



MARICOPA COUNTY, ARIZONA
Board of Adjustment
Minutes
August 13, 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
Ms. Fern Ward

MEMBERS ABSENT: Mr. Jeff Schwartz

STAFF PRESENT: Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Jose Castañeda, Planner
Mr. Sean Watkins, 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: BA2020031, BA2020026, BA2020029, BA2020030, BA2020032,
BA2020033

MINUTES: May 21, 2020 and June 18, 2020

Chairman Loper asked if there were any changes or comments to the minutes for May 21 and June 18, none.

BOARD ACTION: Chairman Loper motioned to approve the May 21, 2020 and June 18, 2020 minutes as written.

WITHDRAWN

BA2020031 **Appeal of Interpretation** **All Districts**
Appellant: Larry S. Lazarus of Lazarus, Silvyn & Bangs, P.C. on behalf of Domenick Passio, President of the Palm Valley V Community Association
Requests: Appeal of staff's interpretation that the compatible uses of the Military Airport and Ancillary Military Facility Overlay Zoning District (MAAMF) supersedes the use regulations of the respective underlying zoning district without a zone change / rezoning

Withdrawn by the applicant, no action by the Board.

CONSENT AGENDA

BA2020026 Applicant: Location: Zoning: Request:	Lavacque Property Jenifer Corey, Zoning Strategies LLC APN 300-15-042 @ 2710 W. Ceton Dr. (NWC of Ceton Dr. and 27 th Ave.) in the Laveen Area Rural-43 Variance to permit: 1) A 3' front setback for a proposed accessory structure where a minimum of 40' is required	District 5
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BA2020029 Applicant: Location: Zoning: Request:	Peters Rollins Family Living Trust Cynthia Slaughter APN 142-84-803 at 9818 N Balboa Dr. Sun City, in the White Tank / Grand Ave Area Plan R-3 R.U.P.D. S.C. Variance to permit: 1) An increase of max allowable lot coverage to 65% where 58% is allowed	District 4
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Mr. Gerard presented the consent agenda.

BOARD ACTION: Member Cardon motioned to approve the consent agenda - BA2020026 with conditions 'a'-'d', and BA2020029 with conditions 'a'-'c'. Vice Chair Ward second. Approved 4-0.

BA2020026 conditions;

- a) General compliance with the site plan stamped received July 9, 2020.
- b) All required building permit(s) 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(s) 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) Applicant shall record a 1' vehicular non-access easement along the 27th Avenue street line to prohibit access from the subject property onto 27th Avenue.

BA2020029 conditions;

- a) General compliance with the site plan stamped received June 23, 2020.
- 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) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

REGULAR AGENDA

BA2020030

Pyle Enterprises, LLC

District 5

Applicant:

Deborah and Mark Pyle, Pyle Enterprises, LLC

Location:

APN 201-08-031J @ 10421 W. Avenida Del Sol – 300 ft. west of the SEC of N. 104th Avenue and W. Avenida Del Sol, in the Peoria area

Zoning:

Rural-43

Request:

Variance to permit:

- 1) Existing rear setback of 38.5 ft. where a minimum 40 ft. setback is required

Mr. Watkins presented BA2020030 and noted there is no known violations or opposition. Staff has found the request fails to meet the statutory test for variance approval. The property has three accessory buildings all which date from at least 1999. Although the buildings were constructed prior to the year 2000, the parcel has been revised since then, and the buildings cannot be considered legal non-conforming in regards to the zoning regulations. There is no primary residential use or other primary use established on the property. If a legal primary use were present and located in the principle building envelope, all of the existing accessory buildings would conform to the required three foot minimum rear and interior side setback. The applicant wants to convert one of the accessory buildings into a two-story residence which would establish a primary use. Building permit B201907063 is currently in process to make that conversion. The southeast corner of that building, where a minimum setback of 40 feet applies to the primary residence because the south wall is not parallel with the south property line. The southwest corner of the same building lies 40.75 feet from the south property line, meaning approximately 45 square feet of the existing building lies within the required rear setback. Since 1982 the property has had several splits and combinations what was a five acre parcel, the subject building was permitted and built on that previous five acre parcel. Approval of the variance will allow the applicant to construct a primary residential use on the property where none currently exist.

Chairman Loper asked what the approximate average setback is. Mr. Watkins said the triangle area with the building in the setback is 45 square feet.

Mr. Gerard said the southwest corner of the building is 40 feet, 9 inches setback, and the southeast corner is 35 feet, 6 inches. One corner meets setback and the other corner does not.

Chairman Loper asked what it takes to consider this a residence, is it an addition of a kitchen or bathroom? Mr. Watkins said you would have to comprise all of the required spaces for a dwelling unit under HUD standards with a kitchen, living quarters, bathrooms, and all spaces have minimum square footage associated with them.

Ms. Deborah Pyle, the applicant said in 1994 they purchased a small home in the County on 2-1/2 acres, and later purchased one more acre. All of the property lines were marked by a line of rocks, and there was only a handful of homes in that entire area. They watched the area grow from orange groves to a largely populated part of the valley. They started this process a

year ago not knowing how many obstacles they would encounter. Their goal was to turn the garage into a livable two-story structure that would allow their daughter to be a stay-at-home mom and raise her children. They are asking for the variance because the building was built askew and the southeast corner sits into the setback 1-1/2 feet. They were unaware of this until after the surveys were done and they started the application for a building permit.

Chairman Loper asked if there were any comments from the Board and if anyone wished to speak on this matter. None.

Chairman Loper asked if the stipulation includes the establishment of a principle use. Mr. Watkins said yes, the approval of the current building permit would provide that primary use.

BOARD ACTION: Vice Chair Ward motioned to approve BA2020030 with conditions 'a'-'c'. Member Cardon second. Approved 4-0.

- a) General compliance with the Site Plan stamped received July 15, 2020.
- b) All required building permits for the 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.

BA2020032	Harstick Family Trust	District 2
Applicant:	Trevor Penrose, Travek Inc.	
Location:	APN 220-12-013F @ 10219 E. Fenimore Rd. – ¼ mile SE of the SEC of Crimson Rd. & Brown Rd., in the Mesa area	
Zoning:	Rural-43	
Requests:	Variance to permit: <ul style="list-style-type: none">1) Propose Proposed southwest rear setback of 25' where 40' is the minimum permitted and;2) Proposed east side yard setback of 18' where 30' is the minimum permitted	

Mr. Gerard presented BA2020032 and noted there's no known opposition, and the request fails to meet the statutory test for variance approval. The existing family residence is largely within the building envelope, but partially located outside the building envelope as it exists today. Any of the expansion of the home westward would be within the lots required rear yard. There's a proposed addition on the west side of the existing home that would encroach within the southwest side. It's not a rectangular property, it has a cut out that gives it an unorthodox bump into the setback that encroaches into the building envelope. There was an addition in 2003, and that existing addition encroaches into the east side yard at 18 feet where 30 feet is the minimum permitted. It was permitted through the County, and was approved in error. They are requesting to produce the east side setback as well as the southwest side rear setback. The applicant has failed to demonstrate there's a peculiar condition facing the property because there is room on the property for a new addition to be added to the single-family residence elsewhere within the

building envelope. An alternative would be to move the proposed west addition northward 15 feet outside of the southwest rear yard, and the variance wouldn't be required. There is not warrant justifying the variance to the east side. Staff can document legal non-conforming status of that setback due to the government action of permitting the construction back in 2003. That variance is not required.

Chairman Loper asked if the second variance is the one not required. Mr. Gerard said that is correct.

Mr. Mark Poulton, the applicant said the reason they are requesting this variance is to allow the homeowners to take care of their disabled family member. If we were to move the addition forward, it would hinder the design and the fact we already had the drainage report to put the addition where it's proposed. They are requesting to bring the property up to the existing envelope. If we change the setbacks to the 25 feet it would actually bring the existing structure in the envelope of the setbacks. The existing is 15 percent in the envelope of the setbacks. If we pull the setbacks back we would be able to add on the addition where it's at with this variance. This would save the property owner quite a bit of money and to not have to redesign everything. This has been going on for over a year, and they would like to get this remodel done in a timely manner for a family member that's in a wheelchair.

BOARD ACTION: Member Cardon motioned to approve BA2020032 with conditions 'a'-'c'. Member Personne second. Approved 4-0.

- a) General compliance with the site plan stamped received June 25, 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.

BA2020033	Ippolito Property	District 1
Applicant:	Joel Watson, Watson Civil Engineering	
Location:	APN 304-89-010K Generally located on the Northeast corner of Power Rd. and San Tan Blvd., in the Queen Creek area	
Zoning:	C-3 and R1-35	
Request:	Variance to permit: <ul style="list-style-type: none">1) Propose Variance to not build wall on boundary separating the C-3 / R1-35 zoning districts	

Mr. Castañeda presented BA2020033 and noted there is an open violation on this property for a commercial operation without zoning, building, drainage permits and construction of a chain-link fence, and a business operation being run in a residential zoning district without entitlement. This request fails to meet the statutory test for variance approval, and has failed to demonstrate undue physical hardship. There are alternatives such as zoning the site to C-3, and screening the entire site. Thus the variance is not warranted. Staff has received three letters of opposition from the adjacent property owners.

Member Cardon asked in order to put a fence around the entire property they would need to rezone to C-3. If it stayed R1-35 they could only put a wall on the portion that is not R1-35? Mr. Castañeda said because of Maricopa County Zoning Article 402, when a zoning district boundary divides a lot or parcel of land that zoning district line is treated as a property line. We have to take our setbacks and screening from that property line dividing the zoning districts. An alternative is for them to use the entire site for their intended purpose of commercial equipment storage, they would have to rezone the entire site to C-3 and obtain their entitlements for the screening and the use.

Mr. Gerard said the biggest issues is that the proposed use cannot be located in R1-35, so the whole section of that property cannot be used for the intended storage yard. The entire property needs to be zoned C-3 so they can use the entire property. We would allow the wall to be built on the perimeter and the retention to be in the R1-35, but that's not what's being proposed. They are trying to have a use that is unentitled, but that's not the venue here for the Board of Adjustment.

Mr. Joel Watson, the applicant said we did this exact variance on the parcel adjacent to the south. The difference is we put the retention in the R1-35 zoning and are happy to do that again. We can move the retention in the R1-35 zoning and not use the R1-35 zoning as the commercial use. We are requesting the variance to be approved just exactly the same as the parcel to the south, but with a stipulation that we cannot use R1-35 for commercial use. We have the grading drawings in for approval, and we'll move the retention to the east identical to the parcel to the south.

Mr. Gerard said the exhibit that's being presented, we wouldn't want to use that as the approval document. If the Board is considering approval we could add a stipulation, there should be no commercial use in the R1-35.

Mr. Peck asked how a retention basin can be the principle use in an R1-35 zone. Mr. Gerard said because the retention would be allowed in any zoning district. Mr. Peck said this is retaining property that is commercial. He asked doesn't drainage require retention for an onsite commercial property. Mr. Gerard said the retention will be provided for both. We can address this in the Plan of Development process, not an issue for the Board of Adjustment.

Mr. Gerard said the question before the Board today is the screening requirement, and staff's concern is showing the commercial use on R1-35, and can they waive their requirement for a screen wall in C-3?

Member Personne said the applicant stated part of the challenge in putting up the wall on the zoning boundary because the layout of the site. If the retention basin were moved perpendicular to be in the R1-35 zoning, and the commercial use to be entirely on the C-3 zoning area. It seems that fence can go in with cut outs for the water to flow through. That would appease the neighbors and that might fix the problem.

Member Cardon said based on the letters, the concern is a wall being erected and that it not be a chain-link fence. When reading the request it says proposed variance not to build wall on boundary separating C-3, and R1-35 zoning districts. There would need to be a wall on the border of the full property on the border of that R1-35 as it is to the south. His understanding is the neighbors would still want that wall there.

Mr. Gerard said there is nothing to prevent a wall to be built on the east side, but if you grant the variance that the C-3 zoning is not required screening from the R1-35 zoning that will just be on the honor of the property owner. Member Cardon said unless we stipulate it.

Mr. Gerard said that's part of the issues of all these unorthodox sites where a person just doesn't rezone the entire property. This is an interpretation that's been made for many years where we allow the retention on any zoning district. The question is do they have to screen R1-35 from C-3, and he believes they can add a stipulation.

Member Cardon said they can ask the applicant if they plan to or can build a wall on the far eastern border of the property to help the neighbors with their concerns.

Mr. Watson said Mr. Ippolito also owns the parcel to the south, and he also went through this identical process. There is a wall on the east property boundary, and it is a retention basin. They are asking for the identical thing on this parcel. We just want relief from the strict zoning that occurred many years ago that divided this parcel in half and created this hardship in the first place. They are more than willing to put a 6 foot block wall on the east property line. If he was a homeowner, he would rather have that than a retention basin to look at with no wall, then another wall on the other side of that. We are looking to be consistent with what was granted on the southern property. They are more than happy to do what makes sense.

Mr. Chris Ippolito, the property owner said he agrees, he would like to build that wall on the east property line just like he did to the lot on to south. The neighbors are worried about a chain-link fence, but that's not our plan we want to do a block wall along there like the south.

Chairman Loper asked would they build a wall along the north. Mr. Ippolito said he couldn't afford to do a wall along the north.

Mr. Tanner Potterf said he lives east of this site. He heard they were wanting to add slates in the chain-link fence, and the neighbors and he were concerned. They really like what they did with the property to the south. This helps screen their property from Power Road and makes it a nice quiet neighborhood. His opposition was to the chain-link fence with slates, but if Mr. Ippolito will do the same thing like he did with the lot to the south than he is totally in favor.

Chairman Loper asked if the property owner were to build a block wall that would address your concerns. Mr. Potterf said yes that would address his concerns. If they build a block wall on the far easterly portion of that parcel in alignment with the existing block wall to the south than that would make them happy.

Chairman Loper said as looking on PlanNet he sees there's a number of property's with this configuration. Mr. Gerard said this zoning was from the 1960's and it predates the current zoning ordinance. All the unregulated land divisions and lot splits, some were carved up to coincide with zoning lines and some were not. If the applicant is agreeing and addresses the neighbors' concerns, he has no issue with them adding a condition that there be a block wall along the east lot line of this parcel.

Mr. Tanner Potterf said there are two more properties to the north of Mr. Ippolito's that will likely have the same zoning issues. What we do here would set precedence for these properties in the future when they are developed to have a block wall extended all the way down.

Member Cardon said if this variance would be approved with an additional stipulation, the property owner build a block wall on the eastern border in alignment with the existing block wall to the south. He believes that would satisfy all parties.

BOARD ACTION: Member Cardon motioned to approve BA2020033 with conditions 'a'-'b', and and additional stipulation 'c'. Vice Chair Ward second. Approved 4-0.

- a) All required building permit for 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.
- b) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.
- c) **The property owner shall erect a block wall along the eastern lot line in alignment with the existing wall on the property to the south.**

Adjournment: Chairman Loper adjourned the meeting of August 13, 2020 at 11:00 a.m.

Prepared by Rosalie Pinney
Recording Secretary
August 13, 2020