

Board of Adjustment

Minutes

City Council Chambers, Lower Level

August 2, 2017

Boardmembers Present:

Trent Montague, Vice Chair
Wade Swanson
Ken Rembold
Kathy Tolman
Chris Jones
Adam Gunderson

Board Members Absent:

Steve Curran (excused)

Staff Present:

John Wesley
Kim Steadman
Charlotte Bridges
Mary Grace McNear
Charlotte McDermott
Mike Gildenstern

Others Present:

Gene Cetwinski
Jeff Blilie
Lawrence Palles
Louie Lopez
Phyllis Smiley
(others present)

The study session began at 4:31 p.m. and concluded at 4:56 p.m. The Public Hearing began at 5:37 p.m., before adjournment at 9:33 p.m., the following items were considered and recorded.

Study Session began at 4:31 p.m.

A. Election of new Chair and Vice Chair

Boardmember Swanson nominated Boardmember Montague as Chair and nominated Boardmember Rembold as Vice Chair. The motion was seconded by Boardmember Jones.

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

B. The items scheduled for the Board's Public Hearing were discussed. Condition #5 was modified in Case BA17-040

Study Session adjourned at 4:56 p.m.

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Executive Session began at 4:57 p.m.

A. Convene an Executive Session

It was moved by Chair Montague, seconded by Boardmember Rembold, 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 BA17-032 appeal from the Zoning Administrator's interpretation for processing a request regarding the proximity of two medical marijuana dispensaries.

Executive Session adjourned at 5:26 p.m.

Public Hearing began at 5:37 p.m.

A. Consider Minutes from the July 12, 2017 Meeting:

A motion was made by Boardmember Swanson, seconded by Boardmember Rembold, to approve the July 12, 2017 minutes as written.

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

B. Consent Agenda:

A motion to approve the consent agenda as read by Boardmember Rembold with the acceptance of Findings of Fact and Conditions of Approval was made by Boardmember Rembold and seconded by Boardmember Swanson.

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

Public Hearing adjourned at 9:33 p.m.

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Case No.: BA17-040 APPROVED WITH CONDITIONS

Location: The 7300 through 7400 blocks of East Broadway Road (south side) and the 400 through 450 blocks of South 74th Place (west side) (District S)

Subject: *Requesting Special Use Permits (SUP) 1) for a Comprehensive Sign Plan; and 2) to allow an electronic message display to change more frequently than once per hour; in the RS-6 and RS-7 Districts.*

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 BA17-040 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Rembold and seconded by Boardmember Swanson to approve with the following conditions:

1. *Compliance with the sign plan submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Development Services Division regarding the issuance of sign permits.*
3. *The detached sign proposed to be placed adjacent to 74th Place shall not be illuminated*
4. *The base of the detached sign proposed adjacent to 74th Place shall be the same material used on the base of the detached sign adjacent to Broadway Road. The overall height of the sign shall be a maximum of 5' in height.*
5. *Sign A, the Existing Building Sign, shall be removed.*
6. *Each message on the electronic display message sign shall remain static for a minimum of fifteen (15) seconds.*
7. *The transitions between messages and the light intensity level of the electronic message display shall comply with the requirements of Section 11-41-8(D)17.*

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

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

FINDINGS:

- A. The original church was developed in the mid 1980's.
- B. The church site is 5.7± acres in size. Street frontage along Broadway Road is about 435' and street frontage adjacent to 74th Place is about 400'.
- C. The CSP proposes a total of three signs. Two detached and one attached.
- D. The subject site is located within a primarily residential area.
- E. The proposed additional sign area for detached sign will help to identify the church along Broadway Road.
- F. The proposed electronic message display sign is approximately 135' from the west and 295' from the east property lines. The nearest electronic message display sign is located over 650' away to the west.
- G. The speed limit at Broadway Road is 45 mph which is typical for the area.
- H. The electronic message displays are to remain static for a minimum of one hour unless a Special Use Permit (SUP) is granted. In this case a 15 second message display allowance is consistent with previous Board of Adjustment decisions.

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- I. The proposed design, with recommended conditions, have special design features that are integrated with the architecture of the existing church.**
- J. The proposed CSP is largely consistent with current Code requirements, and the deviations requested related to the size and number of signs result in a plan that 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.**

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Case No.: BA17-041 APPROVED WITH CONDITIONS

Location: 8332 E. Ebola Avenue (District 5)

Subject: *Requesting a minor modification of an existing Planned Area Development, after the initial construction, to allow the expansion of an existing structure in the RS-6 PAD-AS District.*

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 BA17-041 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Rembold and seconded by Boardmember Swanson to approve with the following conditions:

1. *Compliance with the site plan and elevations submitted, except as modified by the conditions listed below.*
2. *Compliance with all requirements of the Development Services Division regarding the issuance of building permits.*
3. *The maximum allowed encroachment shall be 3' into the existing front setback for enclosure of the carport to a garage.*
4. *The garage shall be architecturally compatible with the home.*

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

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

FINDINGS:

- A. The home was built in the late 1970s with a two-car carport that does not meet current interior dimensions for a carport or garage.
- B. The extension of 3 feet to the length of the proposed garage will bring the length of the garage closer to conformance of the MZO for a garage size.
- C. The proposed garage would encroach 3' into the existing front yard setback. The houses to the east and west of the site are encroaching into the required front yard setback.
- D. Garages are commonly found on most single residences. Numerous carports have been converted to garages within the neighborhood.
- E. Enclosure of the existing carport into a garage with a depth that is consistent with the minimum depth required is consistent with the present standards and will be consistent with the purpose and intent of the adopted plan for Fountain of the Sun.

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Case No.: BA17-042 **APPROVED WITH CONDITIONS**

Location: 860 N. Riverview (District 1)

Subject: *Requesting a Special Use Permit (SUP) for modification of a Comprehensive Sign Plan in the GC PAD District.*

Decision: Continued to September 6, 2017

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

Motion: A motion to continue case BA17-042 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Rembold and seconded by Boardmember Swanson.

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

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- Case No.:** BA17-032 **UPHELD DECISION OF ZONING ADMINISTRATOR**
- Location:** 1842 W. Broadway Road and 1911 W. Broadway Road (District 3)
- Subject:** *Consider an appeal of a Zoning Administrator interpretation regarding the proximity of two medical marijuana dispensaries. The Zoning Administrator's interpretation is that the two medical marijuana dispensaries were registered as approved locations on the same day, and for this reason both locations are considered legal but non-conforming uses. The applicant is appealing this interpretation. (PLN2017-00188)*
- Decision:** The motion to approve the appeal did not receive the necessary four votes with the effect of affirming and upholding the determination of the Zoning Administrator
- Summary:** Chair Montague opened the public hearing and clarified the structure and procedure for the meeting.
- Mary Grace McNear, City Attorney's Office, clarified that she was a proponent of the Zoning Administrator's interpretation and stated that the grounds for appeal for a medical marijuana dispensary in terms of proximity to a school was included in the submission of materials to the Board, but not in NOVA's appeal letter. Mrs. McNear stated that it was not fair for the City to respond to grounds for appeal when not noticed properly in the letter for appeal, and proposed making a motion to prevent Nova Dispensary from raising the school distancing requirement issue as grounds for appeal.
- Boardmember Swanson proposed allowing the school distancing requirement issue to be heard due to all parties being aware of the material before the Meeting.
- Motion:** It was moved by Boardmember Swanson and seconded by Boardmember Tolman to deny the City's Motion to prevent Nova Dispensary from raising the school distancing requirement as grounds for appeal.
- Vote:** Passed: 6-0 Approved (Boardmember Curran, absent)
- The opening Appellant presentation was provided by Mr. Jeff Blilie, Beus Gilbert, 701 N. 44th Street, Phoenix.
- Answering Boardmember Swanson, Mr. Blilie stated that he felt that the City Staff had done nothing nefarious, but didn't understand the reasoning behind the decision, and that his clients were harmed in that they cannot expand or move their dispensary.
- Mr. Blilie explained the Certificate of Occupancy process for Boardmember Gunderson.
- Mr. Blilie explained the site selection process to Boardmember Jones.
- Mr. Blilie explained for Boardmember Tolman the details of the Certificate of Occupancy process between the two dispensaries.

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The Opening City Presentation to the Board was provided by Mrs. Mary Grace McNear, City Attorney's Office.

Mrs. McNear introduced materials to the Board, to which Mr. Blilie objected.

Answering Boardmember Rembold, Mrs. McNear explained the City of Mesa's 4-step process in obtaining clearance to open a Medical Marijuana Dispensary.

Mrs. McNear explained to Boardmember Gunderson her understanding of what the Board of Adjustment is authorized to do in regard to Certificates of Occupancies.

Answering Boardmember Tolman, Mrs. McNear, with the help of Planning Director John Wesley, explained why she thought a Certificate of Occupancy may be inadvertently issued.

Mrs. McNear explained for Boardmember Jones the history of the City of Mesa's 4-step process in determining eligible sites for medical marijuana dispensaries.

Answering Boardmember Gunderson, Mrs. McNear explained the City's challenges with verifying the eligibility of sites for medical marijuana dispensaries.

Mrs. McNear explained for Chair Montague the City's solution to address the concurrent granting of the two Certificate of Occupancies to the dispensaries.

Appellant Closing Statement provided by Mr. Jeff Blilie

Mr. Blilie confirmed for Boardmember Swanson that he had not reviewed the materials that Mrs. McNear had introduced to the Board, but that he was agreeable to allow them being admitted to the record, and to rescind his motion to preclude the materials.

Motion: It was moved by Boardmember Swanson and seconded by Boardmember Jones to deny Mr. Blilie's previous motion to preclude the materials introduced by Mrs. McNear.

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

Mr. Blilie explained for Mr. Swanson his thoughts on the Zoning Administrator's authority and the legality of legal non-conformities.

Mr. Blilie answered Boardmember Rembold's questions regarding the State's approval process for medical marijuana facilities.

Mr. Blilie explained to Boardmember Swanson what the mobility options were for the two dispensaries.

The City Closing statement was provided by Mrs. Mary Grace McNear, and supplemented by John Wesley.

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Answering Boardmember Gunderson, Mrs. McNear explained the Zoning Administrator's role in determining legal non-conforming uses.

Public Testimony was given by Lawrence Palles and Louie Lopez, Moyes Sellers & Hendricks, 1850 N. Central Ave., Ste. 1100, as follows: Mr. Palles explained that VHG Dispensary did everything correctly in obtaining a Certificate of Occupancy and the proper certifications and permissions from the State. Mr. Palles added that distances to schools and churches were provided in good faith estimates and felt that when permits are granted, the applicant's rights are vested. Mr. Palles stated that to his knowledge, Phoenix and Tucson have 2 dispensaries within a mile of each other. He added that he felt that the City had some obligation to verify accuracy before granting permits, and that the church within the required distance has a very limited presence. Mr. Palles concluded by saying that NOVA Dispensary did not have property owner permission to apply until November 8th, 2016, and explained that the City sent an email to NOVA on October 10th, 2016, clarifying that a Certificate of Occupancy and an AZDHS License were necessary.

Mr. Palles confirmed for Boardmember Jones that he had no issue with NOVA moving locations.

Mr. Palles stated to Boardmember Gunderson that no one knew the estimated distance between the church and the dispensary, and Mr. Gunderson reminded Mr. Palles that Nova Dispensary had known about the church.

Mr. Palles explained to Boardmember Tolman that VHG Dispensary submitted their application in December 2015, it was granted on January 11th, 2016, they got their building permit on June 6th, 2016, their Certificate of Occupancy on November 8th, 2016, and AZDHS approval on January 20th, 2017.

City Response to Public Testimony was provided by Mrs. Mary Grace McNear.

Appellant Response to Public Testimony was provided by Mr. Jeff Blilie.

Motion: It was moved by Boardmember Gunderson and seconded by Boardmember Tolman to approve the appeal. A vote was taken and three Board members voted in support of the motion and three Board members voted against the motion.

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

Mesa City Code 11-66-3 states:

"The concurring vote of 4 members of the Board shall be necessary to reverse any order or decision of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass or to effect any variation from the terms and conditions of this Zoning Ordinance or of the City Code within the jurisdiction of the Board as authorized by the City Council."

Because the motion did not receive four concurring votes, the Zoning Administrator's interpretation was affirmed.

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Case No.: BA17-033 DENIED

Location: 1710 W. Southern Avenue (District 3)

Subject: *Requesting a Substantial Conformance Improvement Permit (SCIP) to allow modifications to development standards for a restaurant with a drive through in the LC District. (PLN2016-00838)*

Decision: Denied

Summary: The applicant, Gene Cetwinski, 6044 W. Michelle, Glendale, AZ, presented the case to the Board.

Boardmember Swanson confirmed with the applicant that he had read Section 11-73-3 regarding Substantial Conformance Improvement Permits (SCIP) in the City of Mesa Zoning Ordinance, and that he understood that the Board cannot create any non-conformities.

Boardmember Tolman confirmed that there is a transformer on the north side of the building that would have to be moved to accommodate a drive-thru. The applicant explained that Staff would not approve a drive-thru on the south side of the building and/or parallel to the Right of Way on Southern Avenue.

Planning Director John Wesley clarified that Staff would not support the drive-thru on the southern side of the building, and that the changes on Southern Avenue have been put in place to create a pedestrian-oriented environment. He added that the goal is to not have drive-thrus that front on to Southern Ave, which is consistent with the overall policies of the area.

The applicant explained that because of drive-thru length requirements between the pick-up window, the menu board, and the end of the drive thru, the lane wouldn't be able to fit on one side of the building, and had to be wrapped around two sides.

Planning Director Wesley explained that because of the Fiesta District Design Guidelines, drive-thrus are not allowed along the street, and cited recent restaurants such as Salad and Go and Starbucks, that have drive-thrus positioned off Southern to enhance the pedestrian experience. He closed by saying that the nearby Jimmy John's drive-thru was approved in 2012, before the Fiesta District Guidelines were enacted.

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Motion: A motion to deny case BA17-033 was made by Boardmember Swanson and seconded by Boardmember Jones

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

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

FINDINGS:

- A. The commercial site was constructed in the late 1970's.
- B. The strip center with two pad buildings has remained within this same shape, layout and design since development.
- C. The proposed site plan amendment to introduce a drive through creates new non-conformities that are in conflict to the required findings of a SCIP per MZO Section 11-73-3, including:
 - 1. A reduced drive aisle of 23', MZO Table 11-32-2.H requires a drive aisle adjacent to 90-degree parking to be a minimum of 24' wide;
 - 2. No raised landscape median between the non-drive through land and the traffic area MZO Section 11-31-18 requires that the drive-thru traffic lane be physically separate from the non- drive-thru traffic area with a five foot (5') wide raised landscape median;
 - 3. A reduced drive through aisle of 11' wide, MZO Section 11-32-2.J requires a one way drive aisle shall be a minimum of 12' wide; and
 - 4. No foundation base along exterior of building, MZO Section 11-31-18 requires a minimum of 2' of foundation base along the exterior of the building adjacent to the drive through.

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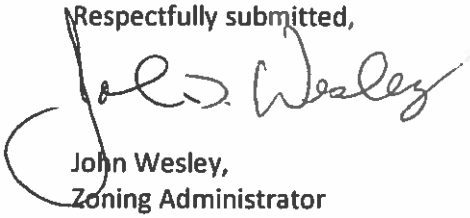
OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Wesley". The signature is written in a cursive style with a large, looping initial "J".

John Wesley,
Zoning Administrator