



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2018071 – Kaliski Property

Hearing Date: November 15, 2018

Supervisor District: 3

Applicant Richard Ottens

Property Owner: Jason Kaliski

Requests: Variance to the development standards of the Maricopa Zoning Ordinance to permit:

- 1) Proposed front setback (west property line) of 6.66' where 40' is the minimum permitted per MCZO Article 1105.1.5, and;
- 2) Proposed second driveway where only one is permitted on street frontage per MCZO Article 1102.7.12

Site Location: APN: 203-38-024 @ 36218 N. 30th Dr. – 31st Ave. & Cloud Rd., in the Phoenix area

Site Size: 43,561 sq. ft.

Current Use / Zoning: Single-family residence / Rural-43

Open Violation: No Violation on property

Citizen Support/Opposition: No known opposition

Findings: The request fails to meet the statutory test for variance approval

Background:

1. **April 28, 2003:** The parent parcel 203-38-010K was split creating parcels 203-38-020, -021, -022, -023, subject parcel **203-38-024**, - 025, -031 and - 033.
2. **May 9, 2005:** The current owner took possession of the subject property via warrant deed under docket **20050605493**.
3. **March 25, 2005:** Septic permit **040232** was submitted for a septic system. The permit is in final status.
4. **April 26, 2005:** Building permit **B200401447** was submitted for the single-family residence. The permit is in final status.
5. **September 11, 2009:** Building permit **B200904499** was submitted for a pool. The permit is in final status.
6. **November 4, 2009:** Building permit **B200905574** was submitted for a detached garage, 6' (h) 700 linear feet block pool barrier, two (2) 4' (h) gates and one(1) RV gate. The permit is in expired status.
7. **August 3, 2018:** Building permit **B201807136** was submitted for a detached garage, 6' (h) 700 linear feet block pool barrier, two (2) 4' (h) gates and one (1) RV gate. The permit is in out to customer status.
8. **October 24, 2018:** The subsequent variance application was submitted.

Reviewing Agencies Comments:

9. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated October 31, 2018.
10. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated October 19, 2018.

Existing On-Site and Surrounding Zoning/Land Use:

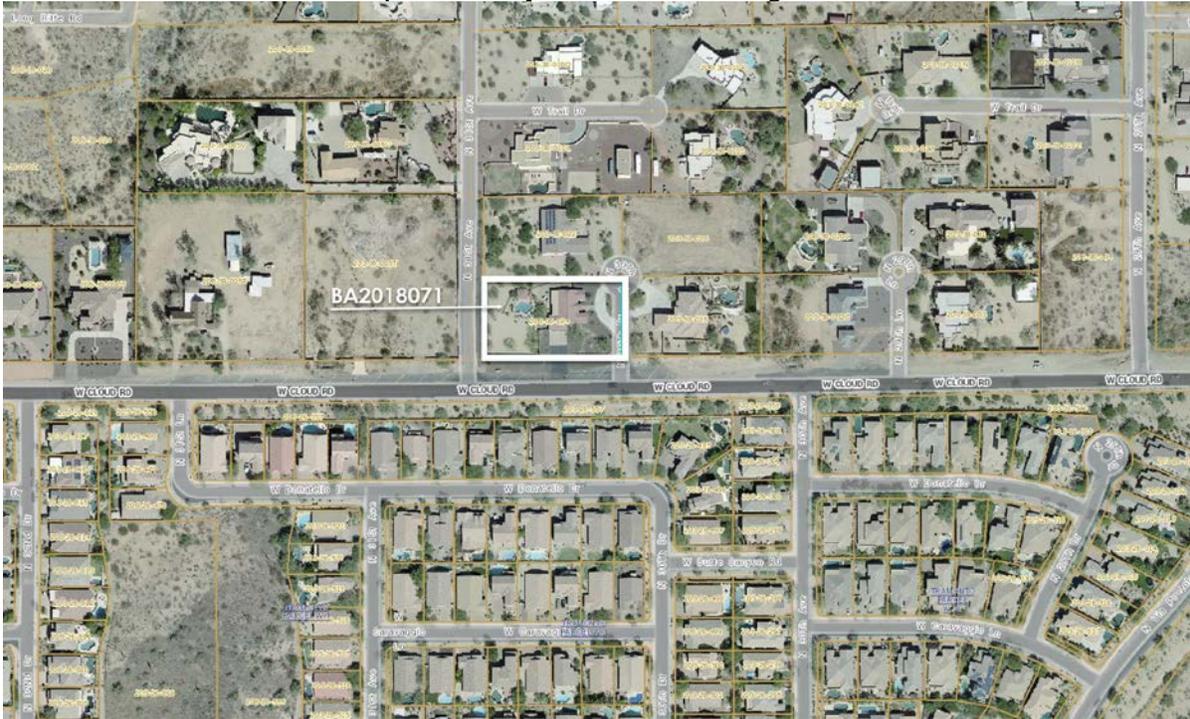
11. On-site: Rural-43 /Single-family residence
North: Rural-43 /Single-family residence
South: Cloud Rd. then Rural-43 /Single-family residence
East: Rural-43 /Single-family residence
West: 31st Ave. then Rural-43 /Vacant

Site Analysis:

12. The subject site is located in the northern portion of the County northeast of the NEC of Cloud Rd. and 31st Ave. alignment, Joy Ranch Rd. is approximately 1 mile to the north, I-17 is approximately $\frac{3}{4}$ mile to the west. Development of the parcels in the immediate area to the north are through the lot split process and immediately south through the subdivision process.

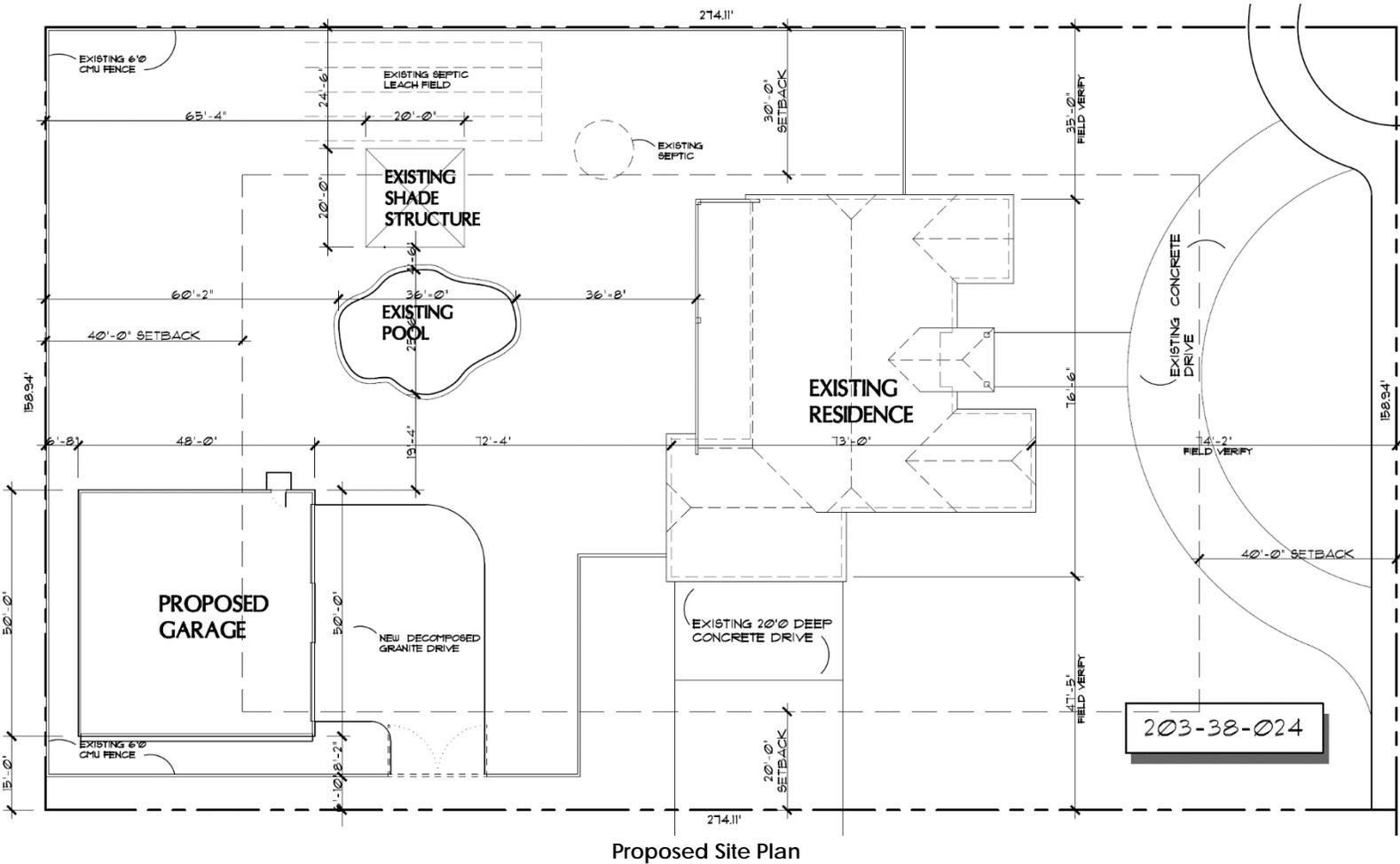
13. The subject site is level and free of any physical or topographical constraints. It is vegetated with a number of deciduous trees adjacent to the residence and along the perimeter. The site fronts on the south, 31st Ave. to the west, 30th Dr. to the east and Cloud Rd. to the south. The subject site is encumbered with right-of-way along three property lines. The frontages are along the lots smaller dimensions creating a narrow lot with an encumbered building envelope. However, the request is to permit a detached accessory structure in the required front yard (west side).
14. The lot configuration is between three streets, fronting east and west and a street side (south) and as such there is no rear yard. The proposed addition could be placed within the building envelope. It could also be attached to the southern portion of the residence. The aforementioned may alleviate the need for the accessory structure variance request and the proposal for a third parking area access.
14. The first variance request is to permit a proposed detached accessory structure to setback 6.66' from the (west) property line where 40-feet is the minimum required. The subject site meets the required Rural-43 minimum lot area with some open land, which could be developed. The western street is 31st Ave. alignment, is classified as a mid-section line where a 40-foot wide roadway reservation (right-of-way) on either side of the mid-section line is required. That reservation is an addition to the subject site's required (western property boundary) 40-foot front yard setback. Staff notes there is existing 25' of right-of-way, for the mid-section alignment. MCDOT has granted a waiver from 40' to 25' as there is no right-of-way impact to the property. Therefore, the parcel has only the 40' front yard setback. Approval of the request would have the proposed structure within the 40' front setback.
15. The second variance request regards a secondary parking area entrance from Cloud Rd. from the south. The Engineering Department has commented where *"the driveway connecting to Cloud Road will need to be paved according to the MCDOT Residential Driveway requirements, and will require an application for work on the Right of Way."* The feature exists on an approved as-built septic permit. The existing second driveway onto Cloud Rd is illustrated on the septic system permit.

Aerial photo of subject site & surrounding environs



Aerial photo of subject site





Proposed Site Plan

16. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the owner (Note: changes to proposed standards are indicated in bold).

Standard	Rural-43 Zoning District	Proposed Standard
Front Yard Setback (east)	40-feet	74-feet
Front Yard Setback(west)	40-feet	6.66-feet
Street Side Setback (south)	20-feet	20-feet
Side Yard Setback (north)	30-feet	30-feet
Maximum Height	30-feet	30-feet
Number of driveways per street	1	2 (Cloud Rd./south)
Minimum Lot Area	43,560-sq. ft.	43,561-sq. ft.
Minimum Lot Width	145-feet	159-feet
Lot Coverage	25%	13.99%

Note: Standards indicated in **bold** do not meet base zoning standards

ARS § 11-816.B.2 and MCZO Article 303.2.2 states the Board of Adjustment may, "Allow a variance from the terms of the ordinance if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship and if in granting the variance the general intent and purposes of the zoning ordinance will be preserved."

State Statute / County Zoning Ordinance Tests:

17. **Statutory Test -1 Peculiar condition** – Discuss and explain what is/are the peculiar condition facing the property and include reference to the Maricopa County Zoning Ordinance Regulation or Development Standard to be varied. Explain the proposed use of the property with the variance request. Identify and explain all peculiar conditions on your property in regard to the following areas: slope, narrowness, shallowness, irregular shape, location, washes, vegetation, and easements, etc. Explain how enforcement of the Zoning Regulation or Development Standard would impose a hardship on the property.

“The property is a residential lot with an existing residence sandwiched between two streets creating two front yards, thereby, limiting the area for locating a new detached garage. The objective is to grant a dedicated easement that restricts access to 31st Avenue and changing the west front yard status to back yard use and function. The home owner will be able to place the new garage as far west on the property and as far south as possible within the parameters”.

18. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar condition on the site create with respect to existing Regulation and Standard of the Maricopa County Zoning Ordinance. Please discuss and explain that the unnecessary hardship facing the property is not self-created in the line of title.

“The 40' rear yard setback currently restricts any building in the setback, limiting where a new detached garage can be located. Current restrictions force placement of the garage alongside the existing pool, which is not an option the homeowner. The condition is existing and is not a result of the homeowner's actions.”

19. **Statutory Test 3 – General Intent and Purpose of the Zoning Ordinance** - Discuss and explain how the granting of the requested variance would not cause a negative impact on the general intent and purpose of the Zoning Ordinance.

“The restriction of accessing 31st Avenue will be a positive impact and the placement of the new detached garage will not impair proper line of sight for the existing road ways. This will be in keeping with standard rules and practice”.

20. **Per MCZO – Evidence of the ability and intention of the applicant to proceed with construction work within 120 days after variance decision by the Board of Adjustment.** Provide evidence of the ability and intention to proceed with construction work within 120 days (4 months) after Board of Adjustment decision. Discuss if there are building permit or as-built permit currently filed with Planning and Development Department and the current review status. Specify the permit number. If no permit have been filed, please provide a timeline for building permit submittal and projected timeframe for construction. Conversely, indicate if the variance request is/are not related to a specific development proposal.

“The homeowner is currently in building review for the construction permit for the new detached garage, permit number B201807136.”

Findings:

21. The applicant has the burden of proving that, in accordance with ARS §11-816.B.2 and MCZO, Art. 303.2.2, the property is entitled to receive a variance. To do so, the applicant must present evidence that, due to a peculiar condition related to the land, that being something that is not a common condition of other properties, applying the requirement of the MCZO as written to this particular property would work an undue hardship on the property. In addition, the applicant must demonstrate that the granting of the variance would preserve the general intent and purpose of the MCZO.

Based upon what the applicant has submitted and the staff analysis in this report, staff offers the following findings:

- The applicant has failed to demonstrate that there is a peculiar condition facing the property because the proposal can be alleviated.
 - The applicant has failed to demonstrate that the strict application of the MCZO to the applicant's property has caused undue physical hardship that prevents the development of the property. There are alternatives available to the property, such as relocating the structure, thus variance is not warranted.
22. However, if the Board finds that the applicant has proven entitlement to the variance; then, the Board must state on the record the basis for that determination with findings and conclusion in a motion to grant the relief sought.

In such event staff would offer the Board the following Conditions of Approval:

- a) General compliance with the site plan stamped received October 24, 2018.
- b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) The new driveway connecting to Cloud Road will need to be paved according to the MCDOT Residential Driveway requirements, and will require an application for work on the Right of Way. This comment supersedes the comments made by Engineering against Permit No. B201807136
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

Presented by: Eric R. Smith, Planner
Reviewed by: Darren V. Gerard, AICP, Deputy Director

Attachments: Case Map (1 page)
Vicinity Map (1 page)
Application / Supplemental Questionnaire (3 pages)
Site Plan (1 page)
Environmental site plan (1 page)
Engineering Comments (1 page)
MCESD Comments (1 page)
MCDOT Waiver (2 pages)