



City of Apache Junction

Development Services Department



BOARD OF ADJUSTMENT AND APPEALS PUBLIC HEARING STAFF REPORT

DATE: October 11, 2021

MEMO TO: Board of Adjustment and Appeals

THROUGH: Larry Kirch, Development Services Director
Rudy Esquivias, Planning Manager

FROM: Nicholas Leftwich, Associate Planner

SUBJECT: October 11, 2021, Public Hearing Item:
Case P-21-82-BA, Variance Request by John Holt

Background

The subject property is identified as APN 100-24-023C, located at the northwest corner of Hilton Road and the Smoketree Street alignment in Apache Junction, Arizona. The property is zoned "RS-54," Low Density Single-Family Detached Residential, which allows for one conventional home on a 1.25 acre minimum lot. John Holt, the owner of this property, has proposed plans to build a single family residence on this parcel, as well as one accessory dwelling unit, which is allowed on a residential lot in all single-family detached residential zoning districts.

During the preliminary planning stages of this construction proposal Mr. Holt inquired with the city regarding the required separation distances from washes and property lines. Staff reported back to Mr. Holt that a 15' setback from the top bank of a wash is required, which affects this property as there is a large tributary wash running directly through the middle of the subject parcel, preventing a significant portion of the property from being used as buildable area.

Additionally, there are 33'-wide Federally Patented Easements (FPE's) along the west, east, and south sides of the property, within which construction cannot be permitted and from which the required RS-54 setbacks are measured. From the edges of these easements, 33' in from the property lines, an additional 30' is

required for the front yard setback in the west, 20' is required for the street side yard setback in the south, and 30' is required for the rear yard setback in the east.

These setback requirements and required wash separation distances impose a significant restriction on the buildable area of the property, as depicted in the Exhibit #3 "Hypothetical Site Plan with Current Setbacks."

Proposal Description

After discussing with city staff what options might be available in solving the issues with limited buildable area, John Holt has decided to request a variance from the Board of Adjustment and Appeals.

Case P-21-82-BA is a request to the Board of Adjustment and Appeals to grant a variance to deviate from the standard "RS-54" front yard setback of 30' and street side yard setback of 20' and reduce the required setback distance for both categories to 5' in order to allow the development of the property as proposed in the Exhibit #2 "Proposed Site Plan".

Public Notification

Case P-21-82-BA was advertised in the newspaper on September 25th, 2021, and mailings were sent out to property owners within 300 feet around the subject site. A public hearing notice sign was posted at the subject site with the public hearing date.

No neighbors or other residents have contacted city staff to express a comment on the proposed variance request.

Staff Analysis and Findings

Staff has reviewed the site and topography of this parcel, including a site visit, and finds that the wash running directly through the center of the property does impose a significant hardship to meet the standard setback requirements. While the property meets the minimum 1.25 gross acre lot size required of the RS-54 zoning district, the wash splits the parcel into two small buildable areas on the high pins of the property.



Staff finds that this topographical hardship is made more difficult by the presence of the 33' Federally Patented Easements on the east, west and south sides of the property which narrow the buildable area of the property further and from the edge of which the standard setbacks start.

As the required separation distance from the wash is enforced to protect homes from flooding danger and the FPEs contain many important roadway and utility rights the city cannot permit encroachment upon, staff believes that the most appropriate way to alleviate the hardship is the requested reduction of the RS-54 front and street side yard setbacks.

Per the requirements of the Apache Junction Zoning Ordinance, §1-16-4 Board of Adjustment and Appeals, a variance may only be granted 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" (§1-16-4 C.2.) and as long as the proposed modifications are not a use variance or "if the special circumstances applicable to the property are self-imposed by the property owner" (§1-16-4 D.)

Staff finds that:

- The 'special circumstances' of the subject site, namely the topography and arrangement of the FPEs, satisfy the hardship requirement for a variance. (§1-16-4 C.2.)
- The requested variance is not contrary to the public interest.
- The requested variance does 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.
- The variance shall cause the minimum possible interference with the general purposes and intent of the Zoning Ordinance.
- No modifications to the uses permitted in the zoning district are requested. (§1-16-4 D.1.)
- The 'special circumstances' are not a self-imposed hardship. (§1-16-4 D.2.)

Planning Division Recommendation

Planning Staff recommends in favor of John Holt's request to the Board of Adjustment, requesting a variance to reduce the front yard setback of 30' (thirty feet) and street side yard setback of 20' (twenty feet) to 5' (five feet).

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 P-21-82-BA, a request by John Holt 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 front setback and the street side setback in the RS-54 Zoning District for the property identified as Parcel #100-24-023C, be APPROVED, subject to the following conditions:

- 1.) The main structure front setback and the street side setback shall be reduced to 5' (five feet).
- 2.) That all future construction on the property continue to be properly permitted and be in compliance with normal setback regulations and flood zone requirements.

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 Patent Easements on three sides which further limits the amount of buildable area, and serve to cause a unique situation on this property.

RECOMMENDED MOTION FOR DENIAL

I move that Case P-21-82-BA, a request by John Holt 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 front setback and the street side setback in the RS-54 Zoning District for the property identified as Parcel #100-24-023C, 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 does not constitute 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 complaint for special action in Superior Court to review any Board decision pursuant to ARS §9-462.06.]

Attachments:

- Exhibit #1 - P-21-82-BA Project Narrative
- Exhibit #2 - P-21-82-BA Proposed Site Plan
- Exhibit #3 - Hypothetical Site Plan with Current Setbacks
- Exhibit #4 - Parcel #100-24-023C Aerial Map
- Exhibit #5 - §1-5-2 Residential Bulk Regulations
- Exhibit #6 - §1-16-4 Board of Adjustment and Appeals
- Exhibit #7 - ARS §9-462.06

August 16, 2021

Dear City council and board members,

We are writing to you to explain a request for relaxing setbacks on residential property that we purchased roughly a year ago at 1800 N Hilton. As the property has a dry wash running through it, that effectively bisects it, we knew that building would present some challenges. We love the view of the superstitions from the lot, so we decided to meet the challenge in the ways of the old west, head on.

After a survey of the property, reading the online Apache Junction zoning regulations regarding setbacks and FPE easements, and meeting with Rudy, Sam, and Kendra, we soon realized the buildable footprint on each side of the wash is less than 1/10 of an acre. There are three structures we are trying to build on the property, and while we are close to the space we need, we just cannot seem to make our plans work out without major changes to the plans.

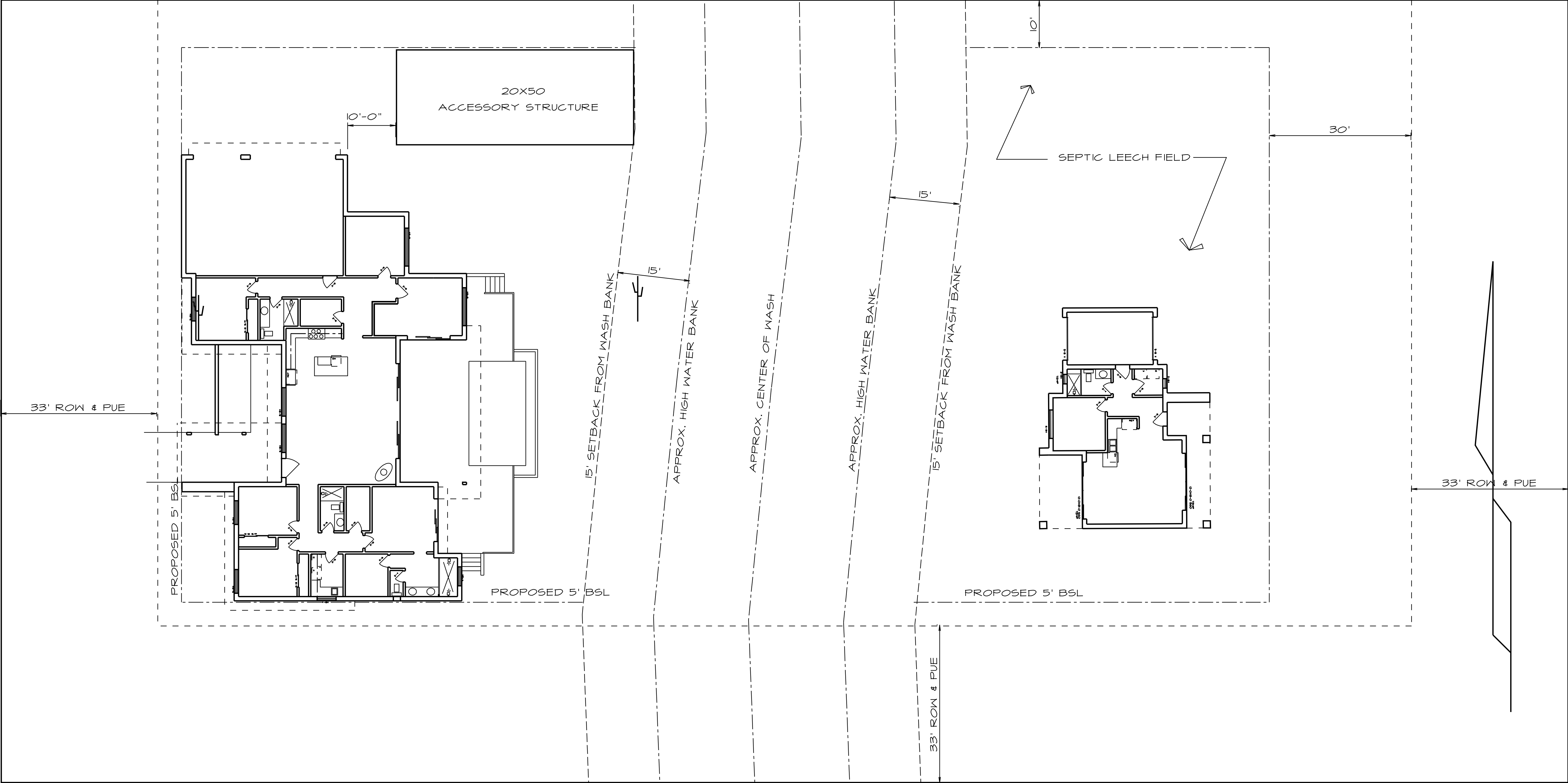
An extinguishment of the FPE easement was considered, but after talking to that department, we discovered that it would require approval from 6 utility companies and if just one said no, we would be out thousands of dollars with no relief.


So, this brings us here today. After our meeting with Rudy, Sam, and Kendra and explaining our situation, Rudy indicated to us that he did see the difficulties in the present setbacks and recommended that we petition for relaxation of the current setbacks. The neighborhood around the property is established on all sides and it seems, too, are all the roads required for the neighbors. As you can see from the drawing provided by our draftsman, the house and workshop would currently overlap. We would like to request removal of the west 30' and south 20' setback to allow us to buildable space for the house and workshop.

We welcome the opportunity to go into more detail, even meeting at the property to get a good view of the challenges on the lot. For now, we wanted to open the dialog and start moving forward to building our dream home in Apache Junction, AZ!

Sincerely,
John Holt and Emily Schmitz

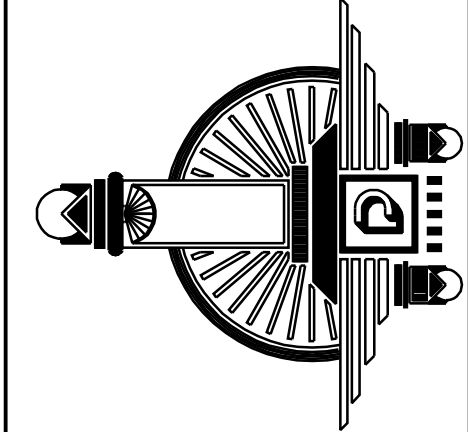
APN 100-24-023C



 SITE PLAN
SCALE: 1"=10'-0"

JOB NAME: ECHELON

DATE: 08.16.21	1	REVISED
	2	REVISED
	3	REVISED
		IRC



DESIGN PROFILE

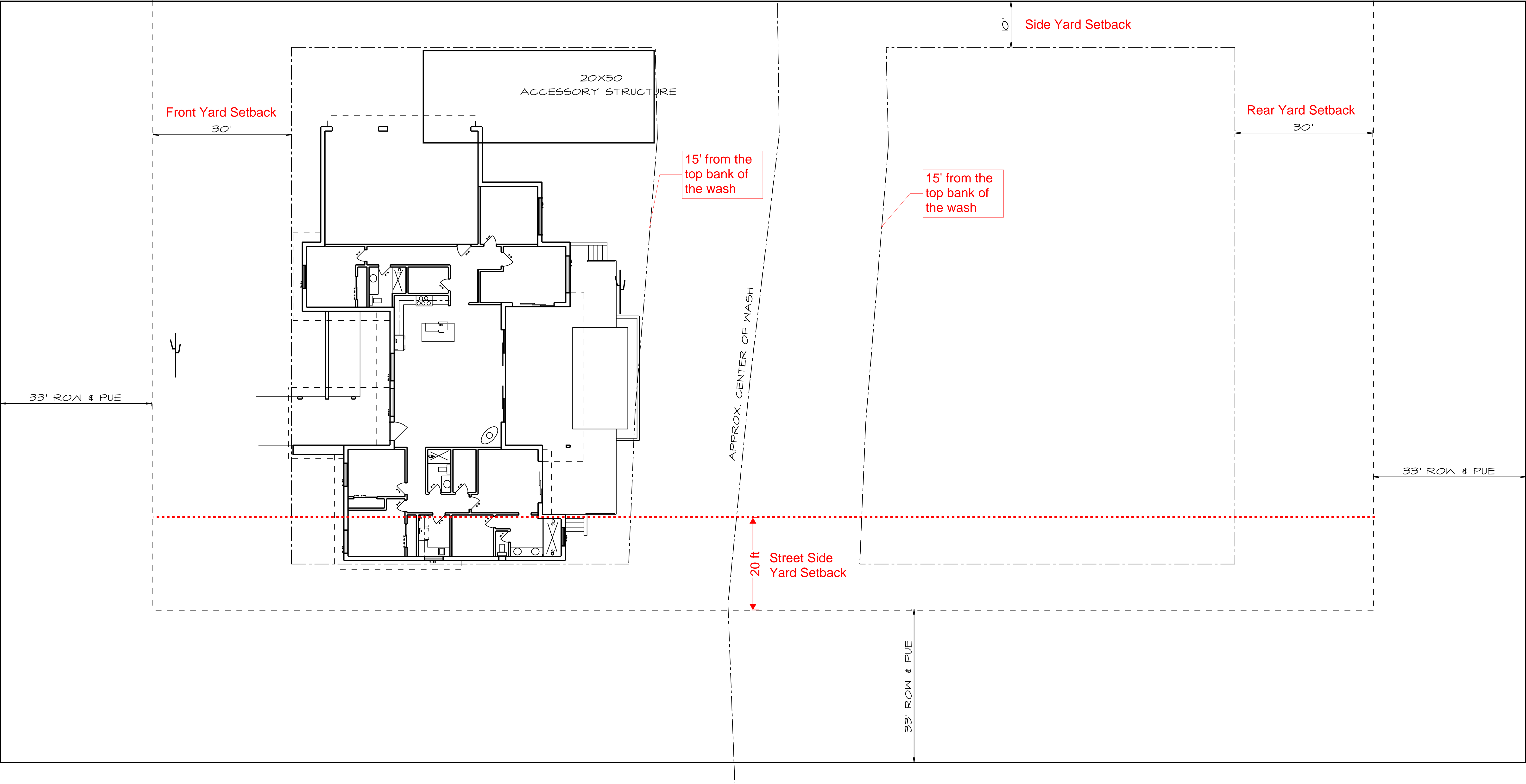
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Exhibit #3 Hypothetical Site Plan with Current Setbacks

APN 100-24-023C



DATE: 05.05.21

1 REVISED

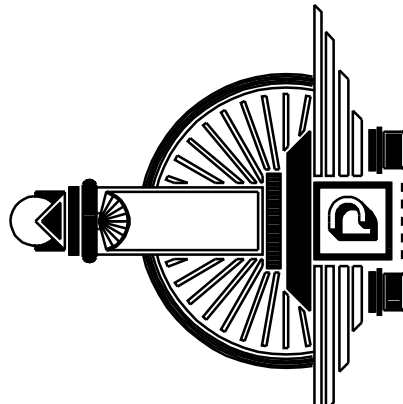
2 REVISED

3 REVISED

IRC

JOB NAME: ECHELON

DESIGN PROFILE



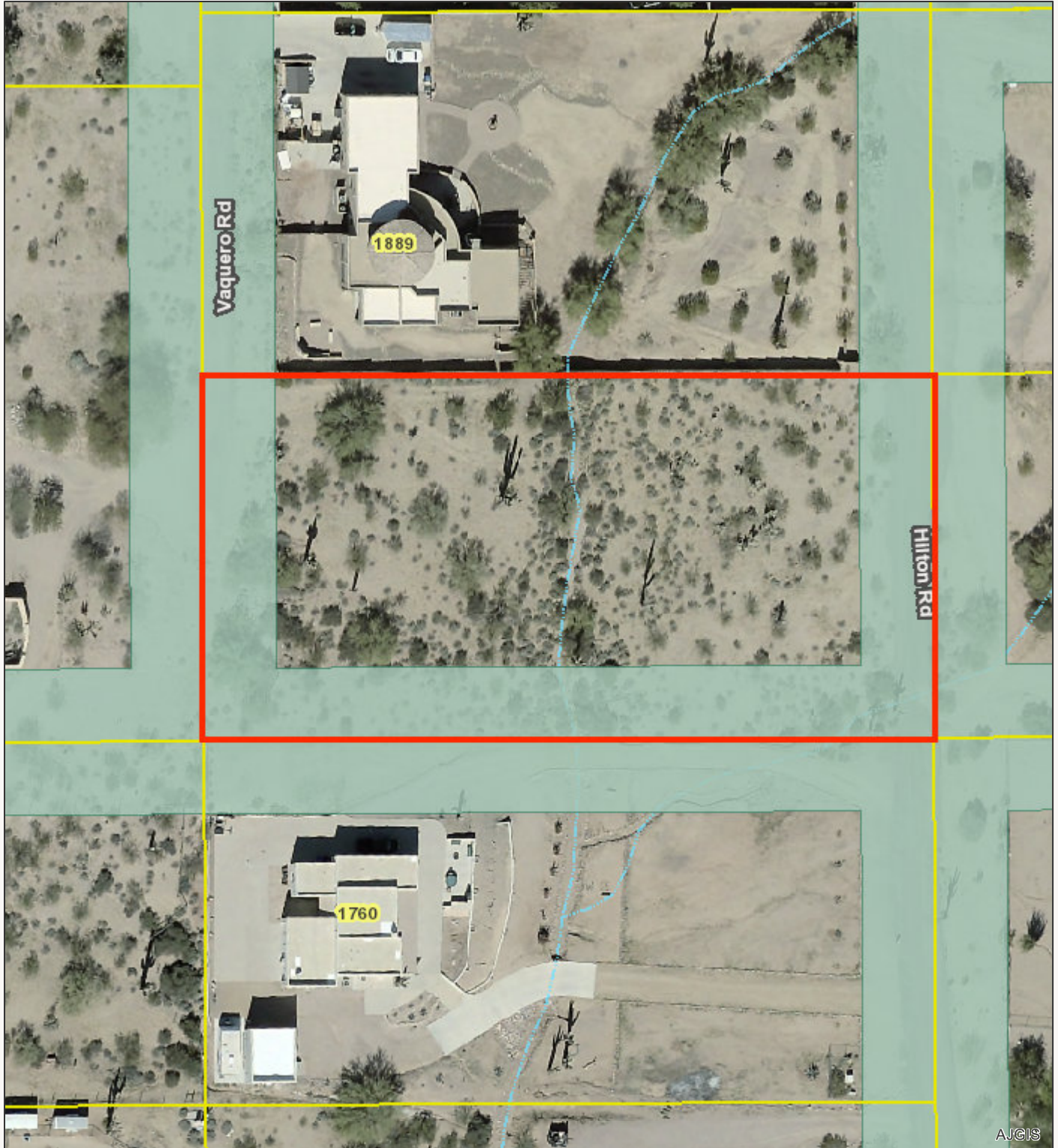
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GIS Map

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

- | | | |
|---------------------------|-------------------------|-----------|
| Street Names | County Boundary | Addresses |
| Municipal Boundary | Parcels | |
| Apache Junction | CITY OF APACHE JUNCTION | |
| Pinal County | PINAL COUNTY | |

City of Apache Junction



October 5, 2021



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.	20 ft.	20 ft. ⁸	20 ft.	20 ft.	20 ft.	15 ft.	15 ft.	15 ft.	15 ft.	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.
5. 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.
7. 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 ≤ 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.

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.

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.