

Staff Summary Report



Board of Adjustment Hearing Date: August 26, 2009

Agenda Item Number: 2

SUBJECT: Appeal of the July 7, 2009 Hearing Officer's decision to modify the request by the **ALLISON RESIDENCE (PL090157)** located at 9338 South Dateland Drive for two (2) variances.

DOCUMENT NAME: 20090826dssl01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Appeal of the July 7, 2009 Hearing Officer's decision to modify the following requests for the **ALLISON RESIDENCE (PL090157/VRA09001/VRA09002)** (James Allison, applicant/property owner) located at 9338 South Dateland Drive in the R1-15, Single Family Residential District:

VAR09004 Variance to reduce the rear yard setback from thirty (30) feet to eight (8) feet.
Setback approved to fifteen (15) feet by the Hearing Officer

VAR09009 Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to twenty (20) feet.
Setback approved to twenty-seven (27) feet by the Hearing Officer

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

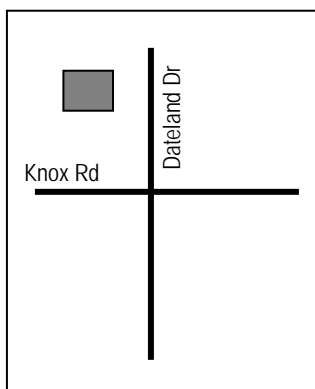
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Denial, upholding the previous Hearing Officer Decision

ADDITIONAL INFO:



On July 7, 2009, the Hearing Officer approved a use permit and two variances to construct a detached garage. The requested variances were modified by the Hearing Officer to allow a twenty seven (27) foot setback on the street side yard and a fifteen (15) foot setback for the rear yard. The applicant is requesting an appeal of the modified approval and seeking a greater reduction of the street side yard and rear yard setbacks. The applicant is requesting a twenty- four (24) foot setback for the street side yard or an additional three (3) feet reduction from that previously granted and a twelve (12) foot setback for the rear yard or an additional three (3) feet reduction. They have proposed a reduction of the structure size and pitch height from their original structure. The building materials will be slump block exterior and tile roof with a pitch to match the existing residence. Staff also received an appeal from the owner of the abutting property to the west. They contend that there were no special circumstances to warrant the variances granted by the Hearing Officer. The applicant held a neighborhood meeting in compliance with the Zoning and Development Code. To date, staff received one letter in support and three letters in opposition to the request and several calls from surrounding neighbors in opposition to portions of the request.

PAGES:

1. List of Attachments
- 2-3. Comments
3. Reasons for Approval; Conditions of Approval
4. History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Site plan
5. Elevation
6. Original Site Plan
7. Neighborhood meeting summary
- 8-11. Letters of Opposition
- 12-13. Staff Photograph(s)
- 14-17. Applicant Photograph(s)
- 18-19. July 7, 2009 Hearing Officer Letter of Resolution to Applicant
- 20-22. July 7, 2009 Minutes of Hearing Officer Meeting
- 23-24. Applicant's Letter of Appeal, dated July 9, 2009
25. City of Tempe Acknowledgement of Appeal, dated July 13, 2009
- 26-27. Neighboring Property letter of Appeal date July 21, 2009
28. Letter(s) of Support for Applicant's Appeal to BOA
29. Revised Site Plan dated July 17, 2009
30. Revised Elevations dated July 17, 2009

COMMENTS:

The Allison Residence is proposing to construct a freestanding building (garage) on the west side of their property. The proposed structure was originally submitted as 1000 s.f. in area and 16 feet (16') in height; the applicant has modified their submittal to reduce the size of the structure to 725 s.f. in area and lowered the overall height to fifteen (15) feet (the structure will be five (5) feet lower than the existing residence). The structure is designed with slump block and a tile roof with a pitch to complement the existing house. The structure will have minor electrical and no plumbing fixtures. The applicant was approved for a use permit for the detached structure and two setback variances.

The configuration of this lot has the front of the lot facing the east on the Dateland Drive side. The street side yard is the Knox Road frontage and the rear yard is adjacent to the neighbor to the west. The variances originally proposed were to reduce the rear yard setback from thirty feet (30) to eight feet (8) and the street side yard setback from thirty feet (30) to twenty feet (20). This lot is located adjacent to a "key" lot which increases the street side yard setback by ten (10) feet. The standard street side yard setback in the R1-15 zoning district is 20 feet unless the lot is adjacent to a "key" lot. The applicant originally designed their plans to conform to the standard street side yard setback of twenty (20) feet and was seeking a reduction of the rear yard setback. They were not aware of the adjacent to a "key" lot requirement. The Hearing Officer granted the variances with modified setbacks of twenty seven (27) feet for the street side yard and fifteen (15) feet for the rear yard: based on the recommendation of staff.

The applicant is requesting an appeal of the Hearing Officer decision; they are seeking a twenty (24) foot setback for the street side. The requested street side yard setback is consistent with what could be granted if they requested a 20% reduction through a use permit standard. They are requesting a twelve (12) foot setback for the rear yard. They contend that if their house fronted Knox Road; the fifteen (15) setback would be a standard side yard with which they could potentially seek a 20% reduction to twelve (12) feet.

Staff also received a request for appeal from the property owner to the west; his representative stated that there was no justification for granting of the original variances and is requesting the previous Hearing Officer Decision be overturned.

Public Input

Prior to the Hearing Officer meeting; the applicant held a neighborhood meeting on May 16, 2009. A summary of the meeting was provided by the applicant. To date, staff has received three letters in opposition of the request and one letter in support. Staff received numerous telephone inquiries regarding the request. A majority of the callers expressed concern with the size of the structure and the proposed location (as noted previously, the applicant has reduced the size and height of the structure). The street side yard setback variance received the most opposition. A modified rear yard setback variance was acceptable to the callers.

Variance

The Zoning and Development Code requires the setbacks for structures, in the R1-15 Single Family Residential District, to be located twenty (20) feet from street side yard property line with an additional ten (10) foot setback if the lot is adjacent to a "key" lot. The premise for the additional setback is that the side of the structure will align with the front yard setback of house for which the lot abuts. The rear yard setback in the R1-15 district requires a thirty (30) foot setback.

This property is located within the Dusk Fire II Subdivision. The Dusk Fire II Subdivision is a unique residential development that is characterized by large lots and custom homes. The Allison Residence lot is one of the lots within the subdivision that does not have a substantial rear yard. The house placement is "squarely" in the middle of the lot. According to the original site plan; the house was constructed thirty-eight (38) feet from the rear property line. The required R1-15 setback at thirty (30) feet limits the building area to an eight (8) foot expansion. For the Hearing Officer report; staff made the finding that the limited setback was a disadvantage which was unique to this lot and a situation that did not apply to the other lots within the subdivision; thus a reduction of the setback through a variance was warranted. Staff supported a variance to reduce the rear yard setback to fifteen (15) feet rather than eight (8) as requested by the applicant. After evaluating the existing pattern for dwelling placement along Knox Road; staff believed that a 15' setback or thirty (30) foot separation between dwellings was a consistent pattern with the remainder of the lots to the west.

Since this lot is adjacent to a key lot; the pattern had been established to keep this dwelling setback from the street to align with the front yards along Knox Road. A pattern existed to support the rear yard variance; conversely it is that same established pattern that the

staff finding was to not support the street side yard setback variance, as requested. The additional ten foot was required to create a setback pattern which wraps the corner. A structure jutting ten (10) feet into the setback was not supportable. The applicant is correct in their request for the appeal; a provision exists within the ZDC which allows all setbacks within the R1-15, Single Family Residence district to be considered for a reduction by 20% through a use permit standard process; when the standard is applied to this request the street side yard may be reduced to twenty four (24) feet (if approved by use permit). The overwhelming input from the neighbors has been to maintain the thirty (30) foot setback; staff believes a supportable concession was to reduce the setback by 10% or to twenty seven (27) feet and save the applicant the process to reapply for a use permit standard reduction

Conclusion

Staff recommends upholding the Hearing Officer Decision and denying the appeal. In regard to second appeal from the homeowner to the west; staff finds there are unique circumstances regarding configuration of the lot that do not apply to the remainder of the lots in neighborhood and unique circumstances in the placement of the dwelling to support variances to the required ZDC setbacks. Staff recommends approval of the variances with modified setbacks; 15' rear setback and 27' street side yard setback.

REASON(S) FOR

APPROVAL:

1. Special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) 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.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S)

OF APPROVAL:

1. Provide a set of plans for the file with site data listing the height of existing dwelling and the proposed accessory building. The height of accessory building not to exceed the height of existing residence.
2. The rear yard setback variance to be modified to fifteen (15) foot setback minimum.
3. The street side yard setback variance to be modified to a twenty seven (27) foot setback minimum.
4. Obtain all necessary permits and clearances from the Building Safety Division.
5. The accessory building to match the existing residence in color and material.

HISTORY & FACTS:

April 2, 1990. The Board of Adjustment approved a variance for James Hold/Duskfire II Developer for the following located at 9338 S. Dateland Drive in the R1-15 Single Family Residential District:

- a. variance to reduce the front yard setback from 35' to 25'
- b. variance to reduce the street side yard setback from 30' to 25'.

Note: these variance approvals lapsed due to no construction activity within one year of approval.

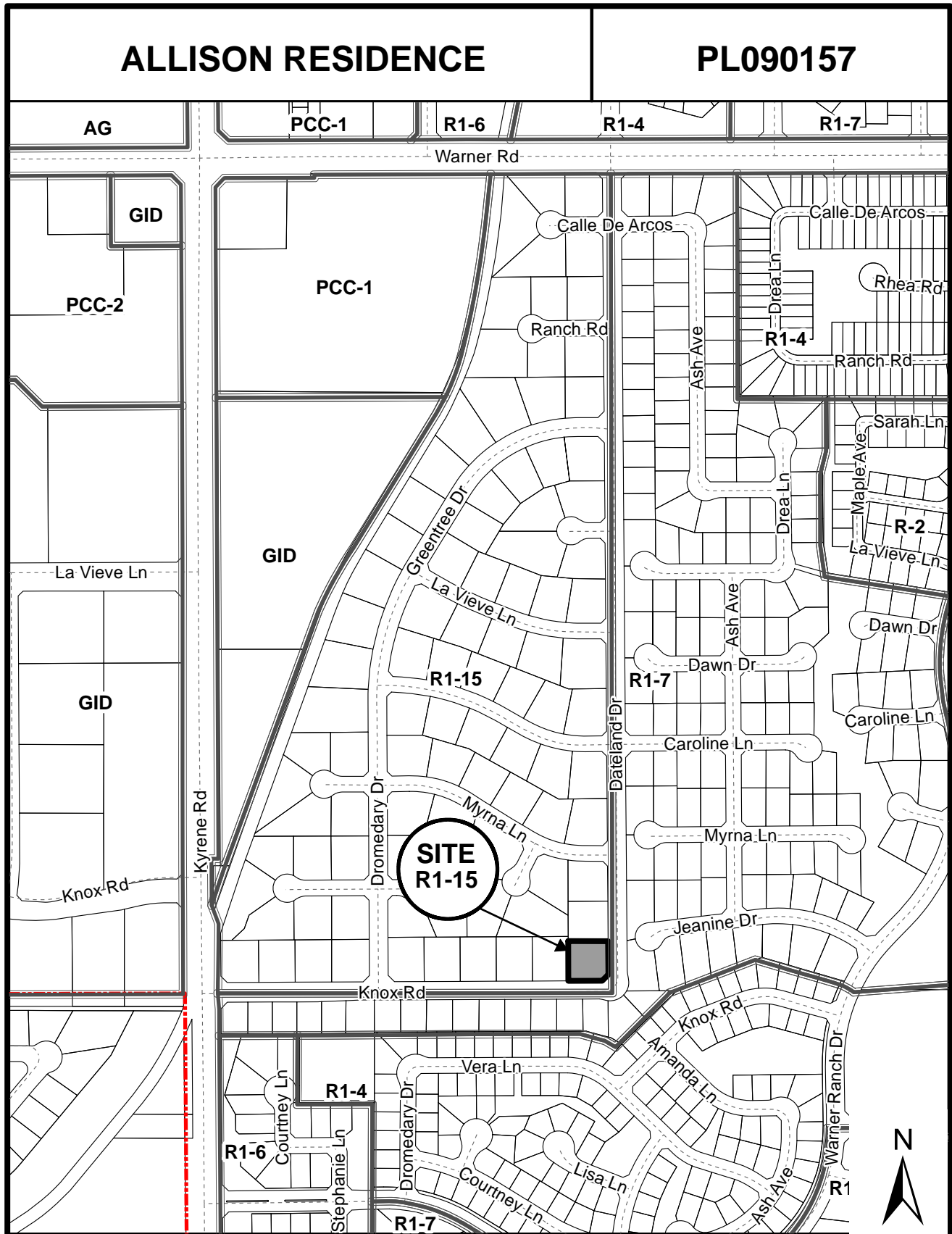
DESCRIPTION:

Owner – James Allison
Applicant – James Allison
Existing Zoning – R1-15, Single Family Residential District
Existing Lot Size-16,139 s.f.
Proposed Accessory Building- 1000 s.f.
Existing Street side yard setback- 30'
Proposed street side yard setback—~~20'~~ 24'
Existing rear yard setback- 30'
Proposed rear yard setback—~~8'~~ 12'

**ZONING AND
DEVELOPMENT**

CODE REFERENCE:

Part 3, Chapter 1, Section 3-102 – Permitted Uses in Residential Districts
Part 3, Chapter 4, Section 3-401 – Accessory Buildings, Uses and Structures
Part 4, Chapter 2, Section 4-202 – Single Family Development Standards
Part 6, Chapter 3, Section 6-309- Variances



Location Map



ALLISON RESIDENCE (PL090157)

Jim & Gail Allison
9338 S. Dateland Drive
Tempe AZ, 85284
(480) 656-7974
jimngail@cableone.net

April 29, 2009

Project: New garage
9338 S. Dateland Drive
Tempe AZ, 85284

Letter of Explanation

Request: To construct a detached garage and come within 8 ft of the rear property line where 30 ft set back is required.

A. There are special circumstances or conditions applying to the land, building or use referred to in the application.

The special circumstances are that even though the lot is over 1/3 acre under the R1-15 zoning the only garage that could be constructed in compliance would be less than 10 ft wide and 32 ft long.

B. That authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights.

The construction of this building will allow for concealed parking of autos and trailers that would otherwise would be parked in the same area, and would not be concealed and therefore an annoyance to the neighborhood.

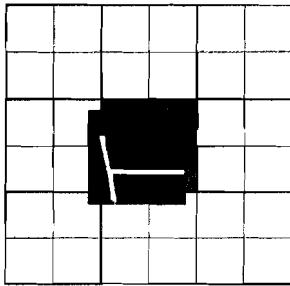
C. That authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or the public welfare in general.

As stated previously the project will enhance the property as well as the neighborhood.

D. Make any changes in the uses and densities permitted in any zoning classification or zoning district.

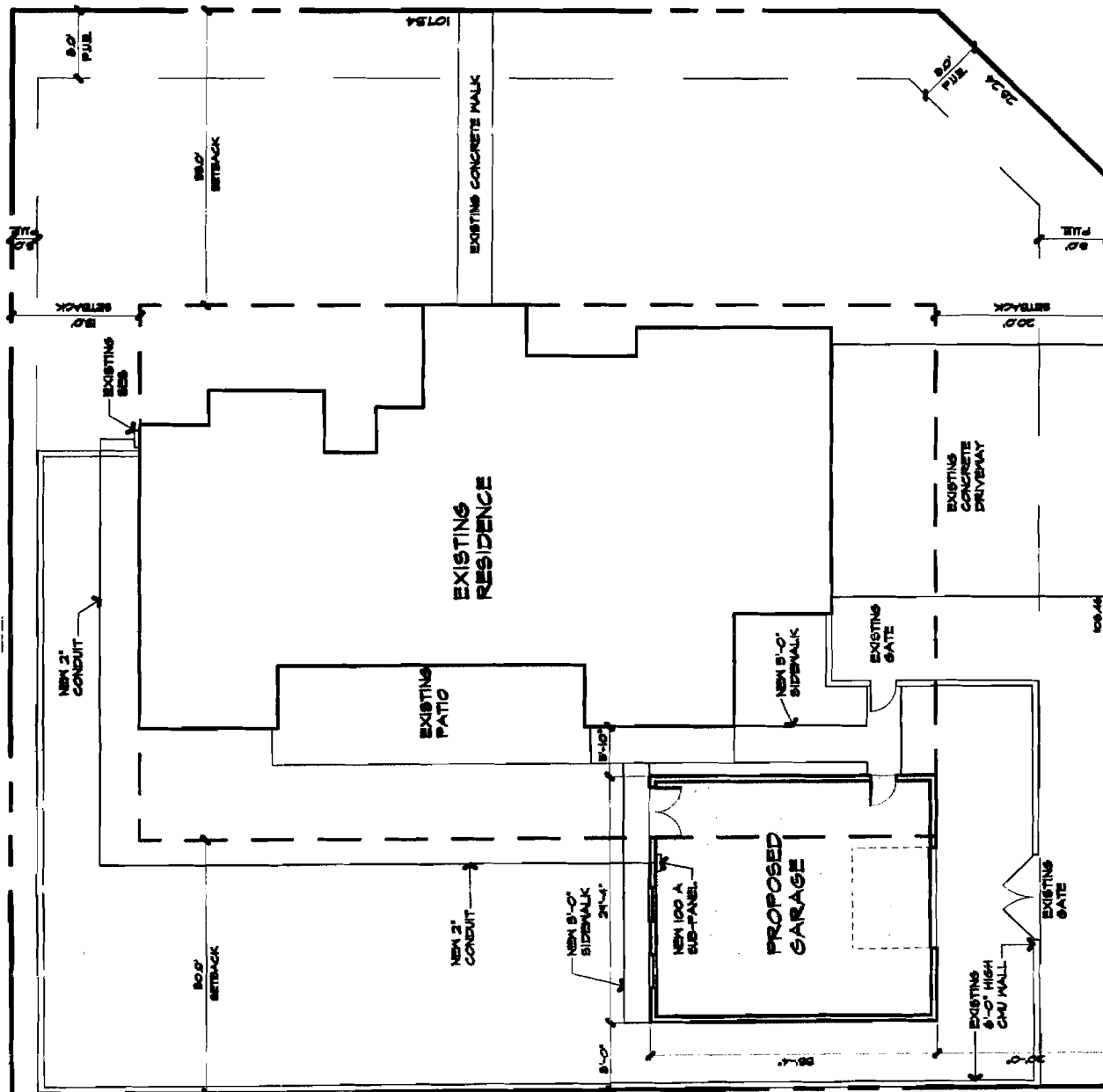
Adding the garage will not make any changes in the uses or densities permitted in this zoning district.

TAYLOR
ARCHITECTS



118 South Pleasant Street
Prescott, Arizona 86303
Phone 928-445-0828
Fax 928-445-6810
Date 4/28/2009
Job No.
Revisions

DATELAND DRIVE



KNOX ROAD

SITE PLAN

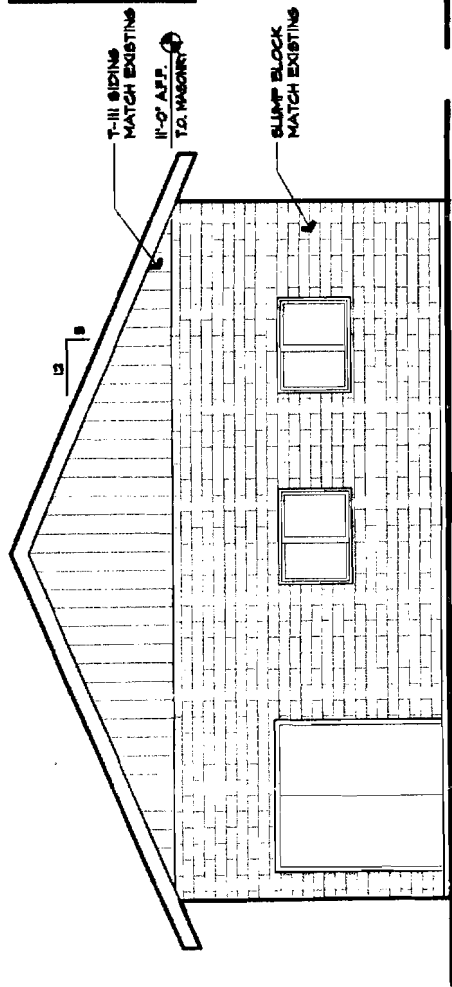
SCALE: 1" = 20'

A NEW GARAGE FOR

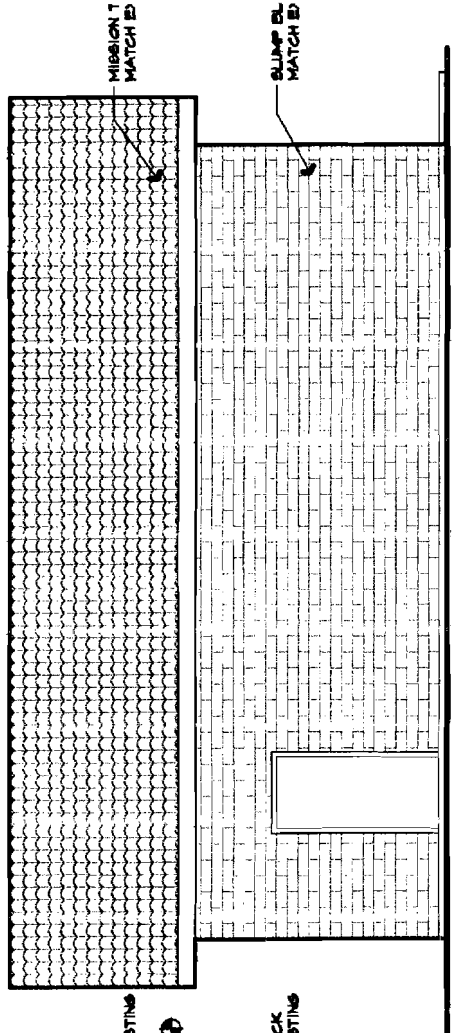
JIM AND GAIL ALLISON

4338 S. DATELAND DRIVE,

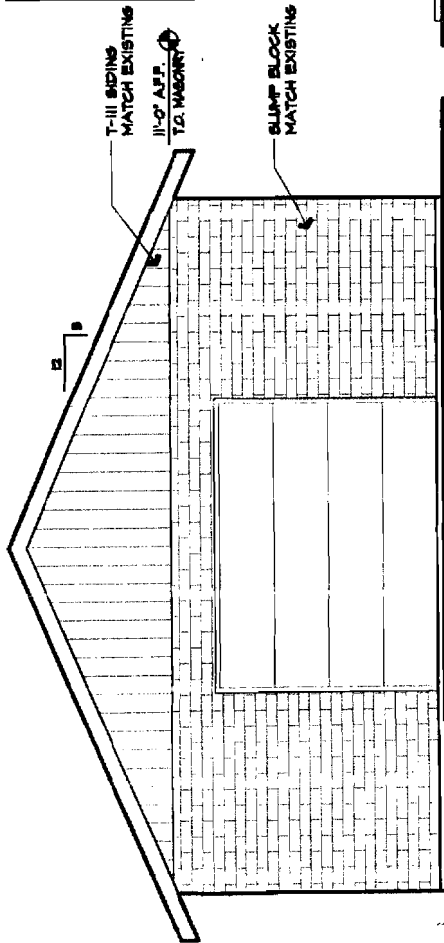
TEMPE, AZ



NORTH ELEVATION
SCALE: 1/8" = 1'-0"

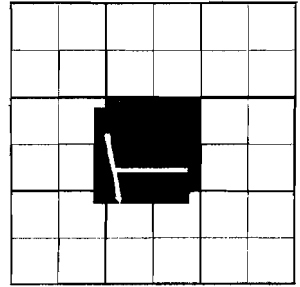


EAST ELEVATION
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

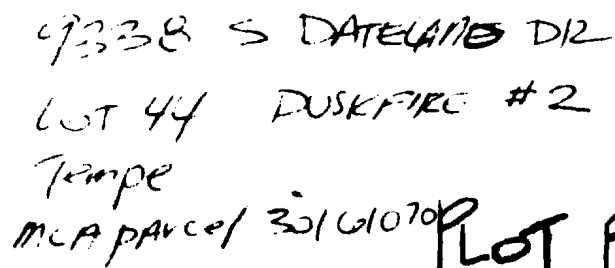
WEST ELEVATION
SCALE: 1/8" = 1'-0"



TAYLOR
ARCHITECTS

118 South Pleasant Street
Prescott, Arizona 86303
Phone 928-445-0626
Fax 928-445-0610
Date 4/28/2009
Job No.
Revisions

A NEW GARAGE FOR
JIM AND GAIL ALLISON
4330 S. DATELAND DRIVE, TEMPE, AZ



 NORTH

ATTACHMENT 6

Lesser, Sherri

From: Jim & Gail Allison [jimngail@cableone.net]

Sent: Thursday, May 28, 2009 8:17 AM

To: Lesser, Sherri

Subject: Neighborhood Meeting Summary

Sherri: The required neighborhood meeting was conducted Saturday May 16th at 3:00 PM. The owners of eleven properties attended. Site plans and elevations were viewed, and the proposed garage was staked out in the back yard so people could see exactly where the building would be placed. Responses were generally favorable. Four owners were very positive, four didn't express opinions and three had concerns. The concerns were as follows: One owner was opposed to building a garage on the lot because "once you let one garage be built then everyone will want one". Two were concerned about the 20 foot set back not aligning with the rest of the houses on the street. A sign sheet was used, if you would like a copy I could fax it to you.

Jim Allison
9338 S. Dateland Drive
Tempe, Az 86304
928-778-4766
Cell 928-899-0796

05/29/2009

ATTACHMENT 7

**GOOD AFTERNOON, COUNCIL.
THANK YOU FOR YOUR TIME THIS AFTERNOON.
MY NAME IS TOM REYNOLDS.
I HAVE LIVED IN TEMPE FOR 25 YEARS; 20 YEARS
AT 216 W KNOX RD AND 5 YEARS ON FOREST AV ALSO
IN TEMPE.
THIS IS IN REGARDS TO THE PROPOSED GARAGE AT
9338 S DATELAND; CASE NUMBER PL090157.
QUIET ENJOYMENT OF MY PROPERTY.
I WANT TO BE CLEAR WE IN THE NEIGHBORHOOD DO
NOT WANT A GARAGE ON THIS PROPOSED SITE.
WHEN I LOOK OUT OF MY 2 FRONT BEDROOMS AND
MY FRONT LIVING ROOM WINDOW I WILL BE SEEING
THIS GARAGE.
CAN YOU PLEASE ASK MR. ALLISON TO PUT HIS
GARAGE TO THE REAR OF HIS PROPERTY NOT THE
FRONT OF HIS PROPERTY.
AS A GOOD NEIGHBOR I WILL PAY MR. ALLISON
\$500.00 FOR NEW SOD IN HIS BACKYARD.
MR. ALLISON IS JUST THINKING OF HIMSELF NOT THE
GOOD OF NEIGHBORHOOD.
THE SOLUTION IS TO PUT THE GARAGE IN THE REAR
OF HIS PROPERTY.
IN SUMMARIZING:
1. THE VIEW
2. GARAGE IS TOO HIGH.
3. ALMOST IN MY FRONT YARD.
4. CANNOT SEE CORNER FROM ALL OF MY FRONT
WINDOWS IN THE FRONT OF MY HOUSE.
5. PROPERTY VALUE GOING DOWN.
6. EYE SORE WHEN YOU TURN THE CORNER FROM
DATELAND ONTO KNOX RD. IT WOULD BE A DRIVING
HAZARD WHEN TURNING THE CORNER GOING SOUTH
ON DATELAND TURNING ONTO KNOX. ALSO WOULD
BE A HAZARD TURNING FROM KNOX RD TO
DATELAND.
I ALSO HAVE PICTURES TO SHOW YOU AND AGAIN
THANK YOU FOR YOUR TIME.**

Lesser, Sherri

From: John L. Rucker, MAI [rucker@viewptgroup.com]
Sent: Monday, June 01, 2009 11:50 AM
To: Lesser, Sherri
Subject: PL090157 Allison Residence Variance Request

Hi Sherri,

I enjoyed speaking with you about the Allison variance request this morning. As I mentioned, I own a residence at 221 W. Knox Road about four lots away from this property and in direct view of the back of property. As we discussed, the placement of the house is unusual in that about five houses faces or have views of the Allison rear yard. The size and placement of a large structure in a relatively open back yard in plain view would be of great concern.

I am looking at this issue, both as a nearby homeowner, but also from the perspective of a commercial and residential real estate appraiser with over 25 years of experience. I believe the Allison request to be highly unusual, noting that the homeowner is requesting a variance to both the rear yard and side yard setbacks. For a homeowner to receive approval, I think there has to be some evidence that there would be no harm or reduction in value to the nearby homes.

I was initially against any variances being allowed for this property, but after speaking with you, I understand your point about the rear yard setback. I took a look at the aerials and the placement of the Allison and Reynolds residences on their respective properties. I am requesting that the city enforce the 30 foot setback from Knox Road, which would coincide with a front setback if the house were facing Knox Road. All of the homes along the north side of Knox meet the 30 foot setback. A structure encroaching into the 30 foot setback area, especially on such an unusual corner lot, would literally "stick out like a sore thumb", and would reduce the visual appeal of the homes on our street. I am against the city even conceding to a 25 foot setback from Knox.

A 15 foot rear yard setback from the west property boundary, which would coincide with a side yard setback of 15 feet, if the house were to face Knox, seems reasonable, as long as the 30 foot setback is enforced. If any additional concession were to be made, I would prefer that the 30 foot Knox Road setback be enforced first. I don't think it would be reasonable, however, to allow a reduction of the rear yard setback to less than 12 feet.

Thank you for speaking with me and considering my concerns. Please confirm via e-mail that you received this correspondence.

Thanks,

John L. Rucker, MAI
Vice President
Lefevers Viewpoint Group, Inc.
2048 North 44th Street, Suite 100
Phoenix, Arizona 85008
(602) 956-1988, xt. 30
rucker@viewptgroup.com

06/01/2009

ATTACHMENT 9

Lesser, Sherri

From: Dawn [dbulriss@cox.net]
Sent: Thursday, June 25, 2009 1:58 PM
To: Lesser, Sherri
Cc: Hort, Jan
Subject: Objection to Case # PL090157, Allison Residence, hearing date 7/7/09

To: City of Tempe Planning Board and Hearing Officer

From: Randy and Dawn Bulriss
 9326 S. Dateland Drive, Tempe, AZ 85284 (Land Parcel #301-61-071)

Re: Case # PL090157, Allison Residence, 9338 S. Dateland Drive (Land Parcel #301-61-070)

Hearing Date currently scheduled for Tuesday, July 7, 2009 (case continued from 6/2/09)

We have resided in our current residence in Duskfire II for almost 13 years now. Our house is next door to the North side of the Allison residence. We recently saw the plans for the garage that is being planned. Although we are not in any way opposed to a small additional storage building, or even the addition of another bay to the existing 3 car garage, we have significant concerns over the garage that is currently planned. It is simply too large and will take up too much of the back yard with "unlivable" square footage to be seen as adding value to the lot or neighborhood. Future demand for this property will be impacted negatively by the reduction in the yard size as a result of such a large storage building/garage, as well as a smaller pool of buyers who would want a property with a separate garage building beyond the already large 3-car garage. Even though a building can increase the value of a property, we believe that this will be more than offset by the reduction in future interested buyers, resulting in a loss of value that will impact the entire neighborhood.

Additionally, we believe that an additional building placed where requested will crowd the neighbors to the west and will detract from the current look and feel of the neighborhood and will not be compatible with the residential nature of our development.

We love this semi-custom neighborhood and only want the best for our neighbors. We recently completed a very large remodeling and home expansion, which included shipping roof tiles from Washington and having them hand-painted in order to retain a natural consistent feel to our home and neighborhood. Therefore, keeping home values up in this decreasing economy is a very real concern to us. We believe that there are better approaches for adding the storage space desired by the homeowners and would like to see other options, such as remodeling/enlarging the existing garage thoroughly researched, rather than approving the current variance request and use permit.

Please deny these requests (ZUP09070, VAR09004, and VAR09009) for the good of the neighborhood.

In summary, our concerns are:

- 1) Negative impact to property values due to fewer buyers interested in lot with 1/3 back yard replaced by significantly excessive garage space.**
- 2) Change to low density neighborhood look and feel by overcrowding lot directly west.**

Sincerely,
Randy and Dawn Bulriss



ALLISON RESIDENCE

9338 SOUTH DATELAND DRIVE

PL090157

FRONT OF RESIDENCE





ALLISON RESIDENCE

9338 SOUTH DATELAND DRIVE

PL090157

REAR YARD



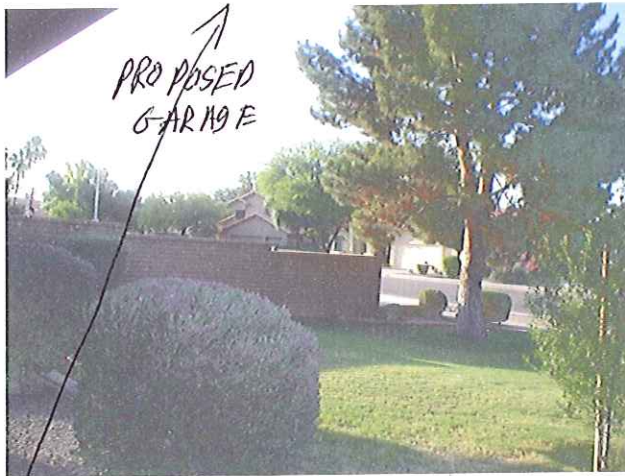
FRONT OF HOUSE 216 W. KNOT



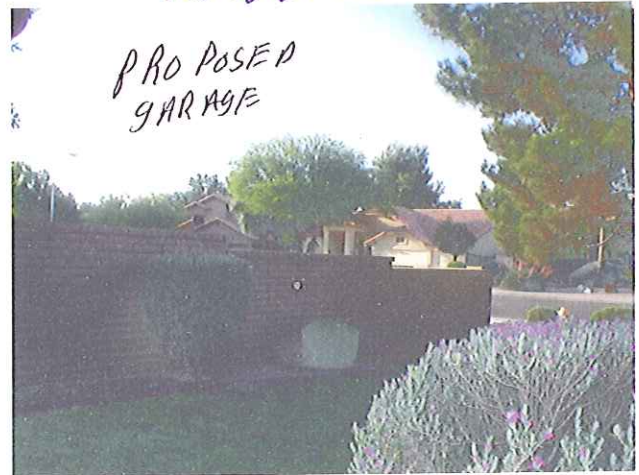
FRONT OF HOUSE 216 W. KNOT



900 sq ft Garage



900 sq ft Garage





1ST BED ROOM



2ND Bedroom



DISTORTED VIEW
1ST Bedroom



DISTORTED VIEW
2ND BED ROOM

TOM REYNOLDS HOUSE
AT 216 W. KNOT RD.
TEMPE AZ 85284

NEXT DOOR TO PROPOSED GARAGE
AT 9338 DATELAND DRIVE.



PROPOSED
GARAGE



TOM REYNOLDS
216 W. KNOX
TEMPE AZ 85284

I LIVE NEXT

DOOR TO 9338 S. PATELAND
DRIVE

TEMPE ARIZ
85284

WILL NOT

LOOK GOOD

FOR THE

NEIGHBORHOOD

IT WILL MAKE
THE VALUE OF
MY HOUSE GO DOWN.
IT IS DOWN FAR
ENOUGH AS IT IS.

MR. ALLISON'S BACK YARD
GARAGE CAN GO HERE



MR. ALLISON'S BACK YARD
GARAGE CAN GO HERE



FRONT OF PROPOSED GARAGE



FRONT OF PROPOSED GARAGE

TOM REYNOLDS
FRONT OF MY HOUSE 216 W KNOX



HAZARD DRIVING DOWN KNOX



Development Services
Department

(480) 350-8331 (Phone)

July 10, 2009

Mr. James Allison
9338 South Dateland Drive
Tempe, Arizona 85284

**RE: ALLISON RESIDENCE
PL090157 / ZUP09070 / VAR09004 / VAR09009**

Dear Mr. Allison:

You are hereby advised that at the hearing held July 7, 2009, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request by the **ALLISON RESIDENCE (PL090157)** (James Allison, applicant/property owner) located at 9338 South Dateland Drive in the R1-15, Single Family Residential District for:

ZUP09070 Use permit to allow a detached accessory building (garage).

VAR09004 Variance to reduce the rear yard setback from thirty (30) feet to ~~eight (8)~~ **fifteen (15)** feet.
MODIFIED BY HEARING OFFICER

VAR09009 Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to ~~twenty (20)~~ **twenty-seven (27)** feet. **MODIFIED BY HEARING OFFICER**

Mr. Williams approved PL090157/ ZUP09070 and modified VAR09004 / VAR09009 subject to the following conditions of approval:

1. Provide a set of plans for the file with site data listing the height of existing dwelling and the proposed accessory building. The height of accessory building not to exceed the height of the existing residence.
2. The rear yard setback variance to be modified to fifteen (15) foot setback minimum.
3. The street side yard setback variance to be modified to a twenty-seven (27) foot setback minimum.
4. Obtain all necessary permits and clearances from the Building Safety Division.
5. The accessory building to match the existing residence in color and material.

Any appeal of the Hearing Officer's decision on a variance must be made within fourteen (14) days of the hearing. You have until **July 21, 2009** to file a formal appeal **in writing** to the Board of Adjustment if you so desire. Should you decide to submit this written appeal, the appropriate fee will be charged. Any existing condition for which a variance was denied must be corrected to comply with the Zoning and Development Code.

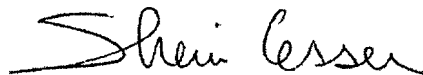
Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with. If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer. You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

If you have any questions please contact me at (480) 350-8486.

Sincerely,

A handwritten signature in black ink that reads "Sherri Lesser". The signature is fluid and cursive, with the first name "Sherri" and last name "Lesser" clearly distinguishable.

Sherri Lesser
Senior Planner

SL/dm

cc: File

Mr. Ward explained that the need for the additional tower was due to increasing coverage needs/capacity requirements in the area and surrounding locations. The existing site cannot handle the increasing capacity needs.

Mr. Williams stated that there was enough distance to buffer the cell phone tower from the residents as it is 270 ft. away from the nearest neighborhood.

DECISION:

Mr. Williams approved PL090005/ZUP09062 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. Landscape planter to be installed along north side of enclosure, to enhance landscape around the perimeter of the enclosure. Details to be reviewed and approved during Building Safety plan review.
3. The new lights fixtures for the access gates shall be full cut off, dark sky compliant. Light fixture cut sheets shall be reviewed and approved during building safety plan review.
4. The monopalm shall be no greater than 60'-0" (T-Mobile height of 58') in height (to the top of the monopalm fronds) as per plans submitted with this request.
5. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
6. The wireless device shall be removed within 30 days of discontinuance of use.

-
5. Request by the **ALLISON RESIDENCE (PL090157)** (James Allison, applicant/property owner) located at 9338 South Dateland Drive in the R1-15, Single Family Residential District for:

ZUP09070 Use permit to allow a detached accessory building (garage).

VAR09004 Variance to reduce the rear yard setback from thirty (30) feet to ~~eight (8)~~ **fifteen (15)** feet.

MODIFIED BY HEARING OFFICER

VAR09009 Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to ~~twenty (20)~~ **twenty-seven (27)** feet. **MODIFIED BY HEARING OFFICER**

Mr. James Allison was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that additional public input had been received since the staff report had been issued in opposition in the form of one (1) phone call and one (1) e-mail. A letter of support had been received also. She noted that the request as originally advertised was modified to include the additional variance due to setback issues related to a key lot and re-advertised.

Mr. Allison stated that they had purchased the house in March 2009. His research revealed that there were three (3) key lots in the neighborhood – two (2) other key lots in addition to his own. Previous variance(s) had allowed a reduction in the setback from thirty (30) feet to twenty (20) feet and from thirty (30) feet to twenty-one (21) feet at these other locations. He presented photographs, location maps and related information pertinent to his request as to what was existing at other neighboring properties in comparison to his request. He felt that staff was holding him to a higher standard than that was allowed on these other properties.

Ms. Lesser explained that there had been earlier versions of the Zoning and Development Code that had different restrictions and guidelines than what was currently required by the present code and that may have affected those earlier setbacks that were granted.

Mr. Tom Reynolds, stated that he lived next door and also had a key lot. He was opposed to this request as it would affect the enjoyment of his property due to noise and other factors. He stated that Mr. Allison had informed him that he had \$10,000 worth of car parts which Mr. Reynolds was concerned might be involved in a resale venture in this proposed garage. The proposed garage is too high and would adversely affect his property values as well as involve safety issues, said Mr. Reynolds.

Mr. Steve Shidt, nearby resident of Mr. Allison, stated that he purchased his property in 1987 and had selected the neighborhood because it was a custom neighborhood with wide open streets. He opposes this request for a reduction in setback from thirty (30) feet because it would take away from the neighborhood. The existing setback examples in the neighborhood presented by Mr. Allison are camouflaged by trees and landscaping and one would not know that they existed, said Mr. Shidt. Due to their location, the garage structures on other properties depicted by Mr. Allison, were not nearly as obstructive due to their location (near a canal, etc.) as this one which juts out into the street.

Ms. Karen Martin, resident that lives directly across this property on Knox Road and supports this request. She and her husband supports this request and does not find the proposed structure detrimental to the neighborhood property values as it will be the same style and materials as the house. They do not feel that there would be a driving hazard as there is already an existing driveway between the structure and the corner – there is an existing attached garage on the south side of this house.

Ms. Dawn Bullriss stated that she is a neighbor to the north and has lived in the area for fifteen (15) years. While she can understand the need for additional space, her concern was for the size of the proposed structure which would substantially reduce the yard space. This would affect future property buyers and home values. The neighborhood is based on large lots and spaces between the homes, if the setbacks are not maintained a precedent for crowding the homes could occur. She asked if the applicant had considered expanding the existing garage(s) or reconfiguring the existing garage space. Regarding safety concerns, she noted that a very serious accident had occurred on the corner when a vehicle was traveling too fast and smashed into the block wall – entering and departing the proposed structure would add to the existing safety hazards. She is opposed to this request.

Mr. Evan Curtis, neighboring resident, is opposed to these request(s) and the proposed placement of this garage and setbacks.

Mr. Williams explained that the purposes of variances are to bring properties onto equal footing with other properties but not to grant special privilege. He noted that he is aware of the placement of the lot and the restriction that it places on structure(s).

Mr. Williams questioned staff as to whether the height of the proposed garage meet code requirements and the height of the house. Ms. Lesser responded that she has requested that the applicant specify the height of the garage and the height of the house when they submit their plans for a building permit and that it matches the height of the house. The plans as submitted with this request, do not specify the height of the existing house.

Mr. Allison was questioned as to the height of the existing structure (i.e. home). He stated that he estimated that it was sixteen (16) feet and that he would not be opposed to lowering the height of the proposed garage if necessary to match the existing home. He stated that the pitch of the roof would match that of the existing structure.

Mr. Williams explained that this was a large structure and that he was concerned over how it would fit with the character of the neighborhood with the original design and layout of the subdivision.

Mr. Williams stated that he would approve the use permit as requested and approve modified variance(s) in accordance with staff recommendations as follows:

VAR09004 Variance to reduce the rear yard setback from thirty (30) feet to ~~eight (8)~~ **fifteen (15)** feet.
MODIFIED BY HEARING OFFICER

VAR09009 Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to ~~twenty (20)~~ **twenty-seven (27)** feet. **MODIFIED BY HEARING OFFICER**

DECISION:

Mr. Williams approved PL090157/ ZUP09070 and modified VAR09004 / VAR09009 subject to the following conditions of approval:

1. Provide a set of plans for the file with site data listing the height of existing dwelling and the proposed accessory building. The height of accessory building not to exceed the height of the existing residence.
2. The rear yard setback variance to be modified to fifteen (15) foot setback minimum.
3. The street side yard setback variance to be modified to a twenty-seven (27) foot setback minimum.
4. Obtain all necessary permits and clearances from the Building Safety Division.
5. The accessory building to match the existing residence in color and material.

-
6. Request by the **HANSON RESIDENCE (PL090184)** (Robert Hanson, applicant/property owner) located at 6694 South Rockford Drive in the R1-7, Single Family Residential District for:

ZUP09092 Use permit to allow an accessory building (workshop).

Mr. Robert Hanson was present to represent this case. He noted that this would not be a business but just for his own personal use.

Derek Partridge, staff planner, gave an overview of this case and stated that one e-mail of inquiry had been received regarding the possible noise factor of this 650 s.f. structure which will be used for woodworking.

DECISION:

Mr. Williams approved PL090184/ZUP09092 subject to the following conditions of approval:

1. Obtain necessary clearances from the Building Safety Division.
2. The use permit is valid for the plans as submitted to the Hearing Officer.

-
7. Request by the **SMITHERAN RESIDENCE (PL090189)** (Eric Stadtmiller, applicant; John Smitheran, property owner) located at 335 East Loma Vista Drive in the R1-6, Single Family Residential District for:

ZUP09091 Use permit to park in the front yard setback.

Mr. Eric Stadtmiller was present to represent this case.

Steve Abrahamson, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. The applicant wants to create livable space out of the existing garage area to house an assistant/caregiver for health issues.

Ms. Liz Welch, neighbor to the south, has a concern over the parking which might create a cluster of cars and not be visibly attractive. She suggested that it should be located off of the alley. She stated that she had spoken with many of the neighbors and no one, including her, had any objection to the basic concept of this use permit request.

Mr. Williams stated that this is a beautifully maintained property and that the design of the neighborhood is intact as it was originally planned/built – there are virtually no carports enclosed for living space. For this reason he cannot support this request as presented as it does not support the neighborhood as a whole.

DECISION:

Mr. Williams denied PL090189/ZUP09091.

Jim & Gail Allison
9338 S. Dateland Drive
Tempe AZ, 85284
(480) 656-7974
928-899-0796 cell

*Rec'd 7/10/09
am*

Ms. Sherri Lesser
Senior Planner
Development Services Department
City of Tempe

July 9, 2009

Request to Appeal to the Board of Adjustment (PL090157)

We respectfully request that our case to be referred to the Board of Adjustment for their further consideration. We have carefully listened to the input from our neighbors, and the city planning staff and want to submit a revised plan for our project. Our request will reflect the following changes from the original submission.

- A 24% reduction in the size of the proposed building, from the initially requested 33 feet 4 inches by 29 feet 4 inches (977 sq. ft.), to 29 feet 4 inches by 25 feet 4 inches (725 sq. ft.).
- A reduction of 4 feet to the initially requested south street side yard setback (from 20 ft. to 24 ft.). This would make the request fall within the Use Permit Standard, if applied. This would also make the request fall within 1 foot of a previous variance granted, but not used, by the subdivision developer (25 ft. setback).
- A reduction of 4 feet from the initially requested west rear yard setback (from 8 ft. to 12 ft.). This would make the request consistent with side yard setbacks established with the lots to the west, and the request fall within the use permit standard if applied.
- A reduction of 1 foot in wall height from 11 feet to 10 feet yielding the same finished wall height as the existing structure.

Development Services Department

7/21/2009

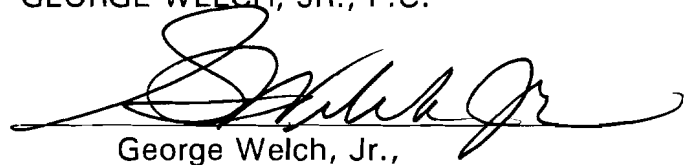
Page 2 _____

It should be pointed out that the Allison request is obviously not based upon any undue hardship, emergency need or other harm that might interfere with the continued comfortable use and enjoyment of the property, there being a three-car garage in place, attached to the residence and being used in compliance with all setbacks.

The suggested modifications of the original Allison request, as provided in the Allison letter of July 9, 2009, requesting the appeal, are patently a mere cosmetic massage, in an effort to make an inherently bad idea seem more palatable.

Respectfully submitted.

GEORGE WELCH, JR., P.C.



George Welch, Jr.,

Development Services
Department

(480) 350-8331 (Phone)

July 13, 2009

Mr. James Allison
9338 South Dateland Drive
Tempe, Arizona 85284

RE: ALLISON RESIDENCE PL090157
VAR09001 – Appeal of July 7, 2009 Hearing Officer decision to modify VAR09004
VAR09002 - Appeal of July 7, 2009 Hearing Officer decision to modify VAR09009

Dear Mr. Allison:

You are hereby advised that your request to appeal the Hearing Officer's decision of July 7, 2009 to modify your variances as follows has been received:

The request by the **ALLISON RESIDENCE (PL090157)** (James Allison, applicant/property owner) located at 9338 South Dateland Drive in the R1-15, Single Family Residential District for:

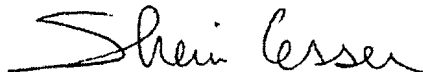
VAR09004 Variance to reduce the rear yard setback from thirty (30) feet to eight (8) ~~feet~~ **fifteen (15) feet.**
MODIFIED BY HEARING OFFICER

VAR09009 Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to ~~twenty (20)~~ **twenty-seven (27) feet. MODIFIED BY HEARING OFFICER**

This appeal is scheduled to be heard by the Board of Adjustment on **August 26, 2009**. Please plan to attend that hearing which will be heard at Council Chambers, 31 East 5th Street at **6:00 PM**.

If you have any questions please contact me at (480) 350-8486.

Sincerely,

A handwritten signature in black ink that reads 'Sherri Lesser'.

Sherri Lesser
Senior Planner

SL/dm

cc: File

Law Offices
GEORGE WELCH, JR., P.C.
6957 East Lafayette Boulevard
Scottsdale, Arizona 85251
(480) 994-4345 Fax (480) 990-1304

July 21, 2009

Development Services Department
City of Tempe, AZ
31 East Fifth Street
Tempe, AZ 85281

Attn: Sherri Lesser, Senior Planner

Re: Allison Request for Variance (PL 090157)
Property: 9338 South Dateland Dr.
Tempe, AZ 85284

This firm has been consulted by Tom and Tammy Reynolds who reside at 216 West Knox Rd., Tempe, AZ, 85284, the residence next door to the West of the Allison property listed above, for the purpose of representing them at any further hearings in connection with the above request. Reference is made to the ruling of the Hearing Officer, July 7, 2009, granting a variance in the reduction of building setbacks on the Allison property. Request is hereby made that the ruling be referred to the Board of Adjustment for a reconsideration and denial of any reductions in the existing setbacks, so as to allow the construction of a detached building within what has been an open area on a single family residential lot.

It should be noted that the original developer of the subdivision, provided for the existing 30' setbacks, within these two "key" lots, in view of the strategic location of the same at or near the corner of these two intersecting streets, as a complement to the entire area, in an effort to preserve the architectural compatibility and beauty, comfortable use by the residents, as well as the ambience and safety in connection therewith.

Any reduction in these setbacks would violate the integrity of the entire subdivision and would serve no end but to allow the negative effects of the construction which is planned, which would affect the entire neighborhood.

Jim and Gail Allison

Ms. Sherri Lesser

July 10, 2009

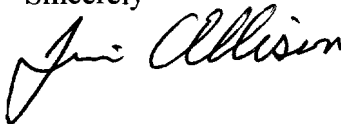
Page 2

- A reduction in roof pitch from 5 /12 to 4/12, lowering the roof height approximately 22 inches, and yielding a roof height of approximately 15 feet. This would be 5 feet lower than the existing house roof.
- A change in roof design from gable to hip, softening and giving a richer look to the roof on both the north and south ends of the building.

A site plan and elevations reflecting these changes will be forward to the Development Services Department as soon as our architectural firm completes them.

Thank you for your consideration of our request.

Sincerely

A handwritten signature in black ink, appearing to read "Jim Allison". The signature is fluid and cursive, with the first name "Jim" and last name "Allison" clearly distinguishable.

Jim and Gail Allison

rec'd 7/10/09
pm

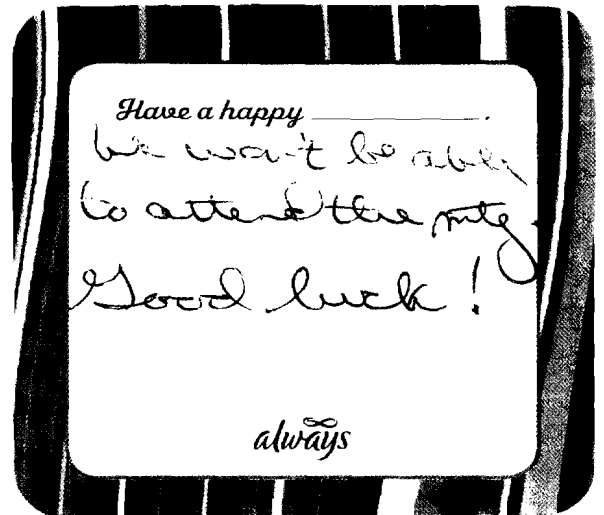
City of Tempe
Board of Adjustment
July 7, 2009

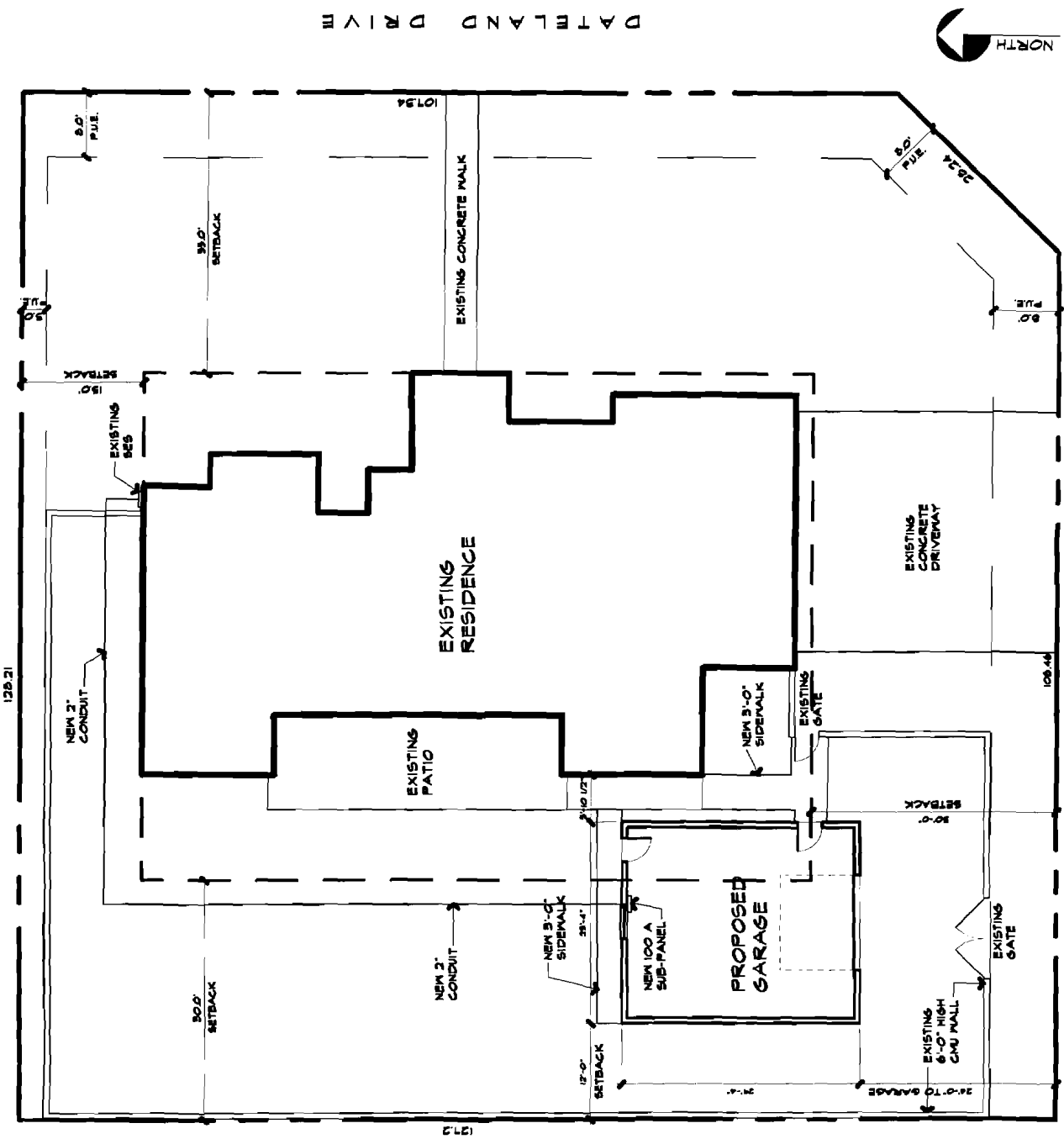
We support Jim and Gail Allison's plans to construct a free-standing garage on their property at 9338 S. Dateland Drive, Tempe. The construction would increase their property value and the property values in the neighborhood.

Jim & Joyce ONEY

Jim & Joyce Oney

233 W. MYRNA LN.
Tempe, AZ 85284





DATELAND DRIVE

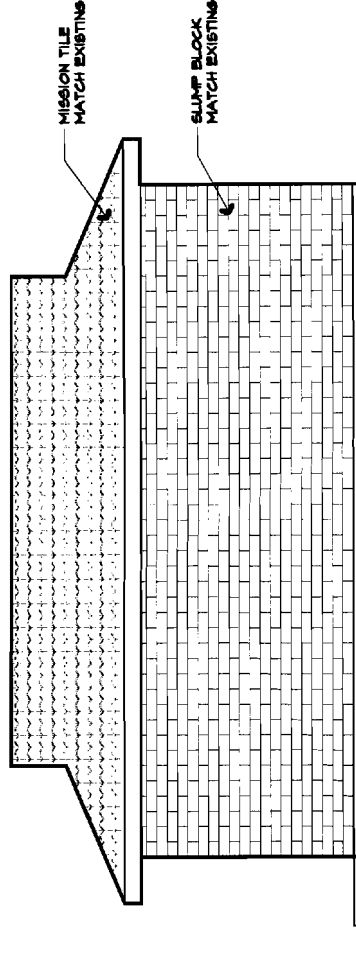
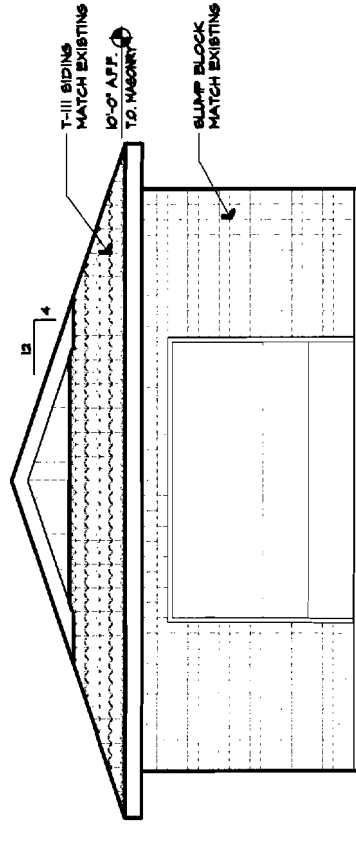
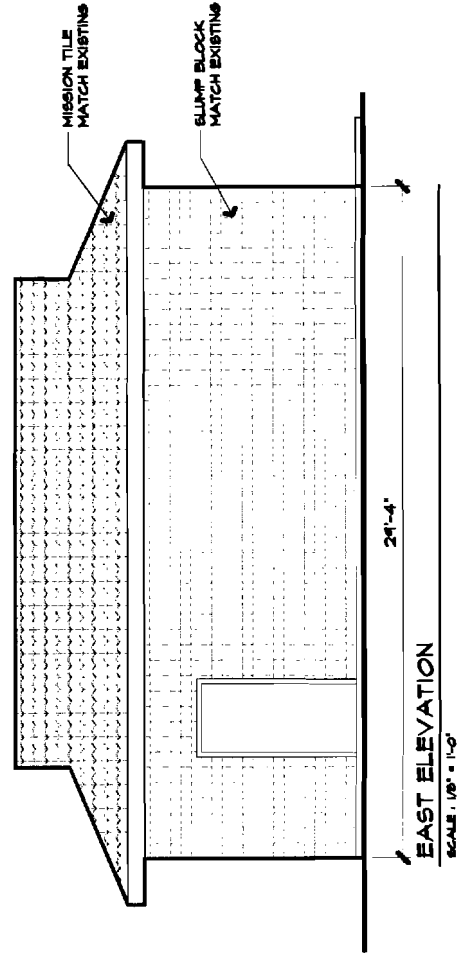
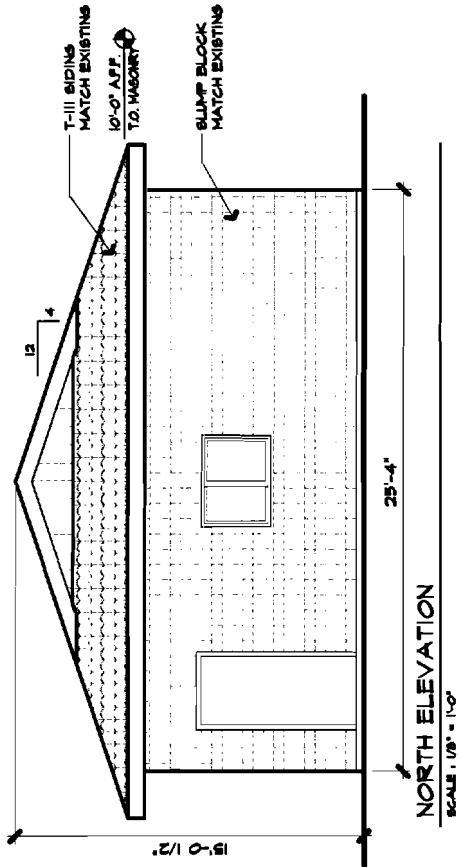


KNOX ROAD

SITE PLAN

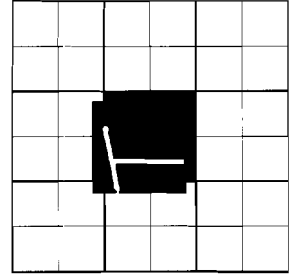
SCALE - 1" = 20'

Received 2/17/09



A NEW GARAGE FOR
JIM AND GAIL ALLISON
9338 S. DATELAND DRIVE, TEMPE, AZ

118 South Pleasant Street
Prescott, Arizona 86303
Phone 928 445 0626
Fax 928 445 6810
Date 7/17/2009
Job No. ☐
Revisions ☐



TAYLOR
ARCHITECTS

Received 7/17/09