



MEMORANDUM

TO: Cochise County Board of Adjustment
FROM: Christine McLachlan, AICP, Planning Division Manager
FOR: Daniel Coxworth AICP, Development Services Director
SUBJECT: Docket VAR 23-05 (Estaca Setback), Application for a Variance
DATE: June 2, 2023, for the June 28, 2023, Meeting

Docket VAR 23-05 (Estaca Setback)

The applicant, Mr. Phil Schultz, requests a reduction in the required setback for an accessory structure in a residential zoning district. By zoning, all accessory structures must be no less than twenty (20) feet from all property boundaries. The applicant requests a variance to lawfully permit an existing 1,800 SF accessory building, which is fully constructed, 9.5 feet from the eastern property line. The subject property is located at 1332 East Via Estaca Benson, AZ (APN 123-25-002X). The granting of a variance is subject to approval from the Cochise County Board of Adjustment. If the Board approves the request, the Applicant must then obtain any necessary building permits to fully legitimize the request.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

Site Size: 0.82 acres
Zoning: R-36 (Rural, one dwelling per 18,000 SF)
Growth Area: Category D
Plan Designation: Rural
Area Plan: None
Existing Uses: Residential
Proposed Uses: Residential with a 1,800 SF shed

Surrounding Zoning and Uses

Relation to Subject Parcel	Zoning District	Use of Property
North	R-36	Residential
South	R-36	Residential
East	R-36	Residential
West	R-36	Residential

Figure 1: Request Location



Location
VAR 23-05 Estaca Setback



II. SITE HISTORY

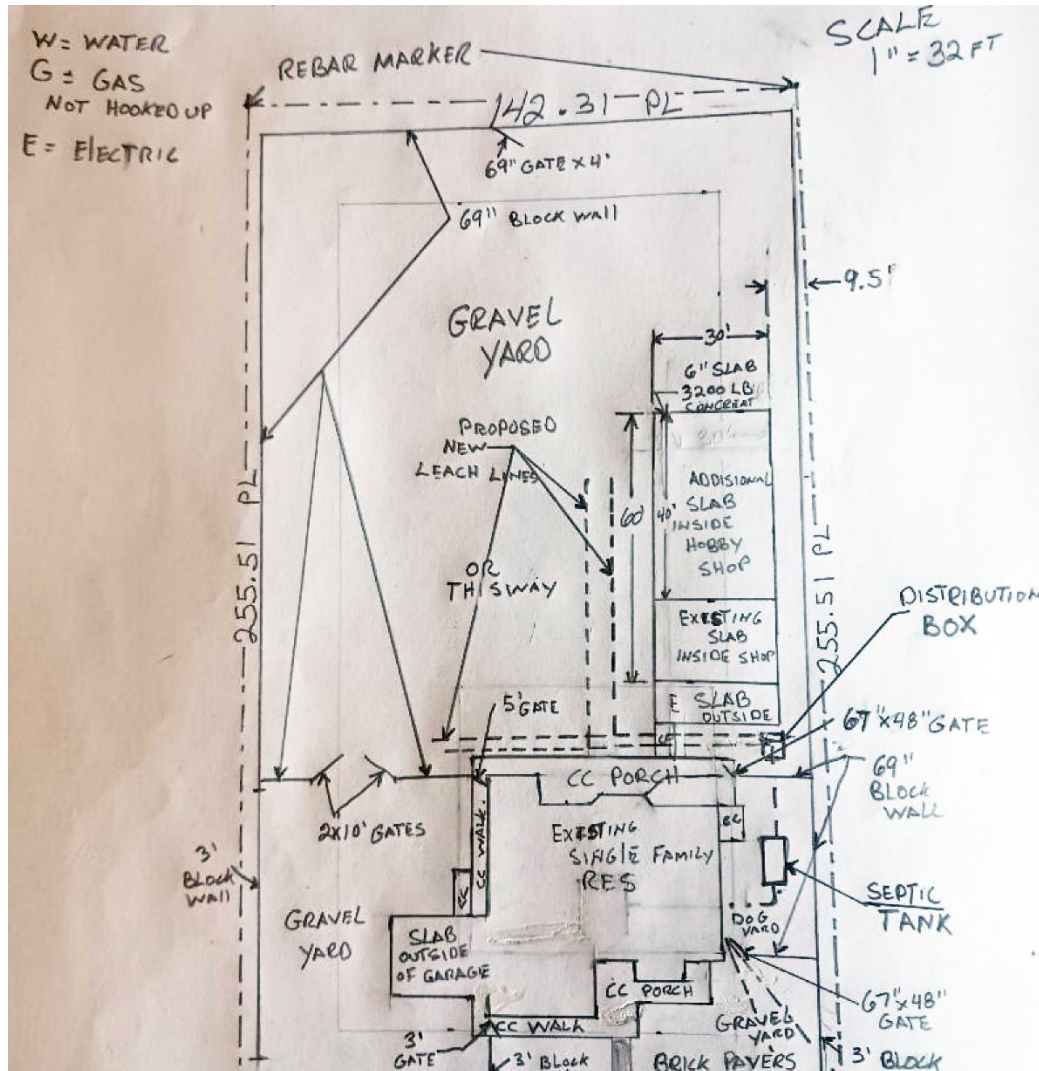
- 2019 – Permit issued for 2,258 SF single family home
- 2023 – Residential Septic Permit (Relocate leach lines)

III. REQUEST DESCRIPTION

The applicant, Mr. Phil Schultz, requests a reduction in the required setback for an accessory structure in a residential zoning district. By zoning, all accessory structures must be no less than twenty (20) feet from all property boundaries. The applicant requests a variance to lawfully permit an existing 1,800 SF accessory building, which is fully constructed, 9.5 feet from the eastern property line. To do so, the Board of Adjustment would need to permit a 10.5’ reduction in setback from the eastern property line to the accessory structure.

Section 704.03 of the Zoning Regulations establishes setbacks for principal and accessory structures/uses in residential zoning. The minimum required setback for all principal or accessory structures in R-36 zoning is twenty (20) feet. When the applicant/homeowner moved to the property, the southernmost portion of the slab was existing. In 2020, he extended the slab and placed the metal building. He did not obtain any building permits for any of the site improvements and was, consequently, unaware of the setback requirements.

Figure 2: Site Plan



IV. ANALYSIS OF IMPACTS – COMPLIANCE WITH VARIANCE FACTORS

Section 2102.02 of the Zoning Regulations provides a list of eight factors with which to evaluate Variance applications. Staff uses these factors to help determine the suitability of a given variance request, whether to recommend approval for a variance, as well as to determine what conditions and/or modifications may be needed. With the information provided, eight (8) factors apply to this request. The project, as submitted, fully complies with five (5) of the factors.



1. There is an unnecessary hardship created by zoning regulations – Does not comply

Section 704.03 of the Zoning Regulations established setbacks for principal and accessory structures/uses in residential zoning. The minimum required setback for all principal or accessory structures in R-36 zoning is 20 feet. R-36 zoned property must be a minimum of 36,000 SF and this is not a nonconforming lot. The lot could accommodate both the home and the accessory structure while observing all required setbacks.

2. There are peculiar site conditions present– Does not comply

There are no physical conditions unique to the site. The lot meets the minimum size requirements for its zoning. It is not irregularly shaped, and there are no significant changes in grade. There are no flood hazard zones on site.

3. This is not a self-created hardship – Does not comply

This factor considers whether “The unnecessary hardship does not arise from a condition created by an action of the owner of the property.” Although unknowingly, the property owner technically initiated the request.

4. This is the minimum to afford relief – Complies

R-36 zoning requires a 20-foot setback. The challenge is that the structure is existing. If it were not existing it could be moved entirely outside the setback, but now that it is, observance of any additional setback would mean the complete removal of the structure.

5. This is a permitted use in Zoning Regulations – Complies

The application is for an accessory use. More specifically, an 1,800 SF storage shed. The use is permitted within the R-36 zoning district.

6. There is no adverse impact to surrounding property owners –Complies

This property is within a medium density neighborhood. Overall, the property is in excellent condition. The presence of a large storage structure/garage allows the indoor storage of cars and materials, that may otherwise be unsheltered and more visually apparent. Also, the accessory structure is to the rear of the home, behind a 6’ tall brick wall. There is a clump of vegetation directly to the east on the adjacent property owner’s yard that also helps obscure the structure.

7. General harmony with the intent and purposes of the Zoning Regulations – Complies

As stated in Article 2 of the Zoning Regulations, a setback is defined as follows, “the horizontal distance between the property line or road travel way and the foundation, wall, or main frame of any building or structure, and between the property line and the outer perimeter of any outdoor area significantly involved in the use or activity of the site, including non-residential sales, rental, display, or storage areas. No structure/use permitted herein shall limit the rights of the owner of any underlying easements which burden a particular site from utilizing their easement.” Residential zoning are established to “provide an area for families living at a variety of low to medium densities.” This request, to encroach into the minimum setbacks. The general harmony of the Zoning District is preserved. In fact, there are several other examples of large accessory structures in the neighborhood. Many not behind a home, or block wall. At least one other accessory structure on Via Estaca is very near a property line.



8. No violation of state or federal law – Complies

The request is for a 10.5’ reduction in the required setback to the property line. There are no state or federal laws that would apply. The County’s Zoning Regulations are local laws. The variance process is a legal means to deviate from development standards.

V. PUBLIC COMMENT

Staff mailed notices to neighboring property owners within 300-feet on May 30, 2023. Staff posted the property on June 2, 2023 and published a legal notice on June 6, 2023. To date, staff has received one letter in support and one letter in opposition.

VI. SUMMARY AND CONCLUSION

Factors in Favor of Approving the Variances

1. This variance request is consistent five of the eight criteria used by staff to help determine the suitability of a given variance request. (Minimum degree of relief, permitted use, no adverse impacts to surroundings, general zoning regs harmony, no violation of state or federal law)
2. There are several other examples of large accessory buildings in the neighborhood, some very near property lines.

Factors Against Approving the Variance

1. This variance request is not consistent with three of the eight criteria used by staff to help determine the suitability of a given variance request. (Not unnecessary hardship by zoning/factor 1, There are no peculiar site conditions present/factor 2, This is a self-created hardship/factor 3)

VII. RECOMMENDATION

Based on the Factors in Favor of Approval as Findings of Fact, Staff recommends **Approval** of the Variance as requested.

Sample Motion: Mr. Chairman, Mr. Chairman, I move to approve Docket VAR 23-05 (Estaca setback), 1332 East Via Estaca Benson, AZ (APN 123-25-002X, granting the Variance as requested by the Applicant, the Factors in Favor of approval constituting the Findings of Fact.