Tempe

CITY OF TEMPE
BOARD OF ADJUSTMENT

Meeting Date: 08/28/2013
Agenda Item: 2

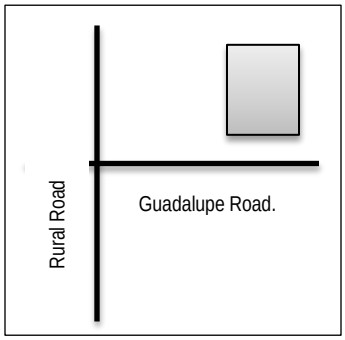
ACTION: Request for an appeal of a previously denied variance to reduce the side yard setback for the WATSON RESIDENCE (PL130184) located at 6231 South Rita Lane. The applicant is Richard Watson

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – discretion of the Board

BACKGROUND INFORMATION: The Watson Residence (PL130384) is appealing the June 18, 2013 Hearing Officer denial of a variance to reduce the south east side yard setback, from fifteen (15) feet to eight and one half (8.5) feet. The variance will allow for the replacement of the existing garage with a larger garage. The subject lot is located in the Winchester Estates Subdivision, north of Guadalupe Road and west of McClintock Drive. The addition is designed to complement the architecture of the main residence. Their request includes the following:

VAR13010	Variance to reduce the street side yard setback from 15' to 8'-6"



Property Owner and Applicant	Richard Watson
Zoning District	R1-15, Single Family Residence
Lot Area	22833 s.f.
Existing Building Area	4991 s.f.
Proposed Addition	1755 s.f approximately (900 sf per floor estimated)
Total Building Area	6746 s/f
Total Lot Coverage	21%

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Sherri Lesser, Senior Planner (480) 350-8486

Department Director: Lisa Collins, Interim Community Development Director
Legal review by: N/A
Prepared by: Sherri Lesser, Senior Planner
Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

July 11, 2013

From: Richard Watson
6231 S. Rita Lane
Tempe, AZ 85283

To: City of Tempe, Community Development Department and Board of Adjustment

RE: Appeal for Variance requested for 6231 S. Rita Lane.

I am appealing the decision of the Hearing Officer rendered at the hearing conducted on June 8, 2013. Staff's recommendation was approval and the Hearing Officer denied the Variance as requested.

As the owner of the property since 1999, I have found it necessary to expand. I have planned an addition to my garage. In order for me to add the required space of a garage addition (removing most of the existing garage), I have requested a variance for the side setback. The existing code is 15'0", and I request a Variance to reduce that to 8'6". There are other homes in my subdivision who have been granted this Variances reducing side setback to 7'0". The requested 8'6" Variance will not set a new precedent in the subdivision as I'm requesting less of an adjustment.

Those homes are:

- 942 E. Libra: 7'0" to the east property line
- 953 E. Westchester: 7'6" to the east property line
- 1001 E. Gemini: 9'6" to the west property line
- 1007 E. Westchester: 10'0" to the east property line

I am requesting the Variance based on the following:

- The lot is irregularly shaped and as my home is oriented diagonally and not parallel to any property line. I am only able to expand the garage to the south of my home while removing most of the existing garage. I also must change from a side entrance to a front entrance for the garage. Given the existing space, I am limited in expanding the garage without adversely affecting the existing structure and living space. This condition was created as a result of the orientation and construction of the existing structure on the irregular lot.
- The net change is adding a 2 car garage. To add the garage, it is necessary to have two 16' door openings. In order to park two automobiles in the space, the standard garage door opening is 16'. Given that vehicles are typically between 6' and 6'6" wide, this provides access to the automobiles and the ability to enter/exit between automobiles.
- This will allow me to enjoy the same reasonable and substantial property rights that other property owners in my subdivision are able to enjoy. For referece: the school and surrounding tracts are zoned as R1-6 which has a 5' side setback.
- Granting the variance will enhance the value of my property. I will not be making changes to the uses or densities of the R1-15 zoning. I will not be correcting a self-imposed circumstance. I will not be seeking relief from anything expressly prohibited by the zoning.

I am appealing as I believe this request is reasonable, my lot is irregular and limits the options to add additional garage space, and that I will be able to enjoy the same reasonable and substantial property rights granted to my neighbors.

I request your approval.

Thank you,
Richard Watson

Tempe

CITY OF TEMPE
HEARING OFFICER

Meeting Date: 06/18/2013
Agenda Item: 8

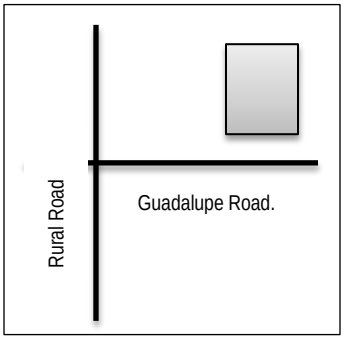
ACTION: Request approval for a Use Permit to allow a second story addition; and a Variance to reduce the side yard setback for the WATSON RESIDENCE (PL130184) located at 6231 South Rita Lane. The applicant is Richard Watson

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approval, subject to conditions

BACKGROUND INFORMATION: The Watson Residence (PL130384) is seeking a variance to reduce the south east side yard setback, from fifteen (15) feet to eight and one half (8.5) feet, and use permit to add a second story addition. The residence will be expanded to replace the existing garage with a larger garage. A second story addition is proposed for above the new garage space for additional living space. The subject lot is located in the Winchester Estates Subdivision, north of Guadalupe Road and west of McClintock Drive. The addition is designed to complement the architecture of the main residence and will share access on the interior of the residence. Their request includes the following:

VAR13010	Variance to reduce the street side yard setback from 15' to 8'-6"
ZUP13060	Use Permit to allow a second story addition



Property Owner and Applicant	Richard Watson
Zoning District	R1-15, Single Family Residence
Lot Area	22833 s.f.
Existing Building Area	4991 s.f.
Proposed Addition	1755 s.f approximately (900 sf per floor estimated)
Total Building Height	6746 s/f/
Total Lot Coverage	21%

ATTACHMENTS: Supporting Attachments

STAFF CONTACT: Sherri Lesser, Senior Planner (480) 350-8486

Department Director: Lisa Collins, Interim Community Development Director
Legal review by: N/A
Prepared by: Sherri Lesser, Senior Planner
Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS

The applicant is requesting a variance to reduce the southeast side yard setback from 15' to 8'-6" to construct a garage and a use permit for a second story addition. . As stated in the letter of explanation, the addition will expand the existing 3 car garage to a 5 car garage with extra work space on the first floor and an undefined livable area on the second floor. The proposed floor plan demolishes the existing garage for the new larger garage which is designed with a higher interior ceiling and new bathroom adjacent to garage plus a large open space. The home addition design matches the dwelling with similar material, finishes and color scheme.

PUBLIC INPUT

The applicant held a neighborhood meeting on May 20, 2013; in accordance with the requirements of the Zoning and Development Code. No neighbors attended the meeting. A summary of the neighborhood meeting may be found in the attachments. To date, no other public input has been received by staff.

VARIANCE

The Zoning and Development Code requires the setbacks for structures, in the R1-15 Single Family Residential District, to be located twenty (15) feet from side yard property line. The request is to reduce the side yard setback to 8.5 feet for a portion of the two story structure, approximately 1/8th of the area of the total addition will encroach into the 15 foot setback (approximately 272 s.f .or 136 s.f. per floor). The applicant provided, in their letter of explanation, a justification for each of the tests to warrant approval the variance. There are characteristics and challenges on this lot which are unique to this application and warrant relief from the requirements of the R1-15 Development Standards. The circumstances will be addressed in the following criteria for approval of a variance.

Per the Zoning and Development Code variance(s) shall not be authorized unless the decision-making body finds upon sufficient evidence of the following:

1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings; and

   The shape of this lot and the placement of the residence on the lot create the special circumstance to warrant approval; the lot narrows at the street to 58' feet in width and gradually increases in width to 200' feet at center of the lot. The placement of the house is closer to the front of the lot, as such; the buildable area is limited due to the prominent angling of the lot toward the front. Most of the buildable area is located in the rear of the lot; but it is nearly impossible to access from the front due to no alley access, existing mechanical structures, and the existence Marcos De Niza High School grounds to the east.

2. The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district; and

   The applicant identified in his letter four other properties with existing variances similar to their request in distance. Staff verified that the variances were granted to reduce the setbacks on the properties with the same R1-15 zoning designation which required a similar setbacks of 15' feet. In comparison of the characteristics of the other properties previously granted variances with the applicant's lot; the other lots are of a similar size and all have seemingly square lots which do not radically angle to the front. The outward limitations of other properties with previously granted variances are not as readily identifiable as those on the applicant's lot. To not grant this variance would deny this property owner a property right enjoyed by other properties;

3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and

   Shall not be considered a special privilege inconsistent with other R1-15 zoned properties, especially those within this subdivision, given the number of variances granted previously.

4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.

The special circumstances are not self-imposed by the property owner. The location of this property next to the high school limits access from the rear of the lot. The shape of the lot, which is very narrow at the front of the lot, then rapidly widens to over a 200' width at middle of the lot; the mid-section of the lot is located behind the residence where existing mechanical equipment limits the ability to add on to the rear of the existing dwelling. A majority of the residential structure is located in the front half of the lot; with an sharp angling of the of the side property lines decreasing to a 58' width at the front property line; the minimal encroachment of the proposed structure into the setback is necessary if the addition is to align on the same plane as main residence.

USE PERMIT

The proposed use requires a Use Permit Standard allow a second story addition to a single-story residence within the R1-15 single family zoning district.

Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic.* The addition of a garage is to replace an existing garage that. There is no additional need for parking by ordinance and the garage purpose is for the storage of the homeowners' collection of classic vehicles therefore it is not anticipated to generate additional traffic from the residence.

2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.* The proposed addition is designed to increase livable space within the home; there are no known nuisances from the proposed second story addition.

3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.* The property has a history of improvements which indicate a commitment to preservation and revitalization of the neighborhood through home improvement efforts. The addition of a garage and second story will increase the size and value of the home, which will also increase property valuation assessments. The proposed use supports the General Plan goals and objectives for neighborhood stabilization, revitalization, affordability and livability.

4. *Compatibility with existing surrounding structures and uses.* The proposed addition is to support a single family use within a single-family residence conforming to all standards of the R1-15 zoning district and the conditions applied. The proposed addition would be 24 feet to the peak of the roof. The neighborhood has some two story structures and larger lots; the height and massing of the second story will have minimal impact on the surrounding area.

5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.* The property backs up to a high school, and the lots to the north and south of the property are not parallel to the home on this lot. There would be no obstruction of views or impediments to privacy with the addition of a second story structure.

Conclusion

Based on the information provided by the applicant, and the above analysis, staff recommends approval of the requested Variance and Use Permit with the finding that the request meets the required tests for approval and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S)
OF APPROVAL:

1. The variance and use permit are valid for the plans as submitted within this application.

2. This variance and are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.

3. The Variance and Use Permit are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process. The setback may not be reduced further without seeking another variance.

4. The addition of a garage and the second story livable space shall provide circulation through the main living space of the house and not be physically separated to function as a second dwelling unit.

5. Should the livable space convert to a guest quarters, which is allowable due to the adequate land area to comply ZDC requirements, the applicant shall apply for a building permit showing the updated livable area and comply with the provisions for utilities and the requirements to record an affidavit against the property limiting the separate rental of the guest quarters.

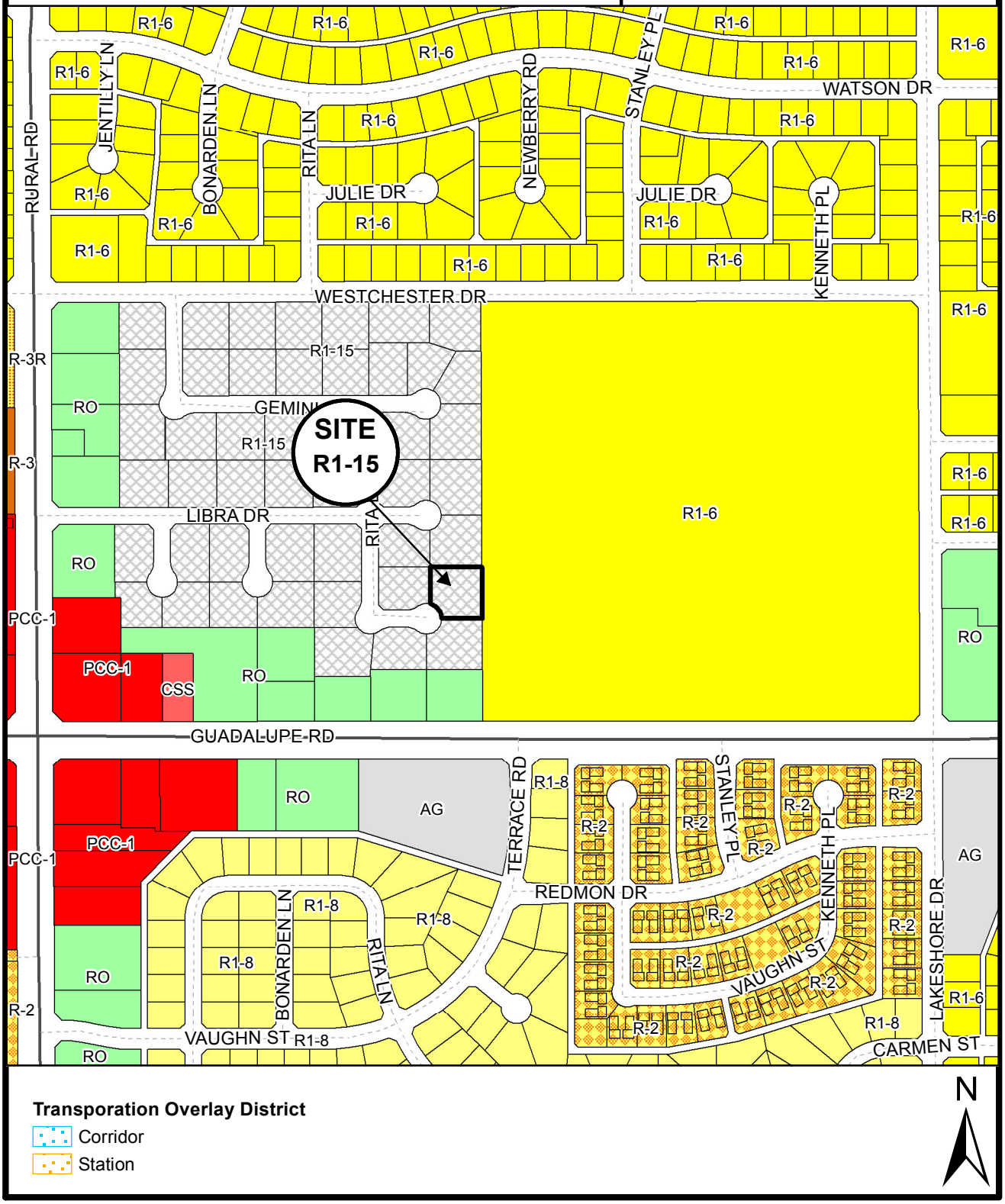
6. The materials and colors of the addition shall match or be compatible with the existing structure.

HISTORY & FACTS: None pertinent to this property.

ZONING AND DEVELOPMENT CODE REFERENCE:
Section 6-308 Use Permits
Section 6-309- Variances
Section 3-420 Single Family Residential Second Story Addition or Rebuild

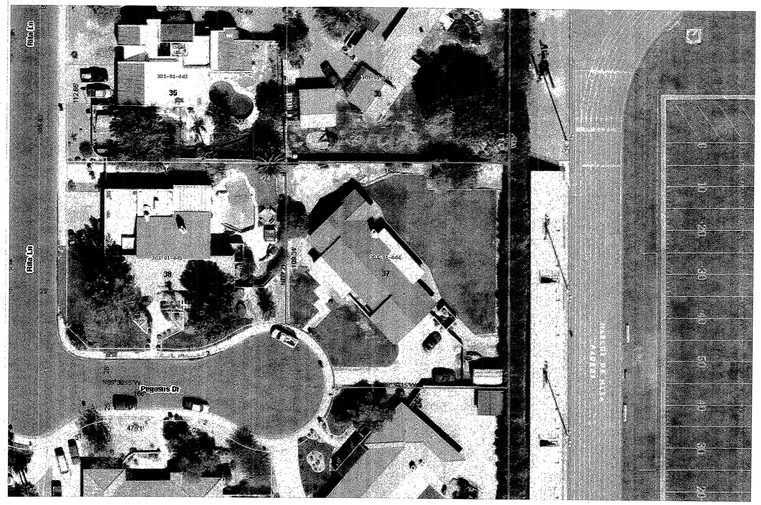
Tempe

WATSON RESIDENCE	PL130184



Location Map

WATSON RESIDENCE (PL130184)



PROJECT DESCRIPTION:
THIS PROJECT REPRESENTS A HOME ADDITION TO THE EXISTING RESIDENCE. THE HOME WILL BE EXPANDED TO THE SOUTH AND EAST. A PORTION OF THE EXISTING GARAGE WILL BE DEMOLISHED AND THE NEW ADDITION WILL REPLACE THE GARAGE WITH A LARGER GARAGE SPACE WITH A HIGHER ROOF. THE NEW ADDITION WILL ALSO HAVE A SECOND STORY LIVING SPACE. A NEW RESTROOM WILL BE ADDED TO THE GARAGE. CONSTRUCTION IS 2x6 WOOD FRAME WITH STUCCO EXTERIOR FINISH TO MATCH EXISTING HOME.

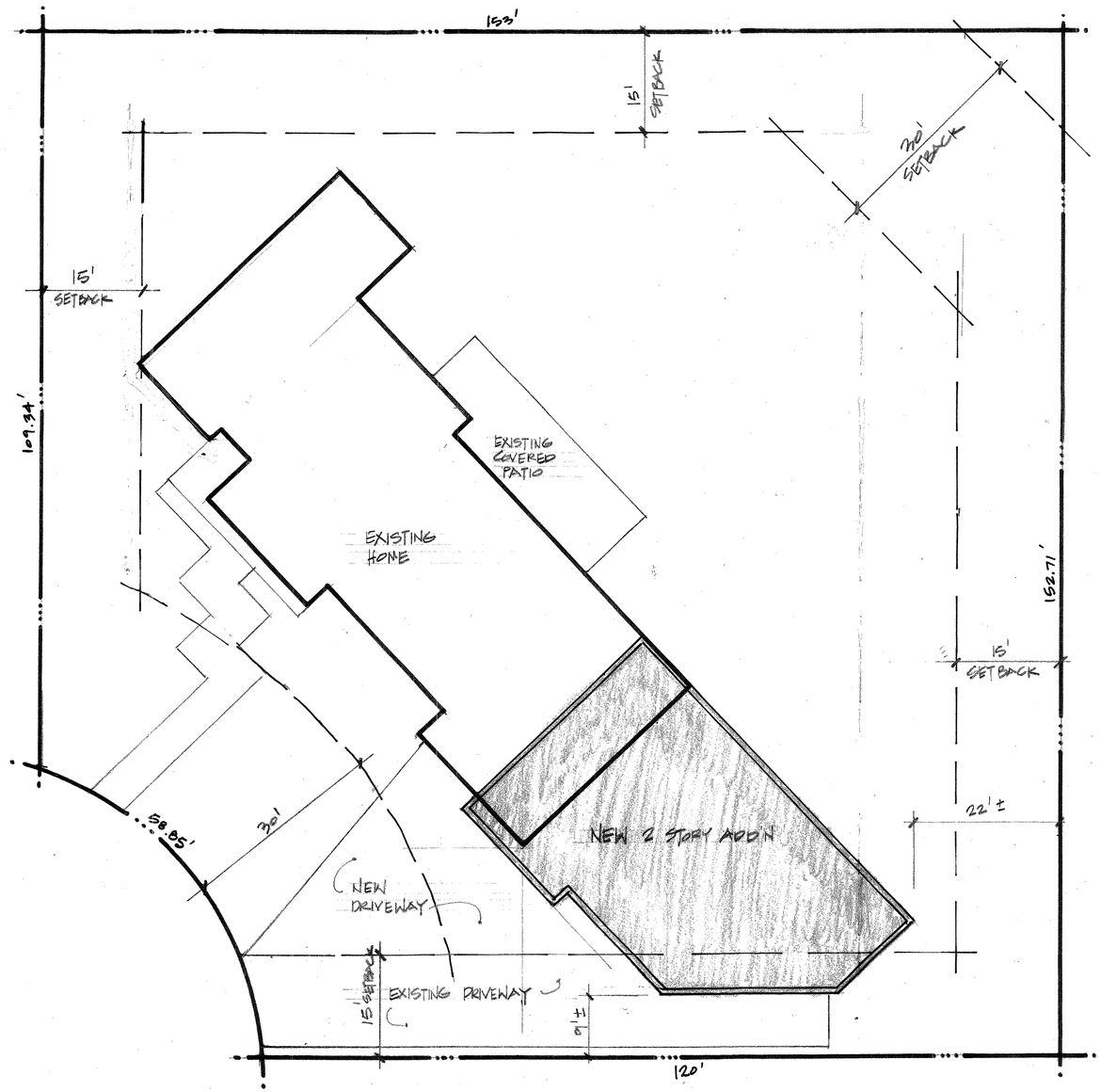
LAYOUT NOTE:
THIS SITE PLAN WAS PREPARED WITHOUT BENEFIT OF AN ENGINEERED SURVEY. ALL DIMENSIONS SHALL BE VERIFIED IN THE FIELD AND PROPERTY AND SETBACK LINES LOCATED PRIOR TO CONSTRUCTION.

PROPERTY DATA:

OWNER:	RICHARD A. WATSON
ADDRESS:	6231 SOUTH RITA LANE TEMPE, ARIZONA 85283
SUBDIVISION:	WINCHESTER ESTATES, LOT #37
PARCEL #	301-91-444
MCR #:	15702

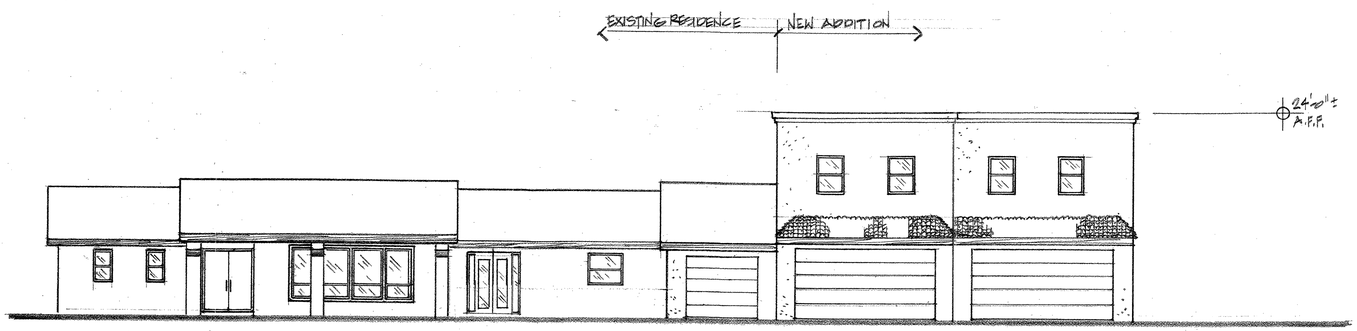
Site Data

Submitter:	Richard Watson 6231 S. Rita Lane, Tempe AZ 85283 602-319-0265
Project Name:	Watson Residence
Site Address:	6231 S. Rita Lane, Tempe AZ 85283
Legal Description:	Lot 37 of Westchester Estates, according to Book 157 of Maps, page 2, records of Maricopa County, Arizona
Zoning:	R1-15
Parcel Size:	22833 sqft
Building Area:	21% coverage
Height:	24'0"
Stories:	2
Construction:	TYPE V-A Protected Wood Frame
Proposed Use:	Garage (1st story), Living Space (2nd story)



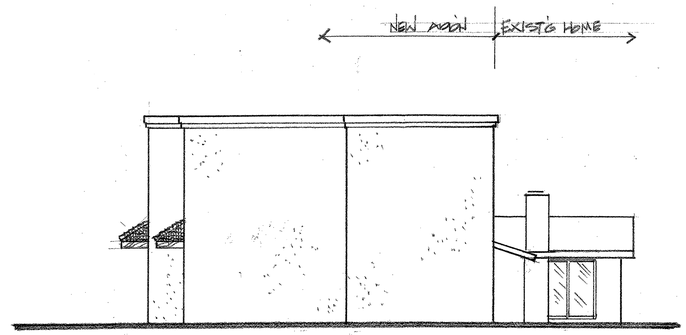
Site Plan

1/10" = 1'-0"



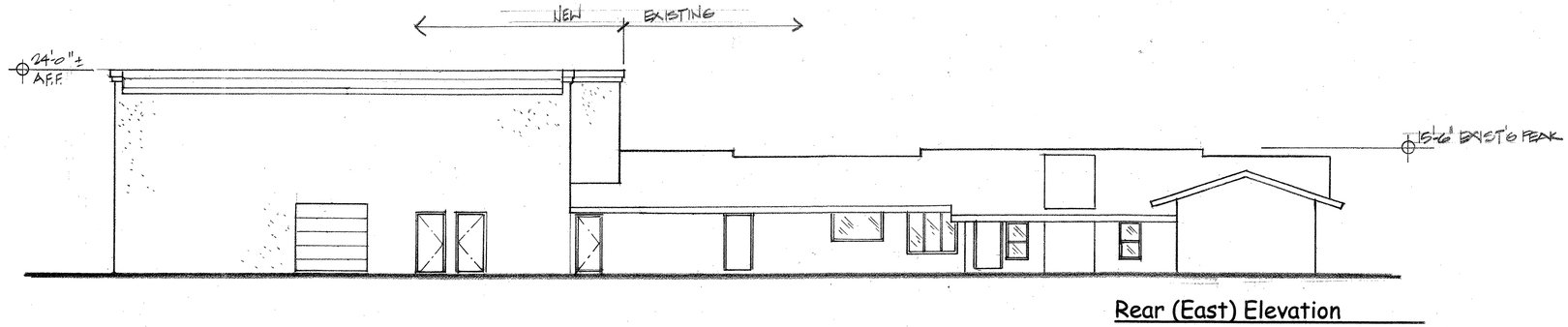
Front (West) Elevation

¼" = 1'-0"



Side (South) Elevation

¼" = 1'-0"



Rear (East) Elevation

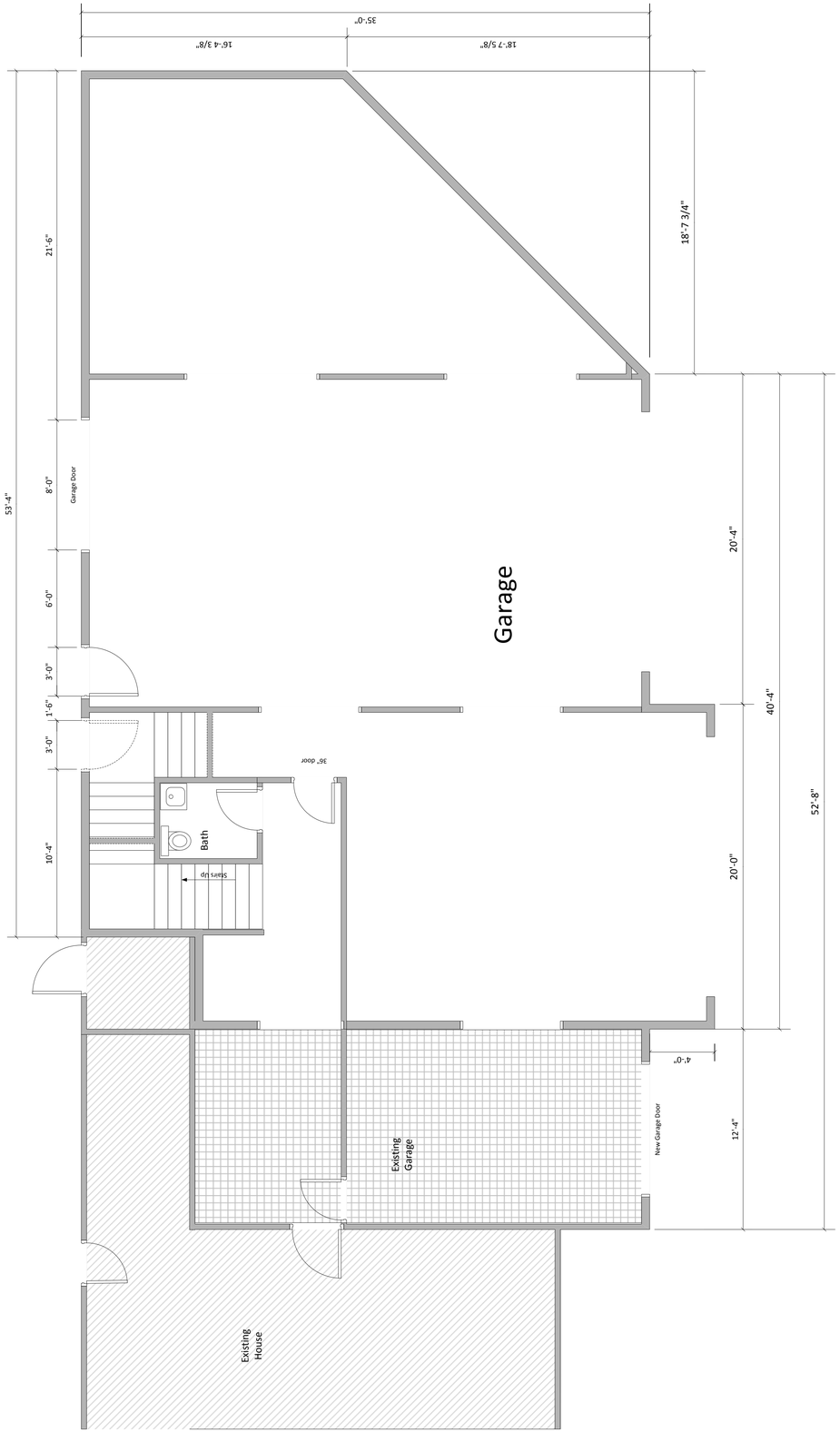
¼" = 1'-0"

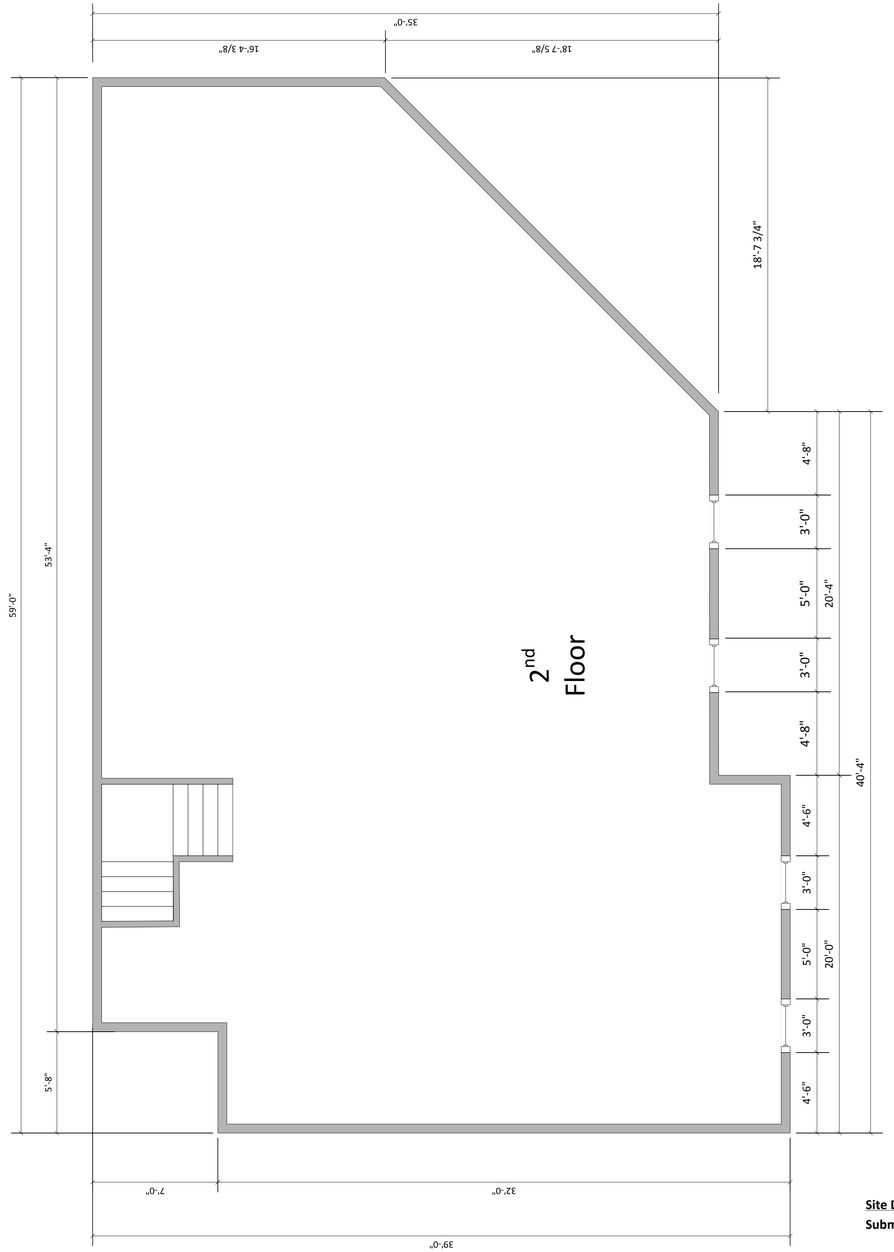
PROJECT DESCRIPTION:

THIS PROJECT REPRESENTS A HOME ADDITION TO THE EXISTING RESIDENCE. THE HOME WILL BE EXPANDED TO THE SOUTH AND EAST. A PORTION OF THE EXISTING GARAGE WILL BE DEMOLISHED AND THE NEW ADDITION WILL REPLACE THE GARAGE WITH A LARGER GARAGE SPACE WITH A HIGHER ROOF. THE NEW ADDITION WILL ALSO HAVE A SECOND STORY LIVING SPACE. A NEW RESTROOM WILL BE ADDED TO THE GARAGE. CONSTRUCTION IS 2x6 WOOD FRAME WITH STUCCO EXTERIOR FINISH TO MATCH EXISTING HOME.

Site Data

Submitter:	Richard Watson 6231 S. Rita Lane, Tempe AZ 85283 602-319-0265
Project Name:	Watson Residence
Site Address:	6231 S. Rita Lane, Tempe AZ 85283
Legal Description:	Lot 37 of Westchester Estates, according to Book 157 of Maps, page 2, records of Maricopa County, Arizona
Zoning:	R1-15
Parcel Size:	22833 sqft
Building Area:	21% coverage
Height:	24'0"
Stories:	2
Construction:	TYPE V-A Protected Wood Frame
Proposed Use:	Garage (1st story), Living Space (2nd story)





Site Data

Submitter: Richard Watson
6231 S. Rita Lane, Tempe AZ 85283
602-319-0265

Project Name: Watson Residence

Site Address: 6231 S. Rita Lane, Tempe AZ 85283

Legal Description: Lot 37 of Westchester Estates, according to Book 157 of Maps, page 2, records of Maricopa County, Arizona

Zoning: R1-15

Parcel Size: 22833 sqft

Building Area: 21% coverage

Height: 24'0"

Stories: 2

Construction: TYPE V-A Protected Wood Frame

Proposed Use: Garage (1st story), Living Space (2nd story)

SCALE: ¼" = 1.0'

public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.

4. The Property Owner shall replace all dead or missing trees along the street frontages (minimum of 1 tree per 30 linear feet of street frontage) and within the existing required landscape islands within the parking lot.
5. There shall be no vehicles for sale at this location.

Ms. MacDonald returned as the Hearing Officer.

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8. Request approval for a Use Permit to allow a second story addition; and a Variance to reduce the side yard setback for the WATSON RESIDENCE (PL130184) located at 6231 South Rita Lane. The applicant is Richard Watson.

Richard Watson was present to represent this case.

Sherri Lesser introduced the case. The property is located north of Guadalupe Road, west of Marcos de Niza High School, east of Rural Road. The applicant is requesting a Use Permit for a second story addition, and a Variance to reduce the side yard setback from 15 ft. to 8 ½ ft. Staff recommends approval of both requests. There are other two-story structures within the area. The property is located in a cul-de-sac. The placement of the house is closer to the front of the lot. The lot narrows at the street to 58 feet in width and gradually increases in width to 200 feet at the center of the lot. A small portion of the addition would encroach into the side yard setback. Staff believes special circumstances are applicable that create a hardship based on the compelling arguments in the applicant's letter. Four other Variances were granted in the area on lots that are rectangular in shape. It seems inappropriate to not grant the applicants Variance where he truly has a special circumstance that the other properties did not have. To not grant this Variance would deny this property owner a property right enjoyed by other properties. Staff recommends approval of the Use Permit and the Variance.

Ms. MacDonald stated the applicant inherited cars from his father that he is hoping to house within the new garage. She asked Mr. Watson if it was suggested during the design process to build the garage perpendicular to the house, instead of continuing with the horizontal line of the house.

Mr. Watson stated the air conditioning units are located at the end of the existing driveway. He is trying not to encroach in that space. Encroaching in that space would require relocating the air conditioning units. He would also like to keep the triangular shape of his backyard available for his dogs to run around.

Ms. MacDonald stated the application includes two separate parts. She does not have a problem with the Use Permit for the second story addition. There are other two-story homes in the neighborhood. The second story addition is appropriate and the design is good. She does have a problem with the Variance. The criteria outlined in State Statute and in the Zoning and Development Code are stringent for Variances. The criteria include showing evidence of a hardship. The hardship cannot be self-imposed by the property owner. The hardship could include wanting to build around a pre-existing swimming pool or an orchid of trees. She has a hard time looking at the project given the size of the new structure. The exhibit shows the addition at 59 ft. by 39 ft. She has a hard time understanding why the applicant has to go into the setback so deeply.

Mr. Watson indicated in order to add the two, two-car garages he would need this amount of space to accommodate the standard size garage doors. If the size of the garage is reduced he would have to use a single sized door or eliminate one of the garage doors.

Ms. MacDonald asked Mr. Watson the size of the garage doors he contemplated using.

Mr. Watson stated he would like to use standard 16 ft. garage doors.

Ms. MacDonald asked Mr. Watson if 14 ft. garage doors are available.

Mr. Watsons stated 14 ft. doors are probably available. It would be harder to get out and around the cars parked in the garage. A standard car is approximately 6 – 6 ½ feet wide. That would leave very little opening between the car doors.

Ms. MacDonald asked if tandem parking would be a possibility in the garage.

Mr. Watson explained relief for the structural integrity encroaches in the space. The plans for the new garage also include a work space for automobile restoration. He is trying to maximize the space while reducing the amount of variance he is requesting. As noted in his letter, there are other properties in the neighborhood that have greater encroachments in the side yard than his request. Realistically his plans show the structure being 9 ft. from the property line. He requested 8 ½ feet for assurance if something is not measured properly during construction.

Ms. MacDonald indicted the desire to maximize space is not a hardship. There is nothing compelling to grant a Variance in this situation. She explained a Use Permit Standard would allow a deviation of 20% in the case of a setback. The side yard setback could be reduced from 15 feet to 12 feet in this case. The criteria for a Use Permit Standard are much less stringent than for a Variance. She believes the Use Permit Standard applies more towards this type of project.

Mr. Watson asked why other houses in the neighborhood had been granted Variances and now he would be afforded less.

Ms. MacDonald stated she did not hear the other cases.

Mr. Watson stated it is somewhat unfair from the property owners' standpoint if other houses in his neighborhood have a greater Variance than he is permitted.

Ms. MacDonald believes the neighborhood dates back to the mid 70's. There have been many different Zoning Codes in affect since then. The other applications may not have been Variances; they could have been similar to a Use Permit Standard. She stated she is trying to follow the criteria while allow some flexibility under the existing code.

Mr. Abrahamson made a comment with respect to the way Variances were handled in the past. Up until about 8 years ago, staff was not strident enough with the Arizona Revised Statutes when it comes to Variances. Often times Variances did not have to prove hardships, special circumstances or substantial loss of property rights to be approved.

Ms. MacDonald stated that may be why some of the neighbors appear to have something the applicant does not have at this point.

Ms. MacDonald asked Mr. Watson if he would be open to the Use Permit Standard. She stated she could convert the application from a Variance to a Use Permit Standard. The Use Permit Standard would reduce the street side yard setback from 15 ft. to 12 ft.

Mr. Watson stated no, he would like to have the Variance as requested. The proposed addition is clearly adding to the property value. He has a neighbor present that is in support of the project. He had a neighborhood meeting with no attendance, and a petition signed by another neighbor. His neighbors see the value of the addition. He sees it as an investment in the property and his commitment to the city. He is clearly not going to build the addition and move.

Ms. MacDonald stated that she appreciates his view point and she hopes he can appreciate her view point. She asked Mr. Watson if he agreed to the conditions of approval.

Mr. Watson agreed to the conditions of approval.

Mr. Felty lives across the street from Mr. Watson. He has reviewed the plans for the project and spoke in support of the project. He believes the plans have merit and he has no objection to the proposed project. He feels the addition will enhance the value and the appearance of the neighborhood. He strongly hopes the request for the Use Permit and Variance is approved.

Ms. MacDonald asked Mr. Watson about the signature on the petition.

Mr. Watson indicated the signature was from his neighbor residing to the west of his property.

Ms. MacDonald asked if Mr. Watson has received any input from the neighbor who is most affected by the proposed addition.

Mr. Watson stated the house went under foreclosure. When the application was submitted the property owner was notified of the proposed addition. The property owner notified Mr. Watson that he was no longer the owner of the property, but was in support of the proposed addition.

Ms. MacDonald stated she did not hear anything compelling from Mr. Watson to persuade her to grant a Variance. The criteria are outlined by the Zoning and Development Code and the State Statute. It speaks to hardship and conditions that are not self-imposed. She does not believe this request meets the criteria outlined in the code to grant a Variance. She asked Mr. Watson if he would rather she denied the Variance or if he would like to be granted the Use Permit Standard.

Mr. Watson asked Ms. MacDonald if she would reconsider her position. He would like to maintain the 16 ft. garage doors so two cars can drive in comfortably. If he brought the line straight back perpendicular to the end of the garage it would still require the same Variance, because the corner of the property would be encroaching within that space. Mr. Watson indicated he would have to appeal the Hearing Officer decision if the Variance request is denied.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:
1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

Ms. MacDonald noted that this request does not meet the criteria for a Variance.
1. She does not believe that special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings.

DECISION:
Ms. MacDonald approved PL130184/ZUP13060 - Use Permit to allow a second story addition subject to the following conditions:
1. ~~The Use Permit is valid for the plans as submitted within this application~~. (Deleted by Staff)
2. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
3. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
4. The addition of a garage and the second story livable space shall provide circulation through the main living space of the house and not be physically separated to function as a second dwelling unit.
5. Should the livable space convert to a guest quarters, which is allowable due to the adequate land area to comply ZDC requirements, the applicant shall apply for a building permit showing the

updated livable area and comply with the provisions for utilities and the requirements to record an affidavit against the property limiting the separate rental of the guest quarters.

6. The materials and colors of the addition shall match or be compatible with the existing structure.

Ms. MacDonald denied PL130184/VAR13010 – Variance to reduce the street side yard setback from 15 foot to 8 foot – 6 inches

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9. Request approval for a Use Permit to allow live entertainment for BOSTON'S GOURMET PIZZA (PL130185) located at 400 West University Drive. The applicant is Jeff Flaherty, ACT Business LLC.

Jake Guzman was present to represent this case.

Diana Kaminski introduced the case. Boston's Gourmet Pizza is located on the north west corner of Farmer Avenue and University Drive. The business has been at this location for quite some time. The business is under new ownership. The new business owner would like to add live entertainment to the services provided to the customers at the restaurant. The owner will not be adding a stage for entertainment. He would like to move two tables to provide an area for live indoor entertainment. Staff has reviewed the application. There has been no public input regarding this request. Staff recommends approval of the Use Permit for live entertainment with conditions.

Ms. MacDonald reviewed the conditions of approval. The live entertainment use shall take place inside only. No live entertainment will be allowed outside. Live entertainment to cease at 12 midnight Sunday-Wednesday and 1:55 am Thursday-Saturday. Any intensification or expansion of use shall require a new Use Permit. A Special Event permit can be obtained through Community Services.

Mr. Guzman agreed to the conditions of approval.

Mr. and Ms. Lamb reside on 7th Street, behind Boston's Gourmet Pizza. They stated their concerns regarding the hours for the live entertainment. They were concerned the noise levels would be disruptive. The Full Gospel Church located at 704 South Farmer Avenue is also concerned about the disruptive noise levels interfering with the services.

Ms. MacDonald understands the concerns. She believes the live entertainment will small acoustic bands, not large rock bands.

Mr. Lamb indicated he would call the Police Department if the noise level was disruptive.

Ms. MacDonald encouraged Mr. Lamb to notify the Police Department if the noise was disruptive. Use Permits are often granted under the belief that the owners will comply with the conditions of approval. Sometimes practice and reality are quite different. Input from citizens is important to determine if a Use Permit is working as it should. There is a mechanism by which a Use Permit can be revoked if necessary.

Mr. Guzman stated they would comply with the conditions of approval and would be considerate to the neighborhood. He welcomed Mr. and Ms. Lamb to come talk to him if there were any complaints. He would like to work with them and the Gospel Church. They are not intending to do anything outside karaoke, trivia, and small bands. He does not foresee any problems with the live entertainment. He understands the ramifications of the hours they are able to use. He does not believe the live entertainment would keep anyone awake late at night.

Ms. MacDonald would like to approve the Use Permit but have it revisited in six months. This would be done at no cost to the applicant. The applicant and the neighbors would have the opportunity to discuss any issues at that time. The following condition was added by the Hearing Officer: 9. Applicant shall return to the Hearing Officer for review of the Use Permit on November 19, 2013.