



**PLANNING DIVISION
STAFF REPORT**

Board of Adjustment

October 13, 2021

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| CASE No.: BOA21-00628 | CASE NAME: Power Food Park |
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| Appellant/Property Owner: | Power Road Park, LLC |
| Appellant Legal Counsel: | Francis Slavin |
| Location of Request: | 1439 N. Power Road, Mesa, AZ |
| Parcel No: | 218-04-005F |
| Request: | Consider an appeal of an interpretation of the Zoning Administrator issued on June 16, 2021, that the current activities on the property do not conform to the Zoning Ordinance definition of Parks and Recreation Facilities, Public. |
| Existing Zoning District: | Office Commercial |
| General Plan Character Designation: | Neighborhoods |
| Council District: | 5 |
| Site Size: | 2.3± acres |
| Hearing Date: | October 13, 2021 / 10:30 a.m. |
| City Staff: | Nana Appiah, Planning Director/Zoning Administrator |
| City Staff Legal Counsel: | Charlotte McDermott and Sarah Staudinger |
| Staff Recommendation: | DENY the appeal and UPHOLD the Zoning Administrator's Interpretation |

A. Factual Background

1. In early 2019, City staff communicated with Power Road Park, LLC (Appellant) regarding Appellant's proposed use of the property, located at 1439 North Power Road, Mesa, Arizona, Parcel No. 218-04-005F, and depicted on Exhibit A (Property), including operating food trucks on the Property. In these discussions, staff informed the Appellant's attorney, Sean Lake (Mr. Lake), that using the Property primarily for food truck vending

and concessions (i.e., food trucks) is not an allowed use on the Property as such use falls under the classification of “Restaurants, Limited Service” (limited service restaurants). Per Section 11-6-2 of the Mesa Zoning Ordinance (MZO), limited service restaurants are only allowed in the Office Commercial (OC) zoning district (the zoning designation on the Property) if it is located within an office building or other commercial building and occupying no more than 1,500 square feet (Exhibit B-1). Because there was no building on the Property, stand-alone food vending, food concession uses, and mobile food trucks were not allowed on the Property.

2. On May 24, 2019, Mr. Lake sent an email to Zoning Administrator Nana Appiah (ZA) stating, “Attached is a plan for a public park that my client would like to develop on the NEC of Power and Halifax” (Exhibit C). Mr. Lake attached a site plan dated April 29, 2019 (Original Site Plan) to the email (Exhibit D). The Original Site Plan showed: beach volleyball, turf area, splash pad, play gym, fire pits, stage, restrooms, and two vending areas.
3. On May 29, 2019, the ZA responded to Mr. Lake, advising that, per the Mesa Zoning Ordinance (MZO), Parks and Recreation Facilities, Public (PPRF) are permitted in the OC zoning district. The ZA also provided Mr. Lake with the MZO definition of PPRF and advised that an administrative site plan review was required (Exhibit C).
4. On December 10, 2019, Mr. Lake submitted the Original Site Plan to the City’s Development Services Division (DSD), as required in the Mesa City Code, Building Regulations, to obtain a building/construction permit.
5. On January 9, 2020, DSD provided site plan review comments to Mr. Lake that required certain changes to the Original Site Plan before it could be approved (Exhibit E). Appellant never responded to the comments from the DSD.
6. In December 2020, City staff became aware, via promotional advertisements that Appellant was planning to host a food truck event on the Property (Exhibit K-1).
7. On December 8, 2020, City staff, including the ZA, met with Appellant and Mr. Lake at the Property to discuss Appellant’s plans for upcoming food truck events. City staff observed the vast majority of the items shown on the Original Site Plan were not present on the Property including the beach volleyball, splash pad, play gym, stage, and restrooms. The ZA informed Appellant that the development of the Property as observed by City staff did not comply with the Original Site Plan and the MZO definition of PPRF. The ZA also informed Appellant that use of food trucks on the Property were permitted if the food trucks were a limited use, related to a PPRF use (more thoroughly explained in Section 4(C) below). The ZA explained, alternatively, food trucks could operate on the Property without park and recreation facilities, but only if the Property was rezoned to a zoning district that permitted limited service restaurants. The ZA explained food trucks were not a use specified in the MZO and the ZA had determined (in a prior decision unrelated to this case) that food trucks were within the use classification of limited service restaurants and that limited service restaurants were only permitted in the OC if located within an office building or other commercial building and occupying no more than 1,500 square feet, but that limited service restaurants are permitted in the Neighborhood Commercial (NC) zoning district (more thoroughly explained in Section B below). Appellant indicated they would proceed with rezoning the Property from OC to NC and any other requirements of the City and would submit a modified site plan as part of the rezoning.

8. Throughout 2020 and 2021, City staff received various phone calls and emails from surrounding residents and property owners to the Property complaining about the continued use of the Property for food truck operations (Exhibit F). Code Compliance inspected the Property on multiple occasions and issued Appellant Notices of Ordinance Violation of Section 11-6-2 of the MZO (operating a food truck event that is not permitted in the OC zoning district) and of Section 8-6-3 of the Mesa City Code (outside storage and trash) (Exhibit G).
9. On March 3, 2021, Appellant submitted a rezoning application for the Property, requesting to rezone the Property from OC to NC, and to rezone three other adjacent parcels to NC (Rezone). The Rezone is going through the City's standard rezoning process and will be heard by the Planning and Zoning Board. The Rezone is not within the jurisdiction of the Board of Adjustment (BOA).
10. On May 11, 2021, the City's Development Services Director sent an email to the ZA requesting the ZA to provide a written interpretation regarding the uses on the Property (Exhibit H).
11. On May 24, 2021, Ivan Hannel, attorney for the owner of the property located at 6822 East Halifax Drive, adjacent to the Property, sent an email to the ZA requesting "a formal zoning interpretation as to whether the current land use of the [Property] complies with uses allowed by the [MZO]" (Exhibit H-1).
12. On June 16, 2021, the ZA issued the formal interpretation (Interpretation) (Exhibit I).
13. On July 1, 2021, Appellant's attorney, Francis Slavin, sent correspondence to City staff appealing the Interpretation (Appeal) (Exhibit J).¹
14. According to Appellant's website and social media accounts (Facebook, Instagram, Yelp) and photos from Google, Appellant has been operating the food truck business since December 2020, with 15-18 food trucks on the Property on weekends (Exhibit K, K-1, K-2, K-3, K-4).

B. City Regulations and Zoning Ordinance

The Property is in the Neighborhoods character area as defined in the Mesa 2040 General Plan (General Plan) (Exhibit A-1). Per Chapter Seven of the General Plan, the primary focus of the Neighborhoods character area is to provide safe places for people to live where they can feel secure and enjoy their surrounding community. Per the General Plan, the Neighborhoods character area can contain a wide range of housing options and often has associated non-residential uses such as schools, parks, places of worship, and local serving businesses.

The Property is zoned OC (Exhibit A-2). Per Section 11-6-1(B)(4) of the MZO (Exhibit B), the purpose of the OC zoning district is to provide areas for small-scale medical and professional offices intended to serve the community and remain compatible with adjacent residential areas.

¹The following public records request was contained in the Appeal: "We hereby request that the Zoning Administrator produce for inspection his official file related to the 1439 North Power Road property." The City already has provided all documents responsive to this public records request, in accordance with Arizona public records law (A.R.S. § 39-121 et seq.).

Section 11-6-2 of the MZO includes a table with a list of permitted use classifications in the OC district and use classifications not listed in the table are prohibited (Exhibit B-1).

Additionally, Section 11-86-1 of the MZO states: “Use classifications describe one or more uses of land having similar characteristics, but do not list every use or activity that may appropriately be within the classification. *The Zoning Administrator shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Chapter.* The Zoning Administrator may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification” [*Emphasis added*] (Exhibit L).

Food trucks, because they are a relatively new land use, are not a listed use classification in the MZO. Therefore, food trucks are not permitted unless the ZA determined food trucks are a specific use within one of the use classifications listed in the table. The ZA previously had determined, in an unrelated case, that food trucks are within the use classification of limited service restaurant. Per the table in Section 11-6-2, limited service restaurants are permitted in the OC district only if located within an office building or other commercial building and occupying no more than 1,500 square feet (Exhibit B-1).

Per Section 11-86-4 of the MZO, limited service restaurant is defined as: “Establishments where food and beverages may be consumed on the premises, taken out, or delivered, but where no table service is provided. This classification includes cafeterias, fast-food restaurants, carryout sandwich shops, limited service pizza parlors and delivery shops, self-service restaurants, snack bars and takeout restaurants. A minimum of 40 percent of gross sales revenue must be from serving food to be classified as a Limited Service Restaurant” (Exhibit L-2).

The table in MZO Section 11-6-2 permits PPRF in the OC district. Section 11-86-3 of the MZO defines PPRF as: “Parks, playgrounds, recreation facilities, trails, wildlife preserves, and related open spaces, all of which are noncommercial. This classification also includes playing fields, courts, gymnasiums, swimming pools, picnic facilities, tennis courts, and golf courses, botanical gardens, as well as related food concessions or community centers within the facilities” (Exhibit L-1).

C. Zoning Administrator Response to Appeal

1. **Appellant Position:** “Power Road Park hereby moves the Board to reject the Zoning Interpretation because neither Power Road Park nor its representative ever submitted to the Zoning Administrator a written request for this Interpretation. The Submittal and Review Process for Code Interpretation published online by the Board of Adjustment (BOA) provides as follows: Should a more fully formal, written interpretation be needed, a request for an Interpretation must be in writing.”

“If there is no written request from Power Road Park for a formal interpretation of the Mesa Zoning Ordinance, then the Zoning Interpretation should be rejected by the Board.”

ZA Response: First, the request for the Interpretation is not required to come from the Property Owner/Appellant or their representative. Section 11-66-7 of the MZO provides that the ZA shall have the duty and authority to “Interpret the Zoning Ordinance to the public, City Departments and other branches of government, and subject to general and specific policies established by the City Council” (Exhibit M). Per this section of the MZO, the ZA has the authority to interpret the MZO to the public, City Departments, and other branches of government. The MZO does not limit the ZA’s authority to interpret the MZO only when requested by a property owner. Issuing the Interpretation based on the requests from the Development Services Director and the neighboring property owner’s attorney complies with the requirements and procedures for interpretations in the MZO.

Second, the MZO does not require the request for the Interpretation be in writing. The information provided on the Planning Division’s website, and cited by Appellant, is guidance regarding BOA procedures (Exhibit N) and does not create an MZO, or other legal requirement, regarding the form in which the Interpretation must be requested. Even if the request for the Interpretation was required to be in writing, the ZA received a written request from both the Development Services Director and the attorney for an owner of property adjacent to the Property.

In sum, the Interpretation issued in response to written requests from the Development Services Director and the neighboring property owner’s attorney was within the authority granted to the ZA by the MZO.

2. **Appellant Position:** “In our considerable experience, a written request for a formal zoning ordinance interpretation allows an applicant to set forth his/her reasons in support of the requested interpretation before a decision is rendered. This is consistent with traditional notions of due process.”

“The Zoning Administrator based his conclusion, that the subject property is being used primarily as a ‘food truck park,’ on pictures and complaints submitted by neighboring property owners without the benefit of any controverting evidence of the property owner. The zoning Administrator has the authority to conduct a public hearing which will allow for neighbors and the owner to submit evidence to determine whether the primary use of the property is a food truck park. The Zoning Administrator’s unilateral decision which did not allow the owner to submit evidence and testify at a hearing lacks due process generally required for determining the rights of a property owner.”

ZA Response: First, there are no statutory nor MZO requirements regarding the type of evidence, or who must provide evidence, before the ZA issues an interpretation. Section 11-66-7(B)(1) grants to the ZA the authority to interpret the MZO (Exhibit M) and does not set any requirements or limitations regarding the evidence the ZA considers. The ZA has the discretion to consider all relevant materials, information, evidence, and facts before issuing an interpretation. There is no requirement in the MZO that requires the ZA to obtain additional information from a property owner’ before issuing an interpretation.

Here, the ZA considered the following materials, information, evidence, and facts prior to issuing the Interpretation:

- The MZO, including MZO Sections 11-6-1, 11-6-2, 11-66-7, 11-69-2, 11-77-4, 11-86-1, 11-86-3, and 11-86-4.
- A.R.S. § 9-462, et seq.
- The Mesa 2040 General Plan.
- May 24, 2019 email from Mr. Lake and the attached Original Site Plan.
- The December 8, 2020, conversation between City staff and Appellant, informing Appellant that food trucks are within the use classification of limited service restaurants and that the Property needed to be rezoned from OC to NC to permit limited service restaurants if the Appellant intended to use the Property primarily for food truck operations, as Appellant advertised.
- Appellant's promotional and advertising items for Power Food Park and photos of Power Food Park.
- Observations and information obtained from various City departments regarding the use of the Property.
- Correspondence from residents and owners of properties surrounding the Property regarding the continued use of the Property for food truck events.
- Ongoing communication with Appellant and Mr. Lake over the past two and a half years regarding use of the Property, including several conversations about the use not conforming to the definition of PPRF and needing to rezone the Property to permit limited service restaurants.

Second, Section 11-66-7(B)(1)(b) of the MZO allows the ZA to determine which requests for interpretations may be decided through an administrative process or reviewed and decided through a public hearing process (Exhibit M). Typically, a decision to hold a public hearing to ascertain additional information is pursued when there is inadequate information for the ZA to issue an interpretation. In this instance, there was adequate information (listed above) for the ZA to issue the Interpretation. The Interpretation was not made in isolation nor was it "unilateral." The ZA received information through various discussions with Appellant, through visits to the Property by the ZA and other City personnel, as well as information from the surrounding property owners, which was adequate to issue the Interpretation in compliance with the MZO and without holding a public hearing.

Third, when the Interpretation was issued, it was sent to the Development Services Director, as well as to the Appellant and the neighboring property owners. Per MZO Chapter 11-77 (Exhibit O), a property owner has the right to appeal a ZA interpretation to the BOA. A.R.S. § 9-462.06 requires the City to establish the BOA and the BOA shall hear and decide appeals from the decisions of the ZA (Exhibit P-1). Chapter 11-77 of the MZO provides for a method of appeal to the BOA. MZO Section 11-77-4 states that all decisions of the ZA acting in an administrative or Hearing Officer role may be appealed by filing a written notice of appeal, containing the specific information listed in Section 11-77-4(B)(1) of the MZO. Appellant submitted its appeal on July 1, 2021, (Exhibit J) and the BOA

hearing is scheduled for October 13, 2021. The BOA hearing is Appellant's opportunity to present its position and evidence. Only the BOA has the legal authority to decide the appeal; the ZA does not have this authority. In sum, the ZA acted within the authority granted to him by the MZO and Appellant is being given every opportunity provided under law to present its arguments and evidence to the BOA.

3. **Appellant Position:** "The Zoning Administrator attempts to modify the Mesa Zoning Ordinance that a food concession is not an allowed use as Public Park and Recreational Facilities ("PPR Facilities") because it is a commercial use and that Section 11-86-3 of the Mesa Zoning Ordinance specifies that all uses in PPR Facilities are non-commercial. This reasoning contradicts the specific language of Section 11-86-3 quoted in the Zoning Interpretation which allows 'food concessions' to be operated in Public Parks and Recreational Facilities."

ZA Response: The Interpretation does not state commercial food concessions and commercial food trucks are prohibited in PPRF. The Interpretation discusses that commercial food concessions and commercial food trucks are permitted only if they are related to noncommercial park and recreation facilities and subordinate or accessory to listed primary activities typically seen in PPRF. The term noncommercial in the definition of PPRF applies to the park and recreation facilities (i.e., playground, trails, open space), not to the food concessions. Once the recreation facilities are established as the primary use (as further discussed in Section C(4) below), then related food concessions are permitted. In other words, the primary and dominant activities must be noncommercial but the related food concessions or food trucks can be either noncommercial or commercial. The reasoning is food concessions are typically commercial in nature and are mostly operated for profit, in exchange for goods and services for a monetary benefit. However, currently, commercial food trucks—not park and recreation facilities—are the primary and dominant use on the Property and for this reason, the current use does not comply with the definition of PPRF (see Section C(4) below).

The ZA agrees with Appellant that, per Section 11-66-7(C) of the MZO, he cannot make changes to the permitted land uses(Exhibit M). The Interpretation does not change the land uses permitted in the OC zoning district. PPRF remain a permitted use in the OC zoning district.

4. **Appellant Position:** "The Zoning Administrator clearly ignores the specific language of Section 11-86-53 which defines PPR Facilities to include 'picnic facilities...as well as related food concessions....' There is no language in Section 11-86-3 which states that picnic facilities alone without playgrounds and recreational facilities are not an allowable use."

ZA Response: The Interpretation does not ignore picnic facilities in the PPRF definition, rather it finds that the picnic facilities that were on the Property were not the dominant use. The Interpretation is specific that food concessions in a PPRF are permitted but only as a "related" use to primary park and recreation facility uses.

As discussed, the definition of PPRF allows “related” food concessions. The term “related,” is found in the term accessory use in the MZO, which means: “A use customarily incidental to, related and clearly subordinate to a principal use established on the same lot or parcel of land, which accessory use does not alter said principal use nor serve property other than the lot or parcel of land on which the principal use is located.” The Interpretation clarifies that for a food concession to be related it must be accessory or subordinate to the primary use as a park (i.e., playgrounds, recreational facilities, trails, wildlife preserves, etc.). Therefore, in a PPRF the main attraction is the park and recreation facilities and the related food concessions that serve the park facilities are permitted as an accessory or subordinate use.

In other words, if the intensity of an accessory use dominates, then it is no longer accessory or related to another use. For example, sports stadiums in Mesa are classified as either Small Scale or Large-Scale Commercial Recreation Facilities. In this classification, restaurants, snack bars, and other food and beverage services are determined by the MZO to be incidental to the primary activities, the sporting activities on the property. The primary reason most people are drawn to the stadium is to see a captivating sports game. The incidental food concessions are an added optional service or amenity, and not what primarily brings people to the stadium.

The determination that food trucks must be a “related” use to PPRF and cannot be the dominant use should be no surprise to Appellant. Prior to Mr. Lake emailing the Original Site Plan, the ZA informed him that food vending in a PPRF had to be accessory to the park and recreation facilities. When Mr. Lake emailed the Original Site Plan to the ZA for a determination of whether it meets the definition of PPRF, the Original Site Plan showed numerous park and recreation facilities with only two small areas for food trucks labeled “vending.” In the Interpretation, the ZA determined the Original Site Plan met the definition of a PPRF because “a majority of the property contained primary uses consistent with a PPRF, such as a beach volleyball court, a splash pad, play area, and a significant area reserved as ‘turf area’ for other recreational activities.” If Appellant develops the Property as shown on the Original Site Plan, they can have related food trucks as identified on the Original Site Plan.

Appellant, however, has not developed, and is not currently using, the Property as shown on the Original Site Plan. The splash pad, play gym, beach volleyball court, and extensive turf area have not been installed. The primary use of the Property is for commercial food truck events with up to 18 food trucks and only accessory picnic tables. Clearly, the main attraction that draws the public to the Property is the food trucks, not the picnic tables. This is evident from Appellant’s own advertisements and description of the use of the Property on Yelp, Facebook and other social media platforms (Exhibit K, K-1, K-2, K-3, K-4). In order to comply with the definition of PPRF, the primary and accessory or related uses must be reversed—the park and recreation facilities listed in the definition of PPRF must attract the public to the Property, and food concessions, or in this case food trucks, must be accessory.

5. **Appellant Position:** “The Zoning Interpretation discriminates against mobile food vendors. Regardless of whether the subject land served food from a food concession building or from mobile food vendors, the amount of food to be provided and consumed would be limited to the number of persons who are picnicking at the park. Absent evidence that persons are purchasing take-out food to consume off premises, there would be no rational argument to be made that the property is being used primarily as a food concession or a food truck park.”

ZA Response: The Interpretation does not discriminate against mobile food trucks or mobile food vending. As more thoroughly explained in Section C(4) above, in the PPRF land use classification, food concessions, whether mobile or permanent, must be “related to” primary noncommercial recreation facilities. If the primary use is not established, neither mobile food trucks nor permanent food concessions are permitted. In other words, mobile food trucks and permanent food concessions are treated equally. Also, the MZO, which was adopted by City Council, lists the land uses allowed in the different zoning districts, as well as the associated development standards and regulations for each zoning district. Section 11-6-2 of the MZO includes a table with a list of the permitted uses in the OC district (Exhibit B-1). In the OC zoning district, certain food establishments are permitted by right, some have limitations, and others are not allowed. For example, full-service restaurants are not allowed in the OC zoning district, but limited service restaurants up to 1,500 square feet are allowed if located within an office or commercial building (Exhibit B). A.R.S. § 9-462.01 provides the authority to the City’s legislative body to distinguish between the land uses permitted, when and how they are permitted, and the applicable development standards (Exhibit P).

In the subject request, Appellant wants to allow food trucks on the Property as a primary use within the PPRF land use classification. As stated above, food vending, whether mobile or permanent, is allowed as an accessory use in the PPRF, not as the primary use.

Appellant asserts that without evidence that people purchase take-out food to consume off premises, there is no rational argument that the Property is being used primarily for food concession or food truck operations. However, Appellant has stated there are typically 18 food trucks on the Property on Fridays and on weekends (Exhibit K-1). The promotional materials and the social media posts show the only rational argument is that the primary use on the Property is commercial food trucks, not park and recreation facilities (Exhibit K, K-1, K-2, K-3).

6. **Appellant Position:** “The Zoning Interpretation purports to increase the 25-foot distance by disallowing food vendors from operating on the subject property which are located at a distance greater than 25 feet, thus flouting the City policy under Ordinance 5623.”

ZA Response: Appellant’s statement is blatantly false. The Interpretation does not increase the twenty-five foot separation from a lot or parcel containing a residence, established in Ordinance No. 5623 approved by City Council on May 17, 2021 (Exhibit Q). In fact, there is no language in the Interpretation about the distance food trucks must be

from a residence. The Interpretation clarifies that the PPRF permits food trucks as an accessory use, not as the dominant or primary use as discussed in Section C(4) above. Any food truck that may be permitted on the Property must conform with the definition of PPRF as well as Ordinance No. 5623, including but not limited to, the licensing and operational requirements and the separation of twenty-five feet from a lot or parcel containing a residence.

7. **Appellant Position:** “Prior to issuance by the Zoning Administrator of the Zoning Interpretation, Power Road Park had submitted to the Mesa Planning Division a revised plan of development for the 7-acre parcel and had received from the Planning Division first round comments and requirements for additional information. The May 29, 2019 site plan has been superseded by the current site plan, a copy of which is attached hereto. Power Road Park has recently resubmitted to the City Planning Division this revised site plan and has responded to the comments and requirements from the Planning Division.”

ZA Response: Appellant submitted a rezoning application for the Property, requesting to rezone the Property from OC to NC, and to rezone three other adjacent parcels to NC. The Rezone does not change the Interpretation. Rezoning the Property to NC will allow limited services restaurants on the Property which includes food trucks, without the limitation that food trucks must be accessory to park and recreation facilities. The Rezone will be considered by the Planning & Zoning Board. Afterward, the Rezone, with Planning & Zoning Board’s recommendation, will go to City Council for final action. If the Rezone is approved by City Council, the Property will be zoned NC, and limited service restaurants (the land use classification food trucks are within) will be permitted on the Property. The Rezone is not part of this appeal and is outside the BOA’s jurisdiction.

D. Conclusion

For the reasons stated herein, the ZA recommends the BOA deny the appeal and uphold the Interpretation.

E. Exhibits

Exhibit A: Depiction of the Property
Exhibit A-1: General Plan Map of the Property
Exhibit A-2: Zoning Map of the Property
Exhibit B: MZO Section 11-6-1
Exhibit B-1: MZO Section 11-6-2
Exhibit C: Email Exchange Between Mr. Lake and ZA
Exhibit D: Original Site Plan
Exhibit E: Development Services 1st Plan Review Comments
Exhibit F: Emails from residents and property owners about the use of the Property
Exhibit G: Notices of Ordinance Violation
Exhibit H: Written request for ZA interpretation from Development Services Director
Exhibit H-1: Written request for ZA interpretation from Attorney Ivan Hannel

Exhibit I: Interpretation
Exhibit J: Appellant's request for appeal
Exhibit K: Appellant's Yelp
Exhibit K-1: Appellant's Facebook Page
Exhibit K-2: Appellant's Instagram
Exhibit K-3: Appellant's website
Exhibit K-4: Photos from Google
Exhibit L: MZO Section 11-86-1
Exhibit L-1: MZO Section 11-86-3
Exhibit L-2: MZO Section 11-86-4
Exhibit M: MZO Section 11-66-7
Exhibit N: Planning Division website
Exhibit O: MZO Chapter 11-77
Exhibit P: A.R.S. § 9-462.01
Exhibit P-1: A.R.S. § 9-462.06
Exhibit Q: Ordinance No. 5623

F. Findings of Fact

1. The Original Site Plan submitted by Mr. Lake showed a public park on the Property with beach volleyball, turf area, splash pad, play gym, fire pits, stage, restrooms, and two vending areas.
2. The Property is located in the OC zoning district.
3. Since December 2020, food trucks have been operating on the Property.
4. Food trucks are not a use classification identified in the MZO, but the ZA, pursuant to the authority granted by MZO Section 11-86-1, determined food trucks are within the use classification of limited service restaurants.
5. Limited service restaurants are permitted in the OC zoning district if located within an office building or other commercial building and occupying no more than 1,500 square feet.
6. There is no office building or other commercial building on the Property.
7. A PPRF is a permitted use in the OC Zoning district.
8. PPRF is defined as: "Parks, playgrounds, recreation facilities, trails, wildlife preserves, and related open spaces, all of which are noncommercial. This classification also includes playing fields, courts, gymnasiums, swimming pools, picnic facilities, tennis courts, and golf courses, botanical gardens, as well as related food concessions or community centers within the facilities."
9. In a PPRF, the primary use must be the park and recreation facilities, which must be noncommercial, and food concessions or food trucks are permitted only as a secondary use, related and accessory to the primary use, and food concessions and food trucks may be either noncommercial or commercial.
10. Accessory use is defined as: "A use customarily incidental to, related and clearly subordinate to a principal use established on the same lot or parcel of land, which accessory use does not alter said principal use nor serve property other than the lot or parcel of land on which the principal use is located."

11. Food trucks in the OC zoning district can operate on the Property either as a related, accessory use to park and recreation facilities (as required by the definition of PPRF), or as a primary use if located within an office or commercial building (as required for limited service restaurants in the OC zoning district).
12. Food trucks are the primary use on the Property—they are not incidental and are clearly not subordinate. This is supported, in part, by:
 - a. Emails from surrounding property owners and residents to the Property about the continued use of the Property for food truck operations.
 - b. Appellant’s website and other online accounts (i.e., Facebook, Instagram, Yelp), as well as photos from patrons posted online (i.e., photos from Google).
 - c. Appellant’s advertisements that the commercial food truck business operates on the Property Monday through Saturday, with 15-18 food trucks on the Property on weekends.
13. The primary reason people go to the Property is for the commercial food trucks.
14. The park and recreation facilities present on the Property are not the primary use.
15. The use of the Property is not a PPRF.
16. If the Property is developed according to the Original Site Plan, the use of the Property would be a PPRF.
17. ZA received written requests from the City’s Development Services Director and Ivan Hannel, attorney for the owner of the property located at 6822 East Halifax Drive, adjacent to the Property, requesting a ZA interpretation regarding the uses on the Property.
18. The ZA, pursuant to the authority granted in MZO 11-66-7 and A.R.S. § 9-462.02, and in compliance with MZO 11-66-7, issued the Interpretation.
 - a. The MZO does not require a request for an interpretation to come from the property owner or their representative and does not require the request to be in writing.
 - b. Per Section 11-66-7 of the MZO, the ZA has the authority to interpret the MZO to the public, City Departments, and other branches of government.
19. The Interpretation did not change the permitted land uses set forth in the MZO.
20. The Interpretation treats food concessions in a PPRF, whether mobile or not, equally.
21. The Interpretation does not establish or alter separation requirements for food trucks from lots or parcels containing a residence.
22. The MZO does not establish requirements for the evidence the ZA must consider before issuing an interpretation.
23. In issuing an interpretation, the ZA has discretion to consider all relevant materials, information, evidence, and facts.
24. The ZA had sufficient information to issue the Interpretation through the administrative process provided for in the MZO and without a public hearing.
25. The Interpretation was supported by the information and facts considered by the ZA.
26. The ZA issued the Interpretation in compliance with the MZO and all other applicable laws, rules, and regulations.