



Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2019058 – Nelson Property

Hearing Date: February 20, 2020

Supervisor District: 4

Applicant: Bradley Nelson

Property Owners: Blake, Tammy, Bradley, & Linda Kay Nelson

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

- 1) Proposed front yard setback of 10' where 40' is the minimum permitted per MCZO Article 503.4.1.a, and
- 2) Proposed south side yard setback of 0' where 30' is the minimum permitted per MCZO Article 503.4.2, and
- 3) Proposed Accident Potential Zone (APZ) Line northeast side yard setback of 5' where 30' is the minimum permitted per MCZO Article 503.4.2

Site Location: APN 503-30-039H @ 27307 N. 237th Ave., Bunker Peak Rd. and 237th Ave., in the Surprise area

Site Size: 189,000 sq. ft.

Current Use / Zoning: Vacant/ Rural-43 MAAMF (Military Airport & Ancillary Military Facility) overlay zoning district

Open Violation: **No Violation on property**

Citizen Support/Opposition: No known opposition

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

Background:

1. **C. 2004:** Arizona Revised Statutes (ARS) enacted the high noise and accident potential zone around Luke Air Force Base, Luke Air Force Auxiliary vicinity, and Gila Bend Auxiliary vicinity.
2. **January 1, 2005:** The subject site was created as a result of a lot combination of four separate parcels.
3. **March 17, 2010:** The MAAMF overlay zoning district was created due to a 2008 court settlement ordered by Superior Court of Arizona in the case of Arizona State, et al. v. Maricopa County, et al. to address A.R.S. §28-8461 and §28-8481.
4. **March 9, 2019:** The current owners took possession of the subject property.
5. **December 23, 2019:** The property owners applied for the subject variance request (BA2019058).

Reviewing Agencies Comments:

6. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated January 30, 2020.
7. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated January 22, 2020.

Existing On-Site and Surrounding Zoning/Land Use:

8. On-site: Rural-43 MAAMF/ Vacant
North: Bunker Peak Rd. then Rural-43 MAAMF/ Vacant
South: Rural-43/ Single-family residence
East: Rural-43 MAAMFC/ Single-family residence & Vacant
West: 237th Ave. then Rural-43/ Vacant

Site Analysis:

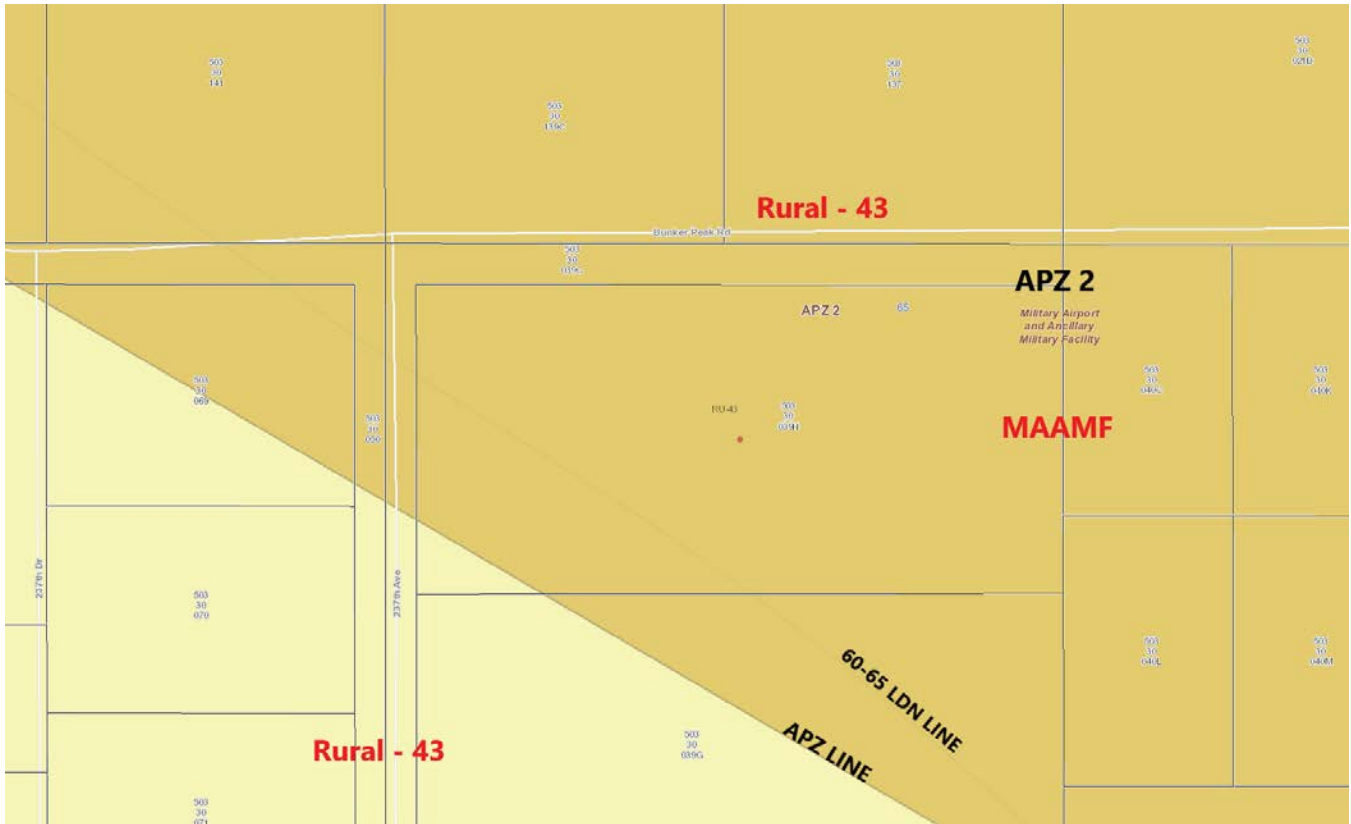
9. The site is a rectangular lot with a width of 300' and a depth of 630' for a total lot size of 4.33 acres located at the southeast corner of Bunker Peak Rd. and 237th Ave. in the Surprise area. The subject lot itself has a relatively flat topography with various Lower Sonoran Desert vegetation. The majority of the site is inside the Accident Potential Zone (APZ 2) where any residential uses are prohibited, as per A.R.S. §28-8481(J), leaving only 10% of the site to place a residential dwelling unit. The developable area of the site forms a right triangle starting at the lot's southwest corner moving 70' north along the west property line and 125' east along the south property line.
10. The applicant is proposing to construct a 1,500 square foot single-family home, which will be a manufactured home consisting of three bedrooms and two bathrooms. With the new residence on the parcel the lot coverage will be 0.8%. Due to the lot's limitation, the applicant is requesting three different variances of the Rural-43 development standards. The first variance request is to reduce the minimum front yard setback from the required 40' to 10'. Another variance request is to reduce the minimum south side yard setback from the required 30' to 0'. Still another variance request to reduce the northeast side

yard setback along the APZ line, which is considered an ad hoc property line for setback purposes due to the overlay zoning district boundary line, from the required 30' to 5'.

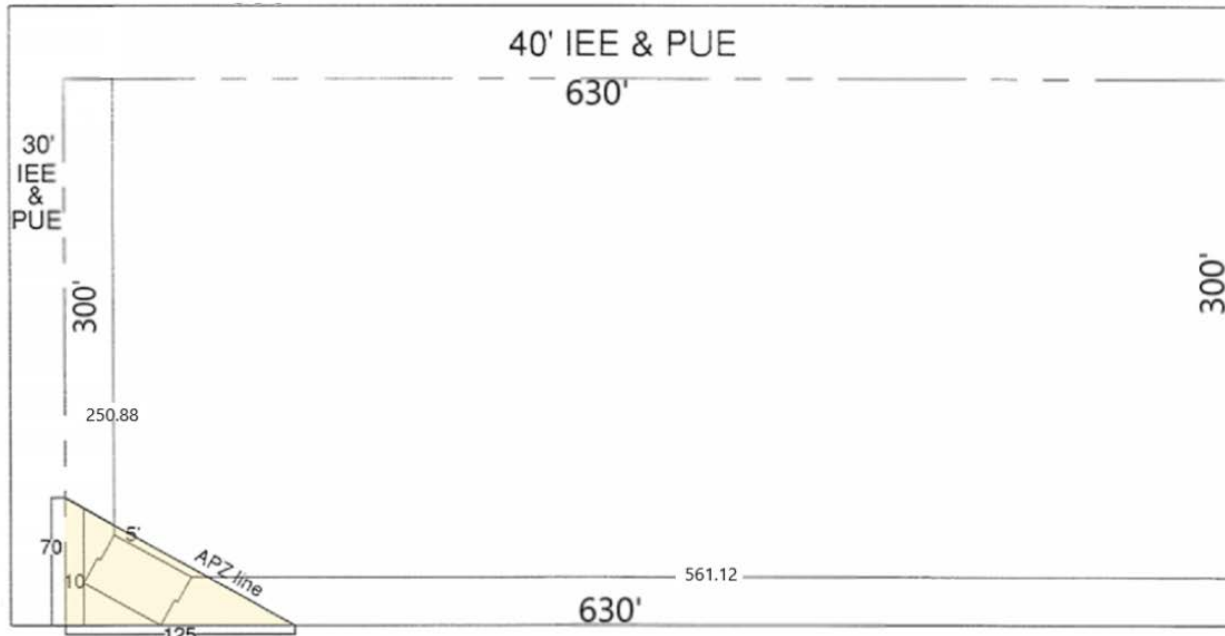
Aerial photo of subject site & surrounding environs



Zoning Map of the subject & surrounding environs



Excerpt from proposed site plan



11. Essentially, staff considers the lot unbuildable for residential development. The lot was created via an unregulated land division. However, it was a lot combination rather than a lot split. The lot combination occurred after state law established the high noise and accident potential zone, but prior to the County's MAAF overlay zoning district.
12. 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	10-feet
Rear Yard Setback	40-feet	561-feet
South Side Yard Setback	30-feet	0-feet
Accident Potential Zone Line Side Yard Setback	30-feet	5-feet
Street Side Yard Setback	20-feet	250-feet
Maximum Height	30-feet	30-feet
Minimum Lot Area	43,560-sq. ft.	189,000-sq. ft.
Minimum Lot Width	145-feet	300-feet
Lot Coverage	25%	0.8%

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:

13. **Statutory Test -1 Peculiar condition** – Discuss and explain what is a peculiar condition facing the property and include reference to the Maricopa County Zoning Ordinance Regulation or Development Standard 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 Regulation or Development Standard would impose a hardship on the property.

“The property is in the Luke AFB Accident Prevention Zone. One corner of the property is the southwest is outside of the APZ. Reduction of the side yard setbacks will allow for placement of a residential home in this area.”

14. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar condition on the site created with respect to existing Regulation and Standard 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.

“The APZ covers most of the property and the RU-43 allows for livestock uses. The property we are requesting is outside of the APZ and the side yard requirements restricts any other use of the property”

15. **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.

“Granting the variances will not impact the area around the request as roadway and Residential use (over 200’) are next to the request area.”

16. **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 permit or as-built permit currently filed with Planning and Development Department and the current review status. Specify the permit number. If no permit have been filed, please provide a timeline for building permit submittal and projected timeframe for construction. Conversely, indicate if the variance request is/are not related to a specific development proposal.

“Financing of the project has been secured and contracts with general contractor with general contractor and home builder. Schedule allows for completion this year.”

Findings:

17. 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 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 developing the site for agriculture, equestrian uses, the raising of livestock, or other non-residential development with approval of Military Compatibility Permit, thus a variance is not warranted.
- The applicant has failed to demonstrate that the general intent and purpose of the MCZO will be preserved with the variance in that placing a home 10' away from the access easement and 0' along the south property line will presumably negatively impact the area. The new single-family residence will not fit in with the rural-residential character of the surrounding homes of the area, that are setback 30' or more from side property lines and 40' or more setback from roadways,

18. 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 January 2, 2020.
- b) All required building permits for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building 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: Martin Martell, Planner
Reviewed by: Darren V. Gerard, AICP, Planning Manager

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