

Board of Adjustment



Minutes

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

Board Members Present:

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

Board Members Absent:

Steve Curran (excused)

Staff Present:

Gordon Sheffield
Lisa Davis
Kaelee Wilson
Cierra Edwards
MaryGrace McNear
Charlotte McDermott
Rebecca Gorton

Others Present:

Phyllis Smiley
Dawn Ainger
Tom Daly
Barbara Brandell
Verl Morris
Chris Totten
David Ouimette
Reese Anderson
Jeffery Gross

The study session began at 4:30 p.m. and concluded at 5:28 p.m. The Public Hearing began at 5:36 p.m. before adjournment at 9:42 p.m., the following items were considered and recorded.

Study Session began at 4:30 p.m.

A. Zoning Administrator's Report

Mr. Sheffield stated the current goal to present the first phase of sign ordinance update to City Council is February, with emphasis on revisions to portable sign requirements.

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

C. Convene an Executive Session

It was moved by Chair Siebers, seconded by Boardmember Swanson, that the Study Session adjourn at 4:57 pm and the Board enter into an Executive Session.

An executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the Board's Attorney regarding the procedure for and the Board's role in hearing the appeal from the Zoning Administrator's interpretation regarding mailed public notices (PLN2016-00846).

Vote: Carried (6-0, Boardmember Curran, Absent)

Without objection, the Executive Session adjourned at 5:27 p.m.

Study Session adjourned at 5:28 p.m.

Public Hearing began at 5:36 p.m.

A. Consider Minutes from the November 2, 2016 Meeting:

A motion was made by Boardmember Tolman, seconded by Boardmember Worcester, to approve the November 2, 2016 minutes as written.

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

B. Consent Agenda:

A motion to approve the consent agenda as read by Vice Chair Montague with the acceptance of Findings of Fact and Conditions of Approval as recommended in the Staff Reports as amended during the study session was made by Boardmember Swanson and seconded by Vice Chair Montague.

Vote: Passed (6-0, Boardmember Curran, Absent)

Public Hearing adjourned at 9:42 p.m.

Case No.: BA16-062 Continuance to January 4, 2017

Location: 5245 E. Southern Avenue (District 2)

Subject: Requesting a Special Use Permit (SUP) to allow: 1) modification of an existing Comprehensive Sign Plan (CSP), and 2) for an electronic message display to change more than once per hour for an existing car wash within a commercial center in the LC zoning district. (PLN2016-00714) Continued from November 2, 2016

Decision: Continuance to January 4, 2017

Summary: Applicant Chris Totten, 5246 E. Southern Avenue, presented an overview of the request for modification of the existing Comprehensive Sign Plan. Mr. Totten stated he is requesting that the sign be 12' tall and 74 sq. ft. and is objecting to staff recommendation that the sign be 8-feet in height and 80 square feet in area. Mr. Totten feels this is not sufficient for the business and is requesting that the Board approve his sign at 12 feet in height and 80 square feet in sign area. He spoke of a sign recently approved on S. Sossaman Road which is 13.5' to the top of the sign in height and 80 square feet and across the street from a residential area.

Boardmember Swanson clarified that the sign in question is for the detached sign and not the attached sign and asked Mr. Totten explained the signage on Sossaman. Boardmember Swanson stated that Mr. Totten did not refer to this sign on Sossaman Road in his justification. Mr. Totten stated that the original justification was only to request what Code allowed and is asking to be allowed a larger sign. Mr. Swanson clarified that the reason for the larger sign is that it is not large enough which Mr. Totten replied he is requesting a larger sign.

Boardmember Wilson clarified that the sign on Sossaman is closer to Superstition Springs and was granted through a different Comprehensive Sign Plan. The CSP approved in 2004 takes precedence over the sign ordinance which takes into account the entire area. Mr. Sheffield clarified the thought behind the approval of the Comprehensive Sign Permit in 2004 was to plan for whole site. This includes the car wash, anchor tenant and a PAD tenant not yet built. Approval of the large sign would take away allowance from the PAD site not yet built.

Tuck Bettin, 1855 S. Signal Butte Road, spoke in support to allow the larger sign. Mr. Bettin feels the car wash is an asset in the community and the larger sign allows the business better visibility.

Boardmember Tolman asked Chris Totten if he would consider reducing the top

portion of the sign to bring into more of compliance with staff recommendation. Mr. Totten stated his customer would be willing compromise for a 68' sq. ft. total. Boardmember Rembold asked staff if this would be viable and staff member Wilson responded that as discussed, staff feels the request is inconsistent with the overall center. Zoning Administrator Gordon Sheffield suggested if the Board agrees, the applicant could work with staff for a compromise. Mr. Totten agreed to this suggestion.

Motion: A motion to continue case BA16-062 to the January 4, 2017 meeting was made by Boardmember Swanson and seconded by Boardmember Tolman.

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

Case No.: BA16-064 Approval with Conditions

Location: 2207 W. Main Street

Subject: Requesting a Special Use Permit (SUP) for modification of a Comprehensive Sign Plan (CSP) for a group commercial center in the LC zoning district. (PLN2016-00736) Continued from November 2, 2016

Decision: Approval with Conditions

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

Motion: A motion to approve case BA16-064 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Swanson and seconded by Vice Chair Montague to approve with the following conditions:

1. Compliance with the sign plan submitted and BA14-020, except as modified by the conditions listed below.
2. Line item numbers 9 and 10 shall be removed from the Comprehensive Sign Plan narrative (for inaccuracy).
3. Any signage that is not in conformance with Chapter 41 (Sign Regulations) of the Zoning Ordinance that exist on the property must be removed.
4. The cornice cap of the proposed detached sign, on both sides, shall be tapered as shown on the right side of the exhibit.
5. The base of the proposed detached sign shall be comprised of red brick to match existing detached signs.
6. Compliance with all requirements of the Building Safety Division with regard to the issuance of sign permits.

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

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

- A. The Zoning Code would allow an aggregate total of 61 feet in height and 610 square feet in sign area for detached signs along East Southern Avenue. The applicant is requesting an aggregate of 51 feet in height and 290 square feet in sign area.
- B. The pad building was not approved in 2014 when the previous modification was approved.
- C. The increased detached sign area and height still meets the intent of the prior approval which balanced the increased attached signage with limited detached signs.
- D. The proposed detached sign is utilizing the Fiesta District logo and embellishment adopted in the Fiesta District Design Guidelines which is furthering the vision for the area.

Case No.: BA16-067 Approval with Conditions

Location: 32 East 14th Place (District 1)

Subject: Requesting a Development Incentive Permit (DIP) to allow the development of a multi-residence project in the RM-2 district. (PLN2016-00739)

Decision: Approval with Conditions

Summary: Applicant Don Henning, 249 N. Westwood, presented an overview of the request for the development of a multi-residence project. Mr. Henning stated the project meets code and feels it would update the area. Boardmember Swanson inquired if he is aware of the staff recommendations and is in agreement with them. Mr. Henning replied that he is in agreement with the recommendations of staff.

Verl Morris, 31 E. 14th Place, stated he is opposed to the project due to the fact that it would increase the amount of families in the area. Mr. Morris stated that a 2 story building does not match the area and disagrees with using the alley to enter their property. He feels that one story home would be fine and would cut down the amount of people living there. Boardmember Swanson inquired what basis would Mr. Morris have to not allow someone to develop property which is allowed.

Mr. Henning responded that the residents will be using the drive aisle and not the alley and there is adequate parking on the property. Staff member Wilson confirmed that this is an allowed density on this property, 30' height is allowed in an RM-2 district and is adequately parked.

Motion: A motion to approve case BA16-067 with the acceptance of Findings of Fact and Conditions of Approval as read 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 elevations as submitted, except as modified by the conditions below.
2. A minimum of two trees and twenty shrubs shall be planted along the eastern property line at sizes listed in the Zoning Ordinance.
3. The wall along the eastern property line shall not exceed 6-feet in height.
4. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.
5. A tree shall be added along the 14th Place frontage on the eastern side on the property.
6. The trash and recycle bins shall be relocated adjacent to the corresponding water heater for each unit, screened from the parking lot with a 6' wall.
7. Dusk to dawn coach lighting shall be added at the front door and the back patio door.
8. Bike racks shall be added to the property that accommodates a minimum of three bicycles.

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

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

- A. The development conforms to the General Plan Land Use category of Neighborhood- Suburban.
- B. The project will provide development on a parcel that's been bypassed for over 50 years.
- C. The architectural detailing and elements on the building meet the Design Standards listed in the Zoning Ordinance.
- D. With the recommended conditions of approval, the landscape quantities and materials meet the intent of the development standards listed in the Zoning Ordinance.
- E. The development is in scale with surrounding development and will not be detrimental to the surrounding neighborhood.

Case No.: BA16-068 Continuance to January 4, 2017

Location: 463 North Grand (District 1)

Subject: Requesting Variances to allow: 1) a carport addition and a detached garage to encroach into the minimum side yard setbacks; and 2) deviation from the required building form standard for carports; both in conjunction with an existing single residence in the RS-6-HP zoning district. (PLN2016-00759)

Decision: Continuance to January 4, 2017

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 Vice Chair Montague to continue case BA16-68 to the January 4, 2017 meeting.

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

Case No.: BA16-069 APPROVED WITH CONDITIONS

Location: 2864 N. Power Road (District 5)

Subject: Requesting a modification of a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) for a group commercial center in the LC-PAD zoning district. (PLN2016-00781)

Decision: Approved with Conditions

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

Motion: A motion to approve case BA16-069 with the acceptance of Findings of Fact and Conditions of Approval with Condition #4 to read "from 12' to 12" as read was made by Boardmember Swanson and seconded by Vice Chair Montague 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. The four signs classified as modifier (shown as DELI, BAKERY, PHARMACY LIQUOR) signs should have font sizes that are consistent in height to match the height of the existing Pharmacy Liquor sign of 12 inches.
5. The area of all five of the attached signs shall not exceed a total of the 210 SF.

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

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

- A. The CSP maintains a consistent detached sign design and size.
- B. No additional attached signs are proposed.
- C. The design of the signs is consistent in material and design with the architecture of the building.
- D. The sign criteria within the CSP is tailored to this specific development and promotes superior design.
- E. The proposed CSP is largely consistent with current Code requirements and is complimentary to the 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.: BA16-070 APPROVED WITH CONDITIONS

Location: 840 E. McKellips Road (District 1)

Subject: Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) for a group office center in the OC-PAD zoning district. (PLN2016-00785)

Decision: Approved with Conditions

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

Motion: A motion to approve case BA16-070 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Swanson and seconded by Vice Chair Montague to approve with the following conditions:

1. Compliance with the sign plan submitted, except as modified by the conditions listed below.
2. Maximum sign area for attached signs shall be limited to 24-sqft, each.
3. Any additional signage not identified with this Sign Plan will require modification to this Special Use Permit.
4. Compliance with all requirements of the Development Services Division with regard to the issuance of sign permits.

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

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

- A. The CSP establishes consistent detached sign design, size and height for the overall development, and for each of the six individual office suites.
- B. The sign criteria specify sign designs that meet or exceed the minimum standards of the Sign Ordinance.
- C. The proposed detached sign design is a slight increase over the standard maximum sign area for this zoning district. However, the slightly larger sign area assists with sign legibility, and the sign is intended for use as a multiple tenant identification sign for the entire development.
- D. To balance the overall sign allowance that includes an increase from two total signs to ten (9 attached and 1 detached), the recommendation includes a small reduction to the maximum sign area proposed by the CSP, from 32-sqft each to 24-sqft each.

Case No.: BA16-071 **WITHDRAWN**

Location: 1118 W. Guadalupe Road (District 3)

Subject: Requesting: 1) a Special Use Permit (SUP) for the modification of an existing sign, and; 2) a Substantial Conformance Improvement Permit (SCIP) for the expansion of an existing carwash in the LC zoning district. (PLN2016-00790)

Decision: Withdrawn

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 Vice Chair Montague to withdraw case BA16-71.

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

Case No.: BA16-061 Continuance to January 4, 2017

Location: 2724 N. Winthrop (District 1)

Subject: Requesting a Variance to allow for a fence to exceed the maximum height in the front yard in the RS-9 zoning district. (PLN2016-00691) Continued from November 2, 2016

Decision: Continuance to January 4, 2017

Summary: Applicant Victor Timpauer, 2724 N. Winthrop, presented his request to the Board for a variance. Mr. Timpauer stated that the fence in question was in place when he purchased his property in 2002. Mr. Timpauer stated he added screening to the 6' fence after removal of trees. He stated that the gate has been in place for nearly 30 years and after receiving the code violation, he was not aware that the location of the gate was in violation of city code. He stated he understands the issue is visibility and safety and there has never been any incident to suggest there is a visual impairment. Mr. Timpauer is requesting approval to retain the fence and has concerns for security for the items he stores behind the RV gate.

Boardmember Swanson stated code allows for 4.5' height and inquired why this height does not work for the applicant. Mr. Timpauer responded that people walking by would be able to look over his fence and see his personal belongs and could jump over the fence to take his things. He stated his neighbor's fence is 6' tall with their backyard is in his front yard and does not understand why he is not allowed to extend his portion for security and visibility and safety for his property. Gordon Sheffield, Zoning Administrator, clarified the fence height requirements have been in place since the Zoning Ordinance was adopted in 1939. The fence height was revised from 3.5' to 4.5' when the ordinance was updated in 2011.

There was discussion that this property is a key lot and requires a 10-foot safety triangle for visibility. Chair Siebers inquired if the applicant would be open to a continuance for him to work with staff to work out a compromise. Mr. Timpauer responded he is open to any step which would allow them to come to a conclusion. Mr. Sheffield showed the Board a diagram from the zoning ordinance which explains the key lot and safety triangle in relation to the property.

Boardmember Swanson stated that one of the requirements the Board looks at is whether approval for one property would allow a privilege over another which is not allowed. He continued to state that the Board is bound by those regulations and that

by granting a variance for one property over another, would be granting a special variance over another.

Mr. Sheffield stated he has empathy for the applicant and clarified the property inspections Mr. Timpauer described are done by private inspectors (not city staff) and typically do not address zoning code issues. In response to the location and storage of his things, Mr. Sheffield responded that in most residential lots, storage is typically behind 6' fence in the rear of the dwelling or on the side; not in front as is the case with this application. Mr. Sheffield continued to state the applicant has made a noble effort to show he has special circumstances, however, to grant a variance all the state-mandated criteria need to apply, and Mr. Timpauer's fence location does not meet the tests required of all of these criteria. He stated that the recommendation is to provide the safety triangle.

There was further discussion of options such as removal of the slats to eliminate the blind spot and the need for safety.

Motion: A motion was made to approve the recommendation by staff to deny case BA16-061 was made by Boardmember Rembold and was seconded by Boardmember Swanson.

Vote: Failed (3-3, Boardmember Curran, absent)

Motion: A second motion was made by Chair Siebers to approve case BA16-061 by incorporating staff recommendation #1 and #2 as provided by staff in the report.

The motion expired for lack of a second.

Motion: A final motion was made to continue case BA16-061 to the January 4, 2017 meeting was made by Boardmember Worcester and seconded by Chair Siebers.

Vote: Passed (4-2, Boardmember Curran, absent)

Case No.: BA16-072 Approved with Conditions

Location: Citywide

Subject: An appeal of a Zoning Administrator interpretation of the mailed public notice requirements for processing a major modification to an approved development master plan adopted as part of a Planned Area Development (PAD) overlay district. (PLN2016-00846)

Decision: Approved with Conditions

Summary: Chair Siebers reminded that the subject in this matter is regarding the interpretation of the Zoning Administrator of the mailed notice requirements for processing a major modification of a Planned Area Development.

Reese Anderson, Pew and Lake, 1744 S. Val Vista, #217, representing the appellant and property owner, Divot Partners, spoke. Mr. Anderson introduced Jeff Gross of Berry Riddell, who is co-counsel for the property owner.

Mr. Anderson began by stating that Divot Partners has an objection to the City's decision on the location and size of posted signs for the initial appeal case.

Chair Siebers reminded Mr. Anderson that the subject of this hearing is the interpretation of the mailed notice requirements and not the posting of the signs.

Mr. Anderson explained the position of the appellant is the cost comparison of mailing notifications to either 150 property owners or 3,050 which would be the 500 feet from the subject property. Mr. Anderson continued to present their position and which Chapter of the City of Mesa Zoning Ordinance best applies to their case. He stated that Chapter 66 of the City of Mesa Zoning Ordinance applies to the newspaper advertisement and signs posted on the subject property. In comparison, Mr. Anderson stated that Chapter 77 which refers to Notice of Appeals, should apply in this case. There was further discussion regarding which chapter of the Zoning Ordinance applies to the case before the Board.

Mr. Anderson asked the Board to consider the notice requirement should be within 500 feet from the project site the driving range and not the entire development. He feels the requirement for notification of the entire development is inconsistent with the Zoning Ordinance and previous cases.

David Ouimette, of Dickinson Wright, PLLC, representative for Mr. Gordon Sheffield, City of Mesa Zoning Administrator. Mr. Ouimette supported the Zoning Administrator's interpretation and reviewed the reasoning behind Mr. Sheffield's interpretation. The focus of the discussion was referring to Chapter 67 which discusses common procedures for processing applications required by the City's zoning ordinance, including applications requiring a review through a public hearing. Mr. Ouimette stated as Zoning Administrator,

Mr. Sheffield made a decision based on 4 factors: 1) had to be consistent with State regulations; 2) Public Policy with City of Mesa; 3) Supported by Zoning Ordinance; and 4) Common Sense.

There was further discussion of which Chapter of the City of Mesa Zoning Ordinance decides the underlying action. Discussion continued regarding what area of the Red Mountain Ranch would be considered as the required area for notifications. The options are to consider the whole golf course or to single out just the portion of the driving range. It was determined that the driving range is not a separate parcel and is within the golf course parcel.

Tom Daly, 6645 E. Redmont Drive, #1, spoke in support of the decision of the City of Mesa. Mr. Daly thanked the Board and City for taking strong stand requiring notification of each property owner in Red Mountain Ranch.

Barabara Brandell, 6646 E. Sugarloaf Street, spoke in support of the interpretation of the Zoning Administrator.

Dawn Ainger, 4055 N. Recker Road, #19, spoke in support of the interpretation of the Zoning Administrator

Boardmember Swanson stated the driving range is part of the golf course and feels that the 500 feet notification should encompass all of the golf course and not a portion.

Vice Chair Montague stated the response from the public shows that the public is notified by word of mouth and only the area around the driving range should receive the notifications. Mr. Montague feels the citizens several miles from the effected project does not affect them directly and therefore, do not need to be notified.

Boardmember Worcester feels the legal boundary should be viewed by how the Maricopa County records show property lines, and currently it encompasses the whole golf course. Mr. Worcester feels until the property owner subdivides the driving range as a separate parcel, he will uphold the interpretation of the Zoning Administrator.

Boardmember Tolman stated the decision to be made depends if the notifications are to be mailed would be the process required for every development. Ms. Tolman stated she cannot find from the testimony that it is required and is ready to support over turning the decision.

Boardmember Rembold stated that he supports the interpretation and agrees with Boardmember Swanson that the driving range is a part of the golf course and should be included as the entire project.

Chair Siebers stated the decision for the Board is to uphold, over turn or amend the interpretation of the Zoning Administrator. The decision now is to determine if the interpretation that was made was reasonable, and whether an argument can be made

either way. What the Board must look at is a common ground for both appellant and the City and how best to achieve the common ground. Policy generally says to involve the public and the determination of the Zoning Administrator was not unreasonable. Chair Siebers stated he is leaning toward upholding the ZA position.

Motion: A motion to modify the September 27 and October 18, 2016 decision of the Zoning Administrator's interpretation regarding the Mesa Zoning Ordinance requirement to mail notice to each property owner be within 500' radius of the entire Red Mountain Ranch Golf Course land parcel was made by Boardmember Swanson and seconded by Boardmember Rembold.

Vote: Passed (4-2, Boardmember Curran, absent)

Respectfully submitted, 

Lisa Davis

Planner II and Acting Secretary to the Board of Adjustment for Case BA16-072


OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'G. Sheffield', is written over the typed name.

Gordon Sheffield, AICP CNU-a
Zoning Administrator