



# MARICOPA COUNTY, ARIZONA

## Board of Adjustment

### Minutes

### April 15, 2021

**CALL TO ORDER:** Chair Ward called meeting to order at 10:00 a.m.

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

**MEMBERS ABSENT:** Mr. Greg Loper  
Mr. Jeff Schwartz

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

**COUNTY AGENCIES:** Mr. Chad McBride, County Attorney  
Mr. David Anderson, Business Engagement Manager, OET  
Ms. Pearl Duran, OET

**ANNOUNCEMENTS:** Chair Ward made all standard announcements.

**AGENDA ITEMS:** BA2020065, BA2021011, BA2021014, BA2021016, BA2021017,  
BA2021009, BA2021012, BA2021013

**APPROVAL OF MINUTES:** February 18, 2021

Chairman Loper not in attendance, Vice Chair Ward will be acting Chair.  
Chair Ward asked if there were any changes or comments to the minutes for February 18, none.

**BOARD ACTION: Chair Ward motioned to approve the February 18, 2021 minutes as written.**

### **CONSENT AGENDA**

<b>BA2020065</b>	<b>Lakeside Development, LLC Property</b>	<b>District 3</b>
<b>Applicant:</b>	Creative Renovations LLC	
<b>Location:</b>	APN 169-16-105, approx. 680' northwest of the intersection of Lakeside Dr. & Moonlight Way	
<b>Requests:</b>	Variance to permit: 1) Hillside disturbance outside the principal building envelope where no hillside disturbance is permitted, and;	

- 2) Septic encroachment outside the principal building envelope where no sewage disposal systems are permitted, and;
- 3) Front (east) setback of 10.4-feet where 40-feet is the minimum permitted, and;
- 4) Side (south) setback of 27.9-feet where 30-feet is the minimum permitted, and;
- 5) Rear (west) setback of 29.1-feet where 40-feet is the minimum permitted

**BA2021011**

**Mokhashi Property**

**District 3**

**Applicant:**

Jon Gillespie, Pew and Lake PLC

**Location:**

APN 169-13-059 @ 7304 N. Highcliff Dr. – Clearwater Pkwy. & Highcliff Dr., in the Paradise Valley area

**Requests:**

Variance to permit:

- 1) Front (street side) / north setback of 0' where 20' is the minimum permitted, and;
- 2) Building height of 49' where 30' is the maximum permitted

**BA2021014**

**Huff Property**

**District 3**

**Applicant:**

Mackenzie Huff

**Location:**

APN 203-39-024 @ 3332 W. Long Rifle Rd. – 1,093' NE of NEC 35th Ave. & Cloud Rd., in the Desert Hills area

**Request:**

Variance to permit:

- 1) Proposed front setback of 15' where 40' is the minimum permitted

**BA2021016**

**Cavin Property**

**District 3**

**Applicant:**

Sam Turner, Mills Engineering

**Location:**

APN 203-36-002H @ 3233 W. Horizon Dr. – ¾ mile NW of NWC 27th Ave. & Joy Ranch Rd., in the Desert Hills area

**Request:**

Variance to permit:

- 1) Proposed lot size of 43,557 SF where 43,560 SF is the minimum permitted

**BA2021017**

**Superstar Car Wash**

**District 1**

**Applicant:**

Cawley Architects

**Location:**

APN 303-52-144B, NWC of Arizona Ave. & Riggs Rd.

**Request:**

Variance to permit:

- 1) Waiver of two (2) 25' x 25' sight visibility triangles required at an access point from Riggs Rd.

Mr. Gerard presented the consent agenda.

**BOARD ACTION: Member Cardon motioned to approve the consent agenda – BA2020065 with conditions 'a'-'e', BA2021011 with conditions 'a'-'c', BA2021014 with condition 'a', BA2021016 with conditions 'a'-'b', and BA2021017 with condition 'a'. Member Personne second. Approved 3-0.**

**BA2020065 conditions;**

- a) Variance approval establishes a 10.4' (east) setback line for APN 169-16-105.
- b) Variance approval establishes a 27.9' (south) setback line for APN 169-16-105.
- c) Variance approval establishes a 29.1' (west) setback line for APN 169-16-105.
- d) Variance approval permits a hillside disturbance outside of the building envelope of up to 10,871 sq. ft. for APN 169-16-105.
- e) Variance approval permits a septic encroachment outside the principal building envelope of up to 691 sq. ft. for APN 169-16-105. The 691 sq. ft. septic encroachment shall not be permitted in excess of the total permitted hillside disturbance of 10,871 sq. ft. permitted in condition 'd'.

**BA2021011 conditions;**

- a) Variance approval establishes a 0' (north) setback line for APN 169-13-059.
- b) Variance approval establishes a 49' maximum building height for APN 169-13-059.
- c) Variance approval does not entitle any existing or proposed encroachment within the right-of-way. A change in the existing Assessor's Parcel number (APN) that may result from an acquisition of right-of-way area shall not void this variance approval.

**BA2021014 condition;**

- a) Variance approval establishes a 15' north front setback line for APN 203-39-024. This is due to the fact a 20' access easement traverses into the parcel along and inside the north lot line from the northwest corner of the parcel for a distance of 20'.

**BA2021016 conditions;**

- a) Variance approval establishes a minimum lot size of 43,557 SF for APN 203-36-002H.
- b) Variance approval establishes the east property line as the front lot line for APN 203-36-002H.

**BA2021017 condition;**

- a) Variance approval permits the waiver of two (2) sight visibility triangles on Riggs Rd. for APN 303-52-144B.

**REGULAR AGENDA**

**BA2021009**

**Applicant:**

**Location:**

**Requests:**

**Jackson Property**

Kevin Jackson

APN 211-54-023P @ 35902 N. 11<sup>th</sup> Ave. Phoenix 85086 – 11th Ave. & Galvin St. in the Phoenix area

Variance to permit:

- 1) Front setback of 15' where 40' is the minimum permitted, and;

**District 3**

- 2) Street-side setback of 25' where 40' would be the calculated setback including a 20' easement plus the 20' minimum street-side setback

Mr. Rivera presented BA2021009 and noted staff discussed solutions with the applicant, but they had difficulty in contacting staff regarding placement of the new structure prior to applying for the building permit. The applicant purchased the 40' x 60' detached structure and it currently resides on the property. Alternative locations were suggested to meet the zoning district required setbacks in circumventing variances. The locations were not preferred due to the proximity of existing utilities, a wash and personal preference. The applicant also describes elements of the site such as the wash, utility location and easements creating a peculiar condition. Staff acknowledges the limitations of the site but they are not peculiar. The applicant has failed to demonstrate an undue physical hardship; the physical elements have designed based solutions not pursued out of personal preference and projected additional cost. These circumstances does not relieve the property owner from the responsibility to apply for and develop their property in a manner that is consistent with the districts regulations prior to construction. All easements for utilities existed on site prior to the owner's acquisition. The applicant has failed to demonstrate the general intent and purpose of the MCZO will be preserved with the variance. There are design-based solutions for the new garage placement. An opposition letter was received from a neighbor with setback concerns. Staff does not support the request for a variance.

Mr. Kevin Jackson, the applicant, said he tried getting information from the county, and he was not clear on the setbacks. They already purchased the building, and there was no good area to place it since there is a wash in the back. They have more space in the area they selected. He wants to place the building where it will least affect any of the neighbors, where it will be in a nice centralized location from the buildings around it. This is what he is proposing and he is looking for options. He did not realize there was another 20-foot setback with the easement. They want to place it in the best possible location.

Member Personne asked if he would be willing to spend time with staff to figure out a different orientation with the dimensions of the building. You can either fit it at the southeast corner meeting the setbacks, or perhaps west of the wash on the southwest corner. Mr. Jackson said he is more than willing to talk with staff. He would have been more than happy to discuss this further before he spent \$40,000. It looks like there is a lot of room on the west end of the property but there is not. He has spent many hours trying to work this out.

Member Personne said her recommendation is to give the applicant time to work with staff to figure out if there is another way to meet the setbacks, and to address the neighbors' concerns. Mr. Rivera said yes he could work with Mr. Jackson further.

Chair Ward asked if anyone else from the public wished to speak on this case. None.

Member Cardon said based on what he is seeing with the wash and septic as a peculiar condition, he is not opposed to the variance request.

Member Personne said she would like to see staff and the applicant collaborate about potential options to reduce the size of the variance or fit within the setback requirements.

**BOARD ACTION: Member Personne motioned to continue BA2021009 to May 20, 2021 hearing. Member Cardon second. Continued 3-0.**

**BA2021012**

**Wasson Property**

**District 3**

**Applicant:**

NextGen Builders, LLC

**Location:**

APN 202-14-041C @ 47114 N 29<sup>th</sup> Ave. – Wander Ln & 29<sup>th</sup> Ave., in the New River Area

**Requests:**

Variance to permit:

- 1) As-built hillside disturbance outside of the lot's principal buildable envelope where none is permitted, and;
- 2) As-built structure outside of the lot's principal buildable envelope where none is permitted

Mr. Rivera presented BA2021012 and noted in January 2000, historic aerial photographs showed disturbance in the area of the subject property associated with the construction of an accessory building of the former parcel 202-14-041 permitted under B20000655. That structure is currently residing on 202-14-041C, which is the subject of this variance. A second phase of disturbance in the area of the subject parcel occurred between December 2001 and February 2002 on the former parcel 202-14-041. This disturbance is 16,161 square feet of previously disturbed hillside area, identified on the grading and drainage submitted on the companion variance request BA2021013. This disturbance was done without benefit of proper permitting and is a violation of the zoning code. An As-Built grading permit is currently in process to address the unpermitted grading and hillside disturbance. In July 2019, the owner of the property split the parcel and created three parcels where there was one. Parcel 202-14-041B is the parcel to the immediate west and is the subject to the next variance case on the agenda. In December 2019, plans were received for construction of new single-family residence on existing foundation. The plans were approved and issued on March 5, 2020. On November 18, 2020, the site received a final drainage inspection and it was discovered there was new disturbance of a culvert crossing the property line to the west. It was not on the approved plans for the house or under any additional permit. This culvert and associated disturbance represents a third phase of disturbance on the parcel. This development is the subject of the current variance request on this parcel as well as the adjacent parcel ending in 041B. The applicant proposes exceptions to these hillside regulations to allow for both 1,056 square feet of new disturbance and the existing 5,889 square feet of hillside disturbance outside the lots buildable area, and variation to allow for the drainage culvert. An approval of the grading permit is contingent on the approval of these variance requests. The neighboring property is under different ownership by members of the same family. The same unpermitted grading work has triggered the same variance request on the property to the west. Staff has found the applicant has failed to demonstrate a peculiar condition facing the property because the parcel with qualifying hillside areas are not unique. Needing an additional entitlement to allow for the completion of the building permit for the home is not a peculiar condition. The delay of the homeowners' completion of the home and delay of move in is self-created. The applicant has failed to demonstrate the strict application of the zoning ordinance to the property has caused undue physical hardship. There are other alternatives such as removal of the drainage culvert and revegetation of the disturbed areas.

Member Personne asked for clarification of the square footage disturbance. Mr. Rivera said each of the two lots have a different hillside table associated with it. The 1,056 square feet of hillside disturbance on the table represents the disturbance by installation of the drainage culvert.

Member Cardon asked if the disturbance is to address drainage. Mr. Rivera said yes, the variances are to address drainage and the hillside regulations that apply to the area of the lot that is outside of the buildable envelope, which is created by the setbacks.

Member Cardon asked which way the water drainage flows. Mr. Rivera said it is his understanding the water flows south, and the accessory structure on the south is subject to flooding and that is why the culvert was presumably installed.

Ms. Melissa Wasson, the property owner said Paul Cooper is the applicant with NextGen Builders who was the builder of the home, but they did not install the culvert. Their goal is to obtain their certificate of occupancy for their house, which was completed in December 2020. The certificate of occupancy was denied as part of the land improvements that were done without the proper permits. NextGen and the County have been working on a solution for over four months, which led to this hearing. They recognize the landowners caused the issues and have tried to let the process work itself out and have now run out of time. On March 31, they closed on their house they owned for 22 years and are now living with family members which is causing hardships due to HOA issues. They moved all of their belongings into the metal shed, which was a pre-existing structure. They are concerned of the remoteness of the property and vandalism and theft since they are not living there. We did not apply for a building permit prior to the placement of the culvert, and now know it is considered a structure, and due to hillside lot restrictions requires a permit. They were ignorant to the permitting requirements and their intentions were good. After acquiring the land, there was a rare rain storm and it was discovered the entire metal building flooring was flooded and the drainage pattern was destroying access to the west portion of Lot C, and both Lots A and B by creating a trench. In an effort to alleviate the flooding, they installed the culvert on the property following the natural wash patterns and were unaware of the hillside ordinance. The drainage does flow south. In addition to the hardships, they are now paying a mortgage on the new house, and by taking out the culvert would create additional hardships with the flooding in this area. The drainage and environmental services aspects of the variance have been approved, which indicates the technical aspects and installation have merit. They apologize for not following the statutory requirements. Their goal is to live the remainder of their retirement years on this property and eventually have their children build homes on Lot A and B in the future.

Mr. Paul Cooper said he is with NextGen Builders representing the Wassons and the Weeks. The grading that was done by the homeowners is allowed under the ordinance to provide access from one lot to the next. There is a small section behind the shed where it was flooding, and between the garage and the road is the 1,056 square feet that is in question. The shed was already there before the Wassons purchased the property, and it did flood and needed to be fixed. They should have applied for a permit, but this would have been addressed anyway. The previous owners should have addressed these issues. The conditions of the site warrant a variance for this lot.

Member Cardon asked how long ago was the culverts installed. Ms. Wasson said they were installed in the summer of 2020.

Chair Ward asked if anyone else from the public wished to speak on this case. None.

Member Cardon said these drainage issues would require some form of variance, and he recognizes they cannot consider the cost concerns even though they are real things. They focus

on the conditions of the property and the statute they observe and follow, but he does see a need for a variance.

Member Personne said it is more challenging to make things work in a hillside situation, and it is unfortunate the applicant did not follow some parts of the process correctly. The culvert was already installed and it is doing its job, she believes the variance is warranted.

**BOARD ACTION: Member Personne motioned to approve BA2021012 with condition 'a'. Member Cardon second. Approved 3-0.**

- a) Variance approval permits 6,552 sq. ft. of existing hillside disturbance outside the principal building envelope for APN 202-14-041C.

<b>BA2021013</b>	<b>Weeks Property</b>	<b>District 3</b>
<b>Applicant:</b>	Paul Cooper, NextGen Builders, LLC.	
<b>Location:</b>	APN 202-14-041B @ Address T.B.D., 685' southwest of the SWC of Wander Ln. and 29 <sup>th</sup> Ave., in the Phoenix / New River area	
<b>Request:</b>	Variance to permit: <ul style="list-style-type: none"><li>1) Existing hillside disturbance of 9,928 sq. ft. outside the lot's principal buildable envelope where hillside disturbance is prohibited</li></ul>	

Mr. Watkins presented BA2021013 and noted there are no known violations or opposition on this request. This is a westward extension of the same activities as the previous case. This property was created in July 25, 2019 as a 3-way split of former parcel 202-14-041. The current property owners have taken possession on that date. The property is hillside and approximately 17,085 square feet of the subject property has been disturbed since January 2020. The subject of this variance request is 9,928 square feet of existing hillside disturbance located outside of the principle building envelope that appears to have been performed without benefit of proper permitting. According to historical aerial photographs, the first disturbance of the property occurred between January 2000 and April 2000. It appears to be the small isolated area of disturbance located on the east property line just north of the main area of disturbance. This was associated with the construction of the accessory building on the neighboring property to the east and was apparently permitted as part of that activity. A second phase of disturbance occurred in December 2001 and February 2002, still on the former parcel 202-14-041. This is the large area of disturbance shown on the southern half of the parcel at 16,161 square feet of previously disturbed hillside area done without the benefit of permitting. As-built grading permit, B202103400 is currently in process to address this disturbance. A third phase of disturbance occurred on the parcel with the installation of a drainage culvert that was discovered as part of the final inspection for building permit. The applicant proposes to obtain permit for the 9,928 square feet of historic and recent disturbance of hillside area outside of the building envelope. The remaining 7,157 square feet of historic and recent hillside disturbance is the subject of the grading permit B202103400. Approval of that grading permit is contingent upon approval of this variance request. Staff has found the applicant has failed to demonstrate there is a peculiar condition facing the property, because the previous landowners created the disturbance without the benefit of proper permitting. The applicant has failed to demonstrate that the strict application of the zoning ordinance to the applicant's property has caused undue physical hardship that prevents the development of the property. There are alternatives available to the property, such as revising the property boundaries to remove the hillside disturbance from the

required yard areas, and/or revegetation/remediation of the disturbed hillside areas. Staff finds the requested variance is not warranted.

Mr. Cooper asked if a stipulation could be added when they submit a building plan for a driveway. It can be right-handed coming across the culvert and absorb that variance need. Mr. Gerard said the culvert disturbance could be considered part of the roadway if necessary for the roadway. At this point, it hasn't been demonstrated and that is why it was discussed with the previous case. Quite likely, when you develop this lot, the roadway and driveway would be on the south and runs the length of the southern boundary. There would be no need for a variance associated with any disturbance to the south only disturbance to the east that may or may not be part of the driveway. Mr. Cooper said hillside is challenging and he was thinking of ways to help them out.

Chair Ward asked if anyone else from the public wished to speak on this case. None.

Member Cardon said this is very similar to the previous case and he feels the same.

**BOARD ACTION: Member Personne motioned to approve BA2021013 with condition 'a'. Member Cardon second. Approved 3-0.**

- a) Variance approval permits 9,928 sq. ft. of existing hillside disturbance outside the building envelope for APN 202-14-041B.

**Adjournment:** Chair Ward adjourned the meeting of April 15, 2021 at 11:04 a.m.

Prepared by Rosalie Pinney  
Recording Secretary  
April 15, 2021