



MARICOPA COUNTY, ARIZONA
Board of Adjustment
Minutes
January 18, 2018

CALL TO ORDER: Chairman Harris called meeting to order at 10:04 a.m.

ROLL CALL/
MEMBERS PRESENT: Mr. Abe Harris, Chairman
Mr. Jason Morris, Vice Chairman
Mr. Craig Cardon
Mr. Greg Loper
Ms. Wendy Riddell

STAFF PRESENT: Mr. Darren Gerard, Planning Deputy Director
Ms. Rachel Applegate, Senior Planner
Mr. Glenn Bak, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Robert Swan, County Counsel

ANNOUNCEMENTS: Chairman Harris made all standard announcements.

APPROVAL OF MINUTES: November 16, 2017

AGENDA ITEMS: BA2017055, V201601243, TU2017041

Chairman Harris requested the election of officers for 2018.

BOARD ACTION: Member Loper motioned to re-elect Chairman Harris and Vice Chairman Morris for 2018. Member Cardon second. Approved 5-0.

Chairman Harris requested a motion for approval of the November 16 minutes.

BOARD ACTION: Member Riddell motioned to approve the November 16, 2017 minutes. Vice Chairman Morris second. Approved 5-0.

CONSENT AGENDA

BA2017055	Rodgers Property	District 4
Owner:	Timothy and Shauna Rodgers	
Location:	7215 W. Port Au Prince Lane – 72 nd Ave. & Greenway Rd. in the Peoria area	
Zoning:	Rural-43	
Request:	1) Proposed additions to single-family residence to setback 22 feet	

from the side (east) property line where 30 feet is the minimum required

Mr. Bak presented BA2017055 on the consent agenda.

BOARD ACTION: Member Cardon motioned to approve the consent agenda; BA2017055 with conditions 'a'-'c', Vice Chairman Morris second. Approved 5-0.

- a) General compliance with the site plan stamped received December 18, 2017.
- b) All required building permit for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

CODE COMPLIANCE REVIEW

V201601243	Code Compliance Review	District 1
Respondent:	Michael & Sharry Nelson Tr.	
Location:	18119 E. Vallejo Street, Gilbert, AZ 85298 (Parcel 304-78-050A)	
Request:	Appeal of the Hearing Officer's Order of Judgment	

Mr. Gerard presented V201601243 and noted the violation is operation of a commercial business in a Rural-43 zoning district with parking and storage of related materials, equipment, metal containers, trailers and trucks all without proper zoning entitlement, as well as dead and dried trees. The case was opened in August of 2016 due to citizen complaints, the violation was verified through inspections that same month. The code compliance officer spoke with the property owner, and the case was set for an administrative hearing on December 8, 2016, and a subsequent hearing date was cancelled due to multiple scheduling conflicts. A third hearing was scheduled for January 24, 2017, the respondent was present along with his legal counsel. The hearing could not be completed in one day and they continued the hearings to July 27, September 21 and October 3, 2017, the respondent and attorney attended those hearings. After the October 3 hearing date, the hearing officer found the respondent responsible for the violations, he was ordered to pay a \$750 non-compliance fine immediately, and a daily non-compliance fine of \$75.00 to commence on January 15, 2018 and to accrue until compliance is verified. No fines have been paid to date. The hearing officer made a finding of fact and reached his conclusion pursuant to Section 1502 of the Maricopa County Zoning Ordinance. The Board may either affirm the hearing officer's order of judgment, or remand it back to the hearing officer if there is a finding of a procedural error. Staff recommends that the Board affirms the hearing officer's order of judgment. The hearing officer's order reads, "the County insists that the types of items found on the property work trucks, cargo containers, spools of wire, cable, utility trailers, a mini excavator, a Bobcat, front loader, cement mixer, an air compressor, chain link fencing, piping etc. has all been stored outside on the property indicate from the totality of what was seen in context to be a commercial storage yard in the Rural-43 zoning district and all without a Special Use Permit or other zoning entitlement. Based on the

evidence presented a person can reasonably conclude the materials and equipment openly stored on the property are in connection with a commercial activity requiring an entitlement for their storage on respondents property, and one can reasonably conclude that most of the equipment, materials and vehicles openly stored on the property were not associated with the residence on the property. The implication about outdoor storage used on the property was a construction yard or similar under the ordinance is a fair inference for the types of materials, equipment and vehicles observed on the property and one cannot parse out one item or another to rebut that inference. The totality of the evidence leads to the conclusion that the respondents are operating a business from their residence in a residential zoned property without a Special Use Permit by having outside storage of equipment, vehicles, materials, trailers etc. presumably used in connection with a commercial business.” Mr. Gerard noted the respondent and counsel are present today.

Member Loper asked if the Board is simply looking if there was a procedural error and not looking at the merit of the case itself. Mr. Gerard said that’s correct.

Member Riddell asked any testimony to that, should be limited as well. Mr. Gerard said correct.

Mr. Doug Zimmerman, attorney for Michael and Sharry Nelson said he understands this is a matter of procedure that we can challenge, and he assumes the county attorney decided he followed proper procedure since he hasn’t been advised otherwise. There is no testimony to be given about anything and the only purpose he is here is so he can appeal to the Superior Court. Mr. Zimmerman also noted not once did the hearing officer talk to his client. He hopes in the future when anyone is reporting to the Board they report truthfully.

BOARD ACTION: Vice Chairman Morris motioned to affirm V201601243. Member Riddell second. Affirmed 5-0.

Mr. Gerard said to be clear, during his presentation he said the code compliance officer spoke to the respondent, if he said hearing officer he misspoke.

REGULAR AGENDA

TU2017041	Newman Temporary Use Permit	District 3
Applicant:	Jenny Vitale	
Location:	42918 N. 12 th St. – Honda Bow Rd. and 12 th St. in the New River area	
Zoning:	Rural-43	
Request:	Temporary Use Permit (TUP) for two Recreational Vehicles (RV’s) to be used for housing during construction of a permanent residence and Interpretation that TUP can be approved prior to issuance of the construction permit for the permanent residence	

Mr. Bak presented TU2017041 and noted there is a violation on the property V201700698, and staff recommends denial as of the writing of the report. There is new information that the related building permit B201706009 was just approved yesterday.

Member Cardon said staff recommends denial in paragraph 13 in the staff report because of the permit for the construction of the residence has not yet been issued, and asked if this has

been corrected and is there anything to amend in the report. Mr. Bak said yes the permit was approved as of yesterday.

Vice Chairman Morris asked does that change staff's recommendation. Mr. Bak said there is another issue to bring to the Board's attention, New River Desert Hills did have a comment that they recommended approval but with the added condition to be limited to one RV, and a one year duration.

Ms. Jenny Vitale, the project engineer for the Newman project said they are in a bit of a catch-22. We had an open violation on the property for two RV's being out there without the temporary use permits, and also had been in plan review with Maricopa County Planning and Development for a pre-fabricated metal building, a grading and drainage plan, alternative septic and a shed permit. As of yesterday, she received an e-mail from staff that the grading and drainage plan, the metal building and the shed had been approved and are ready for pick up. The septic permit was approved back in July or August, so we now have secured all permits for the property. She did have correspondence with Mr. Bak yesterday, but the staff report was already written and he was limited of what he could do at that point. All permits are secured and all fees have been paid. As far as one or two RV's, she listed two RV's on the temporary use permit since there were two RV's on the property at the time of the violation. One of the grandparents were out there helping out with the kids, and that RV has since been removed from the property and will not be returning. If the Board can find recommendation for approval for one RV with a term of one year, the property owner has no problem with that. This will allow them to reside on the property, because they are doing an owner-builder.

Vice Chairman Morris asked about the length of their request. Ms. Vitale said she requested in the temporary use permit six to nine months, and Desert Hills said no more than one year. So if we do one year, it will cover their concern and they should be done and out of there by the time the year is up.

Chairman Harris asked with what Ms. Vitale stated, does this change the recommendation from staff. Mr. Bak said yes.

Mr. Gerard said we could revise stipulation 'f' to read – Temporary Use residence shall be in only one recreational vehicle, and for a maximum period of one year. Member Riddell said yes.

BOARD ACTION: Vice Chairman Morris motioned to approve TU2017041 with conditions 'a'-'f' with modification to condition 'f'. Member Riddell second. Approved 5-0.

- a) Use of the site shall comply with the site plan consisting one (1) sheet, stamped TU2017041 and stamped received December 20, 2017.
- b) Use of the site shall be in conformance with the supplemental questionnaire stamped TU2017041 and stamped received December 20, 2017.
- c) The Temporary Use Permit shall be contingent upon issuance of B201706009 and shall remain valid for a period of one year from the date of permit issuance.
- d) Potable water must be obtained from an appropriate water source.

- e) Wastewater shall be removed to an appropriate wastewater facility, the septic system at the parcel shall not be used.
- f) ~~Determination has been made that the Temporary Use residence may~~ shall be in only two one recreational vehicles, and for a maximum period of one year.

Adjournment:

Chairman Harris adjourned the meeting of January 18, 2018 at 10:19 a.m., and immediately went into an executive session.

Prepared by Rosalie Pinney
Recording Secretary / Administrative Assistant
January 18, 2018