

## **Board of Adjustment**



### *Minutes*

**City Council Chambers, Lower Level  
April 5, 2017**

**Board Members Present:**

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

**Board Members Absent:**

(none)

**Staff Present:**

Gordon Sheffield  
John Wesley  
Christine Zielonka  
Steve Hether  
Lisa Davis  
Kaelee Wilson  
Mary Grace McNear  
Mike Gildenstern

**Others Present:**

Kathi Amen	Debbie Schmuker
Yesenia Guzman	David Farnsworth
Dustin Chisum	Jolene Brown
Daniel Lovell	Frank Murdock
Nikki Lovell	Stephanie Schmuker
Todd Bakken	Benjamin Barbus
Stacy Bakken	(others)
Mark Schmuker	

The study session began at 4:30 p.m. and concluded at 5:30 p.m. The Public Hearing began at 5:30 p.m., before adjournment at 8:54 p.m., the following items were considered and recorded.

**Study Session began at 5:00 p.m.**

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

**Study Session adjourned at 5:00 p.m.**

**Public Hearing began at 5:30 p.m.**

**A. Consider Minutes from the March 1, 2017 Meeting:**

A motion was made by Boardmember Swanson, seconded by Boardmember Rembold, to approve the March 1, 2017 minutes as written.

Vote: Passed (7-0)

**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 was made by Boardmember Swanson and seconded by Boardmember Worcester.

Vote: Passed (7-0)

**Public Hearing adjourned at 8:54 p.m.**

**Case No.:** BA17-013 APPROVED WITH CONDITIONS

**Location:** 1155 South Country Club (District 4)

**Subject:** Requesting a Substantial Conformance Improvement Permit (SCIP) to allow the redevelopment of a commercial tenant space into an urgent care medical office facility in the GC District. (PLN2016-00858) Continued from February 1, 2017

**Decision:** Approved with Conditions

**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 approve case BA17-013 with the following conditions:

1. *Compliance with the site plan, landscape plan elevations and narrative submitted, except as modified by the conditions below;*
2. *Compliance with all requirements of the Development Services Division regarding the issuance of building permits.*
3. *There shall be a minimum of 3 bicycle parking spaces provided as per MZO Section 11-32-8.*
4. *Design Review approval of the proposed elevations, materials, colors and landscape plan shall be required prior to the issuance of a building permit. Review and approval of the following items will be required as part of the Design Review application:*
  - a. *As per MZO Section 11-30-9 screening of roof mounted mechanical equipment shall be required.*
  - b. *The proposed Princess Palm Trees shall be replaced with a tree type that is in compliance with MZO 11-33 for the street frontage.*
  - c. *The chain link fence at the north elevation shall be removed and replaced with a masonry wall.*
  - d. *The patient drop off area shall be redesigned to comply with MZO 11-33-5.*
  - e. *Include 8 additional shrubs adjacent to Southern Avenue to bring the site into more substantial conformance of the MZO Section 11-33.*
5. *The non-conforming pole sign at the south side of building shall be removed as required by MZO section 11-41.*

**Vote:**            Passed (7-0)

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

**FINDINGS:**

- A. The 1.7± acre site was developed in the mid 1980's.
- B. The 2,400 SF retail building at the northeast corner of Southern Avenue and Country Club Drive is currently vacant, and has been for over 1-year.
- C. The improvements proposed for the building and site are proportionate to the proposed intensified use, and provide modifications to the development of the site in a manner sufficient for an urgent care clinic.
- D. Full compliance with development standards would require demolition of the existing site improvements including removal of parking and circulation.
- E. The deviations requested are consistent with the degree of change requested to improve the site.
- F. The proposed improvements will bring the site into a closer degree of conformance with current standards and do not create new non-conforming conditions.
- G. The proposed improvements will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods.

**Case No.:** BA17-018 **APPROVED WITH CONDITIONS**

**Location:** 347 South Windsor (District 2)

**Subject:** Requesting a Variance to allow encroachments into the minimum required side and rear yard setbacks in the RM-4 District. (PLN2017-00029)

**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 BA17-018 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 and narrative submitted.*
2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

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

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

**FINDINGS:**

- A. The parcel is located within the Mesa Mobile Estates Subdivision, which was annexed in 1964.
- B. The lot is smaller than the standard required in a Manufactured Home Subdivision.
- C. The lot is more narrow in the front with a slight taper to a wider width towards the rear of the lot.
- D. There have been several variances approved within Mesa Mobile Estates for setback encroachments into the rear and side yards.
- E. Since the time the subdivision was platted, standard manufactured home models have gotten wider.

Minutes of the Board of Adjustment – April 5, 2017 Meeting

**Case No.:** BA17-020 Continuance to May 3, 2017

**Location:** 1356 East Baseline Road (District 3)

**Subject:** Requesting a Substantial Conformance Improvement Permit (SCIP) to allow modifications to development standards for the expansion of a mini storage facility in the LI District. (PLN2017-00052)

**Decision:** Continued to May 3, 2017

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

**Motion:** A motion to continue case BA17-020 to the May 3, 2017 meeting was made by Boardmember Swanson and seconded by Boardmember Worcester

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

**Case No.:** BA17-022 APPROVED WITH CONDITIONS

**Location:** 132 East Baseline Road (District 3)

**Subject:** Requesting a Substantial Conformance Improvement Permit (SCIP) to allow modifications to development standards for the expansion of an automobile/vehicle leasing facility in the LI District. (PLN2017-00095)

**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 BA17-022 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 narrative, site and landscape plan submitted except as modified by the following conditions:*
2. *Compliance with all requirements of the Development Services Division regarding the issuance of building permits.*
3. *The review and approval of a separate sign permit is required to modify existing or to install new signage on this site.*

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

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

**FINDINGS:**

- A. At the time of initial development in 1975 the setbacks, foundation base, and landscape requirements of the Zoning Code varied when compared to the development standards of the current Code.
- B. The site was developed with some street frontage landscape that has died and has not been replaced within the existing landscape yards. The applicant is installing new landscaping as a condition of approval of the SCIP.
- C. Requiring additional landscaping along the street frontage and within the parking lot landscape islands will help bring the site closer to compliance with current code.
- D. Requiring compliance with the current code for foundation base landscaping would impact the site circulation and would discourage the property owner from improving the site for the intended and allowed use.
- E. The new canopy at the rear of the building will match the height of the existing leasing building.
- F. The proposed improvements, with the recommended conditions of approval, help bring the site into a closer degree of conformance with current standards.

**Case No.:** BA17-023 CONTINUANCE TO May 3, 2017

**Location:** 1251 East Southern Avenue (District 4)

**Subject:** Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) for a group commercial center in the LC District. (PLN2017-00097)

**Decision:** Continued to May 3, 2017

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

**Motion:** A motion to continue BA17-023 to the May 3, 2017 meeting was made by Boardmember Swanson and seconded by Boardmember Worcester.

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

Minutes of the Board of Adjustment – April 5, 2017 Meeting

**Case No.:** BA17-024 CONTINUANCE TO JUNE 7, 2017

**Location:** 1310 East McKellips Road (District 1)

**Subject:** Requesting a Special Use Permit (SUP) for a Comprehensive Sign Plan (CSP) for a group commercial center in the in the NC District. (PLN2017-00098)

**Decision:** Continuance to June 7, 2017

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

**Motion:** A motion to continue BA17-024 to the May 3, 2017 meeting was made by Boardmember Swanson and seconded by Boardmember Worcester.

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



**Case No.:** BA16-068 APPROVED WITH CONDITIONS

**Location:** 463 North Grand (District 1)

**Subject:** Requesting Variances to allow: 1) a carport addition and a detached accessory dwelling unit to encroach into the minimum side yard setbacks; 2) deviation from the required building form standard for carports; 3) the floor area of an accessory dwelling unit to exceed 30 percent of the roof area of the primary dwelling unit; and 4) to allow greater than the maximum floor area for detached accessory buildings all in conjunction with an existing single residence in the RS-6-HP zoning district. (PLN2016-00759) Continued from March 1, 2017

**Decision:** Approved with Conditions

**Summary:** The applicant Daniel and Nikki Lovell, at 463 N. Grand presented the case to the Board.

Chair Siebers reaffirmed to the applicants what the Board would be able to do for them.

Angelica Guevara, at 704 N. Grand, stated that she was in support of the variance. Ms. Guevara mentioned that her property has a casita that was approved with a variance in 1992 for an encroachment in to the required setback. She closed by saying that many properties in the area have encroaching structures.

Paul Miller, 459 N. Grand, stated that he came from Saudi Arabia to be heard and to support the applicant. Mr. Miller mentioned that it was from fear of the precedent that could be established for the neighborhood in terms of code enforcement for a historic district, that brought him to speak. He closed by saying that he accepted that his neighbor's casita was built right up to the wall, but he bought the property for what it was, and he doesn't want the wall torn down as it adds to the ambience of the property.

Chair Siebers then read a list of citizens in support of the variance, but not wishing to speak: Jep Hiltz, Gloria Hiltz, Heather Scantlebury, Rick Murphy, Lanis Boyer, Jennifer Erickson, and Carol Lovell.

Staff member Wilson reiterated that Staff is recommending a 5' setback on the north side of the property, for fire separation, to maintain the historical integrity of the carport's wooden construction, and recommending a 5' side setback adjacent to the casita. Ms. Wilson explained that this recommendation is based on the 1950-1969 Zoning Ordinance, which allowed casitas at a 5' setback. She closed by saying that the Historic Preservation Officer's biggest concern is with the carport and not the casita, and that Staff is supporting the variance to the Building Form Standard, since the carport was originally constructed in front of frontline of home.

Planning Director/Historic Preservation Officer John Wesley stated that he reviewed the case from a historic preservation perspective. He said that because the house is in a unique area, which evolved over time, at first look, he thought the carport was added at a later time, but found that the carport was there when the Historic District was approved. Mr. Wesley felt that modifications could be appropriate, evaluating historic materials, the openings on the building, and the fire-rating would be weighted to see how appropriate it would be for the area. Mr. Wesley closed by saying that he is not concerned as much about the casita, since it is setback, and does not affect the street scape as much, and he believes that an appropriate retrofitting could be accomplished.

Staff member Wilson, mention that the Building Official was in the audience and informed her of something called an “imaginary property line”. If this was applied in this situation, the structures would need to be modified to only be located on the legal property line, but major fireproofing changes would most likely not have to be made to the structures, due to maintaining the 10’ setback on both sides. Ms. Wilson explained that if the adjacent property owners would sign and record a 10’ “no build easement”, the applicant could obtain an “imaginary property line”.

Zoning Administrator Sheffield clarified that a “no build easement” doesn’t change anything from a zoning perspective, but changes the building code requirements, in that there would be less concern from a Historic Preservation perspective because there would be less of a need for modification in construction.

Staff member Wilson stated the carport overhangs the adjacent property by roughly 2’6”, and the casita overhangs the adjacent property all the way up to 2’3”, and explained that the casita would have to be modified regardless as it is built very closely to the fence.

Boardmember Worcester verified with the applicant that their home insurance has allocated a certain amount of money for permitting issues, zoning issues, and to fix the encroachment on the neighbor’s property.

Boardmember Swanson, stated that he was making a motion for approval with findings that there are special circumstances applicable to property, that are pre-existing, and that strict application of the Zoning Ordinance would deprive the property owner of the same privileges enjoyed by others in the classification, and that approval would not grant a special privilege. Mr. Swanson added a condition that creates an allowance for the carport and casita to have a 0’ setback from the lot line.

Zoning Administrator Sheffield stated that it would be left up to obtaining a Certificate of Appropriateness, and if it were to be denied, the structures would have to move back 5’ off the property line. Mr. Sheffield closed by saying that a “no build easement” was obtained, the likelihood of obtaining a Certificate of Appropriateness would increase.

**Motion:** A motion to approve case BA16-068 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Swanson motioned to and seconded by Boardmember Rembold to approve with the following conditions:

1. *Compliance with the site plan and narrative submitted unless otherwise modified by the conditions below.*
2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
3. *Compliance with the requirements of issuance of a Certificate of Appropriateness for all modifications from the Historic Preservation Officer.*
4. *Allowance for the carport and casita to have a 0' setback from the lot line.*

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

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

**FINDINGS:**

- A. The property is zoned RS-6 HD and is 19,863 square feet.
- B. The property is located within the Evergreen Historic District and was originally constructed in 1946.
- C. It is unknown when the carport was extended over the north property line but presumably after 1976.
- D. The detached garage/casita was expanded to the current state in 2000.
- E. The property walls are constructed onto adjacent properties which can be misleading to where the property lines are located.
- F. Given the age of the Evergreen neighborhood, there are many existing non-conformities throughout the neighborhood.
- G. If the detached garage was constructed between 1958-1969, the setback would have been 7' on the south side. The City of Mesa does not have permits from this time period.
- H. There have been several variances granted within the Evergreen Historic District for side and rear yard encroachments.

**Case No.:** BA17-021 DENIED

**Location:** 234S East Inverness Avenue (District 3)

**Subject:** Requesting Variances to allow additions to encroach into the minimum required side yard setbacks in the RS-6 District. (PLN2017-00094)

**Decision:** Denial

**Summary:** The applicants, Todd and Stacy Bakken, 234S E. Inverness, presented the case to the Board.

Cheryl Voltner, spoke in favor of the variance.

Jolene Brown, 2337 E. Inverness Ave., spoke in support of the variance.

Staff member Lisa Davis, clarified for the Board that there was no zoning change in 2001, and the RS-6 zoning on the applicant's property has been consistent, but the "RS-7" zoning seen, was just an error on the permit. Mrs. Davis explained that setbacks are minimally different from what they were initially in that zoning district, and that the side setbacks are the same. She went on to mention that the illegal structures should be viewed as plan on paper, as there were no permits obtained for the structures, and added that she is not sure of the permit or variance status of the examples shown by the applicant. Lastly, she stated that the pool shed would have to be detached and could not be constructed with plumbing or electrical equipment.

Zoning Administrator Sheffield added that the Zoning Districts standards in the RS-6 and RS-7 districts had a front setback that used to be 25', but now is 20', and a total maximum allowed lot coverage that used to be 40% but now is 50%, which was changed in the 1980's, meaning that a property owner can build more on their property now than they could before.

The applicant noted that vehicles were covered by the overhang, and asked the Board to allow him to keep the roof to maintain his property.

Chair Siebers reaffirmed to the applicant what the Board would be able to grant a variance on.

Zoning Administrator Sheffield explained that per a provision in the Zoning Ordinance addressing a combined setback, that there would need to be at least 15' combined of both sides, and since there is not at least 8' on the opposite side, it is not possible.

Staff member Davis reaffirmed for the Board that if the structure was reduced to 7', placed on a non-permanent foundation, was not attached to the house, and had no electrical no plumbing, then it would be compliant.

Board member Montague stated that he agreed with Staff, that because of the total build out on all sides, safety personnel would have trouble getting to the back of the house.

**Motion:** A motion to deny case BA17-021 with the acceptance of Findings of Fact as read was made by Chair Siebers and seconded by Boardmember Rembold.

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

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

**FINDINGS:**

- A. The house was built in the 1976.
- B. The lot is not unique in shape. It is a standard rectangular lot oriented perpendicular to the abutting street.
- C. The lot is surrounded by homes and lots of similar size and shape.
- D. The existing lot is standard size and exceeds the minimum standards for a RS-6 zoned lot. The parcel is 6,565 SF in area with dimensions of 67' x 103'. The lot is 12' wider and 565 SF larger than the minimum lot area for a RS-6 lot.
- E. A building permit was obtained in 2001 for the 432 SF addition at the rear of the home.
- F. The lot does not have unique conditions related to the site.
- G. Further, strict compliance with Code would not deprive the property of the ability to construct shed at the at the rear of the house.
- H. There are options for the sheds within the rear yard and allowances for detached shed structures without variance.
- I. The applicant has not provided sufficient justification related to the land, which would justify the degree of the requested variance for the sheds.
- J. Further, strict compliance with Code would not deprive the property of the ability to construct detached or attached structures.

**Case No.:** BA17-017 APPROVED WITH CONDITIONS

**Location:** 1440 North Crismon Road (District S)

**Subject:** Requesting: 1) a Variance to allow detached accessory buildings and accessory living quarters to be placed in front of the front line of the primary dwelling; 2) a Special Use Permit (SUP) to allow detached accessory structures to exceed the maximum allowable area; and 3) a Variance to allow a fence to exceed the maximum allowable height in the required front yard, all in the RS-43 District. (PLN2015-00519) Continued from February 1, 2017

**Decision:** Approved with Conditions

**Summary:** The applicants, Mark and Debbie Schmuker, 1440 N. Crismon Rd. presented the case to the Board.

City Attorney, Mary Grace McNear stated that the case was advertised for the 3 variances listed in the Staff Report, not for a reinterpretation of Marcus Lane, so that should not be in the Board's purview at the meeting. Mrs. McNear asked for a copy of the packet materials that were presented by the applicant and noted for the record that the applicants presented the Boardmembers with packet materials that neither the Board or Staff had been presented with before the meeting.

David Farnsworth, 9912 E. University Drive, explained that the Schmukers came to his office to ask for help, and that his greatest concern is for the unintended consequences of laws, which sometimes causes an overreach, and he felt that mercy was in order in this situation. Mr. Farnsworth stated that he had been to the Schmuker's home twice, and he had met with the City once in his office. Mr. Farnsworth explained that health and safety are paramount in the community, but he felt that the liberty of the people must be protected as well when property rights are encroached upon. He went on to state that things have changed a lot from 60 years ago, and even though he is a State Senator, he feels like a normal citizen and feels the heavy hand of the law. He went on to say that the structures on the Schmuker's property are all well-constructed, safe dwellings, and that the size of the home has not changed, and that the key dwellings existed before the main house was built. He added that when the City of Mesa granted the permit for construction of the main house, they were aware of the existing structures. He went on to say that once the remodeling was complete, anyone would be proud to live in a home like that, and that sometimes husbands do things for their wives in enthusiasm, which may be done improperly from time to time. He added that from meeting with the City, he had heard that there was an inadequate bridge on the property. What he was expecting was an old rickety wooden bridge, but when saw it, he took it as a strong earthen bridge that had been in place for 20 years, which was strong enough to drive a tank over. He closed by saying that it is a matter of common sense, and added that nothing needs to be changed, as the health and safety issues are fine, the road along Marcus Drive is fine, and if a

variance is not granted, the Schmukers will suffer a great deal.

James Smith, 1150 E Santa Clara Dr. San Tan Valley, AZ, spoke on behalf of the applicants, describing them as stand-up people. He added that he has never seen them do anything to harm anyone, and that they thrive on helping people, and would like to see mercy shown on them.

Frank Murdock, 1502 N. Crismon, spoke in representation of the other 4 families in what is known as Cholla Estates, and for 2 of the 3 families in the area to the west of the Schmukers. Mr. Murdock explained that he called a meeting at his house, to address the situation where the Schmukers were trying to divide their property as one parcel up front (east) and one parcel in the back (west), which was initially approved, but then called back. Mr. Murdock went on to say that he's a person who doesn't like to say bad things about people, but everyone but the Pastor living in the area, has sent in requests for denial of the variance. He went on to say that Mr. Schmuker has been in the building industry for decades and Mr. Schmuker has been in the real estate industry for decades as well, so they know what they have done, and they haven't been friends to anyone in the area. He explained that the Schmukers have filed CC& R's with the County, using the ones from Las Sendas, to bully people in the area, and that there was a situation with Mr. Schmuker that he doesn't even want to talk about here. Mr. Murdock went on to say that he has been unable to find any paperwork that states the earthen bridge on Marcus Lane is safe, and hasn't been able to find any civil engineering plan for the flood plains on the property. Thus, he said that heavy rains and flooding coursed through the east side of property, and Mr. Schmuker threatened him with building a wall on the north edge of his property where Marcus Lane comes, which he was agreeable to, if City Code was met. In conclusion, Mr. Murdock stated that the Schmukers know better, and they have done this for 11 years, and they have been nothing but a bully to everyone in the area.

Pat Vasquez, 3330 E. Main Street, stated that she has known the applicants for 15-16 years, and she has been taken in as family, and she is speaking in support of the variance. Ms. Vasquez read two letters from a Mark Dolan and a Floyd Robinson who were also in support of granting the variance.

Stephanie Schmuker, 8540 E. McDowell Rd, spoke in support of the Schmuker's variance. Mrs. Schmuker explained that she had recently built a home, and learned a lot from the process, and didn't always do everything right. She went on to say that Mark's health has declined in the last two years, and it has been painful to watch them go through this, and that she was shocked to see that something like this could happen to them. She closed by saying that people make mistakes, and that a 2<sup>nd</sup> chance should be given along with better guidance instead of demolition.

Chair Siebers read that a Robin Farnsworth submitted a card, but did not mark if they

were for or against. He added that a Dorran and Joseph Dawkins were in favor, but were choosing not to speak, and added that a Caroline Smith was in favor but chose not to speak.

Debbie Schmuker stated that in 2007 Frank and Shawn Murdock requested a variance for exceeding the maximum percentage of roof area, to which they were in support of. Mrs. Schmuker also noted that they were also in support of Lee and Karen Lugenvoll when they added their accessory building and barn, but today they receive opposition from their neighbors. Mrs. Schmuker explained that the main point of contention was when Mark explained to Frank Murdock that his property would need to be regraded, so rainwater would flood to the wash instead of onto the Schmuker property. She explained that Mr. Murdock called the Sheriff, and he suggested that he regraded his property because that's what "good neighbors do". She went on to say that Mr. Murdock doesn't think it's his problem, because he has stated that "water runs downhill", so the Schmukers should expect to be flooded. Mrs. Schmuker explained that her husband dug a ditch on the property, which is not visible to others, to redirect run-off to the main wash during heavy rains, and built a 3'6" site wall to further ensure that their property wouldn't take on excessive storm water. Mrs. Schmuker added that her husband had installed a waterline in 1996-1997 to water the plants along Crismon Rd., but it has not been used in years. Mrs. Schmuker stated that they had offered to take down the hay tool barn, to reach a middle ground. In response to the split parcel concern, Mrs. Schmuker has stated that it hasn't been split through title, and that they have maintained the entire entry area, and maintained 200' of frontage for the community, and paid for the electricity for the front entry lights for the last 20 years to try and be good neighbors.

Benjamin Barbus, 3420 Shea Blvd., Suite 120, Phoenix, AZ, informed the Board that he is a licensed architect in state of AZ, and that he was asked to inspect the property by the Schmukers. He stated that he felt that the safety and structural integrity were adequate, and that the points requested in the variance involving exceeding 100% of the allowed maximum roof coverage in comparison to the main structures has been resolved due to the Schmukers taking down a structure, so he didn't think that would be an issue. Mr. Barbus went on to say that the Schmukers can take down the wall and build it back up behind the ROW line, so an encroachment permit, wouldn't be necessary either. He went on to say that back in 2005, when the site plan was approved, the City of Mesa was complicit. He closed by saying that the washes and the topography changes make the site difficult to develop, so as far as he's concerned, granting a variance wouldn't create a special privilege.



Boardmember Swanson confirmed with the Schmukers that Mr. Barbus had identified himself as their representative and had stated that the Special Use Permit for more than 100% of primary dwelling coverage for the accessory structures was to not be considered, but the Schmukers informed the Board that as long as Staff was in support of the SUP, they would like to leave it up for discussion.

Staff member Wilson stated that the site plan from 2006, at the time the architect established the front along Crismon Road, maintaining a 30' building setback. Ms. Wilson explained that structures in that roof area were expanded from sometime within 2006-2009, as evidenced in appendix A. She went on to explain that the structures were not permitted in the County, and they would only be "grandfathered" in if they were permitted properly, therefore they must be reviewed as plan on paper, because they are illegitimate from where they were annexed from. She added that the Special Use Permit allows the flexibility of up to 110% of primary roof area, and the corral fencing behind the solid wall does comply with fencing requirements. She closed by saying that a variance should have been applied for in 2005, and she's not sure what the details of the conversation with Building Safety were back then, but that the applicants chose to modify a building without a permit by their choice and when plans are reviewed, Staff takes them at face value as being correct and as having obtained all necessary permits.

Staff member Davis added that in the 2006 site plans, the structure was called out as a shed, and the use and size of the building has expanded since then. She added that even if it were "grandfathered" in, since it has changed from a shed to a livable structure, it changes the use of the building, and it requires a building permit and needs to comply with current code.

Board member expressed concern that the accessory structures existed at the time that the house was permitted to be built, showing in the front half of the property.

Chair Siebers stated that a variance should have been required prior to construction of the home.

Zoning Administrator Sheffield explained that although the structures were labeled as "sheds", and a variance should have been obtained, by enclosing the structures into livable areas, it changed the fundamental building code requirements, and permits would have been required. This would have given City Staff a second shot to look at the site plan, and more than likely a variance would have been required.

The Schmukers explained for the Board that he had enclosed the "bunkhouse" in 1998-1999 and that the main residence was built in 2005-2006, but didn't know why the bunkhouse/casita structure was labeled as "shed" on their site plans in '98. Mr. Schmuker added that Diana Ross, with the City of Mesa, came out to their property in 2005, and helped with the placement of the house. Mr. Schmuker said that Ms. Ross had said that their horse setup was very nice, and had seen the corrals as well as the stables, and the

bunkhouse, and being a horse person she said it was very nice. Mr. Schmuker said that they followed her direction on placement of their home. He closed by saying that he didn't realize there was an issue with the structure or the placement of the structure that that they had built while still in the County, and that they didn't have a lot of money back then and spent everything they had to get that setup for their boys.

Mrs. Schmuker stated that they never represented to Diana Ross in 2005 that those structures were permitted, but told her that the structures were built in the County and annexed in 1998. She added that the footprint has always remained the same, and in 2008 it was filled in to serve as the bunkhouse.

Ms. Wilson added that from historic aerials from 1998-1999, the bunkhouse was expanded to what it is currently seen on the site plan to in 2000, without the benefit of a building permit.

Mr. Schmuker confirmed for the Board that the square footage of the bunkhouse has not changed since 1999, and property taxes has been paid on the property since then as well. Mrs. Schmuker added that they have been tied up for 2 years, so they have wanted to update their tax information on the bunkhouse but have not been able to. Mr. Schmuker made closing statements and reiterated that he didn't know the siting of the structures would create a problem.

Board member Rembold stated that he was perplexed that the City has allowed the approval of the location of the home with knowledge of the site and visiting the site and seeing the structures.

Board member Swanson spoke of the constraints and what the Board is here to do. He cited Title 9 in the State Legislature in relation to the Board of Adjustment, that they may not grant a variance if the special circumstances applicable to the property are self-imposed, and he encouraged the Board to walk through Section 11-80-3 in the City of Mesa Zoning Ordinance, as it relates to granting variances.

Board member Tolman explained that she had a hard time not being angry, as she has worked for the County Board of Supervisors, and seen the problems and misunderstandings when land is annexed from County to City. She stated that the City should have addressed orientation in the time between 2006 and now, and felt that due to flood plains, and topographical changes, there is a special circumstance with the property, and the Board has a right to make a judgement based on reason.

Board member Rembold confirmed with Staff that the house had been "finaled" in 2006.

City Attorney Mary Grace McNear confirmed that the entrance to the property is located off Crismon Road, and although there is an easement to the south of the property, it is not public.

Chair Siebers stated that he felt the case met the required findings for granting of a variance. He stated that special circumstances existed with the drainage, and the unique nature of the roads bordering the property. He felt that the site plan approved in 2006 created a level of culpability for the City of Mesa, and thus created a pre-existing condition for the applicant. He stated that through strict application of the Code, privileges would be deprived to the property owner that others had enjoyed through granting of variances for other structures on other properties in the area. He finished by saying that a denial would reduce the ability of the property owner to have a conversation to fix the issues, so he felt that a variance was justified.

Staff member Wilson confirmed for Board member Swanson that there were 2 requests granted to the lot to the north, a Special Use Permit for an outbuilding to exceed 100% of the roof area, and a Zoning Administrator reinterpretation of the lot frontage, but no variances were given.

Zoning Administrator Sheffield explained that prior to 2011, accesses authorized in the County, were recognized by the City. He went on to say that Marcus Lane is located mostly on the property, so it is not recognized as an easement, it is what would be called a driveway, with the easement being Crismon Road to the east. Mr. Sheffield went on to explain that because frontage is a definition, not a standard, it is not eligible for a variance, and by the definition of what constitutes a lot front, the lot front is the public street. He added that Marcus Lane is not defined as an easement, all it shows is a "dirt road". He suggested looking at the south easement belonging to the Flood Control District, but for various reasons, this option was not pursued. Because Marcus Lane is a private driveway, it couldn't be considered, and the public roadway to the east had to be considered the front. Mr. Sheffield explained that the property owner to the north obtained a reinterpretation of lot frontage due to the Ordinance at the time not requiring a public easement to declare a property front. With the Ordinance change in 2011, that choice isn't available anymore.

Board member Worcester felt that since the site was purchased with no improvements, and all the buildings had been organically added by the applicant, and since they are both familiar with construction and real estate, it baffled him as to why no building permits were obtained. Board member Worcester felt that the hardship had been created by the owner, as the accessory buildings had been added before the primary structure. He added that although a City employee may have given inaccurate guidance years ago, he was curious as to why a design professional under contract wasn't consulted before the structures were built.

Staff member Wilson explained that to petition access off Marcus Lane, a BIZ overlay would need to be approved through the Planning & Zoning Board and City Council.

Zoning Administrator Sheffield reiterated that the southern access is owned by Maricopa County Flood Control District, and because of practical difficulties, this was not an option that the applicant wanted to pursue.

City Attorney Mary Grace McNear explained that legal access was obtained through the Maricopa County Flood Control District property to the south by another property owner through a lawsuit.

**Motion:** A motion to hear case BA17-017 into individual requests was made by Chair Siebers, but failed for lack of a second.

A motion to approve case BA17-017 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Tolman and seconded by Boardmember Siebers to approve with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
3. *The structures shown on the site plan are authorized in the current location and shall not be expanded nor should any additional structures be constructed in front of the front line of the primary dwelling unit.*
4. *All structures shall comply with the setbacks and development standards applicable to the RS-43 zoning district. The setbacks are as follows: Front (livable)- 22'; Front- (garage)-30; Sides- min 10', combined 30' and; Rear- 30'.*

**Vote:** Passed (4-3) (nay Boardmembers Montague, Swanson, and Worcester)

**OTHER BUSINESS:**

None

**ITEMS FROM CITIZENS PRESENT**

None

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lisa Davis', is written over the printed name.

Lisa Davis  
Planner II