



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2020003 – Bomyea Property

Hearing Date: February 20, 2020

Supervisor District: 4

Applicant: Tom Stitt

Property Owner: Jeffery Bomyea and Michelle Day

Request: **Variance to the development standards of the Maricopa County Zoning Ordinance to permit:**

- 1) Allowing an accessory structure to occupy 31.4% of a required side (north) yard, where 30% of any required yard is the maximum permitted per MCZO Article 1106.2.

Site Location: APN 502-03-128 @ 13801 N. 183rd Ave. – Waddell Rd. and 183rd Ave. in the Surprise area

Site Size: 43,597 sq. ft.

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

Open Violation: N/A

Citizen Support/Opposition: One (1) letter of support from Ivan & Judy Simpson

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

Background:

1. **February 5, 1973:** Subdivision **158-38** (Waddell Haciendas 2) is recorded by the County Recorder.
2. **Circa 1998:** A single-family residence was built on the site based upon historical aerial photography.
3. **July 12, 2013:** A minor electrical permit was issued as noted by building permit **B201304044**.
4. **November 16, 2018:** A deed is recorded showing Jeffery Bomyea and Michelle Day as the current owner of the subject property.
5. **August 13, 2019:** The owner applied for building permit **B201907482** to build accessory structure that is the subject of this variance request.
6. **August 27, 2019:** Quality Control requested revisions from applicant for building permit **B201907482**. The revisions requested are associated with placement of the building in the side yard. At the time, the plan showed the accessory structure occupying greater than 30% of the required side yard.
7. **August 29, 2019:** The owner submitted a revised plan which showed the accessory building occupying less than 30% of the required side yard.
8. **September 23, 2019:** Building permit **B201907482** was issued to the owner.
9. **November 22, 2019:** Inspections issued a denial of the final inspection as the location of the accessory structure was closer to the property line than the approved plans indicated.
10. **December 19, 2019:** Quality Control requested more revisions from applicant for building permit **B201907482**. Zoning comments indicate that the applicant was advised that a variance must be obtained or the building design must be modified in order to bring the structure into compliance with MCZO Article 1106.2.
11. **January 21, 2020:** An application for **BA2020003** is received.

Reviewing Agencies Comments:

12. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated February 5, 2020.
13. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated January 30, 2020.

Existing On-Site and Surrounding Zoning/Land Use:

14. On-site: Rural-43 / Single-family residence
North: Rural-43 / Single-family residence
South: Rural-43 / Single-family residence
East: Rural-43 / Single-family residence

West: Rural-43 / Single-family residence

Site Analysis:

- 15. The subject site is a rectangular lot measuring approximately 141.25 feet in width and 237.60 feet in depth. The total area of the lot is approximately 43,597 square feet or 1 acre. Access to the site is available from 183rd Avenue. The site has a relatively flat topography with little if any vegetation present. A chain-link fence borders the majority of the property with a 100% opaque wall bordering the remainder. A 1-foot non-vehicular access easement is present along Waddell Rd.
- 16. A septic area is present underneath the existing paved driveway. There are four existing structures located on site: a residence, storage area, horse stables and an accessory garage. An accessory garage was demolished along with a portion of the horse stables to allow additional space for the new accessory building. Two fenced horse arenas are also present on site. The approximate lot coverage of the site is 7,014 square feet or 16.1%.
- 17. The requested variance is for the allowance of accessory structures to occupy 31.4% of the required north side yard, where 30% is the maximum permitted per MCZO Article 503.4.2. The subject accessory structure has already been built and is set back approximately 5.4-feet from the side (north) property line currently.

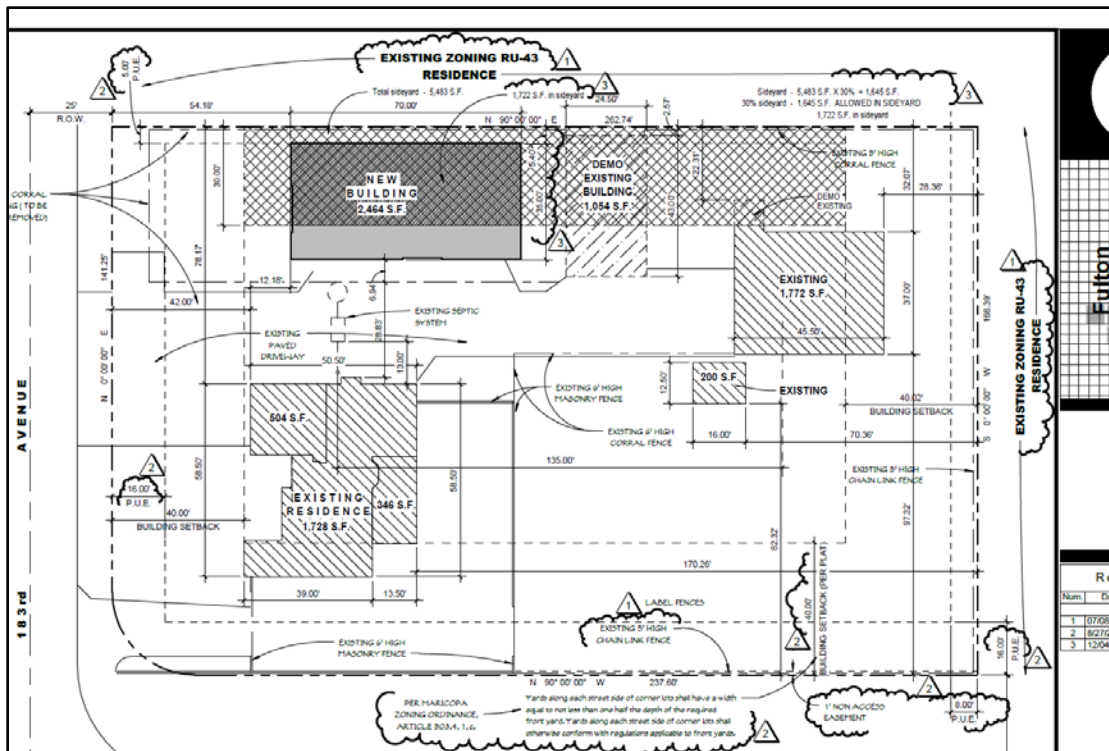
2019 Aerial Map and Surroundings



Zoning Map and Surroundings



Excerpt from the Proposed Site Plan



18. 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	40-feet	n/a
Side Yard Setback	30-feet	n/a
Rear Yard Setback	40-feet	n/a
Accessory Structure Setback	3-feet	n/a
Accessory Coverage in Required Side Yard (North)	30%	31.4%
Maximum Height	30-feet	n/a
Minimum Lot Area	43,560-sq. ft.	n/a
Minimum Lot Width	145-feet	n/a
Lot Coverage	25%	n/a

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:

19. **Statutory Test -1 Peculiar conditions** – Discuss and explain what is/are the peculiar conditions facing the property and include reference to the Maricopa County Zoning Ordinance Regulations or Development Standards 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 Regulations or Development Standards would impose a hardship on the property.

"Existing Septic system was found to be closer to the building than would be allowed for clearance. Septic system was existing and location was established before the current owner purchased the property."

20. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar conditions on the site created with respect to existing Regulations and Standards 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 corner lot restricts the amount of buildable area which, in turn, restricts the maneuvering area between the buildings. Also, the septic system restricts building placement."

21. **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.

"There are many accessory buildings on similar properties in the area. Allowing a 1.4% variance to the side yard area requirement will not be noticeable. The building does comply with the minimum 3' sideyard requirement (5.4' is provided)."

22. **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 permits or as-built permits currently filed with Planning and Development Department and the current review status. Specify the permit numbers. If no permits have been filed, please provide a timeline for building permits submittal and projected timeframe for construction. Conversely, indicate if the variance requests is/are not related to a specific development proposal.

"Permits have been filed and approved and the building is in place."

Findings:

23. 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 the peculiar condition / physical hardship is not self-created in the line of title in that **the accessory structure was built outside of the area approved in building permit B201907482.**

24. 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 January 21, 2020.
- b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

Presented by: Adam Cannon, Planner
Reviewed by: Darren V. Gerard, AICP, Planning Manager

Attachments: Case Map (1 page)
Application / Supplemental Questionnaire (3 pages)

Site Plan (1 page)
Engineering Comments (1 page)
MCESD Comments (1 page)
Letter in support (1 page)