



## Legislation Text

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**TO: Chair and Planning Commission**

**FROM: Paul Michaud, Planning Manager  
Loras Rauch, Special Projects Planner**

**DATE: December 1, 2020**

**DEPARTMENT:** Community Development

**AGENDA TITLE:**

Discussion of a minor amendment request to the R-18 CP SUP for Lot 3 Cheney Estates (SUP-20-08). 7171 E. Paradise Canyon Road (APN: 174-40-004)

**REQUEST:**

The owner of Lot 3 Cheney Estates, Mr. Joel Schaller, is requesting that the Commission consider their request to amend the R-18 Cluster Plan Special Use Permit as a Minor Amendment as outlined in Section 1102.7 B. of the Zoning Code.

**BACKGROUND:**

Specifics of Request:

The applicant is seeking a minor amendment to the SUP only for Lot 3 in order to allow an accessory shade structure to be built at a 15 foot rear setback and maintaining a 10 foot side setback.

The applicant has already constructed the desired shade structure (cantilevered lid) to cover their new outdoor kitchen and seating area adjacent to the new pool. This was done as part of their larger backyard landscape remodel. Although the rest of the backyard improvements were done with building permits and inspections by the Town, this shade structure was built without a building permit. The applicant is seeking to rectify their permitting mistake through the SUP minor amendment process followed by the building permit process and payment of fines.

The shade structure was built in the southeastern corner of the lot and does not abut any neighbor, building or lot. Rather, the shade structure was built on the side of the property which is adjacent to subdivision Tract C; with Scottsdale Road +135 away to the east and Cheney Drive 42 feet away to the south.

History

- 03/12/92: Town approved the preliminary plat Cheney Estates which shows Lots 1-14 and Tract C as R-18 Cluster Plan and Lots 15-72 and 6 tracts as R-35 Cluster Plan zoning.
- 03/12/92: Ordinance 337 approved conditional zoning provided the stipulations are met prior

to final plat approval. Stipulation 4.4 required obtaining a Special Use Permit for the R-18CP.

- 03/26/92: Town grants the SUP for R-18CP.  
The requirements in the R-18CP SUP specifically outline that the property shall be used for an R-18 CP only, in full compliance with all applicable provisions of the Zoning Ordinances of the Town and the terms as follows:
  - ✓ Setbacks: Front setback 35 feet  
Side setback 10 feet  
Rear setback 35 feet
  - ✓ Each main residence shall have a minimum footprint area livable space of 2,000 square feet, and a maximum footprint area livable space of 5,000 square feet.
  - ✓ All structures shall be limited to one story, no higher than 22 feet.
- 05/28/92: Ordinance 347 approves the final zoning of R-35CP and R-18CP SUP and approves the Final Plat.
- 07/22/92: Final Plat for Cheney Estates is recorded.
- 06/25/97: Planning Department Policy/Procedure #14 further clarifies Floor Area Ratios for the two subdivisions that have R-18 CP zoning (Via Vista and Cheney Estates). For Cheney Estates the policy states that the square feet areas (min. 2,000 and max. 5,000) excludes accessory buildings, garage, covered patio, pool etc. Such exclusions are allowed and the only limiting factors are the setbacks and that accessory buildings shall not exceed 50% of the main residence.

History on Lot 3 - The Town has issued the following permits for the property:

- 10/10/95: Single-family Residence
- 07/09/96: Certificate of Occupancy on SF Home
- 09/11/19: Pool demo permit
- 09/26/19: New swimming pool permit
- 12/05/19: Outdoor kitchen permit
- 01/21/20: Final Inspection new pool permit
- 03/26/20: Outdoor kitchen inspection failed due to no one on property & no inspection recall has been made.

## **DISCUSSION/FACTS:**

### Minor Amendment Criteria

Per Section 1102.7 of the Zoning Ordinance, a Minor Amendment to a Special Use Permit shall include any proposal which is not a Managerial Amendment and does not:

1. Change or add any uses; or
  - ✓ *The addition of the shade structure does not change or add any uses that were not there before (outdoor kitchen, fireplace, seating and pool) and an accessory structure for shade is a permissible use within residential districts (including R-18 CP SUP).*
2. Increase the floor area of the project by more than 5,000 square feet or constitute an increase of more than 15% upon the existing or, if still under construction, approved floor area square footage of the affected SUP property, whichever is less, with any such increase to be measured cumulatively over a sixty-month period; or

- ✓ *The shade structure is 360 square feet in size (18'X20'). The shade structure represents an increase of 9.7% and the SUP does not stipulate floor areas for accessory structures or total lot coverage.*
3. Have any material effect on the adjoining property owners that is visible, audible, or otherwise perceptible from adjacent properties that cannot be sufficiently mitigated; or
- ✓ *The location of the shade structure is not on the shared property line with the adjacent residence (Neighboring Lot 2 is located on the opposite side of the subject lot). The shade structure was built at the southeast corner of the lot adjacent to Tract C which is a landscape tract that provides more than 135 feet distance from Scottsdale Road and more than 40 feet from Cheney Drive. This location does the most to ensure that the shade structure itself and the subsequent use of the area does not impact upon the use and enjoyment of any other residential lot.*
4. Change the architectural style of the existing Special Use Permit.
- ✓ *The shade structure maintains the architectural style, stucco finish and paint color of the existing house and the location adjacent to the open space & landscape tracts of the subdivision help to minimize the visual appearance from outside the property.*

Zoning Ordinance Compliance:

The shade structure as built has varying degrees of zoning compliance.

1. SUP Amendment: The strategical location, size and architectural style of the shade structure is compliant with the Minor Amendment SUP criteria outlined above. With the lot being adjacent to an open space landscape tract on two (2) sides, strategically positioning the shade structure as the applicant has, provides the best mitigation for any potential visual and noise impact to adjoining properties. Therefore, all four (4) of the Minor Amendment SUP criteria have been complied with by the applicant. In the narrative submitted the applicant states that if needed or directed by the Commission they would be open to property line screening or planting.
2. The Special Use Permit for the R-18CP approved in 1992 states: 2) The property shall be used for an R-18 Cluster Plan only, in full compliance with all applicable provisions of the Zoning Ordinances of the Town of Paradise Valley and the terms of this Special Use Permit. Given this broad statement and the fact that accessory structures are not specifically addressed in the Special Use Permit there is some rationale for applying the development standards outlined in Section 912 of the Zoning Code when considering this application for Minor Amendment.
3. Section 912 Cluster Plan Adjacent to Major Streets and Floodways: This section of the Zoning Code was adopted 11/16/2017 and became effective 08/02/2019. Section 912 was created specifically for the Ironwood Golf Villas north of Cheney Estates. The provisions of Section 912 shall apply only to parcels of eight (8) acres or more that meet the following criteria: 1) the parcel is adjacent to a major arterial roadway with average daily traffic greater than 35,000 vehicles per day; 2) the parcel is adjacent to the Indian Bend Wash; and 3) the parcel is not adjacent to an R-43 zoned area or lot.

Looking at the entire R-18CP SUP portion of Cheney Estates it could be argued that it loosely fits the Section 912 criteria and that it might be reasonable to apply the development standards (setbacks), specifically for accessory structures, for the Minor Amendment requested by the applicant. The following two standards apply to setbacks for accessory structures:

- 8. Rear yard setbacks (with or without street frontage) for accessory buildings and structures and pools shall be 10 feet. Front yard setbacks for accessory buildings and structures and pools shall be 20 feet.
- 9. Side yard setbacks (with or without street frontage) for accessory buildings and structures and pools shall be 7 feet. The maximum height of accessory buildings and structures shall be 16 feet.

#### Public Comment

Public notification is not required for the work study session.

#### Next Steps

The public hearing is scheduled for December 15, 2020. During the public hearing, the Planning Commission will take two actions:

1. Determine if the scope of the request constitutes a Minor SUP Amendment in accordance with the Minor Amendment Criteria.
2. If deemed a Minor SUP Amendment, the Commission may approve the request subject to stipulations, deny the request, or continue the request for further review.

#### **ATTACHMENT(S):**

- A. Vicinity Map & Aerial Photo
- B. Application
- C. Narrative & Plans
- D. Cheney Estates R-18CP SUP
- E. Cheney Estates Subdivision Plat