



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

September 19, 2019

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

**ROLL CALL/
MEMBERS PRESENT:** Mr. Jason Morris
Mr. Greg Loper
Ms. Fern Ward
Mr. Craig Cardon

MEMBERS ABSENT: Mr. Jeff Schwartz

STAFF PRESENT: Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Eric Smith, Planner
Mr. Ray Banker, Planner
Mr. Sean Watkins, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney

ANNOUNCEMENTS: Chairman Morris made all standard announcements.

AGENDA ITEMS: BA2019024, BA2019036, BA2019031, BA2019032, BA2019034,
BA2019037, BA2019038

APPROVAL OF MINUTES: July 18, 2019

Chairman Morris requested a motion to approve the July 18 minutes.

BOARD ACTION: Member Ward motioned to approve the July 18, 2019 minutes. Vice Chairman Loper second. Approved 4-0.

Mr. Gerard said item #3 – BA2019031 off the regular agenda requested a continuance to the October hearing.

CONTINUANCE AGENDA

BA2019024	Interpretation (Cont. from 7/18/19)	All Districts
Applicant:	Tom Galvin, Rose Law Group	
Request:	MCZO, Art. 804.2.45 and 805.2.1 Third-Party Sales of medical marijuana extracts and other products in the C-2 and C-3 zoning districts	

BOARD ACTION: Member Ward motioned to continue BA2019024 indefinitely. Vice Chairman Loper second. Continued 4-0.

BA2019031 **France Property (Cont. from 8/15/19)** **District 3**
Applicant: Warren France
Location: 1824 W. Galvin St. – Approx. ¾ mile west of 7th Ave. & ½ mile north of Carefree Hwy., in the Desert Hills area
Zoning: Rural-43
Request: Variance to permit:
1) Proposed hillside disturbance of 3,008 sq. ft. outside the lot's principal buildable envelope where hillside disturbance is prohibited

BOARD ACTION: Member Ward motioned to continue BA2019031 to the October 17, 2019 hearing. Vice Chairman Loper second. Continued 4-0.

CONSENT AGENDA

BA2019036 **Grace Foundation** **District 2**
Applicant: Tyler Green, Architect
Location: 42088 N. Fleming Springs Rd. – about 3.25 miles north of Cave Creek Road in the Cave Creek area
Zoning: Rural-190
Request: Variance to permit:
1) Waiver from the requirement of one parking space per 900 square feet of floor area for a storage building

BOARD ACTION: Member Ward motioned to approve BA2019036 with conditions 'a'-'c'. Vice Chairman Loper second. Approved 4-0.

- a) General compliance with the site plan stamped received September 5, 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.

REGULAR AGENDA

BA2019032 **Rivera Property (Cont. from 8/15/19)** **District 5**
Applicant: Manuel A. Inurriaga, M & M Civil Engineering
Location: 10423 S. 40th Dr. in the Laveen area
Zoning: Rural-43
Request: Variance to permit:
1) Proposed hillside disturbance (grading) outside the lots principal buildable envelope

Mr. Banker presented BA2019032 and noted this case was continued from the August 15 hearing to allow the applicant to meet with concerned neighbors. Staff has not received any information with the results of a meeting and he was made aware this morning the applicant sent in revisions last night, but staff hasn't had time to review. He did not see the applicant here this morning but a neighbor his here to speak.

Chairman Morris asked if the applicant is present. No response.

Mr. Banker said the applicant proposed to construct a two-story single family residence with accessory structures within the building envelope. Some of the related grading work proposed would be outside of the lots buildable area within hillside area of the lot. The applicant proposes justification, and mentioned a wash on the west side of the property that would limit their ability to construct along with issues meeting the 30 foot height requirement. There's a 20 foot wide easement for 40th Drive including the west side of the lot. Staff did not believe there's a peculiar condition facing the property. It meets the one acre requirement for zoning, and its 40 percent hillside. Staff believes this vacant parcel is a result from unregulated land division which resulted in large portions of hillside on the lot and it has to meet the regulation for hillside. Staff doesn't believe there's a physical hardship on the property preventing development. There are alternatives to reduce the footprint, redesign the layout, elevations, and adding retaining walls to the property. Staff might have a site plan that's revised but we didn't have time to review.

Chairman Morris asked if staff has a sense of what the footprint would be without requesting a variance. Mr. Banker said there's multiple structures proposed on the site, and the request is for grading outside the building envelope. Depending on what they could do to reduce the amount of grading in the hillside area.

Chairman Morris asked if there's an overall coverage number. Mr. Banker said total lot coverage is 11.7 percent.

Chairman Morris said that doesn't seem like an excessive amount of coverage for an acre lot. Mr. Banker said the maximum allowed is 25 percent.

Chairman Morris asked a second time if the applicant is present for this case. No response.

Chairman Morris said the Board would like to hear from those that came down to speak on this matter, and then we can decide in light of the fact that the applicant is not here whether we are going to take action.

Mr. Jerry Kizziar, a concerned neighbor said they did meet with the Rivera's last Friday to go over the concerns with the building. He was able to take a look at what the engineer submitted last night. They proposed to move the building over to west about 15 feet which reduces the amount of hillside disturbance and requiring a variance on the north. This does cover some of his concerns he had. The property owner immediately to the north wanted to speak with the Rivera's about moving the wash over to make his lot usable. The Rivera's are wanting to work with the neighbors.

Chairman Morris said sounds like they were able to make some adjustments. The lot is a developable lot and it has the makings of a good variance case, but that doesn't mean they

shouldn't do everything in their ability to limit the amount of variances they are asking for and the degree of the variance.

Member Cardon asked Mr. Kizziar where his property located is. Mr. Kizziar said his property is northeast of this lot.

Mr. Gerard said if the revised site plan includes relocating that wash to the west and northwest, then this is an area that is not hillside and would greatly lessen the needed variance.

Chairman Morris said without the applicant here he doesn't know what site plan they need to be working from and the degree of variance they are seeking or whether any additional variances or adjustments are needed. This is the second time Mr. Kizziar has joined us and not seeing the applicant is frustrating.

Chairman Morris asked staff to why the applicant is not in attendance. Mr. Banker said he doesn't know why he is not here. He has communicated by e-mail and saw the neighbors were included in the correspondence that they are working together for a meeting date, and it was said they had a meeting last Friday. It was late to include this in the staff report, and to review a new plan that we haven't even seen.

Mr. John Kliethermes said he purchased his property to the north of the subject property. He didn't know there was a variance trying to be established until Mr. Kizziar contacted him. He would like to have input after they get to view the plans. We intend to put a structure on our site too and coordination would be ideal. Chairman Morris said it looks like your lot is more impacted by the wash and at some point there's an opportunity to come before this Board to ask for a variance.

Chairman Morris said maybe a continuance is in order. Member Cardon said he agrees. His concern is we've have had one neighbor come down twice now, but a continuance might be the best approach.

BOARD ACTION: Member Ward motioned to continue BA2019032 to the October 17, 2019 hearing. Member Cardon second. Continued 4-0.

BA2019034	MD Trust Property	District 1
Applicant:	Michael Whitlock	
Location:	13927 E. Ray Rd. (Ray Rd. & 140 th St.) in the Gilbert area	
Zoning:	Rural-43	
Request:	Variance to permit: 1) Existing eave roof overhang of 4' where 2' is the maximum permitted and; 2) An existing kennel, side setback of 21' where 30' is the minimum permitted	

Mr. Smith presented BA2019034 and noted staff is unable to support the request.

Vice Chairman Loper asked if it's a detached structure. Mr. Smith said no, everything is attached. Mr. Gerard said if it were detached it could be 3 foot from the side.

Mr. Michael Whitlock the applicant said he purchased the property in 1989 as a VA repo for \$85,000, and it took him two months to fix it up to move in. The back structure had a solar water heater on it and we noticed it was leaking through the roof. He always planned on replacing it for the past 30 years, but then six kids later and raising a family he never got to it. Then the middle of last year he started to plan to fix this. In January a storm changed their plans and one of the walls had blown in and the wall was leaning against the dryer. The rain was coming in the house, and the roof was sagging and he can see the rafters were all dry rotted. He had no choice to brace it up and take everything out and moved the washer, dryer and water heater to the kennel, which is a patio enclosed by a chain link fence. He put up tarps but they kept getting ripped up, so he had no choice but to take it all down and built a temporary wall. In the staff report it said I should have drawn up plans and went to get a building permit, but he knew he had to fix his house so he went ahead and demolished the back part and he rebuilt it. Then somebody turned him in. He was drawing up his plans and was going to turn them in to do things right. He designed the trusses to go completely over the patio and to go four feet over with four foot eaves over the walkway. He doubled checked his dimensions and the edge of his house is actually 31 feet 5 inches, so in reality he is seven inches too far on his eaves. He is asking for a variance for seven inches of eaves. As far as the kennel, the County said anything built before the year 2000 was grandfathered and that's been there for 25 years and there's no accessing it from inside the house. It is basically a shade structure for storage. He has affidavits from three neighbors and they are okay with that being there.

Vice Chairman Loper asked if the 31 feet is not just to the garage, but the house itself. Mr. Whitlock said yes, it's 31 feet 5 inches.

Mr. Gerard said it's a covered structure attached to the residence and because it's attached it has to meet the 30 foot side setback with two feet of eave overhang. The original attached facility was legal non-conforming prior to 2000. The reconstruction negated any legal non-conforming status. Mr. Whitlock said nothing was reconstructed on that kennel, he moved the washer, dryer and water heater and temporarily plumbed and ran electric for the appliances.

Chairman Morris asked what staff views as reconstruction versus non-conforming pre-existing use. Mr. Gerard said what he heard is a storm knocked the wall down and he removed the structure and rebuilt it. If the structure was always in place, we view that as a grandfathered setback.

Chairman Morris asked if this structure stood alone what would the separation distance need to be. Mr. Gerard said it needs to be structurally detached and not be under the same eave.

Member Cardon said due to the structure being there for a long time, and a storm knocking them down, along with the irrigation running along the other side of the property. The applicant has demonstrated a peculiar condition facing the land and a strict interpretation would be an unnecessary hardship, and that the general intent and the purpose of the rules are not violated.

BOARD ACTION: Member Cardon motioned to approve BA2019034 with conditions 'a'-'c'. Member Ward second. Approved 4-0.

- a) General compliance with the site plan stamped received August 8, 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.

BA2019037

Applicant:

Location:

Zoning:

Request:

Esposito Property

Phyllis McGurren

524 W. Lavitt Lane, in the Desert Hills area

Rural-43

Variance to permit:

- 1) Proposed rear yard coverage of 72.7% where 30% is the maximum permitted per MCZO Article 1106.2

District 3

Mr. Smith presented BA2019037 and noted there is more room on the property, and they could shrink the accessory structure, and move it elsewhere out of the rear property boundary for those reasons staff does not support this request.

Ms. Phyllis McGurren, representing the applicant said the owner purchased the property through a foreclosure so there were no records and it was sold in as-is condition. He had no idea the existing building had not been permitted, but that would be part of their process if they get the variance. Mr. Esposito owns a motorhome and other toys and he is unable to park them in the building in the rear that is why they asking for the 72.7 percent coverage with the new building at 40'x60'. The placement of the new building would be at the 60 feet going east and west, and would enter at the southwest corner of the driveway. We cannot place it anywhere else to turn the vehicles around for ingress/egress. There is a wash on the east side and a driveway on the west side. Plus a potential rear house yard on the south side and this leaves the only access we have. Mr. Esposito spoke to the property owner behind him and he has no problem. He has big mature trees protecting his view and the owner on the west side has an existing building, and the owner on the east side has mature vegetation blocking his view. We are asking for a variance since this is the only place we can put this building to protect his assets.

Vice Chairman Loper said it looks like the setback to the existing patio is 130'. Mr. Gerard said from the 16 foot patio behind the residence, a 50 foot proposed future back yard, and 44 foot to the proposed structure, it's about 140 feet.

Chairman Morris said it was indicated the dimensions weren't sufficient on the existing building. Ms. McGurren said it is not high enough for his motorhome.

Chairman Morris asked if they looked at reconstructing the building to serve the purpose rather than building an additional building. Ms. McGurren said it has living quarters in it and it is not a feasible project.

Member Cardon asked if they talked to neighbors other than those in the direct vicinity. Ms. McGurren said the owner talked to just the adjoining properties.

Vice Chairman Loper said the intent of the rear yard maximum area and moving it 40 feet closer negates that. The bigger issue is the wash and the mature trees, and this presents a hardship not wanting to remove mature vegetation. He doesn't have an issue with what they are proposing.

BOARD ACTION: Vice Chairman Loper motioned to approve BA2019037 with conditions 'a'-'c'. Member Cardon second. Approved 4-0.

- a) General compliance with the site plan stamped received August 19, 2019.
- b) All required building permits for proposed and existing development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit 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.

BA2019038

Applicant:

Location:

Zoning:

Request:

Boyd Property

Phyllis McGurren

38108 N. 25th Ave, N. 25th Ave. & Joy Ranch Rd., in the Desert Hills area

Rural-43

Variance to permit:

- 1) Proposed 5 lighting structures to be setback 3' where 20' is the minimum permitted

District 3

Mr. Smith presented BA2019038 and noted if they rearranged the arena they could meet the required light setbacks and still leave a driveway to the barn area. The existing/proposed stables, hot walker and arena will be accessory to the horse corral. The proposed lighting for the arena is required to be setback 20' and no higher than 20'. Staff does not support this since it could be rearranged.

Chairman Morris asked if there's been any comments from the public on this case. Mr. Smith said no.

Ms. Phyllis McGurren, representing the applicant said Desert Hills is surrounded by horse property and everyone surrounding this property is in agreement of what we want to do. Mr. Boyd built a mare motel 65' x 200' and it's heavily built. The hot walker is gorgeous and is imbedded. He is in violation because he didn't get a permit for his mare motel and we are in the process of getting the permits. He is wanting to put in an arena, since he and his wife are into reigning, roping and they compete on an amateur level. The arena needs to be a standardized size. This is the only place we can put it with seven horses on the property and the big hay trucks. The owner lives on the property to the west with a driveway going through. We have ingress/egress for trucks, fifth wheels, cattle trucks and feed trucks coming through that property, so the only place to put this is in the southwest corner. We do have a problem with the arena lighting as the statute says it needs to be 20 feet off of a property line. We have talked to all of the property owners around and nobody has a problem with it being three feet off of the property line from the west side and the south side. We will comply with all regulations and codes in building the lighting. Mr. Boyd is very anxious to get this done and to comply.

Member Cardon asked if the lights will be screened to focus in one direction. Ms. McGurren said yes they will be shielded.

Member Ward asked to have written statements from the surrounding neighbors.

Chairman Morris said some of the items that come through this Board are through violation and in this case it looks like the property owner "went to town" when building this mare motel on a vacant space with all sorts of room. Then upon getting a violation notice he is trying to fix it and now needs a variance. In that instance, it could clearly impact one of the property owners. Having some sort of indication from the adjoining property owners other than your statements would've been very helpful to this Board.

Ms. McGurren said she thought the County sent out letters to everybody. Chairman Morris said since you're the applicant you are the one that's supposed to contact the neighbors.

Ms. McGurren said the house to the north is vacant and to the east is over 150 feet from the property line, and so is the guy on the south.

Chairman Morris asked so when you are saying the surrounding property owners don't have a problem with this are you ascertaining whether they have an issue and whether they don't? Ms. McGurren said Mr. Boyd has spoken to them and said they are all good buddies.

Mr. Gerard said the only public notice is the site posting. If the property was combined with the residence this would eliminate two of the lighting variance requests, just to the property to the south. This is a design preference and the lighting can be on the interior of the arena rather than the perimeter. This is an instance of somebody needing to design their project to fit the development standards of the property.

Chairman Morris asked where this site would be posted since it's in interior parcel who would have noticed this and shown up at our hearing. Mr. Gerard said that is a very astute question, there has to be two postings and they were likely posted on 27th Avenue and where the easement enters the property.

Chairman Morris said it's possible the properties to the south and the east may have never seen that notification. He recognizes this is something that would be welcomed by this community since he represents this community. He would like to get some input from the neighbors so we have a sense of what is occurring on this property. Having a lighted arena can have some significant impact, and he would feel more comfortable to have some feedback from the surrounding property owners.

Ms. McGurren asked if she should send the letters to the Planning office. Chairman Morris said to come back in 30 days and show us some progress on that.

Mr. Peck asked to specifically address the lighting issue as opposed to the arena itself. Chairman Morris said to explain what the variance is for and to get their support.

Member Ward said coming from horse property herself she knows how annoying lights can be if they are not properly adjusted. In areas like this where the night sky is very open and then you put in lighting, it is very noticeable. She would like to hear from the neighbors.

Vice Chairman Loper said this came about as a result of a code enforcement action so somebody out there has a concern about the property. Not just the south owner but the owner to the south west, those are the two he is most curious they have support for this. If the property to the west is the same ownership and if they were combined that changes what's your front.

Vice Chairman Loper asked what makes these accessory lights subject to the setbacks versus parking lot lighting or a free standing light in front of a home. Mr. Gerard said it is only the setback on the south and west lot line and we would require lights unless they're within the public utility easement to meet that 20 foot setback. Accessory use lights are limited to a 20 foot height and a 20 foot setback and the corral for the keeping of horses is a primary use, and the arena is an accessory use to that triggers a specific setback for the lighting as would parking lot lighting. Depending on the use of the lights there are some different nuances.

Chairman Morris asked is there a requirement that the lights be shielded. Mr. Gerard said it's in the ordinance where it needs to be shielded, and so it shines below the horizontal plane. If you were considering approval you can add a stipulation 'd' that all lighting be shielded and directed interior of their lot making it stricter.

Chairman Morris said there's no requirement of timing, and these lights could go on as late as the property owner desires. Mr. Gerard said they could be on all night long.

Member Ward said she would like to make a motion to continue for 30 days to get written or in person representation from the adjoining neighbors on all sides, and a timeframe for the use of the lights.

BOARD ACTION: Member Ward motioned to continue BA2019038 to the October 17, 2019 hearing. Vice Chairman Loper second. Continued 4-0.

Adjournment:

Chairman Morris adjourned the meeting of September 19, 2019 at 11:10 a.m.

Prepared by Rosalie Pinney
Recording Secretary
September 19, 2019