



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2018086 – Cordova Property

Hearing Date: January 24, 2019

Supervisor District: 4

**Applicant /
Property Owner:** Thomas A. Cordova Sr.

Requests: **Variance to the development standards of the Maricopa Zoning Ordinance to permit:**

- 1) Proposed front setback of 10' where a minimum of 40' is required per MCZO Art. 503.4.1.a and;
- 2) Proposed rear setback of 28'-1" where a minimum of 40' is required per MCZO Art. 503.4.3

Site Location: APN 503-30-028F @ 23925 W. Gambit Tr. – west of 239th Ave. on Gambit Tr., in the Wittmann area

Site Size: 48,814 sq. ft.

Current Use / Zoning: Vacant / Rural-43 and Rural-43 MAAMF (and within APZ-2)

Open Violation: **No Violation on property**

**Citizen
Support/Opposition:** No known opposition

Findings: **The requests meet the statutory test for variance approval.**

Background:

1. **July 26, 2005:** Quitclaim Deed for current owner was recorded for the subject property.
2. **March 17, 2010:** Maricopa County Board of Supervisors (BOS) approved TA2009012 which included Section 1010 (Military Airport and Ancillary Military Facility) of the Maricopa County Zoning Ordinance (MCZO).
3. **July 12, 2017:** BA2017022, a variance request on the subject property for the same request as the subject case was withdrawn by the applicant.
4. **May 17, 2018:** BA2018020 was approved by the BOA for the subject site for the same request as the subject case.
5. **September 14, 2018:** BA2018020 expired after 120 days of approval since no construction permit was applied for the proposed residence per condition 'b'.
6. **November 9, 2018:** Permit B201810250 was submitted for a single-family residence on the subject property. Comments went out to the customer on 11/30/18.
7. **December 26, 2018:** The subject application BA2018086, was submitted.

Reviewing Agencies Comments:

8. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated January 14, 2019.
9. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated January 4, 2019.

Existing On-Site and Surrounding Zoning/Land Use:

10. On-site: Rural-43 & Rural-43 MAAMF/Vacant
North: Gambit Tr. then Rural-43 MAAMF/easement road then Single-family residence
South: Rural-43/Vacant
East: Rural-43 and Rural-43 MAAMF/Single-family residence
West: Rural-43 and Rural-43 MAAMF/Single-family residence

Site Analysis:

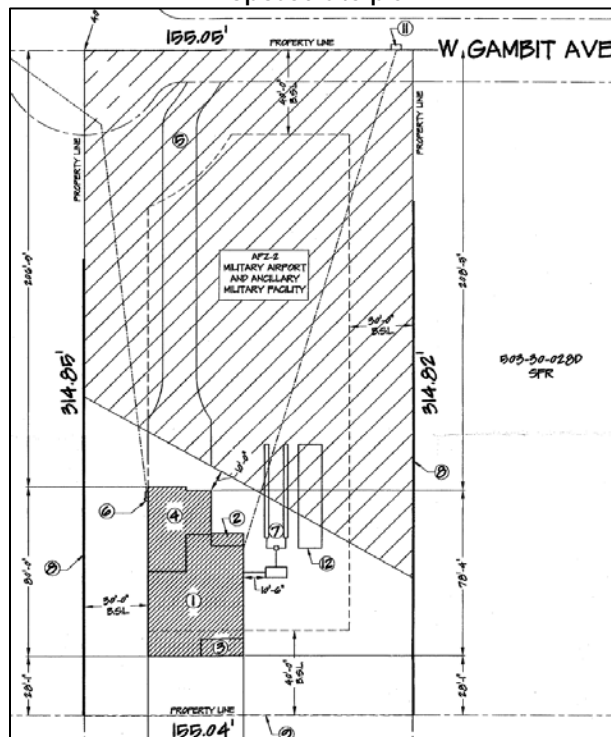
11. The site is located in a non-subdivided area of Wittmann. The site is zoned Rural-43 and Rural-43 MAAMF where roughly 2/3 of the front (north) portion of the site is within a military overlay zoning district – Luke Air Force Base Accident Potential Zone 2 (APZ 2) which restricts residential development. This zoning district boundary line acts as an ad hoc property line for purposes of calculating the minimum required setbacks. It should be noted that this request is to re-approve the previously approved Variance (BA2018020) for the same requests. The applicant did not meet the 120 day timeline to apply for related building permit(s) per MCZO Art. 303.5.2 and condition 'b' of BA2018020.

Aerial photo of subject site



- The applicant proposes to build a residence 10' from the property within the area (northern portion of the lot) where the military overlay is not located. Since the overlay creates a zoning district boundary line, the 40' front setback would be applied at the boundary. The proposed house would also be 28'-1" from the rear yard (where 40' is required). It should be noted that staff will include a condition should the Board approve this Variance request that encroachment of the proposed residence is not allowed within APZ-2 and the MAAMF. LAFB has included an email (attached) regarding the subject Variance request where they state no objections as long as the residence would be outside of the APZ-2 area.

Proposed site plan



13. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the owner (Note: changes to proposed standards are indicated in bold).

Standard	Rural-43 Zoning District	Proposed Standard
Front Yard Setback (north)	40-feet	10-feet
Rear Yard Setback (south)	40-feet	28-feet and 1-inch
Street Side Setback (N/A)	20-feet	20-feet
Side Yard Setback (east & west)	30-feet	30-feet
Maximum Height	30-feet	30-feet
Minimum Lot Area	43,560-sq. ft.	45,560-sq. ft.
Minimum Lot Width	145-feet	145-feet
Lot Coverage	25%	25%

Note: Standards indicated in **bold** do not meet base zoning standards

ARS § 11-816.B.2 and MCZO Article 303.2.2 states the Board of Adjustment may, "Allow a variance from the terms of the ordinance if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship and if in granting the variance the general intent and purposes of the zoning ordinance will be preserved."

State Statute / County Zoning Ordinance Tests:

14. **Statutory Test -1 Peculiar conditions** – Explain and discuss the peculiar conditions on the property and include reference to the Maricopa County Zoning Ordinance Regulations or Development Standards to be varied. Explain the proposed use of the property with the variance request. Explain how enforcement of the Zoning Regulations or Development Standards would impose a hardship on the property owner.

"The property is located between two homes previously built and is subject to Maricopa County Zoning Rural-43 and Overlay Chapter 1010. These standards would originally have prohibited the building of the new home. Our hopes are by asking for the Variance to build so these standards can either be lifted or adjusted for building."

15. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar conditions on the site create with respect to the existing Regulations and Standards of the Maricopa County Zoning Ordinance.

"The regulations, zoning, and standards in place will keep us from building or utilizing the property in any manor if not adjusted or lifted enabling building of a home. The property will become an eyesore to the existing homes."

16. **Statutory Test 3 – General Intent and Purpose of the Zoning Ordinance** - Explain and discuss how this variance would not cause a negative impact on the general intent and purpose of the Zoning Ordinance.

"The Variance would not cause any negativity in the surrounding area, the property is surrounded by homes. By building the home, it would bring flow and continuity to the existing homes without making any additional impact on the flight zone or surrounding homes."

17. **Per MCZO – Evidence of the ability and intention of the applicant to proceed with construction work within 120 days after variance decision by the Board of Adjustment.** Provide evidence of the ability and intention to proceed with construction work within 120 days (4 months) after Board of Adjustment decision. Discuss if there are building permits or as-built permits currently filed with the Planning and Development Department and the current review status. Specify the permit numbers. If no permits have been filed, please provide a timeline for building permits submittal and projected timeframe for construction.

"I, Thomas A Cordova Sr. am working to secure a construction loan, funding, and construction bids. Once the Variance is passed and I obtain permits, I can secure the funds and begin the building process."

Findings:

18. The applicant has the burden of proving that in accordance with ARS §11-816.3.2 and MCZO Article 303.2.2 the property is entitled to receive a variance. To do so, the applicant must present evidence that, due to a peculiar condition related to the land, that being something that is not a common condition of other properties, applying the requirement of the MCZO as written to this particular property would work an undue hardship on the property. In addition, the applicant must demonstrate that the granting of the variance would preserve the general intent and purpose of the MCZO.

Based upon what the applicant has submitted and the staff analysis in this report, staff offers the following findings:

- The applicant has demonstrated that there is a peculiar condition facing the property in that there is a military overlay zoning district that limits residential development to a small portion of the lot.
- The applicant has demonstrated applying the requirements of the MCZO to this property that has this peculiar conditions an undue physical hardship exists that prevents the development of the property in that the military overlay zoning district is not self-created.
- The applicant has demonstrated the peculiar condition / physical hardship is not self-created in the line of title.
- The applicant has demonstrated that the general intent and purpose of the MCZO will be preserved despite the variance because the proposed residence would still meet the setbacks for rear and side yard where there are existing residences to the east and west of the subject site.

And further, staff offers the Board the following Conditions of Approval:

- a) General compliance with the site plan stamped received December 26, 2018.
- b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) There shall be no encroachment of the proposed residence in the Military Airport and Ancillary Military Facility Overlay Zoning District & APZ-2 on the subject property.
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

19. If the Board finds that any aspect of the statutory test has not been proven, Board must state on the record the basis for that determination and then make a vote affirmatively a Motion to deny the relief sought.

Presented by: Ray Banker, Planner
Reviewed by: Darren V. Gerard, AICP, Deputy Director

Attachments: Case Map (1 page)
Vicinity Map (1 page)
Application / Supplemental Questionnaire (3 pages)
Narrative (1 page)
Site Plan (1 page)
Engineering Comments (1 page)
MCESD Comments (1 page)
LAFB Memo (1 page)