



# MARICOPA COUNTY, ARIZONA

## Board of Adjustment

### Minutes

### February 20, 2020

**CALL TO ORDER:** Chairman Loper called meeting to order at 10:00 a.m.

**MEMBERS PRESENT:** Mr. Craig Cardon  
Mr. Greg Loper  
Ms. Heather Personne  
Mr. Jeff Schwartz  
Ms. Fern Ward

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Mr. Darren Gerard, Planning Services Manager  
Ms. Rachel Applegate, Senior Planner  
Mr. Adam Cannon, Planner  
Mr. Martin Martell, Planner  
Mr. Eric Smith, Planner  
Ms. Rosalie Pinney, Recording Secretary

**COUNTY AGENCIES:** Mr. Wayne Peck, County Attorney

**ANNOUNCEMENTS:** Chairman Loper made all standard announcements.

**AGENDA ITEMS:** TU2020006, BA2019060, BA2019061, BA2019038, BA2019055,  
BA2019058, BA2020001, BA2020003

### **CONTINUANCE AGENDA**

<b>TU2020006</b>	<b>Amadio Property</b>	<b>District 5</b>
<b>Applicant:</b>	Hannah Bleam, Withey Morris PLC	
<b>Location:</b>	4701 W. Dobbins Rd. – southwest corner of Dobbins Rd. and 47 <sup>th</sup> Ave. in the Laveen area	
<b>Zoning:</b>	Rural-43	
<b>Request:</b>	Temporary Use Permit for temporary events for farmer's market and other community events	

Ms. Applegate presented TU2020006 and noted the applicant has requested a continuance to the March 19, 2020 hearing to allow for additional time to address staff review comments.

**BOARD ACTION: Vice Chair Ward motioned to continue TU2020006 to the March 19, 2020 hearing. Member Schwartz second. Continued 5-0.**



## REGULAR AGENDA

**BA2019038**

**Boyd Property (Cont. from 12/19/19)**

**District 3**

**Applicant:**

Phyllis McGurren

**Location:**

38108 N. 25<sup>th</sup> Ave, N. 25<sup>th</sup> Ave. & Joy Ranch Rd., in the Desert Hills area

**Zoning:**

Rural-43

**Request:**

Variance to permit:

- 1) Proposed 5 lighting structures to be setback 3' where 20' is the minimum permitted

Mr. Smith presented BA2019038 and noted this case was continued from the December 19 hearing, and to date no new material has been submitted. The request fails to meet the statutory test for a variance approval, and staff does not support this request.

Member Schwartz noted the direction of the Board was for the applicant to meet with staff to look at various alternatives, he asked since that time nothing has occurred. Mr. Smith said yes.

Member Schwartz asked if staff received any communication from the applicant. Mr. Smith said he's communicated with him a couple of times but nothing was done.

Mr. Jesse Boyd, the applicant said he did not know he was to submit anything prior but he did get several quotes from traffic engineers and the cost was unbearable. He personally went and drove around the property, and he can move the setback to 8 feet and possibly 10 feet versus 3 feet.

Chairman Loper asked is that on the south or the west. Mr. Boyd said the south side. He would put a 10-foot return alley there for cattle and he would have the lights on the inside versus the outside.

Member Personne asked so the lights on the west side would stay at the 3-foot distance. Mr. Boyd said they could, but if he moved them 10-foot they would be in the arena. It is very tight there already off the access road on that southwest corner and it would eliminate that access for a truck and trailer.

Member Personne asked is there an opportunity if you shifted the entire thing a little bit north and east, and could it be an angled corner there so you have more room to take the turn. Mr. Boyd said yes, we could work with the east corner light and the southwest corner light where they can be shifted 20 foot.

Member Schwartz noted there has been some history with this case and we have given a number of lifelines to Mr. Boyd to come back with some options for us and a design showing how the traffic would work around the property. Member Schwartz said he is not sure how they can help him anymore by saying they will move it to 10 feet or angle something in a different spot. It is not up to the Board to design this; it is up to him to show us how it works and to see if it meets the criteria. He is not inclined to offer any more lifelines to the applicant unless he is going to spend the time and money to address the issues and show us how it works. Mr. Boyd put in the building to the north and the hot walker that constrains him. He could either show us how he could make it work or not, but unless we get something meaningful he is ready to move on.

Member Cardon asked if this application is denied and Mr. Boyd wants to move forward does he have any other options through any other proceedings. Mr. Gerard said the Board of Adjustment actions are appealable to superior court, and if he consolidates his two properties, he can get the structures to the north permitted as accessory structures. There are ways for him to move forward with some modifications.

Member Cardon said for this area, it looks like this use is very reasonable. The neighbors and everyone around would see this as an enhancement, and there is no opposition. He sees a lot of positive with this.

Member Schwartz said Mr. Boyd has chosen not to combine the lots, and he has chosen not to seek other options to mitigate some of the issues. It is up to the applicant to explain to us why, and he has not. He is happy to give him one more chance to seek various options, but it is not our job as a Board to redesign somebody's project. He is inclined to deny him or give him a very short period to get this done or move on. He is either giving him 30 days or voting for denial.

Vice Chair Ward said the applicant was given some alternatives where he can rearrange the design and be in compliance. She would like to put it off or deny it altogether.

Chairman Loper said we are a Board to take action in all states of presentation and sometimes forgiveness is one of those. We can continue to a date specific, or we can continue indefinitely.

Chairman Loper asked what the cost is for a continuance. Mr. Gerard said we charge \$250 for an indefinite continuance or a continuance requested by the applicant.

Chairman Loper said he has the option to appeal in superior court if this case is denied, and asked how long before he could reapply on the same property. Mr. Gerard said they would have to wait one year to seek the same request.

Mr. Peck said they also have to show something has changed. Under law, you cannot keep coming back for the same thing.

Mr. Gerard said we do have a violation on this case for unpermitted construction. Whatever motion this body takes, we are going to move forward with prosecution to complete that matter. There are options available to the applicant to bring this property into compliance. He can consolidate the properties and move forward with that permitting issue which is separate from the arena.

Member Schwartz said there is pending action that will force either the removal of the building, or the combining of the property, which will then solve the access issue.

**BOARD ACTION: Member Schwartz motioned to deny BA2019038. Vice Chair Ward second. 2-2-1 (Personne) – motion failed.**

**BOARD ACTION: Member Cardon motioned to approve BA2019038. Member Schwartz second. 2-2-1 (Personne) - motion failed.**

Mr. Peck said the motion to approve failed to obtain a majority vote, which is a denial of the requested variance.

**BA2019055**

**LaCasse Property (Cont. from 1/23/20)**

**District 4**

**Applicant:**

Robert LaCasse

**Location:**

15014 W. Heritage Dr. – 151<sup>st</sup> Ave. & Heritage Dr. in the Sun City West area

**Zoning:**

R1-7 SC

**Request:**

Variance to permit:

- 1) Proposed front setback of 14' where 20' is the minimum permitted

Mr. Smith presented BA2019055 and noted there is no known opposition and one letter of support. The applicant is proposing a workshop/car restoration area in front of the residence with a front setback of 14' where 20' is required. Staff does not support the request.

Member Schwartz asked is there any other properties in that development that have a 14' setback. Mr. Smith said he does not know since we go by a case-by-case basis.

Chairman Loper asked the applicant if he would like to go through his presentation again since we have some new Board members in attendance.

Mr. Peck said since it was a continuation, new members cannot participate unless they heard or read the entire transcript, and they can ask questions just like any member of the public.

Member Cardon said to clarify he was not here for the hearing in January.

Chairman Loper asked the applicant to provide a synopsis to what has changed from when he was here in January for those that were here.

Mr. Bob LaCasse, the applicant said the only thing that has changed the neighbor sent in a support letter stating they were okay with the garage as long as it did not affect the value of their home.

Chairman Loper asked is the exterior finish going to look as it were part of the original construction when you are done. Mr. LaCasse said yes.

Member Schwartz asked would there be a driveway that will connect to the street. Mr. LaCasse said yes, it is a requirement in Sun City West.

Mr. LaCasse said he has an unusual predicament; there is a 12-foot easement from the sidewalk to the property line. According to PORA, the governing board of Sun City West told him the inside edge of the sidewalk was supposed to be his property line and he did not know there was an 80 foot easement. He did try to contact PORA and left messages and no response.

Member Personne asked if the 12-foot setback exists throughout the neighborhood or only on this property because it is in the cul-de-sac. Mr. Smith said the utility easement does exist; it has to be utilized by any of the properties. Member Personne asked is this consistently 12 feet, or does it go down to 8 feet in other areas. Mr. Smith said it should be consistent, but we are only looking at this particular property.

Mr. Gerard said if you look at the case map, it appears to have a consistent boundary line along the street.

**BOARD ACTION: Vice Chair Ward motioned to approve BA2019055 with conditions 'a'-'d'. Chairman Loper second. Approved 2-0-3 (Personne, Schwartz, Cardon).**

- a) General compliance with the site plan stamped received December 18, 2019.
- b) All required building permit for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Approval of this variance for a reduced front yard setback of 14' shall apply to encroachment of the workshop addition only. All livable spaces of the residence including any future expansions within the front of the lot shall meet the underlying R1-7 SC zoning district standard of 20'.
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

**BA2019058**

**Applicant:**

**Location:**

**Zoning:**

**Requests:**

**Nelson Property**

Blake, Tammy, Bradley and Linda Kay Nelson

27307 N. 237<sup>th</sup> Ave. Bunker Peak Rd. and 237<sup>th</sup> Ave. in the Surprise area

Rural-43 Military Airport Ancillary Military Facility overlay zoning district

Variances to permit:

- 1) Proposed front yard setback of 0' where 40' is minimum permitted and,
- 2) Proposed south side setback of 0' where 30' is the minimum permitted and,
- 3) Proposed Accident Potential Zone line northeast side setback of 5' where 30' is the minimum permitted

**District 4**

Mr. Martell presented BA2019058 and noted this request fails to meet the statutory test for a variance approval. The majority of the site is inside the accident potential zone where any residential uses are prohibited as per A.R.S. §28-8481(J), leaving only 10% of the site to place a residential dwelling unit. The developable area of the site is a right triangle starting at the lot's southwest corner. The applicant is proposing to construct a 1,500 square foot single-family home, and due to the lots limitations the applicant is requesting three different variances. Variance request #1 is to reduce the minimum front yard setback from the required 40' to 0'. Variance request #2 to reduce the minimum south side yard setback from the required 30' to 0'. Variance request #3 to reduce the northeast side yard setback along the APZ line, which is considered an ad hoc property line from the required 30' to 5'. The applicant has failed to demonstrate the property has caused undue physical hardship that prevents the development of the property. There are alternatives available to the property, such as developing the site for agriculture, equestrian uses, the raising of livestock, or other non-residential development with approval of

Military Compatibility Permit. The applicant has failed to demonstrate that the general intent and purpose of the zoning ordinance will be preserved with the variance in that placing a home 10' away from the access easement along the western boundary and 0' along the south property line will negatively impact the area. The new single-family residence will not fit in with the rural-residential character of the surrounding homes of the area that are setback 30' or more from side property lines and 40' or more from roadways.

Mr. Gerard said state statute has delineated high noise and accident potential zones that are based upon the flight operations of the various military air bases around the state. In Maricopa County, this applies to the Gila Bend Air Field between Gila Bend and Stanfield. It applies to Luke Air Force Base and auxiliary airfield number one of Luke Air Force Base and fly below 1,000 feet in that area. These delineated crash hazard zones and noise contour areas that are within 65-decibel noise contours are also within the Military Airport and Ancillary Military Facility (MAAMF) Overlay Zoning District. This was created after litigation where several jurisdictions and the federal government went to court with Maricopa County. The overlay zoning districts sits on top of the underlying zoning, and most of this area has Rural-43 zoning where you are permitted a one-acre minimum lot size and you can build a single-family residence. The overlay-zoning district supersedes the use regulations of the underlying zoning districts. They have development standards with lot area, lot width and setbacks, but the use regulations are superseded. You cannot establish a use if you are in the MAAMF. You have to proceed according to this overlay-zoning district. There are certain uses that are permitted by right, largely agricultural and open space uses, and there are other uses that require a Use Compatibility and Consistency Determination (UCCD). An application is filed stating the use/s they wish to establish, and that goes to Luke Air Force Base for a written determination that it is consistent and compatible with state statute, military operations and national defense. This will allow them to go forward with a Military Compatibility Permit (MCP), which is legislative zoning action that goes before the Planning and Zoning Commission and the Board of Supervisors to establish any proposed use other than agriculture. There has been a memorandum of understanding settlement of ongoing litigation that there shall be no new residential within the MAAMF. When you have a situation like this where there is a property in the overlay or bisected by the overlay, any residential development is prohibited within that overlay area, so they would have to build it outside. In this instance, we have a lot that appears to be unbuildable residential. There are other uses that can be established other than residential, and if they are to establish residential development with this property because of the Rural-43 development standards there has to be some type of relief through a variance if there's to be residential development.

Mr. Peck said this wasn't established by the State of Arizona, this was done nationally. The reason they call it high noise and accident potential zone is those properties in the most dangerous areas for flights do not want people congregate there, so in the event of an accident damage to people will be limited. In 2004, the state of Arizona adopted this statute and Maricopa County refused to change its zoning. The other issue is if we change the zoning on all these people, you face the possibility of a lawsuit saying you diminished the value of property and you have to pay for it. Maricopa County was sued by the State of Arizona, and the Air Force, and we lost. We were able to work out a settlement afterwards so there could be relief if people needed it, and if anybody made a claim for the damages the state agreed to indemnify us, so we adopted this overlay zone. There is a chart in the ordinance, and depending on your number, and which zone you are in you can see whether you are allowed to do it as of right. The question is, is this triangle area an appropriate place for a house.

Vice Chair Ward asked when somebody purchases property is it on the deed or are they advised when they purchase the property to this type of area. Mr. Peck said zoning is never included in a deed; it is a public record so it should be known and you need to do your due diligence and check.

Member Schwartz asked when the owner took title of the property. Mr. Gerard said the current owner took possession in March 2019 and they applied for this variance in December 2019.

Mr. Bradley Nelson said they acquired the property in 2019 and knew the property was in the Accident Potential Zone (APZ) and saw there was an area outside of the APZ. They had a pre-application meeting with staff to lay out what they wanted to do by putting a house in there to have a single-family residence and develop the rest of the property as horse property. After the meeting, everybody seemed to think this was a viable option where we had sufficient room to do that. The property located to the south is already developed with a single-family residence on it, and it is well over 200 feet away from where we are going to be constructing. He knows the property owner, and he has no issues. Other properties to the north, the west and part to the east is in the APZ, and we are going to have the same building restrictions and the same development restrictions with our property. Placing our house the way we want to place it will not impact the surrounding properties. We have room to put the house in there, and we have sized the house to fit in that triangle. We know we are asking a lot on the setbacks, but this is an open area and there is not a whole lot of development, and not much future for further development. We have a serious impact with the APZ across our property, but we do have a parcel that is buildable outside of the accident potential zone.

Member Cardon asked what the width of the right-of-way on 237th Avenue is. Mr. Nelson the right-of-way is 60 feet.

Vice Chair Ward, asked staff when the other homes built or were they grandfathered in. Mr. Gerard said they would be legal non-conforming residences and built prior.

Vice Chair Ward said it was stated that no new homes could be built. Mr. Gerard said correct, no new residential in the overlay, so it does not apply to homes outside the overlay where the proposed home is.

Member Personne asked is there another zoning designation that would permit single-family in this small triangle that won't require a variance for the setbacks, and it was mentioned there might be some ramifications with zone changes as part of this. Mr. Gerard said the minimum lot area for any residential zoning district in the County is 6,000 square feet. We would never look at residential spot zoning of a single parcel as a viable option, you would want a much larger area. Luke Air Force Base has a graduated density concept that we try to apply consistently with and within the first half-mile of their noise contour, they would look at 0-2 dwellings per acre. It would translate to larger lot sizes and it would not be 6,000 square foot lots. It would be ½ acre or one acre lots. The comprehensive plan and area plans would probably not be consistent with our adopted land use plans for lots smaller than large acreage within these areas, which would be a whole other issue.

Mr. Peck said the statute provided a property owner had a three-year window to bring in action for diminished value. As a result, when we adopted the zoning in 2010, the window to bring in



such an action was three years, so after 2013 there is no more concern that someone can argue this action diminished his or her property value.

Member Schwartz asked where the driveway would be located. Mr. Nelson said on 237<sup>th</sup> Avenue on the midway line about 100 feet.

Member Schwartz noted whenever we have a driveway; we always make sure there is adequate space outside the right-of-way to park cars. He does not see any distances from the corner, and he asked do we know what that distance is, and is it on the long side or the short side. Mr. Nelson said it is on the short side.

Mr. Gerard said in doing any type of site plan review we would not prohibit driveways and parking within the high noise and accident potential zone. Member Schwartz said he is not worried about the high noise he is more concerned about the length of driveway with cars on the street.

Member Schwartz asked how they propose to get around and maintain the corner of your property if it is right on the property line. Mr. Nelson said it is on an angle and we have a point there and fan out from there. There is access on both sides of that house to get to that zero lot line to maintain it.

Member Cardon asked if any cars would be hanging out in the road or in the easement. Mr. Nelson said no, he has four acres to park on whether it is in the APZ or not.

Ms. Lindakay Nelson drew a diagram of the property and marked the surrounding areas where houses are located, and said all they are asking for is this one little corner amongst all the other houses, and she does not think a plane will find her small home and decide to crash there. Member Schwartz said in the development business we always have that question, but they need to make sure there is protection for Luke Air Force Base with generalized requirements of the area.

Member Schwartz said he is having a hard time with the zero setback because there could be a code enforcement issue or the sheriff gets a call and you have to get on someone else's property to fix that corner of your house. He asked how much of an impact would it be if that setback would go from zero feet to three feet. Mr. Nelson said he originally had a three-foot setback on that corner. We cut back on the setback on the street side on 237<sup>th</sup> Avenue where the house was slightly shifted to the northeast, the 10-foot line was reduced to 7 feet, and that gave us access all the way around the house. The drawing here is what staff determined they would like to see us do. His initial request was to have 3 feet on the side, and 7 feet on the street side.

Member Schwartz asked if he could live with 10 feet on the front and three feet on the side.

Mr. Martell said there is another factor where the APZ line is not surveyed on the ground, and the safest bet would give a five-foot setback from that APZ line, because it may be on or very close to that APZ line. That five-foot would give enough buffer so it would alleviate that concern.

Member Schwartz asked how you figure out where the APZ line is so you can build a house that will meet the requirements. Mr. Martell said we rely on our computer system Plan Net and rely on that data.

Mr. Gerard said the statute makes the State Land Department the keeper of the maps, and surveyors scale based upon their official maps. Mr. Nelson said when we looked at placing a house here we asked surveyors and everybody we knew in the area where is the APZ line, and nobody knows. What we have here is a GIS number based on this shaded area is as close as you can get, and by having the five-foot offset, it allows that fudge factor so we do not interfere with Luke Air Force Base.

Mr. Peck said those maps and lines were created at the federal level, and they were not even created by Arizona.

Member Personne asked has the applicant spoken to the neighbor to the south, and would it be possible to get an easement from them for the purpose of maintenance and that would run with the land in case they move. Mr. Nelson said yes they could work with the neighbor, since they are on good terms with him, and he does not think it would be a problem.

Chairman Loper said that line is fuzzy as the exact boundary may be and that line is the same as if it were a river boundary, it creates a de facto property line. We are really looking at is this appropriate in that small triangle and he believes it is.

Member Schwartz said it is a dividing line, but then it's not. When you do PUD developments, you are moving all the density over to one place to preserve open space. His only issue we do not have defined APZ line. He would support a motion for approval that would have a minimum of at least a foot to walk around on that side. If the APZ line is to their favor, they can push over further. He would not have them go get an easement from another property owner for access.

Mr. Peck said that line will never be firmly established. There is no engineer or surveyor that will put his or her seal on a property and tell you that is exactly where that line is. What you could do, because they are asking for a variance of zero feet is condition a zero foot variance on them obtaining an easement, and if they cannot grant them an easement allowing at one foot they have the flexibility to go either way.

**BOARD ACTION: Member Schwartz motioned to approve BA2019058 with conditions 'a'-'c' with new stipulation 'd'. Vice Chair Ward second. Approved 5-0.**

- a) General compliance with the site plan stamped received January 2, 2020.
- b) All required building permits for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permits within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

- d) There shall be a minimum 1' setback from the south lot line unless an easement has been recorded giving the subject property benefit of use and maintenance on the adjacent property to the south.

**BA2020001**

**Applicant:**

**Location:**

**Zoning:**

**Requests:**

**Amrine Property**

Bill Amrine

35822 N. 16<sup>th</sup> St. – Cloud Rd. and 16<sup>th</sup> St. in the New River area

Rural-43

Variance to permit:

- 1) Detached accessory building to be placed in the required front yard at a 12-foot setback, where detached accessory structures are to be located outside the required front yard and,
- 2) Proposed front (east) accessory setback of 12-feet where 40-feet is the minimum permitted and,
- 3) Proposed rear (west) accessory setback of 1.5-feet and side (south) accessory setback of 0-feet where 3-feet is the minimum permitted

**District 3**

Chairman Loper recused himself from this case.

Mr. Cannon presented BA2020001 and noted the requests is allowing an existing mare motel to be placed in the required front yard. Allowing the mare motel to be permitted, and allowing current structures to be placed near to the west property line or along the side property line. The variance for accessory structures pertains to a small shed located in the southwest corner of the site. There is an existing violation case on the property for building the mare motel without a building permit, and no permit record appears to be available for the shed. The request fails to meet the statutory tests for variance approval, as permits were not attained prior to the construction of accessory structures. Staff received three support letters from the adjacent property owners.

Member Personne asked when was the residence built. Mr. Cannon said it was built around 1998, and we have a permit record for the residence. We are not able to find a permit record for the shed. They did try to get a permit for the mare motel but due to the setback issue, it was rejected.

Member Schwartz asked the current owner had one variance for the house, which was approved. Mr. Cannon said yes.

Member Schwartz asked they came in and asked for a permit for a shop building to be built and denied, then went and built it. Mr. Cannon said the shop building which is the shed located in the southwest corner is the one we could not find a permit on. The mare motel is the one that was not able to be permitted.

Member Schwartz noted the proposal is to accommodate the shop building and the mare motel. They got a variance for the house, and then came in and asked for a permit for the side building in its current condition, and it was denied. Then the mare motel was built and now they are coming in and asking for a variance. Mr. Cannon said the mare motel was built before they asked for the permit.

Mr. Rod Jarvis representing the Amrine's said the request is for the shop building which was originally a mare motel and it was there before the Amrine's bought the property, and it was reduced over time. The last two variances relate to the mare motel located in the front yard and in the setback. The Board of Adjustment issued a variance to build the house, where it has a circular driveway, which the historical photos have shown to be on the property long before the house was built. It created a very beneficial and practical way to access the lot. The shop used to be much bigger where it was a mare motel and it was reduced in size. They are asking for setbacks with the west property line to zero and the south property line to 1-1/2 feet, both could be 3 feet. The new mare motel in the front with the nice old trees, seems to be part of the reason the mare motel is nestled that way, preserving those trees. Showing the historical images on the property from 1966, shows the trees where the mare motel now nestles up against them. In 1998, the historical images show that circular driveway and the previous residence. The circular driveway was put in there for that obvious reason for the preservation of the entire flora around it, and they need a place to do a complete turnaround. It also shows the shop building/mare motel, which was there before the Amrine's purchased the property in 2005. Aerial images from 2007 show they still have not built the new house and the shop building remains but the mare motel part is gone. In 2009, the aerial photo shows the current residence where the Board recognized the circular pattern in place along with mare motel/shop building down in the southwest corner. There is no permit for the old mare motel and his client's did not build it as it was there before. The peculiar condition is the island lot surrounded by everybody else's backyard, and it has developed organically overtime. What we are dealing with now is a much smaller building, and there really isn't any reasonable location for it unless you start pulling out nice trees. Some will say a tree isn't a peculiar condition where you can plant a new tree. An old tree is part of the topography too and worth saving. The hardship is the building can't be moved and would have to be torn down. The general intent and purpose and how it is preserved, the photos of the surrounding neighborhood and you see how it fits in with it, and by allowing these variances it will maintain the beautiful open space in the middle of the lot that all the adjacent properties can enjoy as well. There is support of the neighbors on all three sides, and they could not track down the owner with the grazing lot to the west. This lot has no streetscape except the landscape itself with the circulatory drive. If you put the mare motel in the middle of that, you crowd the house and affect its aesthetics and usability. We are also trying to preserve trees to the east and north of the mare motel, and there really isn't a reasonable place to put that mare motel then where it has been placed. The client built the mare motel first, and then came in for a permit and were denied. They are here today to correct that problem.

Member Schwartz said horse properties have a development pattern much different from a typical subdivision. He asked if they would have come in for a permit today would they be able to fit that structure within the building envelope. Mr. Jarvis said you could slide it over and it would make it much less usable. You need to be able to use the circulation in order to be able to back into it with a horse trailer, and it would impact some of the foliage on the site.

Member Personne said it looks as though you could have angled it further away from the trees. She understands the circulation issues, but it seems you would have been able to access it appropriately. Mr. Jarvis said physically there is room to move it and you can see that in the photos and he agrees with that, but the angle of it is actually a much better angle for using a horse trailer for access. It also opens up the front yard, the view of the driveway, and it affects the aesthetics of the lot. This would not be an issue if it weren't an island lot.

Member Schwartz asked is there a concrete slab and steel pillars, and corrugated roof. Mr. Bill Amrine, the owner of the property said the mare motel was built with good material, 4 x 4's and steel.

Member Schwartz asked if it is enclosed. Mr. Amrine said no. It was built up to road grade with gravel and then on top of that is stabilization tile with gravel stamped down in it, so it will not erode away. Then underneath the overhang is rubber poly similar to what they use for playgrounds. It is substantial construction and built well.

Member Cardon said the shop was already there and it fits within the variance. The circulation and current location of the home and the fact that it's in an island lot makes sense to where the mare motel is located. It fits within the peculiar condition and he is in support of these variances.

Member Personne said she feels the same, and it is unfortunate where the shop building was located, but it predated this involvement. She does not think it is negatively impacting anyone, and the mare motel could have been processed in a different way but it is not causing harm.

Member Schwartz said he does believe it lays out better than what it was, and it would have been a much easier conversation to have if you would have come in advance for a permit.

**BOARD ACTION: Member Personne motioned to approve BA2020001 with conditions 'a'-'c'. Member Cardon second. Approved 4-0-1 (Loper).**

- a) General compliance with the site plan stamped received January 27, 2020.
- b) All required building permits for existing development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permits within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

**BA2020003**

**Applicant:**

**Location:**

**Zoning:**

**Request:**

**Bomyea Property**

Jeffery Bomyea

13801 N. 183<sup>rd</sup> Ave. – Waddell Rd. & 183<sup>rd</sup> Ave. in the Surprise area

Rural-43

Variance to permit:

- 1) Allow an accessory structure to occupy 31.4% of a required side (north) yard where 30% of any required yard is the maximum permitted

**District 4**

Mr. Cannon presented BA2020003 and noted there are no violation cases on the property. The findings fails to meet the statutory test for variance approval, as the hardship was self-created in that the accessory structure was built outside the approved area. Staff received one support letter from an adjacent property owner.

Chairman Loper asked are we talking about an existing structure that will increase the lot coverage or a proposed one. Mr. Cannon said it is an existing one. The structure was permitted for a certain area, but it was built outside of that area. Mr. Gerard said to clarify, not lot coverage but yard coverage.

Member Personne asked was it a surveying area that caused the discrepancy. Mr. Gerard said he believes the issue was during the construction process, it failed inspections because it was determined to be in the wrong location.

Mr. Tom Stitt said he is the general contractor, the original plan they submitted was 40' x 60', and because there were issues in the side yard with an existing septic tank, we ended up trying to get as much building coverage. We ended up taking 5 feet off the building to 35 feet and made it a little longer, and that was the permit that was granted. Once they pulled the permit, he had an approved site plan and he had the northeast boundary pin, but he did not have the northwest boundary pin. He could not get the surveyor there on time, and he had a window for his concrete contractor, so it was his call to take the measurements off the existing house to locate the pad. He thought they had plenty of room to the north and it turns out they did not. When they finally had it surveyed, there was about 2-1/2 feet of property on that north side that wasn't there. The only way it could be accounted for is the house was in the wrong location that we used as a benchmark to measure from. That is what made the calculation change, so instead of being 30% of the lot we are now at 1.4% over that which is 74 feet in a one-acre lot.

Mr. George Fulton, the architect said what they are asking is reasonable, and the allowable setback for an accessory building is three feet and we are providing 5.4 feet. We are complying with the intent of the ordinance, but not the letter of the ordinance.

Chairman Loper asked if it were not a corner lot it, would still be in the side yard and still be an issue in terms of exceeding the amount of area. Mr. Cannon said that is correct. There is a vehicular non-access point along Waddell.

Mr. Gerard said what would have been better customer service is for the inspector to halt construction, and not pass inspections with the condition that the survey be completed before final.

**BOARD ACTION: Member Schwartz motioned to approve BA2020003 with conditions 'a'-'c'. Vice Chair Ward second. Approved 5-0.**

- a) General compliance with the site plan stamped received January 21, 2020.
- b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

**Adjournment:** Chairman Loper adjourned the meeting of February 20, 2020 at 12:03 p.m.

Prepared by Rosalie Pinney, Recording Secretary  
February 20, 2020