



BOARD OF ADJUSTMENT
MARICOPA COUNTY, ARIZONA
 205 W. Jefferson Street, Phoenix, Arizona
 and by GoToWebinar

MINUTES
July 20, 2023

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

GoToWebinar
 Mr. Craig Cardon
 Ms. Suzanne Klapp

MEMBERS ABSENT: Ms. Fern Ward

STAFF PRESENT:

Mr. Tom Ellsworth, Planning & Development Director
 Mr. Matt Holm, Planning Supervisor
 Ms. Rachel Applegate, Senior Planner
 Ms. Paola Jaramillo, Planner
 Mr. Joel Landis, Planner
 Mr. Andrew Lorentzen, Planner
 Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Attorney
 Mr. David Anderson, Business Engagement Manager, OET
 Ms. Katie Sanchez, Technical Team
 Mr. Martin Camacho, Technical Team

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2023029, BA2023024, BA2023028, BA2023032, BA2023034

CONSENT AGENDA

BA2023029	Lindstadt Property	District 2
Applicant:	David M. Noe, Noe Engineering	
Location:	APN 219-16-020T @ 13319 N Blue Coyote Trail. – Goldfield Road & Blue Coyote Trail, in the Fort McDowell area.	
Request:	Variance to permit:	
	1) Proposed hillside disturbance of 1,553 sq. ft. outside the lot’s principal buildable envelope where it is otherwise prohibited per MCZO Article 1201.6.1.1.	

Mr. Holm presented the consent agenda.

Chairman Loper asked if anyone from the public wished to speak on the consent agenda. None.

BOARD ACTION: Member Klapp motioned to approve the consent agenda, BA2023029 with condition 'a'. Member Cardon. Approved 4-0. Ayes: Cardon, Klapp, Personne, Loper.

- a) Variance approval establishes an allowance for 1,553 square feet of hillside disturbance not related to driveway or utility connection outside of the principal building envelope for APN 219-16-020T.

REGULAR AGENDA

BA2023024

11343 E. Apache Trail (Cont. from 5/18/23)

District 2

Applicants:

Larry Lazarus – Lazarus & Silvyn P.C.

Location:

APN 220-66-025C @ 11343 E. Apache Trail in the East Mesa Area

Request:

Variance to permit:

- 1) Proposed required separation distance of 530' where 1,500' is the minimum required per MCZO Article 804.2.45.b.5 from a parcel being used for an adult oriented facility to the building housing a marijuana establishment use; and
- 2) Proposed required separation distance of 905' where 1,500' is the minimum required per MCZO Article 804.2.45.b.1 from a parcel being used for a church or other house of worship to the building housing a marijuana establishment use.

Mr. Lorentzen presented BA2023024 and noted the request is for varying the required separation distances of a Marijuana Facility from protected uses. The subject parcel is zoned C-3. Request #1 proposes a separation distance of 530-feet where 1,500 feet is required per the zoning ordinance for distance separation from an adult orientated facility to a marijuana use. Request #2 proposes a 930-foot separation distance where 1,500 feet is required per the zoning ordinance from a church, or other house of worship from a marijuana use. Staff believes the request fails to meet statutory tests for variance approval as the only physical hardships proposed involve the location of protected uses within required distance buffer and not with a peculiar condition relating to only the subject parcel.

Mr. Larry Lazarus with Lazarus & Silvyn, P.C. said there are several people here in support but do not wish to speak. They are proposing to open a marijuana facility in an area that is all commercial along Apache Trail and State Hwy. 88. Dominated by more intense commercial uses and closer to light industrial type uses. Initially his client was told by the county the property met all of the separation requirements and he then purchased the property in March 2023. It wasn't until the pre-application meeting they were told variances are required. When they investigated, the school had been vacated and the church opened up a store front location in the Apache Shopping Plaza. They received a letter that the school was abandoned, therefore eliminating the need for that variance and it was withdrawn. Staff told them the two separation distance variances were required for the adult-use and distance from a place of worship that opened up after they began their application. They believe there are peculiar conditions in this case that meet the zoning ordinance tests and warrant the granting of the variances. Not granting the variance will cause an undue hardship for their client. The findings state there needs to be a peculiar condition related to the land. There is nothing in the ordinance or the state statute stating there must be a peculiar condition only to the configuration to the property itself, just a peculiar condition which will work for an unnecessary hardship. It is not the same test that is required for cities and towns. It is more specific, it states the special circumstance must apply to the land with its size, shape, topography, location, or surroundings. For the church, there is a barrier by a divided highway - State Highway 88 creating a separation between their property and the store front of the church. One would need to travel to get to the church and

dispensary is 2,640 feet. The divided highway does not allow access and creates a peculiar condition that affects the property. It meets the separation intended by the ordinance. As it relates to the separation of the adult use in the ordinance, it is to prevent the concentration of adult oriented facilities which could cause neighborhood deterioration and blight with an increase of crime and diminishing property values. The video store to the east isn't a night club or bar and doesn't create a concentration or gathering place. It is a video store, much like a retail store and wouldn't lead to the deterioration of a neighborhood. Dispensaries have been shown to improve security on areas where they are located, due to their enhanced security measures. The Gentleman's Club to there west requires being 1,500 feet from a dispensary and it is 1,074 feet. This is across South Mountain Road which also creates a barrier from the site and does not create a clustering of adult uses. There is a hardship to the property, it is left with little value for other uses. The property has been vacant for most of the last 10 years, and remained vacant for two years before his client purchased the property. The use of this property is difficult with the location and small size severely limits the potential uses of the property. This creates a hardship and there are not 100 other uses for this property. The variance meets the intent of the zoning ordinance by meeting the needs of people needing marijuana including access to medical needs. The dispensary will create a safer and secure condition than what has historically been on the property. Granting the variances will not negatively impact the neighboring properties or county residents. It meets the intent of the MCZO which is to promote public health, peace, safety, comfort, convenience, and general welfare of the citizens of Maricopa County. Because of the conditions they believe there are peculiar conditions affecting the use of the property. The surrounding land uses are compatible to this use and will not negatively impact surround properties. The strict compliance of the ordinance creates an unnecessary hardship because of the investment made by their client when first told no variances were required, and the limited uses on the property.

Member Cardon asked if there were any discussions with the church. Mr. Lazarus said no, it opened up afterward as a store front. Member Cardon asked where the Gentleman's Club is located, and he didn't believe there was a variance request for that club. Mr. Lazarus said it was not noted in the staff report but it was further away across a major arterial, and he just wanted to mention it. Member Cardon asked was the adult video store opened at the time of the purchase of the property. Mr. Lazarus said yes, the adult video store was opened, but the church was not nor was the school.

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

Mr. Peck said a peculiar condition, according to the Arizona Court of Appeals must relate to the property itself. The statute for municipalities is different, but the court of appeals interpreted the statute that relates to the counties and found it must be related to the land itself.

Mr. Lazarus said one would believe you can only obtain a variance only if there is a physical condition on the property. The case he is talking about is JD's River Bottom vs. Maricopa County. That case stated specifically, no Arizona cases define a peculiar condition. They found some out-of-state cases that were their interpretation and said the physical condition of the property was irrelevant, and they were using this as a persuasive argument. The case found these were only persuasive findings, not precedent setting. Therefore, the definition of peculiar condition is still up in the air in Arizona. Because of the difference between what the legislature stated in two separate types of variances. For cities and towns that was the criteria and they used different language when it came to counties. He believes the case law is still up in the air, and there is no specific definition as stated by the court of appeals. You have a right to make a decision based upon what you consider to be a peculiar condition related to this property. It is a peculiar condition that affects this property as its allowed to be used.

Mr. Peck said the court has told this particular board their standard is, it has to relate to the property. Last night, JD's filed a petition to the supreme court for review. Right now, there is a trial court case and a court of appeals case involving this particular board, and those courts have told you that your standard is it has to relate to the property. The supreme court may change that, but we are not there today. The case is not

precedential as a party to the case, you are bound by that decision. Mr. Lazarus said there is no specification at this point as to what the absolute law is. The fact this is now appealed to the supreme court, it is more up in the air and not sure its distinction between varies counties.

Member Cardon asked would there need to be a variance for the Gentleman’s Club that was mentioned. Mr. Peck said any adult business should cover it. Mr. Holm said a minimum required separation distance of 530 feet from a parcel being used as an adult oriented facility. They would both constitute as an adult oriented facility.

Chairman Loper said when medical marijuana came out there was quite the concern over the potential impacts on neighbors and commercial uses, and that did not bare out. It does not seem to be a haven for illegal activity because of the security.

Member Klapp said in her opinion we created a hardship for the applicant. The applicant purchased the property based on county representatives’ interpretation of the regulations, and on the documents it was noted the property had the proper zoning and the separation requirements had been met. No one is here to speak against the use, and granting this variance will not cause negative impacts on the neighborhood or the general intent of the zoning ordinance.

BOARD ACTION: Member Klapp motioned to approve BA2023024 with conditions ‘a’-‘b’. Vice Chair Personne second. Approved 4-0. Ayes: Cardon, Klapp, Personne, Loper.

- a) Variance approval establishes minimum required separation distance of 530’ from a parcel being used for an adult oriented facility for a building being used for a marijuana establishment on APN 220-66-025C.
- b) Variance approval establishes a minimum required separation distance of 905’ from a parcel being used for a church or other house of worship for a building being used for a marijuana establishment on APN 220-66-025C.

BA2023028	Lebaron & Mendez Property	District 4
Applicant:	Christal LeBaron	
Location:	APN 200-63-021 @ 7216 W. Acoma Dr. – Acoma Dr. & 72 nd Drive, in the Peoria area	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed side yard (east) setback of 15’ where 30’ is the minimum permitted per MCZO Article 503.4.2.	

Ms. Jaramillo presented BA2023028 and noted the variance request is for a proposed east side yard setback of 15 feet where 30 feet is the minimum required; in order to allow the expansion of the existing attached garage from 776 square feet to 1,254 square feet for a third vehicle. There is no known opposition to this request. There are alternatives available to the property that would fall under the RU-43 zoning district regulations such as developing the proposed expansion as a standalone detached one-car garage, which would be allowable per MCZO Article 1106.2. Staff finds this fails to meet the statutory test for a variance, as the applicant has failed to demonstrate that the strict application of the Maricopa County Zoning Ordinance to the subject property has caused undue physical hardship that prevents the reasonable further development of the property.

Ms. Christal LeBaron, the applicant said her nephew Tyler will be speaking on her behalf. Tyler (no last name given) said they are requesting this setback and he doesn’t believe this is posing any issues to not attach this. It will create a very minimal setback from the primary residence for this single car garage.

Vice Chair Personne asked what the setback for the internal side is. Ms. Jaramillo said the garage is being proposed internally on the east side.

Chairman Loper asked if this were detached what would the side yard setback be. Ms. Jaramillo said three feet.

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

Chairman Loper said it will have less impact on the neighboring property attached than if it were detached, but if it were his garage he would want the additional garage built next to the existing garage. He is in favor of this variance.

BOARD ACTION: Vice Chair Personne motioned to approve BA2023028 with condition 'a'. Member Cardon second. Approved 4-0. Ayes: Cardon, Klapp, Personne, Loper.

- a) Variance approval establishes a 15-foot setback along the eastern property line of APN 200-63-021.

BA2023032	Parks Property	District 3
Applicant:	Andrew Parks	
Location:	APN 211-21-008D – unassigned address – 18 th St. and Honda Bow Rd., in the New River/Desert Hills area	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed lot width of 132' where 145' is the minimum permitted per MCZO Article 503.5.2.	

Mr. Landis presented BA2023032 and noted the request is a proposed lot width of 132 feet where 145 feet is the minimum permitted to facilitate the construction of a single-family residence. The subject parcel was created as a portion of a lot created by a minor land division in 2021. Subsequently, the lot was split into its current configuration upon the owner taking possession of the property in 2022. The owner then applied for a building permit in 2023 to develop a residence. At that time, zoning plan review indicated the non-compliant lot width at the south of the parcel, thus causing the variance request for the property. While the lot is 100% hillside, with extreme downward sloping on the northwest of the lot towards what is an apparent arroyo, the proposed residence is located on the flatter southeastern section and the site design otherwise appears to be compliance with all other aspects of the zoning ordinance. The topology itself is indistinct from neighboring lots and is typical of the New River area. Staff is recommending denial of this variance request. The applicant has failed to demonstrate that there is a peculiar condition facing the property because the existing hillside conditions are common to the surrounding area and not unique to the subject parcel and is not germane to the issue of the lot width. The issue was self-created in the line of title upon the unregulated land division which created the lot. The applicant has failed to demonstrate that the strict application of the zoning ordinance to the applicant's property has caused undue physical hardship that prevents the development of the property as there are alternatives available, such as a lot redelineation which would allow for the development of the property without a variance. Chairman Loper asked would acquiring property cause issues with the property to the north, south or east. Mr. Landis said these lots are large and it shouldn't be an issue.

Mr. Andrew Parks, the applicant said the variance is for the south line 132 feet and the total lot width east/west is 262 feet, and north/south is 280 feet. He wants to build a house for his large family. He purchased this lot last year, and the owner of the property to the south had an even five acres and that's how they came up with the lot lines. He wants the house to be built in a particular location because if you

are looking to the west you look down a valley with nice views. With the placement of their living room where they would spend most of their time to enjoy the views to the west. He did receive a letter from the property owner to the south stating the variance on the lot won't affect anything with his lot and he has no objection. They applied for the permit in January, and if they had to resurvey the lot it could take an additional six months. He doesn't know if the property owner to the south would be open to that since he wants to maintain his property a certain size.

Vice Chair Personne asked about the parcel to the south, if someone was to request to build something on that lot would they have the same issue with the lot width. Mr. Landis said he would have to measure it, but as long as it is 145 feet to be in compliance. Vice Chair Personne said maybe they would give him 12 extra feet. Mr. Parks said he has talked to the neighbor with that lower southeast section, but for the time being he is planning on sitting on the lot for a future build, and it didn't sound like that was something he wanted to do.

Chairman Loper said from the aerial and site plan, it looks like a decent size wash that separates the western third of the property, and it might preclude from building at or near it. Mr. Parks said his septic would go off the northwest part of the house then he gets too close to the wash. Chairman Loper said there are separation requirements from a wash.

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

BOARD ACTION: Vice Chair Personne motioned to approve BA2023032 with condition 'a'. Member Cardon second. Approved 4-0. Ayes: Cardon, Klapp, Personne, Loper.

- a) Variance approval establishes a 132' lot width for APN 211-21-008D.

BA2023034	Existing Horse Shade	District 4
Applicant:	Alexander Gray	
Location:	APN 503-37-004W @ 30907 N. 224 th Dr. in the Wittmann area	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed accessory structure setback of 0' where 3' is the minimum permitted per MCZO Article 1106.2.	

Mr. Lorentzen presented BA2023034 and noted this variance request is for a previously built horse shade structure approximately 60 X 40 feet which has been erected on the southern parcel boundary and is currently subject to an open violation. The shade structure has been standing for approximately three years. The applicant has failed to demonstrate there is a peculiar condition relating to the property by not providing any evidence of an existing condition to warrant the variance request.

Chairman Loper asked this came about because of the violation, but nobody responded in opposition to the case. Mr. Lorentzen said correct. Chairman Loper asked is the slope of the roof line sloping on or off the property. Mr. Lorentzen said it is sloping off the property to the property to the south.

Mr. Al Gray said he is representing Ron Giles, the property owner. The existing shade structure has been in place for a couple of years. We are working to come into compliance, and there is no opposition from the neighbor.

Member Klapp asked is it the property owner to the south that is in support. Mr. Gray said correct.

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

Chairman Loper said the complaint must of came from someone else and not from the property owner to the south. He wished people would check with the county before constructing these types of structures.

BOARD ACTION: Member Cardon motioned to approve BA2023034 with condition 'a'. Vice Chair Personne second. Approved 4-0. Ayes: Cardon, Klapp, Personne, Loper.

- a) Variance approval establishes a 0' south accessory structure setback line for APN 503-37-004W

Mr. Holm noted the August 10 Board of Adjustment hearing has been cancelled.

Adjournment: Chairman Loper adjourned the meeting of July 20, 2023 at 11:08 a.m.

Prepared by Rosalie Pinney
Recording Secretary

July 20, 2023