



**PLANNING AND ZONING COMMISSION
MARICOPA COUNTY, ARIZONA**

205 W. Jefferson Street, Phoenix and by GoToWebinar

MINUTES
March 9, 2023

CALL TO ORDER: Acting Chairman Mitchell called the meeting to order at 9:30 a.m.

MEMBERS PRESENT: **In-person**
Mr. T.J. Mitchell, Vice Chairman
Mr. Jimmy Lindblom
GoToWebinar
Mr. Kevin Danzeisen
Mr. Erik Hernandez
Ms. Kate McGee
Ms. Francisca Montoya
Mr. Jay Swart

MEMBERS ABSENT: Mr. Lucas Schlosser, Chairman
Mr. Spike Lawrence
Mr. Greg Arnett

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. Daniel Johnson, Planner
Mr. Andrew Lorentzen, Planner
Mr. Joseph Mueller, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Ms. Judy Green, Technical Team
Mr. Martin Camacho, Technical Team

CONSENT: S2020021, Z2021132, Z2022189

REGULAR: CPA2022014, Z2021115, Z2022019, Z2022206

Acting Chairman Mitchell lead the Pledge of Allegiance and made the standard announcements.

Chairman Mitchell asked if there were any changes or comments to the December 8, 2022, January 12 and January 26, 2023 minutes. None.

COMMISSION ACTION: Chairman Mitchell approved the minutes from December 8, 2022, January 12, 2023, and January 26, 2023 minutes as written.

CONSENT AGENDA

Preliminary Plat - S2020021

District 4

Project name: **Luke Landing II**
Applicant: Dennis F. Keogh, Keogh Engineering
Request: Preliminary Plat in the R-5 RUPD zoning district for 18 lots and 3 tracts with waiver to subdivision regulation requiring two points of access
Location: Generally located approx. 2,000' north of the NWC of Glendale Ave. and 127th Ave. in the Glendale area

Special Use Permit - Z2021132

District 3

Project name: **Sprague Property SUP**
Applicant: John Sprague
Request: Special Use Permit (SUP) for Interim Industrial – Light Truck Repair & Storage
Location: Generally located 0.64 miles south of the SWC of I-17 & New River Rd in the New River area

Zoning - Z2022189

District 4

Project name: **SAFStor Self-Storage**
Applicant: Mike Maerowitz, Snell & Wilmer LLP
Request: Zone Change with Overlay from C-2 to C-2 CUPD
Location: Generally located at the NEC of Wigwam Creek Blvd. and Camelback Rd.

Mr. Gérard presented the consent agenda.

Chairman Mitchell asked if anyone from the public wished to speak on the consent agenda. None.

COMMISSION ACTION: Commissioner Lindblom adopted a motion recommending the Board of Supervisors approve the consent agenda – Z20200021 with conditions 'a'-'j', Z2021132 with conditions 'a'-'j', and Z2022189 with conditions 'a'-'f'. Commissioner Swart second. Approved 7-0. Ayes: Danzeisen, Hernandez, Lindblom, McGee, Montoya, Swart, Mitchell.

S2020021 conditions;

- a. The Final Plat shall be in substantial conformance with the Preliminary Plat entitled "Preliminary Plat for Luke Landing II" consisting of 2 full-size sheets, dated November 22, 2022, and stamped received December 21, 2022, except as modified by the following conditions.
- b. Development and use of the site shall in substantial conformance with the Narrative Report entitled "Narrative Report ", consisting of 7 pages, dated November 22, 2022 and stamped received December 21, 2022, except as modified by the following conditions.
- c. Concurrent with submittal of Final Plat, Improvement Plans shall be submitted to the Planning and Development Department.
- d. After Final Plat recordation and prior to any zoning clearance for building permits, the applicant shall obtain a final Grading and Drainage and Infrastructure permit from Maricopa County.

- e. Prior to Final Plat approval, Water and Wastewater Plans shall be submitted to and approved by the Maricopa County Department of Environmental Services (MCESD) subject to their procedures.
- f. All buildings subject to noise attenuation as per ARS § 28-8482(B).
- g. The master developer shall notify future homeowners that they are located within the state-defined "territory in the vicinity of a military airport" with the following language:

"You are buying a home or property in the 'vicinity of a military airport' as described by State of Arizona statute ARS §28-8481. Your house should include sound attenuation measures as directed by State law. You will be subject to direct over flights and noise by Luke Air Force Base jet aircraft in the vicinity.

Luke Air Force Base executes over 200,000 flight operations per year, at an average of approximately 170 overflights per day. Although Luke's primary flight paths are located within 20 miles from the base, jet noise will be apparent throughout the area as aircraft transient to and from the Barry M. Goldwater Gunnery Range and other flight training areas.

Luke Air Force Base may launch and recover aircraft in either direction off its runways oriented to the southwest and northeast. Noise will be more noticeable during overcast sky conditions due to noise reflections off the clouds.

Luke Air Force Base's normal flying hours extend from 7:00 a.m. until approximately midnight, Monday through Friday, but some limited flying will occur outside these hours and during most weekends."

Such notification shall be recorded on all Final Plats, be permanently posted on not less than a 3 foot by 5 foot sign in front of all home sales offices, be permanently posted on the front door of all home sales offices on not less than an 8½ inch by 11 inch sign, and be included in all covenants, conditions, and restrictions (CC&Rs) as well as the Public Report and conveyance documents.

For further information, please check the Luke Air Force Base website or contact the Maricopa County Planning and Development Department."

- h. Prior to initial Final Plat approval or initial precise plan of development approval, the applicant shall submit to the Maricopa County Planning and Development Department confirmation of service by Liberty Utilities and an approved Certificate of Convenience and Necessity (CC&N) issued by the State of Arizona.
- i. Prior to initial Final Plat approval or issuance of a grading permit, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from the applicable Fire District servicing the project. This information shall be included in the narrative report for the Final Plat and the associated public report for the subdivision. The Final Plat shall contain a note referencing the will serve letter.

- j. Prior to initial Final Plat approval, a licensed engineering investigation of the site shall be conducted and submitted identifying any land subsidence or earth fissuring which affect the site and the report shall include suggested mitigation. The Final Plat shall have a note that the property is within an area of known land subsidence and/or earth fissuring. Further, notice that the property is in area of known land subsidence and/or earth fissuring and a definition of both land subsidence and earth fissures shall be displayed on the front door in the sales office, and written in any disclosure statements for conveyance documents. However, if said report concludes negative impact regarding land subsidence and/or earth fissuring the required notification should include such results.

Z2021132 conditions;

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "Sprague Site Plan Special Use Permit Z2021132 For Light Trucks and Storage ", consisting of 1 full-size sheet, dated 12/22/2022, and stamped received 01/04/2023, except as modified by the following conditions. Staff may determine slight refinements to remain in substantial conformance with the approved site plan. Minor and major amendments to the site plan will be determined in accordance with Chapter 3 of the Maricopa County Zoning Ordinance.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Special Use Permit Sprague Property", consisting of nine (9) pages, with revision date 12/19/2022, and stamped received 01/04/2023, except as modified by the following conditions.
- c. Development of the site shall be in general conformance with the Landscape Plan entitled "Landscape Plan Sprague Property", consisting of one (1) page, dated 12/19/2022, and stamped received 01/04/2023, except as modified by the following conditions.
- d. All outdoor lighting shall conform to the Maricopa County Zoning Ordinance.
- e. All transformers, back-flow prevention devices, utility boxes and all other utility related ground mounted equipment shall be painted to complement the development and shall be screened with landscape material where possible. All HVAC units shall be ground-mounted or screened with a continuous parapet for commercial projects.
- f. The following Engineering conditions apply:
 - 1. Prior to any issuance of any permits for construction/grading on the site, the Owner/Applicant must apply for and obtain a Drainage Waiver to allow for a reduced storm water retention volume for the site. The minimum retention shall be the greater of the pre vs post or first flush volume of runoff.
 - 2. Prior to issuance of building permits, the owner/applicant must provide an erosion setback analysis conforming to ADWR State Standards (SSA 5-96) or Section 11.9 of the FCDMC Design Manual – Volume 2.
 - 3. Detailed grading and drainage plans must be submitted with building permit application(s).
 - 4. Engineering review of planning cases such as this is conceptual in nature. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; Maricopa County Planning and Zoning Commission Minutes

- and current engineering policies, standards and best practices at the time of application for construction.
5. ADOT reserves the right to review any future plans, additions and/or changes to this development in regards to any impact they may have on the State Highway System.
 6. ADOT would like to remind the developer there is ADOT Right of Way in the area and they must not encroach upon it without a permit. No work shall begin on ADOT right of way until said permit is obtained.
 7. ADOT would like to review any impacts that may arise regarding ADOT facilities such as utility tie ins, drainage, fencing along right of way, traffic control if necessary, or landscape encroachment within ADOT R/W during construction, along with any other potential impact items. See Permit Encroachment Process Links. Permit Encroachment Process Link - <https://azdot.gov/business/permits/encroachment-permits> Permit General Mailbox is: Phoenixpermits@azdot.gov Permit Sign Process Link - <https://azdot.gov/business/permits/outdoor-advertising-sign-permits>
- g. This special use permit is valid for a period of ten (10) years and shall expire on April 12, 2033, or upon termination of the use for a period of 90 or more days, whichever occurs first. All site improvements associated with the special use permit shall be removed within 90 days of such expiration or termination of use.
 - h. Prior to issuance of a building permit, written confirmation will be required from the emergency fire protection jurisdiction having authority that the facility has been designed in accordance with their regulations and requirements, and that emergency fire protection service will be provided to the facility. Prior to issuance of the certificate of occupancy, local fire protection jurisdiction review and approval will be required.
 - i. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Special Use Permit as set forth in the Maricopa County Zoning Ordinance.
 - j. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, and at the time of expiration of the Special Use Permit, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, or the expiration of the Special Use Permit, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation or expiration of the Special Use Permit. The Special Use Permit enhances the value of the property above its value as of the date the Special Use Permit is granted and reverting to the prior zoning results in the same value of the property as if the Special Use Permit had never been granted.

Z2022189 conditions;

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "SAFstor Self Storage", consisting of 1 full-size sheet, dated February 27, 2023, and stamped received February 27, 2023, except as modified by the following conditions. Staff may determine slight refinements to remain in substantial conformance with the approved site plan.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "SAFstor Self-Storage", consisting of 6 pages, dated January 3, 2023, and stamped received January 26, 2023 except as modified by the following conditions.
- c. The following Planning Engineering conditions shall apply:
 - i. Without the submittal of a precise plan of development, no development approval is inferred by this review, including, but not limited to number of proposed building lots/units, drainage design, access and roadway alignments. These items will be addressed as development plans progress and are submitted to the County for further review and/or entitlement.
 - ii. A traffic impact study must be submitted with future entitlement (POD) application(s).
 - iii. Engineering review of re-zone case is conceptual in nature. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
- d. Administrative approval of a Plan of Development will be required prior to approval and issuance of construction permits to develop and establish use of the site. Prior to issuance of a building permit, written confirmation will be required from the emergency fire protection jurisdiction having authority that the facility has been designed in accordance with their regulations and requirements, and that emergency fire protection service will be provided to the facility. Prior to issuance of the certificate of occupancy, local fire protection jurisdiction review and approval will be required.
- e. The following C-2 CUPD standard shall apply:
 1. Parking: 1 parking stall per 5,000 Sq. Ft. of Self-Storage space
- f. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation of the Zone Change. The Zone

Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

REGULAR AGENDA

Comprehensive Plan Amendment - CPA2022014

District 5

Project name: **Elliot Corner Commercial**
Applicant: Paul Gilbert, Beus Gilbert McGroder, PLLC
Request: Comprehensive Plan Amendment (CPA) to change the land use designation in the Rainbow Valley Area Plan from Large Lot Residential (1-2 d.u./acre) to Neighborhood Retail
Location: Generally located at the SWC of Tuthill Rd. and Elliot Rd. in the Goodyear/Buckeye area.

Mr. Mueller presented CPA2022014 and Z2021115 and noted the applicant's first request is a change in land use designation to neighborhood commercial and the second request, the applicant is proposing a zone change to C-1 CUPD. The applicant had initially proposed straight C-2 zoning on the site, which staff was not in support. Upon working with staff, the applicant revised the zone change request down to C-1 CUPD with the intent of the overlay to limit uses not compatible with onsite septic. There is 257 in opposition to the proposal, with 13 individual emails and 244 signatures on an opposition petition. Staff notes only two of these emails were received after the applicant revised the request to C-1 CUPD. Staff applauds the efforts made by the applicant to bring the request more in line with the Rainbow Valley Area Plan, which does not offer a land use more intense than neighborhood commercial. Staff does have some remaining concerns not addressed by the applicant such as increased noise, light, and dust pollution. Commercial development could inflict on the neighboring residences due to attracting an increase of off-road activity in the area. This is already an issue in the area and the Rainbow Valley Area plan speaks extensively on the need for the issue to be mitigated. Concern over off-road activity was also specifically mentioned in opposition emails. There is also some concern with commercial development south of the Gila River since there is already undeveloped land designated for commercial development in the Rainbow Valley Area Plan along MC 85. Staff is in support of the proposal given the conditions that have been worked out with the applicant. The building area for each individual building will be limited to 20,000 sq. ft. and the overall building area on the site will be limited to 70,000 sq. ft. Staff believes this will mitigate and eliminate the potential for big box development and strip-mall style commercial developments on site, both are strongly discouraged in the Rainbow Valley Area Plan. The request is appropriate given the site's location on the corner of an arterial intersection. Staff recommends approval of the request.

Commissioner McGee asked staff to address the off-road issues in the area. Mr. Gérard said the general area along the Gila River and east and west of Estrella Mountain has a tremendous amount of off-road activity from the local community. There are some commercial buildings like the Circle K that are frequented by off-road vehicles, and up and down Avondale Blvd. Commercial retail will attract these off-road vehicles to take breaks with activities in the river. The paving will mitigate the dust on site, and this off-road issue is off site from the commercial that is taking place. Commissioner McGee asked is there a governing body where the off-road activity is happening. Mr. Gérard said the City of Avondale, the City of Goodyear, and Maricopa County Flood Control District. He is unsure if there is any federal jurisdiction in this area.

Commissioner Swart said this could be a law enforcement issue, and the property owner needs to post the property with ARS 13-1502 A.1 under Arizona law to not enter the property. That will assist the

Avondale police, and when they see the off-road vehicles there they can immediately take enforcement action. Once the property is developed that would mitigate the dust, and if they were a licensed vehicle they would operate as a car. Mr. Gérard said the City of Avondale jurisdiction is the east side of 143rd Avenue a few miles from here, and some is in the City of Goodyear jurisdiction.

Chairman Mitchell said it was said a good majority of the opposition was prior to the revision of the request when requesting C-2. Mr. Mueller said that's correct.

Mr. Paul Gilbert with Beus Gilbert McGroder representing the applicant said this site is within the Rainbow Valley Area Plan, just south of the Gila River corridor and at the intersection of two arterial streets. This is not an appropriate place for residential but is an appropriate place for commercial. Tuthill Road is the primary north/south to the Rainbow Valley area and is the only roadway in Rainbow Valley that crosses the Gila River into the City of Buckeye to the north. Elliott Road is the other cross street, and it is the main east/west thoroughfare that connects Rainbow Valley to the City of Goodyear. These two roads connect and the whole area crosses at the intersection of this property. Most Rainbow Valley residents will pass this intersection as they travel in and out of Rainbow Valley and as they travel to the City of Goodyear and the City of Buckeye. One of the issues from the opposition was the traffic, but the traffic is already there and we're not going to add to it. The site is 7.5 acres of undeveloped property, and it is adjacent to the Dollar General that was built in 2019 and it has been a huge success. He noted the Planning Commission recommended denial of the Dollar General store, and the Board of Supervisors voted unanimously to approve it. One of the reasons for the denial from Planning & Zoning commission was the property wasn't on the immediate corner and we are proposing commercial at the immediate corner. We reduced our application to C-1 and the Dollar General was C-2. There are several street vendors that use this undeveloped land surrounding the Tuthill and Elliott intersection. The property owner posted signs, but they just keep coming there month after month, so it must be a pretty good site for commercial use. The people that frequent these uses are the residents of Rainbow Valley. The same taco food truck has been coming back to this same intersection for over a year despite the fact the property is posted. We've done our part to discourage this illegal use, but they keep coming. We are proposing to rezone the property from R1-35 to C-1 CUPD that would allow retail commercial on the property. This property is not an appropriate site for single-family residential in a high traffic intersection. We have worked with staff for over a year with this application and staff is comfortable supporting it, and we changed it from C-2 to C-1 and agreed to do a CUPD so staff can restrict uses and stipulations on the property. We agreed with staff a list of uses that are not allowed on the property until sewer is available. They are also seeking to amend the Rainbow Valley Area Plan; this plan is 30 years old. The site is currently large lot residential to Commercial/Neighborhood Retail consistent with the zoning request. There is only one existing commercial designation on Jackrabbit Trail and MC85, and it is not currently developed and not a good piece of property. It doesn't have the same street and traffic pattern as our site. The intersection of Jackrabbit Trail and MC85 is surrounded by open space and rural/residential areas. The subject site is far more suitable to provide retail services for the Rainbow Valley community. The area plan hasn't been updated for 20 years and this amendment is a much-needed update for this plan. This proposal is consistent with the goals and policies of the Rainbow Valley Area Plan. The plan recognizes there may be additional commercial nodes and it is in the area he is proposing - south of the Gila River, and at the intersection of two major arterial streets; our proposal qualifies. The two primary concerns from the community are traffic and crime. Tuthill and Elliot are two arterial streets and are not appropriate for residential uses. They asked Glenn Walp to do a public safety analysis, it showed there was less crime in 2019 and 2021 after the Dollar General was developed. There is no evidence that the crime has increased in the Rainbow Valley area. Within a mixed-use area of residential and commercial there is the potential that crime can be reduced. In summary, the current site is inappropriate for residential uses, there is no better location for commercial services, it is conveniently located at two primary arterials throughout the Rainbow Valley community, and already utilizes this site for commerce, restricting uses incompatible with

septic systems, and it is supported by the Rainbow Valley Area Plan, and the Dollar General was unanimously approved in 2018 by the Board of Supervisors which has been a huge success.

Commissioner Montoya asked what is the population of this area? Mr. Gilbert said he didn't have that information and he would have to get back to her. Commissioner Montoya asked what type of public participation was done for this area when notifying the rural residents. Mr. Gilbert said we did the same outreach as the Dollar General and focused on those in the immediate area and met all the county requirements, noticing the adjacent properties to the site. Commissioner Montoya noted it's what is basically required and said she remembers the Dollar General zoning case with all the opposition they had. She asked with the current opposition, was that prior to the change from C-2 to C-1. Mr. Gilbert said that is correct. The petition that was submitted has zip codes from people that live out of state and clear out to Buckeye. The people most affected are the ones that live in the immediate vicinity, those are the ones they contacted. Commissioner Montoya said 250 signatures is a lot for an area that looks very rural. Mr. Gilbert said the petition was circulated when we were asking for C-2 and that reflects a different application. It was a petition on the [change.org](https://www.change.org) website. There were 65 different zip codes on the petition, 14 different states and 2 countries. A lot of the signatures were from people that aren't affected by this application.

Mr. Gérard said staff found a reference to the Rainbow Valley population as 76,000 people including Estrella Mountain Ranch and incorporated areas, and the census tract that the site is located in according to the 2020 census, it's a population of approximately 6,000 citizens.

Commissioner McGee asked what was the outreach after the new proposal for the C-1 CUPD? Mr. Gilbert said we reached out to the community within the notification area required by the ordinance. Commissioner McGee said the City of Buckeye had concerns with the initial request and then noted it was a good purpose. They also recommended reaching out to the traffic engineer for access and improvements. Mr. Gilbert said they would be more than willing to reach out to them to discuss any traffic mitigation and could do that prior to the meeting with the Board of Supervisors.

Commissioner McGee said Commissioner Swart referenced no trespassing signage, and it is her understanding the property is already posted. Mr. Gilbert said we have posted no trespassing signs at the request of the county.

Mr. Gérard said the traffic study is a requirement of Plan of Development and will be addressed with construction permitting once we know exactly what is being built and what traffic needs will be generated.

Mr. Mueller said the City of Buckeye had no concerns.

Commissioner Lindblom asked are they thinking on putting in a gas station that sells liquor and have these types of things been looked at as we put in the restrictions. Mr. Gilbert said his understanding is those restrictions like for a convenience market would not be precluded. Commissioner Lindblom said he wasn't sure what they defined as a liquor store.

Commissioner Swart said his understanding there is only two people are in opposition after the zoning change. Mr. Gilbert said correct, there are only two in opposition after they amended the application from C-1 to C-2 CUPD. Commissioner Swart said if you are the responsible party or owner, a sign can be posted and once the form is signed then the Buckeye Police can do the enforcement and clean this up. Mr. Gilbert said yes, they are willing to do that.

Chairman Mitchell asked if anyone from the public wished to speak on these cases. None.

Commissioner Lindblom said he supports this land use, and it is an appropriate location for commercial than it is for residential.

Chairman Mitchell said he commends staff and the applicant for working together and C-1 is a much better fit for the area than C-2.

Commissioner Swart said he also commends the applicant and staff for working so hard on this, and for the applicant going above and beyond by doing a comprehensive public safety study. If they are going to look into the ingress/egress and other things discussed he is in full support.

Commissioner Montoya said several years ago with the Dollar General debate she recognized a natural fit would be for commercial in that adjacent intersection. She noted the Planning and Zoning commission are a separate body with our own separate voices, and we make recommendations to the Board of Supervisors.

COMMISSION ACTION: Commissioner Montoya adopted a motion recommending the Board of Supervisors approve CPA2022014. Commissioner Danzeisen second. Approved 7-0. Ayes: Danzeisen, Hernandez, Lindblom, McGee, Montoya, Swart, Mitchell.

Zoning - Z2021115

District 5

Project name: **Elliot Corner Commercial**
Applicant: Paul Gilbert, Beus Gilbert McGroder, PLLC
Request: Zone Change with Overlay from R1-35 to C-1 CUPD
Location: Generally located at the SWC of Tuthill Rd. and Elliot Rd. in the Goodyear/Buckeye area.

COMMISSION ACTION: Commissioner Montoya adopted a motion recommending the Board of Supervisors approve Z2021115. Commissioner Danzeisen second. Approved 7-0. Ayes: Danzeisen, Hernandez, Lindblom, McGee, Montoya, Swart, Mitchell.

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "Elliot Corner Commercial Zoning Exhibit", consisting of 1 full-size sheets, dated February 27, 2023, and stamped received February 27, 2023, except as modified by the following conditions. Staff may determine slight refinements to remain in substantial conformance with the approved site plan. Minor and major amendments to the site plan will be determined in accordance with Chapter 3 of the Maricopa County Zoning Ordinance.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Elliot Corner Commercial", consisting of 7 pages, dated January 13, 2023, and stamped received January 18, 2023, except as modified by the following conditions.
- c. The following CUPD standards shall apply:
 - 1. Total Building Area on subject site: 70,000 sq. ft.
 - 2. Individual Building Maximum size: 20,000 Sq. ft.
 - 3. The following uses will be prohibited:

- a. Day Nurseries
 - b. Schools
 - c. Liquor stores
 - d. Restaurants and Cafes
 - e. Multi-Family Residential
 - f. Single family except on lots of 35,00 sq. ft. or greater
- d. Upon build-out of public sewer services to site the CUPD uses may be revisited via a stipulation modification pending approval of the Board of Supervisors.
- e. The CUPD overlay is applied to restrict the use of the site. Until such time as the site is served by sewer, uses on the site shall only be those acceptable to the Maricopa County Environmental Services Department (MCESD) that can be accommodated by septic systems.
- f. Development of the site shall conform with design standards laid forth in the El Rio Scenic Corridor.
- g. The following PND Engineering conditions shall apply:
1. Without the submittal of a precise plan of development, no development approval is inferred by this review, including, but not limited to drainage design, access and roadway alignments. These items will be addressed as development plans progress and are submitted to the County for further review and/or entitlement.
 2. Any development must ensure that historic drainage patterns are maintained at the up and downstream limits of development.
 3. A traffic impact study must be submitted with any future entitlement application (i.e. plan of development) to identify the need for any offsite road/right-of-way improvements.
 4. Dedication of right-of-way for arterial (65') alignments (Elliot Road and Tuthill Road) may be required as part of future entitlement application(s).
 5. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
- h. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation of the Zone Change. The Zone

Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

Special Use Permit - Z2022019

District 4

Project name: **Moon Valley Nurseries**
Applicant: Adrienne Briceño, Merge Architecture Group
Request: Special Use Permit (SUP) for a nursery holding and growing grounds as an interim industrial use in the Rural-43 zoning district
Location: Generally located at the NEC of Pinnacle Peak Rd. & 87th Ave in the Peoria area

Mr. Johnson presented Z2022019 and noted this request is for a Special Use Permit for 10 years as a wholesale storage and growing grounds for the adjacent Moon Valley Nursery, and this will remedy a violation V202100648 found by the department for the operation of a commercial business in a residential district. A resident living within 300' of the subject site voiced concerns over noise, business operations, employee behavior and concerns over Moon Valley Nursery non-compliance with conditions of approval for the retail nursery adjacent east of the subject site under an older previously approved Special Use Permit. A second resident communicated concerns over water and wastewater uses on the subject site and the adjacent retail nursery site, along with concerns over the state of disrepair of a perimeter fence at the northernmost end of the retail parcel of the nursery, not the subject of this application. All concerns regarding water and wastewater will require coordination with Maricopa County Environmental Services. This application request pertains to only the wholesale storage and growing plants on the subject parcel for a period of 10 years and does not include expansion of the retail component of the site to the east. Staff received direct communication from one of the area residents with concerns over water use, wastewater, and the dilapidated fence were discussed. Staff has included correspondence received by this individual along with the letter received by the resident within 300' of the site to the report. The final number of letters received by area residents, 1 letter of opposition, 1 letter of concern without opposition and 1 letter of support for the request. Given neighborhood context and existing development patterns, approving the use for a period of 10 years will give Moon Valley Nursery an opportunity to operate the site while demonstrating to the neighborhood the use remains appropriate and can operate harmoniously with the rural/residential environment given the recommended conditions of approval.

Chairman Mitchell asked when the violation was issued. Mr. Johnson said in 2021. Commissioner McGee asked is this a ask for permission or be for forgiveness request? Mr. Johnson said a request for forgiveness.

Commissioner Hernandez asked is this for one parcel, because it looks like there is two parcels operating as Moon Valley? Mr. Johnson said this is for the western parcel. Commissioner Hernandez asked does the eastern parcel already has an SUP and when does it expire. Mr. Johnson yes, he'll get back with him on an expiration date.

Mr. Carlos Murieta with Merge Architects said he is representing Moon Valley to assist with the Special Use Permit and to help resolve the issues with the neighbors. The property is surrounded by residential lots in an RU-43 zoning. This type of use is allowed but would require a Special Use Permit to do sales. They sale plants, trees and shrubs for landscaping purposes. The plans for the grading and drainage have been submitted to the county which addresses any runoff of water and site improvements, and the outdoor lighting to not spill on other properties, and to adjust the hours of operation. There is an existing residence, and it would be used for business operations only. A traffic analysis was completed to make sure this property be in compliance for the improved use in place.

Commissioner McGee said there was a letter of opposition with concerns of back up noise from big trucks and asked how it will be addressed and the limiting of business hours. Mr. Murieta said there is a six-foot fence adjacent to the residential properties, and they can raise it to eight feet to minimize the noise of truck traffic going in and out of the property.

Chairman Mitchell asked how long this use has been operating on this site. Ms. Adrienne Briceño said they've been operating in the neighborhood for 20 years. Chairman Mitchell asked if they've been operating on this parcel for 20 years or the eastern parcel. Ms. Briceno said the eastern parcel.

Mr. Juan Toledo said he is a property owner that lives north of this site. He purchased his property after working for over 40 years with plans to retire in their dream home. When the property was purchased in 2018, they thought it would be a lot with trees and it would remain peaceful. He said they were mistaken. Instead, they ended up getting a loud condescending neighbor that didn't care about the neighbors. He requested a courtesy inspection because he had concerns with his property getting flooded. The backup noise is constant and very annoying. He even told them they don't need a back up alarm as long as you have a spotter or cameras, but the noise continues and is constant every day from early morning until 7 p.m. The other SUP on the eastern parcel expires in 2047. The nursery never came to us and made no attempt to work with the neighbors. They have multiple zoning violations. When the code inspector came out and told them they can't begin operating until after 7:30 in the morning, which they agreed to. It was good for a few days, then they go back to starting very early again. They continued to operate at 5 a.m. with the backup noises etc. and they are purposing seven days a week; we won't have any peace. This started as a mom-and-pop operation, but now it is a huge multi-state operation. At this location they have three loaders, one backhoe and flatbed truck, plus three delivery trucks with around 13 employees. This does not belong in our backyard. He has 15 letters in opposition to this use.

Mr. Gérard said the SUP for the retail nursery property to the east expires August 2047.

Commissioner McGee asked what outreach has been done with the neighbors. Mr. Johnson said the 300-foot notification was done as required by the zoning ordinance notifying by postcards in February. Mr. Gérard said the minimum requirement is citizen outreach by first-class mail. The property owners within a 300-foot radius and two postings of the site. He isn't aware if the applicant went above that, but he is not aware of that.

Commissioner McGee said there is no difference for a property with a violation, and asked staff if the process was followed. Mr. Gérard said the minimum citizen participation requirement in the ordinance was followed. It is the same requirement to obtain the zoning entitlement and to prepare for public hearing.

Ms. Jane Triplett said she lives on Avenida Del Sol and walks her dogs early in the morning on the north side of the property to the east. She hears loud music playing and noise from the trucks backing up, there's also dust and rats. Something needs to be done and nothing has been addressed. This use is not appropriate for this area.

Ms. Linda Patterson said she's lived in this neighborhood for 35 years. There is still a drainage issue on this lot, she witnessed a neighbor pumping water out of his driveway after the last rain. She has stopped by Moon Valley with complaints of their water usage, they just let the water drain down the ditch wasting water. We can hear the backup noise three streets away and can hear the noise of the machinery. She is concerned with a big business moving into our small neighborhood. This is a commercial business in a Rural neighborhood with only a two-lane street. This isn't right.

Chairman Mitchell asked who do they contact for the drainage issues. Mr. Gérard said Planning and Development, the code officer would check if the drainage has been altered or if there is unpermitted construction.

Mr. Paul Patterson said the beeping in the early morning is every day. The water usage is an issue. They probably own their own well, but they are dipping into our aquifer and wasting it. They must be putting chemicals on all those trees and shrubs to keep the animals and bugs from eating them and that's probably getting washed off, which should also be addressed.

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

Mr. Murieta said he is the architect trying to help with this SUP and it is important to have solutions. They want to see how they can mitigate the noise and the owner is willing to find solutions.

Commissioner Lindblom said in the zoning ordinance the purpose of Rural 43 is to conserve and protect farms and other open land uses, foster orderly growth in rural and agriculture areas, prevent urban and agricultural land use conflicts, and encourage sustainable development, but when governmental facilities and services, public utilities and street access are available, or can reasonably be made available applications for change of this zoning district to any single-family residential zoning district will be given favorable consideration. Principal uses permitted in this zoning district include both farm and non-farm residential uses, farms and recreational and institutional uses. He said Moon Valley Nursery seems like a farm to him and isn't it a use in RU-43 and asked staff for clarity. Mr. Gérard said a wholesale nursery where plants are grown on site would be treated as a farm use permitted by right. A retail nursery requires a Special Use Permit. This is a 10-year Special Use Permit with more of the landscape materials and supplies on this site.

Chairman Mitchell asked with the hours of operation would it be the times open for the public. Mr. Gérard said that would be the hours of operation, and they should not be operating business outside those hours unless it was specifically clarified otherwise in the language of condition. If he was the responding code enforcement officer and they were operating outside those hours he would bring them to an administrative hearing and let the hearing officer make a determination whether or not it is a zoning violation.

Commissioner Montoya said she is concerned about the noise, non-compliance of the operating hours and the water drainage. She asked if the applicant would consider continuing this, so they have time to sit down and speak to the residents and come to some agreement, especially those neighbors that are immediately impacted. Mr. Murieta said yes it would be beneficial for everyone to sit down and discuss some solutions.

Chairman Mitchell said there is pros and cons to this case. He is sympathetic to the noise issues where he has a similar situation in his neighborhood. It makes sense to have further discussion to mitigate the concerns with the neighbors.

Commissioner McGee said these issues that are being raised are by people that have taken the time to come down and express their concerns and write letters. Just because the business is there and operating it shouldn't be automatic. They need time to work out the concerns of the noise and the rats and come back with a tighter agreement of operation that can be enforced, so everyone can live in harmony to some degree.

Commissioner Swart said he agrees with Commissioner McGee and Montoya. He is greatly bothered by this illegal operation. It would have been very easy for Moon Valley, since they are a big corporation with

lots of resources to get modifications done on the trucks where they can unplug back up beeper when on private property. According to the OSHA standards, as long as there is a safety officer to direct the person with a flag to make sure they don't back into anyone or any objects. These are things that should have been looked at to mitigate the noise for these neighbors. Unless these things are resolved he would be a definite no on this case, it is important to protect the neighbors.

Commissioner McGee said this is a reputable well-known business and they should know better. They need to mitigate their operation so the neighbors can live in peace. The restrictions should be appropriate and enforceable to help the residents and making sure they are honored.

Chairman Mitchell asked the applicant if continuing this case to April 20, will they have enough time to discuss with the neighbors' their concerns and draft some stipulations. Mr. Murieta said yes, they will work to have concerns addressed by April 20.

COMMISSION ACTION: Chairman Mitchell motioned to continue Z2022019 to April 20, 2023 hearing to allow the applicant additional time to work with neighbors on issues and concerns raised. Commissioner Montoya second. Continued 7-0. Ayes: Danzeisen, Hernandez, Lindblom, McGee, Montoya, Swart, Mitchell.

Zoning - Z2022206

District 4

Project name: **Thomas Rd. & 195th Ave. Commercial**
Applicant: Adam Baugh, Withey Morris, PLC
Request: Zone Change from Rural-43 to C-2 CUPD
Location: Generally located at the NEC of Thomas Rd. & 195th Ave. in the Buckeye area

Mr. Lorentzen presented Z2022206 and noted the request would allow the future development of a commercial retail corner limited only to uses which can be served by septic and as to be accepted and approved by the Maricopa County Environmental Services Department. The applicant has complied with public participation requirements for posting and notification. The City of Buckeye has submitted opposition to the request, stating a C-2 use at the corner does not comply with the city's general plan classification for neighborhood commercial uses which are allowed under their plan at this location. Furthermore, the city has expressed they do not wish to see uses that allow outdoor storage to be developed on the site. Staff believes the site to be appropriate for commercial development as it is located at the corner of two major arterial roads. There will be demand for community commercial nodes due to the dynamic residential growth of the surrounding area. Staff recognizes Buckeye's concerns of potential outdoor storage issues and notes that outdoor storage uses are not entitled within C-2 zoning.

Mr. Adam Baugh with Withey Morris representing the applicant said this is an item that normally would be on consent and they have no opposition and staff recommends approval. It was pulled off consent with the correspondence received from the City of Buckeye. They City of Buckeye has no concerns with commercial uses, it was with outdoor storage uses. The zoning they are seeking does not allow outdoor storage uses, we would have to come back for an SUP or C-3 zoning. It can't occur with the proposal today. The property is located a mile north of the I-10 at the intersection of two major arterials. This location makes perfect sense for C-2 zoning.

Commissioner McGee said there was a comment by the City of Buckeye that she referenced in the Elliot Road project, but it was not this comment. Mr. Baugh said it is true the City of Buckeye intends to annex the adjacent roadway, but at that point when they do the plan of development or apply for permits they would have to do roadway improvements.

Commissioner Hernandez asked are you getting this rezoned to make it easier to annex in the City of Buckeye. Mr. Baugh said they do not have a development plan for this, but they hope to get the property to the east for a more neighborhood scale shopping center. This would be future discussions with the owner next door.

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

COMMISSION ACTION: Commissioner Hernandez adopted a motion recommending the Board of Supervisors approve Z2022206 with conditions 'a'-'g'. Commissioner Montoya second. Approved 7-0. Ayes: Danzeisen, Hernandez, Lindblom, McGee, Montoya, Swart, Mitchell.

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "Z2022206 zoning exhibit", consisting of 1 full-size sheet, except as modified by the following conditions;
- b. The CUPD overlay is applied to restrict the use of the site. Until such time as the site is served by sewer, uses on the site shall only be those acceptable to the Maricopa County Environmental Services Department (MCESD) that can be accommodated by septic systems. A public water system shall be required prior to establishment of any use that requires potable water.
- c. Administrative approval of a POD will be required prior to approval and issuance of construction permits to develop and establish use of the site. Prior to issuance of a building permit, written confirmation will be required from the emergency fire protection jurisdiction having authority that the facility has been designed in accordance with their regulations and requirements, and that emergency fire protection service will be provided to the facility. Prior to issuance of the certificate of occupancy, local fire protection jurisdiction review and approval will be required.
- d. The following PND Engineering comments:
 1. Without the submittal of a precise plan of development, no development approval is implied by this review, including, but not limited to drainage design, access and roadway alignments. These items will be addressed as development plans progress and are submitted to the County for further review and/or entitlement.
 2. Any development must ensure that historic drainage patterns are maintained at the up and downstream limits of development.
 3. A traffic impact study must be submitted with any future entitlement application (i.e. plan of development).
 4. Right-of-Way dedication to provide a half-width of 65-feet along 195th Ave and Thomas Road will be required as part of any future POD.
 5. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.

- e. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation of the Zone Change. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.
- f. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
- g. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with conditions.

Mr. Gérard announced the Planning and Zoning Commission hearing scheduled for March 23, 2023 will be cancelled.

Chairman Mitchell adjourned the meeting of March 9, 2023 at 11:24 a.m.

Prepared by Rosalie Pinney
Recording Secretary

March 9, 2023