



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

January 21, 2021

CALL TO ORDER: Chairman Loper called meeting to order at 10:01 a.m.

MEMBERS PRESENT: Mr. Craig Cardon
Mr. Greg Loper
Ms. Heather Personne
Ms. Fern Ward

MEMBERS ABSENT: Mr. Jeff Schwartz

STAFF PRESENT: Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Martin Martell, Planner
Mr. Sean Watkins, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Rebecca Quince, Senior Project Manager, OET

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2020063, BA2020060, BA2020061, BA2020062, BA2020056

APPROVAL OF MINUTES: October 15, 2020 and November 12, 2020

Chairman Loper requested the election of officers for 2021.

BOARD ACTION: Member Cardon made a motion to re-elect Chairman Loper and Vice Chair Ward. Vice Chair Ward second. Approved 4-0.

Chairman Loper asked if there were any changes or comments to the minutes for October 15 and November 12, none.

BOARD ACTION: Chairman Loper motioned to approve the October 15, 2020 and November 12, 2020 minutes as written.

CONTINUANCE AGENDA

BA2020063	Burns Property	District 3
Applicant:	Luis Gonzales, NextGen Builders	
Location:	APN 210-11-021E @ 1710 W. Yearling Rd. – NE of NEC 19th Ave. and Happy Valley Rd. in the Phoenix area	

Request: Variance to permit:
 1) Proposed rear yard setback of 7' where 40' is the minimum permitted per MCZO Article 503.4.3 and;

Findings: The applicant/property owner must exhaust administrative remedies with MCDOT first before determining if a variance would be needed based upon MCDOT's decision on patent easement and reduction of reserved right-of-way. Request for **indefinite continuance** of the case.

Mr. Gerard noted the applicant requested an indefinite continuance. No action required by the Board.

CONSENT AGENDA

BA2020060 **Silvercrest Way, LLC** **District 3**
Applicant: Don Schatz, Creative Renovations
Location: APN 169-16-012 @ 7545 N. Silvercrest Way., in the Paradise Valley area
Requests: Variance to permit:
 1) Proposed rear yard setback of 7' where 40' is the minimum permitted per MCZO Article 503.4.3 and;
 2) Hillside disturbance of 6,496 sq. ft. outside the lot's buildable area where hillside disturbance is prohibited outside the lot's buildable area per MCZO Article 1201.6.1.1

BA2020061 **Epps Property** **District 2**
Applicants/Owners: Darrell & Tracey Epps
Location: APN 219-32-001R @ 11208 E. Minton St. – SW of SWC Meridian Rd. & McDowell Rd., in the Mesa area
Requests: Variance to permit:
 1) Proposed front setback of 30' where 40' is the minimum permitted per MCZO Article 503.4.1.a and;
 2) Proposed east side setback of 15' where 30' is the minimum permitted per MCZO Article 503.4.2 and;
 3) Proposed west street side setback of 15' where 20' is the minimum permitted per MCZO Article 503.4.1.c

Mr. Gerard presented the consent agenda, and noted item #4 – BA2020062 was moved to the regular agenda.

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

BOARD ACTION: Member Cardon motioned to approve the consent agenda - BA2020060 with conditions 'a'-'b', and BA2020061 with conditions 'a'-'b'. Vice Chair Ward second. Approved 4-0.

BA2020060 conditions;
 a) General compliance with the site plan stamped received January 4, 2021.

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

BA2020061 conditions;

- a) General compliance with the site plan stamped received December 3, 2020.
- b) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

REGULAR AGENDA

BA2020062

Applicant/Owner:

Location:

Requests:

Swisher Property

Larry Swisher

APN 503-79-034@ 23601 N 197th Avenue – Pinnacle Peak Rd. & 196th Ave., in the Surprise area

Variance to permit:

- 1) Proposed interior side setback of 5' where 30' is the minimum permitted per MCZO Articles 503.4.2 and 402.2.4 and;
- 2) Proposed interior side setback of 14' where 30' is the minimum permitted per MCZO Article 503.4.2

District 4

Mr. Watkins presented BA2020062 and noted there are no known violations on the property, and no known citizen opposition, but received one agency comment of non-support by the City of Surprise. This variance request is related to the presence of a 65 LDN noise contour line, associated with the Luke Air Force Base (LAFB) Auxiliary 1 Airfield, which bisects the subject property from roughly the northwest corner to the southeast corner. The southwestern portion of the property lies within the 65 LDN where no residential development may be permitted (MCZO Art. 1010.6.1). The 65 LDN contour is to be treated as a property line for applying all zoning district requirements (MCZO Art. 402.2.4). The subject 65 LDN line comprises an Interior Side with a 30 ft. required yard setback where a 5 ft. setback is requested. The north property line is also an Interior Side with a 30 ft. required setback where a 14 ft. setback is requested. Considering the location of the 65 LDN line and the other setbacks required under MCZO Art. 503.4, staff finds that the proposed residence could not fit on the property without a variance for at least one required yard setback. The applicant has demonstrated a peculiar condition and an undue physical hardship exists that prevents the development of the property in that the 30 foot required setback from the 65 LDN contour line is triggered by MCZO Art. 402.2.4, which requires the line to be treated as a property line. The intent of prohibiting new residential construction within the 65 LDN contour would be met even if a 0 ft. setback from it was enforced, as long as no portion of a new residence is within the 65 LDN contour. Enforcement of an additional 30 ft. of setback from the 65 LDN contour is unnecessary, exceeds the intent of the prohibition of residential development within the 65 LDN contour and results in an undue burden on the applicant. The applicant has demonstrated the peculiar condition is not self-created in the line of title in that, according to the applicant's statement, disclosure documents provided at the time of purchase of the subject property specifically identified that no noise contour was present. While this may constitute grounds for civil action against the previous property owner, the applicant instead desires to move forward with residential development of this property rather than dedicating time and resources to pursue potential civil action. The City of Surprise submitted a comment of non-support stating the subject property is within the city's planning area, and it is there policy

to seek to protect the mission of Luke Air Force Base and would not allow residential development on any portion of the property because the 65 LDN line lies on a portion of it. It is not the county's policy to enforce the prohibition of residential development beyond the high noise accident protection zone outside of their delineation. Staff disagrees with the City of Surprise interpretation of the ordinance.

Member Personne asked is there no other way to fit the house on the property without violating setbacks, and said it seems if they pushed it back a little to the east they could get further away from the contour line. Mr. Watkins said he tried to place the house footprint on the property to not encroach on any setbacks, but it won't work. There has to be at least one variance to site this house on this property. Staff acknowledges they could at least redesign the house to create an unusual shape to meet all the setbacks. The burden is on the applicant to achieve that, and it is more of burden than a benefit to the community for meeting all the setbacks.

Mr. Larry Swisher, the applicant said when they purchased the lot they didn't know anything about a noise contour line, and have now gotten themselves in a situation. They went down to the county and submitted drawings and was told they needed a grading and drainage plan, and was not told about the zoning. Then they worked with an engineer and submitted the drawings. If we moved the house back we would be looking right in the neighbor's back yard and back of their house.

Chairman Loper asked if this was to be continued to allow time for Luke AFB to comment would it present a hardship. Mr. Swisher said no it would not.

Mr. Peck said since the portion of the property you are considering is outside of the LDN, Luke has no more ability to comment than anyone else we would route to.

BOARD ACTION: Member Cardon motioned to approve BA2020062 with conditions 'a'-'b'. Vice Chair Ward second. Approved 4-0.

- a) General compliance with the site plan stamped received January 4, 2021.
- b) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2020056	Galhotra Property (Cont. from 12/17/20)	District 3
Applicant:	Edward Chavez, Chavez & Associates	
Location:	APN 169-13-028 @ 4313 E. Upper Ridge Way – ¾ mile SW of the SWC Tatum Blvd. & Clearwater Pkwy., in the Paradise Valley area	
Zoning:	Rural-43	
Request:	Variance to permit: <ul style="list-style-type: none">1) Existing hillside disturbance of 1,509 sq. ft. outside the lot's principal building envelope where hillside disturbance is prohibited	

Mr. Martell presented BA2020056 and noted part of the disturbance occurred on the westerly property line, and other disturbances along the south easterly property line. The property has a history of previous disturbance before the current owner's purchased the property, along with an LU case and a previous variance case that approved the disturbance along the south

property line. There are some preexisting disturbance areas when they bought the property along the south property line and along the street side of Upper Ridge Road. The applicant has demonstrated there is a peculiar condition facing the property in that the dramatic slope of the natural terrain of the lot makes disturbance within the building envelope difficult on this site. The applicant has demonstrated applying the requirements of the zoning ordinance to this property has a peculiar condition, and an undue physical hardship exists that prevents development of the property in that the earth/hard rock that has been removed from the property erroneously cannot be replaced or made to appear undisturbed. The applicant has demonstrated the peculiar condition or physical hardship is not self-created, because the disturbance was done without property owner authorization. Due to alleged negligence of an excavation company which erroneously disturbed areas outside of the lot's building envelope is not at the fault of the property owner. The applicant has demonstrated that the general intent and purpose of the zoning ordinance will be preserved despite the variance because the disturbance has already taken place, and the existing modifications to the lot are minimal and hardly noticeable to the surrounding properties.

Member Cardon asked the status of the open violation. Mr. Martell said the applicant has been working with the neighbors to rectify the situation. The violation was for unauthorized grading by the current construction and is now in review status. This is what started this entire variance request. The violation was for disturbance outside the building envelope, and the disturbance was done erroneously by the grading company. There is a subsequent law suit. This case was continued from December hearing, and they have been working with the neighbors and law firm to resolve these conflicts. They're in agreement that approving this variance request will help mitigate the problems with the outside disturbance and the drainage will be fixed by approving the variance.

Mr. Edward Chavez, the applicant said since our prior meeting, our office has worked with the community representatives to finalize a conceptual design for the drainage of the lot. On December 16 they received written approval of the revised plans they submitted to Don Anderson of Anderson, Nelson Inc. They are the firm that designed the roadway and drainage improvements for lot 161 through lot 163. His approval was for the revised grading and drainage plans submitted to the County and the HOA. On December 22 the revised plans were approved except for the outstanding issue with the variance. We had a site meeting with the community representatives on January 12 with the new county approved modified design. We have met with the owner of lot 160 with discussions of the drainage and feedback from the HOA. They decided to leave the approval up to the county. Currently we have to rely on the engineers and the drainage studies that everything will go in the correct directions and to natural historical flows. There is a hardship with this difficult property being hillside and the negligence by the grading contractor.

Mr. Robert Williams, with law firm of Gust Rosenfeld representing Clearwater Hills Improvement Association said any action the Board takes should not exempt the property owner from making all required submittals and obtaining approval from the association's design review committee with regard to construction on the property. The disturbance should satisfy all applicable Maricopa County Zoning Ordinance requirements, drainage regulations and building safety codes.

Chairman Loper said the County does not enforce CC&R's or other type of deed restrictions. Mr. Williams said he understands.

Member Cardon asked does the HOA require landowners to get approval for this sort of activity. Mr. Williams said yes, they need to be submitted to the HOA for approval.

Member Personne said she did not attend the hearing when this was first discussed, and asked if she is allowed to vote on this item. Mr. Peck asked if she listened to the recording or read the transcript. Mr. Personne said no. Mr. Peck she is not eligible to vote.

BOARD ACTION: Member Cardon motioned to approve BA2020056 with conditions 'a'-'b'. Vice Chair Ward second. Approved 3-0-1.

- a) General compliance with the site plan stamped received October 12, 2020.
- b) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

Mr. Peck said obtaining a variance is one step to getting your project done. If there is a separate HOA requirement and the property owner doesn't get it, then the HOA has an action. After the variance approval they still need to get building permits and everything else they have to get done.

Adjournment: Chairman Loper adjourned the meeting of January 21, 2021 at 10:45 a.m.

Prepared by Rosalie Pinney
Recording Secretary
January 21, 2021