




**Community & Economic Development Division
Planning and Development Services**

7447 East Indian School Road, Suite 105
Scottsdale, Arizona 85251

To: Chair Kaufman and Board of Adjustment members
From: Jeff Barnes, Senior Planner JB
Through: Bryan Cluff, Board of Adjustment Liaison 
Date: June 27, 2022
Re: Case 5-BA-2022 (on the 7/6/2022 agenda)

The applicant for case 5-BA-2022 has requested a Continuance from the July 6, 2022 hearing to the August 3, 2022 hearing. This is their first continuance request for this application. Attached for your reference is the applicant's email requesting the continuance.

From: [Hoon Koo](#)
To: [Barnes, Jeff](#)
Cc: [Tim LaSota](#); [Dave Richert](#)
Subject: Re: BOA agenda
Date: Friday, June 24, 2022 7:31:19 AM

External Email: Please use caution if opening links or attachments!

Jeff,

I would like to request for Continuation. Could you move my case to be presented in August please?

Thanks,

Hoon Koo

(480) 560-2233

On Jun 23, 2022, at 4:06 PM, Barnes, Jeff <JBarnes@Scottsdaleaz.gov> wrote:

In case our staff had not already sent you the link, the agenda is now posted for the 7/6/22 Board of Adjustment meeting:

https://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Boards/Adjustment/agendas-minutes/2022-agendas/07-06-2022_Regular_Agenda.pdf

Linked on that agenda is our staff report for your application 5-BA-2022:

https://eservices.scottsdaleaz.gov/planning/projectssummary/ba_reports/BA_5_BA_2022.pdf

We did receive several inquiries and comments this week after the meeting notification postcards went out. Most of those were received in time to be included in the report attachments. I'm including one additional (attached) that came in after the agenda and report was already posted. We'll provide any other comments received between now and the hearing to the Board for their consideration, but also keep you informed of any additional received as well.

Jeff Barnes
Senior Planner
City of Scottsdale
Planning & Development Services
jbarnes@scottsdaleaz.gov
(480) 312-2376

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<5-BA-2022_Public Comment_Rohn.pdf>

BOARD OF ADJUSTMENT REPORT



Meeting Date: 7/6/2022

ACTION

Koo Variance Request 5-BA-2022

Request to consider the following:

1. Approval of a variance to the City of Scottsdale Zoning Ordinance Section 5.204.A pertaining to the minimum lot area, for a property located at 13647 N. 87th Street, with Single-family Residential (R1-35) zoning.
2. Approval of a variance to the City of Scottsdale Zoning Ordinance Section 5.204.E.3 pertaining to the required rear yard setback, for a property located at 13647 N. 87th Street, with Single-family Residential (R1-35) zoning.

OWNER

Hoon Koo
(480) 560-2233

APPLICANT CONTACT

Tim LaSota
TLS, PLC
602-515-2649

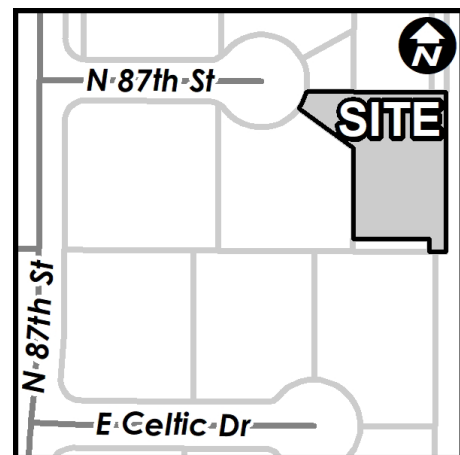
LOCATION

13647 N 87th Street

BACKGROUND

History

This area was annexed into the City of Scottsdale in 1963 under Ordinance 168. The subject property is a remnant parcel that was originally part of a larger lot adjacent to the old Pima Road alignment, that had a house constructed in 1978. The original lot was approximately 87,463 square feet in area and zoned Single Family Residential district (R1-35).



That property was acquired by Arizona Department of Transportation (ADOT) and utilized as a construction staging area to build the Loop 101 freeway. ADOT demolished the house, and the majority of the original lot became right-of-way for the Loop 101. At the end of construction, ADOT sold off the remaining portion of that lot, which was reduced to approximately 30,000 square feet with substandard dimensions for the existing R1-35 property development standards. The ADOT split of this property was not submitted to the City of Scottsdale for land division approval, but as an ADOT governing function, the City acknowledged that the remnant portion of the lot from the freeway acquisition is a legal non-conforming lot with rights to build a single-family home again.

This 30,000 square foot remnant portion of the parent property was then further split into 5 smaller properties by a private entity as fee title deeds recorded through Maricopa County (see property numbers 1,2,3,4,7,8 on Attachment #6). This subsequent split was also not submitted to the City of Scottsdale for approval, and the 5 smaller properties are further substandard in the context of the existing R1-35 property development standards. Because it was done by a private entity without the right-sized zoning or other city approval, the city does not recognize these 5 smaller fragmented properties as legal non-conforming lots. Rezoning, variance(s), and/or land division platting processes through the city would be necessary to recognize the 5 smaller properties as independently developable. Until then, all five properties that make up the original 30,000 square foot remnant share the right to build a singular home.

The subject site of this current request is one of the 5 smaller properties (see property number 7 on Attachment #6). The abutting wedge-shaped parcel to the west was part of Tract C of the McDowell Shadow Estates IV subdivision, which was platted in 1995. Tract C was sold off and split in two, and the southern half is also part of the subject site of the current request, and serves as the access frontage to the adjacent cul-de-sac (see property number 6 on Attachment #6).

In 2013 a variance application ([2-BA-2012](#)) was taken to the Board of Adjustment seeking reductions from the R1-35 property development standards for lot area, lot dimensions, and building setbacks to attempt to make this site developable under the existing zoning. Those requests were denied by the Board of Adjustment at that time.

More recently, under case [10-ZN-2021](#), the applicant pursued a rezoning request for the R1-35 portion of the site from the existing single-family residential zoning district to the R1-10 “smaller-lot” single-family residential zoning district, to seek property development standards that better align to the size and configuration of the subject site. The existing R1-35 zoning district anticipates a larger lot size, like that of the original parent parcel from which the lot was split. The rezoning application received a Recommendation of Denial by the Planning Commission on [February 23, 2022](#) and was Denied by the City Council at their [April 26, 2022](#) hearing.

Zoning/Development Context

Zoning

This site is zoned Single-family Residential (R1-35) with a small portion between the site and the street zoned Single-family Residential Planned Residential Development (R1-18 PRD) of the subdivision to the west (including amended development standards). The R1-35 zoning district is intended to promote and preserve residential development. The minimum lot size of 35,000 square feet, although less than one (1) acre, still results in a low density of population. The principal land use is single-family dwellings and uses incidental or accessory thereto, together with required recreational, religious and educational facilities.

Context

The subject site is located south of East Thunderbird Road, along the western boundary of the Loop 101 freeway. Please refer to context graphics attached.

Adjacent Uses and Zoning

- North: Vacant remnant parcels; zoned Single-family Residential (R1-35) and McDowell Shadow Estates III, existing developed residential subdivision; zoned Single-family Residential Planned Residential Development (R1-18 PRD).
- South: McDowell Shadow Estates II, existing developed residential subdivision; zoned Single-family Residential Planned Residential Development (R1-18 PRD).
- East: Loop 101 Freeway
- West: McDowell Shadow Estates IV, existing developed residential subdivision; zoned Single-family Residential Planned Residential Development (R1-18 PRD).

Zoning Ordinance Requirements

Variance #1: Pursuant to Section 5.204.A of the City of Scottsdale Zoning Ordinance, pertaining to the minimum lot area:

Each lot shall have a minimum lot area of not less than thirty-five thousand (35,000) square feet.

The applicant is requesting a minimum lot area of 15,750 square feet, which would constitute a variance of 19,250 square feet from the current 35,000 square feet requirement.

Variance #2: Pursuant to Section 5.204.E.3 of the City of Scottsdale Zoning Ordinance, pertaining to the required rear yard setback:

Rear Yard. There shall be a rear yard having a depth of not less than thirty-five (35) feet.

The applicant is requesting a minimum rear yard setback of 20-feet, which would constitute a variance of 15-feet from the current 35-foot requirement.

Note: The applicant is proposing to offset this request with a proportional increase in the opposite Side Yard setback dimension, which would effectively shift the developable area 15-feet to the east. If agreeable, the Board could implement this adjustment to the opposite side yard through stipulation.

Code Enforcement Activity

There is no active Code Enforcement activity on this site.

Community Input

Throughout the prior 2012 variance request process and the 2021 rezoning request process, many neighbors expressed concerns and opposition to the development of this site and submitted public comments which are a part of those respective case records. Those comments generally identified potential inconsistency in the development of this site as compared the home and property sizes of existing development in the surrounding area. Also expressed were concerns that deviations in zoning or development standards for this property may set precedence for future requests on other properties in the area. Other comments provided noted that the site would have limited street frontage and expressed concern that visitors/guests would end up parking in front of other properties along the street if they could not park on-site. Comments have been received relative to this application and are included in the attachments for reference.

Discussion

Access and utility connections to the subject site can be provided through the existing cul-de-sac and street right-of-way, from N. 87th Street, via the anticipated outcome of incorporating the south half of Tract C to the final parcel configuration for development of the property. However, under the current R1-35 zoning property development standards, the two pieces owned by Mr. Koo cannot be combined into one legitimate parcel for development. If this variance request is granted and the 2 properties combined for development, there are no perceived impacts anticipated to the existing infrastructure in the surrounding area, in terms of traffic, utilities, and emergency response.

As part of the initial attempts to rectify the zoning conflicts and create developable parcels, the applicant team had attempted to involve the owners of the other 4 fragments of the of the original ADOT remnant parcel, to all join-in on a rezoning application, but they were unsuccessful in bringing everyone together at that time. The scope of this current request is limited to resolving development standard conflicts for just this subject site (see property

numbers 6 & 7 on Attachment #6). This will not resolve the similar issues on the other fragments of the original ADOT remnant parcel, and those owners will likely need to pursue zoning, variance, and/or lot combination applications for their respective sites.

The adjacent McDowell Shadow Estates IV subdivision is zoned R1-18 PRD with amended development standards via the PRD overlay. Those amendments to the development standards provided for reductions in the minimum lot area, lot width, front yard setback, rear yard setback, and maximum building height. Included below is a comparison table of the R1-35, the adjacent R1-18 PRD amended development standards, and the applicant’s requested modifications for this site.

Development Standard	R1-35	Variance to R1-35	Adjacent R1-18 PRD
Max. Building Height	30 feet	No Change	21 feet
Minimum lot area	35,000 sqft	<i>15,750sqft (-19,250sqft)</i>	15,470 sqft
Minimum lot width	135 feet	No Change	108 feet
Front yard setback	40 feet	No Change	35 feet
Side yard setback	15 feet	No Change	10 feet
Rear yard setback	35 feet	<i>20 feet (-15 feet)</i>	25 feet

VARIANCE CRITERIA ANALYSIS

- 1. That 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 such property of privileges enjoyed by other property of the same classification in the same zoning district:**

Applicant Statement:

The applicant identifies in their narrative that this site is the result of a remnant lot created by ADOT. They go on to identify that the subject lot size is compatible to the adjoining R1-18 subdivision and bigger than a few other lots in McDowell Shadow Estate properties which are on the street immediately to the north of the street this lot sits on. However, it is impossible to develop the applicant’s lot under the current zoning designation because it doesn’t meet the R1-35 development standard (smaller than 35,000 square feet). The City Council denied the rezoning application (for R1-10) due the Council’s concern about the “negative precedent” to future lot split applications by other property owners.

The applicant states that this is a textbook example of “special circumstances.” The only possible use for the lot is as a residence, but the lot is too small to place a house on it under the zoning code. As it is now, the property has no use. The lot size is well suited for the R1-18 development standard while the hardship exists due the divided lots under the same ownership. The city staff disallowed the lot combination due to “Tract C” being designed to be the water retention area for McDowell Shadow Estate IV. The subdivision HOA is inactive/dissolved. In summary, “because of special circumstances applicable to the property including its size... the strict application of the zoning ordinance will deprive such property of privileges granted to other properties of the same classification in the same zoning district.” The other similar lots in this neighborhood have houses on them, including some lots that are smaller than this one. Definitively, this is a classic example of special circumstances.

Staff Analysis:

Variance #1: Lot Area: The minimum lot area for the R1-35 district is 35,000 square feet and the subject site is only 15,750 square feet in area. The subject site is substantially smaller than typical R1-35 lots. This non-conforming site was created out of an unrecognized property division of a remnant parcel, which had originally been legally established but non-conforming to the R1-35 property development standards, created from ADOT’s construction of the Loop 101 freeway. The subsequent division of the remnant ADOT parcel created additional non-conforming fragmented parcels. Under the existing R1-35 zoning, the subject site (even when combined with the adjacent portion of Tract C) will not be able to achieve the minimum 35,000 square feet lot area necessary to legally establish these 2 pieces as a singular parcel for development. The requested variance would reduce the minimum lot area requirement to an amount aligning with the available parcel area, to create conformance with the development standards.

The intended outcome of combining the subject pieces of property would be to establish a developable residential lot that is 15,750 square feet in area, which is larger than the minimum 15,470 square feet required in the adjacent R1-18 PRD zoned McDowell Shadow Estates IV subdivision (applicable to the other developed lots fronting onto the 87th Street cul-de-sac).

Variance #2: Rear Yard Setback: The minimum lot area for the R1-35 district is 35,000 square feet and the subject site is only 15,750 square feet in area. The subject site is substantially smaller than typical R1-35 lots. This site was created out of an unrecognized property division of a remnant parcel, which had originally been legally established but non-conforming to the R1-35 property development standards, created from ADOT’s construction of the

Loop 101 freeway. This site is configured with the Front Yard occurring in the wedge-shaped portion of Tract C, where the property would gain its access from the cul-de-sac. The Zoning Ordinance definitions of yards direct that the Rear Yard be opposite the front, which for this site would be aligned along the east boundary (abutting the Loop 101 freeway sound wall). By definition, the remaining property boundaries (after determination of Front and Rear) would default to Side Yards. The applicant is requesting a 15-foot reduction in the rear yard setback dimension, and proposing to offset this request by a proportional increase in the opposite Side Yard setback dimension, which would effectively shift the developable area 15-feet to the east.

- 2. That the authorization of the variance is necessary for the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, and 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:**

Applicant Statement:

The applicant identifies in their narrative that, as demonstrated, the lot size is well within the range of the surrounding neighbors. The city already permitted two other property owners to pave the access driveways over the designated water retention tracts. The illegitimate lots are currently used by the surrounding property owners. The applicant's lot is exclusively remaining undeveloped / unoccupied. The applicant has offered the surrounding property owners to re-plat the subdivision at his own expense to gain their support. Two neighbors, who developed the driveway over the water retention, disregarded the applicant's proposition.

The applicant summarizes that the ability to do what everyone else can already do cannot be described as a "special privilege" and they simply want to build a house on this site. Granting a variance would hardly result in a "special privilege."

Staff Analysis:

Variance #1: Lot Area: Currently none of the 5 fragmented pieces of the original ADOT remnant parcel are able to independently meet the minimum lot area required by the R1-35 zoning, and cannot be developed in their current condition. The requested variance would reduce the minimum lot area requirement to an amount aligning with the available parcel area, to create conformance with the development standards.

The intended outcome of combining the subject pieces of property would be to establish a developable residential lot that is 15,750 square feet in area, which is larger than the minimum 15,470 square feet required in the adjacent R1-18 PRD zoned McDowell Shadow Estates IV subdivision

(applicable to the other developed lots fronting onto the 87th Street cul-de-sac).

This will not resolve the similar issues on the other fragments of the original ADOT remnant parcel, and those owners will need to pursue zoning, variance, and/or lot combination applications to address zoning conformance for their respective sites.

Variance #2: Rear Yard Setback: Currently none of the 5 fragmented pieces of the original ADOT remnant parcel are able to independently meet the minimum lot area required by the R1-35 zoning, and cannot be developed in their current condition. The requested Variance #1 for the subject site would reduce the minimum lot area requirement to an amount aligning with the available parcel area, to create conformance with the development standards.

The requested variance to reduce the required Rear Yard setback, from 35-feet to 20-feet, does not directly affect the ability to build on the intended resulting combined parcel, but does provide the opportunity for the owner to shift the future home location further east toward the Loop 101 freeway sound wall, and away from the existing adjacent developed property to the west. The applicant has provided a proposed site plan showing a setback configuration that proportionally increases the side yard setback on the west side of the property, effectively shifting the building envelope 15-feet to the east. If this variance request is granted, it would be important to stipulate approval to the provided site plan with the increased side yard setback to ensure the intended outcome is achieved.

3. That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant:

Applicant Statement:

The applicant identifies in their narrative that ADOT created the special circumstances and ownership of the property has nothing to do with creating the remnant. The applicant was not aware of this complexity of the legal conflict. Prior to the lot acquisition, he discussed with the neighbor, Mr. Terry Jones, the property owner to the north lot. He acknowledged “the surrounding neighbors supported the development.” during his petition for the rezoning in 2013. Two current homeowners, Ms. Alton and Dr. Almuti, in the cul-de-sac still support the requisition while the other two changed their mind.

The applicant states that this application is simply reoccupying the existing home-site of the previous condition, a home that existed prior to the remanent creation by ADOT. The future home will have a similar value to (if not greater than) the adjacent homes. In addition, the Arizona Supreme Court has squarely held that merely purchasing a property

that needs a land use adjustment does not mean that the special circumstances are “self-imposed”:

“Special circumstances are not “self-imposed” when the owner wants to use the property in a way permitted to other similarly situated properties but cannot do so because of externally imposed circumstances like those involved here. Although it is fair to say that Jachimek voluntarily acquired the Property subject to the special circumstances, he certainly did not create them.”

Pawn 1st, LLC v. City of Phoenix, 399 P.3d 94, 102, 242 Ariz. 547, 555 (2017). The Arizona Supreme Court also specifically rejected any argument that this could be self-imposed: “[such a] rule would impose an undue restraint on alienation, as anyone purchasing a property with knowledge of the restriction would have no ability to obtain an area variance.” Id. These special circumstances were clearly not created by the Applicant.

Staff Analysis:

Variance #1: Lot Area: The minimum lot area for the R1-35 district is 35,000 square feet and the subject site is only 15,750 square feet in area. The subject site is substantially smaller than typical R1-35 lots. This site was created out of an unrecognized property division of a remnant parcel, which had originally been legally established but non-conforming to the R1-35 property development standards, created from ADOT’s construction of the Loop 101 freeway. Under the existing R1-35 zoning, the subject site (even when combined with the adjacent portion of Tract C) will not be able to achieve the minimum 35,000 square feet lot area necessary to legally establish these 2 pieces as a singular parcel for development. The requested variance would reduce the minimum lot area requirement to an amount aligning with the available parcel area, to create conformance with the development standards.

The current property owner purchased a piece of property that represents about 44% of the original ADOT remnant parcel and a piece of property that represents the south half of Tract C of McDowell Shadow Estates IV.

The intended outcome of combining the subject pieces of property would be to establish a developable residential lot that is 15,750 square feet in area, which is larger than the minimum 15,470 square feet required in the adjacent R1-18 PRD zoned McDowell Shadow Estates IV subdivision (applicable to the other developed lots fronting onto the 87th Street cul-de-sac).

Variance #2: Rear Yard Setback: The minimum lot area for the R1-35 district is 35,000 square feet and the subject site is only 15,750 square feet in area. The subject site is substantially smaller than typical R1-35 lots. This site was created out of an unrecognized property division of a remnant parcel, which had originally been legally established but non-conforming to the R1-35 property development standards, created from ADOT's construction of the Loop 101 freeway.

The current property owner purchased a piece of property that represents about 44% of the original ADOT remnant parcel and a piece of property that represents the south half of Tract C of McDowell Shadow Estates IV.

This site is configured with the Front Yard occurring in the wedge-shaped portion of Tract C, where the property would gain its access from the cul-de-sac. The Zoning Ordinance definitions of yards direct that the Rear Yard be opposite the front, which for this site would be aligned along the east boundary (abutting the Loop 101 freeway sound wall). By definition, the remaining property boundaries (after determination of Front and Rear) would default to Side Yards. The applicant is requesting a 15-foot reduction in the rear yard setback dimension that is offset by a proportional increase in the opposite Side Yard setback dimension, which would effectively shift the developable area 15-feet to the east.

4. That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general:

Applicant Statement:

The applicant identifies in their narrative that the proposed home size and quality is equal or better than the surrounding homes. The development will adopt a superior quality building material and most advanced "green" building technique. The new house certainly will be worth more than +30-year-old houses in the current subdivisions. The developed lot will eliminate any inherent hazards along with the support from the neighboring property to the west. It will not create any noise, traffic, vibrations, and any detrimental impacts than the homes that were previously built before the remnant was created.

The applicant summarizes that as of now, the property is inhabited by weeds and vermin. The notion that a weed patch is preferable in comparison to a high-end residence does not make any sense. In addition, because the Freeway is on the east side of the property, the residence can be located further east, closer to the Freeway and further away from houses to the west. Obviously, there are no concerns that freeways need to be set back from a residence if the resident does not care.

Staff Analysis:

Throughout the prior 2012 variance request process and the 2021 rezoning request process, many neighbors expressed concerns and opposition to the development of this site and submitted public comments which are a part of those respective case records. Those comments generally identified potential inconsistency in the development of this site as compared the home and property sizes of existing development in the surrounding area. Also expressed were concerns that deviations in zoning or development standards for this property may set precedence for future requests on other properties in the area. Other comments provided noted that the site would have limited street frontage and expressed concern that visitors/guests would end up parking in front of other properties along the street if they could not park on-site. Comments have been received relative to this application and generally reflect the same concerns and opposition to the development of this site as were identified with the previous applications.

Variance #1: Lot Area: The requested variance would reduce the minimum lot area requirement to an amount aligning with the available parcel area, to create conformance with the development standards and allow construction of a single-family residence.

There was originally one single-family residence on the larger parcel that was demolished with the ADOT Loop 101 freeway construction. That development density of one residence would have carried over in applicability to the remnant parcel left over from that action.

The intended outcome of combining the subject pieces of property would be to establish a developable residential lot that is 15,750 square feet in area, which is larger than the minimum 15,470 square feet required in the adjacent R1-18 PRD zoned McDowell Shadow Estates IV subdivision (applicable to the other developed lots fronting onto the 87th Street cul-de-sac).

Variance #2: Rear Yard Setback: The intent of the required setbacks between adjacent properties is to create an open residential character, to establish view corridors, and to maintain uninterrupted visual continuity with adjacent lot setbacks for main buildings. A variance to reduce the required Rear Yard setback, from 35-feet to 20-feet, does not directly affect the ability to build on the intended resulting combined parcel, but does provide the opportunity for the owner to shift the future home location further east toward the Loop 101 freeway sound wall, and away from the existing adjacent developed property to the west. The applicant has provided a proposed site plan showing a setback configuration that proportionally increases the side yard setback on the west side of the property, effectively shifting the building envelope 15-feet to the east.

SUMMARY

Variance #1:

Based on the facts presented by the applicant, the evidence would support a finding that the property may have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size, shape, topography or configuration of the property appears unique and applicable. Further, the applicant's proposed variance does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood. However, the decision about whether the criteria have been met is for the Board to make after hearing all the evidence at the hearing.

Variance #2:

Based on the facts presented by the applicant, the evidence would support a finding that the property may have special circumstances that would warrant relief from the strict application of the Zoning Ordinance requirements. The size, shape, topography or configuration of the property appears unique and applicable. Further, the applicant's proposed variance does not appear that it would be detrimental to persons residing or working in the surrounding neighborhood. However, the decision about whether the criteria have been met is for the Board to make after hearing all the evidence at the hearing.

APPROVED BY



Jeff Barnes, Report Author
480-312-2376, jbarnes@scottsdaleaz.gov

6/14/2022

Date



Bryan Cluff, Board of Adjustment Liaison
480-312-7713, bcarr@scottsdaleaz.gov

6/14/2022

Date



Tim Curtis, AICP, Current Planning Director
480-312-4210, tcurtis@scottsdaleaz.gov

6/20/2022

Date



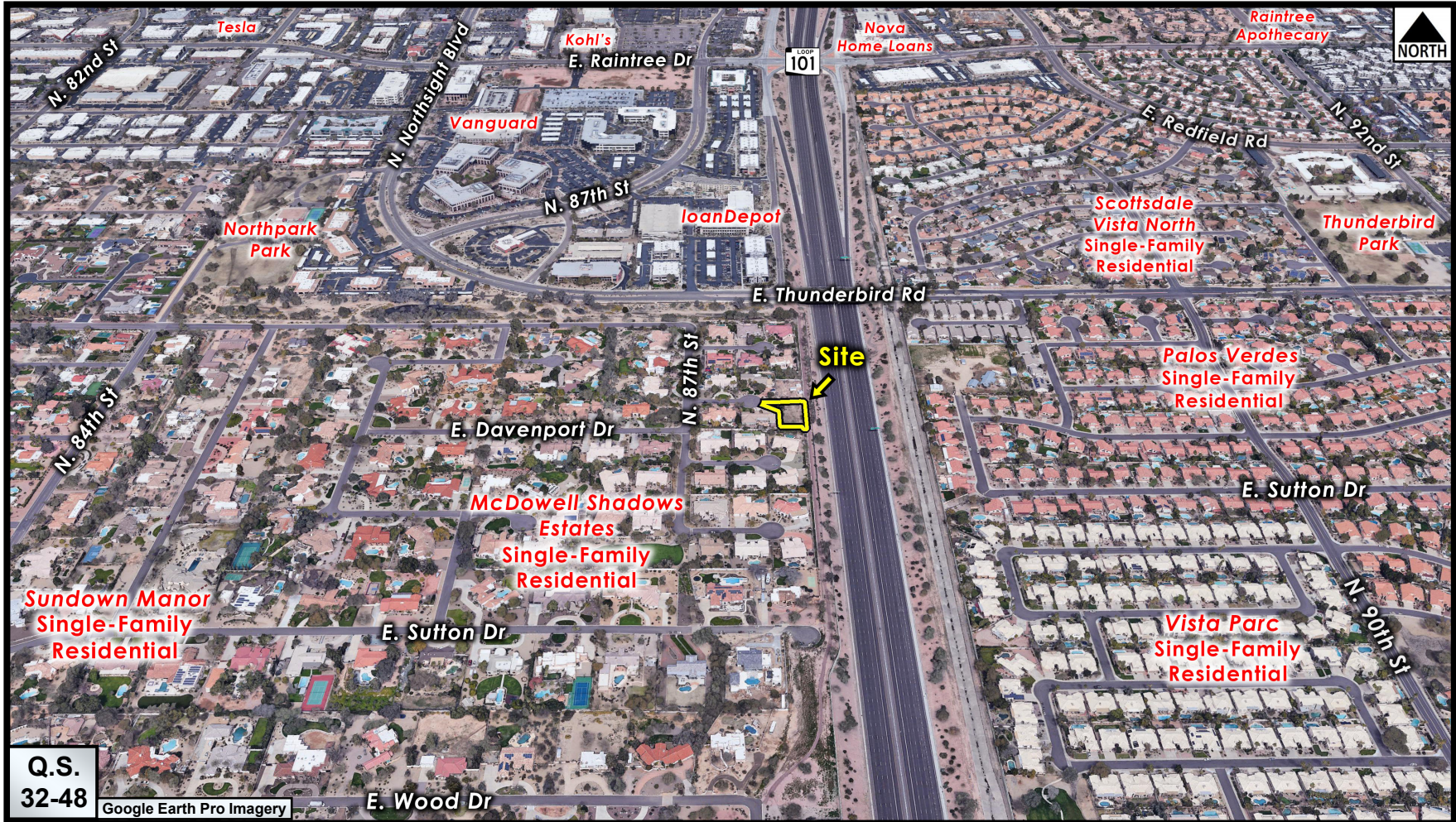
Erin Perreault, AICP, Interim Executive Director
Planning, Economic Development, and Tourism
480-312-7093, eperreault@scottsdaleaz.gov

06/21/2022

Date

ATTACHMENTS

1. Context Aerial
2. Aerial Close-Up
3. Zoning Map
4. Project Narrative/Justification
5. Proposed Site Plan
6. Parcel Context Exhibit
7. Public Comment



Context Aerial

5-BA-2022



Close-up Aerial

5-BA-2022



Zoning Aerial

ATTACHMENT #3

5-BA-2022

Timothy A. La Sota, PLC

2198 East Camelback Road, Suite 305

Phoenix, Arizona 85016

602-515-2649

tim@timlasota.com

May 24, 2022

Via U.S. mail to:

Bryan Cluff, Variance Liaison

BCluff@Scottsdaleaz.gov

City of Scottsdale

7447 E. Indian School Road

Scottsdale, AZ 85251

Cc: Tim Curtis, Jeff Barns, Eric Anderson, Sherry Scott, Dave Richert, Hoon Koo

Re: Petition for Variance Case #544-PA-2020

Address: 13647 N. 87th Street, Scottsdale, Arizona

Dear Mr. Cluff:

Please see attached variance application submitted on behalf of Hoon Koo.

Very truly yours,

TIMOTHY A. LA SOTA PLC


Timothy A. La Sota

ATTACHMENT #4

Case #544-PA-2020 | Address: 13647 N. 87th St. | Parcel: 175-01-171d

5-BA-2022

6/2/2022

Friday, May 27, 2022

Variance Narrative

Case #544-PA-2020

13647 N. 87th Street

Purpose of Request

The Owner of the property (R1-35 parcel: 175-01-171D) located at 13647 N. 87th Street is requesting a variance to reduce the lot size and setbacks to allow the use of the property for his future residence. (Refer to Exhibit #01 and #07) The lot size and characteristics are compatible to the properties among the adjoining R1-18 subdivision, McDowell Shadow Estate IV. (Refer to Exhibit #02 and #03)

Therefore, a petition is filed for two variances, which would allow the property owner to develop a high-end single-family residential building. Right now, the property is unusable for any purpose.

The current lot is a remanent lot after the ADOT's freeway 101 development. A house used to be on site prior to the freeway development. The state of Arizona bought the lot from the owner and developed Freeway. ADOT sold the remnants of the lot to the adjacent neighbors after the freeway expansion. (Refer to Exhibit #05) The current owner used to own two separate lots: main lot (175-01-171b) and Track C (175-01-171c). He combined them into a single taxable lot: 175-01-171D.

The property has gone through the following applications for rezonings and variances:

- **(412-PA-2012) Petition for a setback/lot size variance:** BOA denied the application
- **(111-PA-2017) Petition to rezone to R1-18:** The city staff found that rezoning R1-18 was unsuitable unless both lots were combined. However, the city development standard disallowed the Track C to be developed because the HOA dedicated it as a water retention area. But the HOA does not exist currently.
- **(010-ZN-2021) Petition to rezone the main lot to R1-10:** The Staff supported the main lot to be rezoned R1-10 while Track C is stand-alone "as is". However, the City Council denied the petition, reasoning the grant might set precedence for the future lot splits by other neighbors.

The hardships are not self-imposed at the time of the lot acquisition because of the neighbor's full support expressed by the adjacent neighbors. (Refer to Exhibit #09). The current lot owner cannot have the same privilege of his property right that shares the compatible size and development character. Therefore, the applicant is requesting a variance to the current zone designation that will bring back the housing development that used to exist on site.

Petition: Type of Variances

Development Standard	Standard R1-35	Hoon Koo's Lot	McDowell Shadow IV (R1-18 amend.)
Lot Area	35,000 sf.	15,750 sf. (Request)	15,000 sf.
Lot Width	135 feet	149 feet	108 feet
Set-Back (Front)	40 feet	40 feet	30 feet
Set-Back (Side)	15 feet	15 feet	7 feet
Set-Back (Rear)	35 feet	20 feet (Request)	25 feet

This property meets the statutory criteria for the variances, and they should be granted.

CRITERIA 1:

Because of special circumstances applicable to the property, including its size, shape, topography, location, and surroundings, the strict application of the zoning ordinance will deprive such property of privileges granted to other properties of the same classification in the same zoning district.

- Remanent lot was created by government agency (ADOT): (Refer to Exhibit #05)
- Lot size: The subject lot size is compatible to the adjoining R1-18 subdivision. It is bigger than a few other lots in McDowell Shadow Estate properties. (Refer to Exhibit #03) These lots are on the street immediately to the north of the street this lot sits on. However, it is impossible to develop the applicant’s lot under the current zoning designation because it doesn’t meet the R1-35 development standard (smaller than 35,000 square feet).
- Rezoning hardship: City Staff disallow R1-18 rezoning due to Track C limit. The City Council denied the rezoning application (R1-10) due the Council’s concern about the “negative precedent” to future lot split applications by other property owners.
- Summary: This is a textbook example of “special circumstances.” The only possible use for the lot is as a residence, but the lot is too small to place a house on it under the zoning code. As it is now, the property has no use. The lot size is well suited for the R1-18 development standard while the hardship exists due the divided lots under the same ownership. The city staff disallowed the lot combination due to “Track C” being designed to be the water retention area for McDowell Shadow Estate IV. The subdivision is inactive/dissolved. In summary, *“because of special circumstances applicable to the property including its size...the strict application of the zoning ordinance will deprive such property of privileges granted to other properties of the same classification in the same zoning district.”* The other

similar lots in this neighborhood have houses on them, including some lots that are smaller than this one. Definitely, this is a classic example of special circumstances.

CRITERIA 2:

That the authorization of the variance is necessary for the preservation of privileges and rights granted to other property of the same classification in the same zoning district and does 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.

- Compatible lot size: As clearly demonstrated in the chart, the lot size is well within the range of the surrounding neighbors. (Refer to Exhibit #03)
- Water retention tracks: The city already permitted two other property owners to pave the access driveways over the designated water retention tracks. (Refer to Exhibit #04)
- Occupying nonconforming lots: The illegitimate lots are currently used by the surrounding property owners. The applicant's lot is exclusively remaining undeveloped / unoccupied. (Refer to Exhibit #05 and Exhibit #06)
- Fair attempt to rectify the conflict: The applicant has offered the surrounding property owners to re-plat the subdivision at his own expense to gain their supports. Two neighbors, who developed the driveway over the water retention, disregarded the applicant's proposition. (Refer to Exhibit #09)
- Summary: The ability to do what everyone else can already do cannot be described as a "special privilege." The Applicant simply wants to build a house on this lot that used to be in the past. Granting a variance would hardly results in a "special privilege."

CRITERIA 3:

That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant.

- Fwy 101 development: ADOT created the special circumstances and ownership of the property has nothing to do with creating the remanent.
- Unawareness of the latent hardship: The applicant was not aware of this complexity of the legal conflict. Prior to the lot acquisition, he discussed with the neighbor, Mr. Terry Jones, the property owner to the north lot. He acknowledged "the surrounding neighbors supported the development." (Refer to Exhibit #09) during his petition for the rezoning in 2013. Two (2) current homeowners, Ms. Alton and Dr. Almuti, in the col-de-sac still support the requisition while the other two (2) changed their mind.
- Summary: The application is simply reoccupying the existing home-site of the previous condition: a home that existed prior to the remanent creation by ADOT. The home will have a similar value to (if not greater than) the adjacent homes.

In addition, the Arizona Supreme Court has squarely held that merely purchasing a property that needs a land use adjustment does not mean that the special circumstances are "self-imposed":

“Special circumstances are not “self-imposed” when the owner wants to use the property in a way permitted to other similarly situated properties but cannot do so because of externally imposed circumstances like those involved here. Although it is fair to say that Jachimek voluntarily acquired the Property subject to the special circumstances, he certainly did not create them.”

Pawn 1st, LLC v. City of Phoenix, 399 P.3d 94, 102, 242 Ariz. 547, 555 (2017). The Arizona Supreme Court also specifically rejected any argument that this could be self-imposed: “[such a] rule would impose an undue restraint on alienation, as anyone purchasing a property with knowledge of the restriction would have no ability to obtain an area variance.” *Id.* These special circumstances were clearly not created by the Applicant.

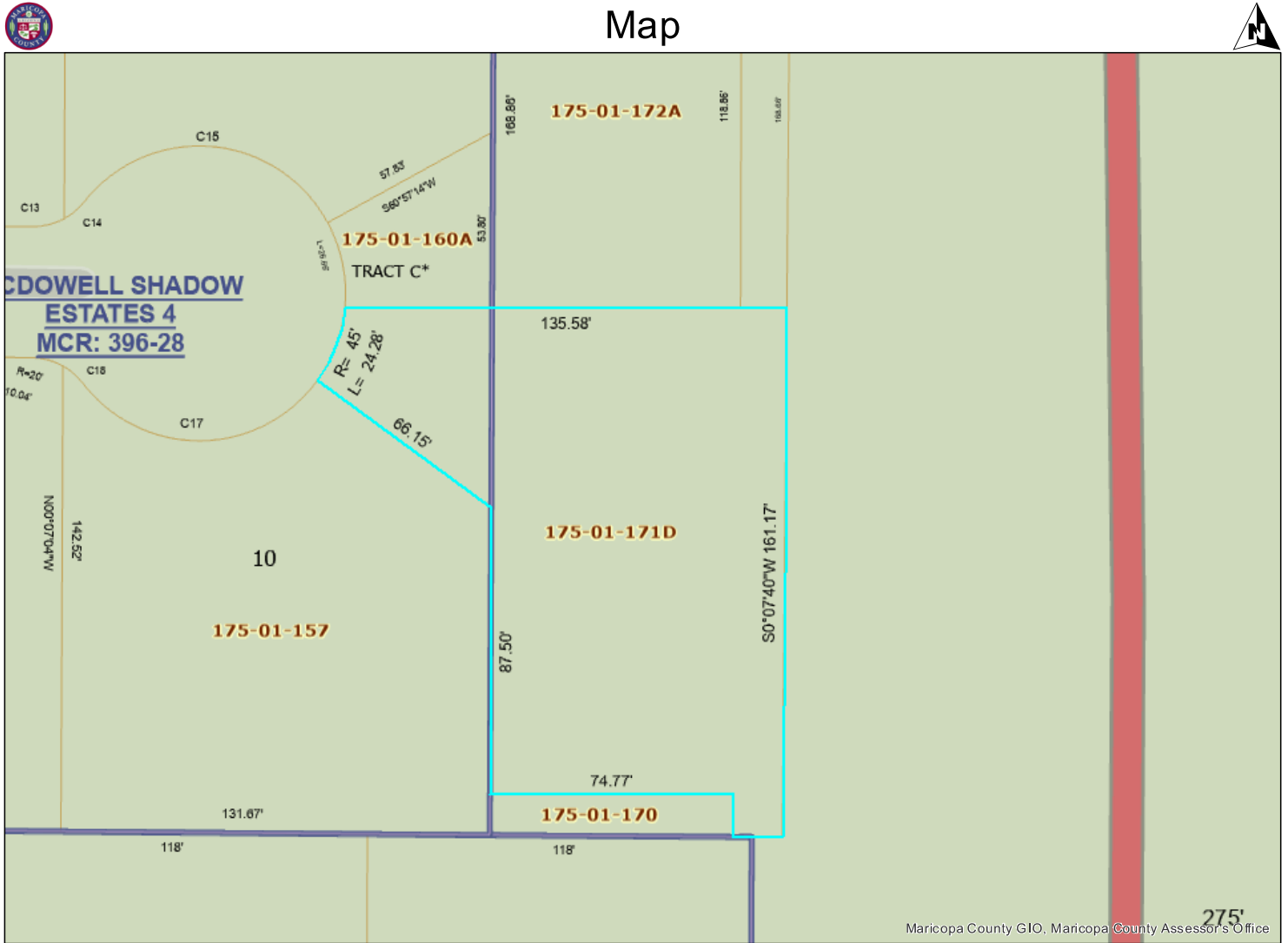
CRITERIA 4:

That authorization of the variance will not be materially detrimental to any persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare in general.

- **Better property value:** The proposed home size and quality is equal or better than the surrounding homes. The development will adopt a superior quality building material and most advanced “green” building technique. The new house certainly will be worth more than +30-year-old houses in the current subdivisions. (Refer to Exhibit #10)
- **Environmental health and safety:** The developed lot will eliminate any inherent hazards along with the support from the neighboring property to the west. It will not create any noise, traffic, vibrations, and any detrimental impacts than the homes that were previously built before the remanent was created.
- **Summary:** As of now, the property is inhabited by weeds and vermin. (Refer to the photo in Exhibit #12). The notion that a weed patch is preferable in comparison to a high-end residence does not make any sense. In addition, because the Freeway is on the east side of the property, the residence can be located further east, closer to the Freeway and further away from houses to the west. Obviously, there are no concerns that freeways need to be set back from a residence if the resident does not care.

Exhibit 01. Maricopa County Assayer's map

Map



Maricopa County GIO, Maricopa County Assessor's Office

5/15/2022 12:59:53 PM

Exhibit 02. McDowell Shadow Estate Subdivision



Exhibit 03. Lot size comparison**McDowell Shadow III**

1997 - 1999

No.	Name	Address	Lot Size	Home	Built
001	BANNING MELISSA M/ETHAN R	8757 E SHARON DR	17,219	3,844	1997
002	SHAH SHIVANI/PATEL BHAVIN	8739 E SHARON DR	14,913	3,424	1999
003	ZUBAIRI RAHEL/SADIA B	8721 E SHARON DR	15,660	4,160	1998
004	LEBOVITZ AARON/MALLORY	8714 E SHARON DR	15,676	3,454	1998
005	LI FAMILY TRUST	8732 E SHARON DR	14,928	3,969	1997
006	SIDHU DALBIR S/BALMEET K	8750 E SHARON DR	17,216	3,578	1999

McDowell Shadow IV

1996 - 1997

No.	Name	Address	Lot Size	Home sf.	Built
001	ALMUTI WALID	13667 N 87TH ST	16,834	4,001	1997
002	LOUGHREY MICHAEL/LIDIA J	13697 N 87TH ST	19,065	4,122	1996
003	4K TRUST	13607 N 87TH ST	21,559	4,400	1996
004	ALTON FAMILY TRUST	13637 N 87TH ST	16,281	4,900	1997

McDowell Shadow II (east)

1994 - 1997

No.	Name	Address	Lot Size	Home sf.	Built
001	ABUJUBARA ISLAM/AL-LAHHAM HEBA	8716 E CELTIC DR	18,505	3,977	1994
002	BERRY FAMILY TRUST	8740 E CELTIC DR	16,753	3,962	1995
003	ZAHN LIVING TRUST	8764 E CELTIC DR	18,475	3,477	1995
004	SUR DAESUN/MISON	8763 E CELTIC DR	17,865	2,998	1997
005	GROSSINGER JEFFREY S/LU ANNE	8739 E CELTIC DR	16,312	4,198	1994
006	ROTH ROBERT N/SUSAN L TR	8715 E CELTIC DR	17,904	3,780	1994
007	BEAUDRY BENNETT C/SHARON K TR	8714 E VOLTAIRE AVE	17,974	4,429	1994
008	JACOBSON RUSSELL E/AMY	8738 E VOLTAIRE AVE	16,225	4,090	1994
009	NOLAN EDWARD A	8762 E VOLTAIRE AVE	18,049	3,204	1995
010	FOSTER FAMILY TRUST	8761 E VOLTAIRE AVE	18,935	2,998	1997
011	UNDERDOWN SHERWOOD/SHERYL B	8737 E VOLTAIRE AVE	17,103	3,777	1995
012	WHISLER REVOCABLE FAMILY TRUST	8713 E VOLTAIRE AVE	18,817	3,218	1994
013	VRYHOF JOHN/DONNA	13480 N 87TH ST	18,834	3,777	1994
014	BROWN DAVID C/TAHIRAH F LAMONT	13458 N 87TH ST	18,174	4,045	1995
015	EDWARDS FAMILY LIVING TRUST	13436 N 87TH ST	18,601	3,777	1994
016	STEEGE TREVOR/TAYLOR	13414 N 87TH ST	17,473	3,628	1994

McDowell Shadow II (west)

1976 - 1994

No.	Name	Address	Lot Size	Home sf.	Built
001	WIRTH ROBERT DEAN/WENDY	8621 E VOLTAIRE AVE	33,937	4,045	1994
002	CLAUDE R THIBEAULT TRUST	8643 E VOLTAIRE AVE	33,937	5,344	1994
003	DOUGLAS H & ANNE-SOPHIE FREEDMAN	8662 E VOLTAIRE AVE	33,937	4,092	1994
004	SRENDZINSKI ERIC/LINDA	8640 E VOLTAIRE AVE	33,937	3,399	1976
005	WHITE JOEL M TR/NAN V CURRIE TR	8618 E VOLTAIRE AVE	33,937	3,547	1994
006	NORRIS JASPER E III/ELIZABETH P TR	8625 E DAVENPORT DR	33,937	4,135	1993
007	S & L TRUST (Mark Speno)	8647 E DAVENPORT DR	28,808	5,493	1994
008	MANGINI ROBERT A JR/KIM	8669 E DAVENPORT DR	33,937	4,648	1994
009	LABARBERA ERICA/MICHAEL JUDE	8691 E DAVENPORT DR	33,937	3,484	1994

Exhibit 04. Driveway over water retention Tracks

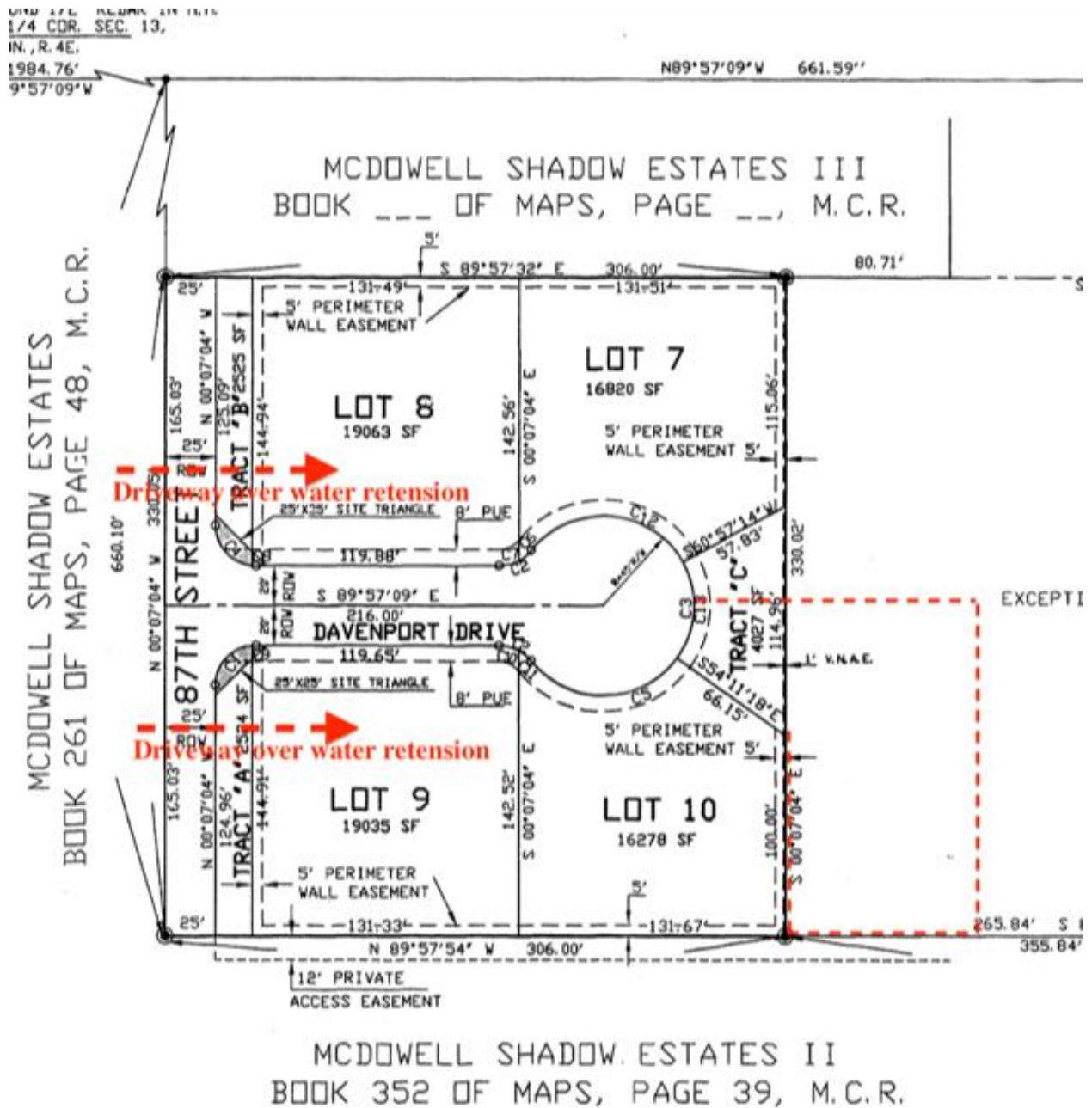


Exhibit 05. ADOT remanent lot split



Exhibit 06. Lots occupied by current property owners



Exhibit 07. Proposed site plan

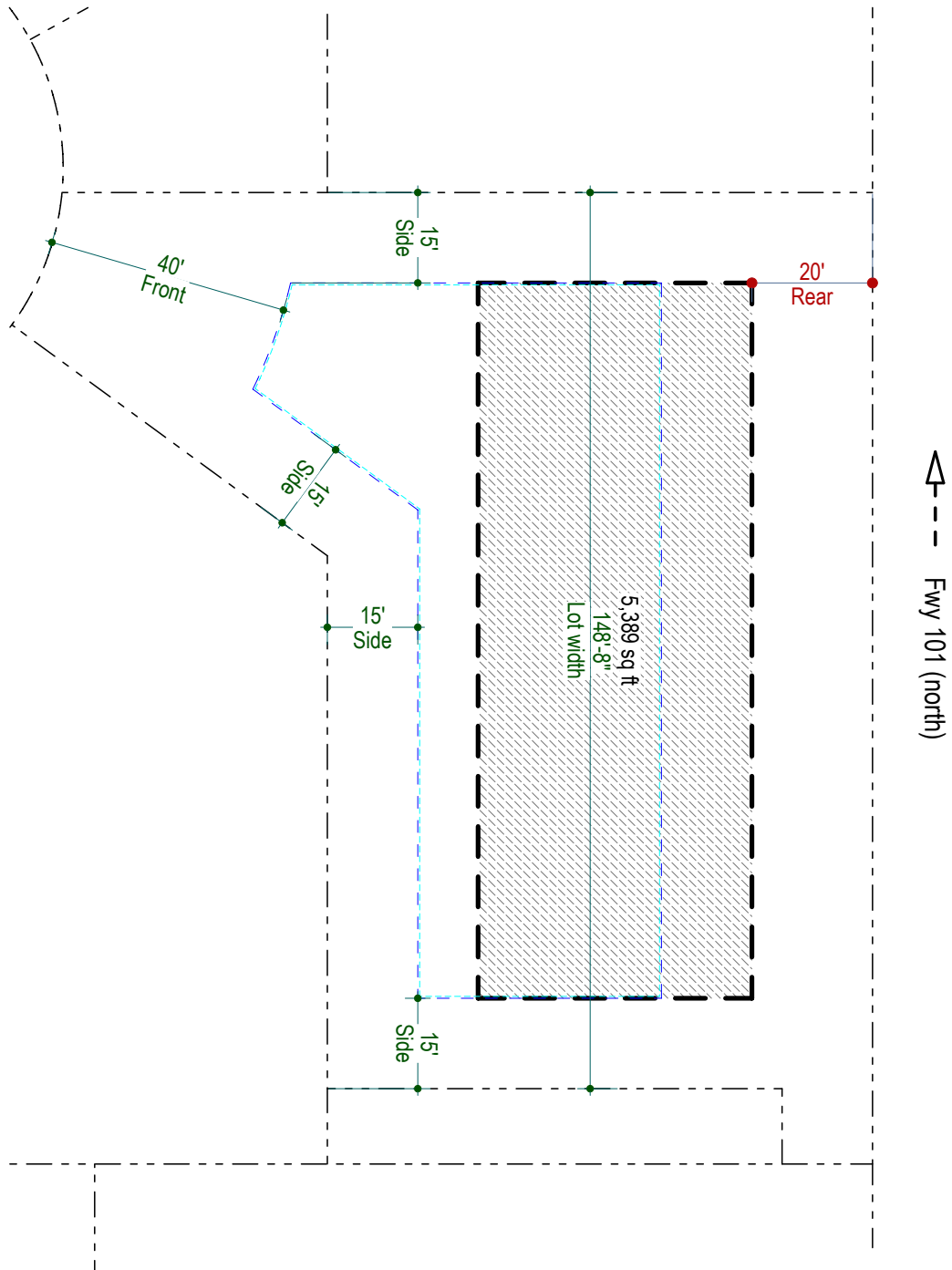


Exhibit 08. Offers to the neighbors

LAND SOLUTIONS INC

Neighbors, My name is Dave Maguire. I am a land planner working with Hoon Koo who owns the parcel at the southeast end of your cul-de-sac. Hoon and his family purchased the lot some time ago with the intention of designing and building their family home on the lot. After meeting with the City of Scottsdale, it became apparent that there are several issues that need attention.

Excess ADOT land to the east of your cul-de-sac was purchased from ADOT after the Loop 101 was completed and was subsequently split into several parcels. Hoon purchased one of those parcels hoping to build his home there. The City of Scottsdale informed us that this was an illegal lot split and requires it to be rectified before moving forward. The City informed us of the following additional issues that need to be corrected:

1. Access to 87th Street from lots 8 (APN 175-01-172) and 9 (175-01-171D) have illegal driveways across Tracts.
2. Tract A to the west of lot 9 needs to be incorporated into lot 9 since the tract was dedicated as common area to the benefit of all lots within the subdivision.
3. Tract B to the west of lot 8 needs to be incorporated into lot 8 since the tract was dedicated as common area to the benefit of all lots within the subdivision.
4. The recorded plat for McDowell Shadow Estates IV shows a Vehicular non-access easement (VNAE) running along the eastern boundary of the subdivision. It is currently illegal to access the "storage lot" or Hoon's lot.
5. The "storage lot" east of lot 7 (APN 175-01-172) and the north half of Tract C need to be incorporated into lot 7 since the parcel was created outside of the City process and the tract was dedicated as common area to the benefit of all lots within the subdivision.
6. The southern half of Tract C needs to be combined with Hoon's lot (APN 175-01-171D) since the parcel was created outside of the City process and the tract was dedicated as common area.

The procedure to correct the issues listed above is a re-plat of all lots within the cul-de-sac. Since there is no active HOA to act with respect to the disposition of the tracts, the owners of all lots would need to consent to this re-plat. Once this re-plat occurs, the City of Scottsdale will no longer refuse to consider permits for the lots mentioned. It would rectify their existing 'non-conforming' status.

Hoon is willing to bear the expense of this re-plat that will benefit these lots as well as allow him the ability to move forward with process of building on his lot. There are additional steps required to accomplish the construction of his home beyond the re-plat including a re-zone.

Following are renderings depicting the proposed Koo family home and the recorded Plat of McDowell Shadow Estates IV. I would very much like to speak with you to answer any questions you might have.

Please contact me by phone at 602-841-1945 or email at dmaguire@landsolutionsinc.com

Also, please feel free to contact the City of Scottsdale. The City planner that we have met with is Doris McClay 480-312-4214 DMcClay@scottsdaleaz.gov

Thank you,

Dave Maguire



Exhibit 09. Rezoning petition by Terry Jones

PETITION IN SUPPORT OF THE JONES PROPERTY REZONING & REPLAT

We, the undersigned, support the proposed request to rezone the subject Loop 101 remnant parcels from R1-35 to R1-18 PRD consistent with the Mountain Shadows Estates subdivision. This proposal is a "clean-up" of old parcel lines created through the County and will allow the vacant R1-35 remnant parcels to be incorporated into the existing adjacent lots and will also allow for the creation of a new lot, which will be comparable to the established Mountain Shadows Estates lot sizes and development standards.

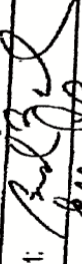

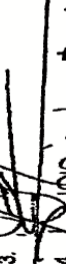




signature	printed name	address/telephone	date of signing
	Bernard Zimm	8764 E. Cecelia Dr. Scottsdale 85260	11/18/2013
	Ellen Lucas	8714 E. Sharon Dr. Scottsdale 85260	11/19/2013
	JAMES LEVINE	13607 N. 87 th St. Scottsdale 85260	11/19/2013
	DEBORAH LENTINI	13607 N. 87 th St. Scottsdale 85260	11/19/2013
	Melissa Austin-Burtha	13607 N. 87 th St. Scottsdale 85260	11/19/2013
	David C. Alton	13637 N. 87 th St. Scottsdale 85260	12/2/2013
	Mary Alton	13637 N. 87 th St. Scottsdale 85260	12/2/13

Exhibit 10. New home



Exhibit 11. Lot Photos



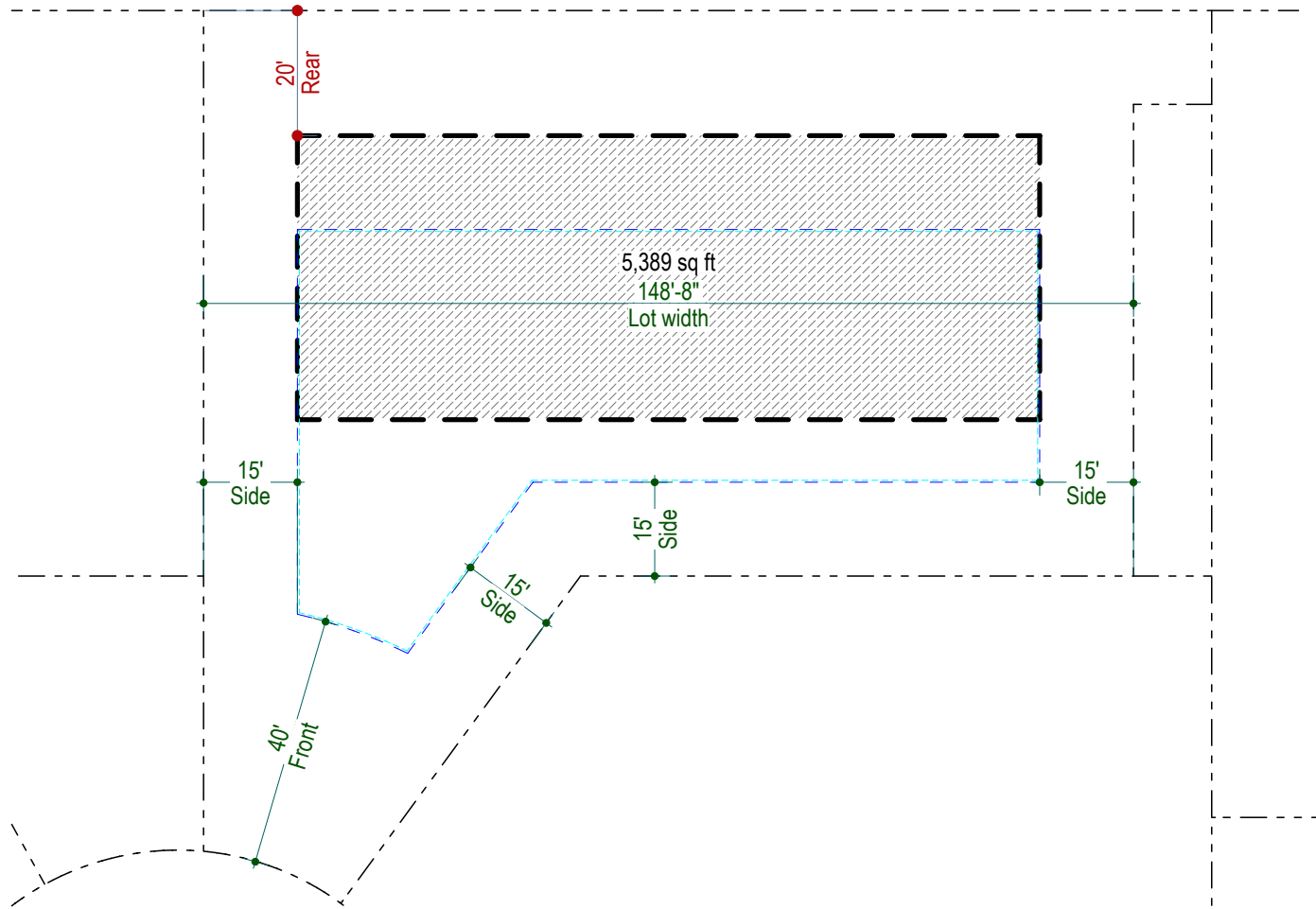


Exhibit 12. Vermin on site

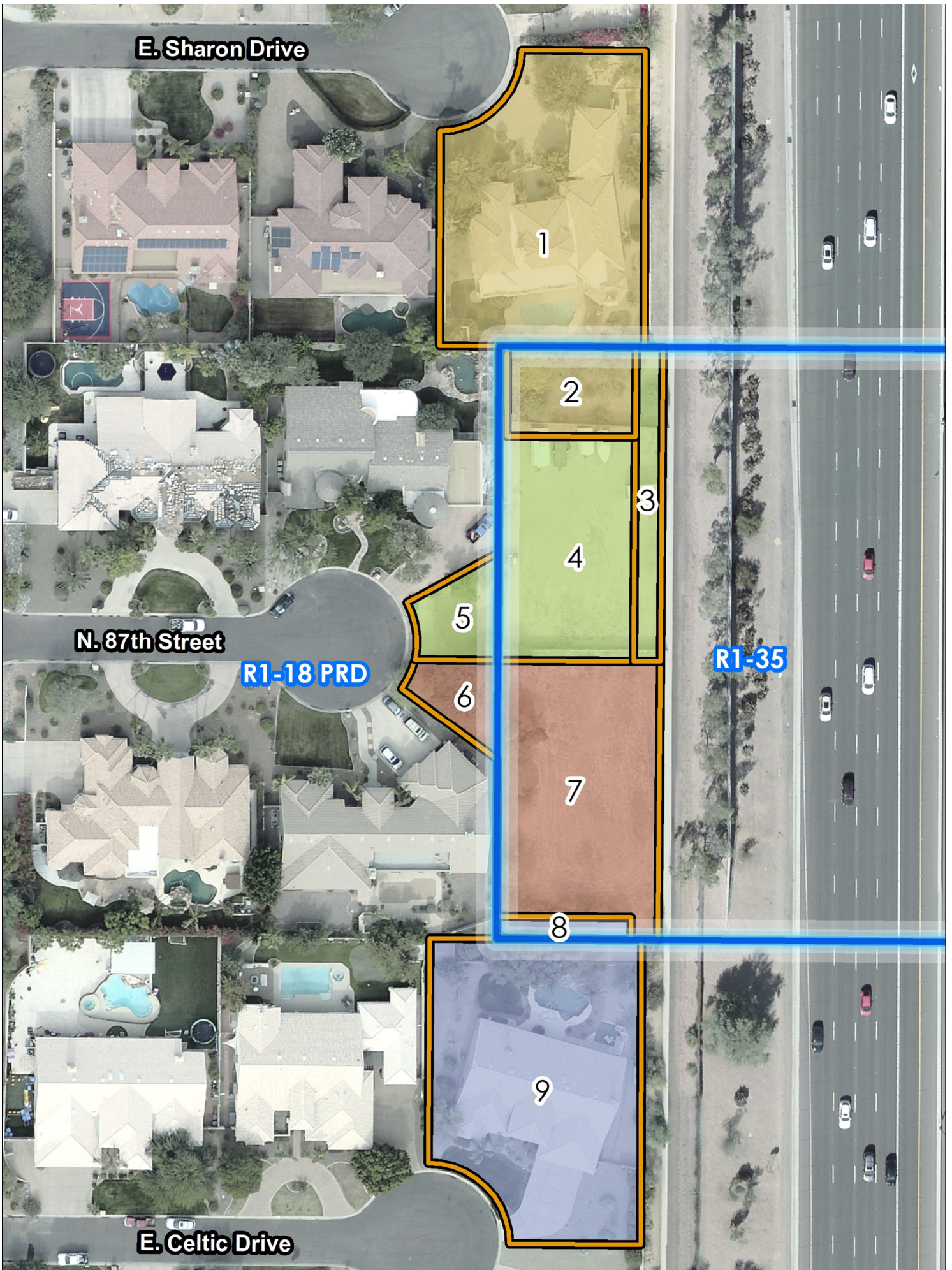


Proposed Site Plan (building setbacks)

← - - Fwy 101 (north)



ATTACHMENT #5



E. Sharon Drive

N. 87th Street

E. Celtic Drive

R1-18 PRD

R1-35

1

2

3

4

5

6

7

8

9

From: [Barnes, Jeff](#)
To: [mpreul](#)
Cc: [Mark Speno](#); [Louis Palmieri](#); [Bennett Beaudry](#); [rohns@rohnaz.com](#); [Susan Wood](#); [Valerie Glickman](#); [eanolan@cox.net](#); [J Norris](#); [Nan Currie-White](#); [AZBCB](#); [Simmons, David](#); [Anne Lanker](#); [jicmc.bernie@gmail.com](#); [Art Buck](#); [Robert Berry](#); [Rob@manginicompanies.com](#); [Roger Malcolm](#); [FITNESSISN](#); [Michelle](#); [Lori](#)
Subject: RE: Koo -- 13647 N 87th St. -- Fwd: 5-BA-2022 Public Hearing Notification
Date: Thursday, June 16, 2022 1:51:00 PM

Mr. Preul,

Thank you for your interest and for including others that we may have missed in this notification outreach. For clarification on process, the Board of Adjustment's meetings occur only once a month, on the first Wednesday of the month, and do have scheduled occurrences that occasionally coincide with holidays and other common vacation times. Applications to the Board of Adjustment are procedurally required by our Zoning Ordinance to be scheduled within a specified timeframe based on their submittal timing, so this application will need to appear on the July 6th agenda and have action taken by the Board.

Regarding a request for Continuance to a future meeting date, for our Board and Commission processes that type of request can be made by the applicant and is voted on for action by that Board or Commission, but is not something that can be directly initiated by other interested parties. There will be opportunity for spoken public comment as part of the July 6th meeting and that time can be used to ask the Board to consider a Continuance of this case to a future hearing date, but that will have to be something the Boardmembers choose to act upon as part of their action at that meeting.

Jeff

From: mpreul <mpreul@cox.net>
Sent: Thursday, June 16, 2022 10:23 AM
To: Mark Speno <markspeno@cox.net>; Louis Palmieri <louisipalmieri@mac.com>; Barnes, Jeff <JBarnes@Scottsdaleaz.gov>
Cc: Bennett Beaudry <bennett.beaudry@cox.net>; rohns@rohnaz.com; Susan Wood <samw1222@aol.com>; Valerie Glickman <valglickman@gmail.com>; eanolan@cox.net; J Norris <jnorris3iii@gmail.com>; Nan Currie-White <nanner8618@yahoo.com>; AZBCB <azbcb@cox.net>; Simmons, David <DSimmons@Scottsdaleaz.gov>; Anne Lanker <annejeffroberts1@cox.net>; jicmc.bernie@gmail.com; Art Buck <artbuckaz@gmail.com>; Robert Berry <rlbcab@aol.com>; Rob@manginicompanies.com; Roger Malcolm <rogmalcolm@aol.com>; FITNESSISN <FITNESSISN@aol.com>; Michelle <mshellfang@gmail.com>; Lori <lori@goldstarlogistics.net>
Subject: Re: Koo -- 13647 N 87th St. -- Fwd: 5-BA-2022 Public Hearing Notification

 **External Email: Please use caution if opening links or attachments!**

Mr. Barnes:

The hearing is scheduled for July 6 6:00PM. As a citizen who has been involved in this neighborhood

ATTACHMENT #7

issue for YEARS, I request a postponement from July 6. The neighborhood has had hearing postponements instigated by the applicant at last minute (e.g., last city council decision process where many people arrived to the council only to find out the hearing had been postponed within the previous 2 hours), thus I request this postponement well ahead of time. This is a subject of critical import to the neighborhood that we have prevailed upon with Planning Committee and City Council decisions. This is a vacation period besides where many neighbors will be away. It's only fair that we as well get to agree on the timing.

Best regards,
Mark Preul
8628 E. Davenport Dr.
Scottsdale 85260

Begin forwarded message:

From: "Barnes, Jeff" <JBarnes@Scottsdaleaz.gov>
Subject: 5-BA-2022 Public Hearing Notification
Date: June 16, 2022 at 10:02:55 AM MST

You are receiving the attached Board of Adjustment hearing notification postcard because you had previously expressed interest in public hearings for application(s) on the property located at 13647 N 87th Street. An application for Variance to the City of Scottsdale's Zoning Ordinance requirements has been filed for that property, additional information is included on the attached postcard and on the City's Case Information page for application [5-BA-2022](#). Once available, the meeting agenda information will be posted on the [Board of Adjustment](#) page on the City's website.

Jeff Barnes
Senior Planner
City of Scottsdale
Planning & Development Services
jbarnes@scottsdaleaz.gov
(480) 312-2376

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- Avoid long waits at the One Stop Shop Service Counters by checking real-time wait times:

<https://eservices.scottsdaleaz.gov/bldgresources/WaitTimes>

- Explore our Planning and Development Services page:

<https://www.scottsdaleaz.gov/planning-development>

<5-BA-2022_HEARING_POSTCARD.pdf>

From: [Art Buck](#)
To: [Barnes, Jeff](#)
Cc: [Mark Speno](#)
Subject: Fwd: Koo -- 13647 N 87th St. -- Fwd: 5-BA-2022 Public Hearing Notification
Date: Thursday, June 16, 2022 11:20:15 AM

External Email: Please use caution if opening links or attachments!

Mr. Barnes,

I would like to echo Mr. Speno's request. I know for a fact that many of the neighbors who will be directly affected in this matter may not be available, on the heels of that holiday weekend.

Thank you.

Art Buck

Associate Broker I Realtor
AZ Lic # 014102000 - CA Lic # 01431238

RE/MAX FINE PROPERTIES
Scottsdale Arizona
Office: 480.792.9500
Mobile: 480.510.7689

www.azfineproperty.com
<https://www.linkedin.com/in/art-buck>

----- Forwarded message -----

From: **mpreul** <mpreul@cox.net>
Date: Thu, Jun 16, 2022 at 10:23 AM
Subject: Re: Koo -- 13647 N 87th St. -- Fwd: 5-BA-2022 Public Hearing Notification
To: Mark Speno <markspeno@cox.net>, Louis Palmieri <louispalmieri@mac.com>, <jbarnes@scottsdaleaz.gov>
Cc: Bennett Beaudry <bennett.beaudry@cox.net>, <rohns@rohnaz.com>, Susan Wood <samw1222@aol.com>, Valerie Glickman <valglickman@gmail.com>, <eanolan@cox.net>, J Norris <jnorris3iii@gmail.com>, Nan Currie-White <nanner8618@yahoo.com>, AZBCB <azbcb@cox.net>, Simmons, David <DSimmons@scottsdaleaz.gov>, Anne Lanker <annejeffroberts1@cox.net>, <jicmc.bernie@gmail.com>, Art Buck <artbuckaz@gmail.com>, Robert Berry <rlbcab@aol.com>, <Rob@manginicompanies.com>, Roger Malcolm <rogmalcolm@aol.com>, FITNESSISN <FITNESSISN@aol.com>, Michelle <mshellfang@gmail.com>, Lori <lori@goldstarlogistics.net>

Mr. Barnes:

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<5-BA-2022_HEARING_POSTCARD.pdf>

From: [mpreul](#)
To: [Barnes, Jeff](#)
Cc: [Mark Speno](#); [Louis Palmieri](#); [Bennett Beaudry](#); [rohns@rohnaz.com](#); [Susan Wood](#); [Valerie Glickman](#); [eanolan@cox.net](#); [J Norris](#); [Nan Currie-White](#); [AZBCB](#); [Simmons, David](#); [Anne Lanker](#); [jicmc.bernie@gmail.com](#); [Art Buck](#); [Robert Berry](#); [Rob@manginicompanies.com](#); [Roger Malcolm](#); [FITNESSISN](#); [Michelle](#); [Lori](#); [Whitehead, Solange](#); [City Council](#); [Littlefield, Kathy](#)
Subject: Re: Koo -- 13647 N 87th St. -- Fwd: 5-BA-2022 Public Hearing Notification
Date: Thursday, June 16, 2022 8:08:30 PM

External Email: Please use caution if opening links or attachments!

Mr. Barnes,

I apologize for belaboring the point, however, the neighborhood would not have even been made aware of this application without your emailing. No sign, no mailing. This affects the neighborhood that is totally against this issue. This process seems somewhat unfair to say the least.

Sincerely,

Mark Preul

On Jun 16, 2022, at 8:00 PM, mpreul <mpreul@cox.net> wrote:

Mr. Barnes

Thank you for your email. However, the point is that members of the neighborhood will not be able to be there on July 6 to speak against this application. The neighborhood has been fighting this issue for YEARS, and we believe we have the right to be heard at our convenience as well. The application was denied years ago for a zoning variance, was recently denied for re-zoning, and now this is proceeding to yet another petition. The neighborhood is frankly frustrated with this issue as we don't have much control over when meetings are scheduled. We were highly displeased when we showed up to the city council meeting only to find out that some minutes before the petitioner filed for an extension, when it was apparent that they were planning not to move forward the previous week.

As well, is there not to be a sign posted at the property within some proper time frame announcing the meeting?

Sincerely yours,

Mark Preul

On Jun 16, 2022, at 1:51 PM, Barnes, Jeff
<JBarnes@Scottsdaleaz.gov> wrote:

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Thank you for your interest and for including others that we may have

missed in this notification outreach. For clarification on process, the Board of Adjustment's meetings occur only once a month, on the first Wednesday of the month, and do have scheduled occurrences that occasionally coincide with holidays and other common vacation times. Applications to the Board of Adjustment are procedurally required by our Zoning Ordinance to be scheduled within a specified timeframe based on their submittal timing, so this application will need to appear on the July 6th agenda and have action taken by the Board.

Regarding a request for Continuance to a future meeting date, for our Board and Commission processes that type of request can be made by the applicant and is voted on for action by that Board or Commission, but is not something that can be directly initiated by other interested parties. There will be opportunity for spoken public comment as part of the July 6th meeting and that time can be used to ask the Board to consider a Continuance of this case to a future hearing date, but that will have to be something the Boardmembers choose to act upon as part of their action at that meeting.

Jeff

From: mpreul <mpreul@cox.net>
Sent: Thursday, June 16, 2022 10:23 AM
To: Mark Speno <markspeno@cox.net>; Louis Palmieri <louispalmieri@mac.com>; Barnes, Jeff <JBarnes@Scottsdaleaz.gov>
Cc: Bennett Beaudry <bennett.beaudry@cox.net>; rohns@rohnaz.com;
Susan Wood <samw1222@aol.com>; Valerie Glickman <valglickman@gmail.com>; eanolan@cox.net; J Norris <jnorris3iii@gmail.com>; Nan Currie-White <nanner8618@yahoo.com>; AZBCB <azbcb@cox.net>; Simmons, David <DSimmons@Scottsdaleaz.gov>; Anne Lanker <annejeffroberts1@cox.net>; jicmc.bernie@gmail.com; Art Buck <artbuckaz@gmail.com>; Robert Berry <rlbcab@aol.com>; Rob@manginicompanies.com; Roger Malcolm <rogmalcolm@aol.com>; FITNESSISN <FITNESSISN@aol.com>; Michelle <mshellfang@gmail.com>; Lori <lori@goldstarlogistics.net>
Subject: Re: Koo -- 13647 N 87th St. -- Fwd: 5-BA-2022 Public Hearing Notification

⚠ External Email: Please use caution if opening links or attachments!

Mr. Barnes:

The hearing is scheduled for July 6 6:00PM. As a citizen who has been involved in this neighborhood issue for YEARS, I request a postponement from July 6. The neighborhood has had hearing postponements instigated by the applicant at last minute (e.g., last city council decision process where many people arrived to the council only to find out the hearing had been postponed within the previous 2 hours), thus I request this postponement well ahead of time. This is a subject of critical import to the neighborhood that we have prevailed upon with Planning Committee and City Council decisions. This is a vacation period besides where many neighbors will be away. It's only fair that we as well get to agree on the timing.

Best regards,
Mark Preul
8628 E. Davenport Dr.
Scottsdale 85260

Begin forwarded message:

From: "Barnes, Jeff"
<JBarnes@Scottsdaleaz.gov>
Subject: 5-BA-2022 Public Hearing
Notification
Date: June 16, 2022 at 10:02:55 AM MST

You are receiving the attached Board of Adjustment hearing notification postcard because you had previously expressed interest in public hearings for application(s) on the property located at 13647 N 87th Street. An application for Variance to the City of Scottsdale's Zoning Ordinance requirements has been filed for that property, additional information is included on the attached postcard and on the City's Case Information page for application [5-BA-2022](#). Once available, the meeting agenda information will be posted on the [Board of Adjustment](#) page on the City's website.

Jeff Barnes
Senior Planner
City of Scottsdale
Planning & Development Services
jbarnes@scottsdaleaz.gov
(480) 312-2376

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- Explore our Planning and Development Services page:

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<5-BA-2022_HEARING_POSTCARD.pdf>

From: [Barnes, Jeff](#)
To: [Mark Speno](#)
Cc: [Bennett Beaudry](#); [Mayor David D. Ortega](#); [Caputi, Tammy](#); [Durham, Thomas](#); [Janik, Betty](#); [Littlefield, Kathy](#); [Milhaven, Linda](#); [Whitehead, Solange](#); [City Council](#); [Projectinput](#); [Mark PREUL](#)
Subject: RE: 5-BA-2022 Public Hearing Notification
Date: Tuesday, June 21, 2022 9:49:00 AM

Mark,

The Variance process and the prior Zoning process are different in their requirements. The Board of Adjustment application process does not require the same white (and red) posting signs with the same timelines as the Planning Commission/City Council application process. I verified with our staff that there will be a sign posted on the site later today, which is consistent with our standard posting timeframe for this process. Hearing notification postcards were also mailed out last week (to properties within the standard 750-foot distance) with the same information provided in my extended outreach email. Applications submitted for the Board of Adjustment are required by our Zoning Ordinance to be scheduled within a specified timeframe based on their submittal timing, so procedurally this application will need to appear on the July 6th agenda and have action taken by the Board of Adjustment at that hearing.

Jeff

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Sent: Tuesday, June 21, 2022 8:54 AM
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Cc: Bennett Beaudry <bennett.beaudry@cox.net>; Mayor David D. Ortega <DOrtega@Scottsdaleaz.gov>; Caputi, Tammy <TCaputi@Scottsdaleaz.gov>; Durham, Thomas <TDurham@Scottsdaleaz.gov>; Janik, Betty <BJanik@Scottsdaleaz.gov>; Littlefield, Kathy <KLittlefield@Scottsdaleaz.gov>; Milhaven, Linda <LMilhaven@scottsdaleaz.gov>; Whitehead, Solange <SWhitehead@Scottsdaleaz.gov>; City Council <CityCouncil@scottsdaleaz.gov>; Projectinput <Projectinput@Scottsdaleaz.gov>; Mark PREUL <mpreul@mac.com>
Subject: Re: 5-BA-2022 Public Hearing Notification

⚠ External Email: Please use caution if opening links or attachments!

Jeff, why wasn't a public notification sign posted on the property as before? Given the overwhelming objection by our community this makes the whole thing smell like gamesmanship again at the hands of the Applicant and with the support of your office. ALL residents of our community are entitled to proper notification. Please postpone the hearing and post a sign.

Respectfully,
Mark Speno

Sent from my iPhone

On Jun 21, 2022, at 8:43 AM, Barnes, Jeff <JBarnes@scottsdaleaz.gov> wrote:

Bennett,

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Jeff

From: Bennett Beaudry <bennett.beaudry@cox.net>

Sent: Saturday, June 18, 2022 8:40 AM

To: Barnes, Jeff <JBarnes@Scottsdaleaz.gov>

Cc: Mayor David D. Ortega <DOrtega@Scottsdaleaz.gov>; Caputi, Tammy <TCaputi@Scottsdaleaz.gov>; Durham, Thomas <TDurham@Scottsdaleaz.gov>; Janik, Betty <BJanik@Scottsdaleaz.gov>; Littlefield, Kathy <KLittlefield@Scottsdaleaz.gov>; Milhaven, Linda <LMilhaven@scottsdaleaz.gov>; Whitehead, Solange <SWhitehead@Scottsdaleaz.gov>; City Council <CityCouncil@scottsdaleaz.gov>; Projectinput <Projectinput@Scottsdaleaz.gov>; Mark PREUL <mpreul@mac.com>; Mark Speno <markspeno@cox.net>

Subject: Re: 5-BA-2022 Public Hearing Notification

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Jeff,

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Note: The Board consists of seven (7) members appointed by the City Council. A vote of the majority of all the members of the Board (4 out of 7) shall be necessary to authorize any variance from the terms and conditions of the Zoning Ordinance.

Could you please provide their email addresses?

Bennett

Bennett Beaudry

8714 East Voltaire Avenue
Scottsdale, AZ 85260

Cell: 480-980-1084

Home: 480-922-9166

From: "Barnes, Jeff" <JBarnes@Scottsdaleaz.gov>

Date: Thursday, June 16, 2022 at 10:03 AM

Subject: 5-BA-2022 Public Hearing Notification

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Jeff Barnes
Senior Planner
City of Scottsdale
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From: [Barnes, Jeff](#)
To: "mpreul"; [Bennett Beaudry](#)
Cc: [Mark Speno](#); [Mayor David D. Ortega](#); [Caputi, Tammy](#); [Durham, Thomas](#); [Janik, Betty](#); [Littlefield, Kathy](#); [Milhaven, Linda](#); [Whitehead, Solange](#); [City Council](#); [Projectinput](#); [Louis Palmieri](#)
Subject: RE: 5-BA-2022 Public Hearing Notification
Date: Wednesday, June 22, 2022 10:09:00 AM

Mark and Bennett,

In response to your questions from yesterday in the email chain below, we recognize that prior application history is important context information for the Board of Adjustment members to be aware of in their consideration of any variance application. Our staff report to the Board will include identification of that application history and direction to the Board on accessing and viewing the case records of both the prior Variance request (2-BA-2012) and the Rezoning request (10-ZN-2021), and the video records available for the Planning Commission and City Council hearings for the rezoning request.

In regard to the powers and duties of the Board of Adjustment, they are tasked with hearing and deciding upon requests for variances from the provisions of the Zoning Ordinance. They are given 4 specific criteria by which to make those decisions:

1. That 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 such property of privileges enjoyed by other property of the same classification in the same zoning district; and
2. That the authorization of the variance is necessary for the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, and 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; and
3. That the special circumstances applicable to the property were not self-imposed or created by the owner or applicant; and
4. That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general.

Jeff

From: mpreul <mpreul@cox.net>
Sent: Tuesday, June 21, 2022 10:22 PM
To: Barnes, Jeff <JBarnes@Scottsdaleaz.gov>
Cc: Mark Speno <markspeno@cox.net>; Mayor David D. Ortega <DOrtega@Scottsdaleaz.gov>; Caputi, Tammy <TCaputi@Scottsdaleaz.gov>; Durham, Thomas <TDurham@Scottsdaleaz.gov>; Janik, Betty <BJanik@Scottsdaleaz.gov>; Littlefield, Kathy <KLittlefield@Scottsdaleaz.gov>; Milhaven, Linda <LMilhaven@scottsdaleaz.gov>; Whitehead, Solange <SWhitehead@Scottsdaleaz.gov>; City Council <CityCouncil@scottsdaleaz.gov>; Projectinput <Projectinput@Scottsdaleaz.gov>; Louis Palmieri <louispalmieri@mac.com>; Bennett Beaudry <bennett.beaudry@cox.net>

Subject: Re: 5-BA-2022 Public Hearing Notification

⚠ External Email: Please use caution if opening links or attachments!

Jeff

The BOA is adjudicating a variance to the property. This is why I and others want the previous variance application files included.

This tactic was applied for in 2018 by the applicant and denied. We have been down the road of assessing shifting the property buildable boundaries so that they are a mere few feet from the sound wall and other walls. This is ridiculous.

This home will appear completely out of place with the surrounding homes given this small orphaned lot. Furthermore, the neighborhood does not believe Mr. Koo and his family would reasonably move into such a situation from where his home is now. There are those of us that believe this application has the potential to result in a short term rental investment — the last thing our neighborhood needs.

Why are we now taking this up again? This is why the neighborhood is very unhappy with this application.

Sincerely, Mark Preul

On Jun 21, 2022, at 4:36 PM, Mark PREUL <mpreul@mac.com> wrote:

Jeff

As well I request the previous file(s) from the variance request that was denied several years ago be included to the Board of Adjustment. These to include the many contacts to the various city departments.

My straightforward thoughts, as many others in the neighborhood also have similar, is that we are “sick and tired “ of the applications by Mr. Koo that don’t seem to end. He’s been told no by the previous variance board, no by the planning commission, no by city council. His problem of not performing due diligence on this property is not our problem—it was and remains his. The neighborhood should not have to suffer for it.

Sincerely,
Mark Preul
8628 E. Davenport Dr.

Sent from my iPhone

On Jun 21, 2022, at 2:47 PM, Bennett Beaudry <bennett.beaudry@cox.net> wrote:

Jeff,

Will you be including all the previous correspondence from us on this topic - this should include the files from the Planning Commission and city Council hearing that have our correspondence in them – when you provide your update to the Board of Adjustment members.

Could you provide a written response that this will occur?

Bennett

Bennett Beaudry

8714 East Voltaire Avenue
Scottsdale, AZ 85260

Cell: 480-980-1084
Home: 480-922-9166

From: "Barnes, Jeff" <JBarnes@Scottsdaleaz.gov>
Date: Tuesday, June 21, 2022 at 9:49 AM
To: Mark Speno <markspeno@cox.net>
Cc: Bennett Beaudry <bennett.beaudry@cox.net>, "Mayor David D. Ortega" <DOrtega@Scottsdaleaz.gov>, "Caputi, Tammy" <TCaputi@Scottsdaleaz.gov>, "Durham, Thomas" <TDurham@Scottsdaleaz.gov>, "Janik, Betty" <BJanik@Scottsdaleaz.gov>, "Littlefield, Kathy" <KLittlefield@Scottsdaleaz.gov>, "Milhaven, Linda" <LMilhaven@scottsdaleaz.gov>, "Whitehead, Solange" <SWhitehead@Scottsdaleaz.gov>, City Council <CityCouncil@scottsdaleaz.gov>, Projectinput <Projectinput@Scottsdaleaz.gov>, Mark PREUL <mpreul@mac.com>
Subject: RE: 5-BA-2022 Public Hearing Notification

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From: [mpreul](#)
To: [Barnes, Jeff](#)
Cc: [Mark Speno](#); [Cox - Bennett Beaudry](#); [Mayor David D. Ortega](#); [Caputi, Tammy](#); [Durham, Thomas](#); [Janik, Betty](#); [Littlefield, Kathy](#); [Milhaven, Linda](#); [Whitehead, Solange](#); [City Council](#); [Projectinput](#); [Mark Preul](#); [Louis Palmieri](#)
Subject: Re: Mr Koo's Application
Date: Wednesday, June 22, 2022 11:57:10 AM

External Email: Please use caution if opening links or attachments!

Jeff

We appreciate your information on this situation. I think you can understand our perspective and why we are so concerned about this as a neighborhood.

With regard to the points that are criteria for the BOA. Here are my responses to the points that the BOA should assess, I assume others on this email thread will have their opinions as well.

1. Applicant is an architect and thus is quite familiar with variances, rezoning, parcel and building requirements. Applicant should have done due diligence before purchasing the property with regard to variances or zoning requirements — especially for this remnant small lot. The bottom line is that the lot was purchased for \$20,000 and applicant believed he would make a windfall profit. The variances and zoning required do not fit in any prior circumstance within the neighborhood.
2. Special privileges as what is being sought and has been sought have not been sought for any such property in the neighborhood. This situation is unique. The rezoning was denied, as discussed in the planning commission and city council hearings, to a great degree based on potential for precedent for any property owner in the area to rezone lots into smaller parcels, thus damaging the long established character of the neighborhood.
3. The circumstances are self-imposed by Applicant —he purchased the property, his actions, he knew or should have known what would be required to accomplish his construction plans before purchase, and certainly as he has been denied variance and rezoning applications. The neighborhood has not imposed anything on him. Applicant is responsible for due diligence.
4. The lot will be detrimental in not fitting within the character of the neighborhood. The home will appear rammed into the parcel, it is planned for 2 stories (no other homes are 2 stories), it will be only a few feet away from a freeway sound wall and other walls, frontage is only a few feet, drainage issues are pertinent, etc.

The neighborhood has a right to maintain its character as promoted by the City of Scottsdale which states its neighborhoods are paramount. There are a myriad of Scottsdale properties that applicant could have purchased that would not have involved the many issues encountered with this property and its circumstances with the neighborhood. His problem of an easy-appearing investment gain that has involved property problems is not and should not continue to have a life as our problem. His consultant Mr. Richert was insulting at a neighborhood meeting in telling all who gathered, “Well he’s bought it [the property], so you have to let him do something with it.” I don’t believe that is how the system works.

Sincerely,
Mark Preul

8628 E. Davenport Dr.

On Jun 22, 2022, at 10:57 AM, Cox - Bennett Beaudry
<bennett.beaudry@cox.net> wrote:

Mark and Mark,

I am not a lawyer but do not understand how Mr Koo application meets the requirements below. I am not sure how to answer this to counter these requirements.

In response to your questions from yesterday in the email chain below, we recognize that prior application history is important context information for the Board of Adjustment members to be aware of in their consideration of any variance application. Our staff report to the Board will include identification of that application history and direction to the Board on accessing and viewing the case records of both the prior Variance request (2-BA-2012) and the Rezoning request (10-ZN-2021), and the video records available for the Planning Commission and City Council hearings for the rezoning request.

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4. That authorization of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general.

Sent from my iPad

From: [BernieLindaZahn](#)
To: [Barnes, Jeff](#)
Subject: 5-BA-2022 Public Hearing Notification
Date: Wednesday, June 22, 2022 2:03:06 PM

External Email: Please use caution if opening links or attachments!

I am the owner of the property which shares the back wall of the property in question. A variance application was first requested in August of 2012 and was turned down by the Planning Commission. (**Brad Carr, AICP LEED AP-planning Services**).

During this past year Mr Koo, has requested re-zoning and has been turned down by the Commission and The City Council. It seems now that Mr Koo, as last ditch effort, is asking for variance changes. My community neighbors have written to you with their objections so I will not reiterate them. I want to be on record that oppose his request.

In addition, I don't want the property used to conduct any business operation by building and renting the home. He purchased this property well knowing it's limitations.

Please uphold our other agencies denials.

Bernard Zahn 8764 E Celtic Dr , 85260