



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

May 21, 2020

CALL TO ORDER: Chairman Loper called meeting to order at 10:02 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
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Rebecca Quince, Senior Project Manager, OET

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2020017, BA2020018, BA2020004, BA2020016

APPROVAL OF MINUTES: June 21, 2018

Chairman Loper requested a motion to approve the changes from the June 21, 2018 minutes.

BOARD ACTION: Member Cardon motioned to approve the June 21, 2018 minutes. Vice Chair Ward second. Approved 5-0.

CONSENT AGENDA

BA2020017 **Becker Property** **District 1**
Applicant: Dustin Becker
Location: APN 304-70-098A @16132 E. Twin Acres Dr. in the Gilbert area
Zoning: Rural-43
Request: Modification to condition 'b' of BA2019027 for a time extension

BA2020018 **Petross Property** **District 4**
Applicant: Dustin Petross
Location: APN 200-64-016C and 200-64-012B @ 15015 N. 71st Avenue – 1,425 ft. north of the NEC of Acoma Drive & 71st Avenue, in the Peoria area
Zoning: Rural-43

Requests:

Variance to permit:

- 1) Proposed lot area of 43,186 sq. ft. where 43,560 sq. ft. is the minimum lot area required; and
- 2) Proposed lot width of 140' where 145' is the minimum lot width required

Mr. Gerard presented the consent agenda.

Vice Chair Ward asked why there is not an expiration date for the construction completion on consent agenda item #1 - BA2020017. Mr. Gerard said we are currently revising the text amendment to eliminate this article from the ordinance to no longer have a time limit to complete construction for a variance. If there is argument for a variance, then that argument is in perpetuity and not to be tied to a building permit.

BOARD ACTION: Member Schwartz motioned to approve the consent agenda - BA2020017 with conditions 'a'-'c'. Member Cardon second. Approved 4-0-1. Member Schwartz motioned to approve - BA2020018 with conditions 'a'-'d'. Member Cardon second. Approved 5-0.

BA2020017 conditions;

- a) General compliance with the site plan stamped received June 17, 2019.
- b) All required building permits for the proposed and existing development shall be applied for within 1-year of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permits within the specified time, or to pursue the construction permit to completion without expiration, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2020018 conditions;

- a) General compliance with the Site Plan stamped received April 23, 2020.
- b) Current parcels 200-64-016C and 200-64-012B must be combined into a single property with a new APN number (as yet to be determined) and the combined property must be no less than 140 feet wide and comprise no less than 43,186 sq. ft. in order for this variance to be in effect.
- c) No driveway may be located on top of the leach field for the septic system.
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

REGULAR AGENDA

**BA2020004
Applicant:
Location:**

Oldham Property
iPlan, LLC
APN 219-33-024F @ 2833 N. 89th St. in the Mesa area

District 2

Zoning:

R1-35

Requests:

Variance to permit:

- 1) Proposed hillside disturbance outside the lot's principal buildable envelope; and
- 2) Proposed height of 35' where a maximum 30' is allowed

Mr. Gerard presented BA2020004 and noted there is no known opposition and read two letters of support received after distribution of the staff report.

Mr. Gerard said there is a wash in the middle of the site, northwest to southeast and two feet deep. Rather than using this hillside and wash slope to push the single-family residence forward south in the front, they are seeking a variance to re-channel and pipe this wash and to build where the wash is. Hillside requirements are based on natural slope rather than finished grade combined with the proposal for a turret. This results in a 35 foot height measurement where 30 feet is maximum. There is a 2 feet deep wash and 7 feet of fill to be brought in. This structure is 35 feet from natural grade which is the bottom of the wash at the north end of the wash bed. Staff looks at this as an unregulated lot split that is in hillside and is slightly larger than the minimum allowed lot size in R1-35. It should be a much larger lot or it needs to be a much smaller footprint. The proposal doesn't meet the lot based upon the lot conditions and zoning standards, and fails to meet the test for a variance approval.

Member Schwartz asked if there are any cross-sections or site plans of the house to look at the architectural feature. Mr. Gerard said there was no cross-section of the house included in the packet, and no pending building permit at this time. We need to defer to the applicant if they have that information available.

Member Schwartz asked if staff has seen any other options in developing this house. Mr. Gerard said staff has sent review comments to the applicant, but there has not been response to that. The issue with the height is a design preference, unless you consider the fact we're measuring from natural grade from wash bottom where the wash has been re-channeled. The Board could look at that as a peculiar condition, but staff views it as a design preference and the house can be shorter, but we can defer to the applicant to see if that's a necessity.

Member Schwartz asked how the adjacent homes constructed their homes, and if they are going down the hill or on a flat pad. Mr. Gerard said there was no variance history for either one of those homes. The hillside is not impacting the house to the north, and the house to the south appears some cuts to the north, and it looks like they meet the hillside requirements. There was a change in hillside standards in 2010, so that can have some impact.

Member Personne said if you look on Google maps street view, it looks like they are on flat pads and not stepping down. Mr. Gerard said it appears the house to the south is a little cut into the slope which would be a flat pad.

Mr. Kable Oldham, the property owner said the property directly north to his property doesn't fall under the hillside restrictions because it doesn't have slopes that are 15 percent or greater. The home south to his property does have the slopes 15 percent or greater with no variances that he is aware of, but they've been allowed to develop all the way to the property line within the 20 foot setback. The property to the south is partially cut into the hill and is built up substantially. In order to stay out of the flood zone because of the wash establishes the building height for their

pad. He has to build up 6 feet because of the wash to get high enough to be out of the flood zone.

Mr. Ben Shire said he is the architect working on the project. The portion of the home that is above the height limit of 35 feet is not resting on a 15 percent slope or greater. Our interpretation of the hillside ordinance is the portion of the home hillside of 15 percent or greater will be under the hillside ordinance. All the portions of the home on the flat portions of the lot we designed from the guidelines measuring from grade. All the portions on the hillside we designed to step with the land. If you look at the rear yard of the design, we do not cut into the mountainside like the neighbor to the south does. We ride with the land and have steps that go up to the positive edge pool that spills towards the house. Our civil engineer does a hydrologist study, where he takes the que of that 2 foot deep wash, so the finished floor of the house is dictated by being able to accommodate the water and not have it come to the house. That is why we have the pipes and had to raise the house to 7 feet. That portion of the home is on the flat portion of the lot, and it's under a 15 percent slope. The turret is an architectural element that the homeowner wanted, and is aesthetically important. We were careful to put that over a flatter portion of the lot, and do not think it should be measured from the existing grade. Everything else that is hillside complies with the height.

Member Schwartz said you are just talking about a triangle piece towards the back of the house, and if he could see a street view he could better understand the issue.

Mr. Gerard said it looks like the 15 percent slope cuts the residence in half. Part of the turret would be in and part of it would be out. If the applicant could better illustrate this or is confident that the height is outside of the hillside slope. This is an interpretation he would need to review with counsel to see if a portion of a house could be measured height according to hillside and a portion of a house could be measured hillside. He doesn't think the definition allows that but would require additional information for the Board's consideration.

Mr. Shire said if you do a review we are using the language from 1201.2.1 and it talks about the portions of a property having a slope and that's where we are getting some is in and some is out. If we show that other cross-section it will show clearly what is in and what is out. We really aren't above the height limit per our interpretation. If we were to move the house to the front of the lot, we would need to put the septic into the rear of the lot and there are specific restrictions of putting a septic near a wash. We are contending the language says otherwise that those portions of a property having natural slope. The development standards only apply to development of those portions. We have a disagreement on how it's interpreted, and we were advised if it's on a hillside portion then the whole house/property is hillside.

Mr. Gerard said he doesn't believe there is any disagreement about portions of a property subject to hillside regulations, except for the definition of building height refers to grade and the definition of grade. The definition of building height is - the vertical distance from grade to the highest point of the coping of a flat roof; to the deck line of a mansard roof or the height of the highest gable, hip or gambrel roof. Grade - the lowest point of elevation of the surface of the ground, paving or sidewalk at any point adjacent to a structure or fence/wall. For purposes of calculating structure, building or fence/wall heights, existing established grade shall be utilized on subdivision land and natural, undisturbed grade shall be utilized on un-subdivided land. The issue we have is building height not the fact that hillside is applicable to non-hillside areas. Can we measure building height of a building differently for hillside portion or

non-hillside portion? Staff doesn't believe it's been illustrated that the 35 foot turret is not partially located on hillside.

Mr. Shire said the portion that would be in hillside for that turret would be the plate height and the rise would be under 30 feet, it is just the peak of that roof sits on top of non-hillside. The only reasons we have 35 foot measurement we are taking it from the bottom of the wash to the top of the turret. Mr. Gerard said that is the way it should be measured from the bottom of the wash.

Mr. Shire said when looking at the illustration you can see the lot is flat right where that 35 foot is taken from that dash line is existing grade, and you can see it transitions from flat as a board to some slope. Mr. Gerard said everything to the right of that 35 foot measurement is on slope and there still is going to be over 35 foot height from natural grade. Mr. Shire said at the cross-section it is a much lower building past that turret. Mr. Gerard said half of the turret appears to be in slope and it would be over the maximum of 35 foot height measured from natural grade.

Mr. Gerard said regardless, a portion of this turret is in an area where the natural grade pre-development means it's over 30 foot in height from natural grade, and it's largely because it is a natural wash being rechanneled. The Board needs to consider if that itself is a peculiar condition, and the 2 foot wash not the hillside slope causing the over height condition on the small portion of the turret. There still is the issue of the disturbance of the lot's principal building envelope.

Member Schwartz asked does the turret run front to back of the house or is it in one section. Mr. Shire said it is only 15 feet in diameter. It is a beautiful architectural element, a grand staircase going upstairs with natural light.

Member Schwartz asked is just the turret 35 feet or is more of the home at the 35 feet. Mr. Shire said the rest of the house is on grade, it is just the turret because of the wash.

Member Schwartz said he is now more comfortable with this after being able to look at the elevation plans presented. It's not like the whole house is hillside and the turret is just the one section. The wash is the peculiar condition.

BOARD ACTION: Member Schwartz motioned to approve BA2020004 with conditions 'a'-'c'. Member Cardon second. Approved 5-0.

- a) General compliance with the site plan stamped received March 27, 2020.
- b) All required building permits for the proposed and 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.

**BA2020016
Applicant:**

Duarte Property
Lydia Reyes

District 4

Location: APN142-33-003X @ 8343 W. Griswold Rd. – 85th Ave. & Griswold Rd., in the Peoria area
Zoning: Rural-43
Request: Variance to permit:
1) Existing front setback of 3' for an accessory structure (chicken coop) where 40' is the minimum permitted

Mr. Gerard presented BA2020016 and noted there is one letter of opposition and one letter of support with six signatures. The front yard is on the north where Griswold Road dead ends and becomes the driveway for the property. As the alignment continues forward there appears to be a well site and a diagonal alley that appears to form the eastern lot line. This may be some type of channelized wash and it is not an actual street. Staff believes there is no warrant for a structure within the required front yard, and finds the request fails to meet the statutory test for a variance.

Ms. Lydia Reyes, the applicant said the property owner built the structure thinking it was on the side of his property line. This is a dead end street away from the neighbors to give him some privacy on his property. They talked to some of the neighbors and they don't see a problem and are okay with this chicken coop other than the neighbor that wrote the opposition letter.

Chairman Loper asked about the architectural structure in terms of building materials and colors. Ms. Reyes said these are pre-fab trusses and already shingled. All you can see from the street is a little bit of the roof line.

Mr. Gerard read a letter received in opposition from Mr. Paul Baker after the distribution of the staff report.

Chairman Loper asked the applicant if she wants to address any of the comments from the opposition letter. Ms. Reyes said Mr. Baker claims he lives on his property, but there is no house just a storage building and he isn't in the area on a daily basis. As far as the dead animals she has been on the property many times and she's never seen any dead animals.

Ms. Reyes asked is there something they could do to make the structure look better.

Member Schwartz asked if she lives on the property. Ms. Reyes said she is just the applicant and she has been working with some of the neighbors in the area, since Mr. Baker complains about the neighbors.

Member Schwartz asked if Mr. Duarte is on the phone call today. Ms. Reyes said no, he does not speak English and she is here representing him.

Member Schwartz asked if the chicken coop is a commercial operation or just for family use. Ms. Reyes said the eggs are just for himself and his family.

BOARD ACTION: Vice Chair Ward motioned to approve BA2020016 with conditions 'a'-'c'. Member Cardon second. Approved 4-1 (Schwartz).

- a) General compliance with the site plan stamped received April 17, 2020.

- b) All required building permits for the 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.

Adjournment: Chairman Loper adjourned the meeting of May 21, 2020 at 11:18 a.m.

Prepared by Rosalie Pinney
Recording Secretary
May 21, 2020