



**PLANNING DIVISION**  
**STAFF REPORT**

**Board of Adjustment**

**August 3, 2022**

CASE No.: **BOA21-00520**

CASE NAME: 740 North Orange Circle

Owner's Name:	Scott and Kellie Willis
Applicant's Name:	Arthereal Design
Location of Request:	740 North Orange Circle
Parcel Nos:	13524099
Nature of Request:	Requesting a variance to allow an existing shop and carport support beam to encroach into rear and side setbacks within an existing single residence.
Zone District:	Single Residence-9 (RS-9)
Council District:	3
Site size:	15,642 square feet or .36± acres
Existing use:	Single residence
Hearing date(s):	<b>August 3, 2022 / 5:30 p.m.</b>
Staff Planner:	Kwasi Abebrese
Staff Recommendation:	Approval with Conditions (Variance for side yard encroachment)
Staff Recommendation:	Denial (Variance for rear yard encroachment)

**HISTORY**

On **January 5, 1949**, the property was annexed into the City of Mesa as part of a larger annexation 2,419.5± acre area and subsequently zoned RS-9 (Ord. #228).

In **1979**, according to the Maricopa County historical aerial photography, the existing home was constructed.

## PROJECT DESCRIPTION

### **Background:**

The applicant is requesting a variance to allow an existing shop and carport support beam and post to encroach into the required rear and side yard setbacks respectively in the RS-9 zoning district. Per Table 11-5-3 of the Mesa Zoning Ordinance (MZO), the minimum rear yard setback in the RS-9 zoning district is 25 feet. The interior side yard setback is 7 feet and the minimum aggregate setback of the two side yards is 17 feet. Per the submitted site plan, the existing shop which is approximately 542 square feet in area encroaches approximately 18 feet for a total provided rear setback of 7 feet. In addition, the front post which supports the carport beam encroaches into the required side yard and is located on the west property line.

Per Maricopa County historical aerial photography, the existing shop was constructed between 2012 and 2013 while the carport was constructed in 1993. However, there is no evidence of a building permit issued for the construction of these structures. The current owners who purchased the property in 2013 claim that the removal of the existing shop would limit the use and function of the property since they do not have an enclosed garage. Moreover, the owners claim that relocating the carport beam by 10 feet would restrict access to the rear of the property by a vehicle or trailer.

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

The Mesa 2040 General Plan Character Area designation on the property is Neighborhood with a Traditional Sub-type. Per Chapter 7 of the General Plan, the focus of the Neighborhood Character Area is to provide safe places for people to live where they can feel secure and enjoy their surrounding community. The Traditional Sub-type neighborhoods are predominantly single residence in character but may contain a variety of lot sizes and dwelling types. Traditional neighborhoods may also contain supportive land uses such as small, neighborhood scale offices, retail, restaurants, and personal services that are located along arterials, and collector streets. The existing single residence use conforms to the intent of the Neighborhood character area and the Traditional Sub-type.

### **Site Characteristics:**

The subject property is located south of West Rio Salado Parkway and west of North Country Club Road. The existing lot is 15,642 square feet (.36± acre) in area.

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

<b>Northwest RM-3 Multiple Residence</b>	<b>North RM-2 Multiple Residence</b>	<b>Northeast RM-2 Multiple Residence</b>
<b>West RM-3</b>	<b>Subject Property RS-9</b>	<b>East RM-2</b>

<b>Multiple Residence</b>	<b>Single Residence</b>	<b>Multiple Residence</b>
<b>Southwest</b>	<b>South</b>	<b>Southeast</b>
<b>RS-9</b>	<b>RS-9</b>	<b>RS-9</b>
<b>Single Residence</b>	<b>Single Residence</b>	<b>Single Residence</b>

**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 existing carport support beam which was constructed in 1993 per Maricopa County historical arial photography can be considered as legal non-conforming structure. However, the existing shop which was constructed between 2012 and 2013 after the MZO had come into force needs to meet the development standards for the RS-9 district. Furthermore, it is possible for the applicant to rebuild or convert the existing shop into a detached structure to meet the minimum of 5-foot required rear and side yard setbacks for detached structures in a single residence zoning district.**

***The proposal does not meet this criterion***

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

**The existing carport support beam and shop on the subject site do not meet the MZO development standards for the RS-9 district. However, the need for the variance is not created by the current property owner's design choices for the placement, orientation, and size of these existing structures. This condition was pre-existing before the current property owner purchased the property in 2013.**

***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.

**It is possible to reconstruct or convert the existing shop into a detached structure as well as relocate the post supporting the carport beam 10 feet and meet the MZO development standards for the RS-9 district without the approval of a variance. Therefore, strict compliance with MZO development standards for the RS-9 District does not deprive the property of privileges enjoyed by other properties in the neighborhood.**

***The proposal does not meet 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 applicant has proposed that approval of the requested variance will not constitute a special privilege because of similar variances that have been granted in the vicinity. However, approval or denial of a variance does not create a precedent for subsequent variance requests because each variance is based upon special circumstances relating to the site for which it is proposed.**

**Based on the findings, the granting of this variance request constitutes a special privilege inconsistent with MZO development standards for the RS-9 district.**

***The proposal does not meet this criterion***

Findings

- A. The existing lot is 15,642 square feet (.36± acre) in area.
- B. The existing carport support beam on the subject site was constructed in 1993 per Maricopa County historical aerial photography and can be considered as a legal non-conforming structure. On the other hand, the existing shop was constructed between 2012 and 2013 per Maricopa County historical aerial photography.
- C. The existing shop encroaches into the rear yard setback approximately 18 feet for a total provided rear setback of 7 feet. The front post which supports the carport beam encroaches into the required side yard setback and is located on the west property line.
- D. There are no special circumstances that would justify the variance request for the existing shop since it was built after the MZO had come into force and needs to meet the setback requirements for the RS-9 zoning district outlined per Section 11-5-3 of the MZO. Moreover, it is possible to reconstruct or convert the structure into a detached structure to meet the MZO development standards for the RS-9 district without approval of a variance.
- E. The need for the variance is not created by the current property owner's design choices for the placement, orientation and size of the existing structures. This condition was pre-existing before the property owner purchased the property in 2013.
- F. Strict compliance with MZO development standards for the RS-9 district does not deprive the property of privileges enjoyed by other properties in the neighborhood since it is possible to reconstruct or convert the existing shop into a detached structure as well as relocate the post supporting the carport beam 10 feet and meet the MZO development standards for the RS-9 district without the approval of a variance.
- G. Granting of this variance request constitutes a special privilege inconsistent with MZO development standards for the RS-9 district.

**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 writing this report, staff has not been contacted by any residents to express support or opposition to the request.

**Staff Recommendations:**

Based on the application received and the preceding analysis, staff finds that the requested variance for the existing shop to encroach into the rear yard setback does not meet the approval criteria outlined in Section 11-80-3 of the MZO; therefore, Staff recommends **denial** of the request. However, staff recommends **approval** of the variance request for the carport support beam to encroach into the required side yard since the structure can be considered as legal non-conforming with the following conditions:

**Conditions of Approval:**

1. Issuance of a building permit for the existing carport.
2. Compliance with all City Development Codes and regulations.

**Exhibits:**

Exhibit 1 – Vicinity Map  
Exhibit 2 – Staff Report  
Exhibit 3 – Justification Statement  
Exhibit 4 – Site Plan  
Exhibit 5 – Elevations  
Exhibit 6 – Site Photos