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Variance Staff Report

TO: ZONING HEARING OFFICER

FROM: SAMANTHA NOVOTNY, PLANNER I *SN*
(480) 503-6602, SAMANTHA.NOVOTNY @GILBERTAZ.GOV

THROUGH: ASHLEE MACDONALD, AICP, PRINCIPAL PLANNER *AM*
(480) 503-6748, ASHLEE.MACDONALD@GILBERTAZ.GOV

MEETING DATE: FEBRUARY 22, 2023

SUBJECT: V22-05 HAMILTON RESIDENCE ACCESSORY STRUCTURE: REQUEST FOR A DEVIATION FROM THE STRICT APPLICATION OF THE LAND DEVELOPMENT CODE REQUIREMENT SET FORTH IN CHAPTER 1 ZONING REGULATIONS, SECTION 3.2 SINGLE FAMILY RESIDENTIAL DISTRICTS, TABLE 3.2.4.B SF-35 ACCESSORY STRUCTURES TO REDUCE THE REQUIRED SETBACK FOR AN ACCESSORY STRUCTURE FROM NINE (9) FEET TO TWO AND A HALF (2.5) FEET. THE SUBJECT REAL PROPERTY IS LOCATED AT 3891 E HAPPY ROAD AND IS ZONED SINGLE FAMILY-35 (SF-35).

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

Unable to make the Findings of Fact, and deny V22-05 Hamilton Residence Accessory Structure: a request to deviate from Section 3.2 Single Family Residential Districts, Table 3.2.4.B SF-35 Accessory Structures, to reduce the required setback for an accessory structure from nine (9) feet to two and a half (2.5) feet. The subject real property is located at 3891 E Happy Road and is zoned Single Family-35 (SF-35).

APPLICANT/OWNER

Name: Brad Hamilton
Address: 3891 E Happy Road, Gilbert, AZ 85142
Phone: (623) 229-9280
Email: bhamiltonaz@yahoo.com

BACKGROUND/DISCUSSION

History

Date	Description
<i>May 9, 2006</i>	Town Council approved Ordinance No. 1738 (A06-02) annexing land, including the subject property, into the Town of Gilbert.
<i>September 26, 2006</i>	Town Council approved Ordinance No. 1830 (Z06-03) rezoning the subject property from Maricopa County R1-18 to Town of Gilbert SF-35.

Overview

The subject property is located at 3891 E Happy Road in the Santan Character Area. The variance request originates from a Code Compliance case CCD-2022-01947 where an accessory structure larger than 200 square feet was installed without a building permit. The applicant is requesting a variance to reduce the required side setback to two and a half (2.5) feet. The accessory structure height is fourteen (14) feet, and based on such a height, it should have been placed nine (9) feet from the side property boundary line.

If the variance is approved, the property owner will be required to apply for the appropriate building permit. A project narrative has been provided in the attachments, which explains how the applicant believes the variance request meets the Findings of Fact.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	Existing Zoning	Existing Use
North	Residential > 0-1 dwelling units/acre	Single Family-35 (SF-35)	Single Family Residence
South	Residential > 0-1 dwelling units/acre	Single Family-35 (SF-35)	Single Family Residence
East	Residential > 0-1 dwelling units/acre	Single Family-35 (SF-35)	Single Family Residence

West	Residential > 0-1 dwelling units/acre	Single Family-35 (SF-35)	Single Family Residence
Site	Residential > 0-1 dwelling units/acre	Single Family-35 (SF-35)	Single Family Residence

Project Data Table

Site Development Regulations	Development Regulations: SF-35 zoning district (Accessory Structures)	Proposed
Location	Within the building envelope. Or if within the rear two-thirds of the lot, may be within the side or rear building setback.	Within the rear two-thirds of the lot.
Maximum Height	30 feet	14 feet
Setbacks	Same as primary structure unless located within the rear 2/3 of the lot then < 10 ft in height, 5 ft setback > 10 ft in height, for each ft above 10 ft add one additional foot in setback. For a 14-foot-tall structure, required setback = 9 feet	2.5 feet

FINDINGS

In order to approve a Variance, the Zoning Hearing Officer is required to make four findings per Section 6.5.3 of the Land Development Code (LDC). The findings are listed here, along with the reasons why staff considers that the findings are or are not met in this case. These findings are:

A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;

The subject property is regular-shaped and unencumbered by any significant factors relating to its surroundings. The applicant states that the flood irrigation causes drainage and grading issues. However, there are mitigation tactics that

can be employed to confine the flood irrigation, and compaction tactics that can be employed to support an accessory structure foundation. The Chandler Heights Citrus Irrigation District only requires 20 feet for an access easement along the southern boundary, which leaves the remainder of the rear areas of the lot to develop the accessory structure within the building envelope and without reducing the side setbacks.

Staff finds that special circumstances not present. Staff finds that the strict application of the zoning ordinance would not deprive the specific property of privileges enjoyed by similar property in the SF-35 zoning district.

B. Such special circumstances were not created by the owner or applicants;

There are remaining areas of the property where the accessory structure can be placed without reducing the side setback. The applicant provided a document from the Chandler Heights Citrus Irrigation District that restricts use on a 20-foot access easement required at the southern property boundary line. However, the total length of the lot is 324 feet and leaves the remaining portions of the subject property for development. There are no other encumbrances found that restrict the placement of the accessory structure. The accessory structure is able to be placed in other areas (in the rear two-thirds of the lot) on the subject property without needing to reduce the side setback.

Staff finds that the special circumstances present are “self-imposed”.

C. The variance does 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

Adjoining and adjacent properties appear to have developed in the front and rear portions of their property while being in the Chandler Heights Citrus Irrigation District. In addition, on the subject property, there appears to be two existing accessory structures in the rear portion of the property. This indicates that development of an accessory structure is possible and need not be in a reduced side setback. Without special circumstances, the conflict appears to be self-imposed, and if the variance relief were to be provided, it would constitute a granting of special privileges.

Staff finds the variance would grant special privileges inconsistent with limitations on nearby or comparable properties.

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

The LDC mitigates for impacts of taller structures to abutting properties by increasing the setback distance from the property line. Not only would the reduced setback be applicable to the accessory structure in question, but also any other future accessory structures.

Staff finds that the proposed variance will be detrimental to the enjoyment of adjacent properties, land uses or the greater community’s welfare and safety.

Pursuant to the above analysis, Staff finds the variance request does not meet the four (4) findings required by LDC Section 6.5.3 and ARS § 9-462.06.G.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, an official notice was posted in all the required public places within the Town, and neighborhood notice was provided per the requirements of the LDC Section 6.2.6.

Staff has received one phone call from a neighbor in the vicinity who was concerned this request may involve encroachment onto the Happy Road and prevent proper access for emergency vehicles.

PROPOSITION 207

An agreement to “Waive Claims for Diminution in Value” pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with the Town of Gilbert LDC. This waiver is located in the case file.

STAFF RECOMMENDATION

Make the determination of Findings of Fact are not met, and deny V22-05 Hamilton Residence Accessory Structure: a request to deviate from Section 3.2 Single Family Residential Districts, Table 3.2.4.B SF-35 Accessory Structures, to reduce the required setback for an accessory structure from nine (9) feet to two and a half (2.5) feet. The subject real property is located at 3891 E Happy Road and is zoned Single Family-35 (SF-35).

Should the Zoning Hearing Officer be inclined to make the findings and approve the variance request, it should be subject to the following condition:

1. The variance only modifies those standards specifically identified; all other standards of the Land Development Code must be met.

Respectfully submitted,



Samantha Novotny
Planner I

Attachments and Enclosures:

- 1) Notice of Public Hearing
- 2) Applicant's Narrative
- 3) Aerial Photo

V22-05 Hamilton Residence - Accessory Structure Variance
Notice of Attachment 1: Notice of Public Hearing

VARIANCE HEARING DATE:

Wednesday, February 22, 2023 TIME: 5:00 PM*

LOCATION: Council Chambers
Municipal Building I
50 East Civic Center Drive

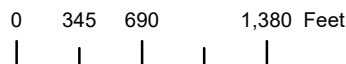
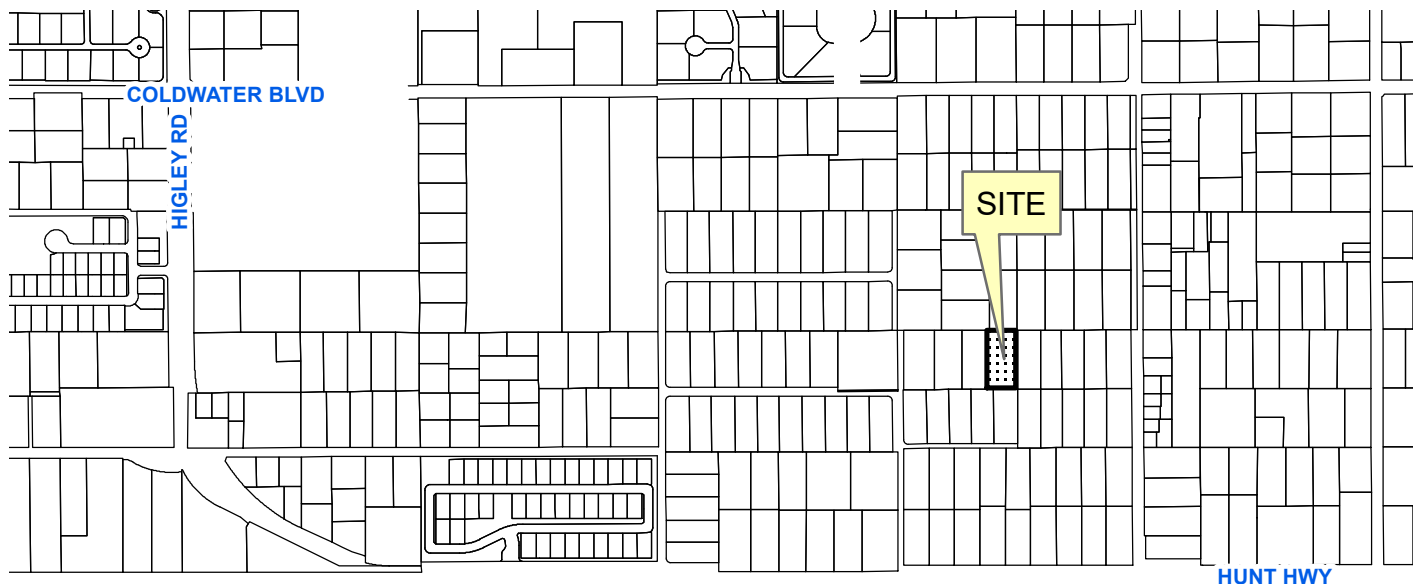
*Call Planning Division to verify date and time: (480) 503-6602

The application is available to the public for review at the Town of Gilbert Planning Division Monday - Thursday 7AM - 6PM.

REQUESTED ACTION:

V22-05 HAMILTON RESIDENCE ACCESSORY STRUCTURE: Request for a deviation from the strict application of the Land Development Code requirement set forth in Chapter 1 Zoning Regulations, Section 3.2 Single Family Residential Districts, Table 3.2.4.B SF-35 Accessory Structures to reduce the required setback for an accessory structure from nine (9) feet to two and a half (2.5) feet. The subject real property is located at 3891 E Happy Road and is zoned Single Family-35 (SF-35).

SITE LOCATION:



APPLICANT: Brad Hamilton
CONTACT: Brad Hamilton
ADDRESS: 3891 E Happy RD
Gilbert, AZ 85142

TELEPHONE: (623) 229-9280
EMAIL: bhamiltonaz@yahoo.com

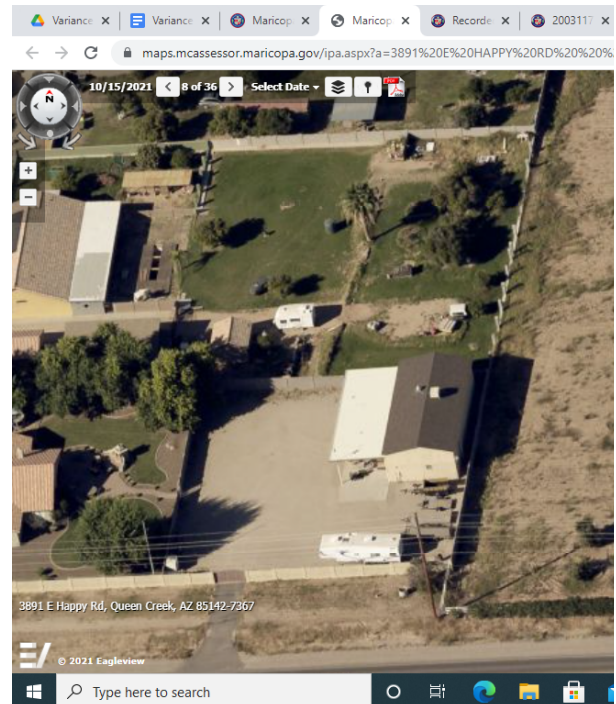
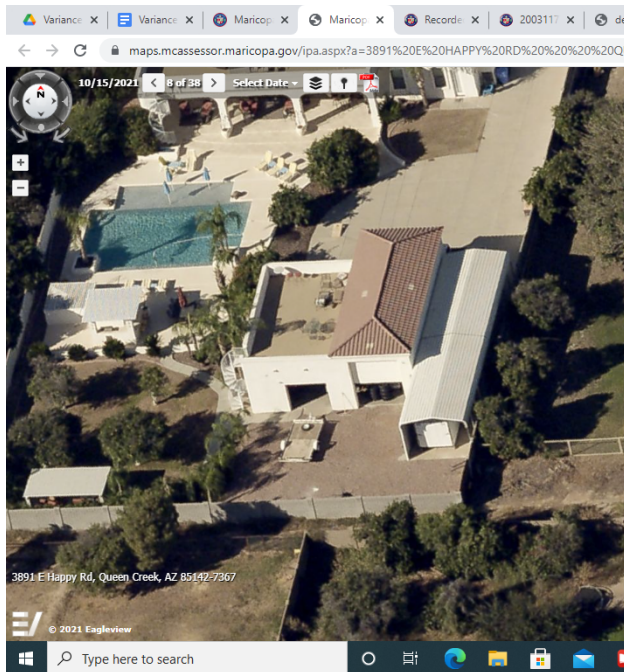
EXHIBIT 2

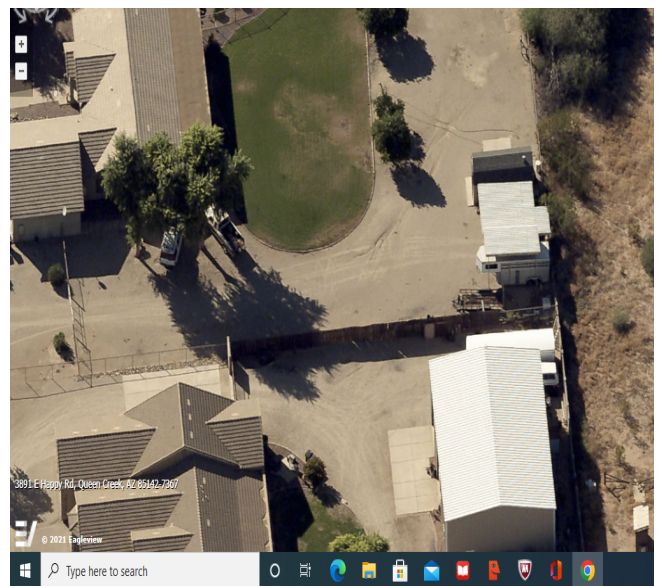
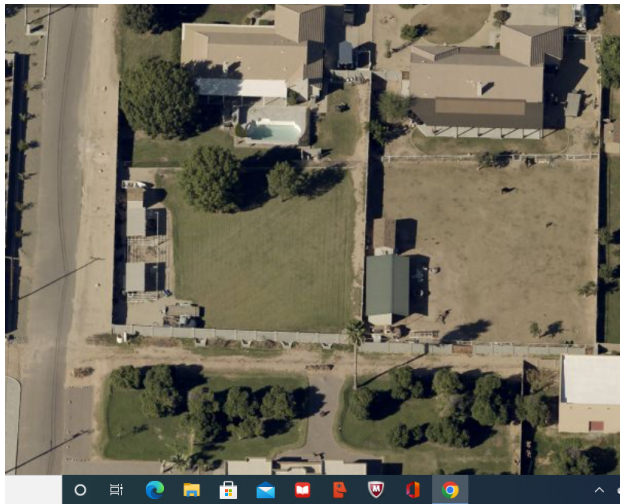
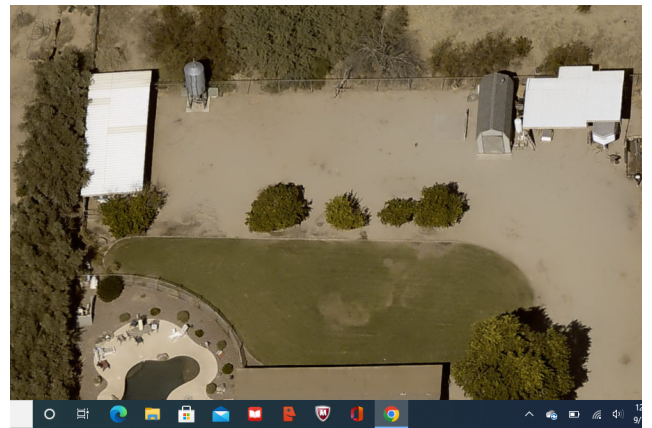
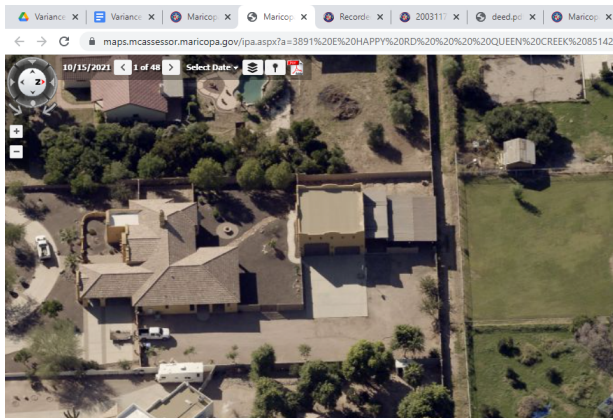
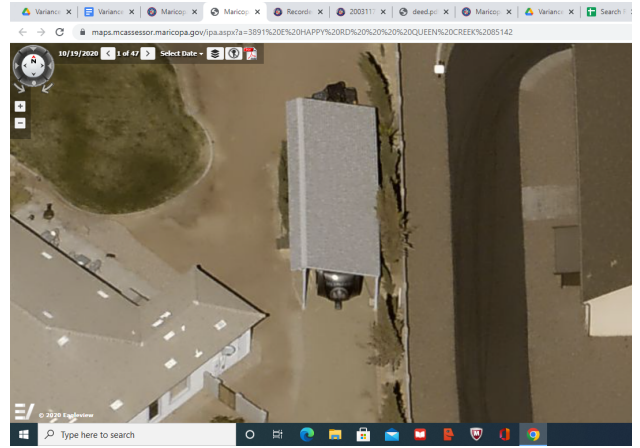
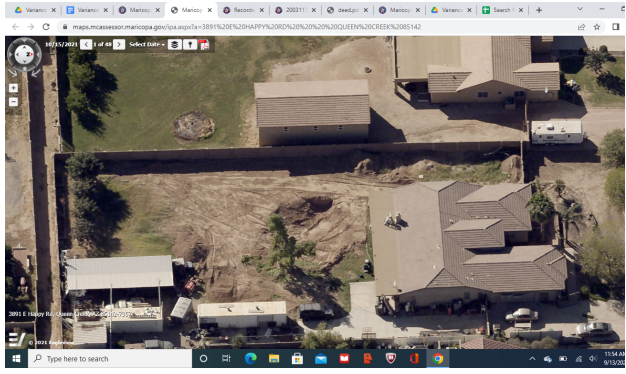
Project Narrative

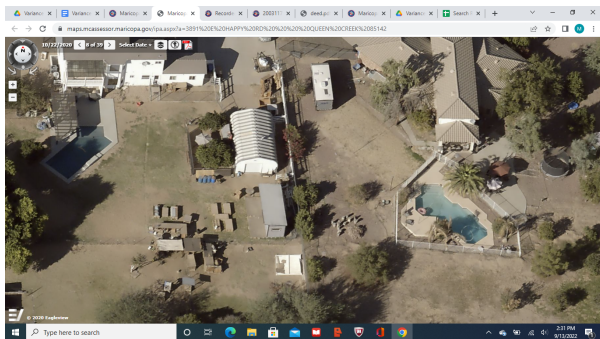
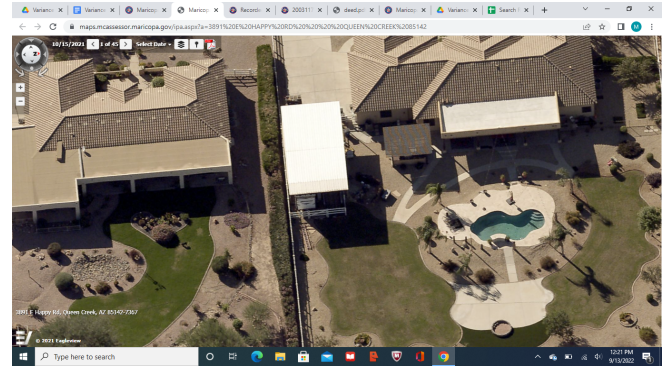
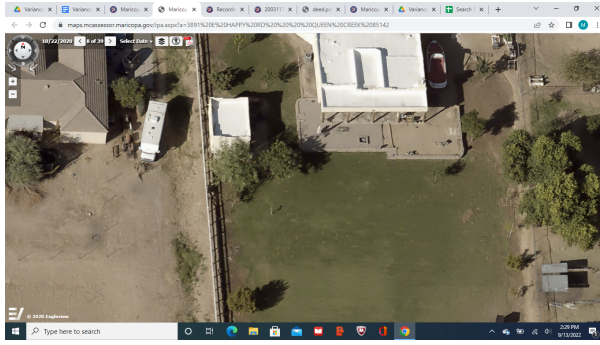
We, Brad and Michelle Hamilton, the property owners at 3891 E. Happy Rd., are requesting a variance to allow a side setback to be a minimum 2.5ft in distance between the property line and an RV shade structure (accessory structure of 35'L x 16'W x 14' H) rather than the required 9 ft setback that this RV shade structure would require under the LDC Table 3.2.4.B.2 Accessory Structure guidelines.

Our response to the four requirements are as follows per LDC section 6.5.2:

1. Many properties in this area zoned SF35 have shade structures erected within the setback margins. (See the photos below of nearby properties that are currently enjoying the benefit that we are seeking through this variance, with no detriment to the Town of Gilbert or to the neighborhood.) Our property, which is 157ft wide and 324ft long, is all flood irrigated except in the proposed location, which is located adjacent along the west side of property and is accessed by the main driveway. The only other location out of the flood irrigation is hindered by the location of the septic system, rendering it unusable for this purpose, as parking on it or driving over it could damage the system.







2. This variance will not be granting our property special privileges, because we are merely seeking approval from the Board of LDC due to the restrictions by elements such as septic system placement on our property (which prohibits driving a heavy vehicle into the backyard due to risk of damage to the septic system) and limitations as to where an RV could be parked to avoid the RV becoming stuck due to sinking into the ground from standing water when the property is flood irrigated. (We rely on flood irrigation to maintain the grass and trees on our property, as there is no domestic water irrigation system installed in the entire backyard.) We as the homeowners did not create these encumbrances, and are merely seeking relief from the deprivation of a privilege that is enjoyed by other property owners in the area (parking an RV underneath a shade structure to protect and maintain the vehicle). As evidenced by the photos in Section 1, it appears that other homeowners in the area may have already done so or were annexed into the Town of Gilbert with this variance pre-existing on their properties. Therefore, the remedy we are seeking is in line with the appearance of other properties in the area. Whether these properties were grandfathered due to annexation in 2006 or are currently non-compliant, what we are seeking is in line with the physical appearance of properties in the area, and therefore our property would not appear any more distinct than others in the area and would be in line with the look and feel of the neighborhood, should this variance be granted. It is not our intent to call attention to those properties that

may be out of compliance; however, their existence illustrates the point that what we are asking for is not out of character with the current appearance of the neighborhood.

3. The special circumstances that are requiring us to request this variance were not self-imposed by us or the previous property owner. The property limitations have been created by the developer and the builder of this property through septic placement and grading of the property for irrigation. As mentioned previously, to avoid damage to our septic system from driving over it and due to the grading of the property for flood irrigation, this is the only space on our property where we could place a shade structure to park an RV to avoid the RV sinking into the ground and becoming stuck from standing water created during flood irrigation which provides water for the grass and trees in our backyard, in order to maintain green space to provide a cooling effect and control dust on our property. (In reference to the recommendation that berms would resolve the issue to park in this area, they are continuously compromised by gophers in the area, so that would not resolve the standing water issues. In regards to building a cement pad, water erosion would still pose an engineering issue for the stability of the pad itself and ultimately the RV shade structure, possibly creating a safety hazard in high winds. In addition, the only way to access the irrigated portion of the yard with a vehicle as large as an RV would be to drive over our septic system, which is was unfortunately placed by the builder directly inside the RV gate access for the backyard. This repeated strain on the septic system would jeopardize its structure and possibly lead to septic failure, which in turn could produce an outcome detrimental to the environment when the tank fails to contain the contents of the septic system.)

4.
 - A. Under LDC 1.102, Purposes of Zoning Codes, this variance approval would direct growth to this rural area by attracting potential homebuyers, as RVs are popular with those seeking home ownership in SF35 zoning, and having the ability to park an RV under a shade structure would enhance the function of the existing development on the property.

 - B. The granting of this variance would not be detrimental to the health, safety and general welfare of the neighborhood, as the photos of existing accessory structures in Section 1 demonstrate. In addition, we have spoken with the neighbors directly adjacent to the west and east of our property, and they have expressed approval of our seeking of the proposed variance and do not see it as a detriment to their property in

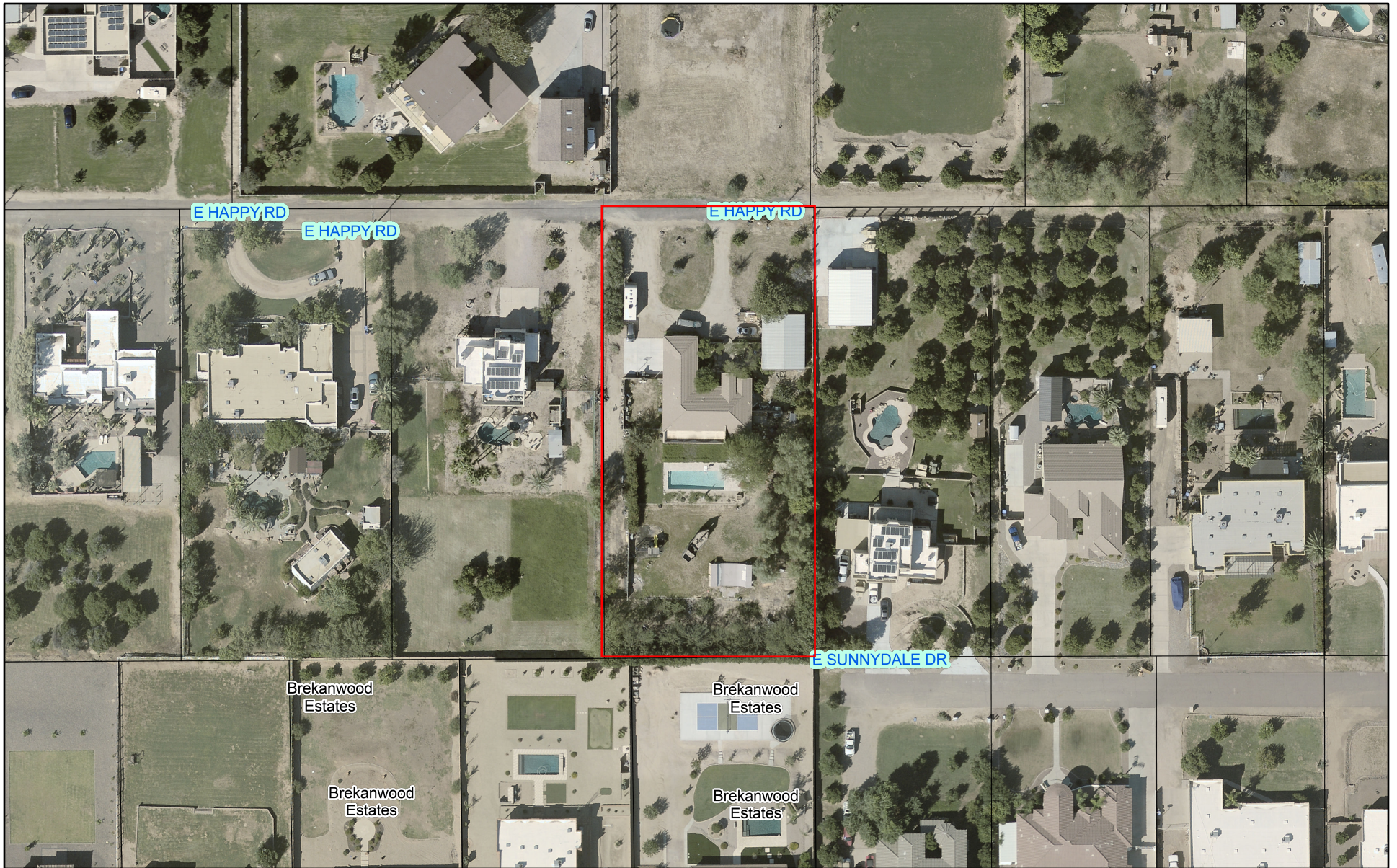
regards to health, safety, or general welfare (see correspondence in Exhibit 7).

This variance would also maintain the general plan for SF35 zoning, as most properties in this area are adequate to support RV shade structures if the property has no limitations. In addition, granting this variance would not interfere with requirements to maintain adequate open space for light, air, and fire safety.

- C. This variance is not detrimental to the Town of Gilbert, as the photos in Section 1 demonstrate that many alternate structures are currently erected on properties throughout the area, and have not posed a detriment to the town. Gilbert, and especially this area of Gilbert, have only gone up in value. Adding the benefit of shaded RV parking only increases the draw people look for in this area of SF35. This reduction in setback would not be a detriment to the neighborhood as building within the setback does not create an unsightly appearance in the neighborhood, impose a threat to public health, safety, or general welfare, as there is still an extremely large distance between the residences of adjacent properties due to the ample property widths, and the very nature of a variance does not give carte blanche to anyone requesting it—they still must go through the official request process through the town's zoning hearing officer and the LDC board, who makes the final decision on a case by case basis to approve or deny such a variance request. Additionally, this request does not change the zoning restrictions of the property—this is still a residential use of the property.
- D. Due to the parking restrictions imposed by the effects of an RV sitting in standing water from flood irrigation and the location of the septic system on our property, this is the least amount of relief we are seeking to enjoy the full use of our property, similar to existing uses of properties in the area that have also erected alternate structures to shade a parked RV. (Please note that the only structures we have in the flood irrigation area are elevated on cement blocks to prevent water damage, and are already showing signs of erosion and sinking due to the water saturation from flood irrigation, and will likely need to be removed. In regards to the recommendation that berms would resolve the issue to park in this area, they are continuously compromised by gophers in the area, so that would not resolve the standing water issues. In regards to building a cement pad, water erosion would still pose an engineering issue for the stability of the

pad itself and ultimately the RV shade structure, possibly creating a safety hazard in high winds.)

Aerial Photo



2/1/2023

