

**CITY OF TEMPE
BOARD OF ADJUSTMENT**

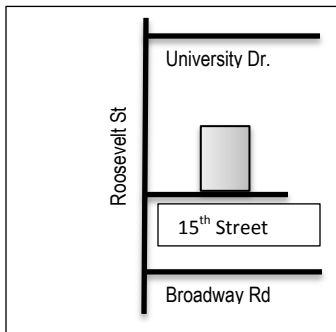
**Meeting Date: 04/22/2015
Agenda Item: 2**

ACTION: Request for an Appeal of the Hearing decision to deny variances to reduce the front yard setback from 20' to 10' and reduce the on-site driveway length from 20' to 10' for the GIGUERE RESIDENCE located at 534 West 15th Street. The applicant Bob Giguere.

FISCAL IMPACT: N/A

BACKGROUND INFORMATION: On February 17, 2015 the Hearing Officer approved the request by the Giguere Residence (PL140422) for a variances to reduce the front yard setback from 20' to 10' and reduce the on-site driveway length from 20' to 10'. At the hearing, a neighboring property owner spoke on record in opposition to the request and submitted a letter of opposition which was included in the Hearing Officer report attachments. The Hearing Officer denied the request based on the finding that the variances did not meet the criteria to warrant approval. The appellant's letter of appeal is attached with a copy of the Hearing Officer: staff summary report and attachments from the February 17th hearing and meeting minutes as background information. . This request includes the following:

VRA15002 Appeal of the Hearing decision to deny variances to reduce the front yard setback from 20' to 10' and reduce the on-site driveway length from 20' to 10'



Property Owner	Robert Giguere
Zoning District	R1-6 Single Family Residential
Lot Size	7000 sf
Building Size	3028 sf
Parking Required/Provided	2/2
Setbacks Required	10' front, 5' side, 15' rear

ATTACHMENTS: Board of Adjustment File

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

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

**CITY OF TEMPE
HEARING OFFICER**

Meeting Date: 02/17/2015
Agenda Item: 2

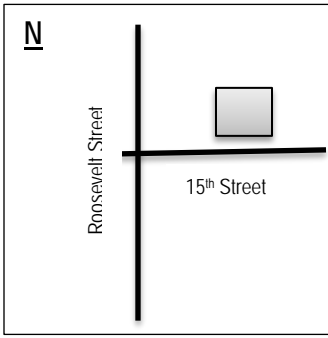
ACTION: Request approval of variances to reduce the front yard setback from 20' to 10' and reduce the on-site driveway length from 20' to 10' for the Giguere Residence located at 234 WEST 15th Street. The applicant Bob Giguere.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approval, subject to conditions

BACKGROUND INFORMATION: The Giguere Residence (PL140422) is seeking a variance to reduce the south front yard setback from twenty feet (20) to ten (10) feet and a variance to reduce the on-site driveway length from 20' to 10'. The applicant's replaced their damaged residence with a new single family home. At the January 20, 2015, several residents spoke on record in opposition to the variance request. The Hearing Officer continued this request for one month for further consideration. The site location is south of University, East of Hardy and North of Broadway Rd. Their request includes the following:

- VAR14008 Variance to reduce the front yard setback from 20' to 10'
- VAR15001 Variance to reduce the on-site driveway length from 20'-10'

	Property Owner /Applicant	Bob Giguere
	Zoning District	R1-6, Single Family Residential
	Lot Area	7000 s.f.
	New Building Area	1371 s.f.
	Total Building Height	18-6"
	Total Lot Coverage	45%
	Front Setback	10 feet
	Side Setback	5 feet
	Rear Setback	15 feet

ATTACHMENTS: Supporting Attachments

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

Department Review: Ryan Levesque, Community Development Deputy Director
 Legal review by: N/A
 Prepared by: Sherri Lesser, Senior Planner
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

COMMENTS

The applicant's variance, for the reduced front yard setback, is necessary in order to complete the construction process for the new house.

PUBLIC INPUT

The applicant held a neighborhood meeting on December 22, 2014 and presented their project to the surrounding neighbors-see summary of the neighborhood meeting in attachments.

VARIANCE

The Zoning and Development Code Development Standards for the R1-6 Single Family Residence District requires structures to be setback twenty (20) feet from the front yard property lines. The residence constructed on this lot was placed twenty (20) feet from the curb line not property line. They state in their letter that the incorrect placement is due an error on the approved plans; showing an incorrect right-of-way dimension. The incorrect right-of-way dimension led to the incorrect placement of the structure on the lot. To remedy the misplacement of the structure on the lot; property owner is seeking is a reduced front yard setback variance.

Staff's evaluation of the variance criteria finds evidence within the surrounding area to warrant support of their request based on special circumstances and privileges enjoyed by other properties within the immediate area. The circumstances will be addressed in review of the criteria for approval of variances.

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
 - *There is no sidewalk in front of this lot and a substantial ROW encroaches on the property- the extensive ROW would require the house to be placed further back on the lot where existing easements and overhead power lines limit placement.*
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
 - *There exists varying setbacks on neighboring properties, attributed to previous front yard variances granted to other property owners. At least three examples exist on the south side of 15th Street (see photos attached).*
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 R1-6 zoned properties, especially those on this street; 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 pertaining the existing ROW, easements and power lines are not self-imposed by the property owner.*

CONCLUSION

Based on the information provided by the applicant, and the above analysis, staff recommends approval of the requested Variance with the finding that the request meets the required tests for approval and will conform to the conditions. Staff notes that substantial landscape exists on the street to mitigate any visual difference the offset of the residence may create.

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 variances are valid for the plans as submitted within this application.
2. This variances valid and in effect with after a valid Building Permit the required inspections completed to obtain final C of O.
3. The variances are valid for the plans as submitted within this application. Any additions or modifications may be. The setback may not be reduced further without seeking another variance.
4. Add a minimum of three trees to the front yard with low shrubs to help mitigate the prominence of the structure. The plant material, species and planting locations shall be reviewed and approved by planning staff. A final planting plan to be submitted to file as a part of a permanent record for property; all plant I material installations to be completed within 30 days or by 03/17/2015. On site landscape to be installed and maintained per planting plan or property shall risk incurring violations for non-compliance with conditions of approval.

HISTORY & FACTS:

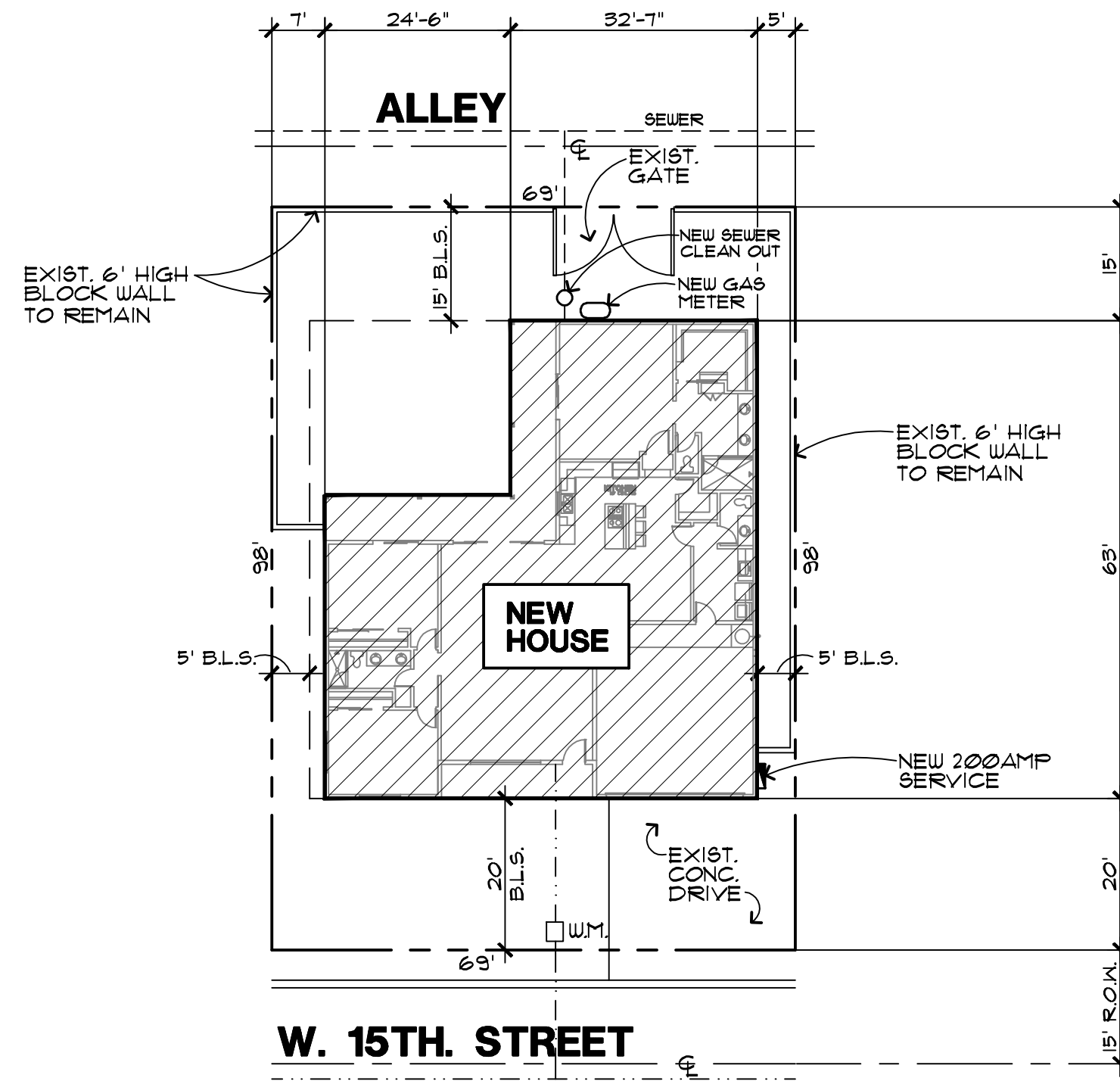
1998-2006 The Hearing Officer approved the same request for three separate residences on 15th Street:
509 W. 15th Street
519 W. 15th Street
543 W. 15th Street

- a. Variance to reduce the north front yard setback
- b. Use permit to park in the front yard setback

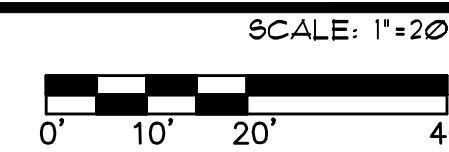
January 20, 2014 The Hearing Officer continued a request for a front yard setback variance to the February 17, 2015 hearing.

ZONING AND DEVELOPMENT

CODE REFERENCE: Section 6-309- Variances
Table A-202A-Deviation Standard in AG and Single Family Residence



DEMOLITION SITE PLAN



SHEET INDEX

- A1 SITE PLAN / SITE DATA
- C-1 GRADING & DRAINAGE PLAN
- C-2 GRADING & DRAINAGE PLAN
- A2 FLOOR PLAN
- A3 ELEVATIONS
- A3.1 ELEVATIONS
- A4 FOUNDATION PLAN
- A5 ROOF FRAMING PLAN
- A6 BUILDING SECTIONS
- D1 DETAILS
- D2 DETAILS
- E1 ELECTRICAL PLAN
- M1 MECHAICAL PLAN
- P1 PUMBING SCHEMATICS

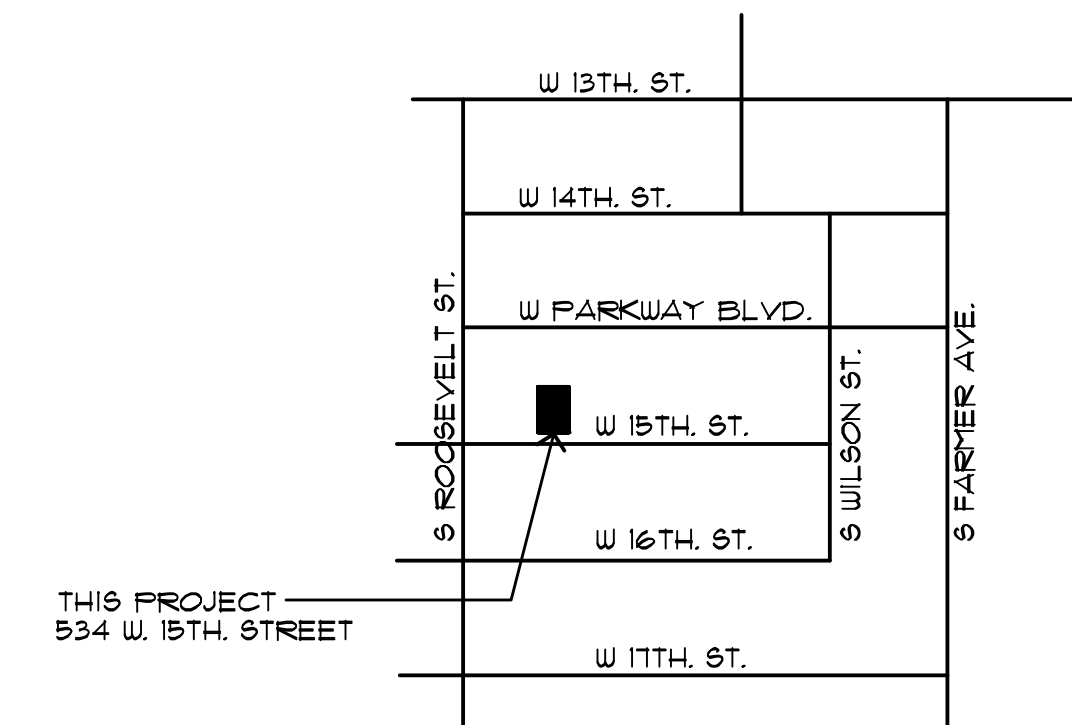
APPLICABLE CODES

ALL WORK SHALL BE IN CONFORMANCE WITH, BUT NOT LIMITED TO, THE REQUIREMENTS OF THE FOLLOWING, AND ANY OTHER FEDERAL, STATE, & MUNICIPAL REGULATIONS WHICH ARE APPLICABLE.

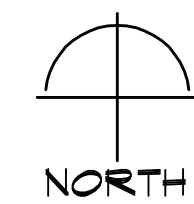
TEMPE BUIDING SAFETY ADMINISTRATION CODE ADMINISTRATIVE CODE

2009 INTERNATIONAL RESIDENTIAL CODE AMENDMENTS

2008 NATIONAL ELECTRICAL CODE AMENDMENTS



VICINITY MAP



OWNER

MICHAEL R. GIGUERE & ROBERT G. GIGUERE
534 W. 15TH STREET
TEMPE, AZ. 85281

SITE DATA

LOT SIZE: 6,765 SF.

HABITABLE: 2,120 SF.

GARAGE: 497 SF.

COVERED PATIO: 321 SF.

COVERED ENTRY: 90 SF.

TOTAL UNDER COVER 3,028 SF.

45% ALLOWABLE LOT COVERAGE
45% LOT COVERAGE PROVIDED

ZONING: RI-6

LEGAL DESCRIPTION

SUBDIVISION: CAMPUS HOMES

PARCEL #: 124-65-075

M.C.R. 055-32

LOT 11

SECTION 21

TOWNSHIP 1N

RANGE 4E

REVISIONS

6-4-14 CITY COMMENTS

Complete
ARCHITECTURAL SERVICES, LLC
CUSTOM HOME DESIGN, ADDITIONS, REMODELS,
RENDERINGS & TENANT IMPROVEMENTS

MARK WALTH
(602) 788-1699
fax: (602) 996-4535
markwalth@hotmail.com

3511 E. THUNDERBIRD RD.
PHOENIX, ARIZONA 85032

NEW RESIDENCE:

534 WEST 15TH STREET
TEMPE, ARIZONA 85281

Title: SITE PLAN & PROJECT DATA

Date: 4-21-2014

Project number: 2014-18

Drawn by: M. WALTH

Checked by: M. WALTH

CAD file:

- Design Development
- Progress Const. Docs.
- City Submittal
- Bid Package
- Construction Issue
- Record Drawings

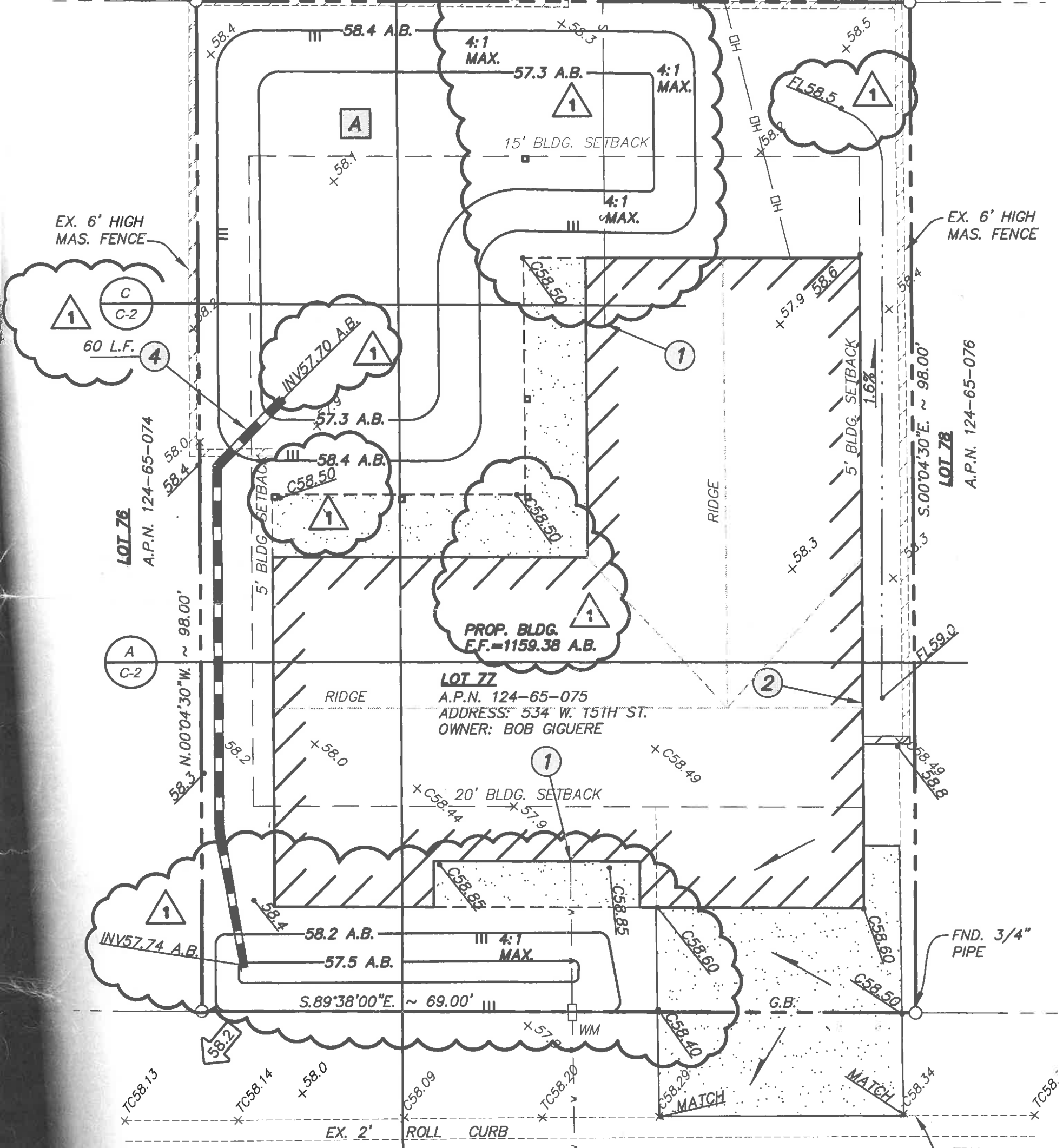
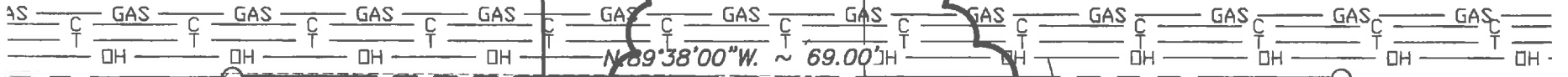
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A1

LOT 72
A.P.N. 124-65-070

16' ALLEY

EX. SEWER MAIN



LOT 76
A.P.N. 124-65-074

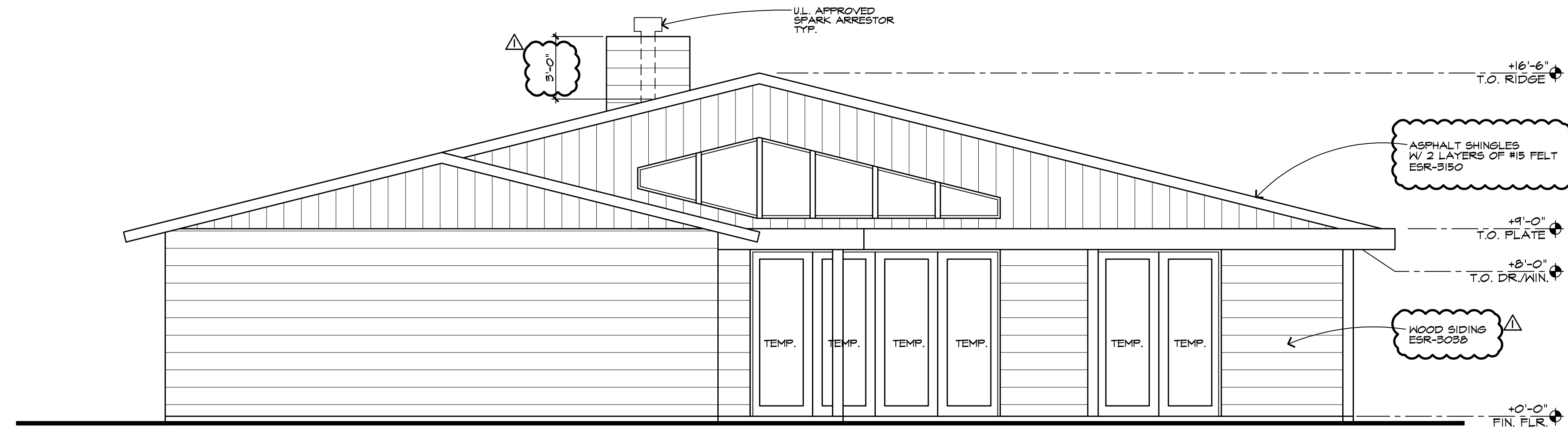
LOT 78
A.P.N. 124-65-076

LOT 77
A.P.N. 124-65-075
ADDRESS: 534 W. 15TH ST.
OWNER: BOB GIGUERE

W. 15TH STREET

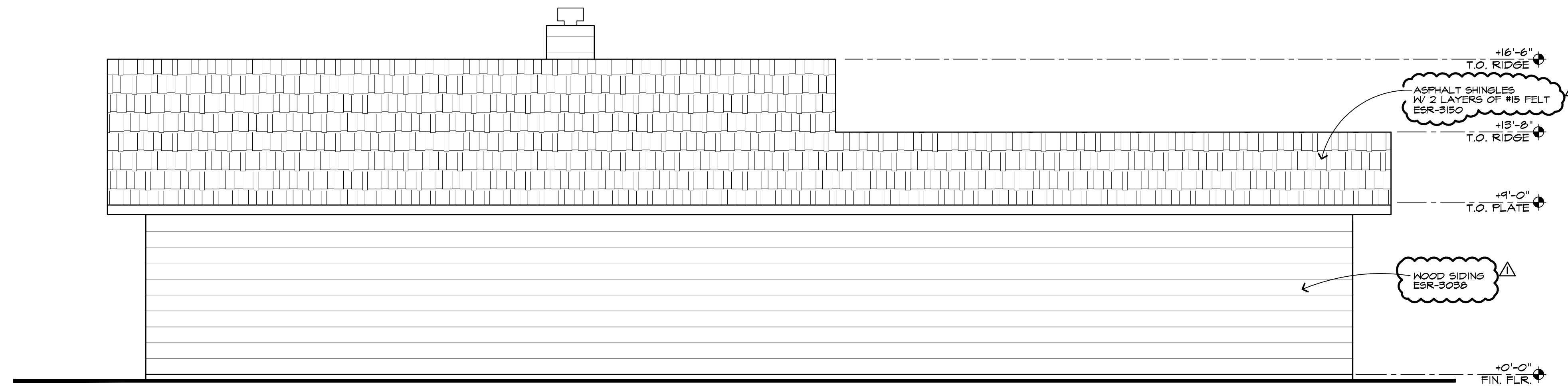
EX. WATERLINE

SITE PLAN AS BUILT



NORTH ELEVATION

SCALE: 1/4" = 1'-0"



EAST ELEVATION

SCALE: 1/4" = 1'-0"

REVISIONS

6-4-14 CITY COMMENTS

Complete
ARCHITECTURAL SERVICES, LLC
CUSTOM HOME DESIGN, ADDITIONS, REMODELS
RENDERINGS & TENANT IMPROVEMENTS

MARK WALTH
3511 E. THUNDERBIRD RD.
PHOENIX, ARIZONA 85032
(602) 788-1699
fax: (602) 996-4535
markwalth@hotmail.com

NEW RESIDENCE:

534 WEST 15TH STREET
TEMPE, ARIZONA 85281

Title: ELEVATIONS

Date: 4-21-2014

Project number: 2014-18

Drawn by: M. WALTH

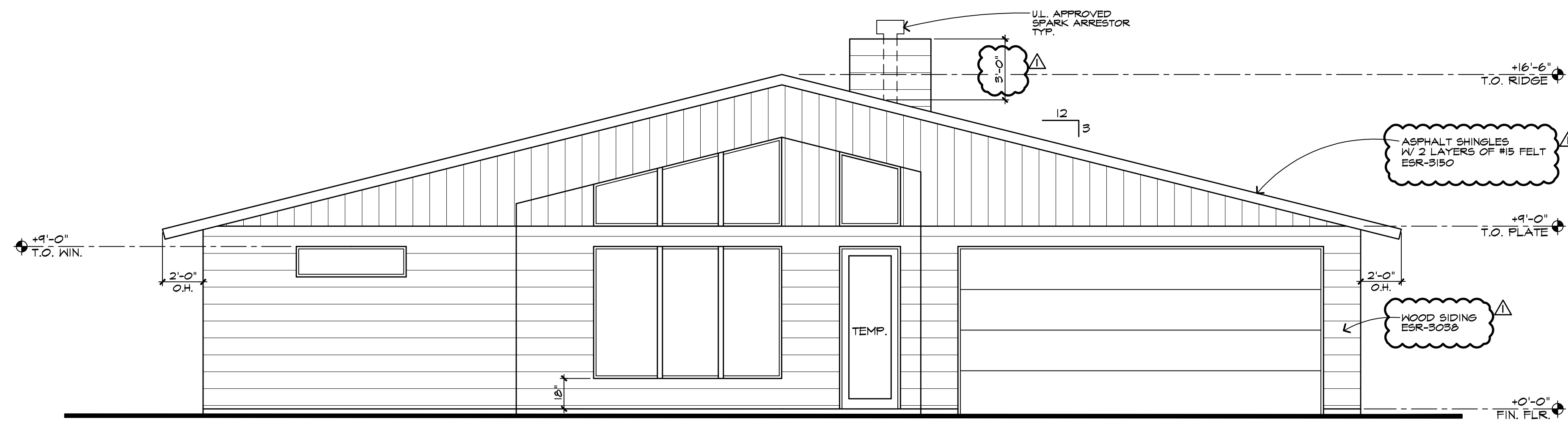
Checked by: M. WALTH

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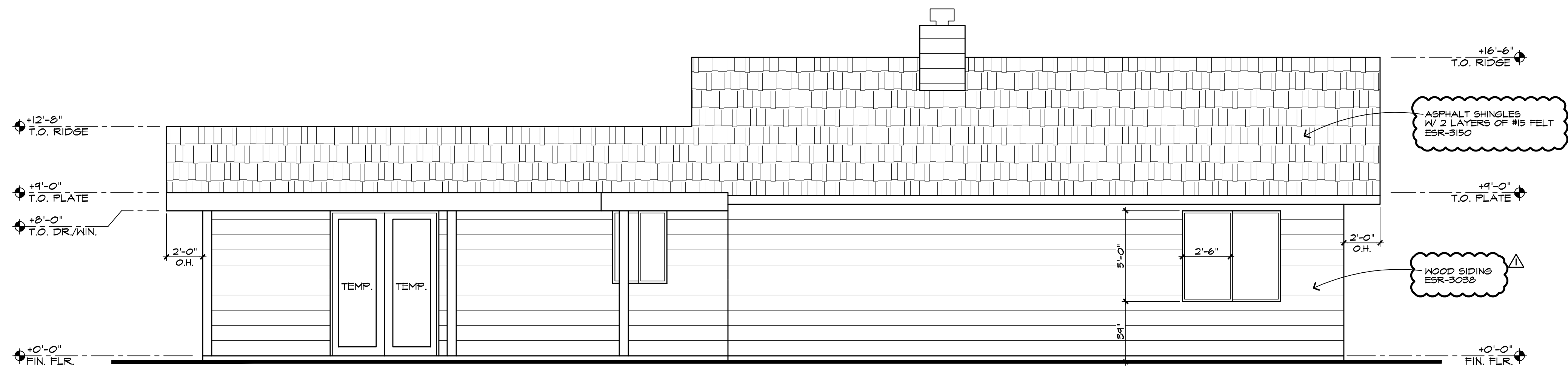
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A3.1



SOUTH ELEVATION

SCALE: 1/4" = 1'-0"



WEST ELEVATION

SCALE: 1/4" = 1'-0"

REVISIONS

6-4-14 CITY COMMENTS

Complete
ARCHITECTURAL SERVICES, LLC
CUSTOM HOME DESIGN, ADDITIONS, REMODELS
RENDERINGS & TENANT IMPROVEMENTS

MARK WALTH
3511 E. THUNDERBIRD RD.
PHOENIX, ARIZONA 85032
(602) 788-1699
fax: (602) 996-4535
markwalth@hotmail.com

NEW RESIDENCE:

534 WEST 15TH STREET
TEMPE, ARIZONA 85281

Title: ROOF FRAMING PLAN

Date: 4-21-2014

Project number: 2014-18

Drawn by: M. WALTH

Checked by: M. WALTH

CAD file:

- Design Development
- Progress Const. Docs.
- City Submittal
- Bid Package
- Construction Issue
- Record Drawings

Sheet Number:

A3



FRONT ELEVATION



Previously approved reduced front yard setback variance

NEIGHBORING PROPERTY SOUTHSIDE OF 15TH STREET



Giguere Residence
(behind oleander hedge)

EASTBOUND VIEW

Giguere Property



WESTBOUND VIEW



FRONT VIEW OF NEIGHBORING PROPERTY WITH FRONT SETBACK VARIANCE





Approved reduce front yard setback

15TH STREET SOUTHSIDE

Lesser, Sherri

From: Bgiguere <bgiguere@aol.com>
Sent: Thursday, January 15, 2015 9:05 AM
To: Lesser, Sherri
Subject: Re: 534 W 15th St/Giguere

Sherri,

I did not take any minutes. The meeting started at 9:00am and ended at 10:30am. There were approximately 8 people in attendance. They expressed concerns over the demolition of the previous home and construction of our new home. Concerns were also raised about the size of the home and the impact on the historical nature of the neighborhood. One homeowner and one homeowner's relative stated that they had called the city at early stages of construction to inquire about the permit issued. Both stated they were told by the City of Tempe that the construction was inspected and approved. One homeowner stated that they asked the city to see the plans and were informed that the plans were unavailable to view.

Both myself and the attendees were disappointed by the lack of representation of the city at the meeting.

After the meeting I was told by one of the homeowners that there was a consensus that the city and myself were aware of the issues and intentionally ignored them. This is not accurate from my stand point. I was not made aware of neighborhood or city concerns until approximate completion of the home.

Please forward any and all correspondence between all homeowners and the city.
Thank you,
Bob

-----Original Message-----

From: Lesser, Sherri <sherri_lesser@tempe.gov>
To: 'Bgiguere' <bgiguere@aol.com>
Sent: Tue, Jan 13, 2015 3:42 pm
Subject: RE: 534 W 15th St/Giguere

Bob-

Do you have minutes from your neighborhood meeting- I may include in my report for the Hearing Officer.

Sherri Lesser
Senior Planner
City of Tempe
(480) 350-8486

From: Bgiguere [<mailto:bgiguere@aol.com>]
Sent: Thursday, December 18, 2014 12:40 PM
To: Lesser, Sherri
Subject: 534 W 15th St/Giguere

Hi Sherri,

I tried to return your call, but your mailbox was full. I was transferred but they could not take a message, and then I was transferred again, but no one answered the line. I have not received an email per your voice mail. Please call me again (480)797-5700 or maybe email would be easier- bgiguere@aol.com.

Thank you,
Bob Giguere

To: The City of Tempe – Planning Division Community Development Dept.
31 E. 5th St.
Tempe, AZ 85281

Re: Case Name: Giguere Residence, Case Number: PL 140422
Hearing Date: Tuesday, January 20, 2015 @ 1:30p.m.

From: Esther & Chet Myers
4239 Bays Water Drive
Colorado Springs, CO 80920

Property Owner of: 530 W. 15th St.
Tempe, AZ 85281

Date: 1/12/2015 revised

Subject: Opposition of variance to reduce the front yard building setback and a variance to reduce the required on site driveway length at 534 W. 15th St.

I am in opposition to the request for variance to reduce the front yard building setback and a variance to reduce the required on site driveway length for the home at 534 W. 15th St. I own the home next door to the east, 530 W. 15th St., Tempe, AZ 85281

My reasons are as follows:

1. The house was illegally built to close to the street.
2. City of Tempe inspectors did not measure properly.
3. The Builder and The City of Tempe have made measurement errors and the house needs to be in compliance with building code.
4. The house looks odd in comparison to the rest of the homes.
5. This oddity takes away from the value of my home.
6. Possible buyers of my home will not consider my home due to the house next door being illegally close to the street.

Also, I had called the City of Tempe regarding the plans to make sure there were no variances or setbacks on 5//12/14, 5/22/14, 5/23/14, 5/27/14 and 6/4/14. I have a printed copy from my phone account of the dates to the City of Tempe. The reason I was calling is because there is a home on 406 W. 14th Street that is odd looking and I wanted to do what I could so that an odd looking home did not get built next to my home. I was given a tracking number of DS 140444 so I could check the plans when they were finalized. On my last call I was told that I was not permitted to see the plans. I was also told that there was no variances or setbacks requested for the plans. Since I was told I was not permitted to see the plans I discontinued my calls.

When the house was built so close to the street I knew it was odd but since I had already spoken to the City of Tempe regarding the plans, I felt I had no recourse because the plans did not call for any variances or set backs.

I recently received a letter from Bob Giguere the owner and I think builder of the home. The letter is title Neighborhood Meeting. RE: Variance for single family residence for right of way and setback for 534 W. 15th Street.

This is shocking and stressing news to me since I had checked with the City of Tempe on all the dates above to make sure there were no variances or setbacks.

On 12/16/14 I called the City of Tempe and I was told that the City of Tempe made an error regarding the variance and setback and also that I should have been able to see the plans. This is very upsetting news since I tried to avoid an odd house being built next to mine.

I had my brother attend the meeting that Bob Giguere had on Monday, December 22, 2014 and several homeowners attended but Sherri Lesser who Bob had arranged to be there did not arrive. My brother called her from the meeting and she did not answer. He left a message for her to call him back and to date she has never called him back. There were several homeowners at this meeting and they also expressed their opposition of this variance.

On 1/8/15 I finally got a call from Karen Stoval after leaving messages for Sherri Lesser and David H. the manager. I asked when I was going to receive my letter regarding the variance meeting and I was told that no letter was sent to me. Karen told me they mailed a notice to 531 W. 15th St. and that is not even an address on 15th St. On 1/9/2015 Karen Stoval called me back and told me she had made a mistake and that I was sent a notice and should receive it. She also sent me and my neighbor the notice in an email. My neighbor emailed us back that she had changed her address to 531 W. 15th St. some time ago, which I was not aware of since I have not lived there for some time. I had checked on Zillow and they still list her address as 529 W. 15th St.

The head of the Planning and Zoning division should look into the process and the people that allowed these planning and building mistakes to occur which impacts property owners.

I would like The City of Tempe to give me an explanation: How did the plans get approved with a 10ft. error? This is basic 101. Why did the foundation line inspection pass? Why did no one question the fact that the house was so close to the street, since all the other houses on the street are set back? Does the City of Tempe have certified and experienced inspectors? Are the inspectors required to measure with a tape at the foundation home site?

I feel that because the city told me that I could not see the plans that my rights as a homeowner were violated.