

Board of Adjustment

Minutes

City Council Chambers
Wednesday, October 02, 2019

Boardmembers Present:

Chair Chris Jones
Vice Chair Kathy Tolman
Boardmember Adam Gunderson
Boardmember Ken Rembold
Boardmember Nicole Lynam
Boardmember Steven Curran
Boardmember Wade Swanson

Boardmembers Absent:

Staff members Present:

Nana Appiah, Planning Director
Rachel Prelog, Senior Planner
Lisa Davis, Planner II
Heather Omta, Planning Assistant
Evan Balmer, Planner II
Charlotte Bridges, Planner I

Other City members Present:

Margaret Robertson, City Attorney
Angelica Guevara, Project Manager

The study session began at 4:30 p.m. and concluded at 5:04 p.m. The Public Hearing began at 5:30 p.m., before adjournment at 6:18 p.m., the following items were considered and recorded.

Board of Adjustment Study Session

1. Call meeting to order

Study Session began at 4:30 p.m.

2. Staff Report

No update

3. Review and discuss items listed on the Public Hearing agenda for October 2, 2019.

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

- Planner Charlotte Bridges presented case BOA19-00595
- Planner Charlotte Bridges presented case BOA19-00617
 - Boardmember Gunderson:
 - Asked for clarification, are there non-conforming lot sizes existing in the area? Staff member Bridges replied that there are many lots in the Lehi area that were created prior to annexation, that do not meet current RS-43 district lot standards and are considered legal non-conforming.
 - Boardmember Tolman:
 - Questioned the size of an accessory dwelling unit that would be allowed in the RS-43 district– Staff member Bridges answered that the Mesa Zoning Ordinance allows the livable square footage of an accessory dwelling unit in the RS-43 district to 30% of the roof area of the main building.
 - Questioned the need to remove the existing accessory building on the north lot if the lot was split. –The building is an “detached accessory building” and is required to be removed because there is no house that could be considered a “primary use” on the lot in the RS-43 District.
- Planner Lisa Davis presented case BOA19-00620
- Planner Evan Balmer presented case BOA19-00624
- Planner Rachel Prelog presented case BOA19-00633
- Planner Rachel Prelog presented case BOA19-00634
- Planner Charlotte Bridges presented case BOA19-00671

4. Adjournment

A motion to adjourn was made by Boardmember Swanson and seconded by Boardmember Rembold.

Study Session adjourned at 5:04 p.m.

Vote: 7-0
Upon tabulation of vote, it showed:
AYES – All
NAYS – None

Board of Adjustment Public Hearing

Call meeting to order at 5:30 p.m.

Public Hearing began at 5:30 p.m.

1. Take action on all consent agenda items.

Items on the Consent Agenda

2. Consider the Minutes from the September 4, 2019 meeting

A motion by Boardmember Rembold and seconded by Boardmember Gunderson unanimously approved the September 4, 2019 minutes and Consent Agenda as read by Vice Chair Tolman.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

3. Take action on the following cases:

A motion to approve the following cases on the consent agenda as read by Vice Chair Tolman was made by Boardmember Rembold and seconded by Boardmember Gunderson.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

***3-a Case No.: BOA19-00595 (Approval with Conditions)**

Location: 1111 South Dobson Road (District 3)

Subject: Requesting a variance from the required setback to allow for a detached sign to be placed in the future right of way width for a commercial development in the LC District.

Decision: Approval with Conditions

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

Motion: A motion to approve case BOA19-00595 was made by Boardmember Rembold as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Gunderson to approve the following conditions:

1. Compliance with the site plan and sign plan details as submitted;
2. Compliance with all City Development Codes and regulations; and
3. Compliance with all requirements of the Development Services Department for the issuance of a sign permit.

Vote: 7-0
Upon tabulation of vote, it showed:
AYES – All
NAYS – None

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

- A. The previous detached sign was approved within Dobson Road's 65-foot future right-of-way of with the submittal of a sign agreement.
- B. The proposal conforms to the required findings for granting of a variance outlined in Section 11-80-3 of the MZO.
- C. Two existing detached signs for the surrounding shopping center are currently located within the future right-of-way of Dobson Road. The placement of the detached sign is consistent with other commercial centers in the area.
- D. The proposed detached sign complies with the area and height allowances of the MZO for a detached sign in the LC district.
- E. The proposed detached sign is 15 feet behind the face of curb and complies with Section 11-43-2(C)(1)(d) of the MZO.

***3-b Case No.: BOA19-00620 (Approval with Conditions)**

Location: Within the 1900 to 2000 block of East McKellips Road (north side) and 1900 block of North Gilbert Road (west side). (District 1)

Subject: Requesting a variance from the required setback to allow a detached sign to be placed in the future right of way width in the LC District.

Decision: Approval with Conditions

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

Motion: A motion to approve case BOA19-00620 was made by Boardmember Rembold as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Gunderson to approve the following conditions:

1. Compliance with the final site plan and sign plan details as submitted;
2. Compliance with all City Development Codes and regulations; and
3. Prior to the issuance of the sign permit, the applicant shall submit plans demonstrating compliance with sight visibility per City of Mesa Engineering Design Standards.
4. Compliance with all requirements of the Development Services Department in the issuance of sign permits.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

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

- A. The subject property is an existing commercial center constructed in the mid-1980's.
- B. In 1997, a Comprehensive Sign Plan was approved for the commercial center which allowed for a multi-tenant detached sign to be constructed within what is now designated as future right-of-way.
- C. The City of Mesa Zoning Ordinance was changed in 2018 to require the 15-foot setback from the curb of the adjacent street.
- D. Gilbert Road was widened in the mid 1990's. The widening of Gilbert Road further reduced the landscape area adjacent to the shopping center that can be utilized for placement of detached signs. To meet the required future 75-foot half street right-of-way setback, the detached sign would have to be placed in the existing parking lot of the commercial center.
- 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 variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity of the subject property. The proposed sign meets all maximum allowed area and height allowed in the LC zoning District.

***3-c Case No.: BOA19-00624 (Approval with Conditions)**

Location: Within the 10200 through the 10300 blocks of East Elliot Road (north side). (District 6)

Subject: Requesting a Special Use Permit (SUP) to allow a parking reduction for an industrial warehouse in the LI-PAD District.

Decision: Approval with Conditions

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

Motion: A motion to approve case BOA19-00624 was made by Boardmember Rembold as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Gunderson to approve the following conditions:

1. Compliance with the final site plan;
2. Compliance with all City development codes and regulations, except as modified by this SUP;
3. Compliance with all requirements of Design Review for case DRB19-00631; and
4. The parking reduction shall apply to the data center facility use only. Any future change or expansion of use shall comply with required parking as outlined in Chapter 32, Table 11-32-3(A) of the Mesa Zoning Ordinance.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

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

- A. There are special conditions present with the proposed data center that warrant a reduction in the required parking per Section 11-32-6(A).
- B. Raging Wire proposes to develop a data center facility with up to 1,539,000 square feet at full build-out on approximately 102± acres within the Elliot Road Technology Corridor.
- C. The proposed development is consistent with the goals of the General Plan and the Mesa Gateway Strategic Development Plan and compatible with surrounding development.
- D. The proposed development will achieve the goals of the Elliot Road Technology Corridor by bringing high-tech industrial jobs to Mesa.
- E. The proposed project meets the criteria of Section 11-70-5(E) of the MZO for approval of a SUP.
- F. The request is consistent with the goals of the General Plan and is in conformance with the LI-PAD zoning district and the Elliot Road Technology Corridor designation on the property.
- G. Allowing reduction in the number of parking spaces on the property will not be injurious or detrimental to adjacent properties and adequate public services will be provided to the site.

***3-d Case No.: BOA19-00633 (Approval with Conditions)**

Location: Within the 0 to 100 block of South Udall, and 0 to 100 block of South Lesueur. (District 4)

Subject: Requesting a variance from the Form Based Code Building Form Standards, Building Type Standards and Private Frontage Standards to allow a residential development in the T4 Neighborhood (T4N) Transect Zone.

Decision: Approval with Conditions

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

Motion: A motion to approve case BOA19-00633 was made by Boardmember Rembold as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Gunderson to approve the following conditions:

1. Compliance with the final site plan and elevations as submitted, except as modified by this variance request;
2. Compliance with all City development codes and regulations;
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits; and
4. Prior to the submittal of a building permit, obtain Certificates of Appropriateness from the City of Mesa.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

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

- A. There are special circumstances, including the small and compact nature of the parcels, limiting development of the site to fully conform to all requirements of the form-based code.
- B. The strict application of the MZO will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district.
- C. Approval of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the form-based code zoned district.

***3-e Case No.: BOA19-00634 (Approval with Conditions)**

Location: Within the 0 to 100 block of South Mesa Drive, and within the 0 to 100 block of South Udall.
(District 4)

Subject: Requesting a variance from the Form Based Code Building Form Standards, Building Type Standards and Private Frontage Standards to allow a residential development in the T4 Neighborhood (T4N) and T4 Neighborhood Flex (T4NF) Transect Zones.

Decision: Approval with Conditions

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

Motion: A motion to approve case BOA19-00634 was made by Boardmember Rembold as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Gunderson to approve the following conditions:

1. Compliance with the final site plan and elevations as submitted, except as modified by this variance request;
2. Compliance with all City development codes and regulations;
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits; and
4. Prior to the submittal of a building permit, obtain Certificates of Appropriateness from the City of Mesa.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

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

- A. There are special circumstances, including the small and compact nature of the parcels, limiting development of the site to fully conform to all requirements of the form-based code.
- B. The strict application of the MZO will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district. Surrounding properties to the site have large open space areas in front of the main body of the house which does not conform to requirements of the form-based code.
- C. Approval of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity.

***3-f Case No.: BOA19-00671 (Approval with Conditions)**

Location: Within the 4000 to 4100 block of South Power Road (east side). (District 6)

Subject: Requesting a Special Use Permit (SUP) to allow a special event to exceed the maximum number of consecutive days in the LC and LI District.

Decision: Approval with Conditions

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

Motion: A motion to approve case BOA19-00671 was made by Boardmember Rembold as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Gunderson to approve the following conditions

1. Compliance with the event's site plans and operation plans as submitted in the Vertuccio Farms Special Use Permit Narrative dated 8/28/19, except as modified by the conditions below;
2. Compliance with all requirements of the Development Services Department in the issuance of building Permits;
3. Prior to operations, the applicant must obtain a Special Event License for the Fall Festival and the Holiday Festival through the City of Mesa License Department;
4. Compliance with all requirements of the Business Services Department regarding application for and issuance of a Special Event License; and
5. The Special Use Permit shall automatically expire on January 12, 2020 and be of no further force and effect.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – All

NAYS – None

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

- A. The 2019 Fall Festival and Holiday Festival special events operate for a 14-week period, October 3, 2019 through January 11, 2020. Between 6-20 employees will be at the site during the special events.
- B. Parking areas are dust controlled with decomposed granite and asphalt millings. Bathrooms and trash receptacles are provided at the site for customer use.
- C. Vertuccio Farms is working through the Planning processes to bring the site into compliance with the Mesa Zoning Ordinance.
- D. The Vertuccio Farms Fall and Holiday Festivals fit within the definition of 2040 General Plan Employment/Mixed Use Activity character type and advances the goals and objectives of the General Plan and the Gateway Strategic General Plan by promoting a unique agricultural entertainment experience.
- E. Planning staff does not anticipate any injury or detriment to the neighborhood or City of Mesa.
- F. Public services, facilities and infrastructure are available for the proposed special event.

Items not on the Consent Agenda

4. Take action on the following cases:

4-a Case No.: BOA19-00617 (Approved with Conditions)

Location: 2550 North Brimhall (District 1)

Subject: Requesting a variance from the required minimum lot area and minimum lot width to allow the creation of two lots in the RS-43 District.

Decision: Approval with Conditions

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

Chair Jones disclosed that he works with applicant but felt it was not a conflict of interest; the Board did not oppose his decision.

Applicant Justin Connolly, 7063 E Plata Ave., stated that special circumstance criteria were subjective. He believes that his family feels deprived of privileges that other established smaller lots have in the area. The proposed lots meet 99% of the lot width requirement and 94% of overall lot area requirement. The applicant indicated that he provided Appendix E in his submittal documents that shows of 105 lots, 46 lots meet RS-43 zoning requirements and 59 do not meet the requirements. The applicant feels deprived of a privilege that other owners have in the area.

❖ Boardmember Swanson:

- The decision to approve the variance will make the two proposed lots non-conforming.
- Stated that existing lots in the area were legal non-conforming because they were in the configuration when annexed into the City.
- The site and house can be used in its current configuration and zoning district.
- Did not find that the request met the criteria of topography or special circumstances to grant the variance. It doesn't meet the findings.

❖ Boardmember Tolman:

- Lehi has a variety of character and lot sizes
- The special circumstances are the history of the area
- Granting would not give the applicant any advantages that neighbors don't have
- In favor of approving the variance to allow the lot split

❖ Boardmember Rembold:

- Questioned the applicant if the reason for the lot split was for estate purposes. Applicant confirmed the lot split helps to settle the estate.
- Not in support of this variance; did not hear anything that supported the criteria for approving the variance request. Rather, the reasons provided were personal.
- Stated the size and width do not meet current Zoning Ordinance requirements.

❖ Boardmember Gunderson:

- Stated that compared to smaller lot sizes in the area, the two lots created are less than 4 percent of not meeting the zoning requirements. We are only talking about a couple feet shy of meeting the requirements.

Speaker Mike LaPorte spoke to the Board, 2130 E Minton, stated that the case does not comply with the ordinance now. Zoning had not changed for 30 years. He is in favor of the variance request.

Planner Lisa Davis confirmed that the lot in its current configuration is in compliance with the zoning district requirements. The request for the variance, if approved, will allow for two non-conforming lots to be created.

❖ Chair Jones:

- Concurs with discussion of Boardmember Gunderson.
- In favor of the variance request.

❖ Boardmember Curran:

- In favor with the variance.

Planner Bridges received three emails, all in favor of the variance.

Planner Davis provided the Board with draft findings and conditions that the Board could use if there was a motion to approve the case.

Motion: A motion to approve case BOA19-00617 was made by Boardmember Gunderson with the acceptance of Findings of Fact and Conditions of Approval provided by staff at the hearing, and seconded by Vice Chair Tolman to approve the following conditions:

1. Compliance with site plan submitted except as modified below;
2. Compliance with all City Development Codes and regulations;
3. Prior to the issuance of a building permit, comply with the City of Mesa Subdivision Regulation requirements for a land split; and
4. Prior to submittal to the City of Mesa for the land split, the existing accessory structure on the north lot shall be removed to comply with the MZO.

Vote: 5-2

Upon tabulation of vote, it showed:

AYES – Jones, Gunderson, Curran, Tolman, Lynam

NAYS – Swanson, Rembold

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

- A. In 1970 dedication of the "east 25 feet" or .14± acres of the property to the City of Mesa required for the public street (Brimhall) reduced the lot area from 1.99± acres to 1.86± acres.
- B. The creation of two large agricultural lots is consistent with the 2040 General Plan designation of this subject lot as a Neighborhood character type with a Large/lot Rural Agriculture sub type and the Lehi sub area plan goal to preserve the historic rural character of the area.
- C. The existing structures on the proposed southern lot meet the RS-43 district minimum yard setback requirements when measured from the proposed new property lines.
- D. The Lehi Area was platted in the County prior to annexation; therefore, there are several non-conforming lots that do not meet the minimum lot size requirement and/or minimum lot width requirement of the RS-43 district.
- E. The strict application of the Zoning Ordinance would deprive the property owner of privileges enjoyed by other properties in the area that do not meet RS-43 minimum lot area and minimum lot width requirements.

5. Other business

None.

6. Items from citizens present

None.

7. Adjournment

A motion to adjourn was made by Boardmember Swanson and seconded by Boardmember Rembold.

Vote: 7-0
Upon tabulation of vote, it showed:
AYES – All
NAYS – None

Public Hearing adjourned at 6:18 p.m.

Respectfully submitted,



Rachel Prelog,
On behalf of Zoning Administrator (Nana Appiah)