



**PLANNING DIVISION**  
**STAFF REPORT**

**Board of Adjustment**

**November 6, 2019**

CASE No.: <b>BOA19-00683</b>	CASE NAME: <b>Fruitlandia</b>
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Owner's Name:	Gem Real Estate Group, LLC
Applicant's Name:	CiFuentes Studio
Location of Request:	351 N Country Club Drive
Parcel Nos:	138-57-011A;
Nature of Request:	1. A variance for a reduction in the required front landscape setback and building setback; and 2. A variance from the required setback to allow a detached sign to be placed in the future right-of way-width; and 3. A Special Use Permit (SUP) to allow an outdoor seating area as an accessory use to a restaurant in a commercial development.
Zone District:	Downtown Business (DB-1)
Council District:	4
Site size:	0.5± acres
Proposed Use:	Commercial including a restaurant with an outdoor seating area
Existing use:	Multi-tenant commercial building
Staff Planner:	Kellie Rorex
Staff Recommendation:	APPROVAL with Conditions

**HISTORY**

In **1883**, 631±-acres, including the subject site, were annexed into the City of Mesa. In time, the site became a convenience store with a gas station and was later demolished.

**On March 30, 2004** the Zoning Administrator acting as a hearing officer approved a variance (ZA04-001TC) subject to the recommendations of the Downtown Development Committee to:

1. Reduce the required front building and landscape setback along Country Club Drive from 10 feet to eight (8) feet;
2. Reduce the required side and building setback along Morris Street from 15 feet to seven (7) feet and allow the trash enclosure and mechanical equipment to be located within the reduced side yard setback;

3. Allow parking spaces to be located within the front yard and side yard setbacks for the subject site; and
4. Eliminate of required parking lot and foundation base landscaping.

## **PROJECT DESCRIPTION**

### **Background**

The applicant is requesting a Special Use Permit (SUP) to allow for a restaurant with an outdoor seating area, a variance to encroach into the required landscape and building setback, and a variance to allow for a detached sign to be constructed within the future right-of-way (ROW) width.

Table 11-8-3 of the Mesa Zoning Ordinance (MZO) requires a Special Use permit to be obtained for outdoor seating areas in the Downtown Business (DB-1) zoning district. The existing 6,444 square foot (SF) building was built in the early 2000s as a multi-tenant retail building. The applicant is requesting to modify the site to construct an outdoor seating area just outside of the main entry on the west side of the building, adjacent to Country Club Drive.

Per Section 11-2-3(L)(1) of the MZO, all required setbacks must be measured from the future ROW rather than the property line. The typical setback adjacent to arterial roads is 10 feet; however, a variance was approved in 2004 (case #ZA04-001TC) that reduced the front setback along Country Club Drive to eight (8) feet. Per section 11-31-19(A)(2) of the MZO, outdoor seating areas are permitted to encroach up to one half the depth of a street side landscape area, provided that any wall or fence that surrounds that portion of the outdoor eating area does not exceed 3.5-feet in height. Under that allowance, the applicant can build an outdoor seating area that extends four (4) feet from the building. The applicant is requesting a variance to reduce the building and landscape setback adjacent to Country Club Drive to zero (0) feet to build a 23-foot x 16 foot (260 SF) outdoor seating area.

The applicant is also requesting a variance to install a monument sign within the future (75-foot half street width) ROW. The proposed sign would be four (4) feet tall and placed adjacent to Country Club Drive north of the existing driveway. Per MZO table 11-43-3(E), sites that are zoned DB-1 may have one (1) detached sign per street frontage at a maximum of five (5) feet in height.

Section 11-43-2(C) of the MZO requires detached signs to be placed 15 feet behind the street curb. As shown on the submitted site plan, the applicant is proposing to place their monument sign approximately 10 feet 10 inches from the back of the curb on Country Club and 29 feet and 5 inches from the back of curb on University.

### **General Plan Character Area Designation and Goals**

The subject site is located within the Downtown and Transit Corridor Character Areas. Per chapter seven of the General Plan, the primary goal of the Downtown Character Area is to provide a people-friendly area that is alive with options for housing, employment, shopping, entertainment, and events. The Downtown Character Area form and guidelines states that buildings should be designed and placed to engage the street and help provide an active street life with parking located beside or behind the buildings not between the street and a building.

The Transit Districts Character Area includes the light rail corridor and areas designated for a consistent high-level of transit options. The focus in this character area is to develop a mixed-use, pedestrian-oriented, urban environment particularly within walking distance of transit stops. This character type overlays other character types and is used to transition the area into a more transit and pedestrian-oriented environment.

The site is also located within the Central Main Street Area Plan planning area. The guiding principles of the Central Main Street Area Plan include creating a prosperous community, a people friendly community, a diverse community, a distinctive community, and an environmentally conscious community.

The subject site's building form and the proposed use are consistent with the General Plan and the Central Main Street Area Plan. The existing building is located close to the street providing an engaging pedestrian realm. The proposed restaurant with outdoor seating area also supports a more transit and pedestrian-oriented environment.

### **Site Characteristics**

The subject site is located on the southeast corner of University Drive and Country Club Drive and is considered a gateway into downtown Mesa. The site is just under a half an acre in size and has three street frontages (Country Club Drive to the west, University Drive to the north and Morris Road to the east).

The existing building was designed to address the corner and create a downtown urban cityscape feel, in conformance with the Downtown Character Area and Central Main Street Area Plan. The building is setback eight (8) feet from the future ROW line at Country Club Drive. North of the site, along University Drive, there is a bus pull out and shelter that expands the entire north portion of the site.

The City of Mesa Transportation Department expressed that Country Club Drive is not scheduled to be widened in the near future; however, requests that if or when the City widens Country Club Drive, the property owner remove the seating area and associated shade structure at their own expense.

The main tenant of the building is a restaurant use, Fruitlandia. There is a second suite (Suite 102) that does not have an identified tenant. The applicant is showing 25 parking spaces on the site plan, which meets the minimum number of parking spaces required for the commercial building with the outdoor seating area. Prior to the site being bought by the current owner, many of the trees and required landscaping had been removed from the site. The applicant's submitted landscape plan indicates that the site will meet the approved landscape plan for case ZA04-001TC with the only deviation being that 20% of the required trees will be substituted with palm trees.

**Surrounding Zoning Designations and Existing Use Activity:**

Northwest (Across University Drive) DB-1 Developed Commercial	North (Across University Drive) DB-1 Developed Commercial	Northeast (Across University Drive) DR-3 Developed Residential - Church
West (Across Country Club) DB-1 Developed Commercial	Subject Property DB-1 Developed Commercial	East (Across Morris Road) DB-1 Developed Commercial
Southwest (Across Country Club) DB-2 Developed Commercial	South DB-1 Developed Commercial	Southeast (Across Morris Road) DB-1 Developed Commercial & Office

**Mesa Zoning Ordinance Requirements and Regulations:**

Per Section 11-80-3 of the City of Mesa Zoning Ordinance, the Board of Adjustment shall find upon sufficient evidence when making a decision on variances that:

- A. There are special circumstances applicable to the property, including its size, shape, topography, location, or surrounding; and

**Seating area**

*The parcel abuts three streets, two that have considerable ROW requirements. The current half street ROW of Country Club Drive is 60 feet and the future half street ROW is 75 feet.*

*The existing building size, orientation, and setbacks (Variance Case ZA04-001TC) were approved because the design created a more urban style development. This resulted in a more compact urban form with the building close to the street. Furthermore, the development occupies most of the parcel, making it difficult for the applicant to build a functional outdoor seating area for their restaurant use.*

*The City does not have plans to widen Country Club Drive in the near future.*

**Sign**

*As stated above, the subject site was designed with reduced setbacks to place the building closer to Country Club and University Drive. This resulted in a reduced landscaped area between the ROW and the building in which a monument sign would be placed.*

*The City does not have plans to widen Country Club Drive in the near future.*

- B. That such special circumstances are pre-existing, and not created by the property owner or appellant; and

**Seating area**

*The subject site was developed in 2004 and has been in its current configuration for 15 years. As such, the constraints of the site are pre-existing and were not created by the applicant.*

***Conditions of the site include a small half acre developed parcel adjacent to two arterial streets that require large amounts of right-of-way. At the north property line adjacent to University there is a bus pull out and shelter that extends the entire length of the site. The City's approved Transportation Plan increases the existing 60-foot-wide ROW to a future 75 feet wide ROW. The existing building is setback eight (8) feet from the future ROW. The street frontage is limited in size to allows for the outdoor seating area.***

**Sign**

***The site was originally developed with reduced setbacks, bringing the building close to the corner and in close proximity to the future ROW along Country Club Drive. In addition, a bus pull-out bay and shelter were constructed, minimizing the area north of the building along University Drive. Because of the existing conditions of the site, the applicant can not place a monument sign outside of the future ROW.***

- C. The strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district; and

**Seating area**

***Accessory outdoor seating areas are an allowed use in the DB-1 zoning district with a SUP. The zoning ordinance limits the distance that an outdoor seating area may encroach into the front setback. This limit will prohibit the applicant from creating a patio that is large enough to both activate the street and be usable by customers.***

**Sign**

***Many of the commercial properties in the area have existing detached signs placed within the future ROW. Including several detached signs south of subject site along the east side of Country Club Drive.***

- D. Any variance granted will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

**Seating area**

***Outdoor seating areas associated with restaurants are an allowed use in the DB-1 zoning district with the approval of a SUP. The subject site is in the DB-1 district and in order to have the outdoor seating area, that other restaurant sites in DB-1 have, the applicant must request reduced landscape and building setbacks due to existing site constraints. The requested variance would not be granting special privileges that other sites in the same zoning district and area do not have.***

**Sign**

***The granting of the requested variance will not grant special privileges to the subject property that are inconsistent with other properties in the area. Several commercial properties at the intersection of University and Country Club Drive have detached signs placed within the future ROW.***

### Special Use Permit

Per Section 11-70-5(E) of the City of Mesa Zoning Ordinance, the Board of Adjustment shall find the following criteria are met for approval of a SUP:

1. Approval of the proposed project will advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable City plan and/or policies;

***The Downtown Character Area and the Central Main Street Area Plan encourage urban style development that activates the street through techniques such as locating buildings and outdoor seating areas where they can engage the street and help provide an active street life and pedestrian realm. The creation of a pedestrian realm fosters community and social interaction in accordance with chapter seven (7) of the General Plan.***

2. The location, size, design, and operating characteristics of the proposed project are consistent with the purposes of the district where it is located and conform with the General Plan and any other applicable City plan or policies;

***The location, size, and design of the requested outdoor seating area is consistent with the overall size, location, and design of the development. The proposed 260 SF outdoor patio is four percent (4%) of the building's footprint. The proposed seating area would be located next to the entrance between the building and the street which will provide for ease of access, maintenance, and surveillance. Restaurant and outdoor seating use are consistent with DB-1 zoning district goals to provide for general retailing and services to the general public within the Downtown Area.***

3. The proposed project will not be injurious or detrimental to the adjacent or surrounding properties in the area, nor will the proposed project or improvements be injurious or detrimental to the neighborhood or to the general welfare of the City; and

***The proposed outdoor seating area should not negatively impact the adjacent or surrounding properties in the area as most of them are all zoned DB-1 and offer various retail and office uses that are congruent with the restaurant and outdoor dining use of the proposed project. The adjacent properties are all geared towards general retail and will benefit from an adjacent neighbor that will promote pedestrian usage.***

4. Adequate public services, public facilities and public infrastructure are available to serve the proposed project.

***There are adequate public services and infrastructure serving the subject site.***

### Findings

- A. The subject property is an existing multi-tenant retail building that was constructed in 2004. The site constraints associated with the property are existing and were not created by the applicant.
- B. The subject property fronts two arterial streets (Country Club Drive and University Drive), and one collector street (Morris Street).

- C. The future ROW is 75 feet along Country Club.
- D. The southeast corner of University and Country Club is considered a gateway into Downtown Mesa. The subject site was designed with a compact urban form in accordance with the goals of the Downtown Character Area and the Central Main Street Area Plan.
- E. The strict application of the Zoning Ordinance would deprive the property owner of privileges enjoyed by other commercial properties and is consistent with the development pattern of the commercially developed intersection.
- F. Approval of the requested variances will not constitute a grant of special privileges inconsistent with the limitations upon other properties within the vicinity of the subject property.
- G. The proposed detached sign meets the required area and height standards for the DB-1 zoning District.
- H. The outdoor seating area furthers the goals of the General Plan by creating a more active, pedestrian-friendly, environment sought for in the Downtown and Transit Character Areas.
- I. The proposed project meets the criteria of Section 11-80-3 of the MZO for approval of a Variance.
- J. The proposed project meets the criteria of Section 11-70-5(E) of the MZO for approval of a SUP.

#### **Neighborhood Participation Plan and Public Comments**

The applicant mailed the required notification letters to all property owners within 500 feet of the site. As of writing this report, staff has not been contacted by any resident or property owner to express support or opposition to the request.

#### **Staff Recommendations:**

Based on the application received and preceding analysis, Staff finds the request for a variance to 1) Reduce the required front landscape setback and building setback and 2) Allow a detached sign to be placed in the future ROW meets the approval criteria of Section 11-80, and the request for a SUP to allow for an outdoor seating area as an accessory use to a restaurant in a commercial development meets approval criteria of Section 11-70-5(E), and therefore recommends approval with the following conditions:

#### **Conditions of Approval:**

- 1. Compliance with the final site plan, landscape plan, and sign plan submitted.
- 2. Compliance with all City Development Codes and regulations.
- 3. Compliance with all requirements with conditions of approval for case ZA04-001TC except as modified by this request.
- 4. Prior to the issuance of the sign permit, the applicant shall:
  - a. Submit plans demonstrating compliance with sight visibility per City of Mesa Engineering Design Standards; and
  - b. Remove all non-conforming signs from the subject site
- 5. The owner is responsible for all costs associated with removing the seating area and associated infrastructure when and if the future right-of-way is dedicated or acquired by the City of Mesa.
- 6. All trees on the site substituted with palms trees will be of adequate height per table 11-33-2(C)(1) of the Mesa Zoning Ordinance.