

the minimum lot width for R1-35 zoning district. The lot has a width of 145 feet and a depth of 164 feet giving the parcel an area of 23,942 square feet. This was on continuance giving the applicant time to hire a land surveyor to see if they recombine the property and split, could they have two conforming lots meeting the minimum 35,000 square feet. The land surveyor reported combining the property and splitting, they would have one property that will not meet the lot size and standards. Mr. Martell said the applicant has failed to demonstrate there is a peculiar condition facing the property because the lot was split from the parent parcel without knowledge of development standards. They have failed to demonstrate physical hardship that the property was split by the property owner prior to deeding the lot to the new property owner.

Member Personne asked if the lots were to be combined and re-split in a different configuration how far off will the lot size be to the standards. Mr. Martell said it will still end up with one lot meeting the standards and possibly be off by 10,000 square feet.

Mr. Peck said it is illegal to split a lot and create any lot that fails to meet the underlining requirements of the zoning district. If they can't make two lots each of which meets the requirement they cannot legally do a lot split. The lot split they did is illegal.

Member Schwartz said if the County records all lot changes they would have inspected that prior to the lot split. Mr. Peck said they are called unregulated lot splits for a reason, they are completely all unregulated. Somebody files a deed and there is no control over it whatsoever. Under the statute you may create up to five lots, but each of those lots must meet the requirements of the underlining zoning district.

Mr. Gerard said we see illegal lot splits when they come in for a building permit and that is what happened here.

Chairman Loper asked if the variance was to be approved it would no longer be illegal. Mr. Peck said it was still illegally split.

Member Cardon said the County Assessor's website shows the parcel as 19,727 square feet, and not sure which one is more accurate. If you use the Assessor's square footage with the property to the west and add it together, it's 65,895 square feet. If you recombine and split them, you would be closer to 4,000 square feet off. If you use the 23,942 square feet, it looks like you could have two properties in conformance. Mr. Martell said the data from the Assessor's website is incorrect. There was a survey done by a licensed land surveyor and that's the number we used. The Assessor's website gives you a warning before you enter the site that the data may not be one hundred percent true.

Member Schwartz said the property owner has made their best efforts to make the lots conforming, but unfortunately could not. Having something on the lot is better than having vacant lot creating dust.

BOARD ACTION: Member Cardon motioned to approve BA2020050 with condition 'a'. Vice Chair Ward second. Approved 4-0-1.

- a) * Variance approval establishes a lot size of 23,942-sq. ft. for APN 219-34-022A.

BA2021001

Richardson Family Limited Partnership

District 1

Applicant:

William Lally, Tiffany & Bosco, PA

Location:

APN 304-54-005Z at 14760 E. Willis Rd. – Willis Rd. & SR 202 in the Gilbert area

Requests:

Variance to permit:

- 1) Proposed off-site sign (Billboard) maximum sign face area of 672 square feet where 300 square feet is the maximum permitted and;
- 2) Proposed off-site sign (Billboard) maximum height of 70' where 30' is the maximum height permitted and;
- 3) Proposed off-site sign (Billboard) front setback of 0' where 25' is the minimum front setback

Member Cardon recused himself from this case.

Mr. Watkins presented BA2021001 and noted there are no known violations on the property, no known public opposition, and one opposition letter from the Town of Gilbert. The subject property is approximately 9.8 acres, zoned C-2, mostly flat with an existing single-family residence (SFR). According to County Assessor records, the lot split parcel was created in 1971. Historic aerial photographs show construction of the SFR occurred between 1961 and 1976. No County permit records exist from that time and for the purpose of this variance request. The single-family residence is assumed to have been built legally and not subject to this request. Aerial photographs also show automobile parking/storage on the northeast quarter of the property beginning in 2019. It appears these automobiles are associated with the dealership located to the east, and this parking use does not appear to be entitled. Entitlement would be necessary because automobile storage is a commercial use that could potentially be provided for by the C-2 zone, but only with an approved Plan of Development (POD) which has not been established. There is a proposed POD currently in process Z2020091 and that includes the automobile use. This variance request is to facilitate the billboard proposed in that POD, so the POD cannot be approved prior to approval of this variance. If this variance is denied, the POD cannot include a billboard that exceeds 30 ft. in height, 300 sq. ft. in sign face area, located in the required front setback. The automobile parking use is a separate issue from the current billboard-related variance requests. The east and south property lines coincide with mid-section lines and associated 40 ft. half-width Future Right of Way (FROW) lies on the south and east property boundaries. Because Town of Gilbert, General Commercial (GC) zoning is to the east, no setback is required in addition to the 40 ft. FROW on the east side. The property to the west is zoned Rural-43 and there is a 25 ft. required front (south) setback in addition to the 40 ft. FROW and coinciding 40 ft. ingress/egress, irrigation and utility easement on the south property line. The billboard does not affect the west or interior side and rear north setbacks. Staff received an opposition comment letter from the Town of Gilbert, the letter disputes there are any peculiar hardships with the subject property and the proposed billboard to justify the requested variances. Gilbert's Planning Area and Gilbert's Land Development Code (LDC) does not allow billboards, and they are opposed to the variance request. The applicant has failed to demonstrate there is a peculiar condition facing the property. There may be obstacles to the potential visibility from SR 202 of a billboard located on the property and built to the C-2 development standards. Those conditions were characteristics of the subject property at the time of the zone change from RU-43 to C-2, in June 2020. That zone change could have included the CUPD overlay with modified development standards applicable to a billboard. There are many other possibilities for the

development of the property under the C-2 zone that would be compatible with existing utilities and development in the vicinity.

Member Schwartz asked about the grade differences of the property from the roadway improvements and the Loop 202. Mr. Watkins said he believes more than an elevation change between the property and the roadway surface, but the applicant could clarify.

Mr. Bill Lally said he is with Tiffany & Bosco representing the landowner. The San Tan Autoplex is adjacent to the property, it is the largest autoplex in the east valley and is zoned in the City of Gilbert. This area is designed to be high density, high traffic and a very intense from the Gilbert Area Plan. The automobile parking to the north is completely separate from the use to the southeast corner for the billboard. The City of Gilbert has talked to every one of these landowners to come through the annexation process to do more of a commercial park setting to be complimentary to the freeway and San Tan overlay. They are requesting additional size from 300 square feet to 672 square feet which is the industry standard size of billboards today. There is currently a Maricopa County code update that is pending to change this to this exact size. The second variance request is for a maximum height from 30 feet to 70 feet, and over the years the Board has approved a number of variances to allow for additional height. The last variance request is to push the billboard closer to the freeway and further from the residents to the west and north. This Board can grant a variance if there is an impact on the property through a particular condition. The statute is very clear if there is a particular condition and applying the code and strict interpretation creates a hardship, and if it meets the general intent of the code then a variance is appropriate. When ADOT came through and took property they built a massive berm adjacent to the property to account for regional drainage concerns. That berm has been landscaped with mature trees and now has cut off visibility to this property. The C-2 zoning allows for a billboard by right. If we did not have a large berm on the property we wouldn't be here asking for additional height. In terms of getting the billboard closer to the freeway then having a larger face for readability from the passerby's. When the billboard is 480 feet or 700 feet away it is harder to see. Most billboards are 100 to 150 feet away from the freeway and most jurisdictions have the 672 square feet and the County size is half the size, so readability becomes a problem for the billboard operator and the driver. ADOT came through 10 years ago to improve and widen, and made all their ADOT signs bigger and easier to see because they were facing the same issues. There is a very large sign at the San Tan Autoplex and it is 400 feet away from the proposed sign and is 60 feet in height and has a massive TV screen fully animated. This shows that Gilbert wants the intensity in this area. To demonstrate, they set up a crane on the property at 30 feet if built as is today. The 300 feet billboard would be completely invisible to vehicles passing by. Then they raised the crane to 70 feet, where it will peak over the trees and be visible. The San Tan Autoplex billboard will be the first thing you see, then as you get around that you can see it at 70 feet. The raised berm is about 22 to 25 feet. As you drive west the berm is taller as it relates to the travel lanes. The berm was created for drainage purposes and a buffer between existing residential and the freeway. The City of Gilbert said their code does not allow billboards, but this area has a lot of large intense signs adjacent to the property. This property was purchased by the original landowner and San Tan Ford to expand automotive uses on the property, and the POD is pending waiting for this variance to be approved. The variance of the billboard is going to be consistent with development standards of other billboards in the area. In the Gilbert letter they oppose this because their code doesn't allow billboards, they think its self-imposed meaning the berms were there before we got the zoning. Title 11 does not have a self-imposed hardship requirement, and the letter says they can go find another site. He represents the landowner, he doesn't represent the billboard company.

None of the points in the letter have anything to do with the statutory test. The use is allowed and zoned today by right, and without the variances that use will be extremely hindered because of the ADOT improvements adjacent to the site. There are peculiar circumstances relating to the property and it affects the property owner with a use that is allowed by right.

Member Schwartz asked how tall the other signs are. Mr. Lally said the sign is 400 feet from the proposed billboard and does not have a berm in front of it, and it is about 60 feet in height. The other sign is 10 feet lower and is internal to the San Tan Autoplex.

Mr. Peck said he would like to correct a few points Mr. Lally mentioned. First, it's not particular, it is a peculiar condition. Case law is clear the peculiar condition must be of the property itself. The statute does not include self-imposed hardship test, the cases in Arizona are also very clear the hardship must not be self-imposed. Title 9 has it explicitly in the statute. In Title 11 the courts have ruled the hardship has to be caused by the zoning ordinance not be something imposed by the applicant.

Chairman Loper said there are several freeway landmark signs similar to the San Tan Autoplex but on the east side of the freeway. He asked does he know the other landmark signs size or square footage. Mr. Lally said he was showing signs in the immediate vicinity. As you travel the 202 in the east valley you see a number of billboards and some are in Maricopa County and some are the exact same size as this. He was making a point of the surrounding property impacts. There are other large signs in the City of Chandler and Gilbert as you get closer to the San Tan Mall they are very large signs that are much taller than this one along the freeway. The nearest subdivision is 1,200 feet to the north, and to the northwest they are 1,000 feet away, and they will be looking at the back of the structure and the face of the billboard will be facing the freeway.

Chairman Loper asked if this is going to be a digital billboard. Mr. Lally said no, Maricopa County doesn't allow for digital signage at this point. The one that is 400 feet away at the San Tan Autoplex is not just digital it is fully animated. From an intensity standpoint this is nowhere near that. The billboard will be up lite or down lite as required by the County's lighting requirements, and it will not be a digital sign.

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

Member Schwartz said based on the applicant's presentation this meets the statutory tests as outlined in the staff report.

BOARD ACTION: Member Schwartz motioned to approve BA2021001 with conditions 'a'-'c'. Member Personne second. Approved 4-0-1 (Cardon recused).

- a) Variance approval establishes a maximum sign face area of 672 square feet for a billboard on APN 304-54-005Z.
- b) Variance approval establishes a maximum height of 70 feet for a billboard on APN 304-54-005Z.
- c) Variance approval establishes a 40' (south) setback line from the south property line, (0 ft. from the north edge of the 40 ft. wide ingress/egress, utility and irrigation

easement [DKT 8195 pg. 361], and coinciding 40 ft. FROW) for a billboard on APN 304-54-005Z.

BA2020064

Rendleman Property

District 4

Applicants:

Jasson L. & Sandra B. Rendleman

Location:

APN 502-60-063 at 1133 N. 193rd Ave. in the Buckeye area

Requests:

Variance to permit:

- 1) Proposed side yard coverage of 55% where 30% is the maximum permitted and;
- 2) Proposed side yard setback of 1.5 feet where 30 feet is the minimum required

Mr. Gerard presented BA2020064 and noted the variance fails to meet the statutory test. The site contains a single-family residence constructed in 1958, it was legal non-conforming with a 28 foot front or setback. In 2016, there was an attached carport constructed without permit and this altered the legal non-conforming setback. To change to legal non-conforming they must bring it into conformance and a variance would be required. The detached structures along the south lot line in the rear yard are also unpermitted. This exceeds the allowable coverage for aggregate areas under roof in the required side yard. There is no peculiar condition or physical hardship facing the property that warrants relief from the standard. The site is an acre and has no topographic constraints, and they failed to demonstrate the strict application of the ordinance has resulted in a hardship and prevents development of the property. There are alternatives available include relocating the mare motel outside of the side yard setback and utilizing the remaining buildable area of the lot. The applicant is the one that modified the attached carport and constructed the mare motel without first obtaining zoning clearances.

Mr. Jasson Rendleman, the applicant said all he did was build a horse shade like all his neighbors did at the property line. Every time he updates his permit request something new comes up and now it's his entire garage. He is going through the process and had the inspector come out, and it's been one thing after another.

Member Personne asked if he has talked to the neighbor in opposition with concerns of the drainage impact and if they came up with options to mitigate that issue. Mr. Rendleman said the neighbor had 2 inches of water when it rained and he already had gutters on the horse shade which brings the water down towards his own property. Then there is flooding on his own yard. The neighbor to the north of him his property floods too, and fills up his own yard. The neighbor's to the south have blocked the entire back end with a small wall and an aluminum galvanized bushing, and there structure isn't permitted either.

Member Personne said his structures need to be designed so they are not impacting on another property. He makes a good point and all the other surrounding properties all have structures on the property line. She asked if those were approved through variances and wanted to know the status. Mr. Gerard said on the applicant's property a lot of this stuff comes up because of the review process, and this would have been caught in technical review for construction permits. With the properties to the north, he is making the assumption those are unpermitted structures and are illegal. There hasn't been a violation case filed against those properties. We are reactive and if the inspector doesn't see it when he goes out to a specific site there won't be a case. Had the inspector gone to the Rendleman's property and saw next door they would have proactively opened a case on those, but otherwise we would not without a citizen complaint.

The property to his northeast is probably without any benefit of a permit and a zoning violation that hasn't been complained about. The property to the northeast and south likely to be consistent with zoning, and if it's three feet from the property line it is likely the mare motel that doesn't occupy more than 30 percent of the required rear to the east and required side to the north.

Member Cardon said it looks like there are many structures on both adjacent properties and throughout the neighborhood that have structures within 30 feet of the side yard setback. The structure that is there certainly looks like it's within 30 feet, and asked would that be in violation. Mr. Gerard said the detached accessory structures only have to be a three foot setback. The 30 feet is for the primary building and the carport that was added on to the Rendleman's residence created a primary building within 1-1/2 feet. If it was a structurally detached carport, it could be within three feet to the side but would need a variance for the front. It would have been caught if he came in for permit before erecting it. His mare motel and the pool along his south lot line can have a three feet setback to that southern lot line. The area within 30 feet of the south lot line stretching the length between the 40 foot front and rear setbacks is called the required side yard. Within that required side yard, it must remain open but for a maximum of 30 percent aggregate area under roof. He has exceeded 30 feet, it is more like 50 percent. The property to the south that is most affected, likely meets that 30 feet required maximum coverage within the north required rear and side and the east required rear yards. To Mr. Rendleman's northeast is likely a zoning violation, it just hadn't been turned in.

Member Personne asked about the references to the power lines in Mr. Rendleman's narrative, and she is having a hard time seeing where they are located. Mr. Rendleman said the power line is on the north side of the property right on the fence line and they go from the alley behind them and has a pole in his yard right where the middle fence line is.

Member Personne asked is it possible for the two structure east of the pool are they able to move three feet from the property line or do they have foundations. Mr. Rendleman said the barn and the mare motel are four feet from the property line and with the carport he already got a variance for that, but he put a wall and garage door on the front. The metal structure in the back can be moved and the barn cannot, it is on a slab and it was there when he bought the property. He did get a variance for that when he altered the roof and it was okay and approved but he was never notified and he didn't pay the fee for the permit.

Chairman Loper asked is it appropriate for a case like this to require drainage improvements such as gutters to a structure that would route the waters to internal areas. He does not have an issue with the variances but he is concerned with the immediate neighbor with the drainage concerns. Mr. Gerard said with construction permitting there would be a drainage clearance and a building safety clearance requirement. He meets the setback requirement the question is the lot coverage on the south lot line.

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

Member Cardon said it sounds like the two structures not connected to the house are four feet away and are in compliance. Except the 55 percent, where the only issue is the garage attached to the house which the structure was already there and all he did was enclose it and put a garage door on it, and is out of compliance. It doesn't change anything about what is happening on the property as it relates to drainage.

BOARD ACTION: Member Cardon motioned to approve BA2020064 with conditions 'a'-'c'. Member Schwartz second. Approved 5-0.

- a) General compliance with the site plan stamped received December 23, 2020.
- b) A 55% coverage shall be permitted within the required side yard setback (south property line) of APN 502-60-063.
- c) Variance approval establishes A 1.5 foot side yard setback (south property line) specifically for the attached carport for APN 502-60-063.

Adjournment: Chairman Loper adjourned the meeting of February 18, 2021 at 11:14 a.m.

Prepared by Rosalie Pinney
Recording Secretary
February 18, 2021