



**PLANNING DIVISION  
STAFF REPORT**

**Board of Adjustment**

**November 4, 2020**

CASE No.: <b>BOA20-00568</b>	CASE NAME: <b>4359 East Decatur Street</b>
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Owner's Name:	Valerie Tucker
Applicant's Name:	Arturo Magana
Location of Request:	4359 East Decatur Street
Parcel Nos:	140-14-038
Nature of Request:	Requesting a variance to allow a detached accessory building, which exceeds eight feet in height, to be closer to the primary residence than six feet and within the side yard.
Zone District:	Single Residence (RS-9)
Council District:	2
Site size:	9,071 square feet or .20± acres
Existing use:	Single residence
Staff Planner:	Charlotte Bridges
Staff Recommendation:	Denial

**HISTORY**

On **June 26, 1979**, the property was annexed into the City of Mesa as part of a larger annexation 3,142± acre area and subsequently zoned R1-9 (Ord. #1250).

In **1984**, according to the Maricopa County Assessor's website, the existing home was constructed.

On **January 28, 2020**, a building code enforcement case was created after an inspection found building in progress without a permit (Case No. COB20-00017).

On **April 24, 2020**, a building permit was issued for an eight (8) foot wide by 20 foot long, 160 square foot, bathroom addition to the east side of the existing dwelling unit.

## PROJECT DESCRIPTION

### **Background:**

The applicant is requesting a variance to allow for a 10-foot high, 140 square foot, detached accessory building to be closer to the home than six (6) feet and within the required side yard setback in the RS-9 zoning district. Per Section 11-30-17(B)(3) of the Mesa Zoning Ordinance (MZO), a detached accessory building on a single residence lot may be located in the required side yard (outside of the rear quarter of the lot) provided that the building does not exceed eight (8) feet in height and 200 square feet of roof area. In addition, per the definition Chapter 86 of the MZO, a detached accessory building is required to be separated from the main building (home) by at least six (6) feet. Approval of the variance request would allow the detached accessory structure to exceed eight (8) feet height and to be located three (3) feet from the home and three (3) feet from the east property line.

Earlier this year, the property owner received a building code violation (COB20-00017) for construction of the subject detached accessory structure and an addition to the eastern portion of the home without a building permit. Upon inspection, the building inspector determined that the detached accessory structure exceeded the eight-foot (8) height allowed in the required side yard setback and was closer than six (6) feet to the main building. A building permit (PMT20-06109) was issued to construct the addition to the house, however, the property owner was directed to apply for a variance for the detached accessory building since its location and height do not comply with the Section 11-30-17(B)(3) of the MZO.

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

The Mesa 2040 General Plan Character Area designation on the property is Neighborhood with a Suburban 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 Suburban sub-type is the predominant neighborhood pattern in Mesa; these neighborhoods are primarily single residence in nature but may also contain areas for higher density residential and commercial uses along arterial frontages. The existing single-residence complies with the General Plan's Neighborhood character area and Suburban sub-type designation for the property.

### **Site Characteristics:**

The subject property is located 170± feet west of Greenfield Road and approximately a quarter mile north of University Drive, on the south side of Decatur Street. The subdivision plat for Greenfield Manor Unit I, 90 lots, was approved in 1981. The subject lot is 9,071 square feet and is similar in shape and size with other lots within the subdivision. The home was constructed in 1984 with a front yard setback (north) to the garage of 25 feet, a side yard setback (west) of seven (7) feet, a side yard setback (east) of 21 feet, and a rear yard setback (south) of the 29 feet non-compliance with RS-9 District setback requirements of Table 11-5-3(A)(1) of the MZO.

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

<p style="text-align: center;"><b>Northwest (Across Decatur Street) RS-9 Single Residence</b></p>	<p style="text-align: center;"><b>North (Across Decatur Street) RS-9 Single Residence</b></p>	<p style="text-align: center;"><b>Northeast (Across Decatur Street and Orlando) RS-9 Single Residence</b></p>
<p style="text-align: center;"><b>West RS-9 Single Residence</b></p>	<p style="text-align: center;"><b>Subject Property RS-9 Single Residence</b></p>	<p style="text-align: center;"><b>East RS-9 Single Residence</b></p>
<p style="text-align: center;"><b>Southwest RS-9 200 feet wide Electric Transmission Line Easement</b></p>	<p style="text-align: center;"><b>South RS-9 200 feet wide Electric Transmission Line Easement</b></p>	<p style="text-align: center;"><b>Southeast RS-9 200 feet wide Electric Transmission Line Easement</b></p>

**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 existing lot is similar in size, shape, topography, location, and surroundings to other lots within the Greenfield Manor Unit I subdivision.**

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

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

**The unauthorized construction of the subject accessory structure does not meet the setback and height provisions of the MZO and therefore requires a variance to remain. Consequently, special circumstances were created by the property owner.**

***The proposal does not meet with 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

**Based on the site plan provided, it is possible to construct a detached accessory structure elsewhere on the lot or modify the proposed structure to comply with MZO requirements.**

It is possible to construct a detached accessory building, separated from the main building by at least six (6) feet, in the southwest area corner of the lot. Section 11-30-17(B)(1) of the MZO allows a detached accessory building that does not exceed 10 feet in height to be located in the required side/rear yards provided that it is within the rear one-quarter (rear 27± feet) of the lot. Furthermore, Section 11-30-17(B)(1) of the MZO allows a detached accessory building that does not exceed 15 feet in height to be located in the required rear yard but outside of the required side yard.

It is also possible to modify the proposed structure to comply with the detached accessory provisions of the MZO. Per Section 11-30-17(B)(4), a detached accessory building can be constructed within the area where the subject detached accessory building is located, and closer to the primary residence than 6 feet, provided that the detached accessory does not exceed 7-feet in height (at the peak of the roof), 120 square feet in roof area, has no permanent attachment to the ground or permanent foundation, does not have any electrical or plumbing fixtures installed and storm water drains back to the same lot or parcel as the accessory structure.

*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.

**The granting of this variance request constitutes a special privilege inconsistent with MZO development standards for detached accessory building applicable to other properties in the surrounding neighborhood.**

*The proposal does not meet this criteria*

#### Findings

- A. The house was built in the 1984 in compliance with the RS-9 District development standards.
- B. The swimming pool was built in 1986 in compliance with RS-9 District development standards.
- C. The addition to the east side of the house, authorized by PMT20-06109, complies with the RS-9 District development standards.
- D. The lot does not have special circumstances related to its size, shape, topography, location, or surroundings. It is a rectangular, 9,071 square foot lot and complies with the RS-9 District development standards.
- E. The addition to the east side of the home, constructed in 2020 by the current property owner, narrowed the property owner's options for the size and height of a detached accessory building constructed on the property. Therefore, the perceived hardship is self-imposed.

- F. It is possible to construct a detached accessory building on the subject lot in compliance with Sections 11-30-17(B)(1), Section 11-30-17(B)(2) or 11-30-17(B)(4) of the MZO. Consequently, strict application of the MZO will not deprive the property of privileged enjoyed by other properties of the same classification in the same zoning district.
- G. The granting of this variance request constitutes a special privilege inconsistent with MZO development standards for detached accessory building applicable to other properties in the surrounding neighborhood.

**Neighborhood Participation Plan and Public Comments**

The applicant mailed 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 does not meet the approval criteria outlined in Section 11-80-3 of the MZO; therefore, Staff recommends **denial** of this request.

**Exhibits:**

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Staff Report
- Exhibit 3 – Justification Statement
- Exhibit 4 – Site Plan
- Exhibit 5 – Site photos