



## Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

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**Case:** BA2020001 – Amrine Property

**Hearing Date:** February 20, 2020

**Supervisor District:** 3

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**Applicant:** Bill Amrine

**Property Owner:** Amrine Family Revocable Trust

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

- 1) Detached accessory building to be placed in the required front yard at a 12-foot setback, where detached accessory structures are to be located outside the required front yard per MCZO Article 1106.2, and
- 2) Proposed front (east) accessory setback of 12-feet where 40-feet is the minimum permitted per MCZO Article 503.4.2, and
- 3) Proposed rear (west) accessory setback of 1.5-feet and side (south) accessory setback of 0-feet where 3-feet is the minimum permitted per MCZO Article 1106.2

**Site Location:** APN 211-52-035H @ 35822 N. 16<sup>th</sup> St. – Cloud Rd. and 16<sup>th</sup> St. in the New River area

**Site Size:** 49,920 sq. ft.

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

**Open Violation:** **V201300117**

**Citizen**

**Support/Opposition:** Three (3) support letters were submitted from adjacent properties owned by Ellis/Mandi Farstvedt, Steven Spurling and Michael Rubie.

**Findings:**  **The request fails to meet the statutory test for variance approval**

## Background:

1. **February 18, 1997:** A parcel split was recorded showing parcel 211-52-035B split into two new parcels: 211-52-035E and **211-52-035F**.
2. **Circa 1997/1998:** A single-family residence was built on the site as noted by building permit **97-019767**.
3. **June 4, 1998:** A parcel split was recorded showing the parent parcel (211-52-035F) split into two new parcels: 211-52-035G and **211-52-035H** (the subject parcel).
4. **Circa 1999:** Available aerial photos show the residence in the same approximate location as shown in the most recently available aerial photos.
5. **February 15, 2005:** The current owners took possession of the subject site via a Warranty Deed recorded under docket **2005-0535153**.
6. **May 30, 2007:** The owner applied for building permit **B200706025** to build an addition to the residence.
7. **July 16, 2007:** The owner/applicant met with staff for a pre-application meeting.
8. **August 6, 2007:** The owner applied for variance request **BA2007098**. The variance request is for a side (north) yard setback of 21.55 feet.
9. **September 12, 2007:** The Board of Adjustment votes to approve **BA2007098** with conditions. The variance is still in place as no time limits were imposed upon satisfaction of the conditions of **BA2007098**.
10. **Circa 2012-2013:** An unpermitted structure "Mare Motel" is built on the subject parcel.
11. **March 5, 2013:** A Notice and Order to Comply (**V201300117**) is sent to the property owner. The NOTC orders the property owner to obtain a building permit for an unpermitted structure "Mare Motel".
12. **November 21, 2013:** An application is received for a building permit for the "Mare Motel" under permit **B201306876**.
13. **December 13, 2013:** Zoning review flags two issues with permit **B201306876** to be rectified prior to issuance of the permit. The first issue is that the existing shed from **BA2007098** has not been removed. The second issue identified is that the "Mare Motel" is located within the required 40-foot front setback.
14. **January 16, 2020:** An application for **BA2020001** is stamped received.

## Reviewing Agencies Comments:

15. **Engineering (Transportation, Drainage, and Flood Control):** No objection to the request, see attached memo dated January 29, 2020.
16. **Environmental Services Department (MCESD):** No objection to the request, see attached memo dated January 22, 2020.

## Existing On-Site and Surrounding Zoning/Land Use:

- 17. On-site: Rural-43 / Single-family residence
- North: Rural-43 / Single-family residence
- South: Rural-43 / Single-family residence
- East: Rural-43 / Single-family residence
- West: Rural-43 / Single-family residence

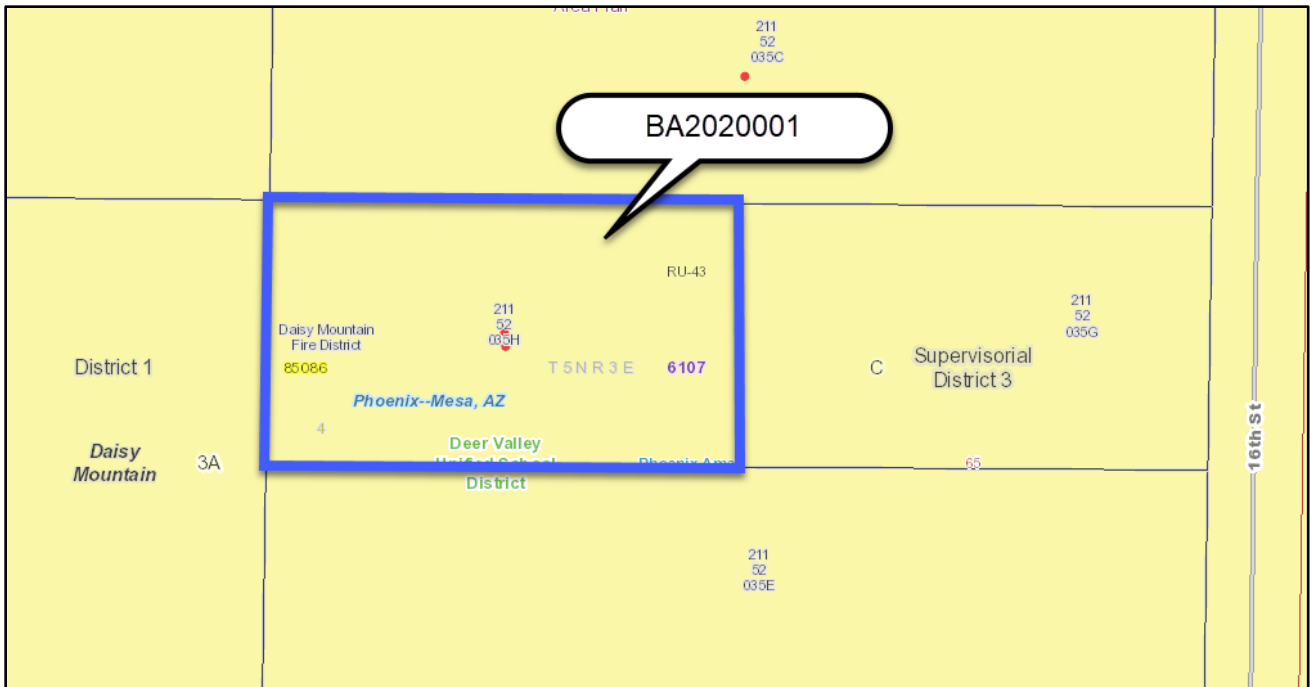
## Site Analysis:

- 18. The subject site is a rectangular lot measuring approximately 166 feet in width and 298 feet in depth. The total area of the lot is approximately 49,920 square feet or 1.146 acres. Access to the site is available through a 20-foot ingress/egress and utility easement from 16<sup>th</sup> Avenue that runs through the adjacent property to the east (APN 211-52-035G). The 20-foot easement extends 60 feet along the southern border of the subject property. The site has a relatively flat topography with various Lower Sonoran Desert vegetation. A fence borders the entire property and there is a gate providing access to the adjacent northern property (APN 211-52-035C). A 5-foot utility easement is present that extends 60-feet along the northern property line.
- 19. A septic area is present behind the residence. There are four structures located on site: a residence, shop building (shed), "mare motel" and what appears to be a shared well between the subject property and the adjacent property to the north. A parking pad for an RV is located onsite as well. The approximate lot coverage of the site is 5,952 square feet or 11.92%. The applicant is requesting four variances. All setbacks that do not pertain to the requested variances meet the standards for a Rural-43 district in the MCZO.
- 20. The first requested variance is for a detached accessory building to be placed in the front yard, where detached accessory structures are to be located in outside of the required front yard per MCZO Article 1106.2. A "mare motel" is located in the front yard (east property line) of the subject site at a 12-foot setback.
- 21. The second requested variance is for a front (east) accessory setback of 12-feet where 40-feet is the minimum permitted per MCZO Article 503.4.2. This variance also pertains to the location of the "mare motel" as it is located approximately 12-feet from the east property line.
- 22. The third requested variance is for a rear (west) accessory setback of 1.5-feet and side (south) accessory setback of 0-feet where 3-feet is the minimum permitted per MCZO Article 1106.2. The shop building (shed) is located approximately 1.5-feet from the rear (west) property line and approximately 0-feet from the side (south) property line.

# 2019 Aerial Map and Surroundings



# Zoning Map and Surroundings



## Excerpt from the Proposed Site Plan



23. 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 (Residence to east property line)	40-feet	n/a
Side Yard Setback (Residence to north property line)	30-feet	<b>21.55 feet*</b>
Rear Yard Setback (Residence to west property line)	40-feet	n/a
Accessory Front Yard Setback (Mare Motel to east property line)	Not Permitted**	<b>12-feet &amp; accessory structure allowed</b>
Accessory Rear Yard Setback (Shop Building to west property line)	3-feet	<b>1.5-feet</b>
Accessory Side Yard Setback (Shop Building to south property line)	3-feet	<b>0-feet</b>
Accessory Side Yard Setback (north property line)	3-feet	n/a
Maximum Height	30-feet	n/a
Minimum Lot Area	43,560-sq. ft.	n/a
Minimum Lot Width	145-feet	n/a
Lot Coverage	25%	n/a

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

\* Variance already granted for 21.55-feet (BA2007098)

\*\* Accessory structures are not permitted in the front yard per MCZO.

**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:**

24. **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.

*"The Maricopa County Zoning Ordinance defines a "front yard" as the narrowest part of a lot and/or the portion that fronts a street. For the subject site, that is the east side of the lot. This "definition" causes a peculiarity in that although access does occur from the east via an easement that extends across the southern part of the lot to the east, the existing home – built in 1998 – is placed at what is defined as the rear of the lot but what actually works as the side yard portion of the lot.*

*Because of the home placement, the only available area for any accessory structures is in what is technically the front yard area."*

25. **Statutory Test 2 – Unnecessary Hardship** – Explain the unnecessary hardship the peculiar conditions on the site created 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.

*"The home, which was legally permitted and constructed in 1998, is placed in such a way on the lot that any accessory structures, such as the existing open horse shade structure/shed, can only be placed at its present location: in the front yard.*

*Due to site configuration and also the placement of the existing permitted home, onsite circulation also limits the area where this structure can be placed.*

*All other setbacks and development standards of the Rural-43 zoning district are maintained."*

26. **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.

*"No negative impact will occur from the granting of the requested variances to the general intent and purpose of the Zoning Ordinance, as no impacts to health, safety or the general welfare of the public is occurring today (nor in the past 22 years) from the existence of these buildings at their existing setbacks.*

*Both the existing residence and the existing shop building underwent plan review and inspections when they were being designed and built.*

*If approved, an application for a building permit will be submitted and processed through Maricopa County for the mare motel; this will ensure that this structure complies with all applicable building requirements.*

*The area is dominated by single-family residential and equestrian uses, and the existence of the residence, shop building and mare motel are in keeping with the character of this area.*

*No impacts have been, or will occur, to the surrounding properties. Written support has been received from the neighbors to the east (Farstvedt), north (Rubie) and south (Spurling) – copies of their respective letters are included with this application.”*

27. **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.

*“Any required permits will be applied for within three (3) months of approval of the variance(s).*

*The residence and shop building were both permitted, with construction completed in 1998.”*

**Findings:**

28. 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 unremarkable and free of topographic or physical hardships.**
- 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 **placing the “Mare Motel” outside of the required front setback**, thus 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 **permits for the “Mare Motel” and “Shop Building” were not obtained prior to construction.**

29. 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 27, 2020.
- b) All required building permits for 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: Adam Cannon, Planner  
Reviewed by: Darren V. Gerard, AICP, Planning Manager

Attachments: Case Map (1 page)  
Application / Supplemental Questionnaire (3 pages)  
Site Plan (1 page)  
Narrative (2 pages)  
Engineering Comments (1 page)  
MCESD Comments (1 page)  
Citizen Support Letters (3 pages)