

Staff Summary Report



Hearing Officer Hearing Date: 8/16/11

Agenda Item Number: 4

SUBJECT: This is a public hearing for a request by the **NETHERCOTT RESIDENCE** located at 108 East Vista Del Cerro Drive for one (1) use permit and one (1) variance.

DOCUMENT NAME: 20110816cds103 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by the **NETHERCOTT RESIDENCE (PL110205)** (Bill Henry/DC Restoration, applicant; Donald Nethercott Trust, property owner) located at 108 East Vista Del Cerro Drive in the R1-6, Single Family Residential District for:

ZUP11070 Use permit to allow required parking in the front yard setback.

VAR11005 Variance to reduce the south side yard setback from 5 ft. to 4 ft.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

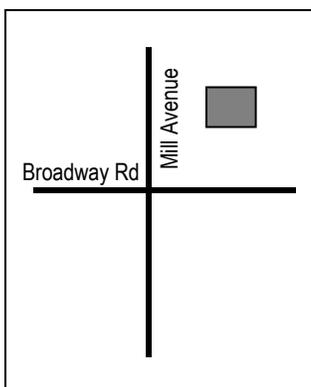
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact to City funds.

RECOMMENDATION: Staff – Approval, subject to conditions

ADDITIONAL INFO:



The Nethercott Residence is requesting a use permit and variance for their property located at 108 East Vista Del Cerro Drive. The request is generated from the prior enclosure of the carport into livable space. Recent flood damage on the property revealed, in the process, that a permit was never issued for the prior enclosure. The applicant is requesting the use permit and variance to rectify the situation and obtain a permit for the structure after the fact. Staff recommends approval of the use permit to allow the required parking in the front yard setback. Staff recommends approval of the variance. Special circumstances exist due to the placement of the house on the lot relative to the property lines. The granting of the variance will not provide a special privileged or right not enjoyed by surrounding properties in the subdivision.

PAGES:

1. List of Attachments
2. Comments
3. Reasons for Approval; Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Site Plan
5. Floor Plan
6. Elevations
7. Neighborhood Meeting Notice & Summary
8. Staff Photograph(s)

COMMENTS:

The Nethercott Residence is located in the neighborhood north of Broadway Rd and east of Mill Ave. The house was constructed prior to 1960. The current owner is in the process to obtain a permit for the illegally enclosed carport structure to be livable. The setback for the enclosed carport does not comply with the current ZDC ordinance nor was a previous use permit granted to allow the parking to encroach into the front yard setback. The current owner has made this application to rectify the previous violations.

Use Permit

The Zoning and Development Code requires use permits for vehicle parking in the required front yard setback in the R1-6, Single Family Residential District.

Evaluating the use permit, the proposal appears to pass the use permit tests listed below:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
No potential nuisances.
- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
The proposal would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d. Compatibility with existing surrounding structures and uses;
The proposed use appears to be compatible with surrounding uses. The Zoning and Development Code requires a use permit

Variance

The Zoning and Development Code Development Standards require setbacks for structures in the R1-6, Single Family Residential District, to be located five (5) feet from the side yard property line; the applicant is seeking a reduction to four (4) feet for a carport to livable space conversion. Since the adoption of the ZDC, the Hearing Officer has granted similar variances for side yard setbacks where the original structure did not conform to the ZDC required setback.

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
The homes in this neighborhood appear to encroach closer the five (5) feet to the side yard setback.
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
A windshield survey of the neighborhood produced evidence other structures encroaching within the side yard setback.
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.

4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
Not a special circumstance and not self-imposed.

Conclusion

Staff recommends approval of the use permit and variance.

REASON(S) FOR APPROVAL:

1. Special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

1. Obtain all necessary clearances from the Building Safety Division

HISTORY & FACTS:

None pertinent to this case.

DESCRIPTION:

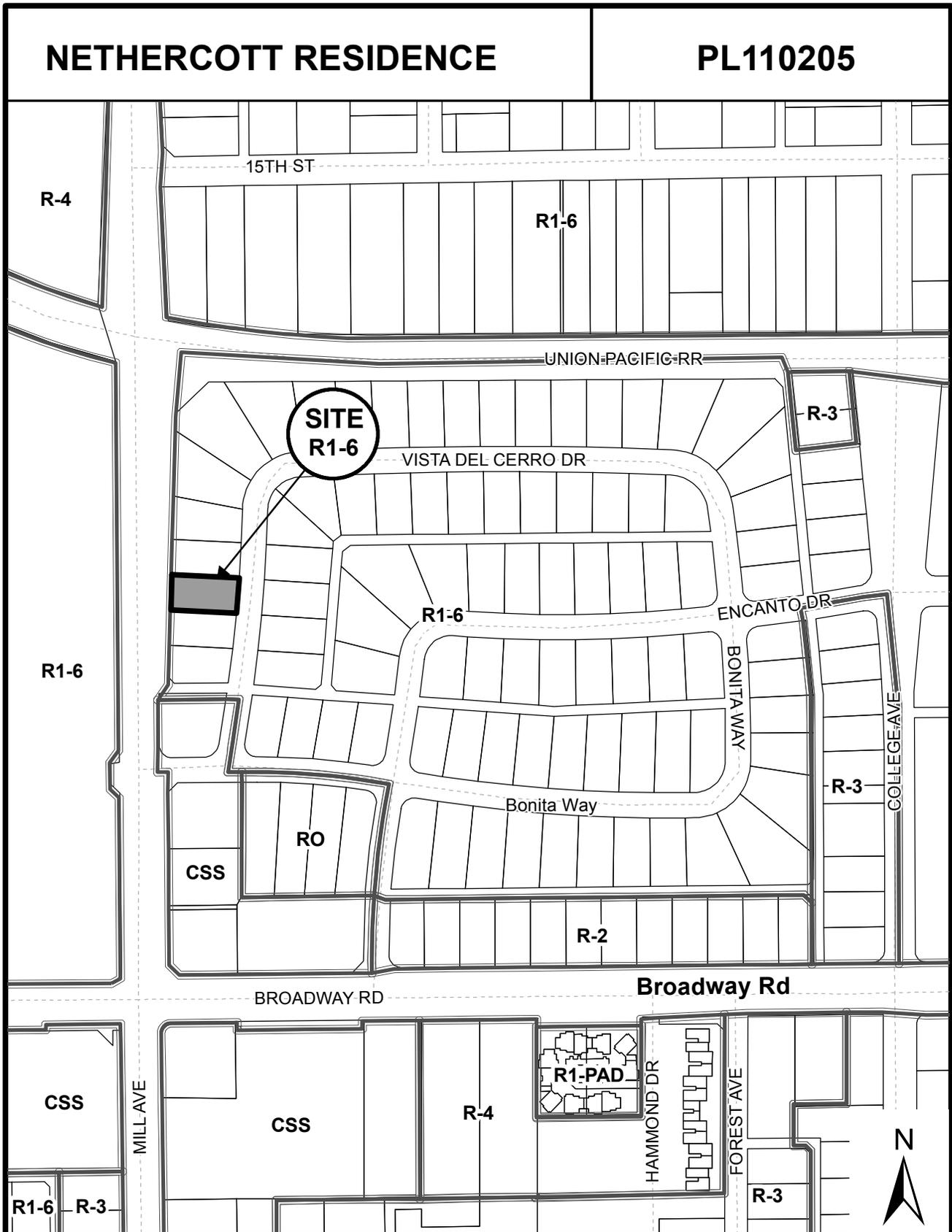
Owner – Donald Nethercott Trust
Applicant – Bill Henry/DC Restoration
Existing Zoning – R1-6, Single Family Residential District

ZONING AND DEVELOPMENT CODE REFERENCE:

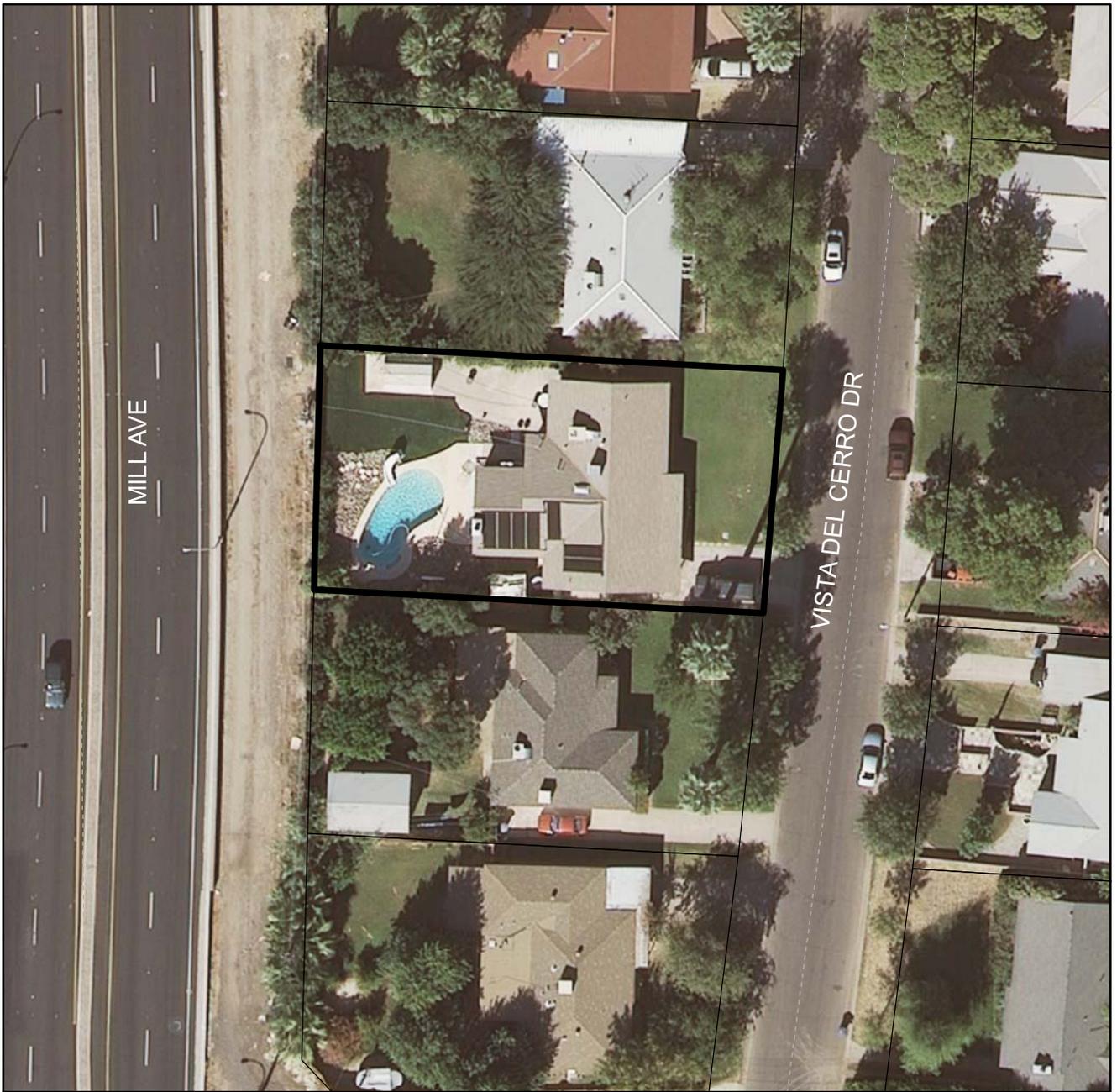
Part 4- Section 4-202 -Development Standards for Residential Districts
Part 4- Section 4-602 (C)- Parking Standards applicable in Single Family Uses and Development.

NETHERCOTT RESIDENCE

PL110205



Location Map



NETHERCOTT RESIDENCE (PL110205)

Graves, Nick

From: Andy Mitchell <andy@damagecontrol-az.com>
Sent: Friday, July 08, 2011 9:54 AM
To: Andy Mitchell
Cc: Graves, Nick
Subject: letter of Explanation for Nethercott- Thanks, Andy

Bill Henry
DC Restoration
c/o Don Nethercott
108 E Vista Del Cerro
Tempe, AZ 85281

Letter of Explanation for variance

This letter is to explain the Variance at 108 E Vista Del Cerro Tempe, AZ. My name is Bill Henry and I work for DC Restoration. After submitting the plans to the City of Tempe for permitting we realized that when the carport was enclosed it was never permitted and is over one foot into the south side yard setback.

We are requesting a Variance from 5ft to 4ft on the southside yard setback due to Carport being enclosed. The special circumstances are carport was enclosed around 1987. The carport was enclosed and now is used as homeowners master bedroom. The home will not be detrimental in any way to the adjacent property, person residing or persons working in the vicinity or neighborhood. This Variance will not make any changes to the uses and densities in any classification or zoning district. The Variance will not be for the purpose of rectifying a special circumstance which was self imposed by the property owner. The Variance will not allow relief from any item expressed prohibited by this code.

Thank you,

Bill Henry

Owner: NETHERCOTT DONALD/APRILLE C TR
Parcel #: 133-16-028
Property Address:
108 E VISTA DEL CERRO DR
TEMPE AZ 85281

Subdivision: UNIVERSITY ESTATES
Lot #: 28
MCR #: 04605

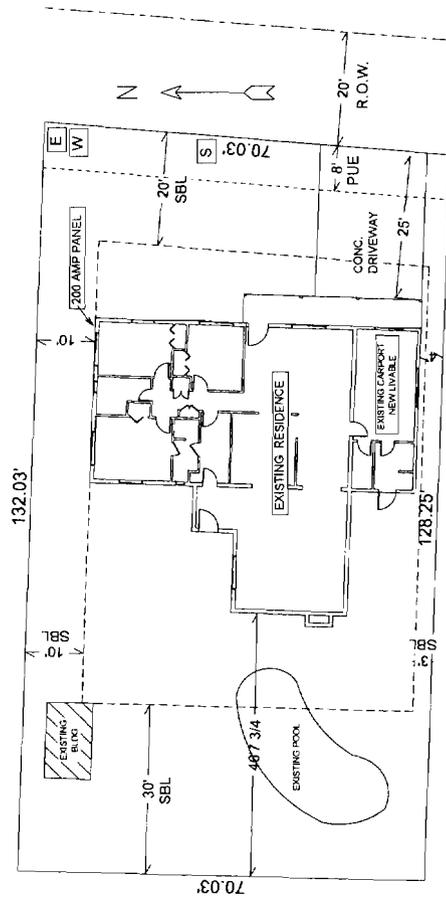
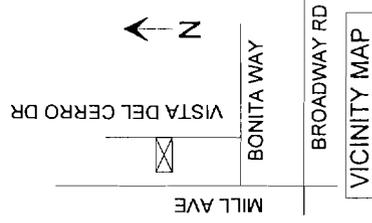
Description: UNIVERSITY ESTATES
Section Township Range: 22 1N 4E
School Dist: TEMPE SCHOOL DISTRICT
Local Jurisdiction: TEMPE

LOT COVERAGE
LOT AREA = 9,196 S.F.
DWELLING = 3051 S.F.
33.2% COVERAGE

FFE = 4.1' ABOVE THE
CURB OR LOT OUTFALL

SITE PLAN

SCALE 1" = 10'



Andy Mitchell
DC Restoration
c/o Don Nethercott
108 E Vista Del Cerro
Tempe, AZ 85281

Dear Neighbors,

My name is Andy Mitchell and I work for DC Restoration. We are the General Contractor doing the flood damage work at the address in question. While getting the permit for this location, the City of Tempe has informed me that the Carport that was enclosed around 1987 was never permitted. I am requesting a Use Permit from the City to park Vehicles in the driveway. I am also requesting a Variance because the South side yard setback has been reduced from 5ft to 4ft.

All questions and concerns can be presented at the Neighborhood Meeting on the 2 issues.

Meeting date : July 26th Tuesday 2011
Time: 5:30pm
108 E Vista Del Cerro
Tempe, AZ 85281

Thank you,

Andy Mitchell
DC Restoration
C/O Don Nethercott

MEETING SUMMARY - BILL HENRY AND HOMEOWNER
DON NETHERCOTT AT SITE ONLY PEOPLE TO SHOW UP
WERE NEXT DOOR NEIGHBORS BOB & PAULINE ROSS
BILL HENRY FOR D.C. RESTORATION (CONTRACTOR DOING RE-
PAIRS) 480 246 6072



NETHERCOTT RESIDENCE

108 EAST VISTA DEL CERRO DRIVE

PL110205

FRONT OF RESIDENCE

