



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

May 17, 2018

CALL TO ORDER: Chairman Harris called meeting to order at 10:00 a.m.

ROLL CALL/

MEMBERS PRESENT:

Mr. Abe Harris, Chairman
Mr. Jason Morris, Vice Chairman (arrived 10:03 a.m.)
Mr. Craig Cardon
Mr. Greg Loper
Ms. Wendy Riddell

STAFF PRESENT:

Mr. Darren Gerard, Planning Deputy Director
Ms. Rachel Applegate, Senior Planner
Mr. Raymond Banker, Planner
Ms. Jaclyn Sarnowski, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Ms. Emily Craiger, County Attorney
Ms. Gema Piatkowski, Interpreter

ANNOUNCEMENTS:

Chairman Harris made all standard announcements.

APPROVAL OF MINUTES:

February 15, 2018

AGENDA ITEMS:

BA2018011, BA2018012, BA2018015, BA2018023, BA2018024,
BA2018029, BA2018030, BA2018031, BA2018032, BA2018033,
BA2018035, V201700320, BA2018008, BA2018020, BA2018025,
BA2018034, BA2018036

Chairman Harris requested a motion for approval of the February 15 minutes.

BOARD ACTION: Member Riddell motioned to approve the February 15, 2018 minutes. Member Cardon second. Approved 4-0.

Chairman Harris noted agenda item #15 - BA2018025 and #16 - BA2018035 are moving to the continuance agenda.

CONTINUANCE AGENDA

BA2018025

Applicant:

Location:

Vertigo Investments Property

Withey Morris, PLC

132-19-001Q & 132-19-002K - 723-735 N. Scottsdale Road – Loop 202
& Scottsdale Road in the Tempe/Scottsdale area

District 1

BOARD OF ADJUSTMENT MINUTES

Meeting of May 17, 2018

Page 1 of 19

Zoning: IND-2
Request: Variance to permit:
1) A proposed medical marijuana facility to be separated from an existing adult oriented business 61' and from an existing public park 1,325' where a minimum separation of 1,500' is required

Member Riddell recused herself from BA2018025.

BOARD ACTION: Member Cardon motioned to continue BA2018025 to June 21, 2018. Member Loper second. Continued 3-0-1 (Riddell)

BA2018034 **Royer Property** **District 2**
Applicant: Bruce Royer
Location: 211-45-101D - 6310 East Lowden Rd. – 63rd St. & Lone Mountain Rd.
Zoning: Rural-43
Request: Variance to permit:
1) Proposed street-side setback of 25' where 53' is the minimum required

BOARD ACTION: Member Cardon motioned to continue BA2018034 indefinitely. Member Loper second. Continued 5-0.

WITHDRAWN

BA2018011 **Recreation Centers of Sun City West Inc.** **District 4**
Applicant: Bootz & Duke Sign Co.
Location: 232-25-622A - 3975 W. Deer Valley Rd. – 135th Ave. & Deer Valley Rd., in the Sun City West area
Zoning: C-2
Requests: Variance to permit:
1) Proposed sign area greater than permitted in the C-2 zoning district
2) Proposed sign located closer than permitted between residential and the C-2 zoning district

The applicant has withdrawn their application, no action required by the Board.

CONSENT AGENDA

BA2018012 **Recreation Centers of Sun City West Inc.** **District 4**
Applicant: Bootz & Duke Sign Co.
Location: 232-19-575 - 21021 N. 151st Ave. – 151st Ave. and RH Johnson in the Sun City West area
Zoning: Rural-43
Request: Variance to permit:

- 1) Freestanding sign with 103 sq. ft. sign face where 24 sq. ft. is the maximum permitted

BA2018015

Applicant:

Location:

Zoning:

Request:

Desert Trail Golf Course

Bootz & Duke Sign Co.

232-30-515 - 22525 N. Executive Way – Executive Way and Deer Valley Rd. in the Sun City West area

Rural-43 RUPD

Variance to permit:

- 1) Freestanding sign with 103 sq. ft. sign face where 24 sq. ft. is the maximum permitted

District 4

BA2018023

Applicant:

Location:

Zoning:

Requests:

Ingrassia Property

PHX Architecture

169-16-130 - 7319 N. Clearwater Pkwy. – Tatum Blvd. and Clearwater Pkwy. in Clearwater Hills

Rural-43

Variance to permit:

- 1) Proposed building height of 35' where 30' above natural grade through any cross section is the maximum permitted; and
- 2) A waiver from Article 1106.2 in order to allow an accessory building in the required front yard, where such buildings are prohibited; and
- 3) A waiver from Article 1201.6.1. in order to allow disturbance outside the principal building envelope where such disturbance is prohibited; and
- 4) Proposed roof overhang of 9-feet over the side building setback line where 3-feet is the maximum permitted; and
- 5) A proposed side-yard setback of 21 feet where a minimum of 30' feet is required

District 3

BA2018024

Applicant:

Location:

Zoning:

Requests:

Ingrassia Property

PHX Architecture

69-16-101 - 4540 E. Moonlight Way – Tatum Blvd. and Clearwater Parkway in Clearwater Hills

Rural-43

Variance to permit:

- 1) Proposed front (east) setback of 32'-6"" where 40' is the minimum required; and
- 2) Proposed rear (west) setback of 32'-6"" where 40' is the minimum required; and
- 3) A waiver from Article 1201.6.1. in order to allow disturbance outside the principal building envelope where such disturbance is prohibited

District 3

BA2018029 **Foncannon Property** **District 2**
Applicant: Robert Foncannon
Location: 220-04-010R - 1547 N. 107th Pl. – southwest corner of Signal Butte Rd. and McLellan Rd., in the Mesa area
Zoning: R1-35
Requests: Variance to permit:
1) Proposed (west) front setback of 18' where a minimum of 40' is required; and
2) Proposed (north) street side yard setback of 5' where a minimum of 20' is required; and
3) Proposed accessory structure located within the required front yard where prohibited; and
4) Waiver of required 25' x 25' Site Visibility Triangle (northwest corner) on corner lot

BA2018030 **Fannin Property** **District 4**
Applicant: Aaron Wendt, W5 Construction
Location: 506-44-098B - 38613 W. Sherman St. – Wintersburg Rd. & Salome Hwy. in the Tonopah area
Zoning: Rural-43
Request: Variance to permit
1) A lot area of 43,145 sq. ft. where 43,560 sq. ft. is the minimum required

BA2018031 **Lapin Investments** **District 4**
Applicant: Tim Davis, TLD Builders, LLC
Location: 502-37-013T - Located on the east side of Perryville Rd. north of the northeast corner with Van Buren St. in the Goodyear area
Zoning: Rural-43
Request: Variance to permit:
1) A proposed lot area of 38,964 sq. ft. where 43,560 sq. ft. is the minimum required

BA2018032 **Lapin Investments** **District 4**
Applicant: Tim Davis, TLD Builders, LLC
Location: 502-37-013W - Located on the east side of Perryville Rd. north of the northeast corner with Van Buren St. in the Goodyear area
Zoning: Rural-43
Request: Variance to permit:
1) A proposed lot area of 38,964 sq. ft. where 43,560 sq. ft. is the minimum required

BA2018033 **Lapin Investments** **District 4**
Applicant: Tim Davis, TLD Builders, LLC
Location: 502-37-013Z - Located on the east side of Perryville Rd. north of the northeast corner with Van Buren St. in the Goodyear area
Zoning: Rural-43
Request: Variance to permit:

- 1) A proposed lot area of 39,699 sq. ft. where 43,560 sq. ft. is the minimum required

Member Loper said agenda items #8, #9, and #10 were all recommended for denial. He's never seen that on the consent agenda before and wanted to make sure the applicants understood that. Mr. Gerard said that's a typo in the agenda only and not in the staff reports.

BOARD ACTION: Member Riddell motioned to approve BA2018012 with conditions 'a'-'c', BA2018015 with conditions 'a'-'c', BA2018023 with conditions 'a'-'d', BA2018024 with conditions 'a'-'c', BA2018029 with conditions 'a'-'c', BA2018030 with conditions 'a'-'c', BA2018031 with conditions 'a'-'c', BA2018032 with conditions 'a'-'c', and BA2018033 with conditions 'a'-'c'. Member Cardon second. Approved 5-0.

BA2018012 conditions;

- a) General compliance with the site plan stamped received April 26, 2018.
- b) All required building permits 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 permits 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.

BA2018015 conditions;

- a) General compliance with the site plan and sign package stamped received May 1, 2018.
- b) All required building permits 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 permits 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.

BA2018023 conditions;

- a) General compliance with the site plan stamped received March 20, 2018.
- b) All required building permit for proposed and existing 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) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.

- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2018024 conditions;

- a) General compliance with the site plan stamped received March 20, 2018.
- b) Failure 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.

BA2018029 conditions;

- a) General compliance with the site plan stamped received April 26, 2018.
- b) All required building permits 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 permits 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.

BA2018030 conditions;

- a) General compliance with the site plan stamped received April 16, 2018.
- b) All required building permits 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 permits 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.

BA2018031 conditions;

- a) General compliance with the site plan stamped received April 16, 2018.
- b) All required building permits 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 permits 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.

BA2018032 conditions;

- a) General compliance with the site plan stamped received April 16, 2018.
- b) All required building permits 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 permits 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.

BA2018033 conditions;

- a) General compliance with the site plan stamped received April 16, 2018.
- b) All required building permits 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 permits 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.

BA2018035

Renue Desert Gardens II LLC Property

District 4

Applicant:

Associated Sign Company

Location:

501-57-007W - 13621 W. Glendale Ave. – 136th Ave. & Glendale Ave., in the Glendale area

Zoning:

R-5

Request:

Variance to permit:

- 1) Proposed front setback of 2 feet where 20 feet is required

Member Riddell recused herself from item #11 - BA2018035 from the consent agenda.

Mr. Gerard presented BA2018035.

BOARD ACTION: Member Loper motioned to approve BA2018035 with conditions 'a' - 'c'. Member Cardon second. Approved 4-0-1 (Riddell).

BA2018035 conditions;

- a) General compliance with the site plan stamped received April 16, 2018.
- b) Failure 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

V201700320

Code Compliance Review

District 3

Respondent:

Campbell Hart

Location:

47812 N. 27th Ave. New River, AZ 85087 (Parcel 202-11-058B)

Request:

Appeal of the Hearing Officer's Order of Judgment

Mr. Gerard presented V201700320 and noted the case was opened February 15, 2017 from a citizen complaint for hillside grading, and the construction of pipe rail type fencing without benefit of issued permit or clearances. The violation was verified and a Notice and Order to Comply (NOTC) was sent on March 6, 2017. Subsequently there was a permit B201705603 for the fence and the unpermitted grading. It was submitted June 20, 2017, and it remains unissued and is still under review. There was a compliance agreement that extended a compliance deadline to February 1, 2018, that deadline was not met. An administrative hearing was held on March 22, 2018 and the hearing officer found the respondent responsible. The judgment included an order to pay fines of \$750 plus \$30 per day to commence April 1, 2018 and to accrue until compliance is verified. The fines to be waived if the deadlines in the judgment are met. To date no fine amount has been paid. The hearing officer made a finding of fact and reached his conclusion pursuant to section 1502 of the ordinance. According to 1504.3.2, the Board may either affirm the hearing officer's order or remand it due to finding of a procedural error. Staff finds no administrative or procedural errors, and recommends the Board affirm the hearing officer's order of judgment.

Member Riddell said with this type of appeal the Board's review is limited to a procedural error. Mr. Gerard said yes, that's correct.

Member Riddell said she encourages the applicant to keep testimony based on procedural error.

Ms. Campbell Hart said she doesn't know if this falls under the category as procedural but it was a major component of the way things have gone. In December she was making phone calls to Mr. Charles Hart, the Code Compliance Supervisor who helped her get the first extension. He told her if we needed to we can do another extension based on the fact of her underlying health issues. She was in the middle of submitting her third or fourth set of plans and she was working on this consistently. At a certain point the complainant accused Mr. Hart of being a relative since they have the same last name. This caused an internal semi-recusal of Mr. Hart's involvement and access. She tried contacting Mr. Hart and she didn't hear back and then tried the inspector, Mr. Thomas Daley and didn't hear back. Mr. Daley did contact her the beginning of January, and there was still some time to submit additional set of plans before the deadline. He acknowledged that a lot of this was out of her hands, and to give Mr. Loftus, the engineer time to submit. She placed a call to Mr. Loftus and she did not hear back from him until the first week of February a few days after the deadline. She told Mr. Loftus what was at stake here and he said he would call the County since it was his fault. They were told they have to have a hearing because this was political. She's not sure if not returning phone calls qualifies as procedural but that is what happened.

Vice Chairman Morris asked if she was able to explain this issue with the hearing officer. Ms. Hart said we did discuss the non-return of phone calls and that everybody at the County has been very professional. She didn't want to "throw anyone under the bus" and she wasn't sure

if she brought up the situation. She did speak with Mr. Hart and he said he would not be at the hearing today for the same reason.

Member Riddell said it would be helpful for the applicant to understand the options available to her. Mr. Gerard said the violation is for unpermitted fencing that is outside of the principle building envelope in a hillside area. The regulations require the disturbance to be within the principle building envelope which means 30 feet from the sides, 40 feet from the street line, and 40 feet from the rear lot line. There was fencing permitted previously and then there was additional fencing along the entire perimeter of the site that was put up without drainage clearance or construction permit. The hearing officer's order found her responsible for this violation and the accruing daily fines will be waived if the permitting is completed by November 26, which is 6 months away. To his knowledge there has not been a resubmittal of the permits before the hearing. Her engineer was in contact with him the second week of February, and he was told fines will not be waived, and the violation has been open for a year and this will need to go to hearing. Depending on the hearing officer's order of judgment the fines can be settled or dismissed depending on the ruling. In order to get the fence permitted there will have to be variance and that is later on the agenda.

Member Riddell asked if item #17 were to be approved would she then be in a position to apply for permits as long as they were achieved before November, and would all the accruing fines be waived. Mr. Gerard said that is correct, there is a pending permit and the option for compliance are to remove the fencing that is in violation or to get it permitted. In order to get it permitted it would need to pass the zoning clearance and she would need the variance. That is where it sits today.

Vice Chairman Morris said having looked at what occurred below and listening today, we have some work to do later in the agenda. The hearing officer's findings don't indicate any reason why the Board would need to intervene.

BOARD ACTION: Vice Chairman Morris motioned to affirm the hearing officer's order of judgment. Member Riddell second. Affirmed 5-0.

REGULAR AGENDA

BA2018008	Pedroza Property (Cont. from 4/19/18)	District 4
Applicant:	Santos Uglade, Unique CAD & Design	
Location:	APN 506-41-225 @ 1320 S. 357 th Ln. - 355 th Ave. and Buckeye Rd. in the Tonopah area	
Zoning:	Rural-43	
Request:	Variance to permit: 1) Proposed front setback of 28' where 40' is the minimum required	

Ms. Sarnowski said this case will require a translator. Ms. Gema Piatkowski will be translating for Mr. Pedroza, the applicant.

Ms. Sarnowski presented BA2018008 and noted the variance request is for an existing accessory structure within the front setback of 28 feet where 40 feet is the minimum required per article

503.4.3 per the Maricopa County Zoning Ordinance. There is no known opposition and the request is a result of a code violation. The case was continued from the April 19, 2018 hearing for staff to determine if the original building permit allowed the porch to encroach upon the front yard setback. It was determined through historical aerials that the porch did not initially encroach the front yard setback but was extended with matching materials. The applicant wishes to protect the front of the residence from the Arizona climate and said the original owner constructed the residence at the 40 foot yard setback leaving no room for additions such as an extended porch. The area is rural with sparse development. The subdivision was re-platted in 1999, and no new development in the subdivision has occurred since 2007. Staff does not believe the variance request meets the statutory test. Paragraphs 21 and 22 of the staff report details requirements for the Board to determine a motion for this case.

Member Riddell said she appreciates the follow up diligence of looking at historical aerials.

Vice Chairman Morris asked if the applicant would like to make a statement. Ms. Piatkowski said Mr. Pedroza would like to know if he can leave it or move it back. As stated earlier by Ms. Sarnowski, the original owner placed the house at the 40 foot setback, and it does not leave him any room to make the porch. He would like to know what he can do.

Vice Chairman Morris asked if there was any communication with the applicant prior to filing the variance or is the variance a result of the enforcement action. Ms. Sarnowski said there was a hearing officer's judgment in February and that's when he applied for the variance.

Vice Chairman Morris said if there was justification for a variance it would give them more flexibility, but given the shape and size of the lot makes it very difficult to find a solution.

Member Riddell said it's the beginning of development out there and she is concerned they would be setting a precedent with new development coming in. She likes to find ways to make something work and that is why they continued the case if it was legal non-conforming construction.

Member Cardon said he is not seeing any drainage in the backyard that prevented the house from being built farther back.

Chairman Harris said there's been a lot of purchasing of property in Tonopah and we'll be seeing a lot of cases come in here from that area, so we need to be careful about setting precedent.

Member Riddell asked if this were to be denied today is there time to bring the property into compliance so he would not immediately be accruing fees. It does seem he has room to add a porch to the north or to the south and be outside the setback. Mr. Gerard said if the variance is denied, he's not going to be able to get a zoning clearance for the building permit. The option before him is to remove the porch overhang that is encroaching into the front setback where he can modify a permit to show that. If he cannot do that in the time allotted by the hearing officer's order, staff can administratively enter into a compliance agreement. Early on the applicant admitted responsibility and staff is happy to work with him to give him the necessary time.

Member Riddell asked would he be allowed to have a two foot overhang in the front yard setback. Mr. Gerard said yes that's correct, a two foot eave or awning overhang encroaching into the front setback.

Mr. Gerard said to correct his previous statement, it is three feet. Member Riddell said he has 10 feet that he would need to remove and relocate.

Member Loper said the home was placed at the 40 foot setback line and that was prior to the applicant owning the property. They have built a rear porch and it does look like the septic leach field prohibits that from going much further, but they can go to the north or south. He's not too worried about precedent since the Board is good at looking at each case, and he does not believe the intent of the zoning ordinance is harmed by this overhang. Looking at the description in the staff report and the aerial photo, it clearly looks like the applicant took some time and effort in getting it to match the dwelling, but he is struggling with a finding or a hardship. The setbacks are the setbacks and it was their obligation to find those things out prior to this, but on the other hand the zoning ordinance itself is not harmed by this.

Member Loper asked if this is open on three sides. Ms. Piatkowski said yes it is all open.

Mr. Gerard said the one thing staff viewed as a possible hardship are the mature mesquite trees on the north which prevents a porch on the north side without removing that tree. There's trees in the front but they are beyond this unpermitted section. There may be room to the south because the trees that are there are just as far from the house as the ones to the front.

Member Riddell asked how wide the right-of-way is. Mr. Gerard said it is a 50 foot wide full width right-of-way.

Vice Chairman Morris asked is it a County maintained road. Mr. Gerard said yes it is a public right-of-way to the County.

Member Riddell said in a single-family subdivision 50 feet seems fairly excessive. Mr. Gerard said in the subdivision regulations and the zoning ordinance it is the local street half width requirement. In order to be reduced, it would have to be a right-of-way abandonment and become a privately maintained street. There's replat issues and it's very complicated.

Vice Chairman Morris said he is not worried about precedent because this Board is good at looking at the individual attributes of each case. They are somewhat frustrated by the application of the ordinance between the applicant and the Board if we're not able to find something to rely upon. Between the right-of-way where this house is situated on the lot and the septic requirements which aren't a function of the application, but a function of a lack of infrastructure in the area whether there is justification for having this set so far forward.

Member Riddell asked do we know how this became a notice of violation. Mr. Gerard said it was a result from a citizen complaint.

Vice Chairman Morris said is it possible this came out of pulling a permit. Mr. Gerard said the review of permit would see the need for a variance but it would not have resulted in an open violation. We do not proactively open violations without citizen complaint.

Ms. Sarnowski said she did not receive any opposition on the variance request, it was just through code enforcement.

Member Riddell asked if there is a distance separation between septic and the building that's required by code. Mr. Gerard said there is, but it's in the health code not the zoning ordinance and he believes it is a 20 foot separation.

Member Riddell asked if that 20 foot separation apply to the edge of the structure or the edge of the habitable area. Mr. Gerard said he would need to defer to Environmental, but his interpretation in reading that as a different regulatory industry, it would be from the edge of the building which would include the covered structure. He understands what's being pointed to in the site plan, and it is something that would be reviewed within the building permit for the porch.

Mr. Gerard said for the benefit of the applicant, there appears to be a porch on the west side of the property that would make that building 10 feet instead of 23-1/2 feet away and there may need to be a septic relocation but that is a separate issue.

Member Loper said he is offering a motion for approval subject to the conditions outlined in paragraph 22 with addition of stipulation 'd' that would inhibit the structure from being enclosed and to remain open on three sides within the front yard setback.

Mr. Loper asked how long do they have to follow-up and work towards approval of the permit. Mr. Gerard said if it's not possible for him to complete the permit within the hearing officer's deadline, staff will work with him on a compliance agreement.

Member Loper said in the findings the applicant has demonstrated a peculiar condition facing the property in that the original structure was placed at the setback line by not allowing anything to be constructed on the east side of that structure, also the septic system in the rear looks as if it could obstruct anything being placed to the rear and the trees on the north is a hardship from placing anything on the north side. The strict application of the development standards in the zoning ordinance for this particular property create an undue physical hardship for the reasons stated. The peculiar condition of the home being placed at the setback was certainly not self-created by the applicant.

BOARD ACTION: Member Loper motioned to approve BA2018008 with conditions 'a'-'c' with inclusion of condition 'd'. Vice Chairman Morris second. Approved 4-1 (Riddell).

- a) General compliance with the site plan stamped received February 8, 2018.
- b) Failure 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.
- d) Prohibit any portion of the structure that encroaches into the required front yard from being enclosed (must remain open on three sides).**

BA2018020

Cordova Property (Cont. from 4/19/18)

District 4

Applicant:

Thomas A. Cordova Sr.

Location:

503-30-028F - 23925 W. Gambit Tr. – west of 239th Ave. on Gambit Tr. in the Wittmann area

Zoning:

Rural-43 and Rural-43 Military Airport and Ancillary Military Facility Overlay Zoning District and within APZ-2

Requests:

Variance to permit:

- 1) Proposed front setback of 10' where a minimum of 40' is required in the Rural-43 zoning district (adjacent to Military Airport and Ancillary Military Facility Overlay Zoning District); and
- 2) Proposed rear setback of 28'-1" where a minimum of 40' is required

Mr. Banker presented BA2018020 and noted staff agrees that the variance requests meet the statutory test required for granting this variance, and there is a peculiar condition with the military overlay district which limits the buildable area for residential development to a small portion to the rear southern portion of the lot. This case was continued at the request of the applicant from April 19, 2018 to change the request to allow more room between the proposed residence and the military overlay district to ensure they did not encroach within this restrictive area. There is no know opposition to the request and paragraph 16 and 17 of the staff report details requirements for the Board.

Chairman Harris asked if the applicant is here and would they like to speak. Mrs. Crystal Cordova said they inherited the property from her husband's family and they are asking for a variance to build a home for their son.

Member Riddell asked why this was not on the consent agenda. Mr. Gerard said it could have been on consent but since it was continued it was kept on for further discussion.

BOARD ACTION: Member Loper motioned to approve BA2018020 with conditions 'a'-'d'. Member Cardon second. Approved 5-0.

- a) General compliance with the site plan stamped received April 27, 2018.
- b) All required building permits 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 permits within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) There shall be no encroachment of the proposed residence in the Military Airport and Ancillary Military Facility Overlay Zoning District & APZ-2 on the subject property.
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2018036

Applicant:

Location:

Zoning:

Requests:

Hart Property

Campbell Hart

202-11-058B - 47812 N. 27th Ave. – Sunset Rd. and 27th Ave. in the New River area

Rural-43

Variance to permit:

- 1) Hillside disturbance of 700 sq. ft. outside the lot's principal building envelope where hillside disturbance is prohibited; and
- 2) Existing fencing outside the lot's principal building envelope along the east, south, west and north property lines where hillside disturbance is prohibited; and
- 3) Existing fencing located within the 25' x 25' sight visibility triangle (SVT) at the 20' wide ingress/egress and 30' width ingress/egress at the southwest corner of the property where structures greater than 2' high are prohibited.

Ms. Applegate presented BA2018036 and noted there is an existing code violation on the property for building without an approved building permit, fencing without drainage clearance, and violation of the hillside regulations. A civil hearing was held on March 22, 2018 which the hearing officer found the owner responsible and ordered site work to be completed by November 26, 2018. Determination of the variance request and obtaining permits for unpermitted work will rectify the violation. The existing 1,197 linear feet of unpermitted fencing installed on the property lines includes a five foot no climb fence. The owner indicated that hillside disturbance occurred with the previous owner and that installation of the fencing along property lines did not create additional hillside disturbance. The applicant is requesting relief from the standard to allow the fencing to remain on the property lines instead of being relocated to meet setbacks. The property is being utilized for residential and currently includes nine rescue horses. The fencing on the property was established to keep the horses on site. The owner is also requesting relief for the fencing within the sight visibility triangle installed at the south and west property lines. Staff has recommended to the owner that relief could include reconstruction of the fencing to meet the sight visibility requirements for safety concerns. The owner has indicated that the ingress/egress easements adjacent to the site only serve the immediate property owner to the west. There are no other developed properties that utilize the easement for access. There is a potential for this easement to provide access to three other lots that are currently vacant. Staff notes the variance is negated if perimeter fencing is relocated in order to meet setbacks. The perimeter fencing for corralling of horses essentially means the entire area will be disturbed and not just the line of fencing. The adjacent development lot has a paved driveway and retaining wall immediately adjacent to the shared property line, and maintaining natural undisturbed hillside slope in this immediate area would serve less purpose. A letter of opposition was received by the adjacent property owner, Eric Sims and Jennifer McPartlin that have been provided to the Board as a handout. They reside to the west of the subject site, and the opposition is due to horses on the property due to hillside regulations, installation of the fencing, and horse structures without permits. They also raise concerns with the site visibility triangle at 27th Avenue, hillside disturbance, and excessive manure from the rescue horses, and impacts to their property. They also provided photographs of the subject site. Based upon the owner's submittal, staff determined the owner failed to demonstrate there's a peculiar condition facing the property and that strict application of the ordinance has caused physical hardship. The request does not meet the statutory tests required for granting of the variance. If the Board finds the applicant have demonstrated due to peculiar

conditions facing the land, that a strict interpretation of the zoning ordinance would work an unnecessary hardship on the property, then the Board must state on the record the basis for determination with conditions of approval listed in paragraph 28.

Member Loper referred to paragraph 20, and noted it talks about the application not including some fencing that was in the site visibility triangle. He asked if it was not included because of the grade difference, and after reviewing that is it actually in violation but it's not part of the application. Ms. Applegate said there's fencing on all perimeters, and when we evaluated the southeast corner, the fencing is actually below the elevation of the streets centerline by a foot. There is a grade drop of about six feet and the fencing is actually below. The photograph shown on paragraph 20 shows the elevation of the road and the fencing below that. We did not include that as part of the variance request because it's not required.

Ms. Campbell Hart, the applicant asked if the variance request has not been accepted. Vice Chairman Morris said you have a pending application in front of the Board and staff makes a recommendation based upon your application. Based upon the information you submitted they are recommending denial of the variance request indicating you don't meet the standards for the granting of a variance.

Vice Chairman Morris asked if she's been working with an engineer or architect or some type of consulting professional in terms of putting this application together, and if she had any conversations with staff to discuss the application. Ms. Hart said yes to both, she had the property surveyed when she purchased it, and she has a copy of the listing stating it's more than two acres and it indicates room for horse setup. She looked for 11 years for a property and thought she found her dream property. She said she is an honorable, decent, kind and patient person and the complainants have made her out to be someone she is not. She had one conversation with the neighbors after the fence went up. She introduced herself and Mr. Sims was very friendly, and Ms. McPartlin never said a word to her. She told them she had rescued the horses, and Mr. Sims told her when they lived in California the neighbors had horses that backed right up to their bedroom windows, and they never had a problem with them at all. When they were informed they didn't express any opposition before the horses arrived. They now have a lot of issues with her and contacted multiple agencies against her. She has a copy of the complaint to the sheriff a month after the horses arrived. The major crimes division came out for an animal cruelty claim, and said the horses were rescues and had a long drive to her and were in the process getting settled and gaining weight. The officer said she was a horse owner and found no fault. The horses were eating and have shelter and food at the top of the hill right behind her house. She was asked by the County to move the corral into the building envelope which she did immediately, and she was also asked to move the small corrals behind her back patio which is by her living room window. When she moved in everything was surveyed because it was her intention to use this horse property for rescues and her dogs. As she imagined this would make a beautiful addition to New River. She had many neighbors stop by to introduce themselves and say they love the fence, love the look, and love seeing the horses. One woman stops at the hillside every single day waiting for the bus with her kids, and they love what she's done and love the horses. Other neighbors come to pet the horses and some asked permission to give them carrots and apples. Her realtor took her to get a permit for the front portion of the hillside which is technically the back. She was granted the fencing from the driveway and along the east on 27th Avenue and along the hillside facing north and 20 feet beyond the corner of the house and 20 feet beyond the hillside in the back. Before she put the perimeter fence up she drove all along 27th Avenue to see what kinds of fences people had up

for horses. She made a selection that was simple, safe, see through, appropriate and rustic. The reason she got out of order from getting the permit was because her 19 year old dog became ill and she was sleep deprived. The permits were on their way and she didn't think there would be any problem, so she made a place for the horses to come to with the intention going to get the rest of the permits.

Member Loper asked if someone can't secure a perimeter of a lot if there is hillside and if it's outside the building envelope because it's not permitted. Ms. Applegate said that is correct.

Mr. Gerard said it doesn't mean you can't fence the lot, it means the fence sits 40 feet from the front, 40 feet from the rear, and 30 feet from the sides if it's all hillside. If a portion of a lot is hillside and a portion of a lot is not, the hillside only applies to the portion that's 15 percent slope or greater.

Member Loper said in terms of keeping of horses, it's zoned for horses and if she had the fence at those setbacks she does not need a secondary fence to keep the horses in. The horses can roam the lot, but not advisable. Technically the horses need to be fenced in at the setbacks noted by staff.

Member Loper asked if the 700 square feet and the restoration area in yellow include the area for the perimeter fencing. Ms. Applegate said it does not, we didn't calculate the amount of disturbance for hillside with that fencing since it was such a small area with wire fencing.

Member Loper asked without the fencing that 700 square feet represents a little bit less than one percent overage. Ms. Applegate said correct.

Member Loper asked Ms. Hart if she has talked to the neighbors on how regularly the manure is cleaned up, and is it a service or is it you, and is it something that's proactive. Ms. Hart said it's very proactive and her property is actually very clean. She goes out every morning and every afternoon. The picture the neighbors submitted of the paint mare is the area of the property they go to the very least. They go down to the south side of the mountain and spend the day in the little arena area which is the place they are most of the day. Not that they go across the whole property here and there they do, but that is where they go the least. In the picture the horse is standing on the spot where her foal was found dead and the bay mare was there too. She was surprised to see them standing there.

Member Riddell asked if she is a certified equine rescue. Ms. Hart said no, she just rescued them from a kill pen before they went on the slaughter truck.

Chairman Harris asked if there was anyone in opposition to speak or anyone in interest on this case that would like to speak. None.

Vice Chairman Morris asked if she has seen the opposition letter. Ms. Hart said yes, she just saw it on Monday.

Vice Chairman Morris said a lot of things were mentioned in terms of the operation of the property with your desire in buying the property and your goal with the horses. The challenges with every case in front of the Board is we have a statutory duty in terms of a variance and often times in hearing the circumstances we will diligently try and find those statutory

requirements in order to grant a variance. This is challenging because the facts you are giving us is very compelling but very little relates to the land itself and we must find the circumstances that are related to the land in order to grant a variance.

Ms. Hart asked if he had an opportunity to read her application. Vice Chairman Morris said yes.

Ms. Hart said she feels she addressed the issues of the land being hillside and being on slope. There is very few places of land that is flat for the horses to exist on.

Vice Chairman Morris said this case is the opposite of the case we heard earlier with very few topographical features for us to rely upon. This has a plethora of topographical features that are causing some of your issues, unfortunately they are all on the hillside area. We have to assume you have knowledge of the hillside area when you purchased the property. Ms. Hart said she was not, and she talked to her realtor and she did not know about the hillside regulations. If she had she certainly would have told her. She didn't know anything about hillside, and with the grading she tried to smooth out and flatten an area in case she needed to put a corral there. There's a lot grading going on around her and she didn't know. She contacted the fence contractor and they said they didn't know and they don't follow all the regulations, they do what the customer asks. When she found out about the grading issue she put it back. The neighbor yells and screams to the County and to different agencies, and they are looking very carefully at everything on her property.

Chairman Harris said if you find yourself here again, it is very helpful to get letters of support and to bring an engineer to speak on your behalf. Ms. Hart said she does have a petition, the prior property owner got signatures since she knows everyone in the neighborhood.

Chairman Harris asked when she received this petition. Ms. Hart said two weeks ago.

Chairman Harris said it would have helped the Board if the petition was given to the staff. Ms. Hart said she called and asked about it and they said to bring it, she has 10 copies.

Member Riddell asked staff if they remember that conversation. Ms. Applegate said they discussed a PowerPoint and Ms. Hart didn't have the capability to set up a PowerPoint presentation and we already had images set up with the staff presentation, but she does not recall the mention of petitions or any items of support.

Member Loper asked if the 700 feet of the hillside area being disturbed will be restored. Ms. Applegate said they are proposing to restore that area and it's already been disturbed. Just like the existing fencing portions of the hillside is already disturbed. She is proposing to do some revegetation in the 700 square foot area.

Member Loper asked if he disturbs a hillside area and then he restores it to somewhat its pre-disturbed condition, it is no longer disturbed. If you grant a variance for it is there an obligation to still restore it, or can you place that obligation on a variance approval for that with a timeline. Ms. Applegate said it's actually tied in with the hillside regulations, and it's one of the standards in the hillside regulations. The permit in for review shows that area for restoration, and the engineer already has that established that it will be restored per the hillside regulations.

Member Loper said under the permit history he noticed she did get a permit for 353 linear feet and that was inspected and approved, and asked is this the subject of the fence issue or just the one in violation along the perimeter? Ms. Applegate said yes, that is correct.

Member Loper said the sight visibility triangle is on the southwest corner that's due to easements to those properties not platted or dedicated right-of-way. Ms. Applegate said correct.

Member Riddell asked what would be permitted to stay if nothing was approved today. Ms. Applegate said unfortunately based on the hillside regulations she would need to move the perimeter fencing to meet setback requirements.

Member Riddell asked what portion of the fence was legally permitted. Ms. Applegate said only the northeast corner. On page four is a screenshot of the building permit that received final inspection about 300 feet, that's the only area allowed to remain on site. That building permit when submitted indicated that it was non-hillside and it was reviewed as just a drainage clearance, so there was no zoning clearance issued. After construction was when the perimeter fencing occurred without permits.

Member Riddell said by looking at the image on the screen the northeast corner remains and you can add fencing. There is additional fencing that can occur outside the residence but not to the perimeter. Ms. Applegate said that is correct.

Mr. Gerard said there is no limit on hillside disturbance as long as it's inside the principle building envelope, and of the two acres a considerable amount can still be used to corral horses. The hillside regulations were amended in 2010 to allow much greater disturbance and to keep it away from the perimeters. That's one reason there's a difference of development pattern from the property owner to the west.

Vice Chairman Morris said there is two different things at stake here, the operation Ms. Hart is trying to continue on her property and what she purchased the property for. This is the appropriate area for horses and has an important mission to saving these horses. What the Board is hearing is it possible to have this, but just not in the configuration that's been established.

Member Riddell asked if she was a certified equine facility would she be eligible for an agricultural exemption. Mr. Gerard said he doesn't believe so since it doesn't meet the five commercial acres, it's 3.75 acres.

Vice Chairman Morris said one of the things he would like to see knowing she does have design professional working on this, he strongly suggests to continue this case. She can work with the design professionals to see what would be permitted on the property to accommodate what she is trying to do with the horses. This is the best direction since it is very difficult to find justifications to permit it, and he is concerned the Board won't grant the variance she is looking for.

Member Riddell said as difficult as it is to have communication back and forth with the neighbor, see if there is any type of resolution. We have in the past challenged most of the applicants when there is opposition to reach out in good faith and try to resolve the concerns.

Chairman Harris said it's unfortunate when neighbors can't get along and the tone of the letter wasn't very nice. He never believes that there's absolutely no chance for you to work things out. If the applicant would do what was stated, and when she comes back to please bring your representative to help us understand what's going on with the property. The Board is talking about having a continuance so she can meet with staff and find out what is permissible, and to have the engineer speak with staff and to please talk to your neighbors.

Member Loper said he agrees with a continuance. He doesn't have a problem with the disturbance because it's already been disturbed and it's going to be restored. He probably wouldn't support this as presented since the horses are right up against the property line when otherwise they would be 40 feet back by a fence. He would like to see a fence buffer to keep the horses away from the property line and that would go towards mending that relationship with the neighbors.

Member Riddell said she would also be in support to a continuance for a month, since it's gone on for quite a while. The intent is to not delay but achieve at least a more amicable solution.

Vice Chairman Morris said knowing what can occur in a month and having the applicant meet with her design consultants and to get it vetted by staff before it comes back to us, he suggests 60 days.

Chairman Harris asked the applicant if she understands what they are about to do. Ms. Hart said she believes so, to take some time to consult with her engineer and with staff to see if we can create a solution.

Vice Chairman Morris said a solution within the zoning ordinance that allows you to have your horse operation. If you find yourself still needing variances with a variance that has less of an impact on surrounding properties, especially those who complained already would be in your best interest. He urges she meets with staff to see if she can accommodate that.

Member Riddell said if the applicant comes back in 60 days with no changes the Board would likely deny the application.

Chairman Harris urged Ms. Hart to please take these 60 days and meet with staff, your engineer and your neighbors, and to allow your engineer to help you and they can come here and speak on your behalf.

BOARD ACTION: Vice Chairman Morris motioned to continue BA2018036 to July 19, 2018. Member Riddell second. Continued 5-0.

Adjournment:

Chairman Harris adjourned the meeting of May 17, 2018 at 11:30 a.m.

Prepared by Rosalie Pinney
Recording Secretary
May 17, 2018