less than what they're proposing with this addition? Is that an accurate statement?

Assistant Planning Director Rachel Prelog: So, in the MZO, there are 10 different criteria for detached accessory structures. So, they all vary slightly about where they're placed on the property and the height of them. So, I believe he had mentioned being located in the rear yard setbacks, so as long as they don't exceed 15 feet in height, they can be in the rear yard setback, as long as they're out of the side yards.

Boardmember Glover: And then I go back to, I look at, I'm a big property rights advocate. And I, you know, again, I look at their intent is to do this right. I look at I don't hear any neighbor opposition. I look at you know; they could build this detached structure that would be more invasive on the neighbors than what's proposed. I don't know, to me, I'm leaning towards approval.

Assistant Planning Director Rachel Prelog: Chair, Boardmembers also for the detached structures there is also size limitations to that. So, they were limited in size further than if they were to attach it to the structure.

Boardmember Reed: May I pose this question, if we set a precedent that we're setting special privilege, where it might, you know, there's a domino effect with other applications that come through? I mean, to me, I don't know that five foot isn't really big in my eyes but we've got to think of what the repercussions are.

Boardmember Jones: Welcome to the board.

Boardmember Reed: So, we don't want to make their job worse. So, I would ask just the question I had.

Boardmember Jones: And I was thinking about that, because I don't know if it was Chair Wagner, who was it that made the comment about obviously, you want to fall in this is my opinion, my interpretation of it. Obviously, we got our Zoning Ordinances here that we have to follow. And you don't want to set precedent. What I'm saying is and the way I look at this particular one, I agree with what Rachel is saying what the city staff are saying. What I'm saying is, it's a unique lot. It's a unique location. Yes, it's in the whole general, but this is very unique. And so, over the last several years that I've been on the board that's always been a challenge is trying to set precedent. I don't personally believe that we're setting precedent on this. I believe that it's a unique lot. It's a unique location. It's a unique area in the city. I obviously I respectfully disagree with that. But that's just my opinion.

Boardmember Gunderson: As far as precedent setting goes, if the precedent we're setting is that if your lot is smaller than in one dimension or another, then what is it supposed to be for its classification, but then you're entitled to a closer look for a variance. That's the precedent, I'm pretty happy to set. Because I think, I think that's what we should be doing. And in this case, the lot isn't as deep as it should be, as a result, there could create some building restrictions that wouldn't have existed if the block was its proper, proper depth for the classification, and, and you know, these zoning rules are, are drafted broadly, so that we can approve variances when they don't quite fit. And I think this is one of those situations where the zoning rules don't quite fit the lot isn't quite the right depth. And so, I don't think we're setting a dangerous precedent in this particular case.

Chair Wagner: RS-35 or RS-15 is the 150 feet?

Boardmember Gunderson: RS-35

Boardmember Reed: Well, if you think of Mesa with the diverse building network and pattern of the city that's over 400 years old. I grew up here and just been a short time on board, seeing some of the non-conforming uses that have been presented to us that were preexisting before the last code update. And we understood what was going on. So, this is a little different than those things, but Mesa is unique city, when I was when I was working in a different city and writing the code, it was a poor city. So difficult hear in the news?

Chair Wagner: So, you guys are arguing that the size is what's sets special circumstances?

Boardmember Gunderson: To me, that's the one that's most significant. In my mind, I do think that this surrounding area, and the location has this buffer. I mean, I understand we need to look at the rule and what the zoning is. But in addition to looking at what the zoning is, and what is allowed, we're specifically directed by the statute to look at size, shape, topography, location, and surrounding, and I think size, clearly smaller location, super unique, surrounding also super unique. And so, I think all three of those give us an invitation to look a little bit deeper. But the one that I find most compelling is the size because I think we've all mentioned, if this block was the depth that it's supposed to be under the code, then this would be a non-issue, they can build exactly the structure they're proposing. That coupled with the fact that it meshes with the rest of the neighborhood, the size, the makeup of the neighborhoods, the neighborhood is okay with it. To me, I think all that combined makes me feel pretty good about.

Vice Chair Lynam: Yeah, I'm kind of on the same thing. And you could argue that these are created by the owner, that what they're doing, they don't need to put this mother-in-law apartment here, they do have space on the property, it may not be their ideal situation. Yeah, they could put the in law in there like, well, we'd have to have its own driveway, we'd have to have all this stuff, that's not necessarily a requirement to have a separate driveway for that. That's a preference to have a separate driveway for the in law apartment. So, there's some things that could definitely be an owner caused hardship here. But the thing that really pushed me over is that property dimension of if there's 150 feet, it will be fully compliant with exactly what they want. So yeah, like you're saying it is really a gray area, this one where I could kind of see justifications on both. If this property was 150 feet of the proper dimensions and everything that I would say, Absolutely, it was it's an owner caused hardship they have space to put this, it may not be all their preferences and exactly how they want it. But yeah, the fact that that property dimension, it wouldn't work entirely exactly how they wanted the property size.

Chair Wagner: With the pool building removed?

Vice Chair Lynam: Yeah. And that would still, if the property was properly mentioned with that pool shed there. It would because that would have been too much. So okay, I think that those five feet makes a big difference in this piece.

Boardmember Reed: And not being too picky, I am a visual person, if I don't the property, it's easier to put it all together. So, when I look at the site plan it's easy to see different ideas. But that's not what we do.

Chair Wagner: Would anyone on the board like to make a motion on this case?

Boardmember Gunderson: I can but I think I might need some help to clarify some of the numbers before I do that. So as far as what the proposal is we're talking about approving a variance that would allow building within what's the updated distance from the southern property line.

Chair Wagner: 15 feet

Boardmember Gunderson: Is this document, the updated narrative, have a name that I can refer to that will make it clear what I am talking about?

Principal Planner Michelle Dahlke: Chair, Boardmembers, Rachel is going to pull up a section here for your possible discussion or just bring it to your attention before the motion.

Assistant Planning Director Rachel Prelog: I am bringing up the staff report and the finding because if there is an alternative motion that we do have to propose alternative findings

Boardmember Gunderson: Alright, so I propose approval of the variance with a few modifications to the proposed findings and conditions of approval. The first modification to the conditions of approval is that it's conditional upon the project complying with the revised narrative, the revised Preston narrative that was supplied to the board today. And then the modification to the findings to finding D. I would modify that to say special circumstances are present on the subject property that would justify the variance on the property related to the size, shape or topography, location or surrounding area. I would modify finding E. to say the need for the variance is not created by the property owner's design choices for the placement, orientation and size of the proposed RV garage

and accessory dwelling unit. And then F. I would modify it to say strict compliance with the MZO development standards for the RS-35 District deprives the property owner of privileges enjoyed by the other properties in the neighborhood. And then G. I would say granting of this variance request constitutes excuse me, G. I would say granting of this variance request does not constitute a special privilege inconsistent with MZO development standards for the RS-35 district. Yeah, and then I just I would change F. to be as I read it. So, basically strict compliance deprives the property of privileges enjoyed by other properties in the neighborhood.

Assistant Planning Director Rachel Prelog: Sorry, bear with me.

Boardmember Gunderson: Alright. So, the other condition for approval is that the site plan comply with the site plan included in the document titled "Preston Residents Preliminary Plans (Site Plan) and Preston Narrative.

Vote: 6-0 (Boardmember Hoffman - absent)

Upon tabulation of vote, it showed:

AYES – Wagner-Lynam-Jones-Gunderson -Reed-Glover

NAYS – None

ABSENT – Hoffman

ABSTAINED – None

6 Items from citizens present: None

7 Adjournment.

Vice Chair Lynam moved to adjourn the Public Hearing and was seconded by Boardmember Reed.

Without objection, the Public Hearing was adjourned at 6:56 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Rachel Prelog". The signature is written in a cursive, flowing style.

Rachel Prelog,
On behalf of Zoning Administrator (Dr. Nana Appiah)