

# Staff Summary Report



Board of Adjustment Hearing Date: February 27, 2008

Agenda Item Number: 3

**SUBJECT:** This is a public hearing for an appeal by the **KERBER RESIDENCE (PL070497)** located at 401 East Hermosa Circle of the February 5, 2008 Hearing Officer's decision to deny two (2) variances.

**DOCUMENT NAME:** 20080227dsac01

**PLANNED DEVELOPMENT (0406)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** Hold a public hearing for an appeal by the **KERBER RESIDENCE (PL070497 -VRA08002 - VRA08003)** (Gregory Kerber, applicant/property owner) located at 401 East Hermosa Circle in the R1-6, Single Family Residential District of the February 5, 2008 Hearing Officer's decision to deny the following:

**VAR07030** Variance to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure

**VAR08002** Variance to reduce the west side yard setback from five feet (5') to three feet (3') for an open structure

**PREPARED BY:** Alan Como, Planner II (480-350-8439)

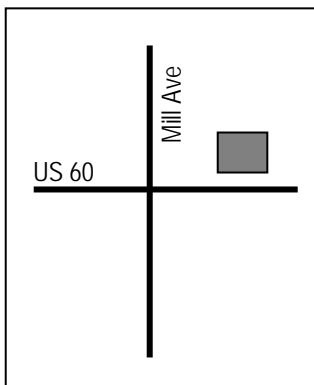
**REVIEWED BY:** Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff – Approval subject to Condition (1)

**ADDITIONAL INFO:** The Kerber residence is appealing the Hearing Officer's decision on February 5, 2008 to deny two (2) variances: a variance to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure, and a variance to reduce the west side yard setback from five feet (5') to three feet (3') for an open structure. The applicant has an enclosed garage (enclosed by previous owner) and intends to build a carport to cover the cars which will be parked in the driveway. Staff recommends approval of the variances as they meet the conditions set forth in the Tempe Zoning and Development Code.



**PAGES:**

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

**ATTACHMENTS:**

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Site plan
- 6-8. Elevations
9. Letter of Opposition
10. Letter of Support
11. Staff Photograph(s)

## COMMENTS:

The Kerber residence is requesting two variances, one to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure, and the second to reduce the west side yard setback from five feet (5') to three feet (3') for an open structure in order to build a carport in front of their house. The applicant's garage was enclosed and converted to livable space by the previous owner; therefore, the applicant has to park in the driveway rather than the garage. The lot has an irregular shape since it is located on a cul-de-sac; therefore, the lot narrows towards the front. Staff received one letter of opposition from a Tempe neighborhood association that is not near the applicant (Sunset/Riverside Association), and one letter of support from a resident that lives on the same cul-de-sac.

At the February 5, 2008 Hearing Officer meeting, Mr. Williams questioned the applicant regarding how long they have lived in this residence. Mrs. Kerber responded that they had lived there for thirty (30) years, and that the previous owners enclosed the garage for livable space. Mr. Williams also expressed concern over the proposed carport's compatibility with the surrounding neighborhood, as no other houses on the cul-de-sac have carports. Mr. Williams also expressed that he did not see a justification for approving the variances. He did, however, approve the use permit request to park in the front yard setback.

## Variance

The Zoning and Development Code requires a variance to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure and to reduce the side yard setback from five feet (5') to three feet (3') for an open structure in the R1-6, Single Family Residential District

Evaluating the variance, the proposal does appear to meet the criteria for approving the variance:

- a. There are special circumstances or conditions applying to the land, building, or use referred to in the application;
  - The applicant has indicated that the special circumstance is that the previous owner enclosed the garage and converted the garage into livable space, thereby not allowing cars to be parked in the garage. Additionally, the lot has an irregular shape; narrower at the front, making property lines closer to the proposed carport than if the house were situated on a square lot. Vehicles would not be able to be safely parked on the street since the property is located in a cul-de-sac.
- b. That authorizing the variance is necessary for the preservation and enjoyment of substantial property rights;
  - Reducing the setbacks for a proposed carport is necessary for enjoyment of substantial property rights as it would enable the property owners to park their vehicles in the driveway instead of the street.
- c. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
  - The owner has not created a self-imposed condition as the previous owner enclosed the garage and converted it to livable space, and the lot is oddly shaped, making it necessary to obtain a variance to build a carport.

The Zoning and Development Code was adopted in 2005 to allow open structures closer to the street, within the front yard setback, with the intent to foster a greater sense of community, bring a presence to the street and deter crime by increasing awareness of activity on the street. Staff is drafting an ordinance amendment to allow structures to further encroach into the setback through a use permit process. Since the adoption of the ZDC; similar variances have been granted for carport canopies over driveways.

## Conclusion

Staff recommends approval of the two variances to reduce required setbacks.

**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 within 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. Obtain all necessary clearances from the Building Safety Division.

**HISTORY & FACTS:**

October 25, 1999

The Hearing Officer granted the following variances for the property located at 1103 East Concorda Drive (similar request, approximately 1 mile to the northeast):

- A. Variance to reduce the required front yard setback from the street from 25' to 4'-0" for a new carport cover.
- B. Variance to reduce the required west side yard setback from 7' to 6'-3" for a new carport cover.
- C. Use permit to allow required parking to occupy the front yard setback.

February 5, 2007

The Hearing Officer approved ZUP07184 a use permit to park in the front yard setback; however, the Hearing Officer denied two variance requests for this property.

VAR07030 Variance to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure.

VAR08002 Variance to reduce the west side yard setback from five feet (5') to three feet (3') for an open structure.

**DESCRIPTION:**

Owner – Gergory Kerber  
Applicant – Gergory Kerber  
Existing Zoning – R1-6, Single Family Residential District  
Required front yard setback to open structure – 15'  
Proposed front yard setback to open structure – 7'  
Required side yard setback – 5'  
Proposed side yard setback to open structure – 3'

**ZONING AND  
DEVELOPMENT  
CODE REFERENCE:**

**Citations of Code Requiring Use Permit(s) & Variance(s):**

Zoning & Development Code:  
Part 4, Chapter 2, Section 4-202.  
Part 6, Chapter 3, Section 6-309





KERBER RESIDENCE (PL070497)

(2)

November 17, 2007

City of Tempe Permit Department  
RE: Letter of Explanation

We, Greg and Carole Kerber, ask the City of Tempe to allow a variance to include a carport, small porch and a wheelchair accessible side entrance to our residence. The reason for the carport is to keep our cars from the sun. The covered carport would also make the side door covered and wheelchair accessible. The front porch would be a nice sitting area and keep the sun off of our front door which faces east and the front porch cover would also protect our front window from the easterly sun. We also think it will add great curb appeal and value to our home as well as the homes around us.

We are specifically asking for a variance from the city's requirements to have a 7 foot setback from the property line to the face of the supporting column. Included is a rough draft, along with a letter from surrounding neighbors supporting the proposal.

Sincerely,

  
  
Gregory and Carole Kerber

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TEMPERATURE  
SERVICES DEPARTMENT

January 17, 2008

City of Tempe Permit Dept

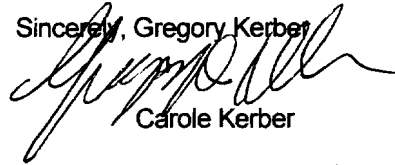
In addition to the previous letter of explanation dated Nov 12 2007, our special circumstances are that we do not have a traditional garage. The previous owners had converted the garage into a spare room. Since having to apply for this variance, we now know the reason why they left the garage doors intact. They didn't want a permit and until now we didn't know one was required. Therefore our cars have been taking a beating for the past thirty years.

The carport cover would also give shelter along the sidewalk to be covered for wheelchair access.

Due to the builders placement and because it is in a cul de sac, our house does not sit square on our property, leaving us with no buildable space that most of our neighbors have.

Also there are a few houses in the neighborhood which have additions or extensions on their driveways that are closer to the property lines than we are asking for. They are: 131 E Manhattan, 237 E LaJolla, 117 E LaJolla, and nearest to us at 307 E Hermosa Dr, who converted their garage into a room and built a patio in front of that, leaving no driveway. Therefore they park on the street.

Sincerely, Gregory Kerber



Carole Kerber



JAN 18 2008



# RESULTS OF SURVEY OF A PORTION OF LOT 662 NU-VISTA UNIT 8 BK 98 OF MAPS, PG 17 M.C.R.

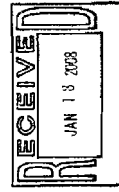
LEGEND	
○	FOUND
⊙	BRASS CAP FLUSH
○	IRON PIPE
⊕	BRASS CAP IN HAND HOLE
●	SET 1/2" REBAR OR NAIL WITH TAG
○	FOUND
⊙	REBAR
(M)	MEASURED
(R)	RECORDED
M.C.R.	MARICOPA COUNTY RECORDS
DOC	DOCUMENT
DKT	DOCKET
REC	RECORD
R/W	RIGHT OF WAY
B/C	BACK OF CURB
F/C	FACE OF CURB
S/W	SIDEWALK
BK	BOOK
PG	PAGE
CONC.	CONCRETE
PROPERTY	
CENTERLINE	
EASEMENT	

## NOTES

- 1) THE INTENT OF THIS SURVEY WAS TO SHOW THE FRONT OF THE EXISTING HOUSE AS IT EXISTS FROM PROPERTY LINE FOR PROPOSED CONSTRUCTION OF A CAR PORT.
- 2) FIELD SURVEY PERFORMED JANUARY 2008.
- 3) REFERENCE MATERIAL PLAT NU-VISTA UNIT 8 BOOK 98 OF MAPS, PAGE 17 RECORDS OF MARICOPA COUNTY, ARIZONA.

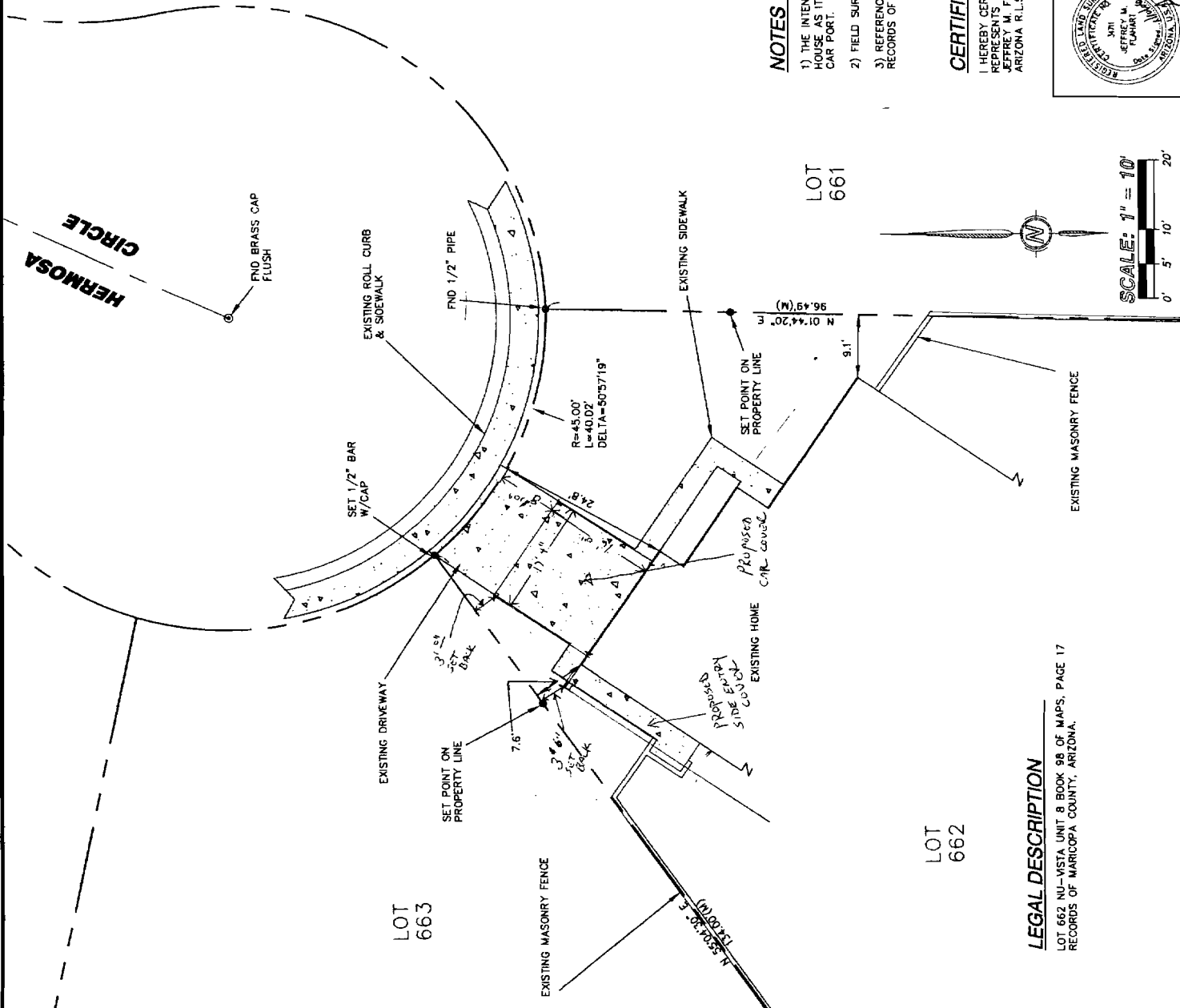
## CERTIFICATION

I HEREBY CERTIFY THIS MAP CONSISTING OF 1 SHEET CORRECTLY REPRESENTS A SURVEY PERFORMED UNDER MY SUPERVISION.  
JEFFREY M. FLAHERTY  
ARIZONA R.L.S. 34711



**Flaherty Brothers, Inc.**  
7545 E. Diamond Cir  
Mesa, Arizona 85208  
(602) 378-8630

RESULTS OF SURVEY  
FOR  
GREG AND CAROLE KERBER  
DRAWN: JMF DATE: 1/10/08 CHECKED: JMF SHEET: 1 OF 1



SCALE: 1" = 10'  
0' 5' 10' 20'

## LEGAL DESCRIPTION

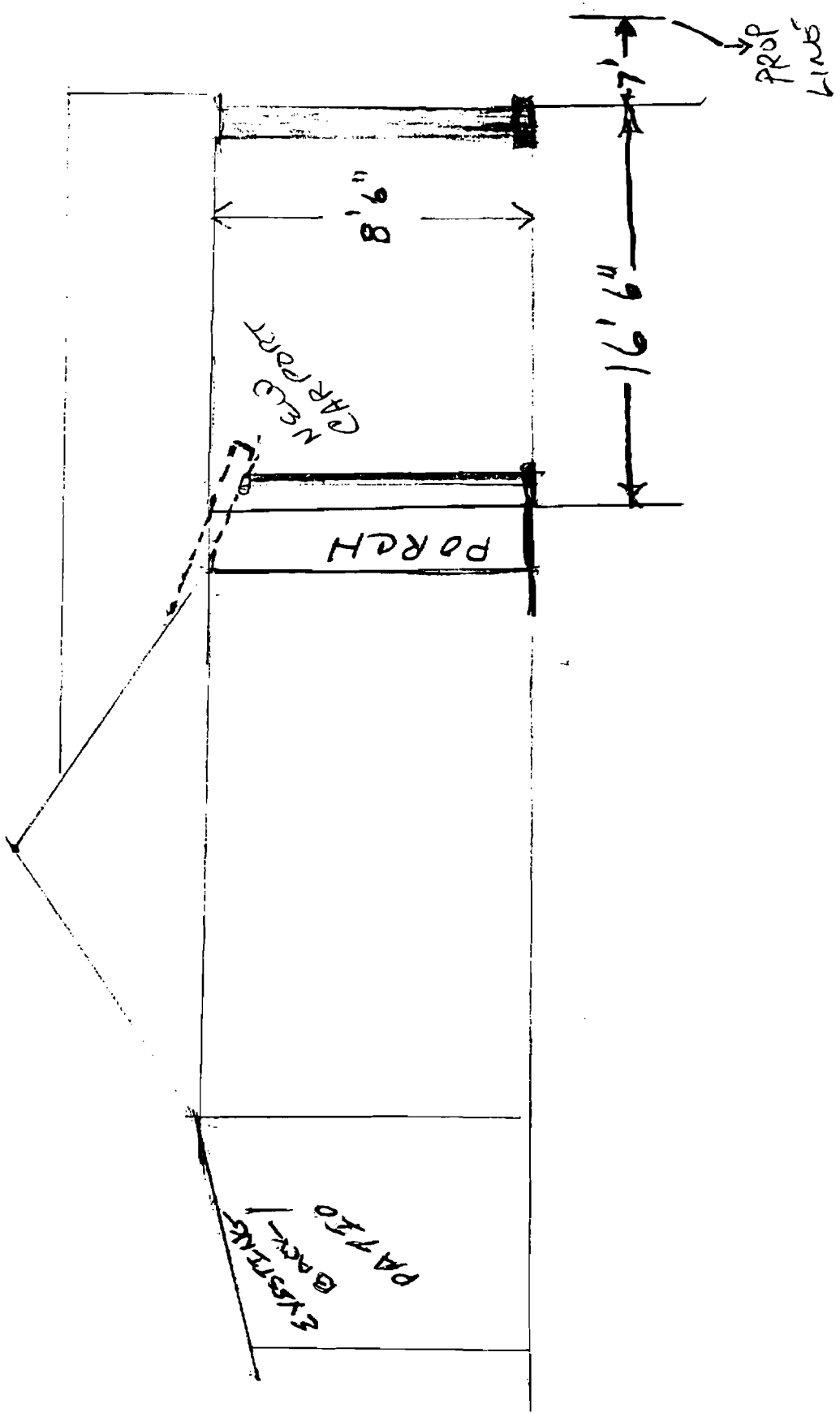
LOT 662 NU-VISTA UNIT 8 BOOK 98 OF MAPS, PAGE 17  
RECORDS OF MARICOPA COUNTY, ARIZONA.

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TEMPERATURE DEPARTMENT  
SERVICES DEPARTMENT



EAST VIEW

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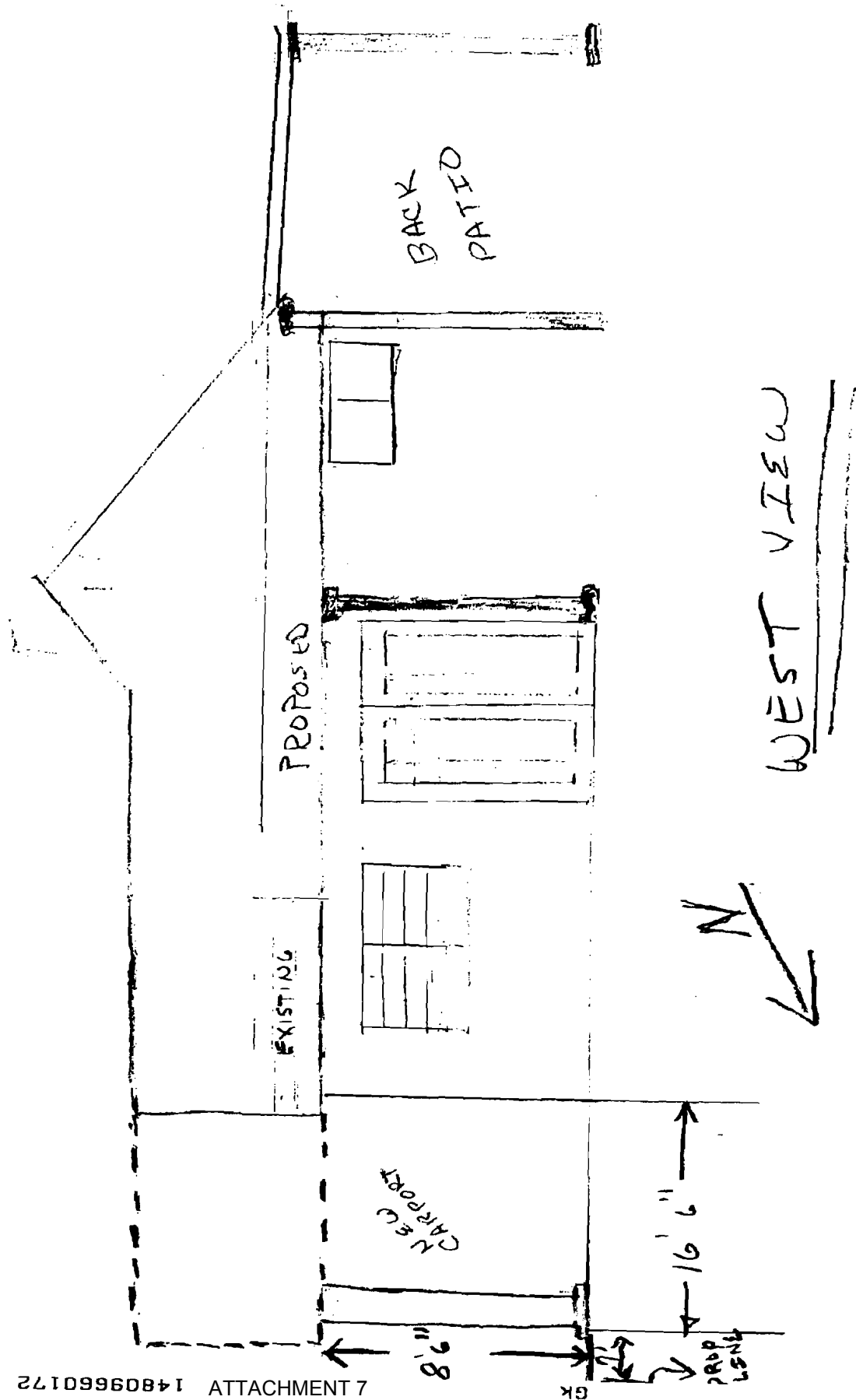
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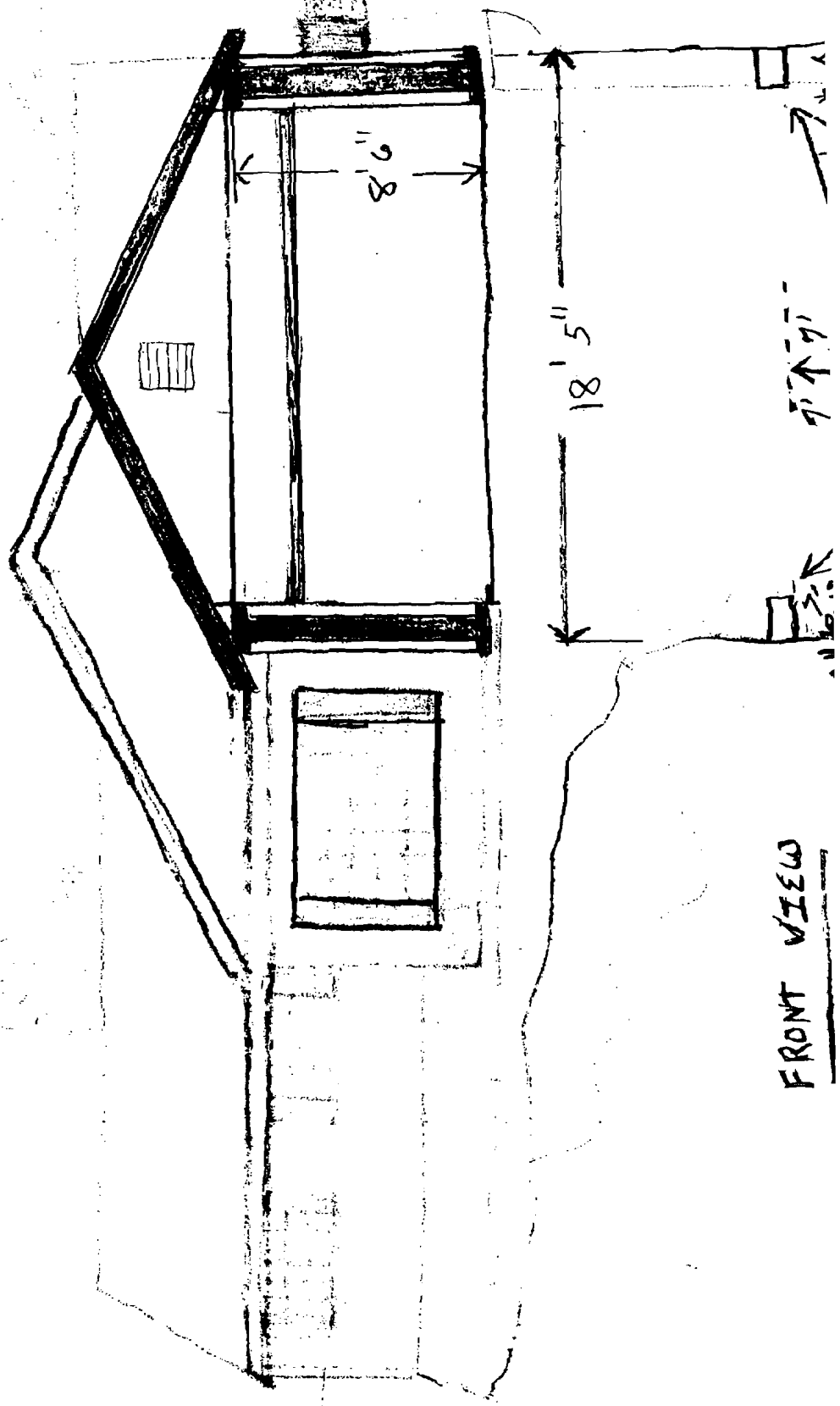
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SERVICES DEPARTMENT

ATTACHMENT 7 14809660172



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TEMPLE DEVELOPMENT  
SERVICES DEPARTMENT



FRONT VIEW

Hearing Officer  
City of Tempe

January 13, 2008

Case #ZUPO7184

Case #VARO7030

KERBER RESIDENCE, 401 East Hermosa Circle

The Riverside Sunset Neighborhood Association opposes this application on the basis of thee being already a congested area for parking.

This kind of area becomes a health and safety issue with access so restricted as to deny entrance for fire and other vehicles in a timely manner.

The applicant needs to look at securing a larger property, or park in the rear of this property.

Bill Butler  
Chair Pro Tem,  
RSNA

February 5, 2008

Hearing Officer  
P.O. Box 5002  
Tempe, AZ 85280-5002

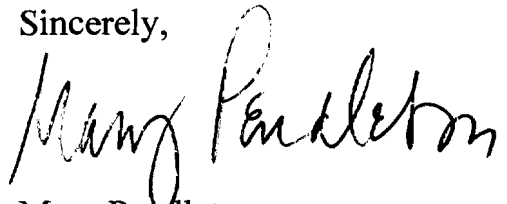
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TEMPE DEVELOPMENT  
SERVICES DEPARTMENT

Dear Hearing Officer,

I am an owner and resident of 405 E. Hermosa Circle, the property neighboring the Kerber residence to the east. Mr. and Mrs. Kerber have a good plan for dealing with both pedestrian and vehicular access to their property. I appreciate the Kerbers' need for these changes. They have solicited suggestions and advice from all the neighbors in our cul-de-sac, and kept us informed of the progress of their plans. I fully support the changes they wish to make, and would like to see the work done quickly. Please allow the necessary changes to the city code.

Thank you.

Sincerely,



Mary Pendleton

405 E. Hermosa Circle

Tempe, AZ 85282

480 829 0228



**KERBER RESIDENCE**

**401 E HERMOSA CIRCLE**

**PL070497**

**FRONT OF RESIDENCE**