



BOARD OF ADJUSTMENT MARICOPA COUNTY, ARIZONA

205 W. Jefferson Street, Phoenix, Arizona
and by GoToWebinar
January 19, 2023
Minutes

CALL TO ORDER:

Chairman Loper called the meeting to order at 10:00 a.m.

MEMBERS PRESENT:

In-person

Mr. Greg Loper, Chairman
Ms. Heather Personne, Vice Chair (arrived 10:02 a.m.)
Mr. Jeff Schwartz

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Mr. Craig Cardon
Ms. Fern Ward

STAFF PRESENT:

Mr. Tom Ellsworth, Planning & Development Director
Mr. Darren Gérard, Planning Services Manager
Mr. Matt Holm, Planning Supervisor
Ms. Rachel Applegate, Senior Planner
Mr. Joel Landis, Planner
Mr. Martin Martell, Planner
Mr. Joseph Mueller, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Pearl Duran, Technical Team
Ms. Alisha Bach, Technical Team
Mr. Martin Camacho, Technical Team

ANNOUNCEMENTS:

Chairman Loper made all standard announcements.

AGENDA ITEMS:

BA2022047, BA2022048, BA2022052, BA2022057, V201902005,
BA2022056, BA2022059, BA2022060

APPROVAL OF MINUTES:

November 10, 2022

ELECTION OF OFFICERS:

2023 Chair and 2023 Vice-Chair

BOARD ACTION: Member Schwartz nominated Chairman Loper to serve as Chairman for 2023, second by Member Cardon. Approved 3-0-1. Ayes: Cardon, Schwartz, Ward. Abstained: Loper.

BOARD ACTION: Member Cardon nominated Vice Chair Personne to serve as Vice Chair for 2023, second by Member Ward. Approved 5-0. Ayes: Cardon, Schwartz, Ward, Personne, Loper.

Chairman Loper asked if there were any changes or comments to the minutes for November 10, none.

BOARD ACTION: Chairman Loper approved the November 10, 2022 minutes as written.

WITHDRAWN AGENDA

BA2022047 **Cook Trujillo Property (Cont. from 12/15/22)** **District 4**
Applicant: Michael Cook / Angelica Trujillo
Location: APN 503-50-029J @ 16735 W Wildflower - Wildflower & 167th Ave in the Surprise area
Request: Variance to permit:
 1) A swimming pool within the required front yard setback

Mr. Gérard said the request has been withdrawn by the applicant. No action is necessary by the Board.

BA2022048 **Arizona Ave Dispensary (Cont. from 11/10/22)** **District 1**
Applicant: Joel Watson / Watson Civil Engineering
Location: APN 303-33-018U @ 19033 S. Arizona Ave. – Arizona Ave. and Germann Rd. in the Chandler area
Requests: Variance to permit:
 1) Proposed separation of a marijuana establishment from an adult oriented facility of 66' where 1,500' is the minimum required per MCZO Article 804.2.45.b.5 and;
 2) Proposed separation of a marijuana establishment from a public park of 1,312' where 1,500' is the minimum required per MCZO Article 804.2.45.b.4

Mr. Gérard said the request has been withdrawn by the applicant. No action is necessary by the Board.

BA20220522 **PHDs LLC Property (Cont. from 11/10/22)** **District 2**
Applicant: Andrei Polukhtin
Location: APN 219-37-095A@ 27814 N. 162nd Way. – Rio Verde Dr & 164th St., in the Rio Verde area
Requests: Variance to permit:
 1) Proposed front setback of 23' where 40' is the minimum permitted per MCZO Article 503.4.1.A and;
 2) Proposed rear setback of 33' where 40' is the minimum permitted per MCZO Article 503.4.3

Mr. Gérard said the request has been withdrawn by the applicant. No action is necessary by the Board.

CONSENT AGENDA

BA2022057 **Pappa Sonny** **District 2**
Applicant: John Hogle, Horizon Land
Location: APN 220-45-010Q @ 10555 E. Butte St. – University Dr. & Signal Butte Rd., in the Mesa area
Request: Variance to permit:
 1) A proposed 6' high solid wall without 80% transparency within the required front yard in the R1-8 zoning district, where fences within

the required front yard must be 80% transparent for portions above a height of 3.5' per MCZO Article 1111.5.4.1.

Mr. Gérard presented case BA2022057 on the consent agenda.

Chairman Loper asked if anyone else from the public wished to speak on this case. None.

BOARD ACTION: Vice Chair Personne motioned to approve BA2022057 on the consent agenda with condition 'a'. Member Schwartz second. Approved 5-0. Ayes: Cardon, Schwartz, Ward, Personne, Loper.

- a) Variance approval allows for a 6' tall solid CMU wall along the entire east property line of APN 220-45-010Q.

COMPLIANCE REVIEW

V201902005 Respondent: Location: Request: Violation:	Code Compliance Review Montana Tractor and Plow Company 912 W. Happy Valley Rd. Phoenix, AZ 85085 (APN 210-09-019) Appeal of the Hearing Officer's Order of Judgment Land use without proper zoning entitlement and unpermitted construction	District 3
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Mr. Gérard presented V201902005 and noted this is an appeal of the Hearing Officer's Order of Judgment. The violation is land use without proper zoning entitlement and unpermitted construction. The violation case was opened November 1, 2019, due to citizen complaints of commercial business activity in a residential zone. A Compliance Agreement was executed on February 24, 2020, with a compliance deadline of March 1, 2021, and later extended to March 1, 2022. A Notice of Violation and Order to Comply (NOTC) / Summons was mailed to the respondent on September 22, 2022, and emailed to him on September 24, 2022, and staff also posted the site September 26, 2022. The administrative hearing was scheduled for November 8, 2022. The respondent, Montana Tractor and Plow Company manager attended the hearing in person but left before the hearing was completed. After the administrative hearing, the hearing officer found the respondent responsible for the verified violation of land use without proper zoning entitlement and unpermitted construction. The hearing officer ordered a \$7,500 noncompliance fine and \$175 daily noncompliance fines to accrue until the respondent completely ceases business operations or gained through compliance with approved zoning and completed permits. No fine amount has been paid since the hearing officer's judgment. The respondent did pay previous noncompliance fines of \$10,000. The property remains noncompliant with a tractor sales business operating in the Rural-43 zoning district where C-3 commercial zoning would be required for the use, and with unpermitted construction including a building not authorized for occupancy yet occupied by employees and general public customers in the daily course of business operations. On December 6, 2022, the respondent appealed for code enforcement review with oral arguments. The hearing officer made a finding of fact and reached his conclusion pursuant to Section 1502 of the Maricopa County Zoning Ordinance. Pursuant to Article 1504.3.2 of the Zoning Ordinance, the Board of Adjustment may either affirm the hearing officer's order of judgment, or remand it to the hearing officer due to finding of a procedural error. Staff has reviewed the record and believes the evidence supports the decision of the hearing officer and can find no procedural error. Staff recommends the Board affirm the hearing officer's order of judgment. The respondents appellate submitted 270

pages of material. County counsel objects to the Respondent's Appellate Memorandum stating that, with the exception of Pages 16 through 18 at Line 22, that all other arguments are outside the Board's jurisdiction in code enforcement review.

Chairman Loper asked what the Board is limited in discussing and acting on today. Mr. Gérard said if you find a procedural error such as, the respondent wasn't notified of the hearing or notified what the violation entailed. Chairman Loper asked we are not to look at the merits of the case itself since it is outside of our purview. Mr. Gérard said that is his understanding. The amount ordered in noncompliance fines and the actual judgment is outside your purview. Was there a procedural error in reaching that judgment.

Chairman Loper said our role is limited, it is whether or not there was a procedural error.

Mr. Jessie Callahan with May, Potenza, Baran & Gillespie, representing the respondent said he understands the scope of review is limited but they disagree with that legal conclusion. We filed a memorandum that provided six points of errors with factual support.

Mr. Peck said the Board of Adjustment is statutorily empowered. If the Board of Supervisors so decides you are empowered to hear these kinds of appeals the BOS has given you that jurisdiction, but it is limited. If the applicant believes your interpretation of your authorities are incorrect you have no jurisdiction to decide your own authority. They would have to file an action on that. For their legal counsel to argue they disagree with how you've decided you have jurisdiction is not something you can reverse.

Mr. Callahan said we disagree, and it is fair to see that is how the county wants to proceed with a limited scope, but for the purposes of the record he wants to make sure those arguments are preserved. The statutes say something differently then what the county is arguing. We filed a memorandum with six points of error and requested additional documents. In terms of the substance of the errors the county failed to cite the record at all. Mr. Gérard believes the evidence supports the decision and he doesn't know of a procedural error. The county did not explain why the errors we assigned are actually procedural errors. Even if what the county did is contrary to the law and facts, this Board is powerless to correct anything other than a procedural error. The statute confers the right to engage in this process and it is clear this Board shall affirm the action unless the court concludes the action is contrary to law, not supported by substantial evidence, is arbitrary or is an abuse of discretion. The zoning ordinance cannot limit the Board from considering and correcting a decision that is contrary to law. Here's the procedural errors identified. #1 - Service was patently defective; it is staff's position they reviewed the matter and could find no procedural error. The statute requires personal service, and it is served by a licensed processor or by a sheriff. It is personal and served on a person. Email doesn't constitute as personal service and being notified isn't the standard in the statute. The hearing officer said the property was posted, but posting is not personal service by the statute. #2 – the respondent was denied legal representation; staff received a written response for a continuance from his client's former legal counsel. The email was received because Mr. Gérard responded to it. His client did not have the opportunity to secure counsel in the few weeks leading up to the hearing. Mr. Gérard also had a written request for a continuance in hand before the hearing. His client is entitled to legal representation at the hearing and was deprived of that right. #3 – Failure to continue the hearing violated due process; the county denied his client the right to continue the hearing for a later date. The hearing officer did not continue the hearing. Mr. Gérard didn't speak up about the continuance request he received but instead repeatedly encouraged Mr.

Raimbeault to leave so they can proceed in his absence with no legal defense and nobody to correct the record. No one would accept a proceeding to go forward without being served and without the right to have counsel and then being asked to leave. #4 – The lack of competent evidence presented at the hearing violated due process. There is an agreement between the county and his client, and his client did pay the fees. The testimony by Mr. Gérard saying his client did not pay the fees. This requires remanding of these proceedings, because it is false based on the county's records. Staff now acknowledges his client paid \$10,000 even though it was said the payment hadn't been made. Mr. Gérard also admitted there was a trailer but said it was an unpermitted building. He wanted to cut off power to his client's property. His client lawfully receives power from APS. The procedure was improper and not predicated on truth and what is in the record instead on false information. #5 – The Hearing Officer lacked the substantial evidence needed to support the Judgment; the Hearing Officer concluded the compliance agreement was nullified. There is no explanation as to how or why or what authority it was nullified. There is no evidence in the record that the compliance agreement was nullified. The Hearing Officer based his decision on a finding that the rezoning hearing had been tabled based on a failure to comply by his client with submitting documentation. The county can cite no evidence in the record to support that allegation. His client has been proceeding consistent with the compliance agreement and reliance on it, he sought rezoning and was in the process of obtaining it when the county improperly tabled in perpetuity that application. That was a violation of the compliance agreement. The county didn't provide any evidence supporting those two conclusions. #6 – The Judgment is contrary to the facts and the law; the factual finding regarding the tabling was a basis for the judgment, it's not supported by any evidence. The tabling itself was wrongly admitted order contrary to the law, another procedural error. The assumption of the compliance agreement was contrary to the facts and law. The rezoning application was tabled forever without any valid basis. During the commission hearing Chairman Arnett said this is a public meeting and he has the right to present if he wants to. Because of things that were said were disparaging against his client and not supported by the record and they approved the tabling forever. You cannot table this forever; it is a violation of his client's rights. Mr. Gérard said in the hearing it was tabled for an indefinite continuance, but it wasn't true. The status of the compliance agreement is now going before the superior court. The Hearing Officer didn't have jurisdiction to interpret the compliance agreement. No evidence in the record that the hearing officer even reviewed the compliance agreement and no testimony in the record relating it to the county's interpretation or provision of it. The use of tabling and misrepresenting in what actually happened and to deny his client his rights should not be condoned and requires the matter be remanded. Valid service did not occur, his client was denied legal representation, and the excuse given the county's insistence of depriving his client his rights are not supported by any evidence at all, they rest on false statements. His client was in compliance with the compliance agreement, and he had his rights trampled on. Mr. Callahan asked the Board to do the right thing, you can remand this to ensure due process is met. If you affirm the violation of knowingly false statements and affirm a decision where personal service wasn't effectuated that is what appeals are made of. We shouldn't have to go down that road or want to.

Chairman Loper asked if anyone on the Board had any questions for Mr. Callahan. None.

Chairman Loper asked if anyone else from the public wished to speak on this case. None.

Chairman Loper asked staff if serving notices is consistent with county practices. Mr. Gérard said yes, it is consistent.

Mr. Peck said he would like to address the points that were raised. The respondent admitted he was in violation of the zoning ordinance. That is in the very first paragraph of the compliance agreement on which counsel seeks to rely so heavily. The statute says personal service; it does not say personal service in accordance with the rules of civil procedure. In your packet is an email from the manager of the respondent acknowledging receipt of the summons. That is what the hearing officer relied upon. The ordinance requires if you are to be represented you provide 10 days' notice before the hearing, and 10 days before the hearing we had notice he was being represented by an attorney and the night before the attorney said he wasn't showing up. The respondent had a right to an attorney, and he didn't show with an attorney. A continuance is a request, it could have been made from the hearing officer, but we would have opposed it because this has been going on since 2019. As far as proceeding without him, the ordinance specifically provides if an applicant does not show up the hearing may proceed in his absence. He chose to excuse himself. The hearing officer was perfecting within his rights to continue once he decided to leave.

Mr. Peck said correction, it was October 13 when the respondent's attorney said he wasn't going to represent him. Chairman Loper asked what the day of the hearing was. Mr. Gérard said November 8.

Mr. Peck said we did not receive a notice 10 days before that there was going to be representation, and under the ordinance you can be represented by counsel or by anyone. As far of lack of evidence in the compliance agreement he admitted the violation. In the compliance agreement it said there's \$3,500 due and that was paid. All the other money paid wasn't in conjunction with the application for the rezoning. Certain fees are doubled when there is a violation. The compliance agreement says you are in violation if you do these certain things we won't fine you for that violation, but you are still in violation. Applying for zoning does not magically convert a business in a residential zoning district into a permitted use. The statement trailers do not need to be permitted is not true, it depends on how you are using the trailer. The statement the nullity of the compliance agreement is before the court, he disagrees the county has not been served in that case. The tabling only matters because the applicant was so lack in his application to come into compliance. He applied for the rezoning 10 months after the compliance agreement was signed and one month before it was going to expire. You cannot get a rezoning in a month. The respondent did not proceed diligently. The reason it was tabled because the night before the hearing there was new evidence presented and the Planning & Zoning commission felt they needed more time. He told them they cannot continue without the applicants consent because they were in the middle of a presentation. A motion to table is always an order and stops any other proceeding. It is indefinite until a member of the commission moves to remove it from the table. No formal request has ever been made from the Planning & Zoning commission to remove this item from the table. The Board of Adjustment is a quasi-judicial body, the Planning & Zoning Commission is not, it is a legislative body. They can decide to do what they want as long as it is not arbitrary or violating someone rights. Tabling an application doesn't violate anyone's rights. The reason they are alleging it violates his rights because now he can't meet the deadlines of the compliance agreement, but that deadline has been extended three times. None of what they alleged is right or a procedural error.

Vice Chair Personne asked is there a requirement they must be notified 10 days prior and what happens if they don't notify you. Mr. Peck said if they show up with counsel and we feel we haven't had time to prepare then we will request a continuance. We were told there was counsel and then told they no longer had counsel, clearly in our mind the respondent understood

what the process was to get counsel. He shows up on the day of the hearing and says he doesn't have a lawyer and did not formally request a continuance. Vice Chair Personne asked he had an opportunity to get new counsel and alert you and he didn't. Mr. Peck said yes, according to Mr. Gérard it was almost a month before the hearing we were told he wasn't going to be represented by counsel. He must have told his client he wasn't going to represent him anymore. If they do not show up we are allowed to proceed with the hearing and that happens a lot.

Mr. Gérard said they paid \$10,000 based upon the compliance agreement. There have not been any daily non-compliance fines paid. When the last compliance deadline wasn't met, there was no non-compliance fines paid, and no daily non-compliance fines paid since then. The applicant has paid all zone change application fees including the investigative fees paid September 2022. No fees are outstanding right now regarding the zoning case. No daily fees paid in regard to the compliance agreement, it's been superseded by the hearing officer's judgment which includes different fines that have not been paid.

Member Schwartz said he's been in the valley for 35 years and he has sat on many different boards and in many different capacities. Staff's only motivation has been to serve the public, they don't have motivations to hurt people and they are servants of the community. Staff really cares about the outcomes to people, and they really care about what they do.

Chairman Loper said his primary employment has been for the development community over the years. He's never found anything to be malicious or to be against him. Years ago, he was unsuccessful with the hearing officer as well.

BOARD ACTION: Member Schwartz motioned to affirm V201902005 hearing officer's determination. Vice Chair Personne second. Affirmed 5-0. Ayes: Cardon, Schwartz, Ward, Personne, Loper.

REGULAR AGENDA

BA2022056 **Propiedades de Inversion Arizona LLC (Cont. from 12/15/22) District 2**
Applicant: JayDee Woods, 312 Architecture and Design
Location: APN 220-70-368 @ 414 S 97th Pl – E. Broadway Rd. & 97th Pl., in the Mesa area
Request: Variance to permit:
 1) Proposed rear setback of 16' where 25' is the minimum permitted per MCZO Article 702.4.3

Mr. Landis presented BA2022056 and noted the subject lot was created as part of the plat for the Golden Crest Terrace subdivision in 1968 and has maintained its original bounds since then. The lot meets or exceeds the standards for an R-5 lot and is not encumbered by hillside or flood conditions. As part of the application, the applicant intends on abandoning the existing septic system on the south of the lot and relocating more towards the front in the northeast corner. The site itself had been subject to several violations over the last twenty years, ranging from trash to occupied RVs, and the lot had generally been in a state of disrepair. The applicant had the existing structures demolished and the lot is currently vacant and there are no current active violations on the lot. The applicant is requesting this variance due to what they consider to be the constrained nature of the lot and that the nature and size of single-family residences has changed considerably since the subdivision was first platted in the late 60's. As the lot already

meets the existing zoning ordinance requirements and is not of an obtuse shape or is otherwise encumbered by inclement site conditions, staff is recommending denial as the applicant has failed to prove a peculiar condition facing the property.

Mr. JayDee Woods the applicant said his client chose a home out of six or seven designs that are energy efficient homes. They chose this specific design because they could not afford something that was custom, and they loved this design. The structure will be outside of the Public Utility Easement (PUE) and there will not be any conflicts with excavation, phone lines or gas. They are just asking for a 9-foot exception. None of the other homes in the subdivision are conforming to the setbacks. One person showed up to the meeting stating concerns with utilities, but there is no conflict. He showed an aerial of the PUE along the length of the parcel and showed other homes in the PUE including the neighbor in opposition not conforming to the setbacks. Their proposal is not in the PUE and there is no obstruction or issues with excavation. This project is to enhance the community with an energy efficient home, and they are acknowledging the housing crisis. His client loves the home, and it was an affordable option for them. Starting over will be a very big challenge as well as the time it takes to get permits. This will provide a well-planned residence for a healthy, peaceful, and comfortable dwelling for the occupants, and they are only asking for a 9-foot exception with no other conflicts or issues.

Vice Chair Personne asked if there was another home option that would not violate the setback and require a variance. Mr. Woods said not for the size they need for their family. The others were too small, and this was the most cost-effective and size for their family.

Member Schwartz asked is there something in the R-5 zoning district if it's a side loading garage and if there's a reduced front yard setback. Mr. Gérard said there are not straight zoning districts, it is routine under an RUPD overlay to have a different setback for front facing garage, but our zoning ordinance is straightforward and 20-feet for all the residential zoning. Member Schwartz asked what setbacks you typically see for front facing garages. Mr. Gérard said under the RUPD we've seen 10 feet, and it is not normal under a straight zoning district. Member Schwartz asked if he's seen it on a one home site before. Mr. Gérard said no, staff would not support a residential spot zone and he's not aware of any variance to this in the past.

Member Schwartz said we have a statutory test to apply to those requesting a variance. He is having a hard time finding that. Maybe they can go with two-story option since a peculiar condition does not exist.

Mr. Wood asked is there any exceptions since this entire neighborhood is non-conforming to the setbacks. Member Schwartz it appears most of those homes are trailer homes and he doesn't know if they are in conformance or not. We can only act on what is in front of us today.

Member Cardon asked if his client had any discussions with the neighbor in opposition. Mr. Woods said based on his letter it was a conflict of us excavating down and around his utilities. He requested an Arizona 811 and there is no conflict. The neighbor never returned our calls or emails.

Chairman Loper said it was mentioned the septic was being relocated towards the rear of the property. Mr. Landis said they intend to move it to the northeast part of the property towards the front. Chairman Loper said you cannot put a house on top of a septic system. With the size of

the property, they can't go wider and not everyone likes stairs especially as we get older. He is in support of this based on the septic impacts. He likes they stayed out of the PUE.

Chairman Loper asked if anyone else from the public wished to speak on this case. None.

Member Schwartz said the way someone wants their house laid out is not a peculiar condition. There are plenty of other floor plans and house styles that could fit on this size lot other than what the applicant is proposing. He is not in support of this request.

Vice Chair Personne said she appreciates them wanting something better for the neighborhood, but we are obligated to look for a peculiar condition facing the property to approve these variances. There could be other options with a two-story house or separate the garage and move the house forward. She does not support the request.

Member Cardon said if there was a peculiar condition this lot was created in 1969 and building has changed over time. He is he is in support of the request.

BOARD ACTION: Member Schwartz motioned to deny BA2022056. Vice Chair Personne second. Denied 3-2. Ayes: Schwartz, Ward, Personne. Nays: Cardon, Loper.

BA2022059	Blackman Property	District 3
Applicant:	Samuel Blackman	
Location:	APN 202-13-056D @ 46236 N 38 th Ave. – 38 th Ave. and Black Canyon Hwy. in the New River area	
Requests:	Variance to permit: <ol style="list-style-type: none">1) Proposed lot width of 120' where 145' is the minimum permitted per MCZO Article 503.5.2 and;2) Proposed hillside disturbance of 3,800 sq. ft. outside the lot's principal buildable envelope where prohibited per MCZO Article 1201.6.1.1	

Mr. Mueller presented BA2022059 and noted the requests would allow a single-family residence to be permitted on site. No permits for a residence have been submitted at this time. Staff has received three emails of opposition. The applicant has failed to demonstrate there is a peculiar condition facing the property because the substandard lot width was the result of unregulated land division which should have been considered during the creation of the parcel. Additionally, the proposed hillside disturbance is to facilitate the septic location. Since no building permit has yet been submitted staff feels that alternate locations/options for the septic have not yet been exhaustively explored and there is potential for a residence, and all septic and grading to be located within the principal building envelope. The applicant has not demonstrated applying the requirements of the MCZO to this property has a peculiar condition / undue physical hardship exists because the slopes present on this property are prevalent throughout neighboring properties. The applicant has failed to demonstrate the peculiar condition / physical hardship is not self-created in the line of title because the parcel was created because of a private land division and the lot width should have been created at that time.

Chairman Loper asked they can meet the zoning requirements by moving the home in the septic area to the south. In this instance, the septic and leach field both apply towards the disturbance.

Mr. Mueller said that option has not been explored and the building envelope extends to the south up to the front yard setback. There is more room than initially appeared.

Mr. Samuel Blackman the applicant said a civil engineer looked at the property and said the drainage would not be an issue, as well as the drainage department. The wash to the west and the ridge to the east will solve the drainage problems. His main issue is the width because we are measuring it at its narrowest as opposed at 145' wide. The basis of the statute is to have orderly growth and sustainable development. When he did the abandonment of the northern easement they were able to move the property further north and get behind the 145' width line and it offsets the buildable area. Staff said the lot was created with unregulated lot split practices, and he finds that irrelevant because it is 145' wide. He cannot purchase land from either side of the property because there is a clean out for a leach field on the west side and gas tank and plumbing on the east side. There is a peculiar condition because all he is able to do is go behind that line and this is why he abandoned that northern easement. It is subject to hillside and all disturbance must be located within the buildable area, and the septic and leach field are the only thing outside of that buildable area. The structure is only 3 percent of the entire lot, and the disturbance is 10 percent, and it will preserve the natural topographic features of the land. He is cutting the house by 4' and it will be the least sloped part on the entire lot and that's the area he would want to put a house.

Vice Chair Personne asked you chose the location of the septic and leach field because less of a cut and it is not possible to put them within the buildable area. Mr. Blackman said it is possible. His engineer said we can put the leach field there but not ideal because of the slope and if he can get a variance on the width. He hasn't drawn any design for the house because he wants to get the width established first.

Vice Chair Personne said the opposition noted he wants to seek a variance and put utilities across their property, and you have zero lot lines. She doesn't see anything of those things here, but she wanted to make sure. Mr. Blackman said there will not be utilities across lot lines they will follow the driveway. He doesn't want to build so close to his neighbors.

Member Schwartz asked if the building envelope is accurate, usually when we create a building envelope it includes the pathway to get up to the buildable area. Mr. Blackman said the line going south is the driveway. Mr. Gérard said it would 40 feet from the street line on the south.

Member Schwartz asked is the driveway part of the disturbed area. Mr. Gérard said yes. Member Schwartz said there are two areas disturbed where the leach field will be located and the driveway. Mr. Gérard said the driveway disturbance outside of the building envelope is permitted in the hillside.

Member Schwartz he believes there might be a peculiar condition with the odd shape lot, if we take the principal width and the carve outside and get an average. To see what the average width is and how it impacts the 140' required. He likes the idea of moving the leach field. Before he can decide, he wants to know what the distance of that is and then come up with an average number. Mr. Blackman said he doesn't have answer right now. Member Schwartz said we can give you time to do that and then you can come back. That could be a peculiar condition.

Chairman Loper asked is the lot width measured at the setback line which is 40' from the back of the property line on the south. An average would be informational, but it wouldn't help him from an ordinance standpoint because the ordinance requires it be measured at the setback line. Mr. Mueller said correct.

Mr. Gérard said the variance is the disturbance on the right-hand side of the exhibit shown which is the disturbance footprint inside the side setback, so it is outside the principle building envelope. Member Schwartz said he is talking about the width of the lot, not the area outside of it.

Chairman Loper said the ordinance doesn't talk about average lot width; it is the lot width at the setback. Mr. Gérard said the only place to measure lot width is at the front setback line. That arm was put on to meet the lot area and not the lot width.

Chairman Loper said an average is informational, but it wouldn't change staff's position because the definition is width measured at the setback. Member Schwartz said he's not saying he wouldn't need the variance he wanted to know since it is an odd, shaped lot and because it is pushed so far off the street it creates a peculiar condition. He is trying to find a way for him to succeed.

Mr. John Dixon said he owns the parcel to the east. Several months back there was a variance to have a patent easement removed which indicates the house would be pushed up north and higher on the property. He hasn't seen a grading and drainage plan and he doesn't want any of that water shedding on his property. If it drains on his property that is an issue. The zoning ordinance says the lot width shall meet the 145 feet, it doesn't say may or should. We keep allowing these changes like the patent easement and now to allow this width. He asked how can we be more proactive than reactive, and who can he contact about these types of concerns? This has been happening for more than 20 years, and this affects him. Chairman Loper said the county doesn't have a minor land division ordinance and we can't have one that regulates lot splits. When people do lots splits they are supposed to meet the zoning requirements. There is not a mechanism in place for the county to verify that. The 145 feet is the minimum, but the variance process gives people an opportunity if they can't make that work, and it is up to this body to decide if the hardships presented warrant granting a variance or not.

Mr. Dixon said the previous property owner and the realtor knew there was a problem with the property, yet they found somebody that would purchase it, but it doesn't meet the requirements. Chairman Loper said the bulk of the variances cases we hear deal with this type of issue, lot splits and minor land divisions that don't meet the ordinance requirements.

Mr. Dixon said there is no P.E. stamp on the plans. Member Schwartz said the applicant probably didn't want to spend the money on engineers until he knew what he can do. When he does get a grading and drainage plan the drainage will be inspected to where the water goes and the septic system. He asked if the neighbors were notified. Mr. Gérard said there is not a public notice or public input process for construction permits, however an engineered grading and drainage plan is required for all hillside lots and drainage clearance on all construction permits for single-family residences. The purpose of the drainage clearance to ensure historic drainage is maintained or improved in post development so there will not be an adverse impact post construction. It'll either be the same condition or an improved condition.

Member Schwartz asked could the width be extended by the easement to make the 145 feet work. Mr. Gérard said they can add easement width and depth, so the street line goes much further into the property and the setback line is measured further north. The area inside the easement counts as part of the lot area. It needs to be an access easement. Member Schwartz said the applicant and neighbor to the east need to talk and they can possibly come up with a meaningful and positive solution.

Chairman Loper said there is a stamped grading and drainage plan that was submitted with this request. The blue lines show what is existing and the topography of the lot doesn't seem it will send anything to your side of the property. Mr. Dixon said it looks as though they will be building in the wash and that isn't going to happen. Chairman Loper said there is a portion that would be disturbed but it would have to be restored to maintain those historic flows.

Mr. Viorel Ciorba said he owns 4-acres northwest of the proposed site for 20 years. He has plans to build a house and he is dealing with too much water and was told the percolation is very bad. He has spent over \$20,000 and he needs a retaining wall, and he needs so many things to build. There is so much regulation and everything cost so much money. Vice-Chair Personne said if this variance is approved the applicant will have to go through plan review process and could also get redlines. Chairman Loper said regulations change over time and encouraged Mr. Ciorba to speak with planning staff.

Ms. Lucy Mitchell asked if this gets approved what recourse do we have when his septic is coming onto our property or if he needs to put in a well and it affects us. When do we get a say if this is too much for us neighboring property owners? Chairman Loper said to contact Maricopa County Environmental Services, they regulate septic systems, and you can file a complaint. Wells are handled through Arizona State Water Resources. Ms. Mitchell asked do we get a say in if this is going to affect our property when drilling a well. Chairman Loper said there is not a process to publicly notify a neighbor when a property owner is developing their property. It is more of a complaint basis if something goes wrong. Member Schwartz said with the well they have draw down requirements and how it can't affect others in the area, and to get that permitted he will need it approved by an engineer. There are a lot of checks and balances in place, but you can reach out to those agencies to help you.

Ms. Mitchell said with the wash that runs through there, if we can a good monsoon storm and our septic and leach lines are right there and if he diverts it just a little bit it will back up our leach lines and it could cause problems to our septic system. The new driveway could push water into our direction and affect our leach line. We wouldn't know until after the fact and then we have to pay thousands of dollars to get things repaired. The applicant hasn't talked to us about any of his plans, no neighborly communication at all. Chairman Loper said she can request a copy of the grading and drainage plan.

Chairman Loper asked if anyone else from the public wished to speak on this case. None.

Mr. Blackman asked if the Board received the grading and drainage plan from planning staff. Mr. Gérard said a grading and drainage plan is a public record, and a building plan may not be. A person may submit a public records request for the grading and drainage plan for a specific parcel number. Mr. Blackman said he would like to speak with his neighbors and show them his plans, but nothing will be possible if he doesn't get the width.

Mr. Gérard said the applicant hasn't applied for a construction permit for the house yet, so there is not a grading and drainage plan related to that construction, but engineering has signed off on the variance. Chairman Loper said this is just a preliminary grading and drainage plan that shows drainage and topography. Mr. Gérard said yes.

Chairman Loper said he is in favor of the variance. This lot is a peculiar shape, and the drainage corridor is another peculiar condition with only a few places to put a house.

Member Schwartz asked is Chairman Loper in support of this with just the disturbed area or the lot width. Chairman Loper said for the lot width and disturbed area, both parts of the variance request.

Member Schwartz said he is only in support of this if they can solve the front setback line, he believes there is a solution to that. He doesn't believe there is enough of a peculiar condition because he bought the lot in the condition that it was. He can possibly get the extra lot width from the neighbor to the east.

Vice Chair Personne said she is in support. She wished there was a way to notify property owners when there is an improper land division.

BOARD ACTION: Vice Chair Personne motioned to approve BA2022059 with conditions 'a'-'b'. Member Cardon second. Approved 4-1. Ayes: Cardon, Ward, Personne, Loper. Nays: Schwartz.

- a) Variance approval establishes a 120' lot width for APN 202-13-056D.
- b) Variance approval allows for 3,800 sq. ft. of hillside disturbance outside of the principal building envelope for APN 202-13-056D.

BA2022060	Christman Property	District 3
Applicant:	James A. Christman	
Location:	APN 202-20-054G @ 42615 N. 13 th Pl. – N. 14 th & Circle Mountain Rd., in the New River area	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed front (and/or rear) south setback of 45' where 65' is the minimum permitted per MCZO Article 503.4.1.1.A & B & Article 1105.1.3. (The minimum. 65' south setback is inclusive of a 25' access easement. The variance request is for a 45' setback inclusive of the 25' future right-of-way reservation along the section line alignment.)	

Mr. Landis presented BA2022060 and noted approving this request allow for the permitting of a single-family residence and detached accessory structure. The subject lot was created as part of an unregulated minor land division in the mid 2000's and has subsequently remained undeveloped. The lot is of a home plate or diamond shape and is subject to hillside conditions on the eastern half of the parcel as well as a section line alignment along the south. Prior attempts at developing the property led to the reduction of the section line alignment from 65' to 25' due to the rugged site conditions surrounding this and adjacent parcels. The current owner came into possession of this site in 2019 and began the process of permitting the proposed residence and accessory structure in August 2020. As of the publishing of the staff report, the subject permits are in their 7th review cycle with continual issues relating to the placement of the

structures on the lot. Approving this variance with a 45' south setback would not allow for the permitting of the structures presented in the site plan. Staff has measured each of these structures to be approximately 40' from the south front parcel line where the applicant is asking for a 45' south front. Given the circumstances previously mentioned, staff is recommending to the Board if they choose to approve this variance request, they approve a 15' variance to equal 40' rather than a 20' variance to equal 45' from the south parcel line. This would allow for the permitting of the structures at their current bounds rather than having to subject the applicant to further plan review cycles. Staff is recommending denial as the hillside conditions and section lines are not peculiar conditions unique to the site itself but rather common to all parcels along the section line alignment. There are other alternatives to the site design that would allow for the applicant to meet the existing setback requirements. These conditions were self-created in the line of title as the lot was created as the result of an unregulated land division.

Chairman Loper asked the if front of this lot is the bottom shown in the photo. Mr. Landis said this will be considered a through lot so there are two fronts, one on the northwestern line and northeastern line will be considered front as well. As well as the south because of the right-of-way line would also be considered a front. Chairman Loper said so there are three fronts to meet the setback.

Vice Chair Personne asked if this was another unregulated lot split. Mr. Landis said that's correct.

Chairman Loper said we have had this type of lot shape in front of us every month for several years.

Mr. Peck said there was a recommendation if you are inclined to approve the variance, you would approve a different variance. Mr. Landis said it would be a 40' south instead of a 45' south. Mr. Peck said in order to do the applicant has to agree to this because you cannot approve a variance that wasn't applied for.

Mr. James Christman the applicant said he's been working on this permit for 2-1/2 years. He was told he had a 40' setback and he designed the house to fit the topography at 40'. To move it would be a total redesign of the house. He plans to leave 1/3 natural desert, that is the way he designed it to see the desert. There used to be a barn on the property, and he took it down and that is where he wants to build the house where it is flat and there's a horse corral that is flat. He can't see removing natural vegetation when he has two flat spots to put a building.

Vice Chair Personne asked where he got the information of the 40' setback. Mr. Christman said he looked online at the county records, and he was informed 1-1/2 years later there was a right-of-way. Mr. Landis said when the property was split in 2000, there was a prior property owner that was going to develop the property in 2008. At that time, they applied for the right-of-way reservation and had it reduced from 65' to 25' and in the course of permitting it came about. He doesn't believe anybody would be aware of it unless they applied for permits.

Mr. Christman said his neighbor aren't complaining, they want to know when I am going to start construction and what he is going to build. The neighbor to the west owns the whole face of the mountain behind him. The chance of that right-of-way ever being used is pretty slim.

Chairman Loper said in the staff report it says the setback to the south would need to be at 40' and asked if that is his request. Mr. Christman said yes, he requests 40' instead of 45' for the southern property line.

Chairman Loper asked if anyone else from the public wished to speak on this case. None.

Vice Chair Personne said she believes these odd, shaped lots create a peculiar condition; they leave very limited ability to develop. She understands the lot was created in a way that shouldn't happen and wished there was a way to notify people ahead of time, so people are aware before they purchase the property.

Member Schwartz said he is applying the same standards as the case before. Somebody created the lot condition, and the lot condition didn't create the peculiar condition. There are ways to configure a house on this lot without asking for a variance. We shouldn't set aside our standards when determining a peculiar condition. People created this condition; it wasn't the land. He is opposed to this because there are other options and ways to solve this.

Chairman Loper said there is not a statutory provision for the county to get ahead of these minor land divisions, so we are stuck with lots that have weird shapes which he believes are peculiar conditions. They aren't necessarily created by the property owner but by coming here is the way to try and make it work. He likes they are attempting to do something with the property.

Member Schwartz said when we buy property we have to do our due diligence, by doing so, would have determined the property does not meet the guidelines of a buildable lot.

BOARD ACTION: Vice Chair Personne motioned to approve BA2022060 with modification of 40' from south parcel line in condition 'a'. Member Cardon second. Approved 4-1. Ayes: Cardon, Ward, Personne, Loper. Nays: Schwartz.

- a) Variance approval establishes a 20' front setback line as measured from the edge of the future right-of-way reservation line (40' from south parcel line) for APN 202-20-054G.

Adjournment: Chairman Loper adjourned the meeting of January 19, 2023 at 12:25 p.m.

Prepared by Rosalie Pinney
Recording Secretary

January 19, 2023