



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2019038 – Boyd Property

Hearing Date: February 20, 2020 (continued from December 19, 2019)

Supervisor District: 3

* Denotes changes from the December 19, 2019 hearing.

Applicant Phyllis McGurren

Owner: Jesse Boyd

Request: **Variance to the development standard of the Maricopa Zoning Ordinance to permit:**

- 1) Proposed 5 lighting structures to be setback 3' where 20' is the minimum permitted per MCZO Article 501.2.15.e

Site Location: APN 203-33-002F @ 38108 N. 25th Ave, N. 25th Ave. & Joy Ranch Rd., in the Desert Hills area

Site Size: 103,003 sq. ft.; 2.4 ac.

Current Use / Zoning: Single-family residence / Rural-43

Open Violation: **Violation on property**

Citizen Support/Opposition: One letter of support

The request fails to meet the statutory test for variance approval

Background:

1. **October 28, 2014:** A lot split and combination created lots 203-33-005A, 203-33-005A and subject parcel **203-33-002F** from parent parcels 203-33-005 and 203-33-002C.
2. **January 18, 2018:** The current owner took possession of the subject property via a warranty deed under docket **20180042172**.
3. **May 17, 2018:** A code violation (**V201800892**) was opened on the subject property for altering the natural grade / importing truckloads of asphalt. Case was closed February 21, 2019 as invalid.
4. **May 13, 2019:** A code violation (**V201900970**) was opened on the subject property for commercial business in Rural/Residential area grading/stockpiling without permits/clearances, no primary use established. The case status is admin remedy.
5. **August 19, 2019:** The subsequent variance request was submitted.
6. **September 19, 2019:** The Board voted to continue the case to the October hearing to allow the applicant time in order to contact adjacent neighbors and provide responses for the variance request.
7. **October 17, 2019:** The Board voted to continue the case to the December hearing.
8. * **November 21, 2019:** The violation case (**V201900970**) was heard by a hearing officer, who found the respondent responsible in absentia, with non-compliance fine (NCF) due and daily non-compliance fine (DNCF) to accrue. The case status is Legal Action. The NCF was paid December 18, 2019. Per Hearing Officers Order the DNCFs and accruing but will be suspended if the required permits are completed by April 21, 2020. At present, the fines are current and the Board may hear the case.
9. * **December 19, 2019:** The Board voted 4-0 to continue the case to the February 20th hearing to provide the applicant additional time to work on a solution.

Reviewing Agencies Comments:

10. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated August 19, 2019.
11. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated August 28, 2019.

Existing On-Site and Surrounding Zoning/Land Use:

12. On-site: Rural-43 /site improvements from 2018 – 2019 aerial images
North: Rural-43 /Vacant
South: Rural-43 /Single-family residence
East: Rural-43 /Single-family residence
West: Rural-43 /Single-family residence

Site Analysis:

- 13. The site is a rectangular shaped lot measuring approximately 321 feet in width and 329 feet in depth for a total area of 103,003 square feet. Property access is from 25th Avenue, a paved two-lane road. The site is level and free of any topographical hardships, aerial image indicates unpermitted site work from 2018-2019. There are a few trees and cacti along the eastern and southern boundaries. The property is currently has no established primary use or residence, and there are no construction permits for anything in the permitting system. According to (V201900970) violation photographs, the site has been mass graded, has rail fencing, stock piled material and barn structures. This area is primarily residential with large lot properties developed with single-family residences. Development in the immediate area is primarily through the lot splitting process although there are two master planned communities in the general area. Anthem is approximately 0.75 miles north of the subject site; Tramanto, in City of Phoenix, location is approximately 1.20 miles south of the subject site. The immediate area is zoned Rural-43 with the surrounding properties zoned Rural-43, R1-6 RUPD, and R1-8 RUPD and S-1 (Phoenix jurisdiction).

Aerial photo of subject site & surrounding environs

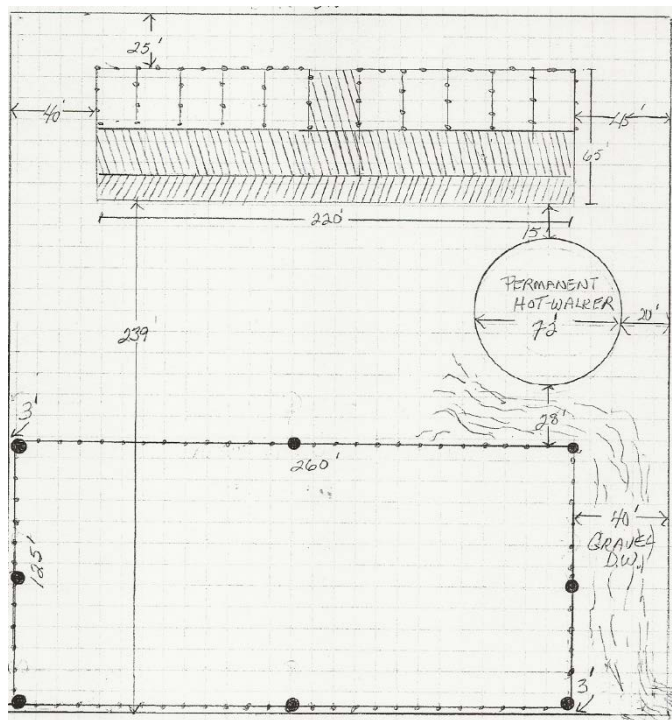


2018 Aerial photo on the left and 2019 aerial photo on the right.



14. The applicant proposes placing 5 lights on the property at 3' from the south and west property boundaries instead of the required 20' as outlined in the Maricopa County Zoning Ordinance 501.2.15.e. The structure illustrated on the site plan (appx 35' x 220') would be approximately 7,700 sq. ft. in area. Staff finds that rearranging the arena, where the ordinance setbacks were met is possible. Moving the arena north 17' and east 17' could meet the required light setbacks and still leave a drive-way to the barn area. Moving everything northward as well. As such staff finds the request unsupportable.

Proposed site plan



15. It's important to note that proposed primary use is a proposed corral for the keeping of horses which is listed as a permitted primary use in the Rural Zoning districts per MCZO Article 501.2.12. The existing/proposed stables, hot walker and arena will be uses accessory to the horse corral. The proposed lighting are accessor use lights for the arena are required to be setback 20' and no higher than 20' per MCZO Article 501.2.15.e:

"15. Accessory buildings and uses customarily incidental to the above uses, including:

e. Accessory use lights provided that permitted accessory use exits. The lights must be located on the property and shielded so as to not direct or reflect light upon adjoining land, shall not be constructed within **20 feet** of any adjoining property under other ownership, and shall not exceed **20 feet** in height."

15. * The variance is not warranted. Existing, unpermitted construction does not represent an undue physical hardship facing the property. This situation is created solely by the property owner. He owns the adjacent property to the west. Variance is not needed with a simple redesign of project layout. The design could have driveway enter property and drive along south lot line forcing lights and arena to meet the required 20' south setback. Drive way can enter western parcel and circle north of the arena to serve the hot walker and stalls. Further, the two parcels can be consolidated to negate variance for lights from the west lot line.

16. 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	40-feet	45-feet
Rear Yard Setback	40-feet	40-feet
Street Side Setback	20-feet	N/A
Side Yard Setback (south)	30-feet	N/A
Maximum Height	30-feet	N/A
Accessory use lights setback (west & south property lines)	20-feet	3-feet
Minimum Lot Area	43,560-sq. ft.	103,003-sq. ft.
Minimum Lot Width	145-feet	321-feet
Lot Coverage	25%	7.6%

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:

17. **Statutory Test -1 Peculiar conditions** – Discuss and explain what is/are the peculiar conditions facing 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. Identify and explain all peculiar conditions on your property in regard to the following areas: slope, narrowness, shallowness, irregular shape, location, washes, vegetation, and easements, etc. Explain how enforcement of the Zoning Regulations or Development Standards would impose a hardship on the property.

"Owner needs the arena permitted (primary use) so he permit the mare motel and resolve the violation case(V201900972). The owner is a semi-professional team roper, so the arena needs to be standard sized (150' x 120'). A 20' setback for lights puts the arena too close to the hot walker for road. There will be cattle housed on the property in the future, so there is no other place for the arena."

18. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar conditions on the site create with respect to existing Regulations and Standards of the Maricopa County Zoning Ordinance. Please discuss and explain that the unnecessary hardship facing the property is not self-created in the line of title.

"Chapter 5, Art. 501.2 states that light must be 20' inside the property line. This would place the arena too close to the hot walker (concreted in place and unmovable) for any horse trailers, hay trucks, etc., to make the turn into the center of property between arena and hot walker."

19. **Statutory Test 3 – General Intent and Purpose of the Zoning Ordinance** - Discuss and explain how the granting of the requested variance would not cause a negative impact on the general intent and purpose of the Zoning Ordinance.

"All surrounding properties have horses and are 150 + from any light pole. Lights will be shielded to minimize or eliminate light on neighbors property."

20. **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 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. Conversely, indicate if the variance requests is/are not related to a specific development proposal.

"Owner is very anxious to get his violation taken care of and to get his arena built so he can practice at home. He will start construction immediately on permit issuance."

Findings

21. The applicant has the burden of proving that, in accordance with ARS §11-816.B.2 and MCZO, Art. 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 failed to demonstrate that there is a peculiar condition facing the property because the site is largely undeveloped and has no topographic restrictions.
- The applicant has failed to demonstrate that the strict application of the MCZO to the applicant's property has caused undue physical hardship that prevents the development of the property. There are alternatives available to the property, such as the rearranging of the proposed elements of the site plan, thus a variance is not warranted.
- The applicant has failed to demonstrate the peculiar condition / physical hardship is not self-created in the line of title in that constructing to the Zoning Ordinance requirements would alleviate the need for the request.

22. However, if the Board finds that the applicant has proven entitlement to the variance; then, the Board must state on the record the basis for that determination with findings and conclusion in a motion to grant the relief sought.

In such event staff would offer the Board the following Conditions of Approval:

- a) General compliance with the site plan stamped received August 19, 2019.
- b) All required building permits for the proposed and existing development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permits within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

Presented by: Eric R. Smith, Planner
Reviewed by: Darren V. Gerard, AICP, Deputy Director

Attachments: Case Map (1 page)
Application / Supplemental Questionnaire (3 pages)
Site Plan (2 pages)
Engineering Comments (1 page)
MCESD Comments (1 page)
Hearing Officer Judgement (2 pages)
Support Letter (1 page)