Board of Adjustment

Minutes

City Council Chambers, Lower Level
February 1, 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
Charlotte McDermott
Steve Hether
Mike Gildenstern

Others Present:
Pete Chavez
Mary Chavez
Matt Cash
Pat Mahoney

The study session began at 4:30 p.m. and concluded at 5:17 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 4:30 p.m.

A. Zoning Administrator's Report – Confirmed April 12, 2017 Special Meeting for Case BA16-049
B. The items scheduled for the Board's Public Hearing were discussed.

Study Session adjourned at 5:17 p.m.
Public Hearing began at 5:30 p.m.

A. Consider Minutes from the January 4, 2017 Meeting:

A motion was made by Boardmember Swanson, seconded by Boardmember Montague, to approve the January 4, 2017 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 #12 in Case BA17-006, was made by Boardmember Swanson and seconded by Boardmember Worcester.

Vote: Passed (7-0)

Public Hearing adjourned at 7:15 p.m.

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

Location: 463 North Grand Avenue (District 1)

Subject: Requesting Variances to allow: 1) a carport addition and a detached garage to encroach into the minimum side yard setbacks; and 2) deviation from the required building form standard for carports; both in conjunction with an existing single residence in the RS-6-HP zoning district. (PLN2016-00759) **Continued from January 4, 2017**

Decision: Continuance to March 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 March 1, 2017 meeting.

Vote: Passed (7-0)

Case No.: BA17-003 **WITHDRAWN**

Location: 4626 East 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) **Continued from January 4, 2017**

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 BA17-003.

Vote: Passed (7-0)

Case No.: BA17-015 **APPROVED WITH CONDITIONS**

Location: 1118 West Guadalupe Road (District 3)

Subject: Requesting: 1) a Substantial Conformance Improvement Permit (SCIP); and 2) a modification of Special Use Permit (SUP); both to allow modifications to an existing car wash facility in the LC District. **Continued from January 4, 2017 for re-advertising**

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 BA17-015 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, narrative and landscape plan submitted, except as modified by the conditions below.*
2. *Compliance with all requirements and conditions of approval for the previously approved SUP, BA86-027.*
3. *Application for, and compliance with all requirements of Administrative Design Review. Review will include the site plan, landscape plan and elevations with finish materials, architectural details and colors.*
4. *Any modification to the height or area of the detached sign will require a modification to the existing Comprehensive Sign Plan.*
5. *The vacuum enclosure roof shall be comprised of a solid building material, and shall not consist of fabric or cloth.*
6. *A Good Neighbor Policy shall be submitted with the Administrative Design Review application.*
7. *The landscaping shown to the east of the area labeled "existing covered employee parking" shall be moved to the north and south of the canopy to make parking more accessible.*

Vote: Passed (7-0)

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

FINDINGS:

A. The proposed expansion of the car wash is allowed in the Limited Commercial (LC) zoning district with the approval of a modification to the existing Special Use Permit.
B. The proposed expansion of the car wash is compatible with adjacent developments, and can be complimentary to existing surrounding uses.
C. Adequate public services, public facilities and public infrastructure are available to serve the proposed project.
D. The proposed expansion of the car wash, with the recommended conditions of approval will not be injurious or detrimental to the adjacent or surrounding properties in the area.
E. The vacuum system is in a separate enclosure and meets the sound attenuation design requirements for less than 55 decibels of sound reading level at the property line.
F. The project site exceeds the minimum 10% landscape design standard required for car washes.

Case No.: BA17-001 **APPROVED WITH CONDITIONS**

Location: 2700 East 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) **Continued from January 4, 2017**

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 BA17-001 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 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 permits.
3. **Add 3 trees, minimum 15 gallon, and 10 shrubs, 5 shall be minimum 5 gallon in size, in the existing landscape areas adjacent to Main Street.**
4. **Removal of the barbed wire and chain link fence adjacent to the east property line and install a minimum 8' high masonry wall from the north property line to the corner of the building where the wall shall return to the building to provide required screening of the outdoor storage.**

Vote: Passed (7-0)

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

FINDINGS FOR VARIANCE:

A. The major automobile repair facility was built in the late 1970's.
B. The lot is not unique in shape. It is a standard square lot oriented perpendicular to the abutting street.
C. The existing lot is undersized to meet MZO 11-31-6 that requires a minimum 1-acre sized site for major/minor automobile facilities. The parcel is 23,710 SF in area or .5 acres.
D. The smaller lot was not created by the owner.
E. Granting of the variance will not constitute the granting of special privilege.

FINDINGS FOR SCIP:

F. The site was constructed in 1979 with a 1,760 SF covered canopy placed adjacent to the north property line.
G. Existing on the site is a 4,811 SF commercial building, a 1,760 SF canopy and 14 parking spaces on the .5-acre site.
H. The proposed improvements do not create a new non-conformity.
I. Full compliance with development standards would require demolition of the existing site improvements including removal of parking and circulation.
J. The proposed improvements together with the recommended conditions of approval will help bring the site into a closer degree of conformance with current standards.

Case No.: BA17-009 **APPROVED WITH CONDITIONS**

Location: 430 South Esquire Way (District 3)

Subject: Requesting 1): a variance to allow for buildings to exceed the maximum roof area allowed for a detached accessory building; and 2) and a variance to allow the detached accessory building to encroach into a required side yard; in the RS-9 District. (PLN2016-00930)

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 BA17-009 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 property is zoned RS-9, but is approximately 30,000 square feet in size between both parcels, which is over 3-times larger than the minimum area for this zoning district
B. The property is located within Esquire Estates, which maintains an agrarian character with many properties actively used for livestock and animal keeping.
C. There are properties throughout Esquire Estates that have detached accessory buildings that are encroaching within setbacks and exceed 50 percent of the roof area of the primary dwelling. Whether or not these structures were in existence prior to annexation, they are considered an accepted character of the neighborhood given the Council's acceptance of the allowing livestock on lots less than 1-acre in size at the time of annexation.
D. Based on the existing character and previously approved variances within Esquire Estates, the approval of the two requested variances will not grant special privilege to this property owner.
E. The drywell that exists on the property is pre-existing and was installed for storm water retention when the house was constructed in Maricopa County.
F. The drywell and the septic location removes viable options for allowing vehicular access to a shade cover or enclosed building, something generally accepted as typical or normal for larger lot properties.

Vote: Passed (7-0)

Case No.: BA17-010 **APPROVED WITH CONDITIONS**

Location: 2055 East Hampton (District 3)

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) with regard to the installation of new carports placed over existing parking spaces for a multiple residence development in the RM-3 District. (PLN2016-00928)

Decision: Approved with Conditions

Summary: The applicant, Jared Calhoun, spoke on behalf of concerned neighbor Tom Hagen who had already left the meeting, who had concerns with potential covered parking structures along the east side of the property abutting the adjacent neighbors. Mr. Calhoun assured Mr. Hagen that there are no covered parking canopies planned along the east side, so his concerns were relieved. Also, the applicant noted that he would pass along Mr. Hagen's complaint about the dilapidated fence along the property to the management of the complex.

Motion: A motion to approve case BA17-010 with the acceptance of Findings of Fact and Conditions of Approval as read was made by Boardmember Swanson and seconded by Boardmember Montague to approve with the following conditions:

1. Compliance with the site plan, narrative, and exhibit submitted.
2. Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.
3. Compliance with all established setbacks within the Superstition Villas apartment development

Vote: Passed (7-0)

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

A. Superstition Villas currently has no covered parking within the complex.
B. The proposed 26 carport structures will cover 238 parking spaces.
C. The deviations requested are consistent with the degree of change requested to improve the site.
D. The design of the carport is consistent in material and design with the architecture of the center.
E. The proposed improvements will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods

Case No.: BA17-011 **Continuance to March 1, 2017**

Location: 536 South Drew (District 4)

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow expansion of an existing industrial building in the GI District. (PLN2016-00934)

Decision: Continuance to March 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 BA17-011 to the April 5, 2017 Meeting.

Vote: Passed (7-0)

Case No.: BA17-014 **APPROVED WITH CONDITIONS**

Location: 5037 East Broadway Road (District 2)

Subject: Requesting a Special Use Permit (SUP) to allow an existing residential care and assisted facility to also be utilized as a nursing home facility in the RM-4 BIZ District. (PLN2016-00922)

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 BA17-014 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, floor plans, and elevations submitted.
2. Compliance with all requirements of the Development and Sustainability Department in the issuance of building permits.
3. The Special Use Permit to allow a nursing home is applicable to all of the cottages.

Vote: Passed (7-0)

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

1. The current Zoning Ordinance requires a SUP for nursing homes in the RM-4 zoning district.
2. The site is an existing assisted living facility that would like to provide hospice care in one of the cottages.
3. The intensification of the level of care reclassifies the use from an assisted living facility to a nursing home.
4. The proposed Special Use Permit will not be detrimental to the surrounding properties as the site has already been operating an assisted living facility, and the operation of the site as a hospice/nursing facility for one of the ten buildings on-site will not change the impact of this site to neighboring properties.

Case No.: BA17-016 **APPROVED WITH CONDITIONS**

Location: 1300 South Country Club Drive (District 3)

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow redevelopment of a commercial center in the LC District. (PLN2016-00937)

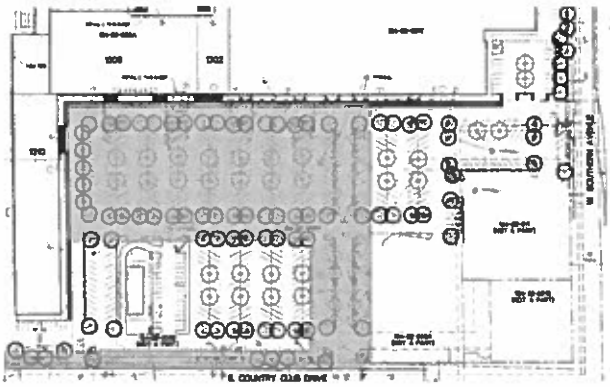
Decision: Approved with Conditions

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

Motion: A motion to approve case BA17-016 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 and landscape 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. As per MZO Section 11-30-9 screening of roof mounted mechanical equipment shall be required.
4. Screening shall be provided to meet the requirements of Mesa Zoning Ordinance (MZO), Section 11-30-9.H, for parking spaces adjacent to Country Club Drive and Southern Avenue. Screening of the parking and circulation areas adjacent to Country Club Drive shall be addressed at phase 1.
5. Screening of the truck docks shall be required as per MZO section 11-30-13 shall include a minimum of 8' high masonry wall. If the truck docks are no longer required they shall be removed and replaced with appropriate landscape area. Review and approval shall be required with the Design review of this project.
6. There shall be a minimum of 20 bicycle parking spaces provided throughout the site as per MZO Section 11-32-8.
7. Design Review and approval of the proposed elevations, placement screening of generators, screening of parking and circulation and truck docks, and landscape plan.
8. Add an additional three trees at the foundation base of the center similar to the 7 trees proposed within the foundation base.
9. Add a minimum 5' wide landscape area with appropriate landscape material at the west side of the employee patios. Review and approval required thorough Design Review.
10. All missing and dead landscape material shall be replaced adjacent to Vineyard that is consistent with the 1987 Zoning Ordinance. 1 tree, minimum 15-gallon size, and three shrubs per 25' of street frontage. This can be phased with the project and is required to have approval through Design Review.
11. The proposed new 29 parking spaces at the west side of the site shall include the required landscape islands at 1 per 8 parking spaces per MZO 11-30-4.

12. ***Phase 1 shall include the installation of landscape within the parking lot, main drive aisle and adjacent to Country Club Drive indicated as part of phase 2 as highlighted in image1.***



Vote: Passed (7-0)

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

A. The 15± acre site was developed in the early 1970's. There is a total of 199,727 square feet of existing in-line retail shop space.
B. A portion of the retail space will house a call center use. The proposed call center use will be expanded into more of the retail spaces.
C. With the approved modifications, the improvements to the site will include installation of landscape material, appropriate screening for the parking and circulation areas adjacent to Country Club Drive and Southern Avenue, installation of landscape material adjacent to country Club Drive and Southern Avenue and within the existing landscape islands and the addition of new diamond landscape islands within the parking field; and increased foundation base at the main entrances of the building.
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 together with the recommended conditions of approval will help bring the site into a closer degree of partial conformance with current standards.
G. The proposed improvements will result in a development that is compatible with, and not detrimental to, adjacent properties or neighborhoods.

Case No.: BA17-013 **Continuance to April 5, 2017**

Location: 1155 S. Country Club Drive (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)

Decision: Continuance to April 5, 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 BA17-013 to the April 5, 2017 meeting.

Vote: Passed (7-0)

Case No.: BA17-017 **Continuance to April 5, 2017**

Location: 1440 N. Crismon Road (District 5)

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; 3) a variance to allow the floor area of the accessory dwelling unit to exceed 30 percent of the roof area of the primary dwelling unit and; 4) a Special Use Permit (SUP) to allow the rental of the accessory dwelling unit and/or primary dwelling unit; all in the RS-43 District. (PLN2015-00519)

Decision: Continuance to April 5, 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 BA17-017 to the April 5, 2017 meeting.

Vote: Passed (7-0)

Case No.: BA17-012 **Request 1: Approved with Conditions**
Request 2: Denied

Location: 525 S. Hunt Drive (District 4)

Subject: Requesting: 1) a variance to allow the number of covered parking spaces to be reduced below the required minimum; and 2) a variance to allow an encroachment of an accessory structure into the required rear and side yards; in the RS-6 District. (PLN2016-00938)

Decision: Request 1: Approved with Conditions
Request 2: Denied

Summary: Chairperson Siebers called Case BA17-012 to be heard, and then confirmed with the Board that the requests would be voted upon in 2 parts based on Request 1, and Request 2.

Request 1

Mrs. Whitney Jensen, spoke on behalf of her mother-in-law, Myrna Jensen, the owner of the property at 525 S. Hunt Drive. Ms. Myrna Jensen explained her case to the Board.

Mrs. Whitney Jensen, highlighted a few points in her submitted justification statement, explaining that the shed has not impacted marketability of other homes in the area, and that only the roof line and gutter of the detached structure in the southeast corner of the rear yard, go to the fence line. Mrs. Jensen closed by saying that the property is kept up better than others in area through the use of the shed for storage, and that other properties in the area have sheds that encroach into required setbacks as well as enclosed carports.

Boardmember Swanson, stated that he has no issues with granting a variance to allow the number of covered parking spaces to be reduced below the required minimum, and asked if there could be a variance granted to allow reducing the required 6' setback between the primary and detached accessory structure.

Staff member Davis explained that the 6' separation requirement is derived from the definition for a detached structure, so a variance cannot be requested to deviate from those standards.

Zoning Administrator Sheffield explained that the requirement is independent of the Building Code, but based on a former building code requirement for construction. Mr. Sheffield stated that currently, if the detached accessory structure is placed closer to 6' to the primary structure, the building would require a 1-hour rated construction method, as the Zoning Ordiance, defines it as "separation". If the structure were to be constructed at a 1-hour construction rating, it can be defined as "attached".

Staff member Davis stated to the Board that although the shed may have been placed there for a long time, from researching aerials from 2001-2013 of the property, the attached addition was seen as being constructed later.

Boardmember Montague stated that he doesn't have a problem with the required parking reduction, even if a variance was granted allowing the detached structure, the process would still bring about many steps to bringing the building into compliance.

Request 2

Staff member Davis explained to the Board that the applicant would not need a variance if the shed were to be moved to a 6' setback.

Boardmember Tolman stated that she would not be able to support a variance since building permits had not been properly obtained for many of the projects on the property.

Request 1 Motion: It was moved by Boardmember Swanson and seconded by Boardmember Rembold to approve Request 1 with conditions in case BA17-012, with the following conditions:

1. Compliance with the site plan, narrative and exhibits submitted.
2. Compliance with all requirements of the Development Services Division in the issuance of building permits **for all structures, remodels and additions.**
3. One 8' x 18' parking space shall be designated outside of the 20' front yard setback.

Request 1 Vote: Passed (7-0)

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

A. The house was built in 1961 with a two car carport.
B. The lot does have unique conditions related to shape of the lot. It has two street frontages. The front line of the property follows the cul-de-sac shape and creates a large front yard at the street intersecting corner of the lot. The unusual shape makes it difficult to comply with the two covered parking spaces on the lot.
C. The front yard takes up more than one third of the lot in area has an unusual shape that makes it difficult to improve the property without the granting of a variance.
D. Per the MZO in 1958, a minimum of one-8' x 18' parking space outside of the required front yard was required for a single residence dwelling unit. In 1970 MZO was revised and required two on-site parking spaces behind the front yard setback.
E. Changes to the MZO in 2011 required two covered parking spaces behind the front yard setback.
F. Both staff and the property owner researched and could not locate any issued building permits for the conversion of the carport to livable space, the addition of the attached storeroom, or the electric to be added to the shed or detached storeroom.
G. The front yard setback for a garage or carport in the RS-6 zoning district is 20'.
H. There is not sufficient space to provide two covered parking spaces in the front yard or the rear yard without the obtaining a variance to encroach into the required yards.
I. Because there are options for the storerooms/sheds within the rear yard and allowances for detached structures, the property would be allowed to have the attached storeroom and the detached storeroom without variance. However, the applicant has not provided sufficient

justification related to the land, which would justify the degree of the requested variance for the shed.

J. 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.

Request 2 Motion: It was moved by Boardmember Rembold and seconded by Boardmember Siebers to deny Request 2 in case BA17-012.

Request 2 Vote: Passed (4-3; Tolman, Montague, and Curran voting nay)

Case No.: BA17-008 **Request 1:** **Upheld the Decision of the Zoning Administrator**
Request 2: Denied

Location: 254 S. Mulberry Street (District 3)

Subject: Requesting 1): an appeal of a denial of a medical marijuana cultivation facility registration; and 2) a variance to allow a medical marijuana cultivation facility to be less than the required distance from a school; in the GI District. (PLN2016-00842) **Continued from January 4, 2017 for re-advertising**

Decision: Request 1: Upheld the Decision of the Zoning Administrator
Request 2: Denied

Summary: Chairperson Siebers allowed Case BA17-008 to be heard and voted upon in 2 parts based on Request 1, and Request 2.

Request 1

Board member Tolman stated that she serves as a principal of a charter school, and that she has students that attend East Valley Institute of Technology (EVIT), but doesn't feel that the participation of the students from her school will affect her ability to make an unbiased decision.

Matthew Cash, 2736 E. Meghan St., Gilbert, the business owner, explained his involvement with the medical marijuana business to the Board. Mr. Cash explained that he had a real estate agent and an attorney vet the property, using the North American Industry Classification System to distinguish East Valley Institute of Technology (EVIT) as a "Junior College", and not a high school. Mr. Cash stated to the Board that he would not have spent all the time and money on the site if it were known to him to be regarded as a school by the City of Mesa. Mr. Cash closed by saying that eligible locations for his type of business are not easy to find.

Zoning Administrator Sheffield stated that Staff was not opposing medical marijuana, and the decision presented here was not as a result of seeing medical marijuana as an undesirable use. Mr. Sheffield explained that Staff analysis regarding registration eligibility of the site was based on two factors. The first factor was whether or not the Zoning Administrator felt that EVIT met definitional requirements of a school, which he determined that it did. And second, is the school within a 1200 feet of the planned medical marijuana facility, which he indicated that it was located inside of that distance. Mr. Sheffield went on to explain that EVIT qualifies as a school as it is regarded as a school in the Arizona Department of Education listing, the primary reason is for filling the demand for vocational education for students on a region-wide basis, so parent high schools don't have to. Mr. Sheffield stated that because many times these vocational paths require expensive equipment, and intensive training, and providing a single source to serve multiple schools helps to grow economies of scale. Several school districts share and benefit from the resources provided at EVIT, and it was to his understanding that that was the premise that EVIT set up in the first place, and the way he understands that school to function now. Mr. Sheffield explained that vocational credits, as well as more conventionally defined academic credits that apply to nursing and biology credits can be obtained at the

campus. He added that a Primavera charter school has a presence on the property, operating from a classroom on the campus, and while although Primavera uses an Internet model for educating many of their students, conventional academic courses such as English, Math, and Biology, are offered by the school.

Zoning Administrator Sheffield explained that the method found in the Zoning Ordinance, section 11-2-3 on Rules for Measurement, was the guide for determining the separation distance between the proposed (medical marijuana cultivation facility) use and the protected (East Valley Institute of Technology) use, in regard to why the application was initially denied. Mr. Sheffield explained that in measuring the radius for the buffer distance around a protected use, the measurement is taken as a straight line using a starting point from the outer-most property line of the protected use (school), including multiple parcel developments (campus) to the outside nearest wall from the building housing the proposed use. Mr. Sheffieid explained that in this situation, a measurement was taken from the northern wall of the "254 Building", located on the southwestern side of the applicant's property, to the south edge of the property line of the East Valley Institute of Technology. He stated that the measurement came to roughly 630'-650', well within the 1200' range, so there was no need for a survey. Mr. Sheffield added that the measurement was taken from the east portion of the property, but he wanted to point out that EVIT also owns the eastern portion of that same parcel that extends to Alma School Road.

Boardmember Swanson referenced language in the Zoning Ordinance that addresses whether EVIT offers curricula, academia, or education consistent with requirements of the State of Arizona State Board of Education's minimum 22 mandatory credits for High School students, grades 9-12, specifying what is classified as meeting the General Academic Education requirement. Mr. Swanson stated that the required, "Fine Arts, Technical, Vocational" category falls squarely within that definition, and that those courses of study are not seen as any different from science, math, English, etc., and regardless of the scope and focus of the institution that is providing them. He followed by saying that it is not a strain for the Zoning Administrator to find EVIT as falling within a definition of a School, and when City Council passed the Ordinance outlining the definition of schools, giving education experiences to children of certain ages. He closed by saying that the same children going to Mesa Public Schools, are going to EVIT, and that there shouldn't be a distinction, even though the experiences provided at EVIT may be more technical in nature.

Request 2

Mr. William Patrick Mahoney, at 5210 N. Central, Phoenix, applicant and landlord of the property, explained the case to the Board. He stated that he became involved when the application was denied because EVIT was determined to fall under protected class status. Mr. Mahoney explained that he felt that the rail line and multiple walls to the north should be seen as a sufficient enough barrier from EVIT to the medical marijuana cultivation facility.

James Leaf, the real estate broker on the project, was called to speak, but stated that his issues were more with the first request.

Zoning Administrator Sheffield showed the Board the City of Mesa Medical Marijuana Cultivation Map, and explained that City Council had set up the Ordinance in the goal making public hearings unnecessary for sites that met the criteria, and further wished to remove politics from the decision-making process for this activity. Mr. Sheffield explained that one of the reasons City Council wanted dispensaries located in industrial districts was to take advantage office-warehouse industrial buildings that are widespread throughout Mesa. Although there is a State requirement that mandates a 500' distancing buffer between dispensaries and schools, Council added churches, parks, HOA private open space, and pre-schools to the mandatory 500' separation requirement list, as they didn't want dispensaries and related medical marijuana uses, such as cultivation facilities, to mix with additional protected uses. Mr. Sheffield went on to explain that the straight line distance requirement created consistency and predictability in measurement, as a separation distance based on path of travel could potentially change based on the route chosen by a pedestrian, bicyclist, or motorist when accessing the site. The City then has developed a map showing these buffers for the dispensaries and cultivation facilities available on the City Website, encouraging applicants to review the map and ask questions before they apply. Mr. Sheffield explained that because of the availability of that resource designating eligible and ineligible medical marijuana sites, the decision of an applicant to locate within an ineligible site is a choice made be the applicant, and is seen by Staff as a self-imposed hardship. Mr. Sheffield added that the applicant may talk about using distinguishing barriers between his site and the protected use to justify an exemption, but Staff didn't believe that a justification based on length of alternative route enough was sufficiently significant to recommend granting a variance. Mr. Sheffield closed in saying that the sliver of biue (color denoting eligibility for the use on the map) seen near Broadway Road, in the immediate frontage, is outside of the 1200' range of the EVIT campus line, and that the most expedient route from EVIT to the proposed facility would be using the driveway on the south edge of the Fry's Food Stores property (formerly Walmart), by taking a right turn, heading south on Alma School, turning right on Broadway Road, and then making a right turn on Mulberry, a distance of just over 1-mile.

Chair Siebers stated that at any time EVIT can develop their vacant eastern parcel, and move a larger portion of students closer to Alma School Road.

Matthew Cash, stated that he thought that the small blue sliver seen on the map near Broadway, was eligible property for the use, and thought that the blue strip was marking Mr. Mahoney's property.

James Leaf, of Colliers International at 2390 E. Camelback Road, Phoenix, explained that he has worked on quite a few land use requests like this, and said that finding a landlord, in the proper area can be exceptionally challenging. Mr. Leaf said that many landlords are not interested, and said that this site is currently the only site in Mesa that meets all the criteria.

Boardmember Swanson mentioned that there is a preschool located at EVIT as well, and told the applicant that he appreciates the practical barriers, but that the straight line measurement method does not include exceptions for barriers. Mr. Swanson stated that he felt that under the "4 Part Variance Test", the case does not constitute a special circumstance as the applicant created a self-imposed hardship when selecting this property.

Boardmember Montague stated that he may be in agreement with the applicant that there is a significant physical barrier, to the north, but he has been by a grow facility on Greenfield and McDowell Roads, and although there is a physical separation, there is still a smell emitted. He concluded by saying that students may know this smell, and that he would appreciated school age children not having to smell the aroma.

Chair Siebers stated that he appreciated the applicant's law enforcement service, and with him trying to bring business to the City, but he didn't feel that there were any special circumstances surrounding the case, and no deprivation of privileges enjoyed by others in the area. Chair Siebers closed by saying that he cannot grant a variance that would constitute a special privilege to the applicant when others are working with and abiding by the requirements.

Boardmember Tolman stated that she is opposed to medical marijuana but feels that this industry has been regulated to a point that it needs special circumstances to conduct business, possibly in the form of a Variance.

Boardmember Swanson responded to the comments made by Boardmember Tolman, stating that by judging from the marijuana dispensary and cultivation facility map shown to the Board, there are a number of facilities that operate in the City of Mesa right now, and he is unaware of any of them requiring a Variance to operate.

Chair Siebers added that some of these marijuana facilities shown on the map may have just been first to the area, securing their eligibility, before others arrived. He closed by saying that although EVIT has not developed the eastern portion property, granting variance to a distance requirement from a protected use may negatively affect the overall expansion plan for EVIT.

Request 1 Motion: It was moved by Boardmember Worcester and seconded by Boardmember Swanson to uphold the decision of the Zoning Administrator

1. **Uphold the decision of the Zoning Administrator** to deny the medical marijuana cultivation facility application (upholding the denial of the initial application will then make the request for a variance relevant); and
2. ***Deny the variance*** request to allow a shorter separation distance from a school than 1200-ft.

Request 1 Vote: Passed (7-0)

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

FINDINGS

Zoning Administrator's Denial of Medical Marijuana Cultivation Facility Registration Application

1.1 East Valley Institute of Technology (EVIT) is an operating school training high school students in vocational skills and arts. Classes taken at EVIT are credited to a student's high school transcript, and included when calculating eligibility for graduation with a high school diploma. It is therefore classified as a school, in conformance with the definition of the Mesa Zoning Ordinance, §11-86-3.

1.2 MZO §11-31-34 requires a minimum separation between a medical marijuana cultivation facility and a school to be 1200-ft. The proposed location of the medical marijuana cultivation facility, based on a closest

straight line distance between the EVIT campus and the building located at 254 South Mulberry is less than 1200-ft. The ZA legitimately denied the initial registration application for failure to comply with the minimum separation requirement.

Variance Request to Allow Less than the Minimum Required Separation Distance Between a Medical Marijuana Cultivation Facility and a School

2.1 The prescribed method of measuring a separation distance between a protected land use and a medical marijuana cultivation facility is the closest straight line between the two areas. Specifically, the distance is measured between the edge of the protected use's 'campus' and the outside wall of the building used to house the proposed use.

2.2 The method prescribed for measuring distance is not based on travel distance, and does not take into account any degrees of connectivity between the two affected land uses. It is a straight proximity measurement, and not a measure of accessibility.

2.3 The applicant's request for a variance is based on the idea that connectivity should be taken into account, and that the presence of the railroad tracks and seven other obstacles in a straight line travel path between the EVIT campus and the Case Site should be considered. While this may be understandable and effective if the measurement distance took into account ease of accessibility and degree of connectivity, that is not the case in this method of measurement. Because the separation standard is a straight line proximity 'as the bird flies' requirement, no hardships or other physical obstructions interfere with how the proximity is measured.

2.4 The Planning Division staff maintains maps that indicate in a general manner the locations of eligible medical marijuana facility sites, one for dispensaries and another for cultivation facilities. It makes both maps readily available on-line. Also available on-line is a summary table which lists the specific requirements for locating any type of medical marijuana facility, including cultivation facilities. The available map shows this site as an ineligible location. The summary table clearly states that a 1200-ft separation is required between a school and a medical marijuana cultivation facility.

2.5 The prospective tenants have options available elsewhere in Mesa for locating a cultivation facility, and are not limited to just this location.

Request 2 Motion: It was moved by Boardmember Swanson and seconded by Boardmember Montague to deny Request 2 in Case BA17-008.

Request 2 Vote: Passed (6-1, Tolman voting nay))

OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,

Gordon Sheffield, AICP CNU-a
Zoning Administrator