



MARICOPA COUNTY, ARIZONA
Board of Adjustment
Minutes
May 20, 2021

CALL TO ORDER: Chairman Loper called meeting to order at 10:06 a.m.

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

MEMBERS ABSENT: Ms. Heather Personne
Mr. Jeff Schwartz

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

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Ms. Pearl Duran, OET
Ms. Erin Novotny, Management Assistant

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: V202000275, BA2021009, V202002058, B2021018

APPROVAL OF MINUTES: March 18, 2021 and April 15, 2021

Chairman Loper asked if there were any changes or comments to the minutes for March 18 and April 15, none.

BOARD ACTION: Chairman Loper motioned to approve the March 18 and April 15, 2021 minutes as written.

CONTINUANCE AGENDA

V202000275 **Code Compliance Review**
Respondent: Caroline Trotter
Location: 14155 W. Pennystone Drive, Sun City West, AZ (Parcel 232-15-381)
Request: Appeal of the Hearing Officer's Order of Judgment

Mr. Gerard said the respondent has requested a continuance to the July 15 hearing.

No motion required by the Board.

BA2021009

Jackson Property (Cont. from 4/15/21)

District 3

Applicant:

Kevin Jackson

Location:

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

Request:

Variance to permit:

- 1) Front setback of 25' where 40' is the minimum permitted

Mr. Gerard said staff is requesting a continuance to the June 24 hearing, there was an error with the number of variance requests amended from the April hearing. The applicant is in agreement with the continuance.

No motion required by the Board.

CODE COMPLIANCE REVIEW

V202002058

Code Compliance Review

Respondent:

Trevor & Carrie Hirshberg

Location:

3499 N. 359th Avenue, Tonopah, AZ (Parcel 506-40-156A)

Request:

Appeal of the Hearing Officer's Order of Judgment

Mr. Gerard presented V202002058 and noted the violation case was opened in December 17, 2020 due to citizen complaints regarding mounted cowboy action shooting in the rural residential area, zoned Rural-43. The violation was verified through evidence including videos and photos submitted by the complainant's attorney. An Administrative Hearing was held on March 11, 2021. There was a Notice in Order to Comply (NOTC)/Summons mailed by United States Postal Service (USPS) and posted on the site for that hearing. The complainants, the attorney, and the respondents were present at the hearing and provided testimony. The Hearing Officer found the respondents responsible for the violation and issued a judgment based on the testimony from the complainant and their attorney. The Hearing Officer imposed a \$250 non-compliance fine and the same daily non-compliance fine only if the violation occurs again and verified. No fine amount has been paid to date, with a \$250 fine outstanding. The respondent appealed for Code Compliance Review with oral arguments, that the evidence submitted by the complainant's attorney was neither date stamped nor time stamped, and it was addressed at the hearing. The Hearing Officer made a finding of fact and reached a conclusion pursuant to Section 1502 of the Maricopa County Zoning Ordinance (MCZO). Pursuant to Article 1504.3.2 of the zoning ordinance, the Board may either affirm the Hearing Officer's order of judgment or remand it back to the Hearing Officer due to a finding of procedural error. Staff has reviewed the file and cannot find a procedural error. Staff recommends the Board uphold the Hearing Officer's order of judgment.

Member Cardon asked we could only focus on was there an error in the process. We are not looking at the evidence if things were time stamped or not. Mr. Gerard said you determine if there has been a procedural error, if the respondent was not properly notified or some other mandated procedural process. If you determine to refer this back to the Hearing Officer, you do not have the ability to overturn the Hearing Officer's decision of responsibility or ordered fines.

Mr. Peck said this a gray area, if they are alleging the evidence should not have been taken by the Hearing Officer, technically that is a procedural question. The statute says that any thing you

do that is not permitted is a violation, and you would have to decide if it matters when they did it. Since the Hearing Officer fined them for one event on the video tape regardless when it was done. The strict rules of evidence do not apply to an administrative hearing like this.

Ms. Carrie Hirshberg, the appellant said they were fined based off evidence from the neighbor that was not time stamped. We have done nothing but complied and the evidence did not line up.

Member Cardon said he is trying to understand the order of events. He asked once you were alerted to the violation you have been in compliance. Then this video was taken before you were alerted to the violation. Ms. Hirshberg said yes.

Member Cardon asked once you were alerted of the violation you went into compliance and then the hearing process started. Ms. Hirshberg said yes.

Chairman Loper said evidence of when it did or did not occur is not germane to the violation, but it seems there is an order for how code enforcement cases are handled and how things occur in the process does seem to have some bearing. Mr. Peck said because it is an Administrative Hearing the strict rules of evidence does not apply. The Hearing Officer was asked to find if there had been a violation of the ordinance, and the Hearing Officer found there was. The Hearing Officer accepted the argument that other than this one instance, there have been no other violations and his order reflects that. All he did was impose a fine for the one violation, and there won't be any other fines unless there are continuing violations. The Board does not have the authority to second-guess the Hearing Officer on his determination.

Member Cardon asked if a person violates unknowingly and once alerted to the violation they may be in compliance. Is it still appropriate to fine them according to the Maricopa County Zoning Ordinance for the violation? Mr. Peck said this case did not follow the usual process, when the complaint was received staff went out to investigate to see if there was a violation. Often with events, they go there and no event is going on. We do give the complaining witnesses the opportunity to present a case to the Hearing Officer even if the County does not have evidence. The County presents it, and it is based on evidence by a complaining witness. They alleged there had been a violation and ongoing violations. The Hearing Officer ruled yes there had been a violation with the evidence and issued a fine, but he also determined there was no evidence of ongoing violations. That is why there was no daily non-compliance fines.

Member Cardon asked that if the fine is permissible whether or not the person who committed the violation knew they were committing a violation. Mr. Peck said yes, under the ordinance if the Hearing Officer finds there is a violation he is required to impose some fine. Somewhere in excess of 80 percent of the investigated violations, never go to hearing.

Chairman Loper said he was not aware action could be taken when they were deemed in compliance, based on testimony provided by a neighbor. Mr. Peck said that is why it goes to a Hearing Officer to weigh all of that. The Hearing Officer was clearly convinced there was a violation and a fine was appropriate. Generally, he is rather lenient especially for those no longer in violation. The fine could have been as high as \$750.

Vice Chair Ward asked if the complainant's attorney submitted any other event dates. Mr. Gerard said we have no evidence of additional events. Mr. Peck said that is not relevant to what

the Board can consider. The Board's jurisdiction is limited to whether there was a procedural error in the hearing.

Chairman Loper said given the limited scope and the evidence presented, it is not under our purview as it is narrowly defined.

Member Cardon said even if the evidence was from a violation before the appellant was aware they were doing anything to violate, would not change the outcome. He does not see a procedural error and will not second-guess the Hearing Officer's decision.

BOARD ACTION: Member Cardon motioned to affirm the Hearing Officer's Order of Judgment. Vice Chair Ward second. Affirmed 3-0.

REGULAR AGENDA

BA2021018

Applicant:

Location:

Requests:

Fisher Property

David Castello, ITNASOCRA Architecture & Planning

APN 502-09-093 @ 8619 N. 193rd Dr., in the Waddell area

Variance to permit:

- 1) Building/disturbance envelope encroachment and side yard (south) setback of 10' where 15' is the minimum permitted (ref: Z2000188) and,
- 2) Building envelope of 62% of lot area where 40% is the maximum permitted (ref: Z2000188) and,
- 3) Building/disturbance envelope encroachment into the required front yard that includes a septic system where it is only permitted for the driveway (ref: Z200188).

District 4

Mr. Gerard presented BA2021018 and noted request #2 is withdrawn, staff incorrectly calculated a 62 percent disturbance envelope where 40 percent is the maximum permitted. Calculated correctly, it is a 29.6 percent disturbance, so they are well within the 40 percent. At the time of the staff report, there was no opposition. The applicant failed to demonstrate there is a peculiar condition facing the property, because it has similar dimensions with all other lots in the subdivision. The proposal is too large for the subject lot, and they failed to demonstrate the strict application of the Rural-43 RUPD zoning ordinance standard to the applicant's property has caused undue physical hardship. There are alternatives available by keeping the development within the regulatory alignments of disturbance.

Mr. David Castello said he is working with the Fisher family on developing a single-family residence. The site was designed to keep an economical design, but they are encroaching on the southern setback line. The topological condition made it more efficient and impactful to locate the septic system in the front of the property. The side yard setback encroachment is due to pushing the whole building further back on the lot to avoid the wash that would create extensive subgrade and foundational work. They cannot do any earthwork in the setback based on the CC&R's; the area must be preserved in its natural condition. The masonry wall line was brought back, and they moved the building back to take advantage of more beneficial regrading of the property. The neighbors recently planted three mesquite trees on the property line, and in order to get a truck in the back would possibly damage trees and landscaping. The

alternative is to have the septic system in the front yard. A few people were in opposition to increasing the envelope, but we are not. We were guided to get the approvals from the County in advance of getting the HOA sign off and approval from the HOA Board. The neighbors were also encroaching in the setback and their request was approved from the County.

Member Cardon asked about the wash they are trying to avoid, and which variance does that relate to. Mr. Costello said it relates to the side yard setback encroachment. The wash exists at the south end of the building/RV garage, if they push the building further to the back it reduces the impact to regrade and to get the finished pad. Member Cardon asked does the RV garage encroach in the setback. Mr. Costello said the RV garage encroaches about 4 inches.

Member Cardon asked if you were not able to do the septic in the front what would you do, and are you aware of any other homes with septic in front. Mr. Costello said it is common to place a septic in the front yard for ease of access. This is not a leach field; this is deep seepage pits and will not have any noxious gases, as you would find in a leach field. He is not sure if there are other homes in the area with the septic in the front, but it is likely. There have been many variances approved for setback encroachments in the neighborhood, and they had the same challenges preserving those buffer areas. Trampling on the Saguaros or other native vegetation could be problematic. We could possibly put the septic on the north end, but the challenge is we would have to go deeper into the ground since that is the high side of the property, and by the time they get the riprap for proper drainage it may create the same condition to the south of the building. Moving it to the front eliminates any of those complications.

Chairman Loper said he is familiar with Sonoran Ridge Estates; there is a lot of drainage and topographical issues throughout the subdivision, and the setback request does not impose on the neighbors.

Mr. Robert Vandenhaute said he is the neighbor directly south of the site. A considerable amount of water flows right into his septic leach field. It drains into the back yard and floods out his pavers, and goes into his pool. They have tried to divert it different ways, and it is always an issue anytime they have a large rain. He is opposed to an RV garage building, because he needs as much room as he can get for drainage. This is his only concern since the building envelope is no longer an issue.

Member Cardon asked the wall is not a concern for you but the RV garage encroaching to four inches is? Mr. Vandenhaute said he needs as much space as possible for drainage coming off the building. If they direct the drainage to the south of that house, he is in trouble.

Member Cardon asked is it the applicant's responsibility to move the water in such a way it does not flow towards your property. Mr. Vandenhaute said he has done what he can do to divert the water, and once the building is on the lot they are not sure which way the water will go.

Mr. Costello said when you obstruct the water flow with riprap or physical objects, it will decrease the rate of any kind of erosion. A building and walls will automatically slow down any of that runoff. Most of the water diversion is going to the front of the building, and they will get it as close to the front of the house as they can with riprap and swales. It is not likely the brunt of the water from the main building is going to go to his property. Mr. Vandenhaute said it sounds like the drainage would be less than what he has now. Mr. Costello said that is correct.

Chairman Loper asked in a rain event do you get standing water from runoff, or your leach field is percolating up. Mr. Vandenhoute said it is from runoff and it dissipates quickly, but it comes from that property.

Ms. Donna Thompson said she has concerns with the back of the fence being less than six feet from the property line, and she is not sure how far the septic will be from the street. Mr. Costello said the septic would be buried in the front in order to meet the standard. The back fence line is in an excess of a 10-foot setback.

Ms. Thompson asked are you requesting five more feet. Mr. Costello said they are only requesting the amount they are encroaching. Mr. Gerard said the wall would not be closer than 10 feet from the south lot line.

Chairman Loper asked where the location of her property is. Ms. Thompson said she is across the street from Mr. Vandenhoute.

Ms. Thompson asked how far can a septic system be from the street and will they use a long hose when pumping the system. Mr. Costello said the septic would be 20 feet from the front property line. That could be an option for maintenance of the system.

Chairman Loper asked if she still has concerns with the placement of the septic. Ms. Thompson said 20 feet should be sufficient. Mr. Gerard said the Environmental Services Department does have septic system setbacks from buildings, trees and washes that will be met. No variance they are giving will alter the Environmental Services standards. The RUPD zoning limits disturbance envelope has to coincide with the principle building envelope except for the driveway. In this instance, other than the driveway is encroaching beyond the principle-building envelope. It is within that normal front setback where you would have the building. This subdivision was built without any physical drainage infrastructure, and there are no common retention basins. The idea was the perimeter of all lots would be maintained natural, so when drainage crosses lot lines it would be returned to its natural state and enter these natural drainage ways.

Mr. Costello said, for the septic we need to be 10 feet from any buildings and 5 feet from any driveways.

Chairman Loper asked if there was any one else from the public that wished to speak on this case. None.

Member Cardon said with the topography and shape of the lot would warrant a variance. The concerns were addressed, and he is comfortable with an approval.

BOARD ACTION: Member Cardon motioned to approve BA2021018 with striking condition 'b' and condition 'c' relabeled to 'b'. Vice Chair Ward. Approved 3-0.

- a) Variance approval establishes a 10' south setback line for APN 502-09-093.
- ~~b) Variance approval establishes a building envelope that is 60% of lot area for APN 502-09-093.~~

- c) **b)** Variance approval allows for disturbance related to a septic system within the required front yard as illustrated on the site plan date stamped received March 23, 2021.

Adjournment: Chairman Loper adjourned the meeting of May 20, 2021 at 11:14 a.m.

Prepared by Rosalie Pinney
Recording Secretary
May 20, 2021