

Board of Adjustment

Minutes

City Council Chambers, Lower Level January 4, 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
Lisa Davis
Kaelee Wilson
Cierra Edwards
MaryGrace McNear
Charlotte McDermott
Rebecca Gorton
Mike Gildenstern

Others Present:

Carlos Bustamante
Pat Mahoney
Kelly Mahoney
Sonny Treloar
Rich Williams
Cheryl Sutton
Victor Timpauer

The study session began at 4:31 p.m. and concluded at 5:12 p.m. The Public Hearing began at 5:30 p.m. before adjournment at 7:15 p.m., the following items were considered and recorded.

Study Session began at 4:31 p.m.

- A. Zoning Administrator's Report (none)
- B. The items scheduled for the Board's Public Hearing were discussed.

Study Session adjourned at 5:12 p.m.**Public Hearing began at 5:30 p.m.****A. Consider Minutes from the December 7, 2016 Meeting:**

A motion was made by Boardmember Rembold, seconded by Boardmember Worcester, to approve the December 7, 2016 minutes as written.

Vote: Passed (7-0)

B. Consider Minutes from the December 7, 2016 Executive Session Meeting:

A motion was made by Boardmember Tolman, seconded by Boardmember Rembold, to approve the December 7, 2016 Executive Session minutes as written.

Vote: Passed (7-0)

C. 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, including adjustment to condition #3 in Case BA17-002, was made by Boardmember Swanson and seconded by Boardmember Worcester.

Vote: Passed (7-0)

Public Hearing adjourned at 7:15 p.m.

Case No.: BA16-062 **APPROVED WITH CONDITIONS**

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 December 7, 2016**

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 BA16-062 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 sign plan submitted, except as modified by the conditions listed below.
2. The blue color on the posts for the sign shall be removed and painted a consistent color that matches the stone.
3. The detached sign shall not exceed 8-feet in height and 62 square feet in sign area.
4. The electronic message sign shall comply with all illumination intensity levels listed in Section 11-41-8-D-18c.
5. The electronic message display shall change a maximum of once per 30 seconds.
6. Compliance with all requirements of the Building Safety Division with regard to the issuance of sign permits.

Vote: Passed (7-0)

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

FINDINGS FOR CSP:

- A. The current Comprehensive Sign Plan allows for a maximum of 8' in height and 30 square feet in sign area for individual tenant detached signs.
- B. The applicant is requesting 12' in height and 74 square feet in sign area.
- C. The proposed sign does not meet the intent of the original Comprehensive Sign Plan (BA04-025) that took both attached signs and detached signs into consideration to create a cohesive sign package.
- D. The proposed is not of higher quality over the existing sign.
- E. There are no special conditions or hardship on this property that would warrant the increase in sign height or square footage.

FINDINGS FOR SUP FOR ELECTRONIC MESSAGE DISPLAY FREQUENCY

- 1 The speed limit is 45 mph for this portion of Southern Avenue.
- 2 There is minimal sign clutter in this area so the electronic message changing every 30 seconds Won't be detrimental or cause a distraction.

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Case No.: BA16-068 **Continuance to February 1, 2017**

Location: 463 N. Grand

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) **Continued from December 7, 2016**

Decision: Continuance to February 1, 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 Boardmember Worcester to continue case BA16-68 to the February 1, 2017 meeting.

Vote: Passed (7-0)

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Case No.: BA17-001 **Continuance to February 1, 2017**

Location: 2700 E. Main Street (District 2)

Subject: Requesting: 1) a Substantial Conformance Improvement Permit (SCIP), and; 2) a Variance to allow a shade structure to encroach into the required setbacks in the GC zoning district. (PLN2016-00779)

Decision: Continuance to February 1, 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 Boardmember Worcester to continue case BA17-001 to the February 1, 2017 meeting.

Vote: Passed (7-0)

Case No.: BA17-002 **APPROVED WITH CONDITIONS**

Location: 241 and 249 S. Alma School Road (District 4)

Subject: Requesting: 1) a Development Incentive Permit (DIP) to allow development of an auto sales facility in the LI zoning district. (PLN2016-00557)

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 BA17-002 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. Compliance with all requirements and conditions of approval for site plan, Z16-060.
3. Compliance with all requirements and conditions of approval for forthcoming and required Design Review Board Case DR17-005.
4. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.
5. Consistent with staff recommendations as indication in the table of this report.
6. A bike rack shall be required to accommodate a minimum of three bicycles.

Vote: Passed (7-0)

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

FINDINGS:

- A. The development conforms to the General Plan's description of an Employment character area.
- B. The site is 14,000 SF, which is considerably under the 2.5-acres maximum allowed for a DIP application, and the lot has been in its current configuration for more than 10 years.
- C. The site has direct access to existing utility services.
- D. The proposed auto sales dealership compares favorably with the level of development of existing and surrounding industrial/employment uses and developments.
- E. Compliance with the Design Review approval will ensure that the level of architectural detailing and design elements on the building will meet the Design Standards listed in the Zoning Ordinance.
- F. With the recommended conditions of approval, the landscape quantities and materials meet the intent of the development standards listed in the Zoning Ordinance.

Vote: Passed (7-0)

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Case No.: BA17-003 **Continuance to February 1, 2017**

Location: 4326 E. Fighter Aces Drive (District 5)

Subject: Requesting a Special Use Permit (SUP) to allow for more than four (4) special events in a calendar year in the LI-PAD zoning district. (PLN2016-00830)

Decision: Continuance to February 1, 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 Boardmember Worcester to continue case BA17-003 to the February 1, 2017 meeting.

Vote: Passed (7-0)

Case No.: BA17-005 **APPROVED WITH CONDITIONS**

Location: 2724 South Signal Butte Road (District 6)

Subject: Requesting a Special Use Permit (SUP) for modification of a Comprehensive Sign Plan in the LC-PAD zoning district. (PLN2016-00860)

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 BA17-005 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 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 area of all seven of the detached signs shall not exceed a total of 288.00-SF.

Vote: Passed (7-0)

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

- A. The CSP remains consistent with the design standards initially adopted for Mulberry Marketplace for detached sign design and size.
- B. The proposed Mulberry Marketplace sign is 13.92 SF.
- C. The sign structure is aesthetically pleasing and mimics the design aesthetic adopted of the entire Mulberry Development Master Plan.
- D. The design of the signs is also consistent in material and design with the architecture of the center.
- E. The sign criteria within the CSP is tailored to the unique size and design of this specific development and promotes superior design.
- F. The proposed CSP is largely consistent with current Code requirements, is complimentary to the development, and consistent with the use of the property. Therefore, the CSP, with the recommended conditions, remains be compatible with, and not detrimental to, adjacent properties or the neighborhood in general.

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Case No.: BA17-007 **WITHDRAWN**

Location: 2701 E. Allred #61 (District 2)

Subject: Requesting a Variance to allow an addition to a manufactured home in a manufactured home park to encroach into the required side yard in the RM-4 zoning district. (PLN2016-00864)

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 Boardmember Worcester to withdraw case BA17-007.

Vote: Passed (7-0)

Case No.: BA16-061 **Denied**

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 December 7, 2016**

Decision: Denial

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 explained that there used to be 50' Ficus trees where the fence was located, but he decided to remove the trees, which were damaging his driveway concrete slab. He went on to explain that the house has been re-financed 4 times, and no home inspector has raised the question of non-compliance, and only after receiving the code violation, he was aware that the location of the gate was in violation of city code. The applicant stated that there wasn't a boat stored behind the fence as had been reported by Staff, but the trailers that are currently place in the enclosed area will need to be relocated at a cost, if he is not allowed to retain the fence. He stated that he understands that one of the issues is visibility and safety, and that there has never been any incident to suggest there is a visual impairment. Mr. Timpauer explained to the Board that there is an original post from the initial construction of the structure, but that the gate has been modified with upgraded wrought-iron fencing in place of the removed ficus trees. In conclusion, Mr. Timpauer stated that he is requesting approval to retain the fence, and that he has concerns for the security of the items that he stores behind the RV gate.

Zoning Administrator, Gordon Sheffield explained that the applicant has 3 options; either he can re-set the gate at an angle to maintain the required view triangle, he can reduce the height of the fence to 4.5' with the top 1' of the fence being composed of transparent materials, with the bottom 3.5' of the fence composed of solid materials, or he can square off the gate/fence and set it back 10 feet from the property line, with no angle needed, and retain the 6' height.

The applicant explained for the Board that he would prefer to keep the gate and fence the way it is, but he is open to changing the configuration to come into compliance.

Mr. Sheffield went on to explain that if the Board approved the variance as requested, the applicant wouldn't need to make any change, but if the applicant were to move the gate in line with the visibility safety triangle, he would move closer to the intent of the Zoning Ordinance. Mr. Sheffield went on to explain that Staff doesn't feel that the

application meets the four-part test for Variance, as a key lot situation is an infrequent occurrence, but the Zoning Ordinance provides for it. Mr. Sheffield closed by saying that if the Board were to approve of the Variance, he would suggest including a condition requiring an arrangement to maintain the safety sight distance triangle.

Boardmember Swanson stated concerns about not creating a special privilege, as the front yard is currently being used for storage, which the Code does not allow.

Chair Siebers reaffirmed that the basic nature of the request is to use the front yard for storage, and that would be seen as granting of a special privilege.

Motion: A motion to deny case BA16-061 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Rembold and seconded by Boardmember Swanson to deny the case.

1. Compliance with the site plan and elevations submitted.
2. A 10-ft by 10-ft site-visibility triangle shall be created and maintained in which the maximum height of the fence be reduced to at least 3.5-ft or lower. The site visibility triangle will begin at the intersection of the west and north property line and created 10-ft east of the west property line, and 10-ft south from the north property line. The fence located the remaining distance along the north edge of the driveway west to the front of the residence may be as high as 6-ft.

Vote: Passed (7-0)

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

1. The home was built in the 1980s, and surrounding lots were the subject of several subdivision redesigns that resulted in this lot becoming a key lot.
2. The applicant would like to enclose additional area in their side yard with a 6-ft high fence. This side yard area is bordered on one side by a 6-ft fence that is allowed as part of the rear yard surrounding the abutting corner lot.
3. Although key lots are not common, the design of subdivisions that have key lots occurs frequently enough so as to not be considered a special circumstance.
4. The granting of the variance would constitute a special privilege to this property owner over other properties in the area. The applicant is seeking to add a 6-ft fence in an area not typically authorized for fences that high.

Vote: Passed (7-0)

Case No.: BA17-004 **Approved with Conditions**

Location: 2620 W. Naranja Avenue

Subject: Requesting a Variance to encroach in rear setbacks in the RS-6 PAD zoning district. (PLN2016-00853)

Decision: Approved with Conditions

Summary: The applicant, Craig Bryan, 2620 W. Naranja explained the case to the Board. He explained that his proposal was to add a garage on the Los Flores side of his house, and take the existing garage along Naranja and convert it to livable space. The applicant explained that he would be eliminating the drive way along Naranja, and that he would like the current side yard to be seen as the front yard. Mr. Bryan proposed 3 options for the siting of his new garage; 1) set back from his neighbor's house to the north; 2) in line with his neighbor's house to the north, in line with the street, about 8 degrees off a straight line with the neighbor's garage; and 3) garage set back, parallel with neighbor's yard, parallel with neighbor's house along street.

Boardmember Swanson confirmed that the applicant purchased his home in April and reaffirmed with the applicant that the Design approval obtained from Dobson Ranch is based on aesthetics, and that the applicant must follow all local building codes and setback requirements.

The applicant stated that the house had an addition put on in the 1990s, and that the garage was located in the middle of the elevation along Naranja, creating an awkward flow. Mr. Bryan explained that the new addition to the home will accommodate his family of four, and his disabled mother-in-law. He went on to explain for the Board that when he purchased the home in April, he didn't know that the required "backyard" was interpreted to be on the north side of the property. Mr. Bryan added that he has attempted to contact the neighbor to the north concerning the addition, but has gotten no response.

Staffmember Kaelee Wilson explained to the Board that the applicant has been made aware that Staff is recommending denial of all 3 of his proposed solutions, as all 3 are still an encroachment.

Sonny Treloar, at 2756 S. Las Flores, was in favor of what the applicant was proposing to do, but did not speak.

Cheryl Sutton, at 2605 W. Naranja Ave, spoke in support of the project, and explained that the lot is uniquely shaped, and that the applicant has spent a lot of time looking to improve the house and grounds to enhance the neighborhood, and knows that Mr. Bryan is willing to make accommodations to make the improvements to his property as well as come into compliance with Code.

Rich Williams, 2624 W. Naranja, spoke in support of the project. He felt, that as a realtor, the natural definition of the backyard is the view down to the lake, and should be considered that way.

Staffmember Wilson explained that the primary concern in this case is in regard to the rear setback, as it appears that the triangular piece of property on the west side of the home was purchased in the 90s to allow the home to reconfigure its frontage to Naranja on the south, from Las Flores on the east. Ms. Wilson stated that livable areas are allowed a 10' encroachment in to the rear setback, but the proposed livable space is 7' from the required side yard setback, so there would be a 3' encroachment in this situation. Ms. Wilson went on to state that the home essentially functions with two frontages, but the north side of the property is distinctly the rear yard, based on the frontage along Naranja, that was established in the 90s, with the addition to the home.

Boardmember Swanson reminded the Board to be careful of granting a special privilege, as it is clear that the frontage of the home was built on Naranja, but that he would like to find a way to allow the homeowner to make improvements to his property.

Chair Siebers stated that the previous owner changed the rules to avoid going to the variance process, and created a circumstance on the property.

Ms. Wilson confirmed this by saying that the plan reviewer assessing the addition at the time in the 90s used the recently dedicated western triangular parcel to justify the frontage of the home being seen on Naranja.

City Attorney, Mary Grace McNear informed the Board that from a legal perspective, to request an interpretation of the frontage, the Board could request a continuance to February; and the applicant would be able to apply for dual frontage. She added that Mr. Sheffield would not be allowed to make an interpretation of the frontage, as he has recused himself, so that decision would be made by the acting ZA. Ms. McNear went on to explain that although there would be a delay in the applicant receiving a decision, an informal interpretation would be free of charge, but added that an informal interpretation could be opposed by anyone, and that would bring the applicant back to the Board for a formal interpretation.

Boardmember Tolman felt that special conditions apply to the property, and that she was leaning towards support of a variance.

Motion: A motion to approve case BA17-004 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Swanson that special conditions were not created by homeowner, and that strict application of the Zoning Ordinance would deprive him of

privileges that others enjoy. Mr. Swanson proposed allowing up to a 5' encroachment on the rear (north) yard, but stipulated that the applicant has to remove the cement driveway on the Naranja (south) yard, and the front of the garage has to be placed behind the front of the front line of the neighbor's house to the north and seconded by Boardmember Tolman to approve with the following conditions:

1. Compliance with the site plan submitted, except as modified by the conditions listed below:
2. The property would be allowed a 5' encroachment on to the required rear (North) setback.
3. The cement driveway on the front (north) setback must be removed.
4. The front line of the proposed garage must be located behind the front line of the house on the property to the north.
5. Compliance with all requirements of the Development Services Division with regard to the issuance of permits.

Vote: Passed (4-3)

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

- A. The property is zoned RS-6-PAD and has a 20' rear and side setback for garages and a 10' rear setback for a carport.
- B. The lot frontage when platted was off the adjacent street, Las Flores.
- C. An addition completed in the 1990's re-oriented the front of the lot from Las Flores to Naranja, and the west property was changed from being a rear property line to a side (and thus reducing the setback at that time from 20-ft to 5-ft). This also revised the north property line from being a side yard to being a rear yard, and this increase the setback from 10-ft to 20-ft. Therefore, the assignment of the north property line as being a rear property line, and the associated rear yard setback were the conscious choice of the previous 1990s owner, and not necessarily a function of the original 1970s subdivision plat design.
- D. The approval of this variance would grant a special privilege to this property owner over others in similar circumstances.

Vote: Passed (4-3)

Case No.: BA17-006 **Approved with Conditions**

Location: 1144 E. 6th Avenue

Subject: Requesting a Variance to allow a room addition and patio to encroach in the required rear yards in the RS-6 zoning district. (PLN2016-00862)

Decision: Approved with Conditions

Summary: Carlos Bustamante, 3345 W. Evans Dr., Phoenix spoke on behalf of the owner of the property for translation purposes, and stated that the owner did not know that permits were required, due to cultural differences. The applicant explained that the addition was formerly a walk-in closet, but is in the process of being remodeled to a master bathroom, and the request is for a 2' encroachment in to the required rear setback. The applicant closed by saying that the parcel in question is 10% smaller than the RS-6 average lot size, and the parcel to the north is vacant so a closer configuration to the property line would not create a fire safety issue.

Staffmember Cierra Edwards clarified for the Board that although there is an encroachment on the east side of the property, the application is for a 2' encroachment in to the required rear setback of the property for livable space. Ms. Edwards explained that a non-permitted building is being converted to a master bedroom, in to the rear yard in which a 20' rear setback is required (with an encroachment allowance of a 10' for livable space), but the proposed structure is protruding 12' into the setback, so a 2' variance is required. She closed by saying that an RS-6 lot is typically 6,000 sq. ft., but the lot under review measures roughly 5,484 sq. ft., almost 10% smaller than an average RS-6 lot dimension.

Motion: A motion to approve case BA17-006 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Tolman and seconded by Boardmember Swanson to approve with the following conditions:

1. Compliance with the site plan submitted, except as modified by the conditions below;
2. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.
3. The variance applies to the 2' encroachment into the required rear yard setback, and not to the 1' encroachment into the required side yard setback.

Vote: Passed (7-0)

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

- A. The house was built in the 1945 within the RS-6 zoning district.
- B. The lot is not unique in shape. It is a standard rectangular lot oriented perpendicular to the abutting street (6th Ave).
- C. The lot is surrounded by homes and lots of similar size and shape.

- D. The existing lot is undersized for a standard RS-6 zoned lot. The parcel is 5,484 SF in total area. The lot is 516 SF smaller than the minimum lot area for a RS-6 lot.
- E. The rear yard setback for livable space in the RS-6 zoning district is 20'. But in MZO may encroach by 10' into the required rear yard for up to one half the width of the building.
- F. The property currently maintains a single carport.
- G. The lot does have unique conditions related to the site in the form of the smaller lot area and smaller width and depth of the lot. This smaller area makes it difficult to add livable area and comply with the rear yard setbacks requirement.
- H. Because there are options available to building livable area in the front or rear yards without variance, the applicant has not provided sufficient justification related to the land, which would justify the degree of the requested variance.
- I. Further, strict compliance with Code would not completely deprive the property of the ability to construct livable additions at the front of the house and/or at the rear of the house.

Vote: Passed (7-0)

Case No.: BA17-008 **Continuance to February 1, 2017 for Re-advertising**

Location: 254 S. Mulberry Street

Subject: Requesting an appeal of the denial of a medical marijuana dispensary registration in the LI Zoning District. (should be last case) (PLN2016-00842)

Decision: Continuance to February 1, 2017 for re-advertising

Summary: City Attorney Mary Grace McNear explained to the Board that Staff had made a recommendation for continuance on Case BA17-008, and she believed that the applicant may oppose the continuance. Ms. McNear went on to state that although the applicant may want to speak on other details of the Case, the Case was only advertised and agendized for an appeal of an interpretation of a denial of a medical marijuana dispensary. Ms. McNear explained that any other discussion outside of what has been noticed would be a violation of the Open Meeting Law because the public hasn't had proper notice via publication or on an agenda. She concluded by saying that the applicant may talk about why they don't think a continuance is appropriate, but she counseled the Board to not get too far away from what has been agendized.

Boardmember Swanson stated that he would not be party to a violation of Open Meeting Law, and if it started to occur, he would excuse himself from the Meeting.

Chair Siebers reaffirmed to the speaker, William Patrick Mahoney, that a continuance to the February 1, 2017 Meeting had been recommended by Staff, and confirmed that he understood that no violation of Open Meeting Law would be allowed to take place.

Mr. William Patrick Mahoney, 5210 N. Central, Phoenix, owner of the property, explained how he was denied in mid-October based on separation requirements, and walked the Board through the details of his process for appeal for an informal and formal interpretation.

Boardmember Swanson restated that what was agendized is for the appeal of a denial of a medical dispensary registration, and the Board must comply with Open Meeting law.

Gordon Sheffield explained that a re-advertising is necessary to correctly satisfy the requirement to have a full range of considerable options available to satisfy the applicant's request at the February Meeting.

Motion: It was moved by Boardmember Swanson and seconded by Boardmember Worcester to continue case BA17-008 to the February 1, 2017 meeting.

Vote: Passed (7-0)

OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,

Gordon Sheffield, AICP CNU-a
Zoning Administrator