



## AGENDA MEMO

**PLANNING COMMISSION MEETING DATE: DECEMBER 16, 2010**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: APPLICANT/OWNER: JASON J. & ROSA M. AUNGENETT**

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### \*\* STAFF RECOMMENDATION(S) \*\*

<i>CASE NUMBER</i>	<i>RECOMMENDATION</i>	<i>REQUIRED FOR APPROVAL</i>
VAR-40107	Staff recommends DENIAL, if approved subject to conditions:	N/A

### \*\* CONDITIONS \*\*

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## VAR-40107 CONDITIONS

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#### *Planning and Development*

1. This approval shall be void two years from the date of final approval, unless a final inspection is approved. An Extension of Time may be filed for consideration by the City of Las Vegas.
2. Prior to occupancy, all necessary building permits shall be obtained and final inspections shall be completed in compliance with Title 19 and all codes as required by the Building and Safety Department.
3. These Conditions of Approval shall be affixed to the cover sheet of any plan set submitted for building permit.
4. All City Code requirements and design standards of all City departments must be satisfied, except as modified herein.

#### *Public Works*

5. Connect to public sewer and abandon the existing Individual Sewage Disposal System (ISDS) according to Southern Nevada Health Department (SNHD) regulations unless documentation is provided from the SNHD allowing the existing ISDS to remain.

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6. Meet with the Flood Control Section of the Department of Public Works for assistance with establishing final grade elevations and drainage patterns for this site prior to submittal of construction plans or the issuance of any building or grading permits, whichever may occur first. Provide and improve all drainage ways as recommended.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

The subject site is located at 5400 Bat Masterson Circle, which contains a 1,659 square-foot single family residence and an existing 14-foot high, 1,750-square-foot Accessory Structure (Class II), where a 12-foot high, 830-square-foot Accessory Structure (Class II) is permitted. A Variance to allow an Accessory Structure (Class II) to exceed 50 percent of the floor area of the principal dwelling unit and to exceed the height of the main building is required. Staff cannot support the Variance request, as the applicant has not provided compelling evidence of a unique or extraordinary circumstance related to the property and has created a self-imposed hardship by constructing the existing Accessory Structure (Class II) without obtaining the necessary building permits prior to construction. Therefore, staff is recommending denial of this request. If this application is denied, the existing Accessory Structure (Class II) would need to be removed, or altered to meet the minimum requirements of Title 19 with all necessary building permits.

**ISSUES**

- A new Accessory Structure (Class II) was constructed without building permits.
- The Accessory Structure (Class II) is not aesthetically compatible (plywood) with the principal dwelling unit (stucco), and exceeds the height of the principal dwelling unit.
- The subject site has a driveway off of Bradley Road and a driveway off of Bat Masterson Circle.

**BACKGROUND INFORMATION**

<i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc</i>	
10/28/76	The Board of Zoning Adjustment approved a Variance (V-0077-76) to allow a 30-foot front setback where 50-foot is required on 69 proposed lots on property generally located on the south side of Craig Road between Jones Boulevard, and Thom Boulevard and extending south 700 feet from Craig Road. The Planning and Development staff had no objections to this request.
12/22/83	The Board of Zoning Adjustment approved a Variance (V-0114-83) to allow corrals and stables to the rear property line where 25 feet is required and to allow a maximum of 6 horses on each lot where only 3 are permitted.
03/31/88	The Board of Zoning Adjustment approved a Variance (V-0019-88) to allow a 6-foot high block wall along the front (south) and side (west) property lines, where four feet with the top two feet 50 percent open is the maximum height allowed at 5400 Bat Masterson Circle.

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08/30/10	A code enforcement case (94041) was processed for building an accessory structure in the back yard without a permit. The case is still open.
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<b><i>Most Recent Change of Ownership</i></b>	
04/16/10	A deed was recorded for a change in ownership.

<b><i>Related Building Permits/Business Licenses</i></b>	
C.1986	The single-family residence was constructed.

<b><i>Pre-Application Meeting</i></b>	
10/04/10	A pre-application meeting was held with the applicant where the submittal requirements for a Variance were discussed.

<b><i>Neighborhood Meeting</i></b>	
A neighborhood meeting is not required, nor was one held.	

<b><i>Field Check</i></b>	
11/10/10	During a site visit staff noted a single family residence with an Accessory Structure (Class II) under construction behind the main dwelling clean of trash and debris.

<b><i>Details of Application Request</i></b>	
<b><i>Site Area</i></b>	
Net Acres	0.46

<b><i>Surrounding Property</i></b>	<b><i>Existing Land Use Per Title 19.04</i></b>	<b><i>Planned or Special Land Use Designation</i></b>	<b><i>Existing Zoning District</i></b>
Subject Property	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)
North	Single Family Residence	ML (Medium-Low Density Residential)	R-PD7 (Residential Planned Development-7 Units Per Acre)
South	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)
East	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)
West	Single Family Residence	DR (Desert Rural Density Residential)	R-E (Residence Estates)

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<i>Master Plan Areas</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Master Plan Area</b>		X	N/A
<i>Special Purpose and Overlay Districts</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
<b>Special Purpose and Overlay Districts</b>			
A-O (Airport Overlay) District (105 feet)	X		Y
<b>Trails</b>		X	N/A
<b>Rural Preservation Overlay District</b>	X		Y
<b>Las Vegas Redevelopment Plan Area</b>		X	N/A
<b>Development Impact Notification Assessment</b>		X	N/A
<b>Project of Regional Significance</b>		X	N/A

## DEVELOPMENT STANDARDS

*Pursuant to 19.08, the following standards apply:*

<i>Standard</i>	<i>Required/Allowed</i>	<i>Provided</i>	<i>Compliance</i>
Min. Lot Size	20,000 SF	20,203 SF	Y
Min. Lot Width	100 Feet	104 Feet	Y
Min. Setbacks (Accessory Structure, Class II)			
• Front	Not Allowed	N/A	N/A
• Side	3 Feet	20 Feet	Y
• Rear	3 Feet	6 Feet	Y
Min. Distance Between Buildings	6 Feet	15 Feet	Y
Max. Building Height	12 Feet	14 Feet	N
Max. Floor Area (Accessory Structure)	830 SF	1,750 SF	N

<i>Street Name</i>	<i>Functional Classification of Street(s)</i>	<i>Governing Document</i>	<i>Street Width (Feet)</i>	<i>Compliance with Street Section</i>
<b>Bat Masterson Circle</b>	Local	N/A	50	N/A
<b>Bradley Road</b>	Collector	N/A	80	N/A

## ANALYSIS

Pursuant to Title 19.08, accessory structures in residential areas shall not exceed 50% of the building area of the primary structure. The accessory structure is to be built using similar material as the primary structure and shall not exceed the height of the primary structure. This application is for a 53% deviation from the allowable square footage, a 100% deviation from the building material requirement and a 14% deviation from the allowed height of an accessory structure. All of these deviations are self-imposed hardships. The subject site is located in the

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Airport Overlay District and conforms to the 105-foot height restriction. The subject site is also located in the Rural Preservation Overlay District and would not have a negative impact, as existing accessory structures exist within the surrounding area. The existing Accessory Structure, (Class II) could be redesigned to meet all Title 19.08 requirements. Therefore, staff recommends denial of the request.

**FINDINGS (VAR-40107)**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070(L) states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by constructing the Accessory Structure, (Class II) contrary to Title 19 requirements without obtaining building permits. Alternative design of the Accessory Structure, (Class II) and reconstruction with building permits and inspections would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED 11**

**NOTICES MAILED 282**

**APPROVALS 0**

**PROTESTS 8**