

1 Kay Marion Macuil (Arizona State Bar No. 023719)
Acting in the Capacity of Hearing Officer
2 1090 East Union Street
P.O. Box 1170
3 San Luis, AZ 85349

4
5 **HEARING OFFICER**
6 **THE CITY OF SAN LUIS, STATE OF ARIZONA**

7
8 In re Application of:) Minor Variance Case No. 2019-0162
9 Rene and Lye Lara)
10 Applicants) **FINDINGS OF FACT,**
11) **APPLICATION OF LAW,**
12) **ORDER AND**
13) **NOTICE OF APPEAL RIGHTS**
14)

12 **FINDINGS OF FACT AND APPLICATION OF LAW**

14 **I. Setback Regulation**

15 Under San Luis Zoning Regulation Section 152.078 Table 2, R1-6 zoning requires seven-foot
16 (7') side setbacks or under footnote (d) of Table 2, five-foot (5') side setbacks with two (2) hour fire-
17 resistive construction.

18 **II. Applicants' Request for Variance from Setback Regulation**

19 The applicants have requested a minor variance to reduce their side yard setback from seven
20 feet (7') to six feet (6') intending to build a carport without two (2) hour fire-resistive construction at
21 455 North Ismael Solorio Court, San Luis, Arizona in subdivision Bienestar Estates No. 9B which is
22 in a Residential R1-6 Zoning District.

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24 **III. Information Reviewed**

25 The undersigned attached and reviewed

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A. Written Documents:

1. dated March 29, 2019, titled "Narrative Statement" presumably signed by one applicant,
2. dated March 29, 2019 Comment by Development Services with a County of Yuma Phone number.,
3. Undated Agenda Item Review Form submitted by the City of San Luis Director of Planning and Zoning.

B. Printed Images:

1. Location Map,
2. Site Plan,
3. three (3) street-level photographs, 2 photographs have red lines drawn,
4. two (2) aerial photographs with red and blue lines and typed text labeling streets, "subject property" and "proposed carport."

The undersigned received in-person verbal information while viewing attached photos on screens from the applicant Ms. Lara and the City of San Luis Building Inspector, Joaquin Campa at an open hearing held on April 9, 2019, at 5:00 p.m. at San Luis City Hall, Council Chambers, 1090 East Union Street, San Luis, Arizona, on the applicants' request for a minor variance.

C. City of San Luis Zoning Regulations:

1. Section 152.078 Low and Medium Density Residential Zoning Districts
2. Section 152.045 Variances and Appeals
3. Section 152.028 Zoning Administrator

IV. Finding of Facts to Applicable Variance Criteria

Under the City of San Luis Zoning Regulation Section 152.045(C), applications for a variance must meet all four (4) hardship criteria.

1 (1) "There exists special circumstances or conditions regarding the land or building
2 referred to in the application which do not apply to other properties in the zoning
3 district[.]"

4 The applicants admit in the written statement submitted that no such circumstances
5 apply to their property. However, they point to other properties in the subdivision that do
6 not meet the setbacks. Variances focus on the land for which the variance is requested, the
7 *applicants'* land. (See § 58:8. 3 Rathkopf's The Law of Zoning and Planning § 58:8 (4th ed)).

8 Recently the City of San Luis faced a situation of several hundred illegal shade structures
9 whose homeowners had frequently been victims of unscrupulous, unlicensed contractors.
10 City Council in response adopted a program under which certain persons could bring their
11 properties into compliance over time. But it was a program to end illegal construction and
12 to phase out the illegal existing structures. Under the adopted program no new illegal
13 structures were to be permitted. The existence of those illegal structures cannot be used for
14 the purpose to justify more illegal structures. Doing so would be contrary to law, the
15 program, safety and would gut the purpose of the program to phase out illegal structures.

16 This request for a variance is so the applicants can build a form of shade structure
17 carport. The request for a variance for a carport is because the applicants are using their
18 garage for other things and can no longer park their vehicle(s) in the garage. It is not a case
19 of such unique property conditions that there is no other place to park vehicles. Discussion
20 in the next criteria speak to other options the applicants have for parking their vehicles.

21 Finding: The first criterion is not met.

22 (2) "The above special circumstances or conditions are preexisting and are not
23 created or self-imposed by the owner or applicant[.]"

24 The applicants have a covered garage. During the hearing, Ms. Lara indicated they are
25 using the garage for other things, as many people do. The variance is requested because
there is a gate to the area where they wish to construct the carport. If the gate remains

1 where it is, they cannot meet the setbacks. Both the using the garage for things other than
2 parking vehicles and constructing the gate are self-imposed. During the hearing, it was
3 determined it would be possible to either leave the gate "as is" and not have a carport, or
4 build a carport, in addition to the garage, but one would have to change the gate. Either
5 way, the property owners can, and indeed do enjoy the rights of others in the neighborhood
6 without need of a variance.

7 The condition of the garage and the condition of the gate are both self-imposed. As
8 stated in § 58:21 Creation by Owner's Affirmative Act, 3 Rathkopf's the Law of Zoning and
9 Planning (4th ed.):

10 In order to be entitled to a variance, the hardship complained of must arise
11 through circumstances or conditions uniquely affecting the property. If the
12 conditions affecting the property have been caused or created by the
13 property owner or his predecessor in title, the essential basis of a variance,
14 that the hardship be caused solely through the manner of operation of the
15 ordinance upon the particular property, is lacking. In such a case, a variance
16 should not be granted because the hardship will be regarded as having been
17 self-created thus barring relief.

18 Variances generally will not be granted when courts determine that the
19 hardship was created by an affirmative act by the owner or his predecessor

20 Finding: The second criterion is not met.

21 **(3) "The variance is necessary for the preservation of substantial property rights.
22 Without a variance, the property cannot be used for purposes otherwise allowed
23 in this zoning district[.]"**

24 At issue is a place to park vehicles. This is not a situation of neighbors having a place
25 and applicants do not. The applicants have a garage, which they are using for different
purposes other than to park vehicles. Building an extra carport is possible without a
variance, just not the kind of carport/gate that is desired. The variance is unnecessary to
enjoy property rights enjoyed by the neighborhood. The applicants have only to clean out

1 the garage or have a different gate. Other options the applicants have include renting an off-
2 site storage unit, or putting in a compliant storage shed on their property.

3 Making an issue of having an aesthetically pleasing carport with issues surrounding an
4 appropriate fire rated wall in the setback area assumes that the carport as desired is an
5 appropriate use to begin with. The applicants request a variance from using stucco which
6 aesthetically they do not like. At the hearing, the Building Inspector gave information that
7 other alternative materials would be possible that may meet with their aesthetic sensibilities.
8 The criterion is "preservation of *substantial* property rights." The facts presented show that
9 *no* property right was infringed since there are ways to achieve both the setback requirements
10 and aesthetics and the ability to park a vehicle on the property. The specifics can be dealt
11 with in the building permit process.

12 Finding: The third criterion is not met.

13 (4) **"The authorizing of the variance will not be materially detrimental to persons
14 residing or working in the vicinity, to adjacent property, or to the neighborhood
15 or the public welfare."**

16 The San Luis Fire Department comment says that setback requirements protect
17 adjacent property and property owners. Not meeting the fire code is inherently
18 materially detrimental. Maintaining setbacks are necessary under the adopted fire code
19 whose purpose is: ". . . to prescribe minimum requirements necessary to establish a
20 reasonable level of fire and life safety and property protection from the hazards created
21 by fire, explosion, and dangerous conditions." NFPA 1 2012 §1.2. If the minimum
22 standards for fire safety are not met, this means the property is inherently materially
23 detrimental for adjacent properties.

24 Finding: The fourth criterion is not met in that applicants appear not to want to
25 build a fire rated construction when inside the minimum setback area.

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ORDER

Because the criteria for variance are not met, it is ordered denying the request for a minor variance.

SO ORDERED this 16 day of April 2019



Kay Marion Macuil
Acting in the Capacity as Hearing Officer

NOTICE OF APPEAL RIGHTS

Under City of San Luis Zoning Regulation Section 152.028(E), the applicants has ten (10) working days (counting Mondays, Tuesdays, Wednesdays and Thursdays) from the day the applicants receive this Order to file a written request for appeal with the City of San Luis Planning and Zoning Department at 1090 East Union Street or P.O. Box 1170, San Luis, Arizona 85349.

Appeals go to the Board of Adjustment which is comprised of the City Council Members. If the Planning and Zoning Department receives no request for appeal within the ten-day time limit, this Order will be final.

Service List

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Lye and Rene Lara
P.O. Box 8575
San Luis, Arizona 85349

Via First Class and Certified Return Receipt Requested U.S. Postal Service

Jose A. Guzman
Planning and Zoning Director
San Luis City Hall
1190 East Union Street
San Luis, Arizona 85349

Via Hand Delivery

NARRATIVE STATEMENT

Dear madam or Sir,

- a) *"There exist special circumstances or condition regarding the land or building referred to in the application, which do not apply to other properties in the zoning district"*

There are not existing circumstances applicable to my land or building, that make the circumstances of my property special or unique from any other properties around it. However, I would like to have the same privileges as other properties in my area. The property with address 463 N. Ismael Solorio Ct. (located north of my parcel) for instance does not have a perceivable special circumstance, but does have an approved variance for a setback reduction from the rear property line that allowed the construction of a pergola. Furthermore, in my neighborhood there are about 8 to 10 properties that have existing attached shade structures that are zero-lot-line or that encroach into the required setbacks.

- b) *"The above special circumstance or conditions are preexisting and are not created or self-imposed by the owner or applicant"*

Based on the statement above, existing circumstances (if any) are preexisting to my parcel and all the parcels in my area, and were not created or self-imposed.

- c) *"The variance is necessary for the preservation of substantial property rights. Without a variance the property cannot be used for purposes otherwise allowed in this zoning district."*

Without the variance I can still improve the property with an even more aggressive setback reduction, since the proposed attached carport can be as close as 5 feet with a 1-hour fire rate. The only reason the variance will be requested is for aesthetic and functionality reasons.

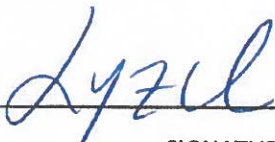
Aesthetics, because the proposed post elements and beams of the proposed structure will need to be plastered with stucco to achieve the 1-hour fire rate, and won't be pleasing to see, more of an eyesore. And functionally since, by allowing a 6-foot setback the proposed vertical elements will be out of an existing gate's radius swing.

- d) *"The authorizing of the variance will not materially detrimental to persons residing or working in the vicinity, to adjacent property, or the neighborhood or the public welfare"*

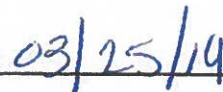
In no way, the proposed carport will have a detrimental effect to people, adjacent properties. Or neighbors. The proposed structure will meet all required building codes and zoning regulations (hence the seeking of this variance) therefore, will enhance the aesthetics in the neighborhood as well as preserve public safety and welfare.

The proposed carport will be design in a way be proportionally correct to the existing home and built with similar materials as the existing home.

Sincerely,



SIGNATURE



DATE



March 28, 2019

MINOR VARIANCE CASE NUMBER: 2019-0162

CASE SUMMARY: This is a request by Rene and Lye Lara, property owner, for a minor variance to reduce the side yard setback from 7-feet to 6-feet to allow the construction of a carport in the Medium Density Residential (R1-6) Zoning District, Assessor's Parcel Number 777-51-223. The property is located at 455 N. Ismael Solorio Court, San Luis, Arizona.

HEARING OFFICER MEETING: April 9, 2019

COMMENTS DUE: April 3, 2019

Your comments on this case will help us prepare an accurate and timely staff report. Your comments on this case will be inserted "as is" into the staff report with your name, department, and telephone number, should the applicant have any questions. Your comments are a public record and will be available to the public, media, and the applicant, in addition to the Hearing Officer hearing this case. Please complete the section below and return via e-mail. For additional information please contact the Planning and Zoning Department at 928-341-8563, or at P&Z@cityofsanluis.org.

Thank you,

Jose A. Guzman
Director of Planning and Zoning

Attachment: Location Map, and Site Plan

COMMENTS NO COMMENTS

Enter Comments below:

This variance request meet several County's criteria that could justify granting the variance; -the strict application of the Zoning Ordinance deprives such property of privilege enjoyed by other property owners in the zoning district (aerial photography shows that there are several properties already enjoying like structures). -There is a hardship imposed from existing conditions (existing gate and wall). -Adverse effect on public health and safety or welfare are not expected. -If granted, this variance does not confere a special privilege not already enjoyed by others in the zoning district, or have a negative impact on the neighborhood (aerial photography shows that there are several properties already enjoying like structures). However, if this project were to be in Yuma County's jurisdiction, the variance won't be needed since, pursuant to Section 1102.02 -Setback Exceptions (E) - Terraces, patio covers, awnings, carports, platforms and ornamental features may project into any required side yard, provided such features shall be distant at least three feet (3')

from any lot line or setback line. At 3 feet distance of a property line the Fire Code 2003 will require the structure to be a 1-hour fire rate. If carport is placed at 5 feet distance from property line, no fire rate is required.

Date:

03-29-2019

Agency:

Development Services

Phone:

(928) 817-5000

Return to: rpacheco@cityofsanluis.org



March 28, 2019

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Thank you,
Jose A. Guzman
Director of Planning and Zoning

Attachment: Location Map, and Site Plan

COMMENTS NO COMMENTS

Enter Comments below:

This request for a minor variance does not appear to preserve the side yard set-back requirements within subdivision regulation. While the City of San Luis Fire Department believes set-back requirements protect adjacent property and property owners, enforcement and/or final decisions regarding this request are best made by the Development Services Department.

Date:

04/02/2019

Agency:

The City of San Luis Fire Department

Phone:

928/341-8550

Return to: rpacheco@cityofsanluis.org



HEARING OFFICER AGENDA ITEM REVIEW FORM

Hearing Officer Agenda

2.A.

Meeting Date: 04/09/2019

Submitted By: Jose A. Guzman, Director of Planning & Zoning, Planning & Zoning Department

ITEM:

Discussion and possible action on any and all matters regarding Minor Variance Case No. 2019-0162. A request by Rene and Lye Lara, property owner, for a minor variance to reduce the side yard setback from 7-feet to 6-feet. This request is to allow the construction of a carport on property located at 455 N. Ismael Solorio Court, San Luis, Arizona.

SUMMARY:

The property is located at Bienestar Estates No. 9B Subdivision, the lot has an area of 6,902 square feet. The reason for this request is that the applicant wants to build a carport on the side of the property at a distance of 6-feet from the property line instead of the 7-feet required by the City Code.

The purpose of the minor variance procedure is to allow for up to a maximum twenty percent (20%) variation from a development standard or dimension requirement of the zoning code where a practical difficulty, unnecessary hardship, or a result inconsistent with the general purposes of the rezoning code would occur from its strict, and literal interpretation, and enforcement.

GENERAL PLAN:

This area is designated as Neighborhood in the City of San Luis 2020 General Plan. The Neighborhood land use designation allows all types of residential development.

AGENCY REVIEW:

City staff explained to the applicant the requirements and procedure of a Minor Variance. It was verified that the property-owner would be able to request a Minor Variance and that it would not need to go before the Board of Adjustment.

As part of the review process, all land use cases are reviewed by various City and outside agencies. We have received comments from the following agencies:

1. Yuma County Development Services Department (3-29-19)
2. City of San Luis Fire Department (4-2-19)

The City has not received any other significant concerns or objections from the various review agencies.

The Planning and Zoning Department has reviewed the request and has the following comments/corrections:

1. Provided on the City Code Zoning Regulations Table No. 2, the required side setback for R1-6 Zoning District is 7 feet. However, 5 feet setback is permitted in a R1-6 Zoning District where the construction beyond a 7 foot setback are constructed with no less than two hour fire resistive construction.

ANALYSIS:

A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance

with all of the hardship criteria established in A.R.S. §9-462.6 and in City Code §152.045(C).

Pursuant to State Statutes, the Board may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district.
2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

The Zoning Administrator or Hearing Officer, upon finding that the variance request does not exceed a twenty percent (20%) reduction or increase in a development standard or dimension required by this code and can determine that the request complies with the four (4) hardship criteria established in §152.045(C) of the City Code, may approve the minor variance.

In the event the Zoning Administrator or Hearing Officer approves, approves with conditions or denies an application for a minor variance filed pursuant these regulations any person may appeal that decision in writing, including any required appeal fee, within fifteen (15) days of the decision and request that the minor variance be placed on the agenda or the next regularly scheduled Board of Adjustment meeting.

In all cases, the review shall address all of the following hardship criteria:

1. There exist special circumstances or conditions regarding the land or building referred to in the application, which do not apply to other properties in the zoning district.

Staff does not find that there are any special circumstances or conditions relating to this request. Bienestar 9B Subdivision was designed as a curvilinear subdivision making the majority of lots in this subdivision have an odd configuration but with a generous size to construct a house and carports. As mentioned by the applicant the reason for the variance request is for aesthetic and functionality reasons.

2. The above special circumstances or conditions are preexisting and are not created or self-imposed by the owner or applicant. *There are no special circumstances or conditions.*

Aesthetics is not considered a hardship circumstance or condition. If the carport is build at the required 7 feet, it will be interfere with the gate's radius swing; this circumstance was self imposed by installing the gate in that location. The conditions creating the request were created by the property owner and should be corrected through redesign of the carport, fire resistive construction, or relocation of the gate.

3. The variance is necessary for the preservation of substantial property rights. Without a variance the property cannot be used for purposes otherwise allowed in the zoning district.

Staff does not find that the construction of this carport with reduced setback is necessary for the preservation of substantial property rights. Without the variance the property can still be used as a dwelling unit with a carport.

4. The authorizing of the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.

Any reduction of setbacks, even though some changes are minimal, increases the potential fire spread between structures. The City allows reduction of setbacks from 7 feet to 5 feet if 2 hour fire resistive construction material is used, otherwise is a potential fire hazard and detrimental to the adjacent property. As required by the Zoning Regulations, written acknowledge from each adjacent property owner of the requested minor variance is necessary. City staff requested a total of six (6) signatures of adjacent property owners.

STAFF RECOMMENDATION:

The applicant has provided information and materials necessary for review of the request.

Staff recommends DENIAL of Minor Variance Case No. 2019-0162, a request by Rene and Lye Lara, property owner, to reduce the side yard setback from 7-feet to 6-feet on property located at 455 N. Ismael Solorio Court, San Luis Arizona.

RECOMMENDED MOTION:

I MOVE TO DENY MINOR VARIANCE CASE NO. 2019-0162

Attachments

Location Map

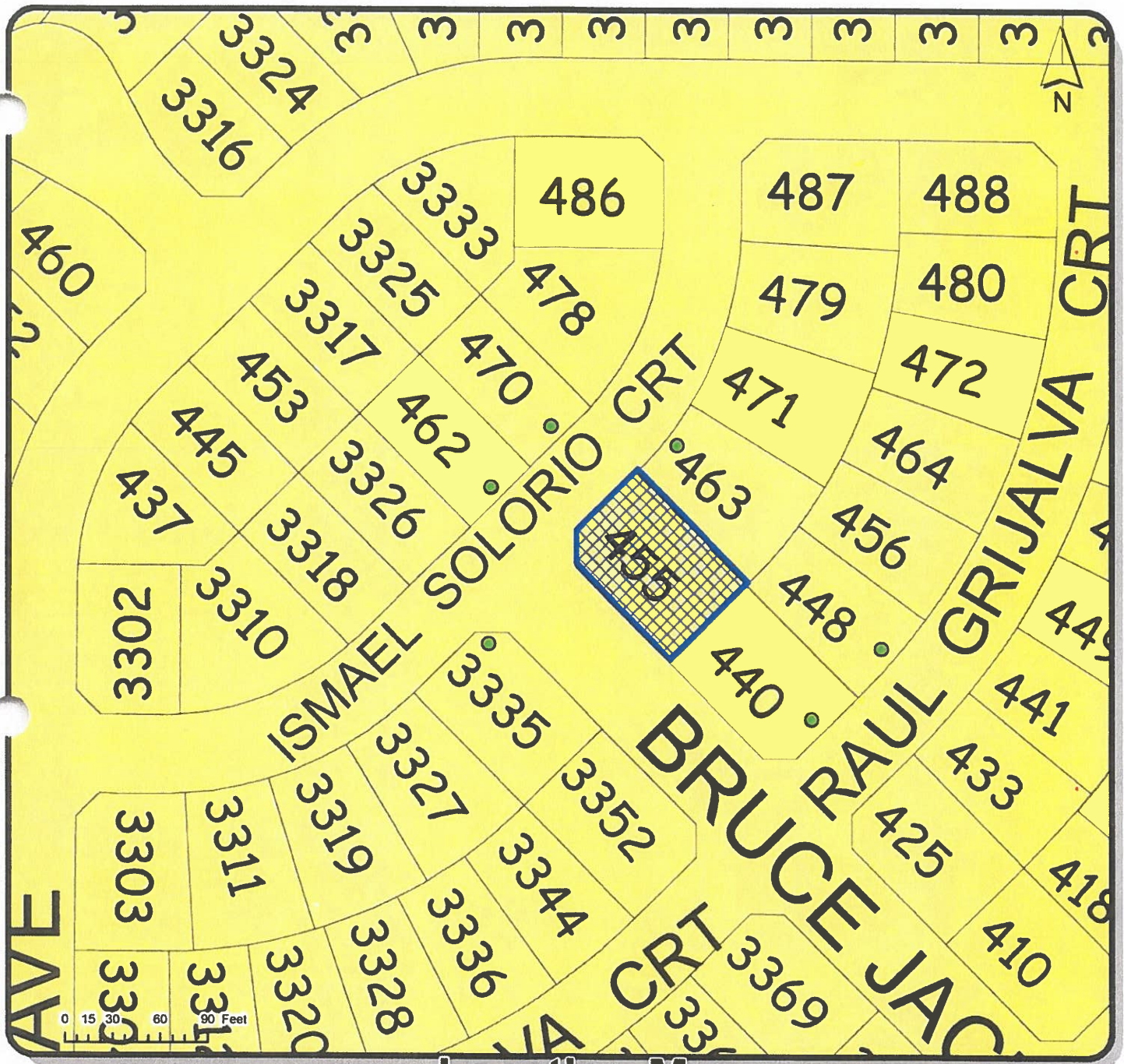
Site Plan

Pictures of Location

Letter of request from applicant

Yuma County Development Services comments (3-29-19)

City of San Luis Fire Department comments (4-2-19)



LOCATION OF SUBJECT PROPERTY

Location Map

MINOR VARIANCE

 455 N ISMAEL SOLORIO CRT
Assessor's Parcel No. 77751223

Zoning Legend

SINGLE RESIDENCE ZONING DISTRICTS
 R1-8

 ADJACENT PROPERTY OWNERS

Date:

3/28/2019

PLANNING & ZONING



GIS

Prepared By:

ISAAC GUTIERREZ

Case No.

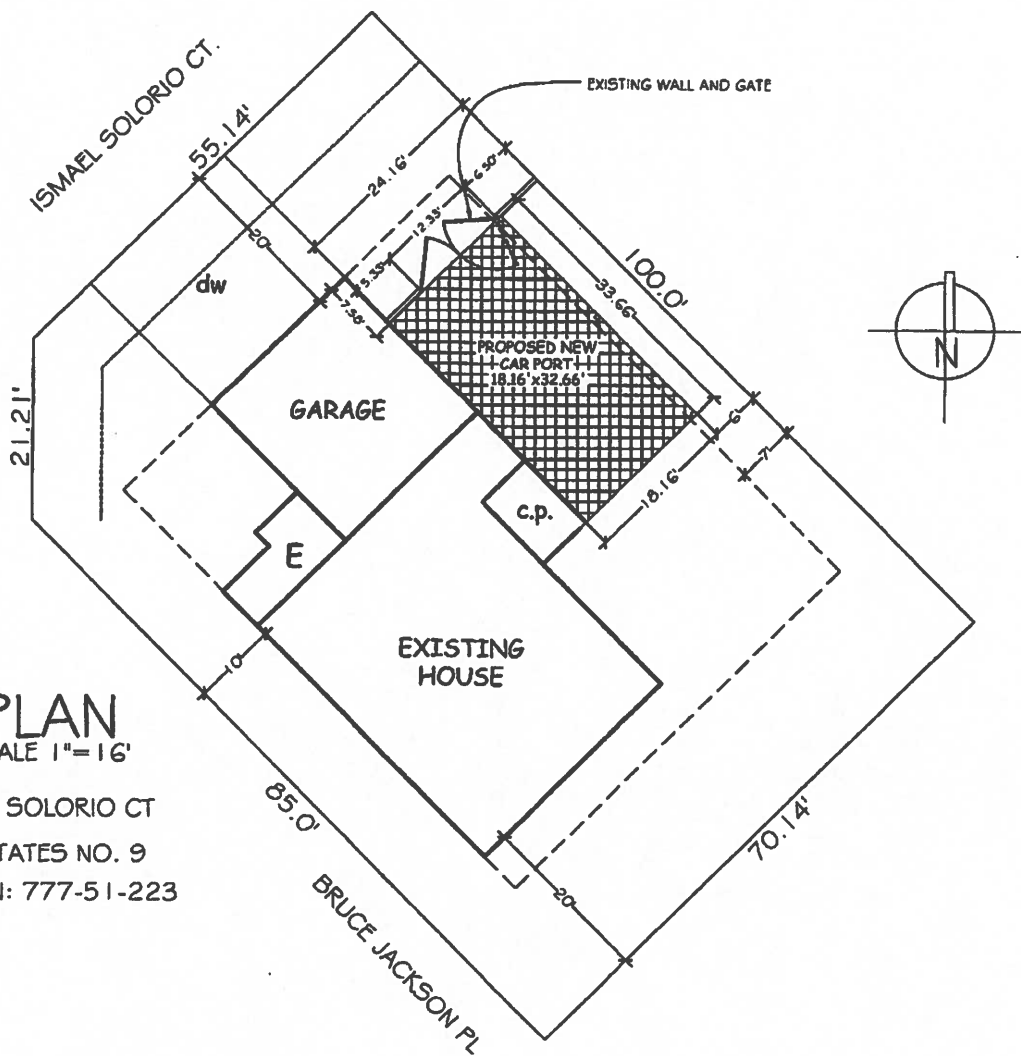
2019-0162

Checked By:

ROMAN PACHECO

APPROVED BY:

JOSE A. GUZMAN



SITE PLAN

SCALE 1"=16'

455 N ISMAEL SOLORIO CT
 BIENESTAR ESTATES NO. 9
 LOT: 223 APN: 777-51-223



