



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

May 19, 2022

CALL TO ORDER: Chairman Loper called the meeting to order at 10:00 a.m.

MEMBERS PRESENT:

In-person
Mr. Greg Loper
Ms. Heather Personne
Mr. Jeff Schwartz

GoToWebinar
Ms. Fern Ward

MEMBERS ABSENT: Mr. Craig Cardon

STAFF PRESENT:

Mr. Tom Ellsworth, Planning & Development Director
Mr. Darren Gérard, Planning Services Manager
Mr. Matt Holm, Planning Supervisor
Ms. Rachel Applegate, Senior Planner
Ms. Paola Jaramillo, Planner
Mr. Martin Martell, Planner
Mr. Joseph Mueller, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Alisha Bach, Technical Team
Mr. Martin Camacho, Technical Team

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2022012, BA2022006, BA2022011, BA2022013, BA2022016, BA2021048, BA2022014

APPROVAL OF MINUTES: April 14, 2022

Chairman Loper asked if there were any changes or comments to the minutes for April 14, none.

BOARD ACTION: Chairman Loper approved the April 14, 2022 minutes as written.

WITHDRAWN AGENDA

BA2022012	DiGiovanni Property	District 4
Applicant:	Tom Stitt	
Location:	APN 502-03-092 @ 14041 N 184th Ave. in the Surprise area	
Request:	Variance to permit: A reduced street-side setback from 20' to 16'.	

No action required by the Board.

CONSENT AGENDA

BA2022006	Whitwam Property	District 2
Applicant:	Scott Whitwam	
Location:	APN 220-17-031 @ 548 N. 104th Pl. – University Dr. and Signal Butte Rd., in the Mesa area	
Requests:	Variance to permit: <ol style="list-style-type: none">1) Proposed front setback of 4.3' where 20' is the minimum permitted per MCZO Article 604.4.1.a and;2) Proposed side (north) setback of 1.9' where 7' is the minimum permitted per MCZO Article 604.4.2	
BA2022011	4420 Clearwater LLC	District 3
Applicant:	Don Schatz, Creative Renovations	
Location:	APN 169-16-092 @4420 E Clearwater Pkwy., in the Paradise Valley area	
Request:	Variance to permit: <ol style="list-style-type: none">1) Proposed hillside disturbance of 10,403 sq. ft. outside the lot's principal buildable envelope where hillside disturbance is prohibited per MCZO Article 1201.6.1.1	
BA2022013	Laufer – Hayes – Dustin – Layne Property	District 2
Applicant:	Steven Hayes	
Location:	APN 219-37-016D @16417 E. Duane Ln., in the Scottsdale area	
Requests:	Variance to permit: <ol style="list-style-type: none">1) Proposed west side yard setback of 18' where 30' is the minimum permitted per MCZO Article 503.4.2. and;2) Proposed lot area of 40,420 sq. ft. where 43,560 sq. ft. is the minimum permitted per MCZO Article 503.5.1. and;3) Proposed lot width of 133' where 145' is the minimum permitted per MCZO Article 503.5.2.	
BA2022016	Thomas & Nanci Olson Trust Property	District 4
Applicant:	Thomas Olson	
Location:	APN 200-33-989 @ 18618 N. Conestoga Dr. – 99 th Ave. and Union Hills Dr., in the Sun City area	
Request:	Variance to permit: <ol style="list-style-type: none">1) Proposed lot coverage of 70.8% where 68% is the maximum lot coverage required per MCZO, Article 702.5.4 of the R-3 RUPD SC (Z74-003) zoning district	

Mr. Gérard presented the consent agenda.

Chairman Loper asked if anyone from the public wished to speak on the consent agenda. None.

BOARD ACTION: Member Schwartz motioned to approve the consent agenda – BA2022006 with conditions ‘a’-‘c’, BA2022011 with condition ‘a’, BA2022013 with conditions ‘a’-‘c’, and BA2022016 with condition ‘a’. Member Ward second. Approved 4-0. Ayes: Schwartz, Ward, Personne, Loper.

BA2022006 conditions;

- a) Variance approval establishes a 4' front/east setback line for APN 220-17-031.
- b) Variance approval establishes a 1' north side setback line for APN 220-17-031.
- c) Variance approval establishes a 3' south side setback line for APN 220-17-031.

BA2022011 condition;

- a) Variance approval allows for a hillside disturbance of 10,403 sq. ft. outside of the lot's principal building envelope for APN 169-16-092.

BA2022013 conditions;

- a) Variance approval establishes an 18' (west) side setback line for the existing single-family residence on APN 219-37-016D.
- b) Variance approval established a 40,420 sq. ft. lot area for APN 219-37-016D.
- c) Variance approval establishes a 133' lot width for APN 219-37-016D.

BA2022016 condition;

- a) Variance approval establishes a maximum lot area of 70.8% on APN 200-33-989.

REGULAR AGENDA

BA2021048

Applicant:

Location:

Requests:

Olson Property

Tom Mooney, Mooney Design Group

APN 210-14-010E @ 233 E. Briles Rd., in the Phoenix area

Variance to permit:

- 1) Proposed front setback of 15' where 40' is the minimum permitted per MCZO Article 503.4.1.a. and;
- 2) Proposed hillside disturbance of 1,855 sq. ft outside the lot's buildable area where hillside disturbance is prohibited per MCZO Article 1201.6.1.1

District 3

Mr. Gérard presented BA2021048 and noted the applicant's argument for a variance is the site is subject to rugged terrain with elevation changes 65 feet across the site. There is recent opposition with a letter from Mr. and Mrs. Downey where they want current setbacks maintained for this neighborhood and indicated all the lots are a very large area. Staff believes there is opportunity for redesign then what is being proposed. The single-family residence is rather large for the site. There are other alternatives available with the potential for abandonment or reduction of the patent easement to increase the size of the building envelope or reconfigure what's been proposed and shift it to the west so it stays within the building envelope.

Vice Chair Personne asked if staff could talk more about the patent easement. She is used to seeing a blanket easement that you cannot abandon. Mr. Gérard said these were created by

a federal act years ago, there is a process to abandon patent easements in the cities and in the past several years there is a process in the County. It is a time-consuming process and is potential for this site where it could change the street line from where the front setback is measured, and it will alter the principle building envelope where a variance may not be needed.

Member Schwartz asked where they can apply for an abandonment. Mr. Gérard said it is a process through Maricopa County Department of Transportation (MCDOT) and it could take several months. Mr. Peck said he also represents MCDOT and once they do determine an abandonment the delay would be getting on the Boards agenda or if they have to do a larger study. Staff said this is part of an active road so odds are MCDOT would not approve abandonment but might approve abandonment of a portion of it. It used to be cities could abandon and counties could not. Maricopa County led the charge to get permission from the legislature seven or eight years ago to abandon them. MCDOT does them all the time now.

Chairman Loper asked is possible for them to get it abandoned or reduced. Mr. Peck said yes, the ones he has seen MCDOT has signed off on and he hasn't received any complaints that they don't do it.

Mr. Andrew Chi said he is the applicant and representative and the property owner is also on the call along with the architect. The roadway dead ends and it is partially in a 30-foot right-of-way. The accessory building is an existing detached garage that will be demolished. There are very steep elevation changes and there will never be a roadway connection to Briles Road because of a cliff that would prevent any roadway from being built. The original request in their report is to reduce the east front setback from 40 feet to 19 feet to accommodate the single-family dwelling. The other request is to reduce the north setback which is a side street from 20 feet to 3 feet. These setbacks are measured from the property line but the Government Land Office (GLO) easement lines are considered right-of-way shifting all the developable buildable area significantly to the west and south. On the western side of the property there is a wash and the old roadway will be demolished and re-vegetated. Where the house is proposed the property was already disturbed pre-2000. The goal of the variance is to allow a reduction in the setbacks from the GLO line for the house to be built in the pre-disturbed area and not move it anymore to the west to avoid disturbance to the natural terrain. We are requesting a small variance on the north with a triangular piece shown on the exhibit, and a portion of the home in the 40-foot setback on the east side. There was opposition received from the neighbor to the east, but the neighbor to the west submitted a letter in support of the variance. The peculiar condition is the property is rugged, uneven, and steep terrain, there is a 65-foot difference in elevation, there is a wash the owner is trying to avoid building or disturbing on the west side of the property, and there are two GLO easements on the north and east sides of the property which reduces the buildable area. The owner did speak to the County last year and he was discouraged on seeking the abandonment of the two easements. There are hardships the owner did not create. The owner purchased the property in November 2020 and there are natural encumbrances and drastic elevation changes limit the buildable area. The GLO created a 33-foot wide easement on the north and east side of the property. The property was significantly graded and disturbed by previous owners dating back to 1976. Not only are there physical challenges, but challenges the owner is facing to try and develop this lot that was not their fault. Granting the variance request would not cause a negative impact on the general intent and purpose of the MCZO. There are many other homes that are much closer to the property line than the owner is requesting. The owner is asking for relief to construct his home, and he is doing

it the correct way. The home to the east is only a few feet from the property line and may obtained two variances on that property.

Mr. Brian Olson, the property owner said they would like to build their home where it makes the most sense and with the least disturbance to the existing properties. He did speak with the County prior to purchasing the property in November 2020, and at that time he was told he would have to apply with the US government, and they would traditionally deny that until it was under a municipality. They didn't pursue the abandonment and applied for the variance.

Member Schwartz asked is the master bedroom side your cuts and the fills and are they towards the side of your front yard setback. Mr. Olson said the master bedroom is shown sitting on the fill that was added prior. The slope to the south of the master bedroom slopes up to the east. The base of that hill is on the left and the top of that hill is on the right and it's a bunch of fill. The cut is on the back side up towards Briles Road and it forms that cliff where the retaining wall is shown. We believe 3rd Avenue will never be connected to Briles Road.

Mr. Chi said he misspoke and the setback from the property line to the east is not 73 feet, it is 53 feet.

Member Schwartz asked if this is a single level home. Mr. Olson said yes, a single level with a walk out garage. Member Schwartz asked if there are any stairs inside the home. Mr. Olson said there are stairs from the garage to the level below. Mr. Chi said it is one level and the majority of the dwelling sits on one elevation and those steps are to the driveway area taking advantage of the terrain but keeping the house at one level. It is not a two-story house.

Member Schwartz asked what made you decide to move the house to the west. Mr. Olson said one of the key reasons is the hillside. There are hillside height restrictions and to have the home follow the terrain, the further west we go we would have to collapse down that hillside and possibly need a variance for the height.

Member Schwartz asked if they ever considered pushing the house to the west and put in steps internally and drop the house down to meet the height requirements. Mr. Olson said he didn't know all the regulations that well and he spoke with his architect and had them design this to the correct parameters and regulations. He didn't have them do multiple plans.

Member Schwartz said you don't put a flat house on a hillside lot, you stairstep the house down so you have more cuts and fills and work with the contours of the land. It may have eliminated the need for a variance. Mr. Olson said the previous owner flattened the hillside, but it is still hillside.

Mr. Gérard said there is significant disturbance that exists in the eastern half of this property with natural vegetation slopes on the western half. There is an existing detached garage encroaching the patent easement. The garage is being removed and all the eastern portion of this property is disturbed. Avoiding the natural slopes and natural vegetation including the large wash on the western perimeter pushes everything to the eastern half of the property. That is what they are proposing to build this house on the eastern half to avoid the slopes and the natural areas, and that area is already disturbed.

Vice Chair Personne said if they move the building to the west, they may eliminate the variance and would have a bigger issue with encroaching the undisturbed area. Member Schwartz said but they are allowed to disturb a certain amount of area. There might be a creative architecture solution and avoid going through the variance process.

Mr. Chi said he believes the disturbance requirements are 15 percent. The property owner wants to do as little disturbance as possible. The house is shifted to the south and west to avoid another variance request. There is no other place for the septic system and that also needs to be taken into consideration.

Chairman Loper asked if there is anyone from the public that wished to speak on this case.

Mr. Anderson said there is a comment from Ms. Allison Fisher and Ms. Keely Caul is on the call and wishes to speak.

Ms. Keely Caul said she recently moved to the east of this property. The setback on Briles Road will prohibit Briles where they don't have an exit out. There could potentially be a way out of Briles that could eventually happen. It was difficult for EMS to get through to her house and they had to back out of Briles. Making the road any narrower would make it difficult to exit, and three families would be affected in a negative way.

Ms. Applegate read the opposition comment from Ms. Allison Fisher, she is the north neighbor just above the proposed property. She is opposed to the setback and the proposed retaining wall against Briles Road. She does not wish to speak.

Mr. Nick Sulaman said he lives just north of the proposed. He wishes everyone the best since everybody deserves something. This is a very nice neighborhood and we try to keep it nice.

Ms. Mary Sandy said she lives directly west of the proposed. She has been in the neighborhood for 23 years. She doubts 3rd Street will be a through street since there is a high cliff. Briles Road dead ends. It is a complicated lot and she is excited they will tear down that garage and build a beautiful home there. The house they are proposing to build will be further away from the property to the east then where the garage is located now. It will be more pleasing to the neighborhood.

Mr. Scott Caul said his concerns are if they were to narrow that drive going up the easement the trash truck or delivery trucks will have difficulty. The retaining wall could possibly fail, and something could fall on the house.

Vice Chair Personne said she understands the new house will be further away from the existing structure. If the easement were to be reduced it is not necessarily reducing the width of the road but rather the right-of-way. She is not seeing anything that suggests the road will be compromised.

Mr. Chi said the property owner is not going to disturb Briles Road, he is leaving it in place and only improving the driveway to access the site which comes off Briles Road. The entire lot going northeast all the way down to the southwest part of the lot in total is a 65-foot elevation difference. They are going to construct a retaining wall to shore up that land to ensure there will not be any erosion issues on Briles Road. The GLO easements will still be preserved and nothing

will be built in either of those easements. If the County ever wanted to improve Briles Road or 3rd Street that is still an option for emergency vehicle issues.

Chairman Loper asked if anyone else from the public wished to speak on this case. None.

Member Schwartz said there is an architectural or engineering solution that could have been done on this site to comply. There is a small drainage way through the site, but it could be moved, and the house shifted back. He is not in support since it doesn't meet the criteria.

Vice Chair Personne said she believes there are several peculiar conditions on the property and understands Member Schwartz comments. There could be another way, but she is comfortable supporting this based on the way it is proposed.

Chairman Loper said he agrees, and he appreciates what Member Schwartz said because there could be other solutions. The existing terrain is a hardship where it has a drop. The bulk of the building is going in areas that are already disturbed. The easement is a pre-existing condition. It is a 73-foot front setback and a 53-foot side yard. Hopefully they can investigate abandoning the easement. He is in support of the variance.

Member Schwartz asked the fact the property has hillside topography is a peculiar condition. Mr. Peck said it can be if it is peculiar. Member Schwartz said we have a hillside ordinance with conditions of property within the hillside that has topography. The ordinance gives you guidelines on how to build within the hillside. The hillside wouldn't be a peculiar condition because there is an ordinance that allows you to be creative and design within that. Mr. Peck said the ordinance tells you what limits would be applied to your ability to design. The peculiar condition is a condition of the property that is peculiar not what everybody else has. If there is a peculiar condition, then you decide if they applied the standards of the zoning ordinance given a peculiar condition or hardship is created. The peculiar condition is not the hardship, it is application of the ordinance to that condition that has to create the hardship.

Member Schwartz asked if the topography of the land becomes a peculiar condition then why do we see staff recommendation for denial. Mr. Gérard said he believes there is a good argument to be made due to the fact there are slopes that can be a topographical constraint pushing the property in a certain direction and there is previous disturbance. It is appropriate to develop in areas previously disturbed and avoid development on the slopes. Yes, slopes could be a topographical constraint, but the presence of slopes doesn't warrant for relief from the hillside regulations.

Member Schwartz asked what the reasoning was in recommending denial in this case. Mr. Gérard said there is a good argument for support or denial. The planner who wrote the staff report has since relocated. He might have focused on the fact of administrative exhaustion that hadn't occurred with potential to abandon the patent easement. That would negate the need for a variance, which is preferred.

Mr. Peck said did the ordinance cause the hardship or is the hardship caused by the something other than the ordinance. To get a variance under the strict language of the statutory requirement it has to be the application of the ordinance that causes a hardship. You can disagree with what the planner thought, but he doesn't believe it was based on the peculiarity

but based on the hardship. Those are two separate and distinct concerns that you have to address as a Board.

Member Ward said her concern was the ingress/egress on Briles Road and the applicant clarified that.

BOARD ACTION: Vice Chair Personne motioned to approve BA2021048 with conditions 'a'-'b'. Member Ward second. Approved 4-0. Ayes: Schwartz, Ward, Personne, Loper.

- a) Variance approval establishes a 15' (east) front setback line for APN 210-14-010E.
- b) Variance approval allows for 1,855 sq. ft. of hillside disturbance outside of the lot's principal building envelope for APN 210-14-010E.

BA2022014
Applicant:
Location:
Request:

Brown Property
Roderick Brown
APN 211-23-227 @ 118 E. Jordon Ln, Phoenix, AZ
Variance to permit:

District 3

- 1) Existing mare motel accessory structure with a required rear yard coverage of 41.4% when 30% is the maximum permitted per MCZO Article 1106.2.

Ms. Applegate presented BA2022014 and noted the mare motel exceeds the lot coverage by 719 square feet or approximately 41.4% which is an increase of 11.46%. A violation case was initialized in November 2020 for construction without building permits. An as-built permit was filed January 2021 and drainage inspection occurred on February 2021 with a note from the drainage inspector no further construction needed as it is as-built. Resubmittals were made in July and August 2021 and permit issuance occurred September 2021. Six days after permit issuance Code Compliance notified the Zoning Division of the error with the permit issuance exceeding the rear yard lot coverage. Zoning sent notice to the owner to resubmit plans to address the lot coverage with instruction to reduce the size of the structure and not to exceed 30%, to relocate the structure or apply for a variance. The property owner refiled January 2022. The zoning supervisor sent an e-mail indicating the lot coverage was missed in the zoning review and included instructions to file for legal non-conforming government action. The owner filed for legal non-conforming which was denied by the Planning Division based upon the structure being erected without benefit of a building permit. Due to the denial of the legal non-conforming the applicant is requesting a variation to increase the lot coverage. There are several options available to the owner which includes reducing the size of the structure, relocating the structure, or reducing the amount of coverage in the rear yard. They could remove the roofed breezeway awning which would result in 1,600 sq. feet and comply with the lot coverage standard, or remove two open regions that are 16'x10' and reduce the size of the breezeway to 10'x60' which would be 30% to meet the standard. Either of these options would allow the owner to amend the building permit to comply with the zoning standard and obtain permit issuance and close out the code violation. Staff did receive comments one neutral and one in opposition with concerns of the as-built construction without obtaining a permit. Yesterday, staff received seven letters in support from area residents provided by the applicant. Staff believes the owner failed to demonstrate there is a peculiar condition facing the property and strict application of the ordinance has not caused physical hardship. There are other alternatives available. The request does not meet the statutory test for granting the variance.

Chairman Loper asked why the government action legal non-conforming was denied. Ms. Applegate said the applicant was advised through zoning review with the building permit to file for the legal non-conforming because staff missed the 30 percent lot coverage with building permit review. Upon review of the application, planning staff decided it was an as-built structure and the determination made by zoning staff was inappropriate. They cannot amend the development standard without going forward with residential plan of development or a variance application. Mr. Gérard said the structure was built before they came in for a permit. That is the reason the legal non-conforming couldn't be approved.

Chairman Loper asked if they had portable awnings to achieve the same affect there would be no violation. Ms. Applegate said correct if they are portable, they are not considered an existing structure. It wouldn't apply to lot coverage.

Vice Chair Personne said the setbacks were less than shown as the standard and asked why they weren't part of the variance application. Ms. Applegate said the structure meets the setback standards. The zoning ordinance allows you to build accessory structures three feet off the rear and side, this structure was built exceeding those standards.

Ms. Emily Brown, the property owner said she needed a place for her horses immediately and she started to build the structure without a permit. She did receive a notice of violation and subsequently applied for and received a building permit September 14, 2021. She paid the fines and got architecturally stamped drawings and went through the County review process resulting in receiving the permit. After the permit was received, they finished construction on the property. It was not finished when she received the permit. One month after the project was completed, she was advised the County missed the 30% variance and her structure was in violation of being 11% over the allotted 30%. Her options were to relocate the structure, reduce the size of the structure or apply for a variance. On January 31, 2022 she received an e-mail from the Plans Examiner Supervisor saying the 30% lot coverage was missed during review, and due to that error, the permit was honored, and the structure can stand as is. Then she was advised to file for a Government Action Legal Non-Conforming, but then was denied on February 23, 2022. The peculiar condition is the County approved the structure and in reliance on this, she completed the structure. Neither the County Zoning Ordinance, nor state law specifically state that the peculiar condition must be inherent with the land. The peculiar condition here is by its own explanation, the County missed the alleged fact that the mare motel did not comply with the zoning ordinance by 11%. Clearly it is peculiar for the County to miss this. Staff claims in their report the aerial pictures of the completed barn were taken October 16, 2020, but she purchased the home September 20, 2020 that's only three weeks to construct this barn according to staff. She purchased the steel to build the barn on October 21, 2020 five days after the alleged photos were taken and the concrete footings were purchased November 9, 2020. The materials weren't even purchased at the time those aerial photos were taken. The unnecessary hardship is we must alter the structure by 11 percent. If the County had indicated the mare motel design was over 30%, the plans could have been changed at that time at much lower cost and hardship. The hardship was not self-created, instead a result of a County error. A denial will have a negative affect not only to her neighbors but to her and the horses. If the variance is not granted 718 square feet of the front awning will have to be removed. This creates a less aesthetically pleasing barn to her surrounding neighbors. She has seven letters of from surrounding neighbors who are in support of this variance. Without the variance it will create a hardship to her horses that will no longer be adequately shaded during the hot summers and protected from wind and rain. The unnecessary hardship is the cost of removal of the awning

which should have been recognized in the review process. A denial of the variance creates a no-win for the surrounding neighbors and aesthetics of the neighborhood. The neighbor to the north is in opposition, the barn backs up to their property. They have concerns of blocking their view, but the view they would be missing is her private back yard. There is no mountain view or any scenery type view. If the awning does need to be altered, this opposing neighbor's view would not be changed in any way. She did reach out to the neighbor to possibly plant trees to help ease their view concerns, but they refused to speak with her. Entrusting in the County's review process has created undue hardship to her and the surrounding neighbors and therefore she is requesting approval of this variance request.

Mr. Peck asked if she received the permit before the structure was completed. Ms. Brown said yes. Mr. Peck asked you received your permit then you continued the work. Ms. Brown said yes.

Mr. Peck requested the Board go into an executive session, 11:30 a.m.
The public hearing reconvened at 11:36 a.m.

Mr. Peck said he has a concern, Ms. Brown stated she had not completed the project, and once she received the permit, she finished the project. Staff does not have the records currently to either confirm or refute that. He did speak with Ms. Brown and she agreed to continue this to next month so we can get this straightened out. Mr. Peck said his recommendation is to continue this case.

Chairman Loper asked Ms. Brown if she agrees with a continuance to next month. Ms. Brown said yes.

BOARD ACTION: Member Schwartz motioned to continue BA2022014 to June 23, 2022. Vice Chair Personne second. Continued 4-0. Ayes: Schwartz, Ward, Personne, Loper.

Adjournment: Chairman Loper adjourned the meeting of May 19, 2022 at 11:38 a.m.

Prepared by Rosalie Pinney
Recording Secretary

May 19, 2022