



MARICOPA COUNTY, ARIZONA
Board of Adjustment
Minutes
June 21, 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 (left at 10:07)
Mr. Craig Cardon
Mr. Greg Loper
Ms. Wendy Riddell

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

COUNTY AGENCIES: Mr. Robert Swan, County Attorney

ANNOUNCEMENTS: Chairman Harris made all standard announcements.

APPROVAL OF MINUTES: April 19, 2018

AGENDA ITEMS: BA2018014, BA2018013, BA2018037, BA2018038, BA2018039,
BA2018025, BA2018026

Chairman Harris requested a motion for approval of the April 19 minutes.

BOARD ACTION: Member Riddell motioned to approve the April 19, 2018 minutes. Member Cardon second. Approved 5-0.

WITHDRAWN

BA2018014	Recreation Centers of Sun City West	District 4
Applicant:	Bootz & Duke Sign Co.	
Location:	232-19-575 – 21021 N. 151 st Ave. – 151 st Ave. & RH Johnson Blvd. in the Sun City West area	
Zoning:	C-2	
Request:	Variance to permit:	
	1) A freestanding sign with a sign face area of 103.6 sq. ft. where 24 sq. ft. is the maximum permitted	

The applicant has withdrawn their application, no action required by the Board.

CONSENT AGENDA

BA2018013

Applicant:

Location:

Zoning:

Requests:

Recreation Centers of Sun City West

Bootz & Duke Sign Co.

232-09-279 - 12702 W. Stardust Blvd - Stardust Blvd. & Skylark Dr., in the Sun City West area.

Rural-43

Variance to permit:

- 1) Freestanding sign at 103 sq. ft. where 24 sq. ft. is the maximum permitted; and
- 2) Freestanding sign setback 13 feet where 20 feet is the minimum permitted

District 4

BA2018037

Applicant:

Location:

Zoning:

Requests:

Moran Property

Robert Morris, HUB Studio

169-16-090 – 4502 E. Clearwater Parkway in Clearwater Hills

Rural-43

Variance to permit:

- 1) A proposed side yard setback of 21'-3" where 30' is the minimum required; and
- 2) Hillside disturbance of 650 square feet outside the lot's principal building envelope where hillside disturbance is prohibited

District 3

BA2018038

Applicant:

Location:

Zoning:

Requests:

Tena Property

Adolfo Tena

502-37-159A – 1103 N. 180th Dr. – Interstate 10 and Citrus Rd. in the Buckeye area

Rural-43

Variance to permit:

- 1) An existing lot area of 36,790 square feet where 43,560 square feet is required; and
- 2) A lot width of 134' where 145' is required

District 4

BA2018039

Applicant:

Location:

Zoning:

Requests:

DeRango Property

Robert & Jenna DeRango

219-16-022T – 14124 N. Meridian Rd. – located northwest of Blue Coyote Trail & SR 87 in the Goldfield Ranch area

Rural-190

Variance to permit:

- 1) Hillside disturbance of 1,523 sq. ft. outside the lot's principal building envelope where hillside disturbance is prohibited; and
- 2) Proposed front yard setback of 31.49', where a 60' minimum is required; and
- 3) A waiver from Article 1106.2 in order to allow an accessory dwelling unit within the required front yard, where such buildings are prohibited; and

District 2

- 4) A waiver from Article 1201.6.1.6 in order to allow retaining walls within front yard setback, where such structures are prohibited; and
- 5) A waiver from Article 1201.6.1.2 in order to allow a septic system outside the proposed building envelope within an area of hillside slope

Mr. Gerard presented the consent agenda.

BOARD ACTION: Member Riddell motioned to approve BA2018013 with conditions 'a'-'c', BA2018037 with conditions 'a'-'b', BA2018038 with conditions 'a'-'c', and BA2018039 with conditions 'a'-'c', Vice Chairman Morris second. Approved 5-0.

BA2018013 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.

BA2018037 conditions;

- a) General compliance with the site plan stamped received May 16, 2018.
- b) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2018038 conditions;

- a) General compliance with the site plan stamped received May 18, 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.

BA2018039 conditions;

- a) General compliance with the site plan stamped received June 4, 2018.
- b) All required building permits for the 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.

REGULAR AGENDA

BA2018025

Vertigo Investments Property (cont. from 5/17)

District 1

Applicant:

Withey Morris, PLC

Location:

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

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

Vice Chairman Morris recused himself.

Chairman Harris said he has many speaker cards for this case, and asked the speakers not to repeat comments when asked to speak.

Mr. Gerard presented BA2018025 and noted there is no known opposition. Two letters of support are in the packet and a handout letter signed by two City of Tempe councilpersons. The subject property is 61 feet south from Dream Palace, an existing adult business on Scottsdale Road. The park 1,325 to the west is separated visually and physically by two blocks of high-density urban development. A waiver to that requirement to the park would seem warranted. There is an argument to be made by the applicant that the Community Health Assessment Area (CHAA) present a peculiar condition with regard to the application of the zoning ordinance setback/separation requirements to the property. Staff does not believe this argument has been flushed out to warrant relief from the standard. There does appear to be authorized dispensary locations within the north Tempe CHAA within the City of Tempe. What's before you today is not a question about the appropriateness of medical marijuana facilities; we have a half dozen to a dozen locations throughout our jurisdiction. It's not a question of the appropriateness of the 1,500 feet separation that is in the ordinance. What needs to be determined today is there any justification or warrant for relief from that standard per ARS §11-816.B.2 and MCZO, Art. 303.2.2. The Board of Adjustment may allow a variance from the terms of the ordinance if peculiar conditions, a strict interpretation would work unnecessary hardship, and if granting the variance the general intent and purpose of the zoning ordinance would be preserved. Staff believes the applicant has an opportunity to try to present argument that there is a peculiar condition at this point, per paragraph 15. Staff does not believe that is the case. We believe there's been failure to demonstrate a peculiar condition facing the property, and there's been a failure to demonstrate that the strict application of the MCZO to the property has caused undue physical hardship that prevents development of the property. The property has already been developed and can accommodate all the IND-2 uses other than a medical marijuana facility or an adult oriented business facility. Staff's recommendation per paragraph 15 is for denial. In paragraph 16, if the Board determines there is a peculiar condition the Board must state those findings on the record and include a conclusion in the motion of approval with staffs suggested conditions 'a'-'c'.

Mr. Benjamin Tate with Withey Morris, representing the applicant said there is two stories to tell about this property, one is where this property has been and the second hopefully where this property is going. This property is on the northeast corner of Gilbert Road and Scottsdale Road on a County Island, and to the north Curry Road. The 202 to the south, and some agricultural land with the City of Tempe to the east. Looking at the aerial view of the site, there are industrial uses to the east of this property – a junk yard, a towing yard and other industrial uses with a lot of outdoor storage. It is surrounded by the City of Tempe, and its two parcels totaling .83 acres zoned light industrial. The current use is a used car dealership and a tire shop. The applicant is proposing a retail dispensary of Sunday Goods, a 4,500 square foot health and wellness retail facility with a medical marijuana dispensary. The Sunday Goods is the critical anchor for this entire development. The concept of Sunday Goods and what they are offering is different than what you would expect from a normal medical marijuana dispensary. The idea is to create a bridge between the traditional pharmacy and some of the more organic natural health and wellness retailers in a unique environment that is welcoming. It offers a lot of products that aren't just necessarily medical marijuana. They will be offering 25,000 products, and only 1 to 2 percent of those are cannabis derived medical marijuana products. They are putting a lot of thought and effort into these designs. Their retail design is done by Partners & Spade, which does work for Whole Foods, Nordstrom, Warby Parker, Tesla and Google. The renderings shown are from a space they just had approved on State Street in Santa Barbara, which is probably the most popular shopping thoroughfare in Santa Barbara. The fact that this particular brand was approved for State Street speaks to what they are offering and how it differs from what people normally would expect from a medical marijuana dispensary. The request is for a variance to allow the facility within 61 feet of an adult-oriented business and 1,325 feet of a park. There are three elements of the variance test – the peculiar conditions affecting the property, the size and the location of the property. We did not give staff the tools they needed to give a recommendation of approval that we did not raise in our original narrative. It provides the necessary peculiar condition to warrant approval of this case. The site was originally part of Fruitland Farms, a subdivision approved in 1947 comprised of sixteen-quarter mile long parcels. The first parcel along Scottsdale Road was 125 feet wide and everyone to the east of that, 160 feet wide. As both the name of the plat and the shape of these parcels suggest this was intended for agricultural production. Over time, it was never developed for agricultural uses through lot splits and lot combinations, and lot divisions. This entire area was chopped up and reformed into irregular lot shapes and sizes, which made them more or less unusable for most industrial purposes. In 1969, you see fully formed residential communities to the north; on the northwest corner of Scottsdale Road and Curry Road, you see the beginnings of a commercial center. In 1979, there is full residential development and full commercial development along Scottsdale Road and it increases into the 90's. The County Island is starting to be left behind by development in the area. Not only was it left behind, it is split up for different industrial uses, and for other purposes to where you no longer have the cohesive lots that it was originally intended, yet the industrial zoning remained. Now in modern day, there is high density multi-family housing to the west, single-family housing to the north, commercial development on the northwest corner, and the County Island is still industrial and split. Mary Street and Gilbert Road were added to the County Island, which further reduced the size of the lot. Today, they have a project site that is still zoned IND-2, and the two lots are still less than one acre. The site is dramatically undersized relative to the zoning uses that this district allows. There are very few if any potential uses for new development along this corridor with a zoning that is financially viable. This lot does not have the footprint to accommodate most of the light industrial uses, such as airports, runways, aircraft sales, service and rentals, or wholesale bakeries. The ones it can accommodate do not provide the type of financial viability that would promote new development. This is no longer inline from

when this plat was originally approved on the far rural outskirts of the valley. You now have Hayden Ferry, Marina Heights, Watermark and Carvana, which is literally across the street from this site. What we have is a number of uses for this site which aren't viable for development with the exception of medical marijuana. When the medical marijuana laws were passed the Arizona Department of Health Services, (AZDHS) divided the state of Arizona into 126 of these Community Health Analysis Areas (CHAA's). The state wanted to evenly distribute patient access around the state to ensure there was appropriate patient access in each of these CHAA's. New licenses were determined by the number of registered cardholders that live in these areas. In 2016, the North Tempe CHAA was identified on a priority list by the Department of Health Services as an area that was under served relative to the number of cardholders in the area. As Mr. Gerard said, there are dispensaries within the Tempe North CHAA, however there aren't enough and that's exactly what the AZDHS has said. Despite the fact they prioritized this area for new licenses, no new dispensaries have gone in which speaks to how difficult it is to find a site in this area. Not only it needs to be zoned properly and be available for sale or lease, but it also needs to meet all the spacing requirements whether it's the City of Tempe or Maricopa County. To make matters worse, the south Scottsdale CHAA to the north of this site, only has one dispensary. A marketing and zoning analysis has been done of this CHAA, and there is not a second site under the current zoning which can even be developed for medical marijuana dispensary. No more exist. There is a demonstrated need in this area for another dispensary, yet the spacing requirements of the MCZO has frustrated this new development. The unique location within the County Island relative to protected uses, we are within 1,500 feet of these two sensitive uses. Due to the location of the County Island relative to these uses and its location within the CHAA, it's nearly impossible to find a site that's zoned properly and meets all the spacing requirements. The proposed site provides the greatest separation from the greatest number of sensitive uses under these circumstances and meets the spirit of the separation requirement and the ones that we don't. The site does meet the spacing requirements for churches, schools, preschools and daycares. It far exceeds the spacing requirement for other dispensaries. In order to provide proper patient access in this area some relief is necessary for the MCZO. The first sensitive use, we are within 1,500 feet to Papago Park which 1,325 feet. We are adequately buffered by Scottsdale Road, which has 52,000 trips a day, and it's buffered by the neighborhoods with no direct path. If you walk to it through the roads, it is actually 2,000 feet to get there. Papago Park is 1,200 acres and only .04 percent is within 1,500 feet of the site. As far as adult-oriented businesses, we are within 61 feet of the Dream Palace. These spacing requirements were adopted before there was really a good sense from the State of Arizona of how these dispensaries were going to operate and the kind of impact they were going to have on the community. The focus of this dispensary is a wellness center that happens to have medical marijuana as one of its potential remedies in an environment you wouldn't typically see in a dispensary. If the idea was to protect the community from these clusters of uses, that intent has already been met illustrated by the amount of support you see in this room. The additional support provided with letters from public officials, residents in the area, and local business owners. It's important to note because this site is surrounded by the City of Tempe, and adjacent to the City of Scottsdale and City of Phoenix none of those zoning ordinances illustrates the fact that this adult use spacing requirement has lost its relevance. None of the adjacent jurisdictions require a spacing distance from an adult use. As a function of the zoning ordinance, the original plat that the County Island was approved under and the zoning that it requires, it created an unnecessary hardship. Where the highest and best use of this property, and one the uses it could actually be used for has made it almost impossible from the MCZO. This hardship is exacerbated by the fact that it's not only a hardship for the property owner in their inability to develop and follow all the spacing requirements. This hardship is being passed on to the patients themselves,

because the idea behind this equal distribution of patient access and prioritizing CHAA's. There are not enough licenses and not enough dispensaries to ensure patient access. That's what this application accomplishes. There is no negative impact from this site; in fact, this will provide a number of positive impacts to promote health and wellness. It is going to provide better patient access, and most importantly be on one of the busiest commercial thoroughfares in the City of Phoenix and promote new development. If this site is approved and we are able to continue moving forward with additional development, it's just going to increase new development in the area and improve the entire area. In the event this is approved and the applicants are able to continue to acquire property along Scottsdale Road the hope to build a large complex someday. This piece of Sunday Goods is the first step of that process. They have interest and letters of intent by a number of really valuable and potential tenants, including Kaleidoscope Juice, Jenni's Splendid Ice Creams, Spiritual Gangster, and Lorelei Wesley who is a naturopathic doctor. Some of these uses may require additional entitlements down the road, but they are simply taking this one-step at a time. There are many folks here in the room supporting this case, and the applicants took it upon themselves to talk to the community and canvas the community and talk to business owners, residents and employees to get their take on this. In addition to the letters the Board has received, he has letters from two state senators, six state representatives, a couple of local business owners, and a hundred plus letters from local residents, these are all people who live and work within a small proximity to the site.

Member Riddell said it was just brought to her attention and she did not know this before the presentation started, but she does have a conflict on this matter and she will have to recuse herself.

Chairman Harris asked if we decide to approve this as laid out in paragraph 16, how do they feel about the stipulations. Mr. Tate said he believes his client is fine with the stipulations, but would have to check with them before he answers.

Chairman Harris asked if he could give them an example of the type of products they would carry. Mr. Tate said cosmetic products, personal care products, organic, health and wellness related - those types of things you would typically see in the two center aisles of a Whole Foods in conjunction with the medical marijuana offerings.

Member Loper asked if he can check with his client because the timeline seems aggressive to go through the site plan review process and then apply for the building permit in that timeframe.

Mr. Gerard said the 120 days is for the applications, and they can submit a building permit POD concurrently if they wish.

Member Cardon asked does he see the success of this business requiring being adjacent to Scottsdale Road. Mr. Tate said he certainly thinks that is part of it, the retail visibility on Scottsdale Road is an important piece of the process.

Member Cardon asked there are no other spots along Scottsdale Road that you've seen where it would meet the requirements of the 1,500 feet. Mr. Tate said if that were the case they wouldn't be here today.

Mr. Gerard asked if he could read his notes to clarify what he believes the argument is for peculiar condition and see if the applicant concurs. Chairman Harris said yes.

Mr. Gerard said his understanding from the presentation, there has been a demonstrated need for a third location within the north Tempe CHAA, and there are zero locations available that meet all zoning requirements of each of the jurisdictions without a variance. The site provides the greatest separation possible from protected or critical uses that meets the spirit of the zoning ordinance in that the other jurisdictions do not require separation from an adult-oriented business, but from uses such as schools, parks and houses of worship. The redevelopment of the urban County Island helps mitigate blight as evidence by the amount of local support.

Chairman Harris asked the applicant if he would like to add to that. Mr. Tate said the peculiar physical circumstances of the parcel resulting from the division of the original Fruitland Farms plat, which was originally intended for agricultural uses. Overtime it was chopped up into smaller sites that made industrial uses along this stretch of Scottsdale Road virtually impossible.

Mr. Gerard said staff disagrees with that point; there has been a lot of unregulated land divisions and a bunch of unorthodox lot splits and a great mix of uses. As far as IND-2 zoning district, the minimum lot requires 6,000 square feet, and the permitted uses are a roll up of all the residential, multi-family residential and commercial uses. There is definitely an opportunity for development and redevelopment, however there may need to be a lot of extra effort to assemble properties for large-scale redevelopment.

Member Cardon said he does not want to take anyone's ability away to speak if they would like to, but he is in support of the variance for the reasons that Mr. Tate mentioned. If the other Board members feel the same it may be worthwhile to take a vote rather than have everyone speak.

Member Loper says he concurs with Member Cardon, but he would like to make sure there is no one here to speak that may be in opposition. Chairman Harris said all the speaker cards he has are in favor.

BOARD ACTION: Member Cardon motioned to approve BA2018025 referencing paragraph 16 with conditions 'a'-'c'. Member Loper second. Approved 3-0.

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

BA2018026	Blakely Property	District 2
Applicant:	Tami Blakely	
Location:	219-39-006U – 28516 N. 141 st St. – located north of Rio Verde Dr. and 141 st St. intersection in the Rio Verde area	
Zoning:	Rural-43	
Request:	Variance to permit:	

- 1) A waiver from Article 503.5.2 of the MCZO, to allow a lot width of 125', where 145' is the minimum permitted

Member Riddell rejoined the hearing.

Ms. Applegate presented BA2018026 and noted staff would like to correct an error, the subject site is located in Supervisor District 2, not District 3 as listed in the staff report and agenda. There is a current violation on the property, V201701866 for grading and construction without zoning, building and drainage clearances. In 2009, the lot was split from a five-acre parcel to form four parcels; three one-acre parcels are located to the north under the same ownership, and Ms. Blakely owns the parcel to the south. The northern property line has twenty feet that was carved out through to the property line to the east. In order to make the other parcels to the north one acre, a section of the southern parcel was cut out making it substandard in lot width. A single-family residence was permitted prior to the parcel being split. The applicant has pending building permits for the grading and unpermitted barn, which is subject to approval of this variance request. There are some additional structures shown on aerial photos that are not shown on the site plan. Staff did provide comments to the property owner to include all structures to ensure setbacks are met. The applicant informed staff per the survey the structures in question met setback requirements. Based upon what the applicant has submitted, staff has determined that the applicant has failed to demonstrate that there is a peculiar condition or hardship facing the property. The lot split happened after the adoption of the ordinance. Staff has determined the request does not meet the statutory tests required for the granting of the variance. If the Board finds the applicant has proven entitlement to the request, then the Board must state on the record the basis for determination with findings and conclusions for a motion of approval, and staff recommending conditions 'a'-'b' as listed in paragraph 20 of the staff report.

Member Loper asked if the lots to the north and south are sufficiently large that they can even acquire more land to make it work. Ms. Applegate said the same property owner owns the properties to the north, so they could combine and provide additional acreage for Ms. Blakely to meet that lot width requirement.

Member Loper asked if she needs another 20 feet to make this valid, and how deep does that have to run, a full front yard setback? Ms. Applegate said it is the front yard setback, 40 feet.

Member Riddell said it was mentioned the lot split occurred to give the parcels to the north the additional acreage to meet the minimum, and she asked who did that. Ms. Applegate said it was the previous property owner, Blomquist.

Member Cardon asked if the structures were already in place before the applicant purchased the property. Ms. Applegate said that is correct.

Member Riddell said this is a situation where it was not of the applicant's creating. This creates a hardship by making the property unbuildable. She does not see a hardship that would occur to the community by being able to develop this property. The applicant is going to be required to get building permits and clearances that are required for this process.

**BOARD ACTION: Member Riddell motioned to approve BA2018026 with conditions 'a'-'b'.
Member Loper second. Approved 4-0.**

a) General compliance with the site plan stamped received March 19, 2018.

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

Adjournment:

Chairman Harris adjourned the meeting of June 21, 2018 at 10:45 a.m.

Prepared by Rosalie Pinney
Recording Secretary
June 21, 2018