



City of Apache Junction

Development Services Department



DATE: September 11, 2017

MEMO TO: Board of Adjustment and Appeals

THROUGH: Larry Kirch, Development Services Director
Rudy Esquivias, Senior Planner/Zoning Admin. *AK*

FROM: Stephanie Bubenheim, Assistant Planner *SB*

SUBJECT: September 11, 2017, Board of Adjustment and Appeals
Case BA-2-17, a Variance Request by David Dixon.

Background

The subject property located at 611 S. Vista Road (north of the northeast corner of S. Vista Road and E. 7th Avenue), is zoned General Rural Low Density Single-Family Residential (RS-GR). It was first developed with a manufactured home in 1964 before city incorporation, and under Pinal County jurisdiction. Part of the manufactured home was located within the north 33-foot Federally Patented Easement (FPE) on the property (6th Avenue alignment). When the City of Apache Junction was incorporated and the first zoning ordinance was passed, structures that existed prior were considered legal nonconforming and not required to be removed.

In 2015 an electrical permit was applied for to upgrade the electric panel and conduit (permit #ELE2015-00047). The building inspector found that a conventional home was under construction and being built around the existing manufactured home on the subject property. A building permit for new home construction was never applied for, and a code case was created for the violation in April of 2015 (code case COD2015-01427).

In June of 2015, a building permit for a main structure was applied for (BLD2015-00209). The plans reviewer noted that the proposed structure was within the 33-foot FPE for utility purposes and did not meet the required 20-foot setback. The setback is normally measured from the inside edge of the easement. The site plan was denied and the building inspector requested revised construction plans. The owner was advised by planning staff to relinquish the 33-foot PUE along the north side of the property to mitigate some of the setback issue. At some point the manufactured home was removed from within the new structure and the conventionally constructed main dwelling was enclosed, once again without permit approvals.

The roadway easement portion of the FPE for the 6th Avenue alignment was abandoned by the City of Apache Junction in January of 2009 (Resolution No. 08-38). This relinquished the city's right to place a road through that stretch of land but the 33-foot FPE for utility purposes was still active. It is at the private property owner's discretion to abandon a utility easement with the private utility companies. The city does not permit construction over a utility easement. Mr. Dixon completed the relinquishments with all utility companies in 2017. The 33-foot FPE no longer exists along the north property side of the subject site. The only utility that requested to keep a partial easement of 8-feet inside the north property line is CenturyLink (see Site Plan). The current home still needs to meet an interior side setback of 20-feet from the north property line. The current distance from the property line to closest edge of the house wall is 10-feet.

Proposal Description

After meeting with the property owner David Dixon, and reviewing options on how to solve the zoning setback issue, the owner decided to request a variance from the Board of Adjustment and Appeals. This is an application by David Dixon requesting the Board of Adjustment and Appeals to grant a variance to deviate from the main structure's side setback requirement in the RS-GR Zoning District. The owners request is to change the side setback requirement for a main structure from 20-feet to 10-feet to accommodate the existing conventionally built structure.

Public Notification

The case was advertised in the paper and mailings were sent out to property owners within 300 feet around the subject site. A sign was posted at the subject site with the public hearing date. Two neighbors have called city staff and asked what the variance was for. They did not have any concerns with the request.

Staff Analysis

The city's zoning ordinance has setback requirements for main structures to property lines in all zoning districts. The RS-GR zoning district requires a minimum lot size of 1.25 acres. The subject site has a lot size of 1.62 acres and does not have a topographic hardship that creates a difficulty to meet minimum setback requirements.

Construction of a main structure in the City of Apache Junction requires a building permit prior to construction. If a building permit was applied for before construction started the plans

reviewer would have denied the location of the new home as it did not meet setbacks. The applicant is requesting relief from not following regulations and performing unpermitted construction.

The application provided by David Dixon (see attached) states that one special circumstance is the need to comply with current city codes. The city zoning ordinance prior to the update in 2014 had the property designated as General Rural (GR) and the side setback requirement was also 20-feet.

In order to keep the home, Mr. Dixon did go through the process of relinquishing the FPE through the city and all the utility companies and received documentation. The next step is to request a variance from the Board of Adjustment and Appeals to change the main structure side setback from 20-feet to 10-feet so that the main structure is no longer in zoning violation. If the variance request is approved the owner will still need to re-apply for a building permit to make sure the construction of the home is up to building code standards. A rezoning request by the property owner to an RS-GR/PD overlay was also a possible course of action, however the applicant chose to apply for a variance.

Planning Division Recommendation

Planning staff does not advocate or encourage construction without a building permit. The building permit plan review process is essential to avoid situations such as this one and to identify easements on rural properties. Property owners do have the ability to apply and go through a road abandonment process with the City of Apache Junction Public Works Department to abandon a roadway easement that will not be used for roadway purposes. All such abandonments must be approved by City Council. Property owners also have the ability to relinquish utility easements on properties with each of the utility companies if the easement is not used or is not expected to be used in the future. This has provided property owners with smaller setbacks and more space on their property to place structures on the past. The request to change the side setback requirement from 20-feet to 10-feet for an illegally constructed home is a self-imposed hardship and planning staff cannot recommend approval of the variance request.

The Board is respectfully reminded that they must cite findings of fact to support their decision of approval or denial. If the Board desires to approve the applicant's request, they may do so with conditions and staff does suggest some conditions as listed below. Below are recommended motions for approval or denial.

RECOMMENDED MOTION FOR APPROVAL

I move that case BA-2-17, a request by David Dixon for the Board of Adjustment and Appeals to grant a variance of Section 1-5-2 Residential Bulk Regulations requesting a deviation for the main structure side setback in the RS-GR Zoning District be APPROVED subject to the following conditions and findings of fact:

Conditions of Approval

1. The main structure minimum side setback shall be 10'.
2. Any future additions to the home must meet the RS-GR Zoning District's minimum setback requirements of 20'.
3. Any future accessory dwelling units must meet the RS-GR Zoning District's minimum main structure setbacks.
4. The SRP, Arizona Water, and Superstition Mountain Community Facilities District utility relinquishments must be recorded with the Pinal County Recorder's office and copies must be supplied to the city before a building permit can be submitted.
5. All applicable building permits must be re-applied for within one (1) year of approval of this order, and applicable drawings and engineering must be submitted to the Development Services Department for approval.

Findings of Fact:

1. There was confusion regarding the prior manufactured home placement and the legal nonconformity of the structure.
2. (other findings determined by the Board?)

RECOMMENDED MOTION FOR DENIAL

I move that case BA-2-17, a request by David Dixon for the Board of Adjustment and Appeals to grant a variance of Section 1-5-2 Residential Bulk Regulations requesting a deviation for the main structure side setback in the RS-GR Zoning District be DENIED subject to the following conditions and findings of fact:

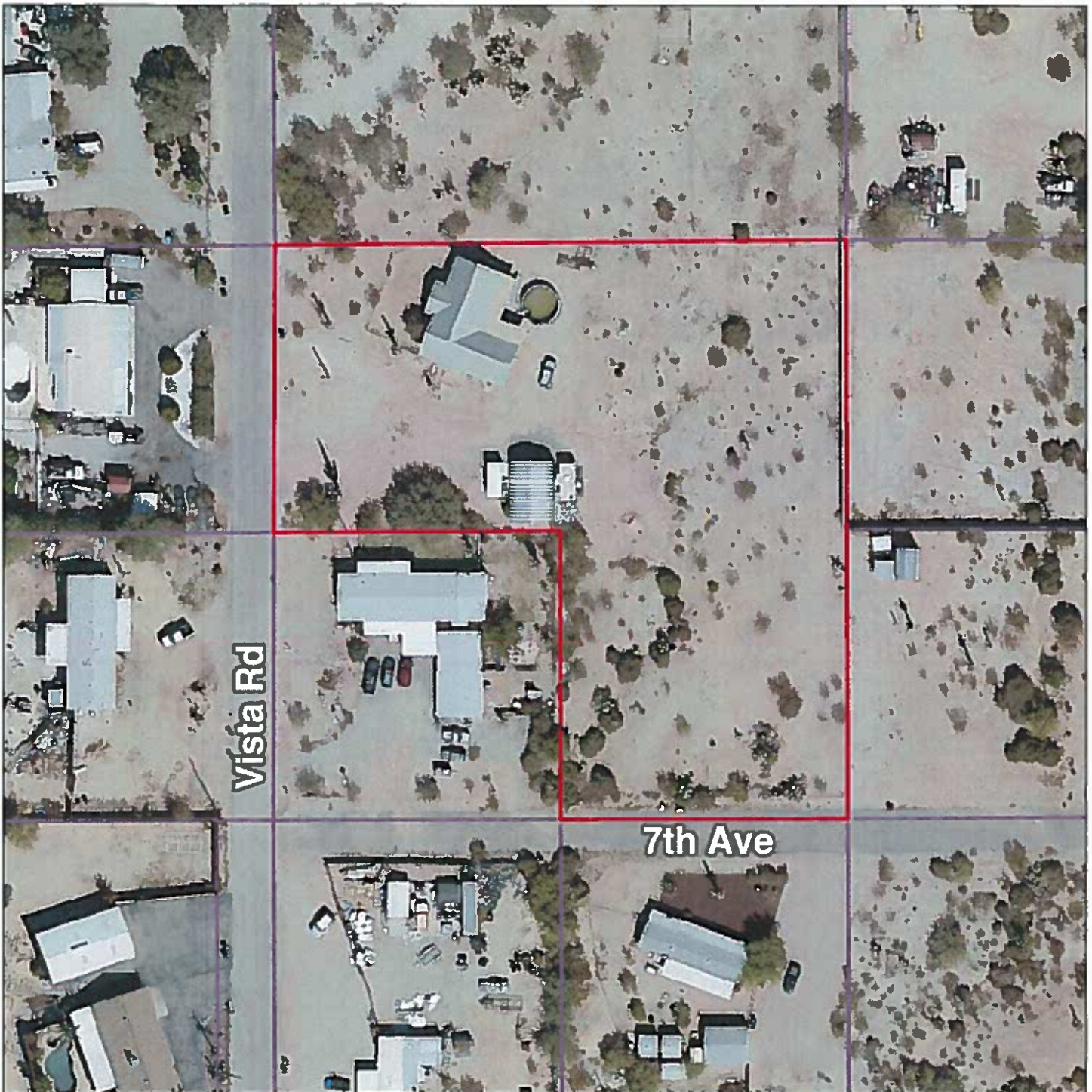
Findings of Fact:

1. There are not special circumstances or conditions applicable to the property referred to in the application which merit an appeal of the city's codes.
2. A building permit was not applied for prior to construction of a new structure.
3. All matters of improper placement of new structures and setback problems are self-imposed.
4. (other findings determined by the Board?)

[Any person aggrieved by any decision of the Board of Adjustment and Appeals may at any time within thirty days of said decision file a complaint for special action in Superior Court to review any Board decision pursuant to ARS §9-462.06.]

Attachments:

- Exhibit #1 - BA-2-17 Aerial Map
- Exhibit #2 - BA-2-17 Zoning Map
- Exhibit #3 - 12/2014 Map of 611 S. Vista Road
- Exhibit #4 - BLD2001-00296 Site Plan with Manufactured Home
- Exhibit #5 - BA-2-17 Application Submittal, Narrative, and Site Plan
- Exhibit #6 - Section 1-5-2 Residential Bulk Regulations
- Exhibit #7 - ARS §9-462.06



City of Apache Junction Aerial Exhibit BA-2-17

LEGEND

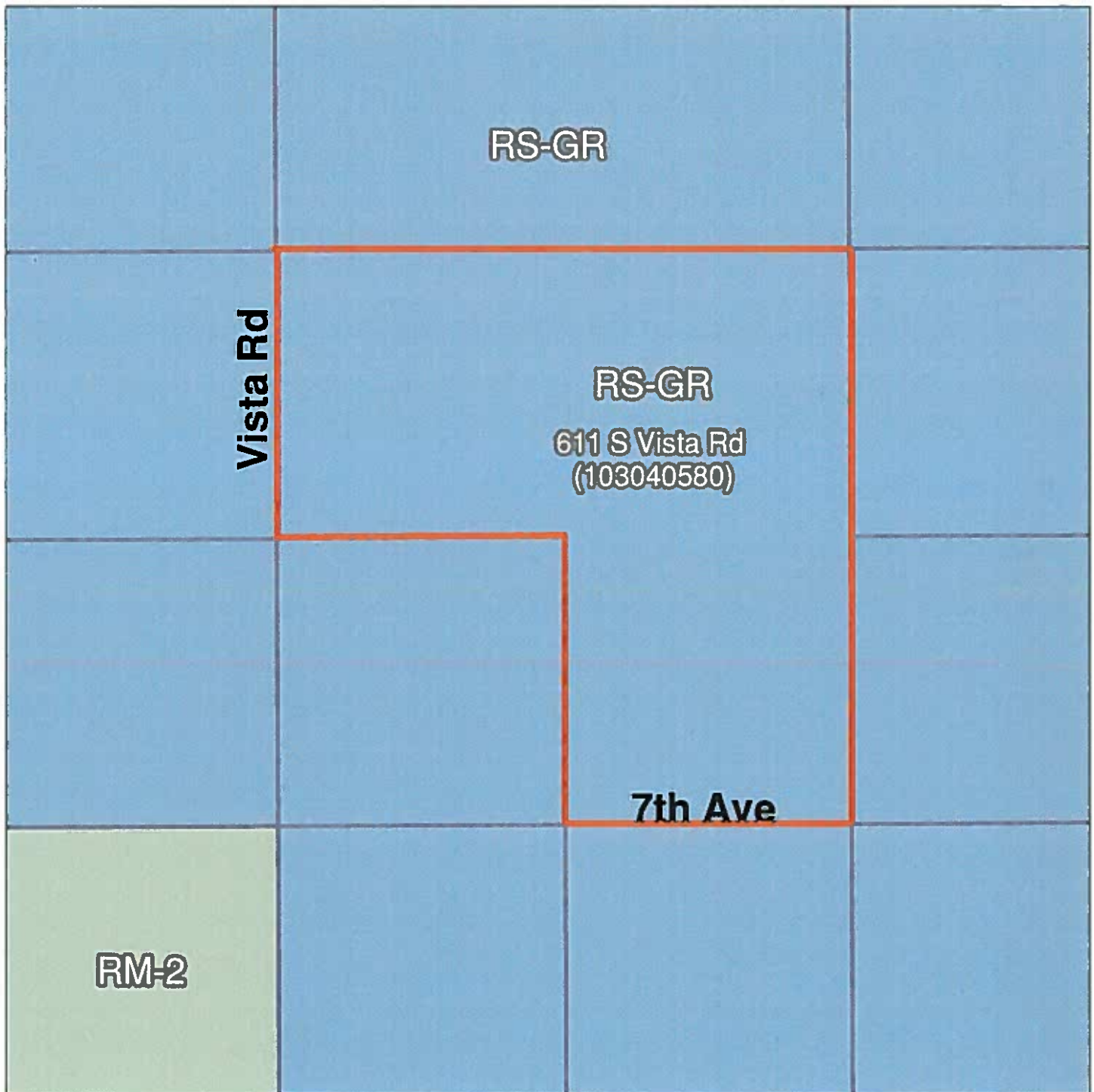
- Subject Site
- Parcel

DISCLAIMER: This exhibit was produced without benefit of a field survey and is not intended to represent a survey document of any kind. Distances shown hereon are approximate. Parcel lines shown hereon are approximate and may not reflect the exact position or alignment of parcel lines, roadway center lines, or easement lines.



August 30, 2017

0 15 30 60 90 120
Feet



City of Apache Junction

Zoning Exhibit

BA-2-17

LEGEND

- Subject Site
- Parcel

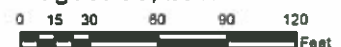
Zoning

- RM-2
- RS-GR

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August 30, 2017

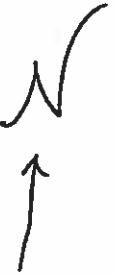




feet 500
meters 100

Date: 12/2004

BLD 2001-00296
Accessory Structure



6TH AVE. 330' (264")

165' (132")

DRIVE

33' r-o-w

146'

165' (132")

20'

EXIST.
M.H.

25'
34'

ATTENTION PROPERTY OWNER:
PROPERTY OWNERS ARE RESPONSIBLE FOR
LOCATING AND MARKING LEGAL PROPERTY
BOUNDARIES; ENSURING THAT NO ENCROACH-
MENTS OCCUR IN ANY RIGHT-OF-WAY, ACCESS
OR UTILITY EASEMENTS; AND ALL EASEMENTS
AND RIGHT-OF-WAY AREAS ARE TO BE INDICATED
ON SITE PLANS.

Proposed Acc. Bldg

330' (264")
33' r-o-w

VISTA RD

EXCEPTED

1165' (132")

33' r-o-w
1165' (132")

7TH AVE.

ZONING REVIEW

ZONE GR

MINIMUM SETBACKS:

FRONT 60'

SIDE 4'

STREET SIDE N/A

REAR 4'

SCALE: 1" = 60'

LEGEND:

-----: r-o-w

|||||: Separate
parcel

REVIEWED BY SKM
DATE 3/26/07

HVAC UNITS CANNOT
ENCROACH INTO ANY
REQUIRED SETBACK OR
RECORDED EASEMENT.

**CITY OF APACHE JUNCTION
VARIANCE APPLICATION FORM**

Owner/Agent Information:

Name: David & Weihong Dixon Telephone: 480-215-6603

Address: 611 S. VISTA RD, APACHE JCT, AZ. 85119

E-mail: wgdwd2009@yahoo.com

Property Information:

Current Zoning Classification: RS-GR

Property Size: 1.62 ~~1.875~~ ☒ acres ☐ square feet County Tax Assessor Parcel #: 10304058

Legal Description of Property (found on County Tax Bill Notices): SE NW SE SW SW
& N 1/2 NW SE SW SW OF SEC. 22-1N-8E 1.62 AC.

Address/Location of Property (if different from Owner Address, above): N/A

Variance Request Information:

Describe existing and proposed use of the subject property and building(s): A HALF BUILT HOME
WHERE A MOBIL HOME ONCE STOOD, DATING BACK TO 1963. AND
IF AGREED TO A COMPLETED HOUSE, LANDSCAPE, AND APPEARANCE.

Describe the requested variance: REDUCTION OF THE NORTH PROPERTY
LINE FROM 20' SETBACK TO THE STATED CENTURY LINK
REQUEST OF 8' WHICH WOULD BE IN KEEPING TO PINAL COUNTY, 1963

Describe any special circumstances or conditions that exist which would cause strict application
of the zoning regulations to be an unnecessary hardship: THE HARDSHIP IS HAVING A HALF
BUILT HOUSE 'STARTED MANY YEARS AGO AND NOW' TRYING TO COMPLY
TO THE NOW INCORPORATED CITY CODES. BUT CERTAINLY IT WILL BE BETTER.

Describe any other reasons for the variance request: SEE ATTACHED PAGE 1
ATTACHED PAGE DESCRIBES FULL REASONS FOR THE VARIANCE.

FOR OFFICE USE ONLY

Case No: BA-2-17

Date Filed: 7/20/17

Receipt No: #16114

Fee Amount: \$ 1,000.00

Application Received By: Stephanie Bubenheim

I/We are the owner(s) of the property described in this application have submitted copies of deeds or title reports as proof of ownership.

I/We, being the owner(s) of the property in this application, have appointed _____ as my/our representative agent. I/We have authorized him/her to do whatever is necessary to have this request considered favorably by the City of Apache Junction and agree that all correspondence relating to this matter should be delivered to him/her.

Dem Daylor
Property Owner Name

Signature _____

611 S. Vista Rd.
Street Address

Apache Junction, Az. 85119
City, State, Zip

480-215-6603
Telephone

Property Owner Name Weihong Qinyi Dixon

Work On River
Signature

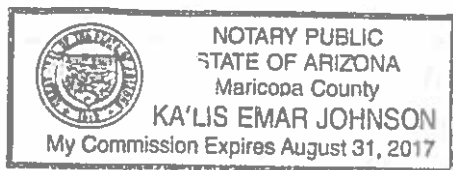
611 S. VISTA RD.
Street Address

Apache Junction, Az. 85119
City, State, Zip

480-243-3326
Telephone

STATE OF ARIZONA)
) SS
COUNTY OF PINAL)

The foregoing instrument was acknowledged before me this 20th day of July, 2017.





Notary Public

My Commission Expires: 08/31/17

City of Apache Junction
Board of Adjustment Members:
Chester Burgess
Jesse Gage
Jodene Weeter
John Dennis Booth
James Burczewski
Jane Jones
Frank Schoenbeck

Dear Members of the Board of Adjustment:

This letter is written to provide a written request and statement to the nature and intent of the variance that is being requested for our property located at, 611 S. Vista Road, Apache Junction, Arizona 85119. The size of the property involved is 1.62 acres more or less and we are both the owners and applicants.

We are requesting a variance to reduce the setback on the north property line from 20' feet to the stated Century Link request of 8' feet which would be in keeping to the original setback given as required by Pinal County when the Mobil Home was placed on the property in 1963.

The structure added to the Mobil Home was added before Apache Junction became an Incorporated City in 1978. The added structure with foundations were constructed by the owners in 1964 by my parents, Bill & Pearl Dixon who bought the land.

My father added on to the Mobil Home approximately 1966, to the best of my knowledge. In 2007 after my parents passed, I inherited the property from my Mother. There was an issue of poor construction with the roof that covered the existing Mobil Home. I also had a major problem with the way my father had constructed the roof and the added structure he had built. I realized I would need to remove a partial portion (The entire Mobil home). and continue renovating what remained. At that point I realized there was an issue with the north easement. The easement had been extinguished while my Mother was still alive, she and the neighbors filed to extinguish this. I was required to prove to the City of Apache Junction it had indeed been abandoned as a roadway and then proceed to file for an extinguishment of the Utility Companies. That has been completed with this last exception which I am requesting from the Members of the Adjustment Board. I have been diligently working with the City to complete all the requirements.

I have created a hardship with having half a home started many years ago and now trying to complete this project and be in compliance with the new codes that are now established within the now established and incorporated City of Apache Junction. Certainly we wish to provide the surrounding neighborhood with a more visibly appealing and functioning home.

Please let me know if there is any more information that I may need to provide to the Members.

Contact Information: 480-215-6603

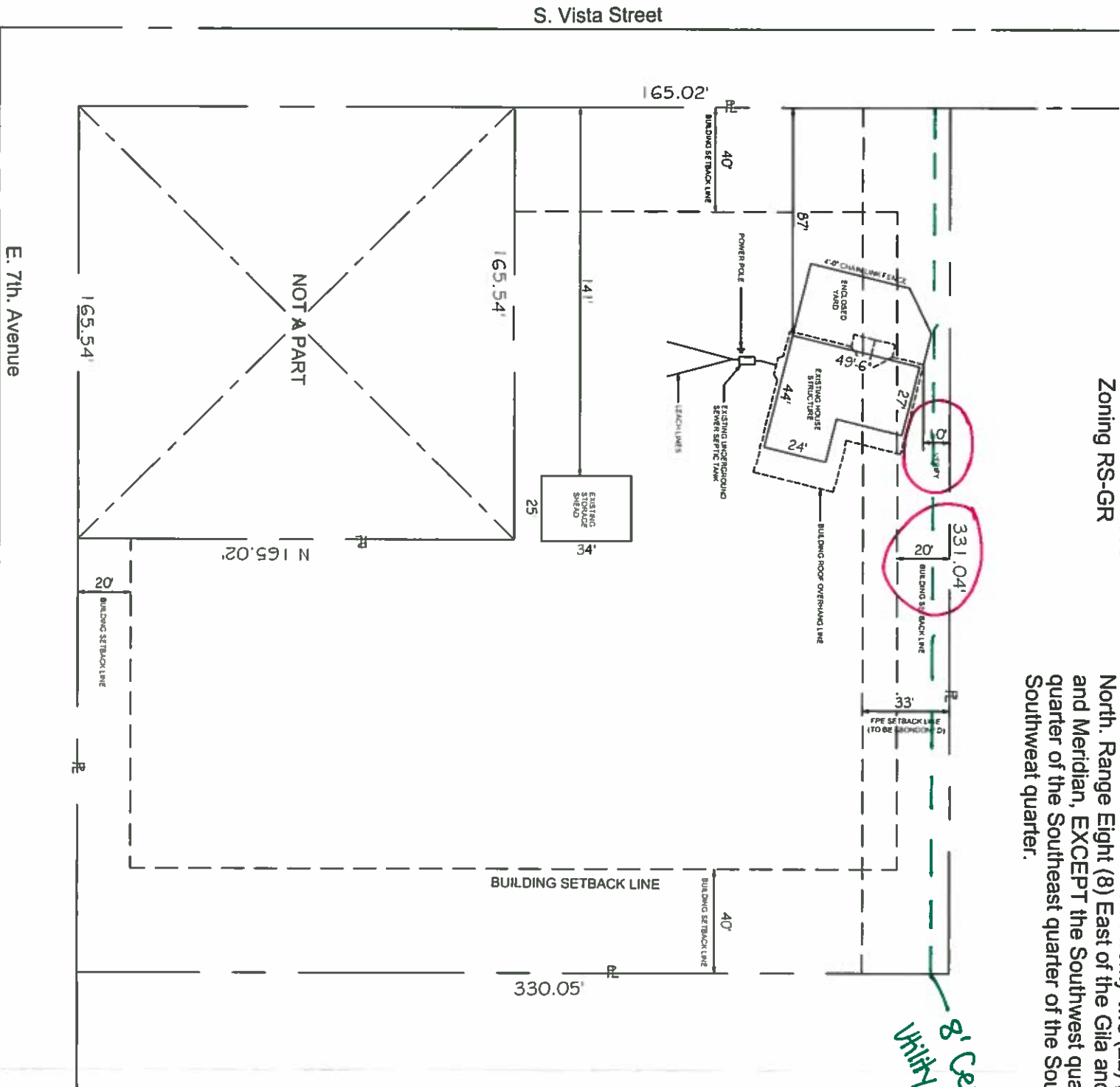
480-243-3326

Thank you for your consideration,
Respectfully, David & Weihong Dixon

LEGAL DESCRIPTION:
Section 22 SW
Parcel 103-04-058
Zoning RS-GR

LEGAL DESCRIPTION:
Northwest quarter of the Southeast quarter of the Southwest of the Southwest section Twenty-two (22), Township One (1) North, Range Eight (8) East of the Gila and Salt River Base and Meridian, EXCEPT the Southwest quarter of the Northwest quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter.

8' Century Link
Utility Easement



S. Vista Street

E. 7th Avenue

RECEIVED
APR 20 2017
City of Apache Junction
DEVELOPMENT SERVICES
BUILDING DIVISION



SITE PLAN

1-5-2 RESIDENTIAL BULK REGULATIONS. Table 5-2 illustrates the bulk regulations for all residential zoning districts:

TABLE 5-2: RESIDENTIAL BULK REGULATIONS

USE TYPE	RS-GR	RS-54 & RS-54M	RS-20 & RS-20M	RS-10 & RS-10M	RS-7 & RS-7M	RS-5	RM-1	RM-2	RM-3	MHP	RV
Minimum Lot Area per Dwelling Unit ¹	1.25 acres	1.25 acres	20,000 sf.	10,000 sf.	7,000 sf.	5,000 sf.	3,350 sf.	1,980 sf.	1,089 sf.	3,111 sf.	2,178 sf.
Maximum Density (dwelling units per acre) ³	0.80 units/ac	0.80 units/ac	2.18 units/ac	4.36 units/ac	6.22 units/ac	8.71 units/ac	13 units/ac	22 units/ac	40 units/ac	14 units/ac	20 units/ac
Minimum Development Area	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	7,000 sf.	7,000 sf.	7,000 sf.	10 acres	10 acres
Minimum Lot Width ²	100 ft.	100 ft.	80 ft.	70 ft.	60 ft.	50 ft.	60 ft.	60 ft.	60 ft.	50 ft./space	30 ft./space
Minimum Front Setback (main structure)	40 ft.	30 ft.	25 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	8 ft.	3 ft.
Minimum Front Setback (accessory structure) ⁴	40 ft.	30 ft. ⁸	25 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	20 ft.	8 ft.	3 ft.
Minimum Interior Side Setback ⁵ (main structure)	20 ft.	10 ft.	10 ft.	10 ft.	7 ft.	7 ft.	10 ft.	10 ft.	10 ft.	5 ft.	3 ft.
Minimum Street Side Setback ⁵ (all structures)	20 ft.	20 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	8 ft.	3 ft.
Minimum Side Setback (accessory structure > 120 sf.) ⁴	5 ft.	10 ft. ⁹	10 ft.	10 ft.	5 ft.	5 ft.	10 ft.	10 ft.	10 ft.	5 ft.	3 ft.
Minimum. Rear Setback (main structure)	40 ft.	30 ft.	20 ft.	20 ft.	20 ft.	15 ft.	20 ft.	20 ft.	20 ft.	10 ft.	5 ft.
Minimum. Rear Setback (accessory structure > 120 sf.) ⁴	5 ft.	10 ft. ⁹	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	3 ft.
Max. Lot Coverage ⁶	30%	20%	30%	40%	50%	60%	50%	50%	70%	NA	NA
Maximum Size for Accessory Structure ⁷	No limit	2,000 sf. ⁷	See #7 below	See #7 below	See #7 below	See #7 below	See #7 below	See #7 below	See #7 below	See #7 below	See #7 below
Maximum Height for Main Structure	35 ft.	35 ft.	35 ft.	30 ft.	30 ft.	30 ft.	35 ft.	40 ft.	60 ft.	15 ft.	15 ft.
Maximum Height for Accessory Structure > 120 sf. ¹⁰	20 ft.	20 ft. ⁸	20 ft.	20 ft.	20 ft.	15 ft.	15 ft. ⁷	15 ft. ⁷	15 ft. ⁷	20 ft.	20 ft.
Accessory Structure ≤ 120 sf. ¹⁰	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below	See #10 below
Accessory Dwelling Units ¹¹	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below	See #11 below

Footnotes from Table 5-2:

1. Minimum Lot Area. Minimum lot area shall be calculated as *net land area*, with the exception of the RS-GR, RS-54 and RS-54M zoning districts, which shall be calculated as *gross land area*.
2. Minimum Lot Width. Minimum lot width is the distance between side lot lines measured perpendicular to the lot depth at the front setback line. Minimum lot width measurement for flag lots shall be interpreted by the Zoning Administrator. Lot width, as measured at the front setback line, shall not be less than 25% of the lot depth, unless waived by the Zoning Administrator due to unique environmental or geographic conditions.
3. Maximum Density Calculation. Maximum density shall be calculated as the total number of dwelling units/*net land area*, with the exception of the RS-GR, RS-54 and RS-54M zoning districts, which shall be calculated as the total number of dwelling units/*gross land area*.
4. Setbacks for Accessory Structures Housing Livestock. Accessory structures allowed to house large livestock (excluding equine) shall maintain a minimum side, rear and front setback of 50 feet. Accessory structures allowed to house small livestock and fowl shall maintain a minimum side and rear setback of 15 feet. Structures housing equine shall be subject to the standard accessory structure setback requirements in Table 5-2. See Section 1-6-5 of this Ordinance regarding detailed regulations for accessory buildings, and Section 1-6-17 of this Ordinance regarding additional regulations for housing of livestock. In no case shall an accessory structure (excluding equine horse shades) be located between the main building and the front lot line.

Side and Rear Street Setbacks for Accessory Structures. Side and rear setbacks for accessory structures located along a street shall comply with the side and rear setback requirements for the district in which the accessory structures are located.
5. Setback Measurement. Interior side setbacks are measured from an interior side lot line that is not abutting a public road right-of-way. Street side setbacks are measured from a street side lot line abutting a public road right-of-way.
6. Lot Coverage. Lot coverage is the ratio of the total footprint area of all structures on a lot to the gross land area, typically expressed as a percentage. The footprints of all principal and accessory structures, including garages, carports, covered patios, and covered porches, shall be added together in order to calculate lot coverage.
7. Maximum Size for Accessory Structures in the RS-GR District. There is no size limit on accessory structures in the RS-GR district.

Maximum Size for Accessory Structures in the RS-54 and RS-54M District. The maximum accessory structure size of 2,000 square feet for RS-54 and RS-54M zoned properties may be increased to 5,000 square feet if 100% of the property owners of adjacent properties and 50% of the property owners of those properties within 80 feet of the adjacent properties agree with the proposed increase through a petition that is drafted, signed and acknowledged in accordance with Development Services Department standards. Adjacent properties shall be defined as property

adjoining the subject property and/or property directly across the street, private road or road easement from the subject property (see Section 1-6-5).

Maximum Size for Accessory Structures in All Residential Districts Not Zoned RS-GR and RS-54 and RS-54M. Maximum size of individual accessory structures in all residential zoning districts, except RS-GR and RS-54, is limited to the floor area of the main building's first floor for zoning districts indicated in Table 5-2

8. Maximum Height for Accessory Structures in the RS-54 and RS-54M District. The maximum accessory structure height of 20 feet for RS-54 and RS-54M zoned properties may be increased to 25 feet if 100% of the property owners of adjacent properties and 50% of the property owners of those properties within 80 feet of the adjacent properties agree with the proposed increase(s) through a petition that is drafted, signed and acknowledged in accordance with Development Services Department standards. Adjacent properties shall be defined as property adjoining the subject property and/or property directly across the street, private road or road easement from the subject property (see Section 1-6-5).
9. Setbacks for Metal Sided Accessory Structures in RS-54 and RS-54M District. Accessory structures with metal siding located within the RS-54 and RS-54M zoning districts shall comply with the following unique setback limitations:
 - Metal sidewalls up to 12 feet in height shall be allowed if the front, side and rear setbacks are at least 30 feet.
 - Metal sidewalls up to 10 feet in height shall be allowed if the side and rear setbacks are at least 20 feet, and the front setback is at least 30 feet.
 - Metal sidewalls up to 8 feet in height shall be allowed if the side and rear setbacks are at least 10 feet, and the front setback is at least 30 feet.

The metal sidewall height established above may be increased to 15 feet, with a minimum 10 foot side and/or rear setback, if 100% of the property owners of adjacent properties and 50% of the property owners of those properties within 80 feet of the adjacent properties agree with the proposed increase(s) through a petition that is drafted, signed and acknowledged in accordance with Development Services Department standards. Adjacent properties shall be defined as property adjoining the subject property and/or property directly across the street, private road or road easement from the subject property (see Section 1-6-5).

10. Accessory Structures < 120 Square Feet. Accessory structures less than 120 square feet in size shall not be located between the main structure (home) and the front property line, and shall have a minimum side and rear setback of 3 feet except that one accessory structure \leq 120 square feet may be located within the side or rear setback area in the MHP and RVP districts. See Section 1-6-5 of this Ordinance regarding additional regulations for accessory buildings.
11. See Section 1-6-19 of the Ordinance for regulations regarding accessory dwelling units.

9-462.06. Board of adjustment

- A. The legislative body, by ordinance, shall establish a board of adjustment, which shall consist of at least five but no more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.
- B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.
- C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.
- D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.
- E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief that has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.
- F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.
- G. A board of adjustment shall:
1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.
 2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions as 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 the property is located.
 3. Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order, requirement, decision or determination as necessary.

H. A board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.
2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the board of adjustment, it shall exercise all of the functions and duties of the board of adjustment in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the board, at any time within fifteen days after the board has rendered its decision, may file an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the legislative body or board, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, may file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.