

**CITY OF TEMPE
BOARD OF ADJUSTMENT**

**Meeting Date: 09/27/2023
Agenda Item: 2**

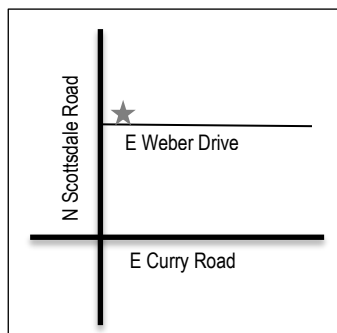
ACTION: Request for a variance to reduce the required side yard setback for an accessory building from seven (7) feet to zero (0) feet for HESSWANY RESIDENCE, located at 918 E Weber Drive. The applicant is Aiman Hesswany. (PL230128).

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Deny

BACKGROUND INFORMATION: The lot is a single-family residence situated within a multi-family residential zoning district (R-2), located on the north side of Weber Drive, east of Scottsdale Road. HESSWANY RESIDENCE (PL230128) is requesting a variance to allow a detached garage to remain within the required side yard. Specifically, the variance would reduce the setback for the accessory structure from seven (7) feet to zero (0) feet along the property’s western side. The request includes the following:

VAR230001 Variance to reduce the side yard setback for an accessory building from seven (7) feet to zero (0) feet.



Property Owner	Aiman Hesswany
Applicant	Aiman Hesswany
Zoning District	Multi-Family Residential (R-2)
Site Area	0.169 acres
Building Area	1,964 s.f.
Lot Coverage	27% (45% maximum allowed)
Building Setbacks (Principal)	32’ front, 8.5’ west side, 18’ east side, 24’ rear (20, 10, 10’, 15’ min.)
Building Setbacks (Accessory)	8’ rear, 0’ east side (7’, 7’ min.)

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Chris Jasper, Senior Planner (480) 350-8096

Department Director: Jeff Tamulevich, Community Development Director

Legal review by: N/A

Prepared by: Chris Jasper, Senior Planner

Reviewed by: Ambika Adhikari, Principal Planner

COMMENTS

The site is located on the north side of Weber Drive, west of Scottsdale Road, on Lot 3 of the Powell Place subdivision. Constructed in 1954, the subject building has been utilized as a single-family residential home with relatively limited modifications since its construction. The property was purchased in April of 2022 by the current property owners, who have utilized the site as a short-term rental property, per the applicant's letter of explanation. In April of 2023, the City Code Compliance Division received a complaint regarding a potential illegal home occupation for vehicle repairs occurring on the property. Upon inspection, the Code Compliance officer determined that the alleged home occupation was not present, but found that the detached garage located in the rear yard was non-compliant with respect to required setbacks for detached accessory structures, and was constructed without building permits.

According to historical aerial imagery available through Maricopa County, the detached garage was constructed between September 2013 and September 2014. A website for "Brothers Automotive Service" indicates that automotive repair operations were present on the site for some time between 2020 and 2022. The interior of the building has since been converted into a game room.

The applicant is specifically seeking relief from Section 3-401.C.2 of the Zoning and Development Code (ZDC), which establishes the development standards for detached accessory buildings. The Code states that any detached accessory building of more than 200 square feet in area or 8 feet in height must be located at least three (3) feet from all side and rear property lines. That required distance increases one (1) additional foot for every additional foot in height above nine (9) feet. Because the detached garage is between 12 feet and 13 feet in height, the applicable setback is 7 feet from both the side and rear property line. The subject lot's rear property line is adjacent to a public alley, and so the setback is measured from the midpoint of the alley, per Section 4-202 of the ZDC. As such, the location of the detached garage is compliant with respect to the rear setback, and the request is limited only to the side setback.

CODE COMPLIANCE HISTORY

The subject property has been cited for City Code compliance violations 13 times since 1995, of which six (6) have been filed with the City since 2012. One (1) complaint, which initiated the inspection that resulted in the discovery of the non-compliant structure, has been submitted since the applicant took ownership of the property. A majority of the earlier complaints related to maintenance of the property, including landscaping and building paint.

PUBLIC INPUT

- A neighborhood meeting was required for this request.
- The neighborhood meeting was held at the subject property, 918 W Weber Drive, from 6:30 p.m. to 7:30 p.m. on August 17, 2023. Staff was in attendance. Two (2) residents attended the meeting, one of which lived across the street. One neighbor questioned the need for the variance and stated that the building did not represent a nuisance. Both neighbors in attendance indicated support for the project.
- Upon completion of this report, staff has received no public comments related to the variance request.

VARIANCE

The proposed design requires a variance to reduce the required side yard setback for an accessory building within the R-2 zoning district from seven (7) feet to zero (0) feet.

Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* There are no unique conditions associated with the topography or layout of the subject lot. The parcel was included in the Powell Place subdivision plat in 1953, and, at 62.5 feet in width and 116.25 feet in length, is dimensionally consistent with all surrounding lots established through the subdivision process; and

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;* The strict application of the Code would not deprive the property of rights or privileges enjoyed by other properties in the immediate vicinity. All property owners, including owners of the subject lot, are permitted to construct or place accessory buildings that are compliant with setbacks established by the Zoning and Development Code. To construct buildings that do not conform to the ZDC's development standards, property owners also may seek approval of a variance request. In the immediate vicinity of the subject site, one (1) property, located at 1042 East Weber Drive, was granted a variance in 1970 to reduce the side yard setback from seven (7) feet to three (3) feet to accommodate the enclosure of a carport. Similar accessory buildings located at or near side property lines may be found on lots in relative proximity to the subject property, but staff has been unable to find evidence that they were built with permits or with the approval of a Variance request. Therefore, a pattern of variance approvals for this development type within the same zoning district has not been established, and the denial of this request would not deprive the applicant of rights that are enjoyed by others; and
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;* Approval of the variance would grant a special privilege to the subject property, as it would allow a detached accessory building to be placed in a location that would not be permitted for similar sized lots in the same zoning district and neighborhood; and
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.* Although the current property owner is not responsible for the construction of the detached garage, they are responsible for ensuring that all structures on the lot are compliant with City regulations. Alternative solutions exist to remedy the non-compliance, which include both modifications to or the demolition of the detached garage.

REASONS FOR DENIAL:

Based on the information provided by the applicant, the public input received, and the above analysis, staff recommends denial of the requested Variance. This request does not meet the required criteria.

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. This Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- Approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months of the approval or within the time stipulated by the hearing body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the variance.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/planning/documents.htm or purchase from Development Services.

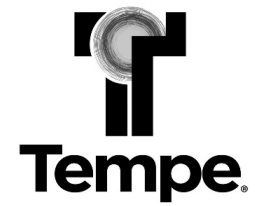
- **SITE PLAN REVIEW:** Verify all comments by all departments on each Preliminary Site Plan Review. If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Division will be reviewed by planning staff to ensure consistency with this Design Review approval prior to issuance of building permits

HISTORY & FACTS:

1930 - 1953	Aerial imagery indicates that the subject lot was utilized for agricultural purposes.
1954	Single-family residence is constructed.
April 18, 2023	City receives complaints regarding a potential illegal home occupation in the rear yard.
September 27, 2023	Variance request is scheduled to be heard by the Board of Adjustment.

ZONING AND DEVELOPMENT CODE REFERENCE:

[Section 6-309 Variance](#)



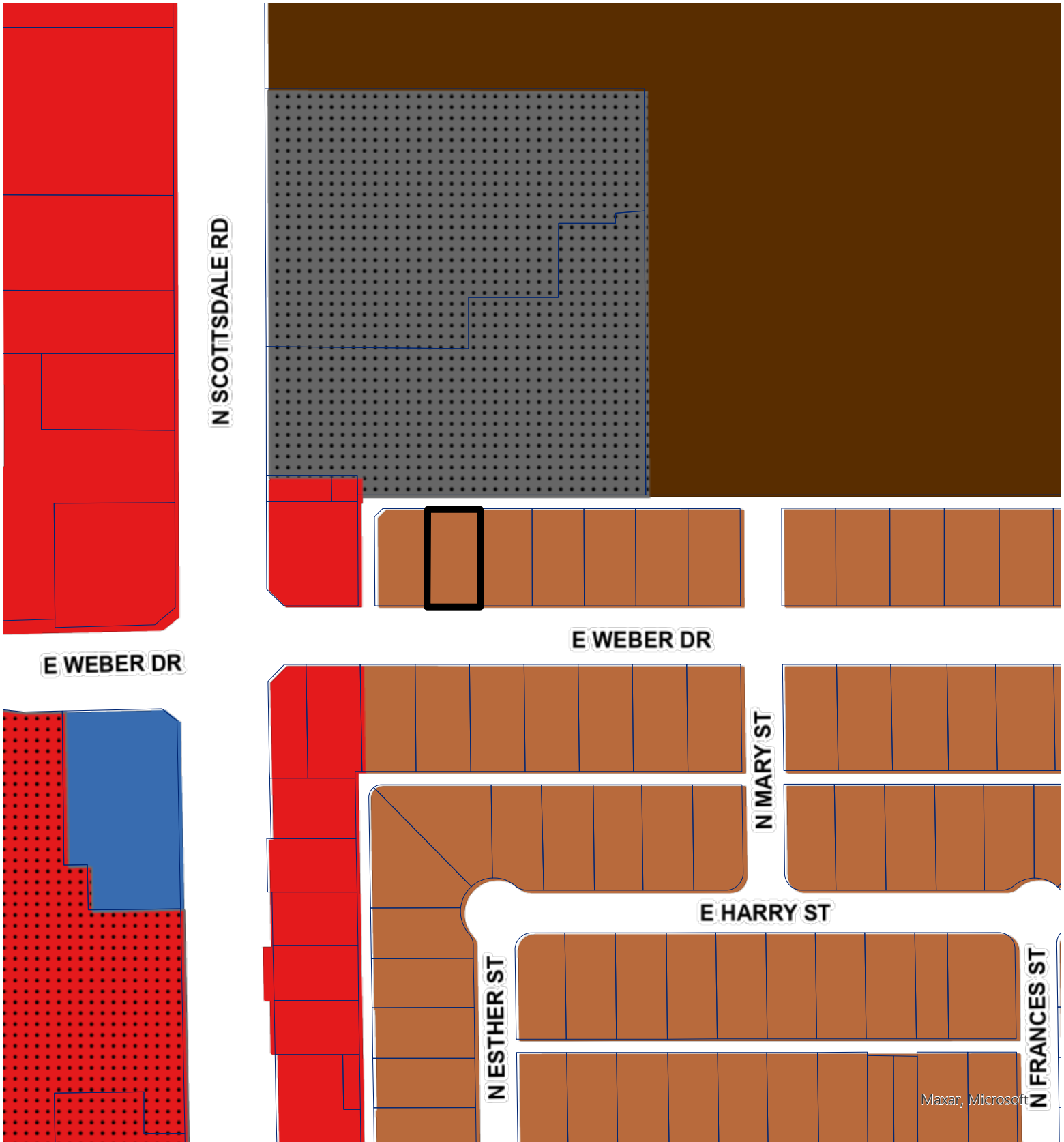
DEVELOPMENT PROJECT FILE

for

HESSWANY RESIDENCE
(PL230128)

ATTACHMENTS:

- 1-4. Site Context (Location Map, Aerial, Site Photos)
- 5-6. Applicant's Letter of Explanation
- 7. Site Design
- 8. Neighborhood Meeting Summary and Public Input

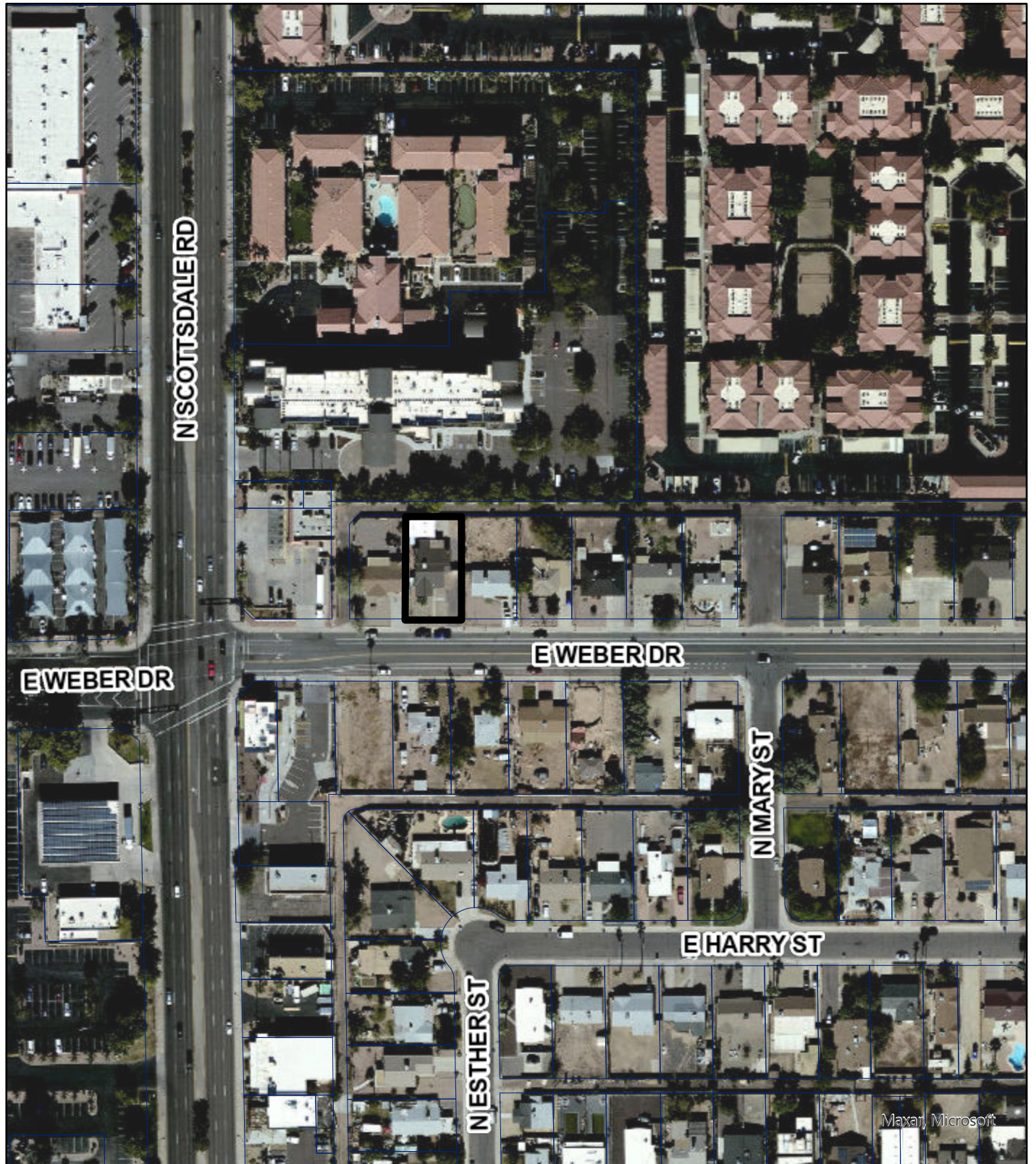


- General Industrial District (GID)
- Mixed Use Med-High (MU-3)
- Commercial Shopping and Services (CSS)

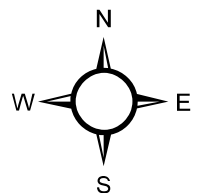
- Planned Commercial Center Neighborhood (PCC-1)
- Multi-Family Residential (R-2)
- Multi-Family Residential General (R-4)

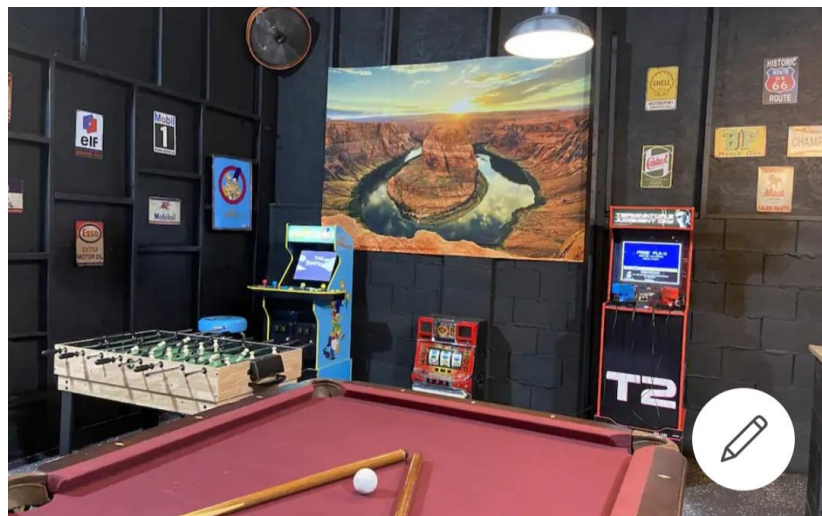


HESSWANY RESIDENCE PL230128



Aerial Map







Letter of Explanation

To the City of Tempe,

Dear Sirs and Madams,

We, the owners of 918 E Weber Dr, Tempe, AZ 85281, are respectfully requesting a variance to reduce the side yard setback from 7 feet to 0 feet on the west side of our property in order to accommodate the existing detached garage.

The existing garage height is between 12 – 12.4 feet high.

Several factors underpin our request:

1. We purchased the property with the belief that the existing structure was legally constructed, as it was depicted on the county assessor map at the time of our acquisition and continues to be listed as such.
 2. The presence of the structure has had no adverse impact on the neighboring properties.
 3. We are not seeking special privileges but rather seeking to rectify an existing situation that has been in place since 2014.
 4. This is not a self-imposed condition; the structure predates our ownership by several years.
 5. Our request does not entail any changes to permitted uses or density.
 6. We are not seeking any items that are expressly prohibited.
- It is noteworthy to mention that when we requested the public records of the property from the City of Tempe, they provided us with the same property plan that we had previously obtained from the county assessor's office. This plan included the detached garage as part of the property. It should be emphasized that it is not reasonable to expect someone without expertise in a specialized field of city engineering to recognize that this structure is not permitted.

Some background information on our request:

We purchased the property in 2022 and relied on the county assessor's map to verify the legality of all existing structures. We expected that everything on record would be in compliance with local regulations. The structure in question was constructed in approximately 2014 and was previously utilized as a mechanical shop by the previous owner for many years, with no complaints from neighbors. The title company that facilitated the purchase assured us that there were no violations associated with the property at the time of the sale.

Recently, the City of Tempe received a false complaint alleging that we were using the structure as a mechanic shop. This accusation is entirely baseless, as our property is licensed as a short-term rental by the City of Tempe, and the structure has been converted into a recreational area. Our neighbors are aware of this transition, and the false allegations were made with the intent to harm us personally. The previous owner operated the property as a mechanic shop for years without any complaints.

During an investigation into the property's use for business purposes, a city inspector noted that the structure did not comply with the current setback code. This information was inadvertently included in the violation notice sent to us. We have since communicated with the City of Tempe, which confirmed that the property is no longer used for unpermitted business activities. However, they advised us that the only way to address the setback issue is to submit this variance application.

The play area in question has become a significant attraction for tourists, driving their choice to stay at our property during their vacations. Losing this feature would have a detrimental impact on our short-term rental business. Successful short-term rental properties in Tempe contribute to increased tourism, neighborhood prosperity, and tax revenue for the city. It is in everyone's best interest to maintain such businesses, especially in a competitive market compared to neighboring areas like Scottsdale. Losing the playroom would undermine our competitiveness in the rental market.

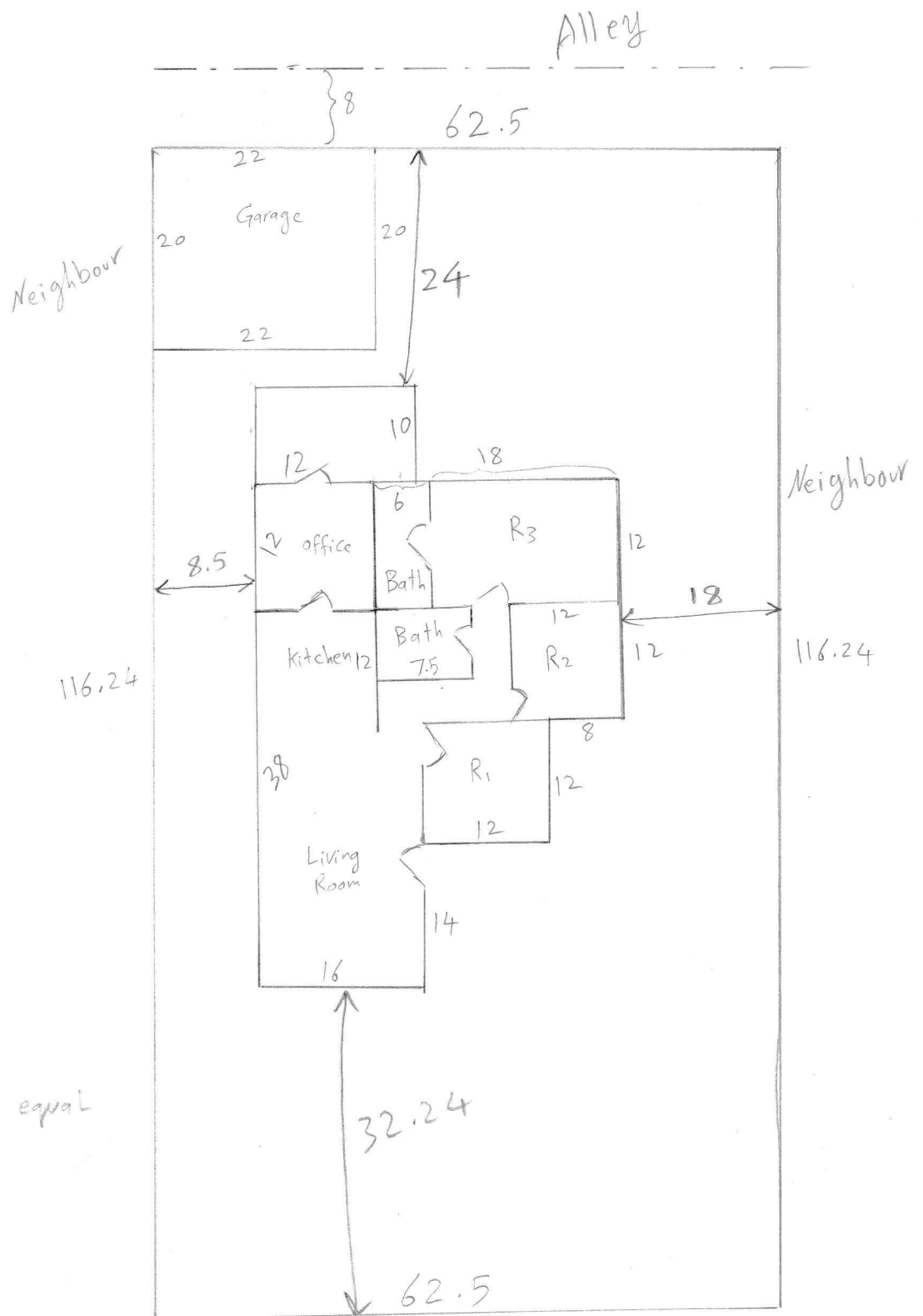
I would like to emphasize that denying our humble request for a variance would place us in a financially precarious situation. First we will pay a huge amount to adjust the structure's dimensions to meet the setback requirements. Additionally, we would lose the use of the play area, resulting in a loss of our rental business. We would be forced to cancel existing bookings to complete the necessary construction, which would harm our reputation, reliability, and trustworthiness, potentially leading to the loss of our business. Rental income is currently my sole source of livelihood, especially after my job layoff and my challenges in finding suitable employment given my physical condition.

We take immense pride in what we offer to our guests, particularly the gaming area. We have received numerous compliments, glowing reviews, and positive comments from our guests, many of whom cite the gaming area as the primary reason for choosing our property. They express their enjoyment and satisfaction with their friends and family in this space. If desired, we can provide excerpts from these reviews and feedback from our guests and their children.

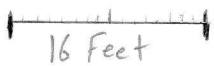
We appreciate your time and understanding and eagerly await your kind approval.

Sincerely yours,

Aiman Hesswany



Scale: Each 1 inch equal to 16 Feet



1" = 16'f

Updates to the Public Involvement Plan:

- The public notice sign for the neighborhood meeting was installed in front of the property on 07/25/2023.
- We obtained the addresses of all neighbors with properties within an 600-foot radius of our property through the county office.
- Letters inviting neighbors to the public involvement meeting on August 17th at 6:30 PM were mailed out on 8/2/2023.
- Unfortunately, the original sign was removed from the site, but we promptly replaced it on 8/3/2023 to ensure that the notice remained visible to the public.

1- Public Responses and Feedback Prior to the Meeting:

- We received one phone call on 8/16/2023 in response to the mailed letters. The caller, Mr. Randy Becklund (phone number: 602-349-1031), expressed his strong support for approving the variance and maintaining the structure as it is. Mr. Becklund, who is the president of a neighboring HOA, personally knows the existing garage in question and has visited the property several times in the past while it was owned by the previous owner. Although he couldn't attend the meeting, he conveyed his full support for retaining the garage.

2- Public Response and Feedback During the Meeting:

- The meeting took place as scheduled on 8/17/2023 at 6:30 PM in front of our property, with a table and chairs set up for the occasion.
- Mr. Chris Jasper, representing the City of Tempe, attended the meeting and offered his assistance in addressing any questions or concerns.
- Only two neighbors attended the meeting, and they engaged in a lengthy discussion with us and Mr. Jasper. Both neighbors expressed their wholehearted support for keeping the garage in its current state, emphasizing that they did not see it as an issue and believed we should not be required to undertake the process of removing or altering the structure.

In conclusion, the neighbors have overwhelmingly expressed their support for retaining the existing structure. Mr. Randy Becklund, the president of a neighboring HOA, conveyed his full support via a phone call and cited his personal knowledge of the property. During the public meeting, attended by two neighbors, both individuals offered unequivocal support for maintaining the structure as it is. This collective neighbor backing underscores the consensus that there is no objection within the community to preserving the current state of the garage.