



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

May 23, 2019

CALL TO ORDER: Chairman Harris called meeting to order at 10:05 a.m.

**ROLL CALL/
MEMBERS PRESENT:** Mr. Abe Harris
Mr. Craig Cardon (telephonically)
Mr. Greg Loper

MEMBERS ABSENT: Mr. Jason Morris
Mr. Jeff Schwartz

STAFF PRESENT: Ms. Jen Pokorski, Planning & Development Director
Mr. Darren Gerard, Planning Services Manager
Mr. Glenn Bak, Planner
Mr. Eric Smith, Planner
Mr. Ray Banker, Planner
Mr. Farhad Tavassoli, Planner
Ms. Jaclyn Sarnowski, Planner
Mr. Tyler Martinez, Planning Intern
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney

ANNOUNCEMENTS: Chairman Harris made all standard announcements.

APPROVAL OF MINUTES: March 21, 2019 and April 18, 2019

AGENDA ITEMS: BA2019014, BA2019020, BA2018083, BA2019013, BA2019016,
BA2019017, BA2019018, BA2019019, BA2019021, TU2019008

Chairman Harris requested a motion to approve the March 21 and April 18 minutes.

BOARD ACTION: Member Loper motioned to approve the March 21, 2019 and the April 18, 2019 minutes. Member Cardon second. Approved 3-0.

Chairman Harris said item #2 – BA2019020 is moving from the consent agenda to the regular agenda.

Mr. Gerard presented Chairman Harris with a service award recognizing his 10 years of service. Chairman Harris said it's been great working with Planning and the Board of Adjustment he really enjoyed it, and appreciated the opportunity.

CONTINUANCE AGENDA

BA2019014 Applicant/Owner: Location: Zoning: Requests:	XLNT Investments, LLC (cont. from 4/18/19) Timothy A. La Sota, PLC / XLNT Investments LLC 825 N. Scottsdale Rd. – approx. 400' south of Curry Rd. in the Tempe area IND-2 Variance to permit: <ol style="list-style-type: none">1) A proposed medical marijuana dispensary and cultivation site to be separated 251' from an existing medical marijuana facility and;2) A proposed medical marijuana dispensary and cultivation site separated 1,294 from an existing park and;3) A proposed medical marijuana dispensary and cultivation site separated 83' from an existing adult oriented business where 1,500' is required per MCZO	District 1
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Mr. Gerard presented the continuance agenda.

BOARD ACTION: Member Loper motioned to continue BA2019014 to the June 20, 2019 hearing. Member Cardon second. Continued 3-0.

BA2019019 Applicant/Owner: Location: Zoning: Requests:	3906 W. New River Rd. Carolyn Oberholtzer, BFSO / CP2004 Station, LLC 3906 W. New River Rd. – Northeast of the intersection of Interstate 17 (I-17) and New River Rd. in the New River area C-2 Variance to permit: <ol style="list-style-type: none">1) A proposed off-site advertising sign (Billboard) sign face of 672 sq. ft. where 300 sq. ft. is the maximum permitted and;2) A proposed off-site advertising sign (Billboard) height of 66' where 30' is the maximum permitted	District 3
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Member Cardon recused himself from this case.

Mr. Gerard said the applicant for BA2019019 is requesting a continuance since there's only two Board members present.

Mr. Peck said Member Cardon has a conflict with this case and there would only be two Board members to vote. That's why the applicant is requesting the adjournment.

Mr. Richard Zimmerman said he doesn't want this case continued and he is requesting this case be voted on today.

Member Loper asked if he is here in favor or opposition. Mr. Zimmerman said he is in opposition, and he took time off of work to be here today.

Mr. Peck said the problem is one no vote would result in a tie which would be a denial.

Chairman Harris said the applicant has the right to have more Board members present and we feel more comfortable if more members were here.

Member Loper said he appreciates those that came down, and he hopes they can make it to the next hearing. They will have 30 days to meet with the applicant to discuss what's going on with the project. If they can't make the June 20th hearing this gives them time to put something together in writing to express opposition or unless they arrive at a different position.

BOARD ACTION: Member Loper motioned to continue BA2019019 to the June 20, 2019 hearing. Chairman Harris second. Continued 2-0-1(Cardon).

REGULAR AGENDA

BA2019020	Showman Property	District 3
Applicant/Owner:	Chris Adams / Dennis & Lorraine Showman	
Location:	807 E. Joy Ranch Rd. – 7 th St. & Joy Ranch Rd. in the Desert Hills area	
Zoning:	Rural-43	
Request:	Variance to permit: 1) Proposed street-side setback of 15' where 30' is the minimum permitted	

Mr. Tavassoli presented BA2019020 and noted the property is accessed by a 10 foot ingress/egress easement on the east side of the property. The easement also provides access to the adjacent residence to the south. Since the easement serves as the primary vehicular access to the property the 20 foot street-side building setback must be maintained from the edge of the 10 foot easement. The topography in Desert Hills consists of a series of natural drainage washes although the subject property itself is fully graded and unremarkable. The owner is proposing to construct a 36' x 38' pre-fabricated metal storage building five feet from the ingress/egress easement which is 15 feet less than what is required per the zoning ordinance. The applicant contends and staff concurs with a required rear yard building setback. 30 feet is virtually impossible to locate the storage building in the rear yard because of the location of the existing leach lines and septic system. Based on what the applicant provided and staffs analysis, the applicant has demonstrated that applying the requirements of the MCZO to this property that there is a peculiar condition involved and an undue physical hardship. This prevents the development of the property and the existing septic and leach lines preclude the applicant from placing the proposed building 20 feet from the edge of the easement or in the rear yard.

Mr. Dennis Showman, the applicant, said after several deaths in the family he picked up a number of vintage cars. He didn't want the cars sitting out in the open, and it's the only place on the property that is realistic to build.

Member Loper asked if he is aware of the opposition from the New River Desert Hills Community Association, and they offered some alternatives. Mr. Showman said yes.

Member Loper asked if that would solve the issue for you. Mr. Showman said not at all. There could be another placement but his neighbors won't like it and he doesn't like it. This is a hardship because the way the house was built and the position of the leach lines. He needs a variance and the law allows for that variance.

BOARD ACTION: Member Loper motioned to approve BA2019020 with conditions 'a'-'c'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received April 22, 2019.
- b) Failure 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.

BA2018083	Rasa Properties LLC (cont. from 4/18/19)	District 3
Applicant/Owner:	Roberto Santos / Rasa Properties, LLC	
Location:	1238 E. Calvary Rd. – 12 th St. & Circle Mountain Rd. in the New River area	
Zoning:	Rural-43	
Request:	Variance to permit: <ul style="list-style-type: none">1) Existing side yard setback of 25' where 30' is the minimum permitted	

Mr. Smith presented BA2018083 and noted there was opposition, and they showed up at the April 18 hearing. There was a violation on the property on January 10 for construction without the required clearances and permits. The applicant proposes allowing the existing structure, which is attached to the residence to remain at 25 feet from the north side property boundary. The structure is 396 square feet and total lot coverage is 9.1 percent for the residence and all the other structures on the site. There are no peculiar conditions and the request fails to meet statutory test for variance approval.

Member Loper asked if this were a detached structure what the setback requirement would be. Mr. Smith said if it was detached it could go as close as three feet to the side property boundary.

Member Loper asked then they wouldn't need a variance if it was detached. Mr. Smith said no.

Chairman Harris asked if the applicant is here. No response.

Mr. Nicholas Ellis said he purchased the adjacent property about four years ago and he built a simple four-walled structure. He believes in Maricopa County and he believes in the rules. He paid over \$12,000 in permits for his structure. Once the property was subdivided that structure should have been removed. When he checked the tax records this property has more than doubled in square footage and the tax collections is nearly half of what the structure actually is. He doesn't understand why a property like this gets special consideration when he got none when he paid for his permits, and he did everything legal. This entire structure was never legal and never permitted.

Member Loper asked where his home located in relation to this property. Mr. Ellis said to the south.

Member Loper asked do they pass your property to get to theirs. Mr. Ellis said yes, he has given up 20 feet of his property as an ingress that he pays for and maintains.

Member Loper asked if he understands what they are asking to get approved, and said if it gets approved it would have to go through a permitting process and it will kick that record to the Assessor's to get the property properly accessed.

Member Loper said this property is on the other side of the residence from you, and it's on the north side from you. Mr. Ellis said if you look at the property a slab is there where the building was removed when it was subdivided. There's structures all to the south of the existing home, these structures serve no function except blocking the view and infringing on the property. He was told the first 40 feet cannot have structures on that lot, and the first 40 feet on his lot cannot have structures because Calvary Road is considered the front side of that property.

Mr. Gerard said Mr. Ellis property fronts onto Calvary and the south is his front, the north is his rear and the west is a side and the east is a street side, and with the subject property the east is the front, the west is the rear, and the south and north are sides. The requested variance is for an existing structure that's attached to the primary dwelling and it's only 25 feet from the north side lot line which needs to be 30. If it was structurally detached it could be as close as three feet to that north line or three feet to the south line or three feet to the west line. It can't be within the first 61 feet of the east because there's a 21 foot easement. The setback orientations are different for the subject property than Mr. Ellis.

Mr. Ellis said he described his property incorrectly, my entrance is to the east. Mr. Gerard said the front setback is measured from his frontage which is the south. His house may enter from the street side, but regulatory wise south is the front, east is the street side, north is a rear and west is a side. Those are different orientations for setback calculation than the subject property.

Mr. Ellis said he was told the front of the subject property is the Calvary side no matter where the front door is to the property. If you are switching that rule then why doesn't his rule change? Member Loper said what Mr. Gerard is saying, you have two street frontages you have Calvary on the south and the extension on Calvary to the east. The more narrow part of your property fronts the street to the south, and that's why your front is the south. For the subject site the only street he has is that extension road of Calvary and his front faces east and your front faces south.

Member Loper said he appreciates his concerns on what's happening with the neighbor's property and not understanding the variations of how one lot can be vastly different than the lot next to you. The requested setback variance is on the north side of the property and it would appear to not be visible to his property. He recognizes it's an existing structure and it would either have to be removed or get the correct permits and go through that process. As mentioned earlier if it was a detached structure, because his north property line is side property line this could be within three feet of that property line. The requested variance of 25 feet actually pushes further to the south and makes it less noticeable because it becomes part of the permanent structure, and he is in favor of this variance.

Member Cardon said he agrees with Member Loper's analysis and he appreciates the gentleman that came down and spoke in opposition. He can see the concerns he has with the existing slab and he also sees how this variance doesn't address those issues, but denying this doesn't address those issues.

Chairman Harris said he is wondering why the applicant is not in attendance, and asked didn't they know about this hearing? Mr. Smith said he's been in contact with them over the past few weeks and he sent another e-mail last night.

Chairman Harris said if this means that much to them, they would be here. Member Loper said you're correct, when the applicant hasn't been here we have continued cases. We don't know why they aren't here and this may be significant to them, and they may have had car issues or family issues.

Chairman Harris said he understands, but this Board could have been notified.

BOARD ACTION: Member Loper motioned to approve BA2018083 with conditions 'a'-'c'. Member Cardon second. Approved 2-1 (Harris).

- a) General compliance with the site plan stamped received February 19, 2019.
- b) Failure 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.

BA2019013

Applicant/Owner:

Location:

Zoning:

Requests:

Our Saviors Lutheran Property (cont. from 4/18/19) District 2

FMQ Development / Our Saviors Lutheran

612 S. Ellsworth Rd. – Ellsworth Rd. & Weir Ave. in the East Mesa area

Rural-43

Variance to permit:

- 1) Existing light poles height of 35.5' within the parking area where 18' is the maximum permitted and;
- 2) Existing light poles and signage within the Sight Visibility Triangles where structures greater than 2' in height are not permitted and;
- 3) Waiver of parking area screening requirement along street-side (north) property line and;
- 4) Parking stalls 18' where 20.1' is required

Mr. Bak presented BA2019013 and noted some of the signage has been removed, and out of the nine light poles on the property, three are within the sight visibility triangle (SVT). There has been a long standing violation on the property since 2012. The owner purchased the property in 1984 and shortly after they built the church with proper permits, then some time later the western portion parking lot was enlarged significantly and they got rid of some landscaping along the north edge of the property. That's why we are requesting the screening. There's no known opposition and the test failed to meet the statutory tests.

Member Loper asked are the light poles that are over height in the SVT, and do we know how they compare to the street lights on Weir or Ellsworth, are they similar? Mr. Bak said we have no schematics of the height, but along Ellsworth there are power poles and they are similar in height to those.

Mr. Gerard said the light poles were installed by the utility provider and are likely similar.

Member Loper asked is the depth of the parking stalls are for the ones along Weir, or is this the depth along the development. Mr. Bak said the minimum is 18 foot depth stalls along Weir and there's others under the needed length stalls at 40.1 feet for both, and they need to be 40.2 feet. The most significant ones are for 18 feet.

Member Loper asked is it the one row on the west side of the church? Mr. Bak said yes.

Mr. Frank Quinn, the general contractor representing the church said, the pastor, Bill Rindy is here along with the president of the church, Ron Rock, and he appreciates the work staff has done. On May 22, 2012 there was a complaint submitted for a code violation that the paving was done without a permit. The church takes responsibility, and it should not have been done without a permit. There's no complaint mentioned about the light fixtures on Weir and Ellsworth. On November 1, 2012 the church moved forward to get a permit to add the retention basin, and the biggest violation the church is required to have 42,000 cubic feet of water to be retained. In November 2014 Ron and Bill joined the church, and this was two years after the violation took place. This is new leadership and to learn that two years before they got here this work was done without a permit. They have wanted to move forward and address the problem to resolve and to meet the zoning ordinance as best they can. They've worked hard with the other agencies with many meetings to work through this process. There are no objections from engineering, transportation, drainage or flood control or environmental. SRP said the light posts are 35 feet in height. Their civil engineer looked at this and there's only two light posts in the SVT. The one on Ellsworth is on our side of the line, and the other two are clearly in the SVT. The one on Weir Avenue to the west, this light post sits 25.4' back from the street, and if you create a triangle from the property line and to where a car would actually pull forward to make a decision to turn left or right, that light post is out of the SVT. There's only two, not three in the SVT. Staff has made comments that it would not cause any hazard where it is. The other light post is on Weir but closer to Ellsworth and that just sits touching the line. They recognize that no exit signs are allowed to be in the SVT and they are going to remove them. He said the definition of 'peculiar' is strange, odd, or unusual. The actual test is to explain if there is something strange and unusual or odd, and yes, the lights were put in by SRP. He said if a city or county came knocking on your door and said you need to move all your light fixtures because SRP put them in 20 years ago and didn't get a permit, or didn't put them in right and they want you to pay the bill, how many would just pay the bill or say you need to discuss with SRP. This is a hard one to handle. SRP says when you bring the posts down to 18 feet the photo matrix shape is how the light is disbursed on the asphalt and they would not nearly cover the same space that they do now. More than double the light fixtures would be required plus trenching the asphalt and digging it up, putting in new conduits and an additional 10 to 14 light fixtures. This would be an enormous hardship, and there is a peculiar event that took place here. We have documentation that a municipality put these light fixtures in and documentation that the permit cost is zero since it is in the lease payment. The lease agreement that was entered into with the church and SRP was almost 20 year ago, and had it been six month longer we would have complied with legal non-conforming and not been here today. SRP said to him they don't put lights in without a permit and don't put them in on property that's not theirs. This is a peculiar situation where the County says they don't have any record of a permit. They are asking for the light fixtures to remain as they are. The church only conducts services on Sundays and also a Saturday afternoon service. There's no cars the rest of the week. The one day it's in the morning for four services and then one service on Saturday. We are asking for seven percent of the entire parking lot to be designated for compact

parking. The church has done an enormous amount to preserve as much as they could to the zoning ordinance. They are about to put in the retention tanks that are required to get this property fixed spending hundreds of thousands of dollars to do this. They have to replace the curbing to the south with the required sloping, and have to redesign the entire parking lot to have the angles correct, and restripe the parking lot, and resurface it for a cost of \$50,000 to meet that requirement. They are requesting the four variances be granted.

Member Loper asked if staff is aware of any accident history along Weir with these driveways. Mr. Gerard said he is not aware of any accidents.

Member Loper asked if they have looked through the stipulations, and if they would have a problem with another stipulation added that stated 'any stalls less than 18 feet deep to be designated for compact vehicles' and can add the wording in front of the space. Mr. Quinn said that's appropriate.

Member Cardon said if the parking along Weir is only used during daylight hours and would it be appropriate to make a condition that parking along Weir can only be done in the daylight hours, or if that is even possible? Mr. Gerard said this is a more like a "feel good" stipulation, and it is unlikely to have efficient enforcement other than self-policing.

Chairman Harris said he kept hearing them speak of peculiar situations but it didn't sound like things this Board is supposed to consider. Mr. Gerard said the actual poles located in the SVT were more than 25 feet from the actual pavement lanes and they were outside of the engineered site lines, which is a separate issue from the ordinance. Clear site visibility triangle which is just a standard one-size fits all 25'x25' based upon the driveway intersection with the street at Weir and Ellsworth. The other SVT's are for commercial driveways, it's not commercial but a public assembly use. SRP is equivalent to a municipality, they installed the light poles and there's a question of the local jurisdiction coming in claiming a regulatory authority, and a claim from a third-party municipality to obtain permits. We have zero records of permitting, and we have a comprehensive list of permits post 1999.

Mr. Peck said Mr. Quinn raised the question if the peculiarity had to be physical, and he understands the dictionary definition, however the case law is clear that the condition has to relate physically to the property itself. The examples he gave is out of the statute, ex. topography, location, and size. They have to be peculiar, and physical, and the condition can't be created by the applicant, such as having done a lot split. The Board has to decide if Mr. Quinn has identified any peculiar conditions that do relate to the geography. In order for it to be a basis for a variance the peculiarity must be physical, and when you apply the regulation to the property and the peculiarity has to cause the hardship.

Member Loper says when he looks at the historical photo from the year 2000 to what it is today, it looks the same with parking on the west side, and it may or may not been in dirt, but that is probably why they paved it. Clearly there's been growth in the church. The light poles were put in by SRP and they are a quasi-municipality, and we don't have a lot of control over SRP. We don't know when the light poles went in but they are there. The SVT is measured at the property line and it is clear from the site plan that the actual paved area going out to the roadway is outside of that, and the SVT is kind of behind when you are entering traffic, and there's no known accident history with the driveways. Ellsworth is a major arterial and Weir might be a local or

collector street, but it looks like they were set back by SRP at a time when they were thinking long term. He is in favor of this variance.

Member Cardon says he agrees with Member Loper's comments.

BOARD ACTION: Member Loper motioned to approve BA2019013 with conditions 'a'-'d' with addition of condition 'e'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received April 22, 2018.
- b) Failure 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.
- d) Any existing signs, located within adjoining dedicated right-of-way, must be relocated prior to the issuance of any building permit connected to the site.
- e) **Any parking spaces less than 18' deep shall be designated for compact vehicles.**

BA2019016	12481 W. Glenn Ct.	District 4
Applicant/Owner:	Michelle Uhan / Meritage Homes	
Location:	12481 W. Glenn Ct. – approx. 475' from the intersection of 124 th Ave. & Glenn Ct. in the Glendale area	
Zoning:	R-5 RUPD	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed front yard setback of 0' for a portion of the garage in the R-5 RUPD zoning district, where 20' is the minimum required	

Ms. Sarnowski presented BA2019016 and noted the site is comprised of 4,646 square feet and its lot 50 of Marbella Ranch, parcel one subdivision. The site is vacant and is in the process of being developed. The applicant is requesting a zero front yard setback due to the configuration of the lot being next to tract 'c', and the curvature of the road into a cul-de-sac. The variance request is for a garage portion and not the livable area. The test fails to meet the statutory requirement outlined in the staff report.

Member Loper said staff mentioned the request is for zero feet and the materials in the applicants hand-out is showing 10 feet. He asked staff if they know if it's been modified. Ms. Sarnowski said she isn't aware of any modification and the applicant would have to address that.

Mr. Troy Hill representing Meritage Homes said when we were doing the plat, we deleted one of the lots on the far east side of that, and when we did that we did not shift all of the lots to the east. If we would have shifted all the lots to the east by 21 feet he wouldn't be here today. When they were going to sell lot 50 the Luis family asked for the 1840 model. They have two sons and they wanted to be in a cul-de-sac. It's not a zero lot line because there's an 8 foot public utility easement (PUE). He took from the property line to the corner of the garage and that distance is actually 10 feet, and there's a minimum 15 foot back yard setback. If you push that back from

the property line you're at 19 feet, 4 inches and you have a minimum of 20 feet. The Luis family asked to put the home as forward as possible to have a bigger back yard. He agrees with everything Ms. Sarnowski said, but we are not looking for a zero setback, we are looking for an 8 or 10 foot on the back side of the PUE so we can give them the largest back yard as possible. If you want the backyard to be at 23 feet then we would have a discussion with them, or have them move to a different lot.

Mr. Gerard asked is it only the garage portion that would be closer than 20 feet and would it be nine feet instead of 10 feet. Mr. Hill said it is right on the PUE, so you can say it is 8 feet since it's touching the PUE.

Mr. Gerard said the request before the Board is for an 8 foot setback where 20 feet is required.

Member Loper said the peculiarity of this is the cul-de-sac is offset. If it were centered in the roadway we probably wouldn't be having this discussion. He was glad to hear it was the homeowner that wanted a good rear yard. He is in support of the variance.

Mr. Gerard said the applicant did indicate they have an option to meet the setbacks. There's a desire for a larger rear yard, but does that rear yard have anything to do with the cul-de-sac at all.

Chairman Harris said they are asking for 8 feet when 20 feet is required, and asked how big of deal is that. Mr. Gerard said if the lot line was at a 90 degree angle at the street it would meet the setbacks. This is just a subdivision layout issue, and a housing product choice issue, and the lot is developable as is.

Member Loper said he supports the variance and he believes this works for the livable area setback. If it was a regular cul-de-sac they probably would not have the issue, and if weren't the developer and the actual homeowner he still would be inclined to support it.

BOARD ACTION: Member Loper motioned to approve BA2019016 with conditions 'a'-'d'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received April 12, 2019.
- b) Approval of this variance for a reduced front yard setback of 0' shall only apply to encroachment of the garage. All livable spaces of the residence including any future expansions within the front of the lot shall meet the underlying R-5 RUPD zoning district standards of 20'.
- c) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2019017
Applicant/Owner:

18709 E. Blue Sky Dr.
Dan Pottinger, Cardno Inc. / Taylor Morrison

District 2

Location: 18709 E. Blue Sky Dr. – Rio Verde Dr. & Forest Rd. in the Rio Verde area
Zoning: R1-6 RUPD
Request: Variance to permit:
1) Proposed height limit of 5' where a maximum of 2' is the maximum permitted within the sight visibility triangle

Mr. Tavassoli presented BA2019017 and noted one of the sight visibility triangles (SVT's) is in tract 'f' to the north and the other is in lot 19 to the south. The applicant is proposing two five foot posts within the SVT's and a 31 foot long gate to allow egress only access, and emergency ingress at the intersection at Forest Road. Per the zoning ordinance no structure, landscaping, fence, wall, terrace or other obstruction in excess of two feet in height measured from the lowest established elevation of the nearest street and center line shall be placed in the SVT. They are requesting a five foot gate which is in excess of three feet which is currently allowed. The request does not meet the statutory test for a variance.

Member Loper asked where the gate is located, do we know the tract is deep enough to accommodate the SVT? Mr. Tavassoli said yes.

Member Loper asked do we know if Forest Road is a collector, local or arterial road. Mr. Gerard said he believes it's going to be an arterial, the same classification as Rio Verde Drive. He believes without there being an expansion of an additional travel lane on Rio Verde Drive with the build out at Vista Verde, he doesn't believe there will be any further build out on Forest Road.

Member Loper said the unused right-of-way conditions are likely to remain for at least some time.

Mr. Robert Johnson representing TaylorMorrison said the project is currently being developed with nine homes. The final plat and original plans had this community to be gated, and that was done by the previous developer. It was completely finished except for the gates and the mailboxes and some additional landscaping, but we learned through the submittal process that there was more things to be done, and things weren't quite configured the way we thought they would. This is a challenging site and it's very constricted. The Tonto HOA issued a letter of support and they are adamant that we gate this age restricted community. The homeowner's look for security and to have the ability to lock and leave while having that sense of security behind a gate. Lot 19 is adjacent to the roadway that is under construction, and the rolling gate would be to the north sliding across the open tract space. MCDOT has no objections to the requested variance and we worked with the Rio Verde Fire District and they approved the gate layout. A transportation study was done last December and it was recommended the road remains two lanes through the year 2040. The roadway is signed at 30 miles an hour. The hardship would be the future residents if this gate doesn't get approved. They have worked with the gate company to come up with different scenarios and this is the best one that works.

Member Loper asked how wide the lots are. Mr. Johnson said they are 50 wide lots.

Member Loper said the gate will occupy a large portion of their front yard, and asked which way is the garage hung. Mr. Johnson said to the west, usually with corner lots the garage would be to the inboard.

Mr. Gerard asked is the gate on Rio Verde is where they'll be stacking and queuing of cars trying to turn in and turnaround at the Forest Road gate be emergency ingress/egress only. Mr. Johnson said the Forest Road gate will be egress for residents and ingress for fire, and the turnaround would be at the entrance to the west side of the property which is a large paved area where they could turnaround.

Member Loper said he appreciates and understands having the sight visibility triangles. Nothing is more frustrating than trying to exit any site and having signs, pulls, and trees in the SVT. The County has a baseline standard on what needs to be maintained. In this instance the application of the SVT as defined doesn't work or serves the purpose. The exit out onto Forest Road is significantly after that, and with a gate there people are stopping anyway, and they proceed out. That's where the SVT would be applied but that's not what the code says. Because there's all that extra unused right-of-way and he believes that does create a peculiar condition to support the variance. Along with the MCDOT comments and the Rio Verde transportation study that it's unlikely that Forest Road would be expanded to push the driveway back. He was glad to hear that it's an exit only because it doesn't have any turnaround ability plus the HOA and the fire department supports this.

Member Loper asked if we need to add a stipulation that dictates it egress only. Mr. Gerard said perhaps you want to add a stipulation to that. Should there be any future expansion it would be very close, and that's the concern with the stacking and queuing.

BOARD ACTION: Member Loper motioned to approve BA2019017 with conditions 'a'-'c' with addition of condition 'd'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received April 12, 2019.
- b) All required building permits for proposed structures 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.
- d) **Access at Forest Road shall be egress only.**

BA2019018	Mei Property	District 2
Applicant & Owner:	Sheila & Brian Mei	
Location:	22806 E. Kalil Dr. in the Goldfield Ranch area	
Zoning:	Rural-190	
Request:	Variance to permit: <ul style="list-style-type: none">1) Proposed hillside disturbance (fencing) outside the lot's principal building envelope	

Mr. Banker presented BA2019018 and noted the applicant is proposing to construct a perimeter pole fencing around the entire property where portions of the lot are considered hillside and 800 linear feet would be considered in this area. The owner provided a justification for the request

that their future home would be too close to the fencing if it were required to be located within the building envelope along the hillside areas on the eastern side of the lot. They also want to keep their horses separated from wild horses and would lose a significant portion of their property if the variance is not granted. The applicant provided photos of similar existing fencing located in the Goldfield Ranch area. Staff doesn't believe there is a peculiar condition facing the property as the site is over six acres, and the fencing could be scaled back to stay within the building envelope to still secure the equine on the property. Staff doesn't believe there's a physical hardship preventing development on the property, and there's alternatives available by reducing the footprint or relocating the future residents to be further away from the fencing. The property is well over the minimum acreage required of 4.36 acres, this allows for more developable land within the principal building envelope. There is no known opposition to this request.

Ms. Sheila Mei, the property owner, said when they purchased the land they understood the building setbacks for the home. When they spoke with the civil engineer, the realtor and the other homeowner's it was their understanding they could build a fence on their property line. They want to keep their horses secure. There's three herds of wild horses in the area and they want to prevent them from coming on their land. They raise young horses and they don't want the wild horses to destroy their property, and cause mayhem to their horses. They also want to fence their land without losing any of it. They talked to their engineer to move the house farther to the east but it would be a considerable hardship with the retaining walls and to the build the lot up, and it would cost an additional \$30,000 for retaining walls and engineering fees. They are trying to impact the land as little as they can. The contractor has agreed to hand dig the posts so there will be no grading or disturbance to the hillside. If they are forced to use the building setback they would lose 60 feet to the north and 30 feet to the east which is a significant amount of land. Two years ago when they purchased the land they were told a building was a roof structure, and this is a two rail fence and there's nothing below it and it's just to keep the horses separated and safely on our land. Our proposal will reduce the environmental impact, and this area is very rural and very equestrian friendly. The Wilm's family have their fences on their perimeter and it hasn't obstructed any of us. Images were provided of other properties in the area with fences right on the perimeter.

Mr. Gerard said fencing is only required to the meet the principal building envelope in hillside slopes of 15 percent or greater. Everywhere in the County you can have a fence on a property line except in these hillside slopes that are 15 percent. The Wilm's property is an agricultural property and it is exempt from zoning. If you are raising horses you could possibly qualify for the tax assessor classification of agricultural exemption since your property is over five commercial acres. They could be exempt from zoning, and could have a fence on the property line.

Member Loper said based on the applicant's presentation and the maps provided you can see there's a lot of constraints on this site. He is in favor of the variance as proposed. If this property was agriculturally exempt we wouldn't be having this meeting, and they could potentially be eligible for an agriculture exemption.

BOARD ACTION: Member Loper motioned to approve BA2019018 with conditions 'a'-'c'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received April 16, 2019.

- b) Failure 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.

BA2019021	Howard Property	District 2
Applicant & Owner:	Danny & Jenell Howard	
Location:	29611 N. Cave Creek Rd. – 56 th St. & Dixileta Rd. in the Cave Creek area	
Zoning:	Rural-43	
Request:	Variance to permit: <ul style="list-style-type: none"> 1) Proposed side setback of 7' (north property line) where 30' is the minimum permitted 	

Mr. Bak presented BA2019021 and noted there is no known opposition and the request fails to meet the statutory test for a variance. There is a significant wash to the south and within that wash there's a patent easement 30 feet wide. This causes a 53 feet setback that is required from the south. They requested that the house be only seven feet from the north property line. It was discussed to abandon the patent easement but that is a lengthy process which would solve one problem but would lead to more significant in the wash.

Member Loper said they have physical constraints and hardships that affect the property but it's really because of the size of the dwelling, and asked if they build something smaller could they meet setbacks. Mr. Bak said correct, that's one of the considerations and also the orientation. The front door faces to the west and the wider portion of the residence goes north and south.

Mr. Peck said a peculiar condition is only part of the test, the question then becomes is a hardship created because your applying the regulation of the ordinance, and if there is a hardship it's for reasons that don't relate to the regulation. That's what the Board needs to figure and balance out.

Ms. Jenell Howard, the applicant, said they understand the lot has two issues. There is a large wash, and up until the approval from zoning we were told we were all good, and then they were told the patent easement is still valid. They thought it was not valid anymore since the neighbor to the south had gotten a roadway abandonment in 2007. The architect or the engineer didn't realize this easement was still a problem and the length of the house originally with a 30 foot setback on each side. They talked with the neighbor and she didn't have a problem with the housing moving over since her house sits further back. We are putting up a fence on our property so there still will be privacy. Turning the house would be a financial problem because they would need much more retention to go along the backside of the property, and it would only give them a five foot setback on the front and back yards. They have a septic system that is alternative in the front yard, and this placement of the house is needed.

Mr. Danny Howard, the applicant, said he bought the property about 20 years ago and he purchased the property for a retirement home. He is going to retire in a few years and this is where he wanted to live. Most of the custom homes in the neighborhood are this size and 90 percent of them face 56th Street. By turning the house we wouldn't have no front yard and no

back yard and it really isn't practical. This is going to be their home and they will be living here, and to build a smaller house on this property won't be feasible.

Ms. Howard said they researched the other homes in the area and knew the size of the home was comparable to the area before they even got this far. The patent easement and the major wash really posed a problem.

Member Loper asked is the patent easement considered to be a street. Mr. Bak said yes, there was some confusion in the past where they thought that it was 20 feet from the north property line, but it is 30 feet from the north property line since that is a regular street side with no patent easement encumbering it. To the south you have a patent easement within the wash and add 20 feet to it because it's a street side and you get the 53 feet.

Mr. Gerard said the patent easement only affects the south. It has pushed them north as the wash. They are asking for seven feet from the north where they need to be 30 feet and they meet the south.

Mr. Gerard said there is a lot of discussion of the patent easement on the south, but that is also the argument of the physical hardship due to a wash. The wash as erosion setbacks are an environmental rule not a zoning rule, between that and the alternative septic in the front is the applicant's strongest argument for a peculiar condition. Staff does believe the house can be reoriented.

Member Loper said based on the applicant's presentation and the existence of the wash along the south with the erosion setback that pushes things to the north. As well as the patent easement which also pushes things to the north, and they have to allow for a septic tank and a leach field, and a backup location for that. He moves for approval.

BOARD ACTION: Member Loper motioned to approve BA2019021 with conditions 'a'-'c'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received April 22, 2019.
- b) Failure 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.

TU2019008	Kodiak Investments Property	District 2
Applicant & Owner:	BCS Enterprises Inc. & Kodiak Investments LLC	
Location:	West side of 80 th St., approx. 1,500' north of Warner Rd. in the Mesa area	
Zoning:	IND-3	
Request:	Temporary Use Permit (TUP) for temporary use of mobile trailers as a contractor's office and yard during construction of a permanent facility	

Mr. Bak presented TU2019008 and noted the applicant's lease at their current location for their business expires the end of August. They submitted an application for a temporary use permit, and it was determined this needs to be brought to the Board's attention. They are needing to get a Plan of Development (POD) for a 5,200 square foot building. It arguably meets the other use category but it is broadly defined, and it doesn't give us a great deal of clarity to what fits into that. They are looking to put five modular's together to serve as a temporary office and storage of equipment for their business. They initially sought six months for approval, and more realistic time frame is two years to give them enough time for their POD, and their building permits, and to build the building.

Member Loper asked this was needed for more thorough review, it wasn't because of opposition or anything. They barely submitted and the opposition period expired so they wanted to bring it forward ahead of schedule? Mr. Bak said staff created an ambition timeframe that they weren't able to meet with possible opposition coming in and taking several days to go back and forth with the report we found ourselves in this situation.

Member Loper asked is this a renewal or they are renewing the lease on the property by the end of August. Mr. Bak said their lease expires at their other property at the end of August. They will have no office space to work out of. The current site is vacant and they want to move forward with temporary offices, and in the meantime work on their permanent office to be completed in two years.

Mr. Gerard said the purpose of a Temporary Use Permit (TUP) is to allow a use that normally is not permitted in the zoning district, but this is a permitted use in an industrial zoning district. Staff did not administratively approve this because staff believes a Plan of Development is required and could go straight to a building permit. There are concerns of the timing of the POD, and the building permits, and the applicant is wanting to move temporary structures out there. Our stance is we cannot make the determination administratively that this an appropriate temporary use that should be approved and that's why staff brought it to the Board.

Chairman Harris asked staff their recommendation. Mr. Gerard said staff's recommendation was for a continuance. Staff is not supportive of the TUP request and recommend denial. We provided stipulations for your consideration should you make the determination this is an appropriate temporary use permit.

Mr. James Middleton, the applicant, said he and his partner, Casey Johanson owns BCS Enterprises, a demolition contractor. They sold their existing property and have to be out by the end of August. They purchased just under 16 acres on 80th Street and are contracted with an architect, a civil engineer, soils engineer, and have done a traffic study and are presenting everything for the POD but are under a timeline. We are looking to do what is normal with many construction projects to set up a temporary office trailer on the site that we can operate out of the temporary office. They are asking to utilize the temporary office trailer while we build our permanent office and shop.

Member Loper asked how many buildings will be moving to the site as a temporary use. Mr. Middleton said it's one building, but they are five pieces that are 12'x60'. It's a typical office trailer without the center walls and you slide them together to be 60'x60'.

Member Loper asked are the trailers part of what's going to be permanent. Mr. Middleton said no, they will only utilize them while they are building an office building 5,200 square feet, and a shop 11,000 square feet, and a warehouse 15,000 square feet. These will be permanent buildings on the site. Once we get into our permanent buildings the temporary building will go away.

Member Loper said he doesn't have a problem with a construction trailer being used during construction, but in this case they have not submitted plans for the site. Mr. Gerard said he is not aware of any pending building permits.

Member Loper said the concern is the permanent structure, then you're back here nearly two years later seeking additional time. Is there's a way that you could tie the submittal of a plan of development and the processing of it to a temporary use permit.

Mr. Peck said if they were to submit a plan of development then there is no temporary use permit. This is an industrial zone and a normal construction trailer situation, for instance you are building a house so having a construction trailer is not permitted in that zone and that is why you need a temporary use permit. A temporary use permit under the ordinance is for a use that is not appropriate as a permanent use. In the IND-3 zone, the Board of Supervisors in adopting the zoning ordinance has determined that a construction office is an appropriate permanent use. If they submit a plan of development whether it's a modular situation or a permanent building that's 11,000 square feet. A temporary use talks about the use, so once they give a POD they can go in as of right.

Member Loper said they can have the buildings they are seeking. Mr. Peck said absolutely, when they are ready to get the building permit for the permanent building they would show a new plan of what it's going to look like.

Mr. Gerard said they can have a POD with phases.

Member Loper asked how close they are to having a plan of development ready for submittal. Mr. Middleton said they are in the process, and a civil engineer is doing the grading and drainage plan right now. They just aren't finished with it and we can't submit for the POD until we can get to that point. We're in a time bind where we need to move out and we are asking to move into the temporary trailers which would be appropriate anyways on the site. They just want to get there sooner.

Mr. Casey Johansen said the plan of development they'll be submitting will be for all the new buildings, and we are 30 days out. We are in limbo where we either have to go find a place to rent to move our office to, or move into these trailers at the end of August.

Mr. Middleton said it puts a hardship on us if we have to move twice.

Member Loper said since it is a use by right it is not a temporary use as normally defined. He asked would we be establishing precedent or would we be able to say in this particular instance we find certain circumstances that apply here that wouldn't necessarily apply to another IND-3.

Mr. Peck said he doesn't believe the Board has jurisdiction to hear this application because the ordinance says a temporary use has to be a use that is not appropriate on a permanent basis. This is technically not a temporary use permit, but it is before you to make that determination. It

would be a precedent that you would be saying the Board would entertain a TUP because somebody needs to get in quicker for a use that is otherwise permitted. You have to consider if that's how you want to interpret the ordinance, and if that's how you want to open up the TUP.

Member Loper said here's a scenario, I have a property that is IND-3 and I am working on a POD and I need a place to store construction materials that would otherwise be permitted in an approved plan of development. I can't legally just move them on the property, I would run the risk of a code enforcement issue. If I have a POD in process, can I put these on my site? Mr. Gerard said code enforcement is based on a citizen complaint and there wouldn't be a staff generated complaint. If you are to move on or use for storage, we won't open a violation unless we received a citizen complaint. If we receive a citizen complaint we seek voluntary compliance and they would be notified. They would be using land without a plan of development and haven't established a use, and you would have to remove the items from the property or seek an administrative remedy with the application necessary to have that entitlement. We have the ability to enter into a compliance agreement by a set of certain deadlines by which time any fines may be suspended until such time.

Member Loper asked do you need these set up on the property and be energized, or are they going to be used prior to starting construction of the office building and shop building. Mr. Middleton said it depends on how fast we get a building permit. We are in the process of getting our drawings done right now so we can submit for the permit. Yes we would need to use them before we get a permit through the County for the permanent building.

Member Loper asked how soon do these temporary offices need to be occupied, and would you store them on site until you get the main permit, or is this where your office is going to be when the POD is under review. Mr. Johansen said we would move into the temporary office when we have to be out of the other building around the beginning of August.

Mr. Middleton said we need to be able to move furniture, our computers, and equipment from our office.

Member Loper asked is there electrical to the new site? Mr. Middleton said that's why they are asking for the temporary use permit so they can contact SRP to get an address established and bring in temporary power to that location.

Member Loper said his concern is not what you want to do. It's industrial and you are allowed to do it, but it is the precedent by opening Pandora's Box to say you can open a temporary use permit to apply for anything like a house while it is under review. He does have a problem with that. We are creating a process here that is not presently allowed.

Mr. Bak said in regards to the precedent issue he took before the Board a lesser issue, people wanting to live in an RV while they are building their home. What we need is an issued building permit in hand ready to go so that you can start construction as soon as you're on the property with your RV. There was one case he took before the Board where they didn't quite have it issued but they had to be out of their other residence and they needed some time to bridge the gap.

Mr. Gerard said the ordinance is very clear that they have to have an issued permit in order to have the temporary housing.

Mr. Peck said living in an RV in a residential zone in a permanent basis is not permitted, that's the difference in Mr. Bak's example.

Mr. Gerard said if the Board does continue this to June we want to work with the applicant to see about getting administrative approval of this POD because they already have a site plan showing the temporary condition and an ultimate build out. It would need to be reviewed by engineering and staff can work with them on a timely process for the POD.

Mr. Peck said this would be to the applicant's benefit because if there's a time crunch and as they get closer and if the Board needs to revisit this they could, whereas if the Board was to act today and possibly deny it they would be out of luck. Taking the month that staff originally recommended to get the POD further along would probably be to their benefit.

Member Loper said this is not to take away their due process and he doesn't want to put them in a bind, but with the 30 days you might not even need this any longer. Mr. Middleton said they are trying not to be in violation by putting the trailers out there without having the proper use.

Chairman Harris said what we are looking at is a denial or a continuance, and he would be in favor of a continuance so they can work some things out in that 30 days.

BOARD ACTION: Member Loper motioned to continue TU2019008 to the June 20, 2019 hearing. Member Cardon second. Continued 3-0.

Adjournment:

Chairman Harris adjourned the meeting of May 23, 2019 at 12:38 p.m.

Prepared by Rosalie Pinney
Recording Secretary
May 23, 2019