

## **Board of Adjustment**



### *Minutes*

**City Council Chambers, Lower Level  
September 7, 2016**

**Board Members Present:**

Chair Tony Siebers  
Trent Montague, Vice Chair  
Wade Swanson  
Tony Siebers  
Ken Rembold  
Terry Worcester  
Kathy Tolman

**Board Members Absent:**

(none)

**Staff Present:**

Gordon Sheffield  
Lisa Davis  
Kaelee Wilson  
MaryGrace McNear  
Charlotte McDermott  
Michael Gildenstern  
Kim Steadman  
Rebecca Gorton  
Angelica Guevara

**Others Present:**

Walter Finninger  
Wade Pennell  
Scott Johnson  
Daniel Jones  
John Christakis  
Robert Sanderson  
David Moore  
John Gabaldon

The study session began at 4:30 p.m. and concluded at 5:34 p.m. The Public Hearing began at 5:49 p.m. before adjournment at 7:26 p.m., the following items were considered and recorded.

**Study Session began at 4:30 p.m.**

**A. Zoning Administrator's Report**

Mr. Sheffield updated the Board on the status of the sign ordinance and stated presentations to City Council should begin in the next 30 days.

Mr. Sheffield reminded the Board that there will be two meetings in October. The first will be on October 5, 2016 and a special meeting with a single case on October 26, 2016.

**B. The items scheduled for the Board's Public Hearing were discussed.**

**Study Session adjourned at 5:34 p.m.**

**Public Hearing began at 5:49 p.m.**

- A. Consider Minutes from the June 1, 2016 Meeting: A motion was made by Boardmember Swanson to continue to the October 5, 2016 meeting and seconded by Boardmember Rembold.  
Vote: Passed (7-0)
- B. Consent Agenda: A motion to approve the consent agenda as read with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Rembold.  
Vote: Passed (7-0)

Public Hearing adjourned at 7:26 p.m.

**Case No.:** BA16-033 **APPROVED WITH CONDITIONS**

**Location:** 2840 E. Main (District 2)

**Subject:** Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) in the LC zoning district. (PLN2016-00448)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Worcester and seconded by Boardmember Rembold to approve with the following conditions:

1. Compliance with the comprehensive sign plan submitted, except as modified by the conditions listed below.
2. Any additional signage not identified with this Sign Plan will require modification to this Special Use Permit.
3. Compliance with all requirements of the Development Services Division with regard to the issuance of sign permits.
4. Major A, an anchor tenant, shall be limited to 240 SF of aggregate sign area and 3 signs maximum.
5. Major B, an anchor tenant, shall be limited to 200 SF of aggregate sign area and 3 signs maximum.
6. All minor tenants shall be limited to a maximum total of 160 SF of aggregate sign area and sign number allowed per MZO.
7. The Jack in the Box monument sign shall still be considered a nonconforming sign for purposes of replacement. In the event the City issues a building permit, a sign permit, or this Jack-in-the-Box building applies to change the existing certificate of occupancy, the condition of issuing the permits or changing to certificate of occupancy shall specify and require that all non-conforming signs be removed, in conformance with Section 11-41-8.E.7. Any detached signs shall conform with the pad sign design, M2, as shown in this sign plan.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

- A. The CSP establishes consistent detached sign design, size and height.
- B. The CSP proposes two detached signs adjacent to Main Street and two detached signs adjacent to Lindsay Road. No proposed detached sign exceeds 12 feet in height or 80 square feet in area.
- C. The proposed detached sign design for all four of the signs is consistent in size, colors and material with the proposed elevations for the repurposed Kmart building.
- D. The proposed placement of the detached signs is more than 50' apart.
- E. The existing repurposed Kmart building is setback more than 450' from Main Street.
- F. The original commercial center was constructed in the mid-1970's.

- G. The proposed CSP is largely consistent with current Code requirements and is complimentary to adjacent development and consistent with the use of the property. Therefore, the CSP, with the recommended conditions, will be compatible with, and not detrimental to, adjacent properties or the neighborhood in general.

**Case No.:** BA16-038 APPROVED WITH CONDITIONS

**Location:** 1133 S. Dobson Road (District 3)

**Subject:** Requesting a Substantial Conformance Improvement Plan (SCIP) to allow modifications to development standards associated with placement of a childcare facility within an existing commercial center in the LC zoning district. (PLN2016-004S6)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Reduce the required landscape setbacks adjacent to Dobson Road and Southern Avenue; and
2. Reduce the required landscape setback at the north property line from 15' to 0' and the east property line from 15' to 0'.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

1. Compliance with the site and landscape plan submitted, except as modified by the conditions below;
2. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.
3. A total of 4 trees shall be added to the proposed 5' wide landscape at the north side of the outdoor play area identified on sheet AS102 or elsewhere on the site as approved by the Planning Director.
4. There shall be a minimum of three bicycle parking spaces provided on the site as per MZO Section 11-32-8.

**Case No.:** BA16-041 APPROVED WITH CONDITIONS

**Location:** 3558 E. McDowell Road (District 1)

**Subject:** Requesting: 1) a Development Incentive Permit (DIP), and 2) a Special Use Permit (SUP), both to allow development of an assisted living facility in the OC zoning district. (PLN2016-00546)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Compliance with the site plan, narrative and exhibits submitted.
2. Compliance with all requirements of the Development Services Division in the issuance of building permits.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

- A. The location and context of this site comply with requirements for an infill site, which authorizes this project to request consideration of a Development Incentive Permit (DIP).
- B. The Citrus Sub-Area Plan designates the subject property for office and related uses, as long as they are designed to be consistent with the rural citrus character; this development meets that criteria and is therefore consistent with the Citrus Sub-Area Plan.
- C. The proposed assisted living facility is consistent with the policies of the General Plan.
- D. The location, size, design and operating characteristics of the development are consistent with the OC zoning district.
- E. The proposed development should not be injurious or detrimental to the adjacent or surrounding properties, neighborhood or to the general welfare of the City.
- F. Adequate public services, facilities and infrastructure are available for the development.
- G. The proposed incentives would authorize a development that is consistent with the context of the Citrus Sub-Area, and with similar OC zoned properties in the surrounding neighborhood.
- H. The architectural elements, construction and landscape materials, and other site improvements of the proposed development meet the intent of the Design Standards of this Ordinance. Design elements used on the elevations reflect the large residential character that is the goal of the Citrus Sub-Area Plan for this vicinity.

**Case No.:** BA16-042 APPROVED WITH CONDITIONS

**Location:** 9130 E. Elliot Road (District 6)

**Subject:** Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) in the PEP-PAD zoning district. (PLN2016-00574)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Compliance with the sign plan as submitted.
2. Review of significant revisions to this sign plan, such as those that may involve additional sign related to future phases of development of the medical campus, shall be through the Board of Adjustment as a modification of this CSP. Minor revisions, such as changes to sign message or color of the sign support structure, do not require Board review.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

- A. The proposed land use for the case site is a hospital, which would eventually expand to a medical campus. This initial sign plan governs only the hospital building.
- B. The hospital building to be constructed on this site will be 62-ft tall, with 93,670-sqft. The first floor has over half this floor area: 56,000-sqft. At 62-ft, the building will be 22-ft higher than the standard maximum for industrial zoned sites, and 32-ft taller than typical commercial sites.
- C. Generally, the Board has recognized medical campuses and hospitals as land uses with special and unique qualities that justify deviations from standard commercial/industrial sign maximums. Such qualities typically include the large building masses, and the need to facilitate wayfinding for medical emergencies. The Board has also recognized other wayfinding and identification needs related to non-emergency medical functions.
- D. Although the proposed attached sign designs exceed standard sign ordinance maximums, the proposed detached signs are significantly less than the standard maximums allowed.
- E. Given the scale of the building, the need for immediately understandable identification and wayfinding related to a medical emergency facility, and a balanced approach proposed between oversized attached and under-maximum detached signs, the proposed comprehensive sign plan is consistent with criterion b for CSP's. This sign plan exhibits unique conditions of land use and physical scale that do vary when compared to conventional industrial or commercial development.

**Case No.:** BA16-043 **APPROVED WITH CONDITIONS**

**Location:** S020 E. Main Street (District 2)

**Subject:** Requesting a modification of an existing Substantial Conformance Improvement Permit (SCIP) and a Special Use Permit (SUP) to allow the addition of a finishing canopy for a car wash in the GC zoning district. (PLN2016-00566)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Compliance with the site plan, landscape plan and sign plan submitted, except as modified by the conditions below.
2. Compliance with all conditions of approval of case BA16-004.
3. Seven trees and forty-two shrubs shall be planted along Main Street.
4. Compliance with all requirements of the Development Services Division with regards to the issuance of building permits.
5. All exterior modifications, including the finishing canopy, shall be reviewed and approved by the Planning Director through an Administrative Review.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

#### **FINDINGS FOR SCIP**

- A. This request for a SCIP would allow for the redevelopment of a carwash.
- B. The proposed vacuum stalls invoke current development standards.
- C. The site is located in the Neighborhood Suburban character area with a Transit Corridor as defined in the 2040 Mesa General Plan. This request is consistent with the General Plan policies.
- D. The proposed improvements will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods.
- E. Requiring full compliance with the current code would require demolition of existing buildings.
- F. The deviations requested are consistent with the degree of change requested and will improve the site.
- G. The proposed improvements with the recommended conditions of approval help bring the site into a closer degree of conformance with current standards.



**FINDINGS SUP FOR CARWASH**

- A. The carwash has been in existence since 1985 without a SUP.
- B. The carwash has not been detrimental to the surrounding neighborhood and will not become detrimental with the modifications.
- C. The vacuum motor will be housed in an enclosed CMU building to negate any potential impacts to surrounding neighbors.
- D. The site is coming further into compliance with code through the site improvements conditions through the SCIP process.

**Case No.:** BA16-044 APPROVED WITH CONDITIONS

**Location:** 1927 N. Gilbert Road (District 1)

**Subject:** Requesting: 1) a Substantial Conformance Improvement Permit (SCIP) and; 2) a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP), both associated with the development of a drive-thru restaurant in the LC zoning district. (PLN2016-00577)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval with the removal of condition #6 for the Substantial Conformance Improvement Permit (SCIP) and the continuance of the Special Use Permit (SUP) to the October 5, 2016 meeting as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Compliance with the site plan and elevations submitted, except as modified by the conditions below.
2. Compliance with all requirements of Design Review approval;
3. Compliance with all requirements of Administrative Site Plan Modification;
4. Compliance with all requirements of Development Services in the issuance of building permits;
5. All landscaping material throughout the shopping center shall be replenished shown on the approved landscape plan from case DR99-075.
6. All parking spaces shall be 9' wide by 18' long.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

#### **FINDINGS FOR SCIP**

- A. This request will allow for the development of a coffee shop. The coffee shop will have a drive-thru and outdoor seating.
- B. The site comes into substantial conformance with foundation base requirements and parking lot landscape requirements.
- C. The site cannot come into full conformance with code without significant modification to the site.
- D. The improvements will be compatible and not detrimental to the surrounding neighborhood.
- E. Based on the applicant's parking study there is adequate parking on site for this use.

**Case No.:** BA16-04S APPROVED WITH CONDITIONS

**Location:** 2207 W. Main Street (District 3)

**Subject:** Requesting a Substantial Conformance Improvement Permit (SCIP) to allow modifications to development standards for an existing manufactured home park in the GC zoning district. (PLN2016-00S80)

**Decision:** Continuance to the October 5, 2016 Meeting

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson and seconded by Boardmember Worcester to continue case BA16-04S to the October 5, 2016 meeting.

**Vote:** Passed (7-0)

**Case No.:** BA16-046 APPROVED WITH CONDITIONS

**Location:** 1433 and 1457 W. University Drive (District 3)

**Subject:** Requesting a Substantial Conformance Improvement Permit (SCIP) to allow for the expansion of a management office for an existing apartment complex in the RM-3 and RM-2 zoning districts. (PLN2016-00S78)

**Decision:** Approved with Conditions

**Summary:** Architect and applicant, Robert Long, 427 W. 5<sup>th</sup> Street, described the project for the Board.

Wade Stanley Pennell, 1457 W. University, #24, spoke in favor of the expansion of the management office. Mr. Pennell requested that with the addition of the office, that addressing of the complex be changes to one address of the apartment complex. Currently, the two different addresses complicate the delivery of packages and mail.

Chair Siebers replied to Mr. Pennell's comments that addressing of properties is out of the Board's jurisdiction and they are unable to make this change.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Rembold and seconded by Vice Chair Montague to approve with the following conditions:

1. Compliance with the site plan and landscape plan submitted, except as modified by the conditions below.
2. Compliance with all requirements of Administrative Design Review approval;
3. All detached signs shall be brought into conformance with the issuance of a building permit;
4. Compliance with all requirements of Development Services in the issuance of building permits.

**Vote:** Passed (6-0; Boardmember Curran, absent)

**The Board's decision is based upon the following Findings of Fact:**

1. This request will allow for the development of a leasing office for an existing apartment building.
2. The site comes into substantial conformance with foundation base requirements and parking lot landscape requirements.
3. The site cannot come into full conformance with code without significant modification to the site.
4. Adequate parking is proposed for the site based on the differing peak demand time for the uses in the commercial center.
5. The improvements will be compatible and not detrimental to the surrounding neighborhood.
6. Based on the applicant's parking study there is adequate parking on site for this use.

**Case No.:** BA16-047 APPROVED WITH CONDITIONS

**Location:** 7400 - 7500 block of E. Southern Avenue (District S)

**Subject:** Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) in the RSL-2.S-PAD-PAD zoning district. (PLN2016-00S86)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Compliance with sign plan submitted, except as modified by the conditions listed below.
2. The placement of the sign shall comply with the calculations of the visibility triangle as set by the City of Mesa's Transportation Department.
3. Compliance with all requirements of the Building Safety Division in the issuance of sign permits.
4. Any additional permanent signage shall require an amendment to the Comprehensive Sign Plan.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

- A. The sign location is constrained by easements and right-of way and must be placed on private property which required the sign to be placed further into the site, which limits sign visibility.
- B. The Villas at Sonoran Ridge is a development consisting of 11.57 acres. Given the scale of the development, two total signs will not be detrimental to the surrounding properties.
- C. The proposed signage will be comprised of high-quality, durable materials that reflect the character of the subdivision.

**Case No.:** BA16-039      **Approved with Conditions**

**Location:** 636 E. 2<sup>nd</sup> Street (District 4)

**Subject:** Requesting a Variance to allow for the elimination of minimum parking requirements for an existing single residence in the RS-6 zoning district. (PLN2016-00S20)

**Decision:** Approved with Conditions

**Summary:** Staff member Lisa Davis presented the case to the Board. Ms. Davis stated the house was built in 1949 with a single car carport, which was grandfathered in. The zoning code now requires two covered parking spots for single family residences. The applicant has noted that the lot is too small to accommodate two covered parking spots and the rear of the lot is not accessible for the addition of a new parking area. At the time the applicant purchased the home, there was no covered carport. The carport had been converted into a bedroom and bathroom without permits prior to the applicant purchasing the home. Ms. Davis stated that there is ample space to add livable space in the front and rear of the property. Staff is sensitive to the fact that the applicant needs the additional livable space, but feels it does not meet the criteria for a variance. Ms. Davis stated the applicant has provided photos of surrounding homes which do not have carports.

The applicant, Marisela Contreras, 636 E. 2<sup>nd</sup> Street, presented a review of her case through an interpreter, Sandra Dominguez. Ms. Dominguez read a statement by the applicant which describes the purchase of the home was in need of a great deal of repair. Ms. Contreras stated she was unaware that the previous owner did not comply with requirements to have a building permit. Neither the realtor nor the title company made her aware that the property had an unpermitted addition. Only when she applied for homeowner's insurance did she find out that there were no construction permits. She stated there are several homes in the area that do not have garages. She had provided photos of several of the homes.

John Gabaldon, 8761 E. Pampa Ave., is the owner of Los Dos Molinos and spoke in favor of approval of the variance. Mr. Gabaldon stated that Marisela Contreras is an employee at his restaurant and he had assisted Ms. Contreras in the process of purchasing her home. Mr. Gabaldon recently discussed the need for her to obtain homeowner's insurance and this is how she found out that the addition of the livable space did not have building permits. Boardmember Rembold inquired if there was a difference of the square footage from the real estate listing and what the county records showed. Mr. Gabaldon responded that an inspection was done to check for termite damage and the inspector told them there was no garage.

David Moore, 649 E. 2<sup>nd</sup> Street, spoke in favor of the variance. Mr. Moore stated that he owns the house directly across the street from Ms. Contreras. He stated that the area has deteriorated over the years and Ms. Contreras has done wonders for

the home to make it look good. Mr. Moore stated he sees no reason for the Board to deny the request.

Boardmember Swanson inquired if staff member Davis was aware of the reason some of the homes in the area do not have covered parking. Ms. Davis responded that as she researched the area, three of the homes were built prior to a zoning requirement for one parking space becoming adopted in 1958.

**Motion:** A motion was made by Boardmember Tolman to approve case BA16-39 as the house was built many years ago prior to the current standards and the circumstances the applicant is faced with are not of her cause and is not given the privilege that other people do not have and it would be a benefit to the neighborhood. 2<sup>nd</sup> by Vice Chair Montague.

Chair Siebers clarified a Point of Order that there were staff recommendations if the Board made a motion for approval. Boardmember Tolman amended her motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report, and was seconded by Vice Chair Montague with the following conditions:

1. Compliance with the site plan, narrative and exhibits submitted
2. Compliance with all requirements of the Development Services Division in the issuance of building permits.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

- A. There are special conditions that apply to the land or building, including initial development of the property in the 1950s on a lot less than the minimum 6,000-sqft, and
- B. The special condition of smaller than typical lot area and existing location and size of the house was pre-existing before the current owner's purchase of the residence. These conditions were not created by the current property owner.
- C. That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district. Because of several residences in this vicinity being constructed before the initial parking requirement for single residences being adopted in 1958, the lack of covered parking in this neighborhood is not an unusual condition. Although not covered, off-street parking is still available using the front driveway.
- D. The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property. As noted in Finding C, uncovered parking is not an unusual condition in this area. Construction of several homes in this area pre-date the adoption of mandatory on-site parking for single residence lots.

**Case No.:** BA16-036      **Approved with Conditions**

**Location:** 2146 E. Glencove (District 1)

**Subject:** Requesting a Special Use Permit (SUP) to allow for more than four (4) special events in a calendar year in the PS zoning district. (PLN2016-004SS)

**Decision:** Approved with Conditions

**Summary:** Chair Siebers requested that Vice Chair Montague proctor case BA16-036 as he will recuse himself due to *ex parte* contact outside of the meeting. The applicant, Robert Sanderson, presented his case to the Board. He stated the structure was built in 1992, and at the time he had contacted the City to request a permit and was told that a permit would not be required. He is requesting that the Board approve one of the following: 1) allow him to leave the structure as is; 2) restrict his deed until the property is sold and the structure be removed at that time; and 3) allow him to move the structure over 4'.

Resident Daniel Jones, 2157 E. Glencove Street, spoke in favor of the structure being approved. Mr. Jones stated that he feels the structure is not a problem and as it has been there for many years, it should be able to remain.

John Christakis, 2133 E. Glencove Street, spoke in favor of the approval of the structure being approved. Mr. Christakis stated he moved into his home 12 years ago and at the time the RV was there. He feels the structure is nice and should be allowed to remain where it is.

Boardmember Tolman asked Mr. Sanderson if his neighbor to the rear was still opposed to the structure. Mr. Sanderson stated he has spoken with her and is no longer opposed to the structure remaining where it is. Gordon Sheffield stated that he did receive a phone call stating she withdrew her opposition.

Boardmember Curran inquired if the applicant were to move the structure over 4', would Mr. Sanderson require pouring concrete as well as concern for drainage. Mr. Sanderson stated that the relocation would cost approximately \$4,000.00.

**Motion:** A motion to approve case BA16-036 with the condition to relocate the structure 4' from the property line was made by Boardmember Rembold and seconded by Board member Tolman to approve with the following condition:

**Vote:** Approved (Vote: 4-2; Chair Siebers, recused)

**The Board's decision is based upon the following Findings of Fact:**

- A. The structure in question was constructed in 1992 without a building permit. The applicant states they asked if a building permit was required and were told none was required for the type of metal structure being built.
- B. The structure is 571-sqft, and 12-ft, 8-in high. The front of the building is located 51-ft from the rear property line, where a maximum of 34-ft would be allowed.



- C. The lot in question is a standard rectangular-shaped lot, with flat topography. The size of this lot conforms to standard requirements of the RS-9 zoning district. There are no obvious physical limitations or restrictions related to this site.
- D. The existing structure accommodates a recreational vehicle, which is a common practice in this residential neighborhood.
- E. Reducing the encroachment by 4-ft, as per the condition of approval set by the Board decreases the visual impact of this building on adjacent properties.

**Case No.:** BA16-040      **Approved with Conditions**

**Location:** 2222 N. Val Vista Drive, #9 (District 1)

**Subject:** Requesting Variances to allow: 1) a detached accessory dwelling unit, and 2) a detached garage, both to encroach into required side and rear yard setbacks, and to exceed the maximum building height of detached structures in the RS-3S PAD zoning district. (PLN2016-00SS5)

**Decision:** Approved with Conditions

**Summary:** Applicant Scott Johnson, 2222 N. Val Vista Drive, #9, presented his request to the Board. Mr. Johnson stated he is requesting a variance to encroach into the side and rear yard setbacks so that he may construct a 2 car garage. He currently has 2, 2 car garages and several of his children are now driving and has a need for more parking spaces for automobiles. The property is in a gated community with an HOA which prohibits on street parking. The side yard where he would put the garage abuts to the community tennis courts, and no neighbors. His request is to encroach 6-7 feet in the setback. Mr. Johnson stated he has full support of the HOA as well as all of the neighbors.

Chair Siebers inquired about the HOA approval and staff member Wilson stated that a letter of the HOA support was given to the Board at the Study Session. Boardmember Swanson clarified that Mr. Johnson is requesting two variances; one is for the detached garage and the other pertains to the Casita or pool house having a stove top. Mr. Swanson stated that Mr. Johnson has only addressed the variance for the encroachment of the garage. Mr. Johnson clarified that the casita was built 11-12 years ago and he believed that the contractor had the necessary permits and only through this process did he learn the contractor did not pull permits. Mr. Johnson stated he fully intends to follow staff recommendation to bring that into full compliance by removing the stove top and obtain all required permits.

Boardmember Rembold clarified the number of garage spaces he has. Mr. Johnson responded there are currently 2, 2 car garages and is utilizing three for the parking of 3 cars, the other is used as storage.

Chair Siebers stated that staff had presented Mr. Johnson with several options and asked that he speak of them. Mr. Johnson responded that his lot has an irregular shape and is very long which makes it difficult to get a full garage on the property. He continued to explain that the original proposed plans had a 4 ft. setback,

however, with angling the garage he is able to get a 7 ft. setback. He reiterated that the garage would not interfere with any neighbor. Chair Siebers requested that Mr. Johnson point out where the garage doors are on the existing house and Mr. Johnson showed the Board the proposed location.

Boardmember Tolman clarified that the applicant currently has a 4 car garage and this would addition would give him space for another two car garage. Ms. Tolman stated the new garage seems excessively large. Mr. Johnson stated that it is a standard 2 car garage. Staff member Wilson clarified that the proposed garage is 28' x 23' and zoning code requires a minimum interior dimension of 20' x 22' for a 2 car garage.

Boardmember Swanson stated with unanimous support from the HOA, it would seem feasible they would allow a variance from the CC&R's to allow a front garage entrance or other solutions. Mr. Johnson responded it is not an option because the HOA prohibits front facing garage doors and then they would not have HOA support. There was further discussion on the angling of the garage and need to have access for the cars to enter the garage.

Chair Siebers stated the Board makes a decision based on if unusual situation gives the applicant the ability to do something that someone else would not have the ability to do it. Mr. Siebers asked the applicant if he was aware of the different solutions staff proposed. Mr. Johnson replied that he is aware of the options and that the front facing garage is not an option with the HOA. He feels the setback encroachment is the only option that will work.

The applicant stated that the limitations in the CC&R's create a unique situation. Secondly, the lot is only approximately 100 feet deep which is shallow for a lot, and although it is not necessarily an unusual condition, it does create difficulty in placing the addition. Consequently, if the Board is looking for unique conditions, the Board might consider these as justifications.

Boardmember Swanson stated his concern with the fact that one of the conditions is created by the restrictions of the CC&R's which can be changed. Consequently, there is a community that is saying the City makes the exception because they are not willing to change the CC&Rs.

Boardmember Tolman inquired if the applicant would consider reducing the size of the garage. Mr. Johnson stated he had wanted the length to use the space for storage but would consider reducing by a few feet. Boardmember Worcester stated

that if the length of the proposed garage is 28' and the ordinance requires 22', an option could be to expand the width of the garage by 6'. This would provide the applicant to establish extra storage on the side of the garage.

Gordon Sheffield stated that to appease the applicant and move the case forward, the Board could consider approval of the case and suggested that they make a consideration on the property to limit the depth of the garage and work out the width with staff in order to meet the setback requirements.

**Motion:** A motion was made by Boardmember Worcester the approval of case BA16-040 with the conditions stated by staff with the recommendation approving the request and then the correction of the pool house as conditioned. The motion was seconded by Boardmember Rembold.

Vote: (2-5) The motion failed.

A second motion by Boardmember Worcester was made to approve the request with the stipulation that the applicant modify the garage design, reducing the longitudinal axis from 28' to a 22' length, with flexibility to increase the width for storage as deemed appropriate by working with staff and to incorporate staff findings reflected in the staff report. Mr. Sheffield clarified to include in the motion the findings of fact that were discussed and to include the conditions of approval stated in the staff report.

This motion was withdrawn.

A final motion was made to authorize the applicant to change the size of the garage from the 28' length on longitudinal axis to comply with city ordinance of a minimum of 22' so that the width is allowed to be expanded with recommendations of staff, justified by the limited depth of the lot and presence of a tennis court with tall fences on the adjacent common area, as well as the challenges presented by the homeowner's association prohibition against front facing garages. Chair Siebers asked for clarity.

Mr. Sheffield suggested that the final motion be made that: 1) the applicant make modifications to the design of the detached garage such that the longitudinal axis be designed according to the minimum length required in the zoning ordinance with width to be flexible to accommodate additional storage, and compliance with front yard building set back requirements; and 2) that existing conditions related to the

rear yard pool house confirm that it is not a detached accessory structure but a pool house, as is commonly interpreted by the zoning ordinance; and 3) obtaining all required building permits.

It was then moved by Boardmember Worcester and seconded by Boardmember Rembold to approve case BA16-040, with the following conditions:

1. The oven and stove shall be removed within the detached accessory building.
2. The proposed garage shall be modified to reduce the side yard encroachment to be no more than needed for a garage with a longitudinal axis of no more than 22-ft.
3. A building permit shall be issued and completed for the detached accessory building and the ramada.

**Vote:** Passed (6-1)

**The Board's decision is based upon the following Findings of Fact:**

- A. The limitations in the CC&R's restrict the location of the entrance to the garage
- B. The lot is shallow which is a special condition that apply to the land.
- C. The special condition of the lot size and placement of the tennis court was pre-existing and not created by the property owner.
- D. That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
- E. The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

**Case No.:** BA16-048 APPROVED WITH CONDITIONS

**Location:** 406 N. Val Vista Drive (District 1)

**Subject:** Requesting: 1) a Development Incentive Permit (DIP), and 2) a Special Use Permit (SUP) for outdoor dining, both associated with the development of a new group commercial development in the NC zoning district. (PLN2015-00650)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and not discussed on an individual basis.

**Motion:** A motion to approve with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Report was made by Boardmember Swanson and seconded by Boardmember Worcester to approve with the following conditions:

1. Compliance with the project narrative, site plan, landscape plan and elevations submitted except as modified by the following conditions;
2. Compliance with all conditions of Z16-033;
3. Compliance with the Development Agreement;
4. Compliance with all requirements of Development Services with regard to the issuance of building permits.

**Vote:** Passed (7-0)

**The Board's decision is based upon the following Findings of Fact:**

- A. DIP: The lot meets the definition of a bypassed parcel. It does not exceed 2.5 acres and has been in its current configuration for more than 10 years. The parcel is surrounded by properties within a 1,200-foot radius in which less than 25 percent of the developable land is vacant, and greater than 50 percent of the lots have been developed 15 or more years ago.
- B. DIP: The development incentives requested are limited to building setbacks and landscaping design. These incentives are allowed by Ordinance.
- C. DIP: The incentives do not allow development that is more intense than the surrounding neighborhood.
- D. DIP: The architectural elements, construction and landscape materials, and other site improvements meet the intent of the Design Standards of the Ordinance.
- E. DIP/SUP: The proposed development is consistent with the General Plan, and the proposed uses are permitted in the NC zoning district.
- F. SUP: The location and design of the outdoor dining areas are consistent with the purposes of the NC zoning district and conform to City policies.
- G. SUP: The design of the proposed outdoor dining will not be detrimental to surrounding properties or to the surrounding neighborhood.

OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,



Gordon Sheffield, AICP CNU-a  
Zoning Administrator