



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

October 17, 2019

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

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

MEMBERS ABSENT: Mr. Jason Morris

STAFF PRESENT: Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Eric Smith, Planner
Mr. Glenn Bak, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney

ANNOUNCEMENTS: Vice Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2019032, BA2019030, BA2019040, BA2019031, BA2019038,

APPROVAL OF MINUTES: August 15, 2019 and September 19, 2019

Vice Chairman Loper requested a motion to approve the August 15, 2019 and September 19, 2019 minutes. Member Schwartz indicated his abstention due to not being in attendance at either hearing.

BOARD ACTION: Member Ward motioned to approve the August 15, 2019 and September 19, 2019 minutes. Member Cardon second. Approved 3-0-1 (Schwartz)

Vice Chairman Loper announced item #4 - BA2019031 will be moving from the Regular Agenda to the Withdrawn Agenda

WITHDRAWN

BA2019032	Rivera Property (Cont. from 9/19/19)	District 5
Applicant:	Manuel A. Inurriaga, M & M Civil Engineering	
Location:	10423 S. 40 th Dr. in the Laveen area	
Zoning:	Rural-43	
Request:	Variance to permit:	
	1) Proposed hillside disturbance (grading) outside the lot's principal buildable envelope	

- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2019040 conditions;

- a) General compliance with the site plan stamped received September 20, 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.

REGULAR AGENDA

BA2019038

Boyd Property (Cont. from 9/19/19)

District 3

Applicant:

Phyllis McGurren

Location:

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

Zoning:

Rural-43

Request:

Variance to permit:

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

Mr. Smith presented BA2019038 and noted existing violation, letters of support, and one objection. The proposed lighting for the arena is required to be setback 3' and no higher than 20'. Staff does not support this since the largest could be rearranged without need for variance.

Member Cardon asked about the violation related to the property and if resolved. Mr. Smith said the violation is in admin remedy status pending outcome of the variance request.

Vice Chairman Loper inquired about support and opposition. Mr. Smith said we do have some letters in support and one in opposition of the lights included in the packet.

Member Schwartz asked why staff doesn't support the request.

Mr. Smith said lights and structures were built without permits. Mr. Gerard said had they come in for permitting before erecting the structures they could easily redesign and comply with the development standards. We do not believe this meets the statutory tests to grant a variance

Vice Chairman Loper inquired about the location of the opposition. Mr. Smith said the opposition was to the southwest.

Ms. Phyllis McGurren, representing the applicant indicated at the last Board hearing the Board said the request was a good thing but wanted letters from the neighbors. Ms. McGurren said Mr. Boyd put up this massive structure without a permit and was turned in for a violation. There is no residence on this property and it is not a primary use. An arena is a primary use so they put in an arena. She went on to describe horse trailer circulation. Horse lovers were in support and the

individual opposed was concerned that if the property were sold the new owner would not adhere to light standards. She concluded the variance was also needed to allow the owner to move forward with permitting the as-built mare motel. They can't apply for that until they have a primary use.

Member Cardon inquired as to what standards are being proposed by Mr. Boyd. Ms. McGurren said whatever the County would require i.e. lights off by 9:00 or 10:00.

Member Cardon asked staff as to what lighting regulations are in place. Mr. Gerard said there are no rules regarding timing of lights, but lights must be shielded. If you were to entertain a variance it would be appropriate to add a condition, but enforcement of that would be extremely difficult.

Member Schwartz asked about the timeline relating to structures on the property. Mr. Gerard indicated the property was vacant in the latest available aerial and all the structures were constructed in the past several months.

Member Schwartz asked if there was a permit for the arena. Mr. Gerard said they are going to seek a permit for the arena, but there has not been a permit for anything that has been done on the property.

Member Schwartz inquired as to if there were current photos available. Ms. McGurren indicated nothing was permitted.

Member Schwartz said things happened in reverse and put things in and they should have gotten a permit first than asked for the additional structure and the variance. Mr. Peck indicated they couldn't have obtained a permit for the building since it could not be the primary structure on the property.

Member Schwartz said they are asking for forgiveness and not permission.

Vice Chairman Loper asked about the sequential order of structures now in place and what was proposed to be built i.e. the mare motel, hot walker and arena. Ms. McGurren clarified the arena and lights had not yet been built.

Vice Chairman Loper asked why the proposed dimensions and lighting setbacks were needed and why it couldn't be reconfigured. Ms. McGurren said it is a standard size for competition purposes. He has tried to reconfigure it but there is no way he can in order to turnaround these large trucks.

Vice Chairman Loper asked if the owner also owned the property to the west and Ms. Phyllis McGurren said that was correct. Vice Chairman Loper asked if there were any other speakers and there were none.

Mr. Wayne Peck explained the statutory test for a hardship in that if a peculiar condition exists, when you apply the regulation to that peculiar condition, that regulation creates a hardship and that granting the variance would not be in derogation to the zoning ordinance or comprehensive plan, and in determining if there is an unusual condition it cannot be self-created by the applicant or anyone in the chain of title. Mr. Wayne Peck said while support can be taken

into consideration, it's not part of the statutory plan. Mr. Wayne Peck said this is a complicated matter and the question raised is whether there was an alternative and the testimony was they need a primary use so they can have the mare motel and anything listed in the zoning ordinance as a primary use would satisfy that and as the applicant stated the arena is good for the competition, so part of your consideration is if it is appropriate to have the arena in that area because this arena creates a violation because of the lights. Mr. Wayne Peck asked if he confused the Board more.

Member Schwartz replied no, but the point he was making was the peculiar condition was the result of looking at various options to determine that it is a peculiar condition and here's my point and you look at the site plan the stables are modular and can be moved around so that you could have looked at various options and peculiar condition didn't exist.

Vice Chairman Loper asked if there were any more comments of staff or the applicant. Vice Chairman Loper then asked the applicant what is a 'permanent hot walker'.

Ms. McGurren said it is concreted 3 feet into the ground and it exists today and the mare motel is a large welded structure and permanent not portable and is a very heavy duty structure, as is the hot walker, the owner has very expensive animals and he did not know he needed to have a permit. Ms. McGurren said the last time she was in here you folks were willing to let this pass, you just wanted the extra security of knowing how the neighbors felt.

Member Ward said that is not factual as I recall we did not make any decisions we asked you how the neighbors felt without telling you we were for or against, because I have another question I have been Googling arena sizes and the biggest I found was 150 by 250, can you tell me what kind of specialized arena this is?

Ms. McGurren said this is for barrel racing, roping, and reining.

Member Ward said those all fall under the maximum size I found, which would allow the variance for the lighting to make the arena just a little smaller.

Ms. McGurren said if that's what we have to do we'll do it, we have to get this barn permitted, he's on non-compliance at this moment.

Member Ward said if they were to agree to that it would take it away from us.

Mr. Gerard said there are many options available from the staff perspective we believe the site can be redesigned and the property can be consolidated with the property the owner owns to the west and then the only issue are the 3 lights and their height to the south and they need to be moved in 20 feet.

Member Ward said the last time they were unwilling to make any modifications.

Ms. McGurren said that's the owner not me.

Member Ward said if you were to modify the arena that would allow you to move the lights and we would no longer have the issue.

Vice Chairman Loper asked if there were any more questions of the applicant. Vice Chairman Loper asked the applicant and staff if it was just the 3 lights on the south.

Mr. Gerard said for clarification and to the west property under same ownership has a principal use in a single-family residence and the only question would become accessory lights.

Vice Chairman Loper asked the applicant if she knew about how big the property to the west is

Ms. McGurren said she believed it was about 3 acres.

Vice Chairman Loper said it wasn't advise, but if they were able to get the agricultural exemption with 5 acres.

Mr. Gerard said the wasn't that much acreage even if consolidated, they'd need 5 commercial acres which they may or may not have and if they were exempt it would exempt them from County zoning authority which would include the 20 foot setback for lights. From the staff standpoint the driveway could run along the south, loop through the property to the west and they'd still have the same access and they could move the arena 20 foot to the north and closer to the hot walker.

Vice Chairman Loper said asked if we were to approve the variance would it need to include the lights to the west.

Mr. Gerard said its's all part of the variance request.

Vice Chairman Loper said from what Darren said there are options in terms of squeezing the entrance drive. My concern is the person to the southwest wasn't extremely vocal in opposition but also didn't support it, and so I am taking that into consideration as part of the overall. Vice Chairman Loper asked if the Board had any more questions of the applicant.

Ms. McGurren asked if she would get notified from this meeting.

Vice Chairman Loper said you will get a letter stating the outcome and the minutes once approved are public record.

Mr. Gerard said there will be a vote from the dais.

Vice Chairman Loper said you will be here when we vote and closed the public discussion then asked if any further Board discussion.

Member Schwartz said I am a big horse guy and have been riding forever but a couple things bother me with it. Number one is the good guys get punished for following the rules when the bad guys are breaking the rules. This case was resolvable without having to come to us and I can't see any peculiar condition. The applicant just didn't take the time to figure out options. Member Schwartz said I don't want to be a bad guy because if we deny them they can't come back it's not good to have a denial but I'm not happy you have now had to sit through 2 hearings and staff has had to work on something when an applicant could've been more proactive in trying to find options, so I'm inclined to ask the applicant to go back and not put us in the position of giving them a denial because there's no peculiar condition.

Vice Chairman Loper said if that were to occur the applicant would not have to come back they would just proceed with working with staff to insure everything gets permitted.

Member Cardon said I agree with member Schwartz the way this came about seems difficult so I'm taking a few things into consideration, the neighbor to the south who doesn't feel great about approving this didn't come but there is a letter here. What could help is some time conditions when the lights go off. As it relates to peculiar conditions, all the things Member Schwartz mentioned are true. In looking at the area in order to use the property in the desired way, there are some limitations on how things can be configured, so I'm seeing a peculiar condition in that regard, but also because the owner has property to the west I can see granting a variance for the 2 lights and approving the rest if we included a condition about timing.

Vice Chairman Loper asked what kind of time were you looking at.

Member Cardon said I guess that would be a question of staff.

Mr. Gerard said we have had many different scenarios 10:00 P.M. is usually fairly standard.

Member Schwartz said I have a question who becomes the police there's no way to enforce and asked if there's a process to revoke a permit.

Mr. Peck said if they violate the condition they would be in violation of the variance which would be a zoning code violation which would not take away the variance they would just be punished for what they did and it would be almost impossible because after 10:00 P.M. and while our staff is incredibly diligent in order to investigate they'd have to go out at business hours, which are light and if light on would not be a violation, it's basically unenforceable.

Member Schwartz said to that point the owner owns both lots and should have planned in advance, he created the peculiar condition and he needs to go back and show us he can make it work because we're going to be precedent setting by allowing people to put up improvements without getting permits first.

Vice Chairman Loper said this is a tough one for me I'm not a horse person but I work with the industry enough that I feel for the requirements; however, it would appear to me that there are options there that may negate the need for a variance and so I like the idea of not taking a vote. If you get it denied you have to wait a period of time to reapply even if you adjust the site and now you need a foot.

Mr. Peck said if there's a substantial change there would be no time requirement as it would be to request the same.

Vice Chairman Loper said I think I'm supportive of them going back to the drawing board rather than us rendering a decision today, but with that said I'll call for a motion.

Member Schwartz said I make a motion that we continue case BA2019038 to allow the applicant to go back and work with staff on various other options.

Vice Chairman Loper said before I look for a second is that an indefinite continuance or to a date specific.

Member Schwartz said just indefinite I don't know how much time they'll need unless staff advises us any differently. I'm OK either way I just thought if we put a date specific and they can't get their team in place in that time because I know engineers are busy.

Vice Chairman Loper said then the question for staff is if we continue indefinitely what is the trigger stop.

Mr. Gerard said separately we still need to prosecute code enforcement so I can have the officer check to see if the mare motels have been permitted or not regardless of other external factors.

Vice Chairman Loper said is it helpful then if continued to say 30 or 60 days.

Mr. Gerard said it's the same to continue to date specific or deny it, as they could still redesign.

Member Ward said if we motion to deny it today they could then be right back around this afternoon and resubmit their changes that would meet requirements, they could continue going.

Mr. Gerard said yes, for construction permitting.

Mr. Peck said could we clarify if you deny and they go back do a plan that conforms they don't need you any more.

Member Schwartz said they go back and they need only 2 or 3 feet they need to start all over again.

Mr. Peck said they would in either event, they would have to submit a new application if they're requesting different variances.

Member Schwartz said so a denial would not harm them.

Mr. Peck said it only means they could not come back with the exact same plan that is correct, and it would allow staff to process the code violation.

Vice Chairman Loper said I'm looking for a second and I'll open it back up for discussion.

Member Schwartz said so I'll modify that.

Mr. Peck said I think you want to withdraw your motion which has not yet been seconded.

Member Schwartz said let me withdraw my motion I want to keep a hammer out there to keep things moving but I'm not supportive in it's current condition but I hate to give a denial without giving someone the opportunity to fix it but if you're saying it doesn't matter either way then I make a motion for denial.

Member Ward seconded.

Vice Chairman Loper said we have a motion and a second for denial I just throw this out there before I ask for the vote that if continued and a question for Mr. Peck and staff if they came

back and they needed 2 feet rather than 17 feet they could simply modify this application and not have to pay another application fee so they save they variance cost.

Mr. Peck said maybe but staff would still have to do an analysis and that involves expenses so I can't answer that and if you consider them going to 2 feet a substantial change they could come in with a variance for that.

Member Schwartz said well hold off on the vote, Darren if they said 2 feet to 17 feet can you tell us would there be another application.

Mr. Gerard said if we're looking at a lighting request for the south lot line I think we would look at that as the same variance.

Member Schwartz said I want to remove my motion and go back to where I was at.

Vice Chairman Loper said we have a motion and a second and we need to take a vote on this item.

Mr. Peck said no it can be withdrawn if both the maker and seconder are in agreement.

Member Ward said may I hear your reason.

Member Schwartz said my reason is why make them pay twice to go through a variance process. I don't want to make them spend more money and I'm willing to give them 45 more days to prove that and I think that's fair I don't like being heavy handed but I like following the rules.

Mr. Gerard said the next hearing dates are November the 14th or December the 19th.

BOARD ACTION: Member Schwartz motioned to continue BA2019038 to the December 19, 2019 hearing. Member Ward seconded. Continued 4-0

Adjournment:

Vice Chairman Loper adjourned the meeting of October 17, 2019 at 10:43 a.m.

Prepared by Glenn Bak
Recording Secretary
October 17, 2019