



**BOARD OF ADJUSTMENT**  
**MARICOPA COUNTY, ARIZONA**  
205 W. Jefferson Street, Phoenix, Arizona  
and by GoToWebinar  
**February 16, 2023**  
**Minutes**

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**CALL TO ORDER:** Acting Chair Schwartz called the meeting to order at 10:01 a.m.

**MEMBERS PRESENT:**

**In-person**  
Mr. Jeff Schwartz  
Ms. Fern Ward  
**GoToWebinar**  
Mr. Craig Cardon

**MEMBERS ABSENT:** Mr. Greg Loper, Chairman  
Ms. Heather Personne, Vice Chair

**STAFF PRESENT:**

Mr. Tom Ellsworth, Planning & Development Director  
Mr. Darren Gérard, Planning Services Manager  
Mr. Matt Holm, Planning Supervisor  
Ms. Rachel Applegate, Senior Planner  
Mr. Joel Landis, Planner  
Mr. Joseph Mueller, Planner  
Ms. Rosalie Pinney, Recording Secretary

**COUNTY AGENCIES:**

Mr. Wayne Peck, County Attorney  
Mr. Nik Decker, County Attorney  
Mr. David Anderson, Business Engagement Manager, OET  
Ms. Alisha Bach, Technical Team  
Ms. Judy Green, Technical Team  
Mr. Martin Camacho, Technical Team

**ANNOUNCEMENTS:** Acting Chair Schwartz made all standard announcements.

**AGENDA ITEMS:** TU2022041, BA2022061, BA2023003, BA2023004, TU2023003

**APPROVAL OF MINUTES:** December 15, 2022 and January 19, 2023

Member Ward nominated Member Schwartz to be acting chairman in the absence of Chairman Loper and Vice Chair Personne.

Chairman Schwartz asked if there were any changes or comments to the minutes for December 15 and January 19, none.

**BOARD ACTION:** Chairman Schwartz approved the December 15, 2022, and January 19, 2023 minutes as written.

## WITHDRAWN AGENDA

<b>TU2022041</b>	<b>Jajou Property (Cont. from 11/10/22)</b>	<b>District 4</b>
<b>Applicant:</b>	Kenny Hermiz Jajou	
<b>Location:</b>	APN 142-80-035 @ 11221 N. 111 <sup>th</sup> Ave. Sun City, AZ	
<b>Request:</b>	Temporary Use Permit (TUP) for underage occupancy of a minor in the Senior Citizen Overlay	

Mr. Gérard said the request has been withdrawn by the applicant. No action is necessary by the Board.

## REGULAR AGENDA

<b>BA2022061</b>	<b>Odogui Property</b>	<b>District 4</b>
<b>Applicant:</b>	Rosalio Mondragon, ARQM LLC	
<b>Location:</b>	APN 503-40-001W@ 21816 W. Lone Mountain Rd.– Lone Mountain & N. Crozier Rd., in the Wittmann area	
<b>Request:</b>	Variance to permit: 1) A proposed side setback (north) of 19' where 30' is the minimum permitted per MCZO Article 503.4.2	

Mr. Landis presented BA2022061 and noted approving this request would allow a 19' side setback on the north of the parcel where 30' is the minimum permitted. The subject lot was created as part of an unregulated minor land division in 2006 and is one of several properties that the applicant and his family owns in the immediate vicinity. The subject property is bound by an ingress/egress easement to the west, floodway to the east, and a section line alignment to the south on Lone Mountain Road. These features limit the buildable area for the home based on the existing parcel boundaries. There are questions regarding the current use of the parcel. Site aerials indicate the storage of materials and vehicles on the subject site and adjacent parcels owned by the applicant that would have the potential to be used for commercial applications. As seen on the flood map aerial, several of these materials and buildings are shown within the floodway, potentially affecting the orderly flow of water through the parcel and adjacent properties. It would be possible to reconfigure these lots in such a way to mitigate setback concerns. However, there would be several issues in the permitting phase regarding existing structures within the floodway. Staff is recommending denial as the applicant has failed to demonstrate that the strict application of the Maricopa County Zoning Ordinance (MCZO) to the applicant's property has caused undue physical hardship that prevents the reasonable development of the property. Along with the prior state possibility to redelineate the lot, the applicant may also design the house to meet existing setbacks or reconfigure the ingress/egress easement on the west side of the property to allow for more conducive development.

Mr. Sam Odogui, the property owner said the materials on the property are for the construction of his home and his son's home on the northeast part of the property. His son received his building permit a few weeks ago. He did not create the lot split of the parcels. He purchased the property from the bank in 2008, it was a home that was foreclosed upon. He doesn't believe being 11 feet closer to the wall will adversely affect anything. He had an engineer do a grading and drainage plan.

Member Cardon asked if it wasn't for the floodway would you be doing a different plan for the house and not need a variance. Mr. Odogui said he is proposing to build a home that he had visioned when he was 16 years old. The water flows on the east and he's never had a problem with water backing up. He put over 200 fruit trees in the floodway area. Member Cardon said we have a statute we go by when seeking a variance to find a peculiar condition on the property and a hardship that would necessitate you receiving the variance.

Member Cardon asked if it wasn't for the floodway, easements or different things would you be able to achieve what you want to accomplish without a variance. Mr. Odogui said he is not asking to encroach in the floodway, he is only asking to be closer to the north wall. He doesn't want to use property from one of his other parcels, because he doesn't want to risk losing both properties if the economy takes a bad turn.

Mr. Gérard said the fact there is a floodway in the east end of your property and asked is it a hardship forcing you to push your house plan further west if it wasn't for that floodway. Mr. Odogui said the purpose of going north because MCDOT has a 55-foot reservation for a future roadway.

Chairman Schwartz said you do have the ability on the north side of your property to get enough land from your other parcel to eliminate requesting a variance. Mr. Odogui said no. If he took a piece from the other parcel to the north it would reduce it below one acre. Chairman Schwartz said you also own the other parcel further to the north of that and asked how many acres is that parcel. Mr. Odogui said under two acres.

Chairman Schwartz asked if anyone else from the public wished to speak on this case.

Ms. Jenny Vitale said she is an engineer by trade, and she believes the applicant doesn't understand what the hardship is on his parcel. She sees several hardships on the property. The floodway sets off a chain of events. The septic system has setbacks from the wash, and it has a lot of flow. He will have to move his reserve area further to the west because it doesn't comply with the setbacks. The septic system is dictating the location of the building, and there is no room on the southside and potential right-of-way on the west side of the property. The septic and floodway determine how far east and west this building can be. He cannot turn that section that is encroaching 90 degrees, it shoves everything back. The hardship is the floodway in the easement and not having enough land to install the septic system.

**BOARD ACTION: Member Ward motioned to approve BA2022061 with condition 'a'. Member Cardon second. Approved 2-1. Ayes: Cardon, Ward. Nays: Schwartz.**

- a) Variance approval establishes a 19' north setback line for APN 503-40-001W.

<b>BA2023003</b>	<b>Hill Property</b>	<b>District 3</b>
<b>Applicant:</b>	Jenny Vitale, P.E.	
<b>Location:</b>	APN 202-20-461G @ 43848 N 10 <sup>th</sup> St. – Circle Mountain Rd. and New River Rd. in the New River area	
<b>Request:</b>	Variance to permit: <ul style="list-style-type: none"><li>1) New hillside disturbance of 3,447 sq. ft. outside the lot's principal buildable envelope where prohibited per MCZO Art. 1201.6.1.1</li></ul>	

Mr. Mueller presented BA2023003 and noted granting the variance would allow the issuance of an active building permit for a single-family residence. The subject property is not only entirely defined hillside, with slopes of at least 15% over the entire property, but is severely encumbered by extreme slopes in excess of 40% on the southwestern portion of the property, prohibiting placement of septic within Principal Building Envelope (PBE). Staff notes the applicant proposed the establishment of a preservation area within the PBE as a trade-off for the proposed disturbance. While staff recognizes the positives of this proposal, it must be noted that the Board does not have authority to establish such a preservation area. Staff has received one email of opposition. The applicant has demonstrated there is a peculiar condition facing the property because of the unusually severe slopes encumbering safe development within the lot's principal building envelope. The applicant has demonstrated applying the requirements of the MCZO to this property with these peculiar conditions and an undue physical hardship exists because the extreme slopes prohibit placement of a properly functioning septic system within the PBE.

Ms. Jenny Vitale said she is the engineer for the project. There is a little bit of the driveway encroaching outside the building envelope. In this area you cannot back down a driveway, you need a way to safely turn around to get back down. This didn't allow a whole lot of room for the septic. She does her best to abide by the hillside ordinance and it's her responsibility to put in a septic that is going to function well beyond the 20-year design life. We wanted to preserve something inside that is environmentally sensitive with a preservation easement. This property will be sharing a well with the lot to the north and the lot to the west. She did her best to keep everything tight and this is a modest house with a garage and not a very big backyard.

Member Ward asked if the other properties would have developed first then they would have the well on their property. Ms. Vitale said this was a parent parcel and they split it into three lots with one well easement for the three lots. If someone else built first they would have the responsibility of putting in the well.

Member Cardon asked without this easement the property could not be developed. Ms. Vitale said correct, she would have no way to put the septic in, and there is no way to put the septic in the front of the house.

Chairman Schwartz asked if this is a single-story house on one elevation. Ms. Vitale said yes.

Chairman Schwartz asked if you stepped the house down the hill would it help at all. Ms. Vitale said no it would make it worse where she would have to chase the cut up the hill. This is the minimum height a house can be, and it was difficult to wedge in. There are multiple retaining walls and there is a limit to where she can place the driveway because of the 30-foot ingress/egress along the east property line.

Chairman Schwartz asked if anyone else from the public wished to speak on this case. None.

Member Cardon noted there was a letter of opposition to this case, and they mentioned the lot would be unbuildable if the variance was denied. Member Cardon said the lot ought to be buildable in some respect.

**BOARD ACTION: Member Cardon motioned to approve BA2023003 with condition 'a'. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Schwartz.**

- a) Variance approval establishes 3,447 Sq. Ft. of permissible hillside disturbance for well and septic systems to be located outside the principle building envelope on APN 202-20-461G.

**BA2023004**

**Pantalone Property**

**District 3**

**Applicant:**

Jenny Vitale

**Location:**

APN 202-21-019F @ 43827 N. 11<sup>th</sup> Ave. – N. 11<sup>th</sup> Ave. & Circle Mountain Rd.,  
in the New River area

**Request:**

Variance to permit:

- 1) Proposed existing and new hillside disturbance of 1,218 sq. ft. outside of the lot's principal building envelope where prohibited per MCZO Article 1201.6.1.1

Mr. Landis presented BA2023004 and noted approving this request would allow for 1,218 sq. ft of existing and new hillside disturbance outside of the lot's principal building envelope where no disturbance is allowed. The subject lot was developed in the early 2000's and is subject to both hillside and wash conditions throughout the lot. The applicant indicates at the time of development under a prior owner the hillside regulations at that time allowed for disturbance outside the buildable envelope. The garage itself is not within the hillside area, however, the disturbance caused by its construction extends 240 sq. ft outside the buildable envelope. The applicant has taken several steps to allow for more conducive construction on the lot, including the abandoning of an easement along the north parcel line. The current owner has already caused some hillside disturbance outside of the buildable envelope and not in the location of the proposed garage. These areas would be revegetated, and historical drainage patterns would be reestablished as part of the development process. Staff is recommending approval. The applicant has demonstrated there is a peculiar condition facing the property in that there are scattered areas of hillside disturbance interspersed with difficult drainage patterns created by the lot's rough topography, pre-existing disturbance, and existing washes. The applicant has demonstrated applying the requirements of the MCZO to this property has a peculiar condition and an undue physical hardship exists that prevents reasonable development of the property in that the applicant is trying to focus development on areas of pre-existing disturbance, thus maintain the majority of hillside areas in a natural state. The applicant has demonstrated the general intent and purpose of the MCZO will be preserved despite the variance because as the structure itself is not located within the hillside area of the lot and its disturbance to hillside areas is minimal, greatly minimizing the impact of the proposed construction.

Ms. Jenny Vitale said she is engineer for the project. She did the original grading and drainage for this property twenty years ago and she was dealing with a different hillside ordinance. Back then, the couple that owned the property wanted the house placed so the lot couldn't be split, and the natural vegetation was preserved. There are two main areas where the water wants to drain on the southside of the lot, and the water wants to come through the north side of the house towards Skunk Creek. The challenge is how to marry the old hillside regulations with the new regulations. The entire back yard is the septic system and reserve area and is not available for placement of a detached garage. They are proposing to put the building further to the west to be in line with the existing driveway and to be out of the hillside. There is too much grade change on the east side and even if she did step walls she would still need a variance. They did abandon the 20-foot ingress/egress that ran across the top of the property and by removing that easement it preserves the hillside and allows to keep 95 percent of the building in non-hillside slopes, and only encroaches on the fill slope 250 square feet. She can't get the walls to work,

either way she would need a variance for the walls or fill slope. The fill slope is cleaner and allows them to revegetate.

Chairman Schwartz said building homes in the hillside side you have to be creative and find solutions because working with slopes is tricky. Ms. Vitale said she started a program with Tonto National Forest, and if any of her clients don't want their small cactus she donates them through her program, and they use for the burn scar area. She is big on preservation and when she develops lots she wants to make a small footprint and she encourages her clients to either salvage their cactus or donate them.

Chairman Schwartz asked if anyone else from the public wished to speak on this case. None.

Chairman Schwartz noted there was one letter of opposition in this case.

**BOARD ACTION: Member Cardon motioned to approve BA2023004 with condition 'a'. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Schwartz.**

- a) Variance approval establishes 1,218 sq. ft. of permissible hillside disturbance outside of the principal building envelope on APN 202-21-019F.

<b>TU2023003</b>	<b>Hogan Property</b>	<b>District 4</b>
<b>Applicant:</b>	Cheryl Hogan	
<b>Location:</b>	APN 142-80-594 at 10724 W. Peoria Ave. in the Sun City area	
<b>Request:</b>	Temporary Use Permit to allow for an underage occupant to reside within the Senior Citizen overlay for a period not to exceed March 18, 2024	

Mr. Landis presented TU2023003 and noted approving this request would allow for an underage occupant to reside within the Senior Citizen overlay for a period not to exceed March 18, 2024. The applicant is requesting this temporary use permit on behalf of her son, whom she adopted in 2014. It is understood based on the documentation provided to the County that the underage occupant is unable to live independently and would require a permanent caretaker due to his conditions. The underage occupant is 17 years old and will be turning 18 next month. Therefore, the permit request only extends to March 2024 when he turns 19 and would be allowed to live within the community by-right as long as the home is occupied by someone not-less than 55 years old. Staff would note that while the County does not take a role in enforcing the CC&R's of any community located within the Senior Citizen overlay, the applicant is in full compliance with the CC&R's of her condo association. This is because prior to purchasing the home on August 13, 2021, the applicant applied for and received a variance from the condo association, M.F.G Apartments on July 31, 2021, to allow for the underage occupant to live at the condo. This was stated incorrectly in the published staff report. He emphasized the applicant bought the home on August 13 after receiving the variance and not prior on July 1 as written. Sun City's HOA only covers single family dwellings and not condos, unlike in prior cases, Sun City's HOA did not provide formal comment. What is before the Board today is just the Temporary Use Permit application and not a determination regarding Sun City's overlay. As with prior applications within the overlay, staff has received many letters in opposition to the proposed request. Staff received 88 letters of opposition in addition to 9 letters of support. Since 2009, there have only been six TUP requests including the subject case, of which, two have been approved. As staff and members of the Board can attest to, this and the prior cases that have come before the Board have involved very difficult sets of circumstances. Staff is recommending approval of case TU2023003. This request to allow for 13 months of underage occupancy is of short duration and

will have no foreseeable significant impact on the senior citizens community. Staff notes the property owner received approval for underage occupancy from her condominium association.

Chairman Schwartz asked did the Sun City HOA comment at all about the Temporary Use Permit. Mr. Gérard said the HOA maintains a website where they comment on cases. They did not provide staff with a formal comment, but they commented on their website that they defer to the Condominium Association since it is outside the single-family residential neighborhoods and the association has signed off.

Ms. Rebecca Sobie said she is a staff attorney from the Arizona Center for Disability Law (ACDL) speaking on behalf of the underage occupant. They are the federally mandated and protection advocacy system for persons with disabilities in the state of Arizona. ACDL submitted a letter outlining their position on behalf of their client. They cited extensive legal and statutory authority supporting issuance of the Temporary Use Permit and reaffirmation of this process as it relates to reasonable accommodation requests for people with disabilities. Voting in favor of the application would be consistent with the Fair Housing and ADA laws and voting against the application would violate the Fair Housing and ADA laws for the reasons stated in their letter. Prior to purchasing the condo Ms. Hogan should have been informed of the process to request reasonable accommodation through the county and she understands the Board doesn't make these decisions right now. She was not informed and not aware of the alleged requirement to go through this process until late December 2022, after she received notice from the county of a zoning ordinance violation. She then contacted the Planning Department and informed them that she had permission for her son to reside with her as an accommodation for his disability. Ms. Hogan provided documentation to the county supporting the disability and the need to live with her, but this process still proceeded. We are hoping there could be reformation to this process. She was also told by the county to apply for the TUP at a cost of \$595 which she should have not been charged and unsure if the reimbursement of this charge is in the purview of the board. In late January the county posted a notice of the application in Ms. Hogan's front yard including publishing personal and confidential information about Ms. Hogan and her son. That triggered scrutiny and personal attacks on Ms. Hogan that led to trauma for her and her minor son. She read the letters in opposition and the matter is not about the age restriction with the majority of the comments refer to the senior citizen overlay which is not applicable. This is about a reasonable accommodation for a disability that is a legal right under state and federal fair housing clause as well as Title 2 of the ADA. There were also concerns that this would open doors for an influx of underage occupants. The comments are not relevant to this issue. The zoning ordinance violates Fair Housing laws to the extent that it discriminates against people with disabilities absent granting reasonable accommodation. The county has a duty to reasonably accommodate citizens with disabilities and that includes making changes to zoning ordinances, regulations, and practices. She realizes this is not within the purview of the board and is something to discuss with the county attorneys reforming this process for the future. The Kennedy case protects a decision vote in favor. The Arizona court of appeals upheld that the HOA violated the reasonable accommodation mandate under the federal and state fair housing laws. It is a similar scenario in this case for failing to waive the minimum age requirement to allow an underage occupant with disabilities to reside with his parent.

Member Ward said several times we have heard these cases and asked with the 20 percent how many people would that be. Mr. Gérard said it would be close to 2,000, and it is not an issue and has never come close to that.

Mr. Peck said he would like to explain why this is different than the other cases we've heard. One case was a custody dispute where the parents were fighting over custody and the child was

underage. The other one was the occupant of the unit who was over 55 had a disability and was hiring a caretaker who had an underage child. It was not something where disability was involved with age restriction directly. This case is very different, the application is to allow an individual who has the disability to reside. That is why Ms. Sobie is 100 percent correct, it brings into question the issues under the Fair Housing Act and the Americans with Disabilities Act. In Ms. Sobie's letter as to the three issues that have traditionally been raised in opposition, she is 100 percent correct. He read the case she cited, and they were the exact same points made. The court of appeals said those were not a basis to deny an accommodation for the disability. There may be others, but we haven't heard those. He has communicated with Ms. Sobie, and she has explained to us why she believes our ordinance itself is problematic. He has had conversations in the past with staff and management at the department and we are looking into that. We have invited Ms. Sobie to help us as we do that, and she has agreed. This Temporary Use Permit does fall squarely within the federal definition of a reasonable accommodation. If you believe this accommodation to be reasonable, he hopes it would help to guide the Board in making a decision, but it is different than the other cases we've heard.

Ms. Cheryl Hogan said she is the applicant for the Temporary Use Permit. She thanked Ms. Sobie for representing her son, and those who have displayed understanding, compassion, and support. Her son is in school, and he is aware a decision will be made today regarding approval for him to live in our home. I have asked him if there was anything he'd like me to say for him, he said ask them to please let me live with my mom. Her intent on moving to Sun City was never to deceive anyone and she has been an open book from the beginning. She found herself in very reduced circumstances and in the process of trying to secure their future, she found an affordable community in Sun City and who would understand their unique situation. She felt based on her son's disabilities, their situation was a compelling case for extenuating circumstances to apply for a variance to have her son live with her. At age 66, she was eligible and in need of the affordable cost of living and she began the process of buying a condo. She understood her son's disabilities offered the opportunity, under fair housing disability laws to live here as his caretaker. Knowing those things, she made the offer to buy her condominium, and once it was accepted she applied for a variance with the condo association for her disabled son to live with her. She closed on her condo only after she received the requested approval from the condo association. She was astonished at the vitriol directed at her and her son in this community. She was called many hurtful names by misinformed people, and this has caused them stress and heartache.

Ms. Nancy Roe said it is unfortunate this hearing is even taking place. Her sister, Cheryl has provided her nephew with a secure and safe home when she became a foster parent and then adopted him. When Warren came into their lives he was a scared non-verbal boy who grew up with drug addicted parents with no sense of security. Cheryl worked for months with him as he had no understanding of the life he lived or the world around him. Cheryl's connection with him and empathetic nature drew her to the decision to be his foster parent. She fell in love with this little boy as we all did, and then she decided to be his permanent parent. She wanted him to know he would always have a safe home. He has blossomed into a wonderful young man and is a wonderful addition to the family. Cheryl could only afford a senior living community and went through every approval she needed to have him live with her in this community. She didn't purchase the home until she received the necessary approval. It was difficult to hear what she has been through the past couple of months and the appalling comments that have said about her. She didn't think she would have to worry about his safety and security after all these years. She asked the board to vote in favor of this request, and hopes they take action to ensure this type of situation doesn't happen to anyone again.



Chairman Schwartz asked if anyone else from the public wished to speak on this case. None.

Chairman Schwartz said he has been a stickler on procedures and going through the right steps by asking for permission and not forgiveness. He thanked the applicant for working with the condo association upfront and commends her for that, and the applicant's attorney working with Mr. Peck to work on the county regulations.

Member Ward said she thanked her for doing her due diligence prior to moving in and she is in support of the TUP.

**BOARD ACTION: Member Ward motioned to approve TU2023003 with condition 'a'. Member Cardon second. Approved 3-0. Ayes: Cardon, Ward, Schwartz.**

- a) Temporary Use approval establishes occupancy for a minor in the Senior Citizen overlay zoning district for APN 142-80-594 through March 18, 2024.

**Adjournment:** Chairman Schwartz adjourned the meeting of February 16, 2023 at 11:09 a.m.

Prepared by Rosalie Pinney  
Recording Secretary

February 16, 2023