



# *City of Apache Junction*

## *Development Services Department*



**DATE:** September 6, 2017

**MEMO TO:** Board of Adjustment and Appeals

**THROUGH:** Larry Kirch, Development Services Director

**FROM:** Rudy Esquivias, Senior Planner/Zoning Admin.

**SUBJECT:** September 11, 2017, Public Hearing Item:  
Case BA-1-17, Variance Request by Richard and Beverly Spurgeon

### **Background**

The subject property is located at the northwest corner of S. Hopi Road and W. 4<sup>th</sup> Avenue. Prior to June of 2014, the property was zoned TH (Trailer Homesites) zone, which was a single-family residential district which allowed either one conventional home or one manufactured home on an 8,000 square-foot minimum lot. Upon the adoption of the city's new zoning ordinance and new zoning maps in June of 2014, the new zoning assigned to the property was RS-10M, which typically allows either one conventional home or one manufactured home on a 10,000 square-foot minimum lot. The property itself is actually 1.25 acres gross in size, but subtracting the street dedications on the south and east sides, the net lot is approximately 35,000 square feet in size. It is a legal lot under both the previous and new zoning ordinance.

According to Assessor's records, a previous property owner installed a manufactured home on the property in 1989. The address assigned to the property was 336 S. Hopi Road, so technically the front yard of the property faced east to Hopi Road. The minimum setbacks for the home were 20' front (east side), 20' rear (west side), 10' interior side (north) and 20' street side yard (south). It appears that the previous owner's intent for the property was to split it into roughly a north half and south half. The home was placed towards the north end of the property, thus the Hopi address was appropriate.

The Spurgeons bought the property in January of 2014, with the home already on it and more than meeting its minimum setback requirements, especially to the south.

In February of 2014, the Spurgeons applied to construct a detached garage on the property, which was located just to the south of the existing home. The minimum setbacks for a detached garage were 20' front (east), 5' rear (west), 10' interior side (north) and 20' street side yard (south). The garage also more than met its minimum setback requirements on three sides, except that on the west side (the "rear" yard) it was placed at the minimum 5-foot setback. All buildings on the property were in compliance with zoning setbacks. The adoption of the city's new zoning ordinance did not change the minimum setbacks. The setbacks for buildings under RS-10M zoning are basically the same as they were for TH.

A peculiar thing about the Spurgeons' property is that their house is the only house that is addressed and serviced by the stretch of Hopi Road on their east side. Even though the road has been dedicated (deeded) to the city, because this stretch of Hopi only serves one home, the city does not maintain the road. Another unique thing about the property is that most of the lot is encumbered by a FEMA flood zone, which significantly limits where buildings can be placed on the property.

#### **Proposal Description**

Within the last year or so, Mr. Spurgeon stated that they had a medical emergency at their home and called for emergency services. He said that emergency personnel could not locate his house. He says that Hopi Road is very difficult to find. However, 4<sup>th</sup> Avenue (the street along his south side) is easily recognizable and easy to find. He would like for the city to change his address from Hopi Road to 4<sup>th</sup> Avenue.

When we first discussed the possible address change, we discovered a zoning problem. If the address is changed to 4<sup>th</sup> Avenue, then technically 4<sup>th</sup> Avenue will become the front yard for the property. The west side of the lot will then become an interior side yard. As mentioned above, a building must be setback a minimum of 10 feet from an interior side yard. Unless granted a variance, an address change would result in a zoning violation for the existing garage, which is only 5 feet from the west property line. City staff do not have the administrative discretion or authority to approve changes for a property that result in zoning violations.

Short of moving the garage, two options were available to Mr. Spurgeon, rezone the property to something which allowed for lesser side yard setbacks, or apply for a variance. Being the less expensive and quicker of the two options, the Spurgeons are applying for this variance. If the Board grants the Spurgeons their variance, then they can apply for an address change.

### **Planning Staff Analysis and Findings**

A variance request is evaluated on criteria that are mandated by state law as well as city ordinances. The law says that a Board of Adjustment shall.....*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.*

One could argue that the special circumstances applicable to this property include the fact that only one home is served by a city street that lies mostly in a flood zone. It has topographical, as well as location and surroundings issues. Although other properties to the northeasterly and southwesterly of the property are also affected by the flood zone, most of those other properties are served by better developed and more easily accessible streets. In fact, because the city does not maintain this part of Hopi Road, it is not even marked with a street name sign. In a sense, this property is enjoying fewer privileges than other properties in the area, in similar zones.

Furthermore, the law states that a Board of Adjustment may not.....*grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.*

As mentioned above, the home was installed by a previous owner before the Spurgeons bought the property. The Spurgeons then properly applied to construct a garage in compliance with the city's codes. They did everything correctly. They did not, however, anticipate that the physical characteristics of the property would make their home difficult to find in emergency

situations until they actually experienced one. The circumstances in this case were not deliberately self-imposed, much less for the purpose of getting around the city's setback requirements. The request is being made because of a health and safety concerns not previously known.

### **Public Input**

All surrounding property owners within 300 feet of the subject property were sent notices and invited to the public hearing. Staff has not received any inquiries from neighbors relative to this variance request.

### **Planning Division Recommendation**

Planning Staff recommends in favor of this request to the Board of Adjustment for a side yard setback variance, from 10 feet to 5 feet, for an existing properly permitted detached garage, which will result with a future address change for the subject property from S. Hopi Road to E. 4<sup>th</sup> Avenue, by Richard and Beverly Spurgeon.

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 variance 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-1-17, a request by Richard and Beverly Spurgeon for the Board of Adjustment and Appeals to grant a variance pursuant to the City of Apache Junction Zoning Ordinance Section 1-16-4, requesting to encroach 5 feet into a required 10-foot side yard setback for a detached garage, which will result with a future address change for the property currently addressed as 336 S. Hopi Road (Parcel #101-22-046), be **APPROVED**, subject to the following conditions:

- 1) That all future construction on the property continue to be properly permitted and be in compliance with normal setback regulations and flood zone requirements.
- 2) That the property owners work with Public Works personnel and their immediate neighbors to the east to explore the

possible relinquishment their mutual frontages on S. Hopi Road.

Findings of Fact:

1. There **are** special circumstances or conditions applicable to the property referred to in this application which do not prevail on other property in that zone or immediate area. Those special circumstances or conditions include:
  - a) The property is encumbered by a natural wash which makes it difficult to find and access.
  - b) The home is the only residence served by a road which is not maintained by the city, nor marked, making it difficult to find, especially by emergency personnel.
  - c)
2. The strict application of the regulations **would** work an unnecessary hardship and the granting of the application **is** necessary for the preservation and enjoyment of substantial existing property rights, because:
  - a) The applicants are requesting a reasonable variance which affects only one side of a properly permitted building.
  - b) Property owners have a reasonable expectation that emergency providers can find them in time of need.
  - c)

**RECOMMENDED MOTION FOR DENIAL**

I move that case BA-1-17, a request by Richard and Beverly Spurgeon for the Board of Adjustment and Appeals to grant a variance pursuant to the City of Apache Junction Zoning Ordinance Section 1-16-4, requesting to encroach 5 feet into a required 10-foot side yard setback for a detached garage, which will result with a future address change for the property currently addressed as 336 S. Hopi Road (Parcel #101-22-046), be **DENIED**.

Findings of Fact:

1. There **are not** special circumstances or conditions applicable to the property referred to in the application which do not prevail on other property in that zone.

2. The strict application of the regulations **would not** work an unnecessary hardship and that the granting of the application **is not** necessary for the preservation and enjoyment of substantial existing property rights.

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

Attachments:

- BA-1-17 Application
- Vicinity Map
- Zoning Map
- Aerial Map
- Flood Zone Map
- Site Plan from 2014 building permit
- ARS Section 9-462.06

**CITY OF APACHE JUNCTION  
VARIANCE APPLICATION FORM**

**Owner/Agent Information:**

Name: RICHARD C & BEVERLY C. Spung Telephone: 480-646-1621

Address: 3365 HOPI Rd. AZ.

E-mail: \_\_\_\_\_

**Property Information:**

Current Zoning Classification: RS-10M

Property Size: 1.25 <sup>gross</sup> ☒ acres ☐ square feet County Tax Assessor Parcel #: 101-22-0460

Legal Description of Property (found on County Tax Bill Notices): See attached

Address/Location of Property (if different from Owner Address, above): \_\_\_\_\_

**Variance Request Information:**

Describe existing and proposed use of the subject property and building(s): Single-family Residential Home, detached garage

Describe the requested variance: Side Setback for detached garage

Describe any special circumstances or conditions that exist which would cause strict application of the zoning regulations to be an unnecessary hardship: Current address is insufficient

Describe any other reasons for the variance request: Services unable to locate property

**FOR OFFICE USE ONLY**

Case No: BA-1-17

Receipt No: \_\_\_\_\_

Application Received By: STEPHANIE BUZENHEIM

Date Filed: JULY 3, 2017

Fee Amount: \$ \_\_\_\_\_

I/We certify that:

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 have read the application instructions and have truthfully completed this application and that the City has the option of either approval or denial of this request following conduct of a Public Hearing.

I/We, being the owner(s) of the property in this application, have appointed NA 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.

PLEASE PRINT

RICHARD SPURGEON  
Property Owner Name

Richard Spurgeon  
Signature

336 S HOPI RD  
Street Address

Apache Jct AZ  
City, State, Zip 85119

480 646 1021  
Telephone

Beverly Spurgeon  
Property Owner Name

Beverly Spurgeon  
Signature

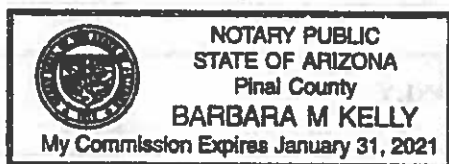
336 S HOPI RD  
Street Address

Apache Jct AZ  
City, State, Zip

480 646 1021  
Telephone

STATE OF ARIZONA )  
 ) SS  
COUNTY OF PINAL )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of JULY, 2017.



Barbara M Kelly  
Notary Public

My Commission Expires: 1/31/2021

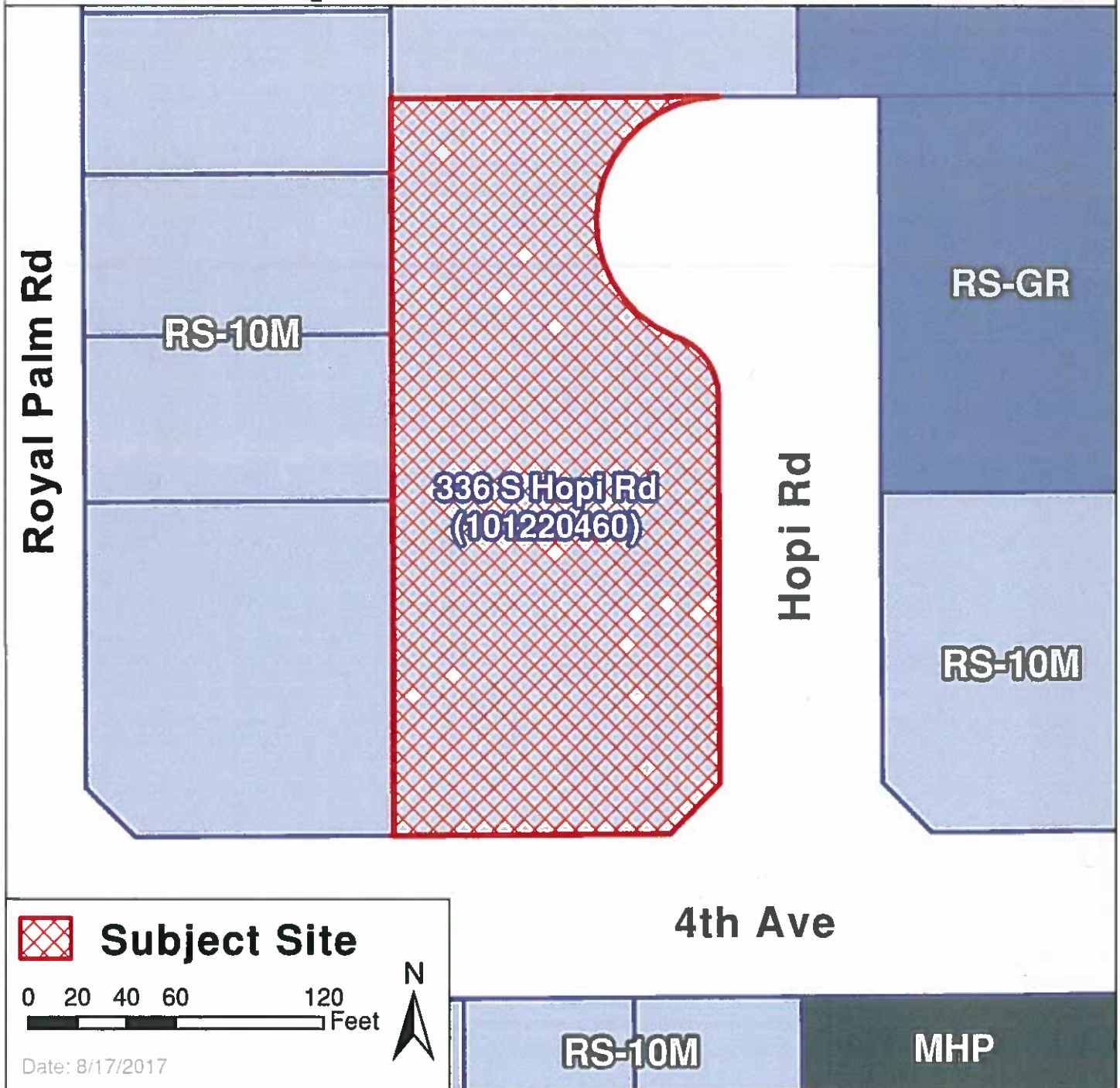


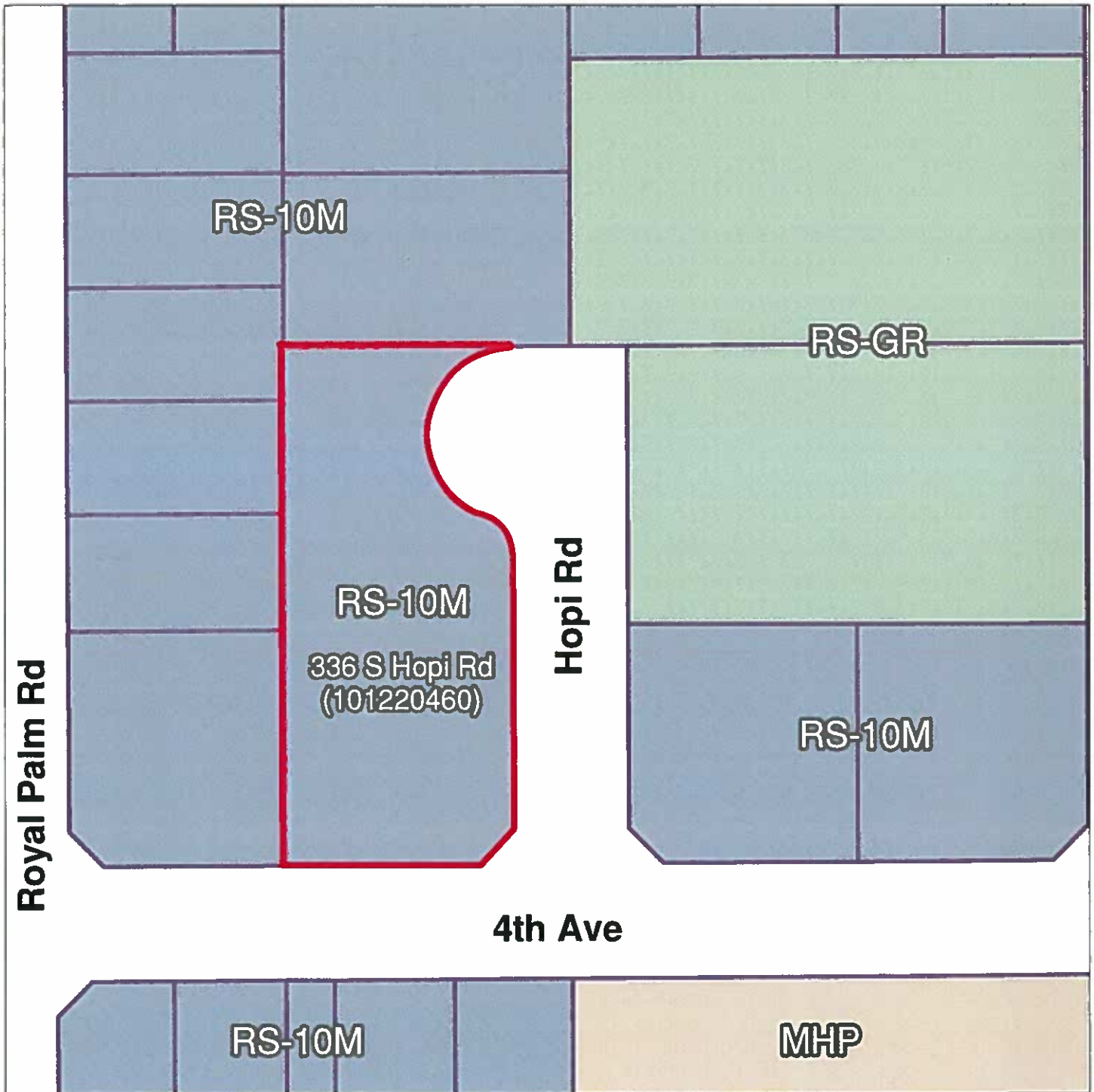


# Vicinity Map

BA-1-17

A request for a variance to the side yard setback requirements, as part of a proposal to also redesignate the front yard and re-address the property from Hopi Road to 4th Avenue.

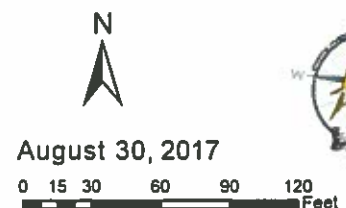




## City of Apache Junction Zoning Exhibit BA-1-17

- LEGEND**
- Subject Site
  - Parcel
- Zoning**
- MHP
  - RS-GR
  - RS-10M

**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.







## City of Apache Junction Aerial Exhibit BA-1-17

### **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

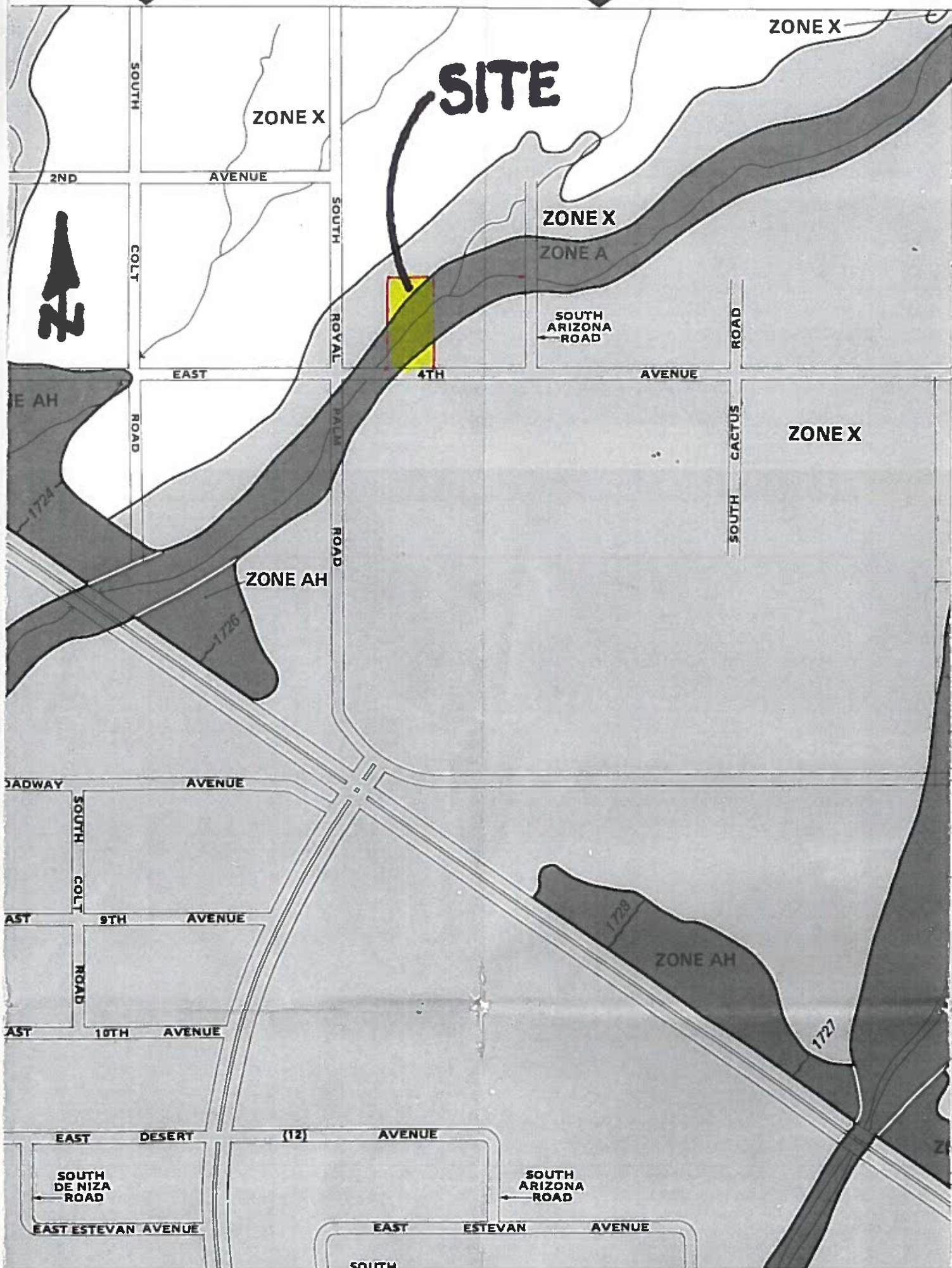


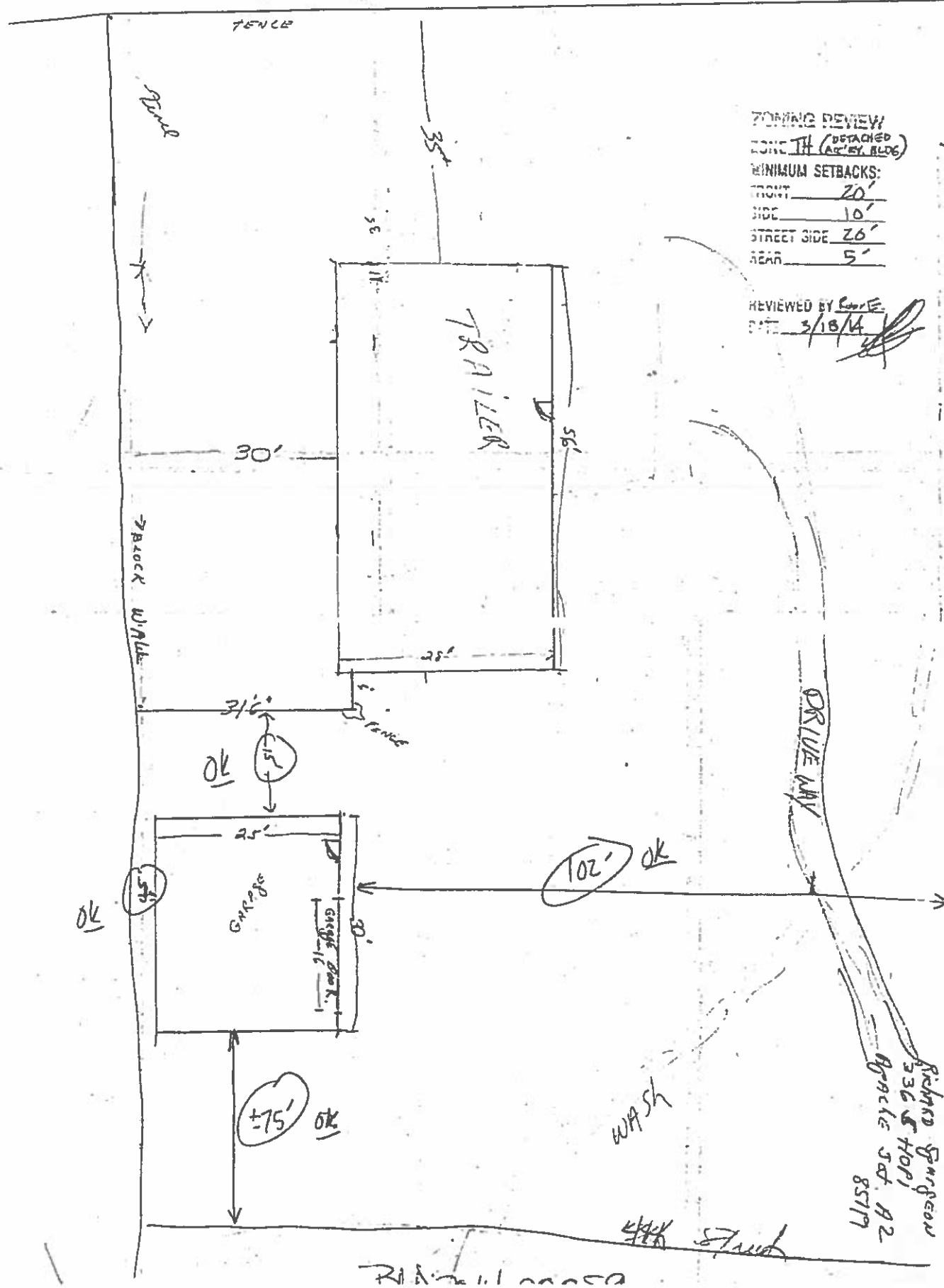
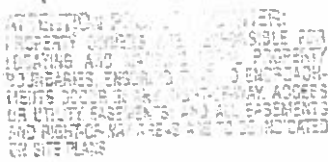
0 15 30 60 90 120 Feet



B

C





**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.