



# *City of Apache Junction*

## *Development Services Department*



**DATE:** November 3, 2020

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

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

**THROUGH:** Rudy Esquivias, Planning Manager

**FROM:** Morgan Henn, Planning Intern

**SUBJECT:** November 9, 2020, Public Hearing Item:  
Case BA-1-20, Variance Request by Joe and Sue Ruthardt

### **Background**

The subject property is located at 2179 E Superstition Blvd. in Apache Junction, Arizona. The property is zoned as "RS-GR" (General Rural Low Density Single-Family Detached Residential), and was acquired from the county with this zoning. RS-GR zoning districts allow for one conventional home or one manufactured home on a 1.25 acre minimum lot. Under the City of Apache Junction Zoning Ordinance, one accessory dwelling unit is allowed on a residential lot in all single-family detached residential zoning districts, including RS-GR zoned districts.

According to Assessor's records, a previous owner purchased the property in 1974, and installed a manufactured home in 1997. The Ruthardts purchased the property in 2012, with the manufactured home already on it. The home is located near the southeast corner of the property, and faces north.

The entire property lies within a FEMA Flood Hazard Zone (Zone AE), and the northwest portion of the property lies in a Zone AE Floodway. The property also has Federally Patented Easements along the north 33' and part of the northeast corner. Extinguished Federally Patented Easements are located along the east 33' and south 33' sides of the property. These are significant limitations on where buildings can be placed on the property.

### **Proposal Description**

The Ruthardt's have requested to build a guest house in the front yard area of their property. Typically, a guest house is required to be built in the side or rear yard of a property behind the main structure. But, because of the lack of buildable space due to the Federally Patented Easements and the limitations of building in a floodway, the Ruthardt's have requested to build the guest home in their front yard area instead.

### **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 the property lies completely in a flood zone. Also, the Federally Patented Easements bordering the property significantly limit the amount of buildable space.

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 Ruthardt's bought the property. The flood zone limitations were also not self-imposed, but a natural topographical property constraint.

### **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 by the Ruthardt's to the Board of Adjustment, requesting a variance to construct a guest house in the front yard area of the subject property at 2179 E Superstition Boulevard.

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-1-20, a request by Joe and Sue Ruthardt 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 build a guest house in the front yard area for the property addressed as 2179 E Superstition Boulevard (Parcel #103-03-004D), 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.) Property owners shall pay all applicable building permit and development fees at time of permit issuance.

### **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 limits the available buildable area.
  - b. The property is bordered by Federally Patented Easements which limit the amount of buildable area.

### **RECOMMENDED MOTION FOR DENIAL**

I move that case BA-1-20, a request by Joe and Sue Ruthardt 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 build a guest house in the front yard area for the property addressed 2179 E Superstition Boulevard (Parcel #103-03-004D), 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-1-20 Application
- Vicinity Map
- Zoning Map
- Aerial Map
- Flood Zone Map
- Site Plan
- City Zoning Ordinance, Section 1-16-4 Board of Adjustment and Appeals
- City Zoning Ordinance, Section 1-6-19 Accessory Dwelling Units
- Comments

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required by the Zoning Ordinance. Please note that there is no appeal process to the City Council for variance requests; relief may be gained only by filing a lawsuit with the Pinal County Courts to have the decision overturned.

**CITY OF APACHE JUNCTION  
VARIANCE APPLICATION FORM**

**Owner/Agent Information:**

Name: JOE RUTHARDT Telephone: 480-459-0917

Address: 2179 E SUPERSTITION BLVD. 85119

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

**Property Information:**

Current Zoning Classification: RS - GR

Property Size: 1.15 ☐ acres ☐ square feet County Tax Assessor Parcel #: 103-03-004D

Legal Description of Property (found on County Tax Bill Notices): \_\_\_\_\_

SEE ATTACHED LEGAL DESCRIPTION

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

SAME AS ABOVE

**Variance Request Information:**

Describe existing and proposed use of the subject property and building(s): EXISTING

HOUSE IS TO FAR BACK ON PROPERTY SO WOULD  
LIKE TO BUILD GUEST HOUSE IN FRONT OF EXISTING HOUSE

Describe the requested variance: TO BUILD GUEST HOUSE IN

FRONT OF EXISTING HOUSE

Describe any special circumstances or conditions that exist which would cause strict application

of the zoning regulations to be an unnecessary hardship: NO ROOM BEHIND

EXISTING HOUSE. EXISTING HOUSE IS

197 FT SOUTH OF FRONT BLOCK WALL

Describe any other reasons for the variance request: NO ROOM ON S-W-ORE

SIDE OF EXISTING HOME, WOULD LIKE BUILD

GUEST HOUSE IN FRONT OF EXISTING HOME

OR N OF HOUSE WHERE THERE IS OPEN LAND,

**FOR OFFICE USE ONLY**

Case No: BA-1-20  
PLN2020-00098

Date Filed: 10/5/2020

**Exhibit A**

**The East half of the Northeast quarter of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 22, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona;**

**EXCEPT all oil, gas and other mineral deposits as set forth in the Patent to said land.**

*LEGAL DISCRPTION*

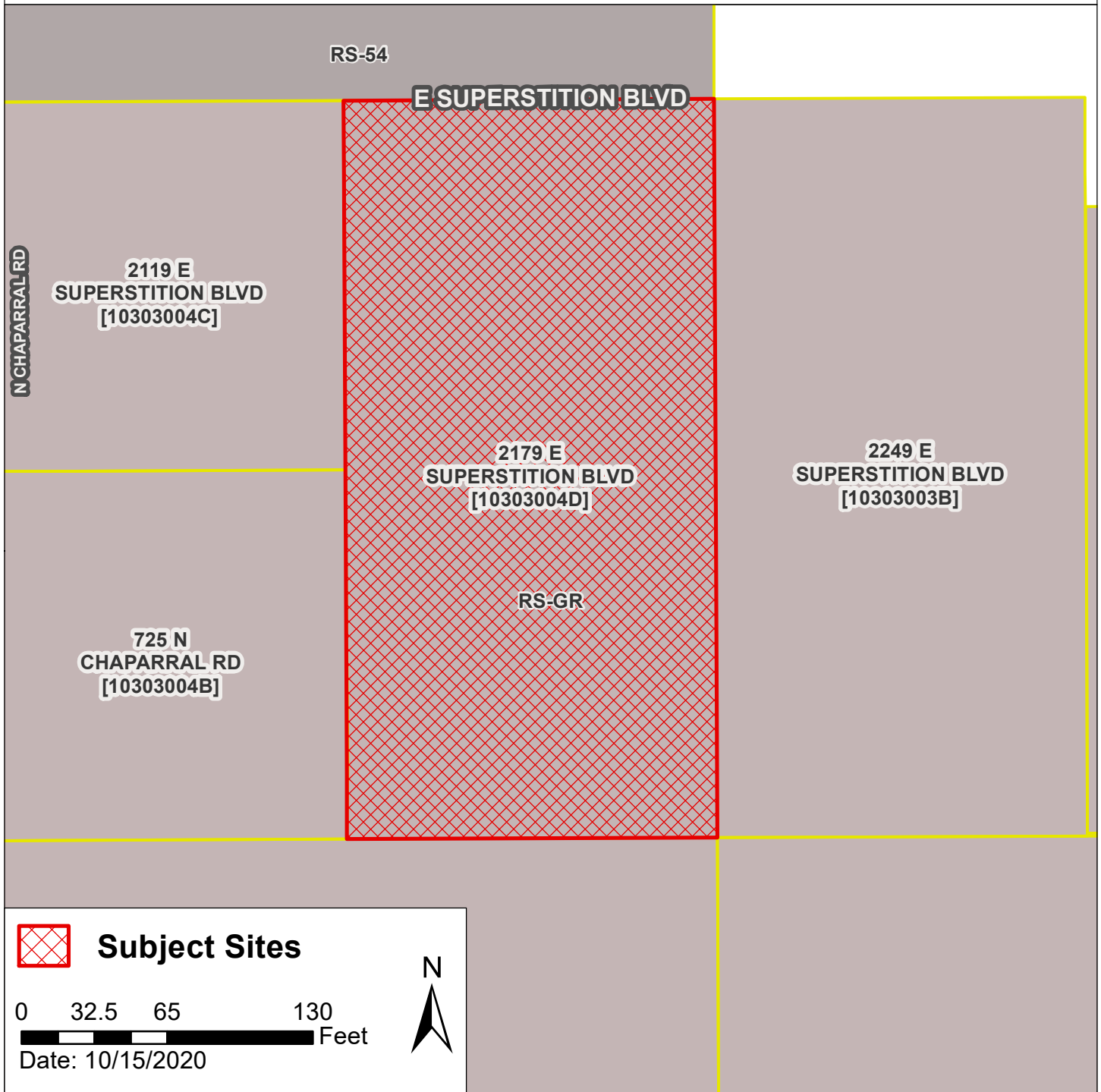


# Vicinity Map

2179 E. Superstition Blvd.

BA-1-20

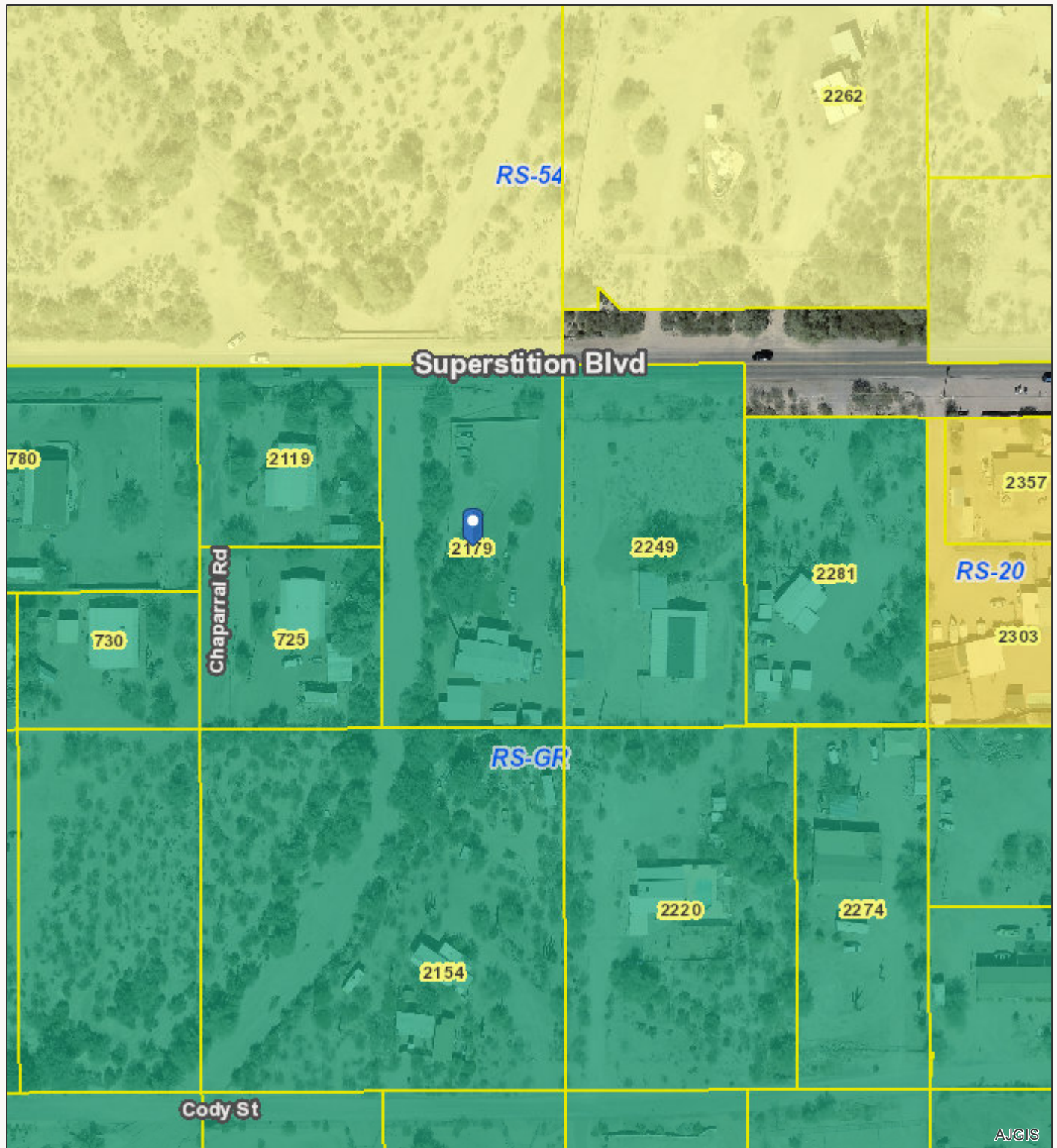
Request for a variance to build a guest house in  
the front yard area on the RS-GR  
(Low-Density Single-Family Residence)  
zoned property at 2179 E. Superstition Blvd.  
(Parcel No. 103-03-004D).









# GIS Map


DISCLAIMER: This map was produced without benefit of a field survey and is not the intended use. The use of this map is for informational purposes only and the City of Apache Junction makes no warranty, expressed or implied, regarding the reliability of the information provided.



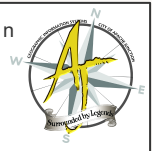
## LEGEND

### Municipal Boundary Parcels

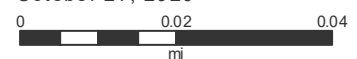
- |   |   |
|---|---|
|  Apache Junction |  CITY OF APACHE JUNCTION |
|  Pinal County    |  PINAL COUNTY            |

 Addresses

City of Apache Junction



October 27, 2020



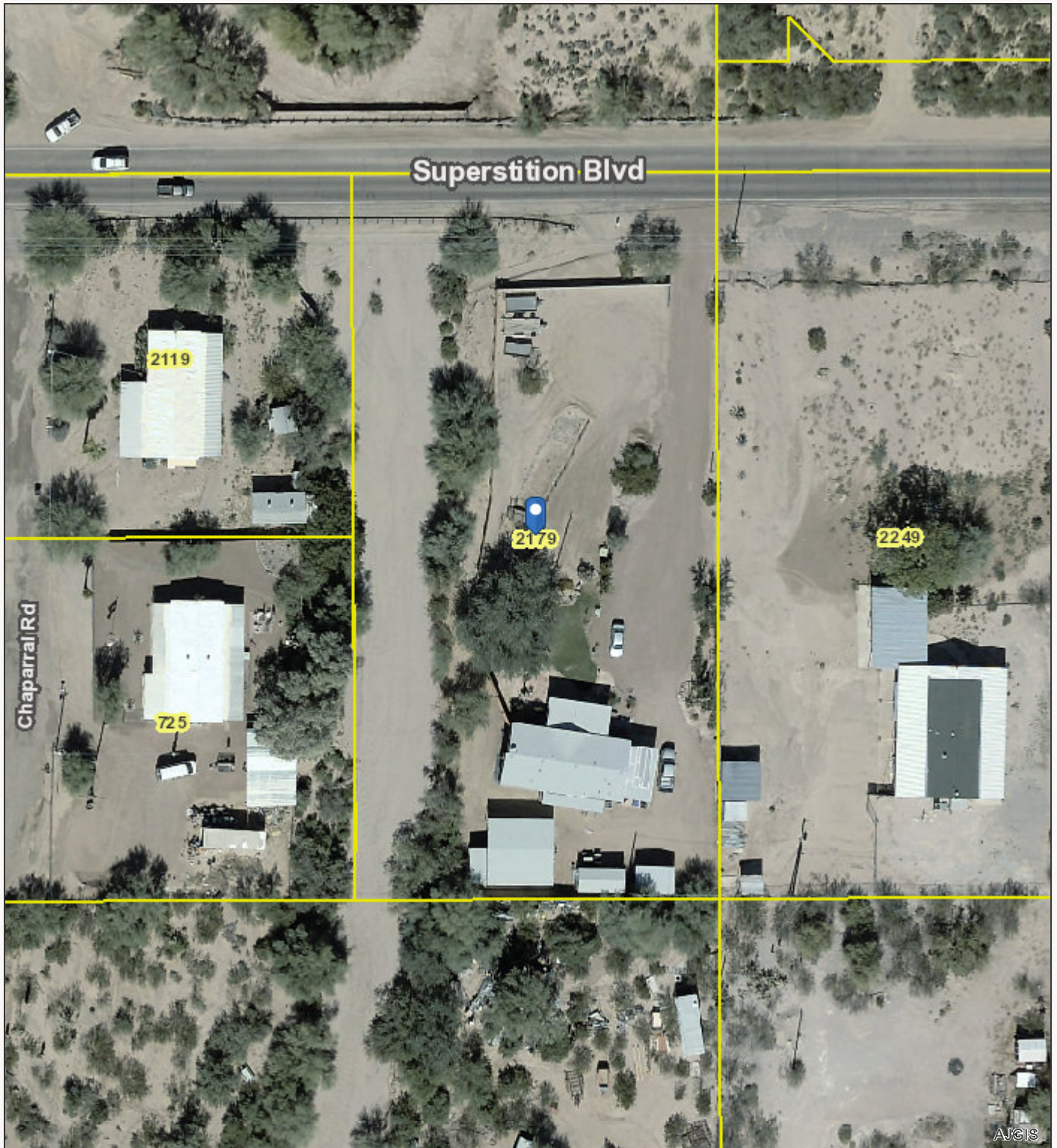
Content maintained by the Apache Junction GIS Division

Zoning Map



# GIS Map

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## LEGEND

- |                           |                         |              |
|---------------------------|-------------------------|--------------|
| <b>Municipal Boundary</b> | Case History            | PINAL COUNTY |
| Apache Junction           | <b>Parcels</b>          | Addresses    |
| Pinal County              | CITY OF APACHE JUNCTION |              |

City of Apache Junction



October 27, 2020



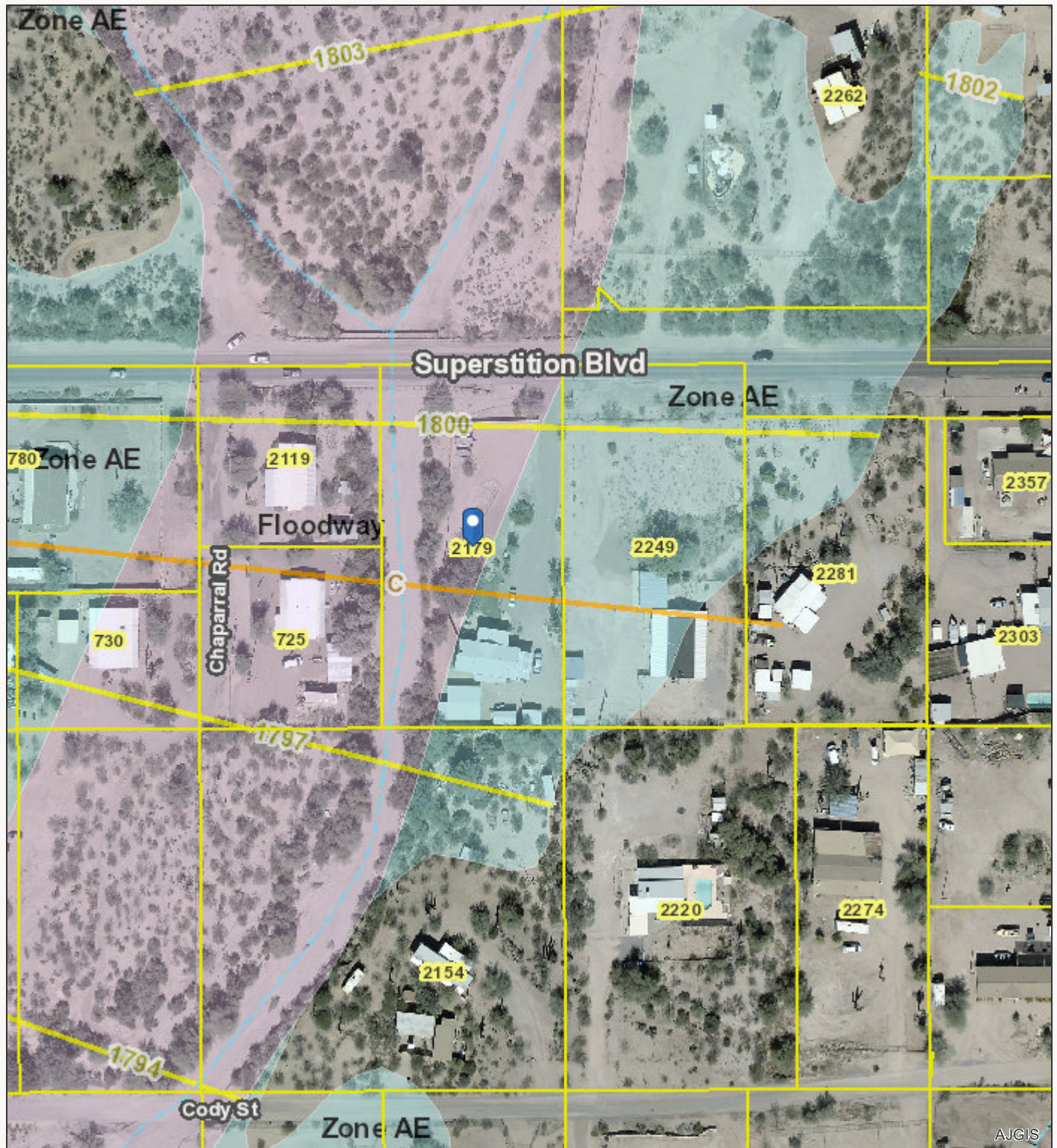
Content maintained by the Apache Junction GIS Division

Aerial Map



# GIS Map

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## LEGEND

Municipal Boundary		Parcels		Station Locations	Base Flood Elevation
	Apache Junction		CITY OF APACHE JUNCTION		
	Pinal County		PINAL COUNTY		Ephemeral Washes
			Addresses		Cross-Section

City of Apache Junction



October 27, 2020

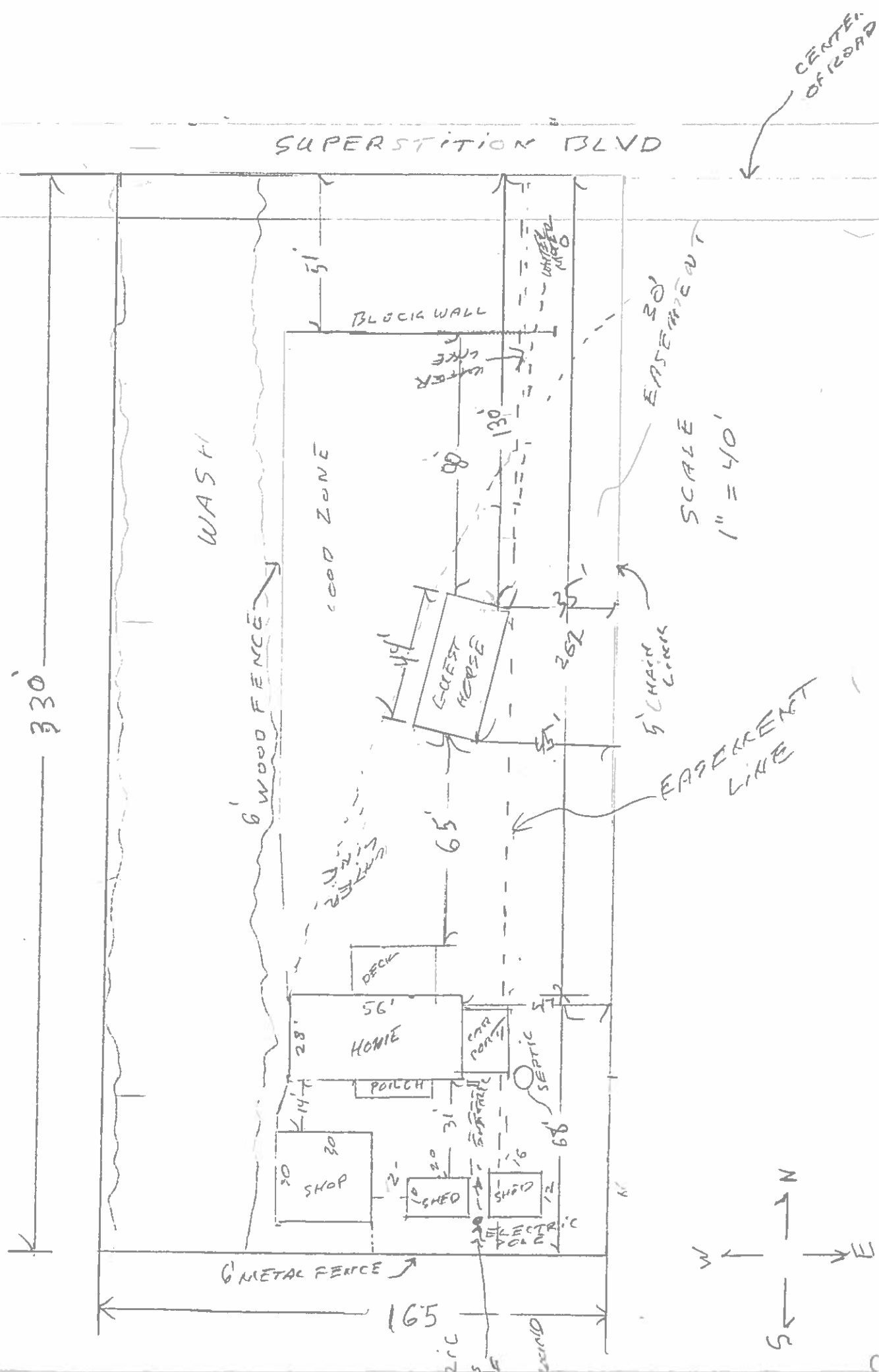


Content maintained by the Apache Junction GIS Division

Floodway Map

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PROPERTY LOCATION - 2179 E SUPERSTITION BLVD.



## 1-16-4 BOARD OF ADJUSTMENT AND APPEALS

- A. Establishment. A Board of Adjustment and Appeals ("Board") is hereby established pursuant to A.R.S. § 9-462.06 and Apache Junction City Code, Volume I, § 2-21-1.
- B. Meetings. The Board shall meet regularly as needed. All meetings shall be open to the public. It shall elect its own officers, establish its own rules, keep a record of its action, and render an annual report to the Council and Commission. The Chairperson, or in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses in accordance with the laws of the State of Arizona. Any finding, ruling, or decision of the Board relating to the administration of the Zoning Ordinance shall be an order at either a regular or special meeting of the Board, and shall be fully reported in the minutes of the Board.
- C. Powers and Duties. The Board shall have the following powers and duties:
1. Appeals of Zoning Administrator's Decisions. Hear and decide appeals in which it is alleged there is an error in an order, requirement, interpretation or decision made by the Zoning Administrator in the enforcement of the Zoning Code.
  2. Appeals for Variances. Hear and decide requests 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 result in unnecessary property hardships, result in serious impairment of substantial property rights and deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.  
  
Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not be contrary to the public interest, 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 and shall cause the minimum possible interference with the general purposes and intent of this Ordinance.
- D. Powers and Duties Not Authorized. The Board shall not have the following powers and duties:
1. Make any changes or allow modifications to the uses permitted in any zoning district classification (i.e., no use variances allowed).
  2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

- E. Ex parte Communications. The Board shall act in a quasi-judicial manner and shall not entertain, accept or participate in any ex parte communications.

## **1-16-5 APPEAL AND VARIANCE PROCEDURES**

- A. Legal Standing for Appeals. Appeals to the Board may be taken by persons aggrieved or by any officer, department, board or bureau of the City affected by a decision of the Zoning Administrator, by filing with the Development Services Department a notice of appeal and required complete application within 30 calendar days of the decision being communicated to the applicant.
- B. Information Required for Filing an Appeal. The following information is required for filing an appeal:
1. Completed application form filed with the Zoning Administrator at 300 E. Superstition Blvd., Apache Junction, Arizona 85119. with date of appeal, name and contact information of person filing the appeal (i.e., appellant), assessor's parcel number, case number and any individual representing the appellant.
  2. List of address to which notices must be sent.
  3. Description of requested variance or decision being appealed.
  4. Date of the Zoning Administrator's decision that is being appealed.
  5. Description of requested outcome if the appeal is granted.
  6. Description of grounds for appeal.
  7. Scaled and properly dimensioned site plan illustrating relevant property information.
  8. Payment of application fees established in Apache Junction City Code, Volume I, Chapter 4.
  9. Other items and materials required by the application form and/or necessary for the appeal.
- C. Legal Effect of Appeal. 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 and finding, a stay would cause imminent peril to life or property. Upon such finding, 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 appellee requests relief which has previously been denied by the Board, except pursuant to a special action in Superior Court.

- D. Public Hearing. The Board shall fix a reasonable time to conduct a public hearing for the appeal. Public notice of the hearing shall be administered by the Development Services Department and shall comply with the following:
1. Newspaper Publication. Notice of the time, date and place of the hearing, including a general description of the matter to be considered and a general description of the area affected, shall be published in a newspaper of general circulation that is published or circulated in the community. The publication notice shall be at least 15 calendar days before the hearing, and shall be published as required by A.R.S. 9-462.04, as amended.
  2. Posting Notice. The notice of public hearing shall be posted by the applicant in accordance with the instructions provided in the application materials.
  3. Mailing Notice. The City shall send notice by first class mail to each real property owner, as shown on the last assessment of the property, within three hundred feet of the appellant's property. The notice shall include the proposed hearing date, time, location and information regarding the case.
- E. Failure to Receive Notice. The failure of any person or entity to receive notice shall not constitute grounds for the City or any court to invalidate the actions of the Board.
- F. Board Review. The Board shall conduct a public hearing (i.e., *de novo*), and shall review all relevant information, including but not limited to the application, plans, related project materials that were submitted by City staff and the appellant, the original decision being appealed, any additional materials as may be presented at the appeal hearing, any written correspondence submitted prior to or during the hearing, and any information observed by a site visit.
- G. Board's Decision. The Board may approve, approve with conditions, or deny an appeal, and may prescribe reasonable conditions in connection with its decision as may be necessary in order to fully carry out the purpose and intent of the Zoning Code.
- H. Appeal to Superior Court. Any person aggrieved by a decision of the Board or any taxpayer, officer or department of the municipality affected by a decision of the Board may, at any time within 30 calendar days after the Board has rendered its decision, file a complaint for special action in the superior court to review the 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.

- I. Expiration. Rights and privileges established by the granting of a variance shall be exercised within one year following the date of approval unless a different time limit is specified by the Board at the time the variance is granted. Failure to exercise a variance within the time limits specified shall cause the variance to become null and void.

## **1-16-6 AMENDMENTS TO ZONING CODE OR ZONING MAP**

- A. Authority. The Council may, from time to time, upon the recommendation of the Commission amend, supplement, change or repeal the Zoning Code regulations (i.e., Zoning Code text) and/or Zoning Map boundaries (i.e., rezoning). The Council shall have the power to approve, modify and approve with conditions or deny the Commission's recommendation.
- B. Request to Amend.
  1. By Commission or Council. Request to amend the Zoning Code regulations or Zoning Maps may be initiated by the Council or Commission on its own motion.
  2. By Private Party. Petition by a private party for a Zoning Map amendment shall be made to the Commission on a form and application provided for that purpose by the Development Services Department and shall be signed and notarized by the real property owners of the properties to which the Zoning Map amendment applies.
- C. Citizen Review Process. Prior to any Commission public hearing regarding a Zoning Map amendment initiated by a private party, a Citizens Review Process shall be required pursuant to Section 1-16-7(B).
- D. Public Hearing and Notice. The Commission shall hold a public hearing on any proposed amendment to the Zoning Code Regulations or Zoning Map boundaries, and City staff shall provide the following notice:
  1. Newspaper Publication. Notice of the time, date and place of the hearing, including a general description of the matter to be considered and a general description of the area affected, shall be published in a newspaper of general circulation that is published or circulated in the community. The publication notice shall be at least 15 calendar days before the hearing, and shall be published as required by A.R.S. § 9-462.04, as amended.
  2. If the proposed amendment involves a change to the Zoning Code standards, the changes, or reference to where the changes may be publically viewed, shall be



## **1-6-18 AGRICULTURE**

- A. Commercial Agricultural Uses. Commercial agricultural uses shall only be allowed in the RS-GR (General Rural) residential zoning district and may include field crops, truck gardening, berry crops, flower gardening, plant nurseries, greenhouses, orchards, aviaries and apiaries. A produce sales stand up to 200 square feet in size for the sale of farm products grown on the premises is allowed but shall be set back a minimum of 10 feet from the road right-of-way.
- B. Non-Commercial Agricultural Uses. Non-commercial agricultural and horticultural uses shall be allowed in all residential zoning districts.
- C. Commercial Feedlots. No commercial feedlots shall be allowed in any zoning district.

## **1-6-19 ACCESSORY DWELLING UNITS**

- A. Purpose and Definition. An accessory dwelling unit is an attached or detached residential dwelling unit that may provide complete independent living facilities for one or more persons, and which may include provisions for living, sleeping, eating, cooking, and sanitation on the same parcel where the primary single-family dwelling is situated. An accessory dwelling unit may also be known as a secondary dwelling unit, granny flat, property caretaker's dwelling or guest house. Accessory dwelling units should not be confused with "accessory structures", which are defined and regulated differently in § 1-6-5. Accessory dwelling units shall comply with the following regulations.
  - 1. Permit Required. An administrative use permit ("AUP") shall be required prior to construction and use of an accessory dwelling unit.
  - 2. Number Allowed. One accessory dwelling unit is permitted on a residential lot in all single-family detached residential zoning districts. This limitation does not include a personal caretaker's unit, which is separately described and regulated in § 1-6-20.
  - 3. Design. Accessory dwelling units may be detached, attached, or directly accessible from the primary dwelling unit. An accessory dwelling unit shall be constructed as a conventional (i.e., site-built) structure that compliments and is consistent with or improves upon the main building's design and building materials, as determined by the Director or designee.

Property caretakers, however, working as ranch hands for approved commercial horse boarding facilities may use a motor home, travel trailer or 5<sup>th</sup> wheel RV unit for their accommodation. See Section 1-6-7 (D)(7).

4. Setbacks. Accessory building setbacks shall comply with the main building's setback requirements, and shall not be located between the main building and the front road right-of-way.
5. Use. An accessory dwelling unit may be used to accommodate family, friends, guests, personal caretaker and/or property caretaker.
6. Size. An accessory dwelling unit shall not be larger than 50% of the main building's square footage.
7. Height. The maximum height shall not exceed 25 feet.
8. Kitchen Allowed. An accessory dwelling unit shall be permitted to have a kitchen.
9. No Rentals Allowed. An accessory dwelling unit shall not be operated as a separate rental unit; if the entire property is a rental property, the owner or lessee thereof shall not sublet the accessory dwelling unit.
10. Addressing. An accessory dwelling unit is not permitted to have a separate address or separate utility services/meters, or sewer/septic system from the main dwelling unit (unless an additional septic tank is allowed by the Pinal County Health Department).
11. Driveway Access. The main dwelling unit and the accessory dwelling unit shall both use the same driveway for access.
12. Conditional Use Permit Modification Option. Modifications to the maximum size and height of an accessory dwelling unit may be allowed by approval of a CUP in accordance with Section 1-16-12 (D)(4).

## **1-6-20 PERSONAL CARETAKERS UNITS**

- A. Purpose. The City Council has determined that there is a need in the City for special consideration to housing handicapped/disabled persons who need on-site personal care and assistance.
- B. Permit Required. An administrative use permit ("AUP") shall be required prior to construction, placement or use of a personal caretaker unit.
- C. Site Requirements. A personal caretaker's unit may be allowed subject to the following:
  1. Number Allowed. One temporary personal caretaker unit is permitted on a residential lot in all single residence zoning districts. Personal caretaker unit is separate and distinct

## **Rudy Esquivias**

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**From:** Emile Schmid  
**Sent:** Tuesday, May 26, 2020 2:27 PM  
**To:** Larry Kirch; Rudy Esquivias  
**Subject:** RE: 2179 E Superstition Guest House and contact info

Gentlemen,

Guest house is allowed in flood fringe and floodway areas of the floodplain per the following requirements:

1. Additions to existing structures are subject to 50% FEMA Substantial Improvement requirements:
  - a. If the value of the construction is equal to or greater than the value of the existing structure, then the entire structure (existing and proposed improvement) is required to be brought into current FEMA floodplain development compliance, including elevation of the lowest floor above the Base Flood Elevation (BFE).
  - b. If the addition is located within the "conveyance shadow" then a No-Rise certification is not required. The conveyance shadow is a 1:1 extension on the upstream side of the home and 4:1 on the downstream side. See image below.
  - c. If it extends beyond the "conveyance shadow" then a No-Rise certification will be required to certify that the addition will not cause a rise in the BFE.
2. If a building is detached from the main residential structure and located outside of the floodway (pink) but in the flood fringe (blue):
  - a. A No-Rise certification will be required.
  - b. The lowest floor of the building will need to be at the Regulatory Flood Elevation (RFE) which is the BFE + 12 inches if the building is to be used as a habitable space.
  - c. If the building will not be used as a habitable space the building may be constructed at grade and wet floodproofed, and can only be used for parking and storage of non-hazardous materials.
3. If a building is detached from the main residential structure and located partly or completely inside of the regulatory floodway, then in addition to number 2 above the following also must be adhered to:
  - a. No waste disposal systems in the floodway.
4. Other requirements for buildings in a floodplain:
  - a. Machinery and service equipment are to be designed and/or located so that they are elevated to the RFE so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - b. Materials used are to be resistant to flood damage for any portions of a non-habitable building below the RFE.
  - c. Buildings must be anchored.
5. The city will need to see a detailed site plan showing the property boundaries, Federal Patent Easement (FPE) lines, floodway and floodplain boundary lines, existing improvements and existing structures, and proposed structures.
6. A BFE does exist for the site, so that is one item that will not need to be calculated by a civil engineer.