



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

March 18, 2021

CALL TO ORDER: Chairman Loper called meeting to order at 10:02 a.m.

MEMBERS PRESENT: Mr. Greg Loper
Ms. Heather Personne
Mr. Jeff Schwartz
Ms. Fern Ward

MEMBERS ABSENT: Mr. Craig Cardon

STAFF PRESENT: Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Warren Rivera, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Pearl Duran, OET

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2021002, BA2021003, BA2021004, BA2021005, BA2021006,
BA2021008, BA2021010, BA2021007

APPROVAL OF MINUTES: January 21, 2021

Chairman Loper asked if there were any changes or comments to the minutes for January 21, none.

BOARD ACTION: Chairman Loper motioned to approve the January 21, 2021 minutes as written.

CONSENT AGENDA

BA2021002 **Deverill Property** **District 3**
Applicant: Leonel Campas
Location: APN 211-51-007G@ 36627 N 18th Dr. – Maddock Rd. & 19th Ave., in the Phoenix area
Requests: Variance to permit:
1) Proposed front setback of 28' where 40' is the minimum permitted per MCZO Article 503.4.1.a, and a
2) Proposed front setback of 8' where 40' is the minimum permitted per MCZO Articles 503.4.1.a and 1106.2

BA2021003 Applicant: Location: Request:	Humble Family Trust W. Ralph Pew, Pew & Lake, PLC APN 304-09-075A@ Address T.B.D. – 2,300 ft. northwest of the NWC of Elliot Rd. & Greenfield Rd., in the Gilbert area Variance to permit: 1) Proposed interior side setbacks (2) of 15' where 30' is the minimum permitted per MCZO Article 503.4.2	District 2
BA2021004 Applicant: Location: Request:	Wilhelm Property Don Wilhelm, Ashland Properties LLC APN 141-56-078 @1167 Leisure World, in the East Mesa Area Variance to permit: 1) Proposed rear-yard setback of 16' where 25' is the minimum permitted in the R1-6 RUPD zoning district	District 2
BA2021005 Applicant: Location: Request:	Sasser Property Mark Sasser APN 211-72-007C @42203 N 3rd St., in the New River area Variance to permit: 1) Existing hillside disturbance of 1,754 sq. ft. outside the lot's principal buildable envelope where hillside disturbance is prohibited per MCZO Article 1201.6.1.1	District 3
BA2021006 Applicant: Location: Requests:	King Property Adam Venetis, Trinity Residential Consulting APN 173-44-011E@ 4309 N 66 TH Street, in the Scottsdale area Variance to permit: 1) Proposed street side setback of 7' where 20' is the minimum permitted per MCZO Article 601.4.c. and; 2) Proposed side yard setback of 17' where 20' is the minimum permitted per MCZO Article 601.4.2.	District 2
BA2021008 Applicant: Location: Request:	Grubbs Property Patrick Grubbs APN 220-02-030D@ 10346 E McLellan Rd., – 300 ft. east of the NEC of McLellan Rd. & 103 rd St., in the Mesa area Variance to permit: 1) Proposed lot width of 138' where 145' is the minimum permitted per MCZO Article 601.5.2	District 2
BA2021010 Applicant: Location: Request:	Elite Pawn Shaine Alleman, Tiffany & Bosco PA APN 132-19-001S @ 805 N. Scottsdale Rd., in the north Tempe area Variance to permit: 1) A free-standing sign to be located within the clear-sight visibility triangle (SVT) of a commercial driveway per MCZO, Arts. 1111.4.2 & 1401.3.5.	District 1

Mr. Gerard presented the consent agenda and noted staff received three letters in support for item #2 - BA2021003.

BOARD ACTION: Member Schwartz motioned to approve the consent agenda – BA2021002 with condition ‘a’, BA2021003 with conditions ‘a’-‘b’, BA2021004 with condition ‘a’, BA2021005 with condition ‘a’, BA2021006 with conditions ‘a’-‘b’, BA2021008 with conditions ‘a’-‘b’, and BA2021010 with condition ‘a’. Vice Chair Ward second. Approved 4-0.

BA2021002 condition;

- a) Variance approval establishes 28' (north) front setback line for APN 211-51-007G, except that the existing water storage tank may setback 8' from the north lot line.

BA2021003 conditions;

- a) Variance approval establishes a 15' setback line on the east and west sides of APN 304-09-075A.
- b) Should the Board of Adjustment find favorable approval for the applicant's request, a Drainage Clearance will need to be obtained prior to issuance of building permit(s).

BA2021004 condition;

- a) Variance approval establishes a 16' rear-yard (east) setback line for APN 141-56-078.

BA2021005 condition;

- a) Variance approval establishes a hillside disturbance 1,754 sq. ft. outside the lot's principal buildable envelope for APN 211-72-007C.

BA2021006 condition;

- a) Variance approval establishes a 7' (north) street side setback line for APN 173-44-011E.
- b) Variance approval establishes a 17' (south) side setback line for APN 173-44-011E.

BA2021008 conditions;

- a) Variance approval establishes a 138' width for APN 220-02-030D.
- b) If the variance is approved, an engineered grading and drainage plan will be required to be submitted for procurement of building permit(s).

BA2021010 condition;

- a) A free-standing pole sign may encroach into the southern SVT of APN 132-19-001S. The location of the sign pole shall be at least 7' setback from the street line and a max. 12" diameter, with the bottom of the sign face shall be at least 12' above finished grade and no portion of the sign encroaching into the plane of public right-of-way.

REGULAR AGENDA

BA2021007

Moran Real Estate

District 5

Applicant:

Withey Morris, PLC

Location:

APN 104-26-005D @ 1835 S. 59th Avenue – 59th Ave. & Buckeye Rd.,
in the Laveen area

Request:

Variance to permit:

- 1) Proposed offsite advertising (billboard) sign height of 63 ft.
where 30 ft. is the maximum permitted per MCZO Article
1403.3.2.2

Mr. Rivera presented BA2021007 and noted on October 2018 a previous variance was approved by the Board of Adjustment, prior to the completion of the 202 for a total height of 48 feet and an area of 672 square feet. The applicant's approval was based on that the 202 Freeway would be elevated 18 feet above the site with an additional 4 feet of sound wall, that presented a peculiar condition. The applicant argues the completed freeway has an elevation slope or cant, and angle of the curve that results in the sign being obscured from travel lanes on the 202. This was not predictable prior to the opening of the freeway.

Mr. Bill Allison with Withey Morris representing Lamar said this is an existing sign that was previously approved in 2018. His client did not want to overreach and thought 48 feet was going to be sufficient for a safely readable sign, but it ended up not being enough. With the actual conditions of the freeway, and the cant makes the sign very difficult to read. The photographs show the existing sign from the travel lanes with the cant and the barrier on the eastern edge of the freeway, and it obliterated half off it. An additional 15 feet would make the sign legible safely from the freeway and serve its purpose. They believe the hardship does result in the angle of the Loop 202 and obstruction by the wall along the freeway. The general intent and purpose of the ordinance allows billboards, and there will be no negative impacts to the area. If approved they would immediately file the appropriate permits to extend the height of the billboard.

Ms. Lisa Perez said she lives in the Estrella Village area, if they raise the billboard height it would be in full view of an elementary school and middle school, and they would have no control of its content. Member Schwartz said we cannot make a decision to what the content would be on any billboard. This is a first amendment right - the right to speech, and we cannot control content.

Mr. Peck said the Board of Adjustment has nothing to do with what the content is. There are substantial differences between the statutory tests to a municipal Board of Adjustment and a county Board of Adjustment. It is up to the Board to decide whether the deviations from the requirements of the ordinance meet the statutory test.

Vice Chair Ward asked, how many other billboards can come before for us for the same thing? Is this something that should be coming to us for a variance, or established somewhere else? If there is a line of sight from a freeway, would it automatically be granted a certain height? Mr. Gerard said if you are in commercial or industrial zoning you have to be 1,000 feet apart on the same street, and there may be another potential billboard to the north. We do not have an allowance right now that treats freeway frontage different from any other arterial or collector frontage in commercial or industrial zoning. There has been a text amendment that has been inactive for the past couple years and they were proposing different standards along the freeway, but it is not in place today.

Mr. Peck said every variance is supposed to be based on the peculiar condition on the property. If the board finds many of these applications coming before you with the same issue and it is not peculiar, the only place to address that is by an amendment to the zoning ordinance. Variances are supposed to be because of problems caused by conditions on the property.

Mr. Allison said the variance is an appropriate way to handle the request before the Board. We believe we have satisfied the statutory conditions and tests that are outlined in the county ordinance. Other jurisdictions do have other ways at looking at freeway billboards. This is the process we have in the county today. The county found the tests were satisfied in 2018, and the only thing that has changed is the cant in the freeway, an impact they did not anticipate. The intent is to have a billboard readable and right now, it is not. As far as the content, there are first amendment rights that you cannot regulate the content of billboards. There are self-regulating standards in the industry near schools, and the Board is not able to implement that through a stipulation.

Mr. Dan Penton said the billboards in the county and the city are increasing compared to a year ago especially on a frontage of a freeway. He travels that route every day and this billboard is clearly visible from the northbound and southbound lanes. He has no problem reading it. He asked if the billboard is already at a certain height and readable, what is the benefit to the community and the county for approving an increase in height. When it comes to sustainability, a digital billboard draws 30 times of electricity and is a huge draw on renewable resources, and they are not of recyclable materials and cannot be repurposed.

Mr. Allison said we are not asking for a variance for spacing and not asking for billboard in a location not allowed. There has been an increase of billboards along the 202 because the Phoenix City Council approved a text amendment in November to allow billboards along this section of the Loop 202.

Member Schwartz said some of the complaints we heard are not under the purview of this Board. Our job as the Board of Adjustment are to see if these projects meet the statutory test for a variance. There are different jurisdictional places for those type of questions and concerns. He believes this application meets the statutory test for a variance approval. If the applicant had known the curvature of the freeway and how it impacted the billboard ahead of time, they would not have been back in front of us today.

BOARD ACTION: Member Schwartz motioned to approve BA2021007 with conditions 'a'-'d'. Member Personne second. Approved 3-1.

- a) General compliance with the site plan stamped received March 3, 2021.
- b) Lighting for the billboard shall conform to all applicable lighting regulations and shall not exceed the height as approved.
- c) All required building permit for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or 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.

Adjournment: Chairman Loper adjourned the meeting of March 18, 2021 at 10:40 a.m.

Prepared by Rosalie Pinney
Recording Secretary
March 18, 2021