



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

February 17, 2022

CALL TO ORDER: Chairman Loper called meeting to order at 10:01 a.m.

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

STAFF PRESENT: Mr. Darren Gérard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Joseph Mueller, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Ms. Karen Hartman-Tellez, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Alisha Bach, Technical Team

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2021060, BA2021049, BA2021056, BA2021063

APPROVAL OF MINUTES: January 20, 2022

Chairman Loper asked if there were any changes or comments to the minutes for January 20, none.

BOARD ACTION: Chairman Loper approved the January 20, 2022 minutes as written.

CONSENT AGENDA

BA2021060 **Bloomquist Residence** **District 3**
Applicant: Bloomquist Residence, Morgan Taylor Homes
Location: APN 203-23-019V @ 37116 N. 33rd Ave – 33rd Ave. north of W Rambling Rd.,
in the New River area
Request: Variance to permit:
1) Proposed hillside disturbance of 596 sq. ft. outside the lot's principal
buildable area where hillside disturbance is prohibited per MCZO
Article 1201.6.1.1

Mr. Gérard presented the consent agenda.

Chairman Loper asked if anyone from the public wished to speak on the consent agenda. None.

BOARD ACTION: Vice Chair Personne motioned to approve the consent agenda – BA2021060 with condition ‘a’. Member Schwartz second. Approved 5-0. Ayes: Cardon, Schwartz, Ward, Personne, Loper.

- a) Variance approval permits a maximum hillside disturbance of 600 sq. ft. outside the principal building envelope for APN 203-23-019V.

REGULAR AGENDA

BA2021049	Gray Property (Cont. from 12/16/21)	District 3
Applicant:	Brent Gray	
Location:	APN 211-24-027W @ 109 W. Night Glow Dr. – Carefree Hwy. and Central Ave., in the Phoenix area	
Request:	Variance to permit: <ul style="list-style-type: none">1) Existing hillside disturbance of 4,324 sq. ft. outside of the lot's principal buildable area where hillside disturbance is prohibited per MCZO Article 1201.6.1.1	

Mr. Mueller presented BA2021049 and noted by allowing the proposed hillside disturbance would allow the applicant to receive zoning clearance and a grading permit to rectify a violation for grading without a permit. The applicant has failed to demonstrate there is a peculiar condition facing the property because the shape of the lot is relatively common and the topography appears to be consistent with a typical hillside lot. The applicant has not demonstrated a peculiar condition and undue physical hardship exists. The current condition of the site could have been avoided if the applicant sought a grading permit prior to grading. The applicant has been working towards rectifying the violation. They sought and received the reduction of future right-of-way from MCDOT along the southern portion of the parcel to reduce the size of the variance request. The applicant has failed to demonstrate that the peculiar condition and physical hardship is self-created because the condition was a result of the grading without a permit.

Member Schwartz asked if the Board does not approve this variance then the hillside disturbance would not be repaired. Mr. Gérard said correct, you cannot undue this disturbance. The ordinance allows for remediation with restoration of contours and vegetated cover. If this variance is approved then they could move forward with their existing permit as proposed, and the inspections would insure the cut is stabilized. Member Schwartz asked if not approved what modifications would they have to make to fall within the disturbed areas allowed. Mr. Gérard they would have to have an engineered plan showing 5,000 square feet of fill to restore the previous contour and indicate what type of vegetative cover or resurfacing. We would have them bring dirt back in and fill in that area. Either way he will need an engineered permit.

Member Schwartz asked if we ask them to restore to the original contours would that plan meet the requirements of the county. Mr. Gérard said the plan would need to meet drainage. The cut was done without permitting or authorization.

Mr. Brent Gray, the applicant said he was trying to put in a basketball court and lay a slab in the back. This area was previously cut out, and he rented a small tractor and tried to clean up that

wall in the southwest corner. There was construction rubble exposed due to the erosion and that is what he removed. He did not take any rock or extend where he wanted to put the slab because of the violation. He has been dealing with this for three years. He is asking for forgiveness and would like to do the right thing. Yesterday, MCDOT revised the square footage.

Member Schwartz asked when he bought the house did this condition already exist. Mr. Gray said he just moved some dirt in the southwest corner. He is on his third engineer and they said his drainage has improved where everything runs the right way. A hard dig was previously done and his whole west side is a cut out rock wall from when the house was built, and the cul-de-sac is a cut wall. He cleaned it up and removed a bunch of rubble.

Vice Chair Personne asked how does that right-of-way change the disturbance, and would it be now changed to zero. Mr. Mueller said it is the future right-of-way reservation MCDOT reduced and the southern lot line is adjacent to a mid-section line, so there is a 40-foot future right-of-way reservation area. The applicant did seek that reduction; it was reduced down to 25 feet. Then yesterday, MCDOT came back with a further reduction to zero feet. It reduced the required rear yard down to 40 feet, and the future right-of-way is brought down to zero. The lots buildable area has increased slightly.

Vice Chair Personne asked does it change the lots buildable envelope, and if so, is the proposed standard a smaller percentage. Mr. Mueller said the staff report has not been updated, but there still is a disturbance outside the lots buildable area. The exhibit does reflect the 25-foot reservation area plus the 20-foot street side setback.

Mr. Gérard said because of lot splits and easements, the property line butting the street line are actually not just the north and south. In the county, we get many unregulated lot splits. The west is the front, the north is street side, and the south would be a through lot if that future right-of-way reservation is no longer being preserved.

Mr. Mueller said the 45-foot setback from the southern lot line now would be 30 feet and considered a side yard. Mr. Gérard said instead of 4,324 sq. ft., it is now about 4,000 sq. ft.

Member Schwartz asked if the variance was not granted and he was required to restore the previously disturbed area back to its original condition, would that affect any drainage issues on the lot. Mr. Gray said he was told by previous engineers the drainage was greatly improved. That back corner was left there and eroded, and it was running off into his yard. The drainage now runs out of his yard and to the south.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Vice Chair Personne said it looks as though the applicant has some constraints making some things challenging.

Member Schwartz said when looking at the topography it looks as though the water is running to the south and exiting to the southeast of the site in a vacant lot. The area is already disturbed and not sure how he can put it back in its original condition. The best thing is to revegetate some of those areas outside of the building envelope and get it back to a more natural setting.

BOARD ACTION: Vice Chair Personne motioned to approve BA2021049 with condition 'a'. Member Cardon second. Approved 4-0-1. Ayes: Cardon, Schwartz, Personne, Loper. Member Ward abstained due to technical issues.

- a) Variance approval establishes 4,325 square feet of permissible hillside disturbance outside of the lot's principal buildable area for APN 211-24-027W including existing retaining walls, pool equipment, screen wall, and septic leach field to be in substantial conformance with the site plan dated January 3, 2022.

BA2021056	Aloisio Property	District 3
Applicant:	Joseph Aloisio	
Location:	APN 211-23-196 @ 515 E. Blue Eagle Ln. – 7 th St. and Joy Ranch Rd.	
Requests:	Variance to permit: <ul style="list-style-type: none">1) Proposed rear (south) setback of 5' where 40' is the minimum permitted per MCZO Article 601.4.3 and Z85-225, and;2) Proposed side (east) setback of 5' where 20' is the minimum permitted per MCZO Article 601.4.3 and Z85-225	

Mr. Mueller presented BA2021056 and noted the request would allow the applicant to seek a permit for a 1,200 square foot accessory structure in the southeast corner of the lot. The applicant has failed to demonstrate there is a peculiar condition facing the property because the lot is within a recorded and platted subdivision and the restrictions facing the parcel are from approved RUPD standards. The applicant has not demonstrated a hardship to the property and undue physical hardship exists. All the parcels in the Desert Hills Subdivision face similar conditions and no other parcel has been granted a variance within the subdivision. The applicant has failed to demonstrate that the peculiar condition and physical hardship is not self-created because the RUPD and platted drainage easements existed prior to the applicants purchase of the parcel.

Chairman Loper asked does the RUPD prohibits this out of the standard rear accessory setback allowances. Mr. Mueller said yes, typically an accessory structure could be placed in this location; however, it is the RUPD that prohibits structures outside of the lots buildable area. Chairman Loper asked did the RUPD specifically address accessory structures. Mr. Mueller said yes, it specifically addresses any construction outside the buildable area for drainage purposes within the subdivision.

Mr. Joseph Aloisio, the applicant said he applied for this variance for an RV shed in the back corner of the lot, and he understood the lot was setup that way for the drainage and on the west side of the property, we have a wash. They are proposing to build in the southeast corner where it is flat, high and dry away from the wash. They do not want to disturb the drainage and it would be placed as far away from the wash. The RV is currently parked in the southeast corner of the property right now, and we want a structure that is enclosed to protect our investment and it would look better than having an RV sitting in the corner of the yard. The driveway already exists and it makes more sense to put it in the far corner instead of by the wash. There are other accessory buildings in the neighborhood, but he has a wash covering a third of the west side his property. He contacted his surrounding neighbors and they have provided letters of support.

Member Schwartz asked if he considered changing the shape and direction of the building so you would not have to ask for a variance. Mr. Aloisio said they recently purchased a new RV

that is 35 feet long and it would block our patio view, and they want more of a backyard. In the future, they would like to add a playset for their one-year old child.

Member Schwartz said we have a statutory requirement to make a decision based upon a peculiar condition. There are probably other ways to put a building back there and to keep it within the setback line.

Vice Chair Personne asked, could they make that accessory building narrower and still have the room you need by turning it 90 degrees and pushing it up against the wash. Mr. Aloisio said because of the investment of the building they wanted the largest structure they could for future storage or any other toys. It is a nice open backyard and to have a shed right in the middle of the back yard against the patio would devalue the property. The southeast corner is the best option.

Chairman Loper said they have the ability to park an RV in the backyard under the RUPD by right. Mr. Gérard said yes.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Chairman Loper said in addition to the drainage easement, he views the RUPD as a hindrance or hardship, and there is support from the adjacent neighbors. He is in favor of the variance.

Member Cardon said this neighborhood has these kind of structures in them, and this would not be something unusual in this neighborhood.

Member Schwartz said we should not measure this case on others that decide to build things without going through the county. They could possibly rezone the property with a PUD if that is an option to have an accessory building in the setback line. They can look at the drainage easement and reroute the drainage area to provide more space to have a structure built within the setback lines. There are other opportunities to put a building back there. He does not support this since it does not meet the statutory requirement.

Member Cardon said to clarify the other structures he was referring to are within the conforming distances from the lot lines.

Vice Chair Personne said, she would recommend a continuance so the applicant can work with staff to look at some other options. Member Schwartz said he would be in support of a continuance.

Mr. Aloisio said he did find a property that was outside of the setbacks and the others are within the setbacks. The whole reason for the setbacks is the drainage and by possibly moving a wash that has been flowing for years would adversely affect the drainage. The southeast corner is the most flat, high and dry area and not affect the drainage.

BOARD ACTION: Vice Chair Personne motioned to continue BA2021056 to the April 14 hearing. Member Schwartz second. Continued 4-0. Ayes: Cardon, Schwartz, Personne, Loper.

BA2021063

Ruggaard Property

District 2

Applicant:

Knute Ruggaard

Location:

APN 219-55-231 @ 18614 W. White Wing Dr. – Generally located approx. 149' NE of the intersection of Leather Ln. & White Wing Dr.

Request:

Variance to permit:

- 1) Proposed 100% opaque block screen wall within the required front yard where fences, walls or retaining walls with heights above 3'-6" are only permitted at 80% transparency in a single-family zoning district per MCZO Article 1111.5.4.1.

Mr. Gérard presented BA2021063 and noted the request would allow the wall to be solid in the front setback and serve as a pool barrier. Staff received two support letters from neighboring properties indicating a solid wall would be preferable than a see-through wall, and the wall would provide a better barrier to limit noise and light. We also received a support letter from the Rio Verde Community Association Architectural Committee they are in support of the variance request. The applicant has not demonstrated there is a peculiar condition facing the property and have not demonstrated undue physical hardship exists, there is no peculiar condition related to the land. The solid screen wall could be erected at the front setback line three to five feet further in. The applicant has not demonstrated a peculiar condition or physical hardship is not self-created. The applicant applied for a permit for a rod iron fence and that permit was issued. After issuance, the variance request was sought. If this wall did not meander outward as much they could accomplish the zoning requirements, and with a slight redesign could accomplish what is proposed.

Member Schwartz asked if they have an existing wall, and would they be tearing it down and replacing it. Mr. Gérard said we would need to defer to the applicant.

Mr. Knute Ruggaard, the applicant said their house is a Santa Fe style home with a front courtyard. The only thing the house was lacking was a swimming pool. The existing wall has been in place for more than 25 years with less than a 25 feet distance from the road. The current ordinance limits the height of the wall to just 3-1/2 feet. Their existing wall is 3-1/2 to 4-1/2 feet, and some of these conditions exist throughout this older community. He found two homes with distances as short as 7 feet from the road. In the pictures, you can barely see their fence on the left hand side. Their meandering wall tries to break up the physical look of the wall with varying height and from a horizontal perspective. To put in a pool the wall needs to be at least 5-foot tall. We were advised to get two permits, one for the pool and one for the wall. We were granted both permits, and immediately filed for the variance for the wall. With the variance, it would provide a much better condition. They are seeking to put in a 100% opaque wall and raising the existing wall from the 3-1/2 to 4-1/2 feet to 5 to 5-1/2 feet. The variance would allow them to maintain the existing wall and increase the level. It would be a benefit for safety and security, reducing the noise and nighttime pollution, and minimize the noise of dog barking. This wall does not affect any views and does not decrease any property values. He has letters of support from the two neighbor directly affected, and verbal support from other neighbors, and the support of the HOA.

Member Schwartz said this is his district and his challenge is we have a statutory requirement and guidelines we need to follow and this does not meet that statutory requirement. He does not see a justification for a peculiar condition. Mr. Ruggaard said this is an existing house and wall, and now an existing pool. There really are not any options because this is an existing condition. They

cannot just move everything a few feet, and this is the hardship. The existing wall was permitted, inspected, and approved many years ago.

Member Schwartz asked staff, the height of the wall inside the front setback line meets the code, and then if you want to increase the height it needs to be transparent. Mr. Gérard said correct, once you go above 3-1/2 feet you can have rod-iron above that, you can have chain link or glass panels as long as it's transparent. The problem is the pool barrier requires 4-1/2 feet. In order to be a pool barrier it would have to be beyond that required front setback and to have some transparency.

Member Schwartz said that 20-foot setback line is really the delineation of whether it can be transparent or not. He needs to know exactly where that wall is located. Mr. Ruggaard said the wall meanders, and near the tree it is at 20 feet and it meanders back in and out. The wall has been there for many years and they want to use the existing wall.

Member Schwartz said he likes what they are trying to do but he has that struggle with our mandates.

Chairman Loper said we are dealing with the opacity of the wall not the height. Mr. Gérard said that is correct.

Chairman Loper said he is in support of the variance and the opacity is not really an issue. It is either a wall or it's not. The placement and the height are not an issue for the neighbors, and there are some good benefits as mentioned by the applicant.

Member Cardon said he echoes the chair's comments, and he is in support.

Member Ward said she is also supportive.

Vice Chair Personne said, she agrees with Member Schwartz that it is challenging, but she is in support of this variance.

BOARD ACTION: Member Schwartz motioned to approve BA2021063 with condition 'a'. Member Cardon second. Approved 5-0. Ayes: Cardon, Schwartz, Ward, Personne, Loper.

- a) Variance approval permits a 100% opaque block wall as a pool barrier within the required front yard for APN# 219-55-231.

Adjournment: Chairman Loper adjourned the meeting of February 17, 2022 at 11:26 a.m.

Prepared by Rosalie Pinney
Recording Secretary

February 17, 2022