



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

August 16, 2018

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

**ROLL CALL/
MEMBERS PRESENT:** Mr. Abe Harris
Mr. Craig Cardon
Mr. Greg Loper
Ms. Wendy Riddell (arrived at 10:04 a.m.)

MEMBERS ABSENT: Mr. Jason Morris

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

COUNTY AGENCIES: Mr. Robert Swan, County Attorney

ANNOUNCEMENTS: Chairman Harris made all standard announcements.

APPROVAL OF MINUTES: June 21, 2018

AGENDA ITEMS: BA2018048, BA2018052, BA2018046, BA2018050, TU2018014,
BA2018049, BA2018051

Chairman Harris requested a motion for approval of the June 21 minutes.

BOARD ACTION: Member Loper motioned to approve the June 21, 2018 minutes. Member Cardon second. Approved 3-0.

CONTINUANCE AGENDA

BA2018048	Whyte Property	District 3
Applicant:	John & Elaine Whyte	
Location:	9 E. Tanya Rd. – Tanya Rd. & Central Ave., in the Phoenix area	
Zoning:	Rural-43	
Request:	Variance to permit: 1) Proposed street-side setback of 5'-11" where 20' is the minimum permitted	

Mr. Gerard presented BA2018048 and noted the applicant is requesting a continuance to September 13.

BOARD ACTION: Member Cardon motioned to continue BA2018048 to September 13, 2018. Member Loper second. Continued 3-0.

WITHDRAWN

BA2018052	Ginest Property	District 5
Applicant:	Charles Ginest	
Location:	53731 W. Baseline Rd. – 539 th Ave. & Baseline Rd., in the Tonopah area	
Zoning:	Rural-43	
Request:	Variance to permit:	
	1) The existing lot area of 41,340 where 43,560 sq. ft. is the minimum permitted	

The applicant has withdrawn their application, no action required by the Board.

CONSENT AGENDA

BA2018046	Zimbaro Property	District 3
Applicant:	Anthony Zimbaro	
Location:	34122 N. 2 nd Ave. in the Desert Hills area	
Zoning:	Rural-43 with Carefree Hwy. Scenic Corridor overlay	
Request:	Variance to permit:	
	1) Proposed front setback of 10' where 40' is the minimum permitted	

BA2018050	Desert Trails Golf Course	District 4
Applicant:	Nadine Rivera, Bootz & Duke Sign Co.	
Location:	22525 N. Executive Way – Executive Way & Deer Valley Rd. in the Sun City West area	
Zoning:	Rural-43 RUPD	
Requests:	Variance to permit:	
	1) Proposed rear yard setback of 6' where 40' is the minimum permitted and;	
	2) Proposed street side setback of 7'-6" where 20' is the minimum permitted	

Mr. Gerard presented the consent agenda.

BOARD ACTION: Member Riddell motioned to approve BA2018046 with conditions 'a'-'c' and BA2018050 with conditions 'a'-'c'. Member Cardon second. Approved 4-0.

BA2018046 conditions;

- a) General compliance with the site plan stamped received July 9, 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.

BA2018050 conditions;

- a) General compliance with the site plan stamped received July 24, 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.

REGULAR AGENDA

TU2018014	Temporary Fire Station (Cont. from 7/19)	District 4
Owner:	Desert Forrest Nursery LLC	
Location:	17007 W. Lawrence Ln. in the Waddell area	
Zoning:	Rural-43	
Request:	Temporary Use Permit (TUP) for a privately operated Fire Station for a 2 year period	

Mr. Banker presented TU2018014 and noted the case was continued from July 19, 2018 to allow for the applicant to meet with neighbors and the community to discuss outstanding issues. The neighborhood meeting was held on July 31, 2018. Staff believes the proposed fire station is an appropriate temporary solution to provide a crucial community service need as a permanent location is being pursued. If the temporary location is not secured, the response time would be at least 25 minutes for the area with their closest fire station location in Litchfield Park.

Member Loper asked if the applicant has indicated an approximate time to get the other location resolved. Mr. Banker said they have not, but they are looking at several options right now.

Member Cardon said the letter of opposition states there's a concern with sirens going on all hours of the night, and asked if there are any time restrictions with the sirens once they leave the fire station. Mr. Banker said they did mention that in the last meeting, and they would not turn their sirens on until they were on Cotton Lane which is west of the property. They will station the truck on the east side of the property, and the neighbor in opposition lives on the west side. Staff has not introduced any conditions regarding the sirens.

Member Cardon asked if it would be appropriate to add a condition to appease the opposition. Mr. Banker said that is something they could consider.

Member Riddell asked if the County would be taking on Lawrence Lane, and asked staff for any insight. Mr. Gerard said he cannot, there may be a MCDOT representative here but he is not sure.

Member Riddell asked if there has been any discussion with the County about that. Mr. Gerard said not that he is aware of, and it would be independent of a planning and development item.

Chairman Harris asked if the applicant is here. The applicant, Mr. Wald is not in attendance.

Mr. Bob Bombiadi said he is the Battalion Chief for Rural Metro and he oversees the west county operations. They did discuss the siren issue at the last hearing, and they held a neighborhood meeting as the Board requested on the July 31. He explained to the residents they would not activate their siren and air horn until they got to Cotton Lane. It also depends on the traffic, but if it's 3:00 in the morning it wouldn't be activated. The proposed site for the temporary station would be located 400 or 500 feet east of Cotton Lane on the south side of Lawrence Lane. Photographs of Lawrence Lane and the intersection of Cotton Lane were presented for the Board. He noted there is a gate at the end of Lawrence Lane and the gate would remain open once the station is located there. Mr. Wald was going to provide a space for the truck to turn around, since there were concerns of garbage trucks and other vehicles not having a place to turn around because of the narrow street. The fire station would be set back to the south, and 65 feet in front of the station to accommodate any vehicles that need to turn around and head back down Cotton Lane. There was a concern the first notification from the County wasn't seen and some people didn't know what was coming in. They posted three signs for the neighborhood meeting and they were blown down because of the storms, but they were posted at one time.

Chairman Harris asked how the neighborhood meeting went. Mr. Bombiadi said it went fairly well, the residents had questions and they were addressed, and by the end of the meeting they had their questions recognized.

Member Loper asked if there was any discussion with Mr. Wald about locating it to the furthest east parcel. Mr. Bombiadi said what's on the property now may have been easier to relocate than further to the east.

Member Loper asked what the anticipated timeframe for the other station is. Mr. Bombiadi said they would like to get out of there as soon as possible, and the Temporary Use Permit will have a 24-month length. Mr. Wald and the department are ready to move forward, and they are trying to identify a permanent site.

Member Loper asked if the neighbors know who would be a point of contact at the fire station. Mr. Bombiadi said they are free to go to the station at any time, but the initial point of contact would be the on-duty captain. If the captain had issues that weren't clear to address then he would be the one contacted.

Mr. Arkadiusz Slomba said he lives right next door to the proposed site. The fire department tried the road already by pulling in and backing out with a truck and ambulance. We heard it in the house, and the windows were shaking, and they felt the vibration. The road is made for residential use, it cannot withstand 35,000 pounds driving on it all the time. Mr. Wald has three gates, and he uses their street all the time transporting trees and other materials to the nursery. We have all kinds of trucks blocking our driveway already with this traffic. We have kids, and now have a three-week old baby. We are helping our daughter-in-law care for the baby since his son was deployed to Afghanistan for nine months. The noise and traffic isn't going to help them. The school bus picks up their kids on the corner of Lawrence Lane and Cotton Lane around 7:40 a.m.

and the station will have a shift change at 8:00 a.m. with cars coming and going. The traffic will probably increase even more since Mr. Wald will only have two gates because the gate on Olive will be blocked from the road construction. The street used to be nice and quiet and now it's been getting worse, and now with the fire station coming it is too much. If something happens they could be here longer than 24 months, then they can extend it to another 24 months. He doesn't want to be stuck with this for four years, they need to think of something else. There are three owners of the road and the tenants won't be responsible for anything on this road, they will damage the road the first year with the heavy trucks. He does not want to be responsible to pay to pave the road. His attorney said they should have an agreement with Mr. Wald for repairing the road, but he doesn't care about that. This is a private road and someone has to be responsible for the damage of the road. This should not be located in a residential neighborhood. This is a safety issue with all the traffic - the workers going to the nursery and the fireman going to their shift, and then an ambulance is going to be using the road several times a day. This is a narrow 19 foot road.

Member Riddell asked if they have spoken with the neighbors to dedicate the road to the County. Mr. Slomba said he thinks they should leave it like it is, because the County would need a 24 foot wide road. Then he would have to give up some land and this would cause more problems.

Ms. Jennifer Rodriguez said she is a senior right-of-way agent overseeing the project, and the other parcel further east is not owned by Mr. Wald so that's not an option. After the neighborhood meeting she provided the dedication information to the property owners by e-mail. Mr. Wald is actively seeking a permanent location for Rural Metro, and they do not want to be at this location for a permanent site. This is a temporary solution to move out of the project area of the Olive Avenue widening project.

Member Riddell said she appreciates Rural Metro taking the time to follow up and host a neighborhood meeting with the residents. She realizes it may not satisfy Mr. Slomba but they were there to address his concerns. It is a temporary solution and it is better for the community. She doesn't view this as an unsafe condition in anyway, Rural Metro would never let that happen neither would Maricopa County. She is supportive of the request subject to the stipulations and conditions.

Member Loper said he would not want to live next to a fire station, and he would have a lot of the same concerns. He couldn't think who would be a better neighbor than firefighters, they would be great stewards to your neighborhood and property. He does empathize with the neighbor, and if it was a permanent request he would have bigger concerns. Due to the temporary nature and the operational aspects he does support this.

Member Cardon said he missed the last meeting and asked if there were any other locations pursued. He is troubled that this is in a residential area and he appreciates the neighbors' concerns.

Member Riddell said there is a pre-existing relationship with the property owner and they are anxious to find a location because of the 303 coming in. They are trying to find a location quickly and this was the one that makes the most sense.

Member Riddell said if you look around the valley there are a lot of fire stations in residential communities.

Chairman Harris said in the southwest valley there are several fire stations within communities, and he lives right around the corner from one.

Member Loper asked if the current facility is closed or are they operational until they get this Temporary Use Permit. Mr. Gerard said it is still up and running and they have until September 15 to have this station open because the other location will be closed at that time.

Member Riddell asked if they will be adding the new stipulation that Member Cardon proposed regarding the trees and sirens or do we ask Rural Metro in good faith to abide by that. Mr. Gerard said last month they indicated what their practice would be but that depends on what the situation warrants.

Member Riddell said she is more reluctant to add that as a stipulation, and stated for the record, the Board asked Rural Metro to use good faith and best efforts to not turn on the sirens until it's necessary and until they are outside the residential neighborhood.

BOARD ACTION: Member Loper motioned to approve TU2018014 with conditions 'a'-'i'. Member Riddell second. Approved 3-1 (Cardon).

- a) Development of the site shall comply with the entitled site plan, stamped received on June 19, 2018, consisting of 1 sheet, except as modified by any condition identified herein.
- b) Use of the site shall be in conformance with the Narrative Report and Supplemental Questionnaire, consisting of 2 pages, stamped received on June 19, 2018, except as modified by any condition identified herein.
- c) This Temporary Use Permit is authorized for 2 years and shall expire on August 16, 2020. The Temporary Use Permit approval letter must be visibly displayed at the front of the property at all times. Failure to meet this display requirement shall result in revocation of the Temporary Use Permit if a Zoning Citation is issued.
- d) The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with any condition.
- e) Approval of the Temporary Use is not an approval to construct. Prior to construction, development or use of the property, the applicant/owner shall obtain all necessary clearances and construction permits.
- f) All development and engineering design shall conform with the Drainage Regulation, Drainage Policies and Standards and current engineering policies, standards and best practices at the time of application for construction.
- g) Prior to zoning clearance approval, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter

substantiating coverage from the appropriate Fire District, Department or Company servicing the site.

- h) Extension of an approved Temporary Use Permit shall only be extended by the Board of Adjustment upon submittal of a new Temporary Use Permit application. The Board of Adjustment may grant a one-time extension for up to two years with all requirements of the original Temporary Use Permit met and the applicant/owner provides justification for unusual or exceptional circumstances not of the owner's creation. Request for time extension must be applied for prior to the expiration of the current Temporary Use Permit.
- i) Upon expiration or termination of the Temporary Use Permit, the temporary use shall cease. Any temporary or mobile structures shall be removed within **ten days** of said expiration or termination. Any alterations to the principal or accessory buildings or structures should be issued permits within **ten days** and shall be completed and finalized within 30 days of expiration.

BA2018049

Spinuzza Property

District 2

Applicant:

Frank & Pat Spinuzza

Location:

Located at the northeast corner of Olsen Rd. and 139th Pl., in the Rio Verde area.

Zoning:

Rural-43

Request:

Variance to permit:

- 1) Proposed lot area of 43,516 sq. ft. where 43,560 sq. ft. is the minimum permitted

Mr. Scheerer presented BA2018049 and noted staff has concluded the request fails to meet the statutory test for a variance approval and recommends that the Board motion for denial. If the Board conclude the request does meet the statutory test for approval on page 8, paragraph 18 of the report staff has included conditions 'a'-'b'.

Mr. Jason Glutz with Home Smart Realty said he is the realtor for the applicant and he is also the realtor for the potential buyers of the property. The property was purchased back in 2003 for \$245,000 under the assumption this was a buildable lot. The lot had water and electricity and a survey was done. They bought this property in hopes to build a single-family home on it or sell it down the road as an investment. They are wishing to sell the property to the buyers.

Member Riddell said he didn't create this lot, it was an illegal split. It was purchased after the fact and he has no other way to use the lot but for a variance. She asked how is this not on the consent agenda and recommended for approval. Mr. Gerard said staff does not believe it meets the statutory test, and there was a due diligence issue with the unregulated land division. There may have been the same issue with the lot to the west and perhaps it should have been caught at that time. This seems to apply to all the lots along the street on the south end of this lot split. It appears there is at least one other unregulated split that is substandard adjacent to the other property.

Member Riddell asked if he doesn't get the variance what are his options. Mr. Gerard said he has an unbuildable lot.

Member Riddell said it looks like he has a hardship. Mr. Gerard said this can also be viewed as an incentive for poor lot splitting practice.

Member Riddell said if this was the gentleman that did the lot split her approach would be very different. According to the report it sounds like he is an innocent bystander that bought a lot and is 44 feet shy. Mr. Gerard said there are proposed stipulations if you wish to approve it, but it will need to be on the record.

Chairman Harris asked if there are stipulations we can add to help him along and to satisfy the County. Member Riddell said there are proposed stipulations if we are inclined to approve this.

Mr. Gerard said the only thing that needs to be added is 54 square feet.

Member Loper asked if there's a provision in the zoning ordinance that allows discretion on staff's part in terms of setbacks and is lot size not one of those. Mr. Gerard said we cannot have discretionary development standards.

Member Riddell said she does appreciate that we do not want to promote illegal subdivisions. It seems when you have a good faith buyer and it is a minor deviation and it is unbuildable, she would move for approval.

BOARD ACTION: Member Riddell motioned to approve BA2018049 with conditions 'a'-'b'. Member Loper second. Approved 4-0.

- a) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- b) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2018051	Herold Property	District 3
Applicant:	Anjeleigh Tretz	
Location:	1314 E. Dove Valley Rd. – Dove Valley Road and 14 th Street (In the Desert Hills area)	
Zoning:	Rural-43	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed side setback of 21.03' where 30' is the minimum required	

Mr. Bak presented BA2018051 and noted the request fails to meet the statutory test for variance approval.

Member Loper said from a topographical basis, there's not a reason why the home could move further to the east. Mr. Bak said that's correct, however, it's not totally flat, there is some slope on it. The only hillside we can ascertain would be on the southeast corner of the property.

Mr. Drew Zanga said he is going to be the new owner of the property, and hopefully he is going to develop this property. He is in escrow to try and build a house for his son, and the house is laid out to minimize the impact of the natural landscaping. They have angled the house to keep as

much natural landscape as possible. Even though they would have to build a retaining wall, it would be less intrusive to the landscape if he could take 124 feet of the house, and put it 10 feet into the side setback. All he is asking for is 124 square feet of the house to be in that 20 foot setback area instead of 30.

Member Cardon asked if he talked to the neighbor of the west. Mr. Zanga said that lot is for sale, but he has not contacted anybody.

Member Cardon asked other than the disturbance to the natural vegetation, is there another reason you don't move it 10 feet to the east. Mr. Zanga said 10 feet means he would have to put in a bigger retaining wall and it will cut into the landscaping and he wants to keep it as natural as possible. We positioned the house to keep it on the high side to have that natural lot. This is the minimal impact to the property.

Member Cardon said the topography could be a peculiar condition for this particular variance.

Member Loper said he had the rare opportunity to go by the property, and it is a beautiful property and a beautiful area. After reading the staff report he was disinclined for the variance because the 9 feet could be made. The applicant is correct, it would be a more significant retaining wall and what are they really accomplishing as the intent of the zoning ordinance.

Member Riddell said when you are looking at what's around it, and the fact that anyone who buys the adjacent piece will be unnoticed, and high retaining walls are not attractive in neighborhoods.

**BOARD ACTION: Member Cardon motioned to approve BA2018051 with conditions 'a'-'c'.
Member Loper second. Approved 4-0.**

- a) General compliance with the site plan stamped received July 16, 2018.
- 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.

Adjournment:

Chairman Harris adjourned the meeting of August 16, 2018 at 10:47 a.m.

Prepared by Rosalie Pinney
Recording Secretary
August 16, 2018