



MARICOPA COUNTY, ARIZONA
Board of Adjustment
Minutes
March 17, 2022

CALL TO ORDER: Chairman Loper called the meeting to order at 10:02 a.m.

MEMBERS PRESENT: Mr. Greg Loper
Mr. Jeff Schwartz
Ms. Fern Ward

MEMBERS ABSENT: Mr. Craig Cardon
Ms. Heather Personne

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

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Mr. Nikolaus Decker, County Attorney
Mr. David Anderson, Business Engagement Manager, OET
Ms. Alisha Bach, Technical Team

ANNOUNCEMENTS: Chairman Loper made all standard announcements.

AGENDA ITEMS: BA2022003, BA2021022, BA2022009, TU2022008

APPROVAL OF MINUTES: February 17, 2022

Chairman Loper asked if there were any changes or comments to the minutes for February 17, none.

BOARD ACTION: Chairman Loper approved the February 17, 2022 minutes as written.

CONSENT AGENDA

BA2022003 **Hild Property** **District 3**
Applicant: Jenny Vitale
Location: APN 211-71-008F @ 40415 N. 10TH St., in the Phoenix area
Requests: Variance to permit:
1) Proposed front yard setback of 22' where 40' is the minimum required per MCZO Article 501.4.1. a. and;
2) Proposed hillside disturbance of 2,534 sq. ft. outside the lot's principal buildable area where hillside disturbance is prohibited per MCZO Article 1201.6.1.1.

BA2021022 **Danielson Property** **District 3**
Applicant: David Pounders
Location: APN 202-13-045C, approx. 653' E of the intersection of Black Canyon Hwy. and 38th Ln.
Request: Variance to permit:
 1) Hillside disturbance outside the principal building envelope where prohibited per MCZO Article 1201.6.1;

BA2022009 **PCG Residential LLC** **District 2**
Applicant: Curtis Kelner, PCG Residential LLC
Location: APN 220-39-037 @ 9728 E. Birchwood Avenue – Birchwood Avenue & 98th Street, in the Mesa area
Requests: Variance to permit:
 1) Proposed front setback of 18' where 20' is the minimum permitted per MCZO Article 702.4.1.a and;
 2) Proposed rear setback of 11' where 25' is the minimum permitted per MCZO Article 702.4.3

Mr. Gérard presented the consent agenda.

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

BOARD ACTION: Member Schwartz motioned to approve the consent agenda – BA2022003 with conditions 'a' – 'b', BA2021022 with conditions 'a'-'b', and BA2022009 with condition 'a'. Member Ward second. Approved 3-0. Ayes: Schwartz, Ward, Loper.

BA2022003 conditions;

- a) Variance approval establishes a 22' min front setback and 145' lot width for APN211-71-008F.
- b) Variance approval permits 2,069 sq. ft. sf of hillside disturbance outside the principal building envelope for the reserve septic system leach field for APN 211-71-008F consistent with the site plan dated February 28, 2022.

BA2021022 conditions;

- a) Variance approval permits a hillside disturbance outside of the principal building envelope of up to 5,274 sq. ft. for APN 203-13-045C.
- b) Variance approval permits a minimum 40-foot rear yard for APN 203-13-045C.

BA2022009 condition;

- a) Variance approval establishes an 18' south setback line and 11' north setback line for APN 220-39-037.

REGULAR AGENDA

TU2022008 **Palms Estate LLC** **District 2**
Applicant: Glenn Myers
Location: APN 219-40-257 @ 30505 N. 136th St., in the Scottsdale area

Request: Temporary Use Permit for a temporary event for a seminar per MCZO Article 1302.2

Mr. Castañeda presented TU2022008 and noted this is a Temporary Use Permit (TUP) for a 3-day Seminar. According to the applicant, an approval of the TUP would allow for a 3-day Seminar to occur on the site April 15 through April 17 from 7:30 a.m. to 5:30 p.m. The site would be occupied by 10 staff and 30 guests with no overnight occupancy. No food concessions or overnight camping. Staff has received six letters of opposition from five individuals. The opposition has concerns with the site being used for temporary rentals and activity, and excessive noise. There are no violations present. Vacation rentals are not restricted by the Maricopa County Zoning Ordinance. Staff reached out to those with noise concerns and informed them of the code enforcement process. The request meets the statutory test for a variance approval and the applicant has satisfied the requirements of MCZO Article 1302.2.2 regarding temporary events. There are no proposed temporary structures or outdoor amplified music. All parking will remain on the site and will be monitored by a parking attendant. Staff received confirmation from the City of Scottsdale that they don't require any additional permits. Staff recommends approval of this request.

Member Schwartz asked if the property owner is having the seminar or is he renting it out. Mr. Castañeda said he believes he is renting it out.

Member Schwartz asked if this property is owner occupied. Mr. Castañeda said with the opposition received, the site is being used as an Airbnb. The county doesn't regulate a rental of a residence, however we do regulate temporary events.

Mr. Peck said it would be an improper consideration to make a zoning decision whether this is being done by the property owner or someone else, it has nothing to do with zoning. If it is being rented out as an Airbnb one of the requirements to qualify is you don't live there.

Member Ward asked where they will be parking. Mr. Castañeda said according to the applicant they are instructing the attendees to carpool, if additional parking is necessary the parking attendant will place the vehicles on the east side of the property.

Member Schwartz asked why this doesn't meet the statutory requirements. Mr. Castañeda said the requests meets the requirements of the MCZO, however when opposition is received for a Temporary Use Permit it has to be scheduled for the Board of Adjustment otherwise it would have been an administrative approval.

Mr. Peck said this is not a variance application. Member Schwartz asked what is the statutory test for a TUP. Mr. Peck said most TUP's are handled administratively but when someone objects it comes before the Board of Adjustment. Mr. Gérard said each case is judged by its own merit. Usually we look at compatibility with the neighborhood and what would the impact be or community benefit.

Mr. Glenn Myers, the property owner said they are seeking a permit for a special event. This is an event run by a doctor who will be renting the property to have a seminar for up to 30 people. The attendees are dentists learning how to perform root canal surgery. Everything will be indoors and the attendees will be leaving at 5:30 p.m. to their hotels. There will be no outdoor music or amplified sound, and no disturbance to the community. He has made several improvements for

his rental. He requires a minimum age of 30 to rent and does not allow events without a permit, and does not allow outdoor music at any time, and he has noise sensors to monitor his guests. He has a local property manager who is on call to interact when necessary. He has made big improvements in the quality of guests and minimized the noise impact for the community.

Member Ward asked what is the most people you've had on your property. Mr. Myers said 14, and 12 overnight. Member Ward asked so 30 will be your biggest event to date. Mr. Myers said yes.

Member Schwartz asked what is the threshold for a temporary use permit. Mr. Castañeda said it is not the number attending the event, it is the time - not to exceed 30 days. This is more for a specified time for a specific event on a specific site.

Mr. Gérard said any public event with public advertisements or a commercial transaction, subscription or entrance fee, we would not consider this just a private invitation. Some people host a party and invite a lot of people; it may be a public nuisance but it's not a zoning concern. The commercial public assembly type activity where it is advertised for people to subscribe or pay an entrance fee makes this more than just a residential activity. This requires a Temporary Use Permit or proper zoning entitlement.

Member Ward asked is there a fire marshal recommendation for private residences. Mr. Gérard said during construction permitting the county has no fire code for non-public buildings. The fire marshal will have construction permitting requirements. When we have a commercial venue it will be routed to the fire district.

Member Ward said her concern is exists and entrances in case of an emergency. Land use, noise and accident mediation should be part of our decision making. Chairman Loper said he agrees. There has been uses where we look at the noise if it escapes the property, but this is an internal use. He has had events at his house where it's been an excess of 30 people but not the same timeframe.

Chairman Loper asked if they are doing something above and beyond for emergency services. Mr. Myers said no, but he doesn't think it will be an issue. Emergency vehicles can park on 136th easily with egress exits on his property.

Mr. William Doddman said he lives immediately south of the property and he is speaking in opposition to this Temporary Use Permit. These type of seminars usually take place in an event or conference center. The property is a short term vacation rental which is allowable, but he is concerned that this TUP will expand his business footprint to run a business from the property. A for profit corporation operating with a 30 guest event/conference center out of a single-family dwelling does not meet the intent of the zoning ordinance, even on a temporary basis. This is open desert and it is very quiet where sound travels great distances with a dozen people on deck talking, we can hear what they are saying 100 yards away. When they talk loudly we can hear them in our own house. This TUP doesn't bring any benefit to the neighborhood, it'll just cause additional stress to the neighbors.

Mr. Brian Wood said he lives directly east of the property and is the closest neighbor. He agrees with statements made by Mr. Doddman's. The sound travels and you can hear normal conversations, and when there's a party it gets very loud. The parking will be too close to their

bedroom in the southwest corner, and a lot of noise in the morning when they are trying to sleep. It is hard to keep six people quiet at that property, and not sure how they will keep 30 to 40 people quiet even though they won't be outside.

Chairman Loper said he wants to make those in opposition aware of a few of the stipulations if approved. Stipulation '13.d' reads: "This Temporary Use Permit is authorized for events on the following dates: April 15, 2022, April 16, 2022, and April 17, 2022, with start time of 7:30 a.m. and end time of 5:30 p.m. each day. Changes in proposed dates shall be provided to staff at least two weeks in advance of the change in event dates. This Temporary Use Permit shall expire on April 18, 2022. The Temporary Use Permit letter must be visibly displayed at the front of the property at all times. Failure to meet this display requirement shall result in revocation of the Temporary Use Permit if a Zoning Citation is issued." Stipulation 'g' reads: "The Temporary Use must be removed at the end of the approved time period. All temporary structures must be removed, and the site returned to its original condition or better upon completion. No structures shall be erected more than 72 hours before the start of the event from which this permit is issued. All structures shall be removed within 72 hours following the end of the event for which this permit is issued."

Member Schwartz said in the event the applicant does not comply with the stipulations what is the process. Mr. Gérard said it would be a zoning violation. Since it's a short period of time it could just be a warning and even grounds for staff not to recommend approval for future events. If it's a verified violation it could go to a hearing officer even after the fact and fines could be imposed. The maximum fine is \$750. Mr. Peck said if this is a corporation then the maximum fine could be up to \$10,000.

Member Ward asked how a single-family home could become a conference center. Mr. Gérard said if this was a conference center they would need zoning. This request is for a one-time weekend event, and if this is something more than that they would need zoning entitlement.

Member Ward said they are going from 14 people and doubling that to more than 30 for a three-day event. That's a conference. Mr. Gérard said we don't get involved with Airbnb rentals and leasing of the property. If there is something other than residency of the site and continued special events, they would need zoning entitlement. Anything beyond that would need a special use for large assemblage of person or commercial zoning. This is an inappropriate site for commercial.

Member Ward said we wouldn't have heard about this event if it wasn't for the opposition. Mr. Gérard said an Airbnb is rented out to a single party and for residential purposes, not for commercial purposes. Since the doctor is inviting others to attend this event that triggers the need for a Temporary Use Permit. The request before you today is for an event that will last one weekend. It could have been an event for up to 30 different days within a six month period.

Chairman Loper said we are restricted by statute in what we can do with short term rentals. We have had TUP requests for weddings on a property for two days over multiple weeks to equal 30 days, and roping events. The TUP is a broad category. We normally don't hear these cases unless there is opposition. He doesn't see much difference in this if you invite people over to discuss an investment strategy or having friends and family over for a holiday weekend, or even a family reunion. If they come back again either the previous one was successful or it was unsuccessful.

Member Schwartz asked will they be bringing in equipment to do a root canal on site. Mr. Castañeda said he does not know and would have to defer to the applicant. Mr. Myers said he doesn't know if they are bringing in equipment or if it will just be presentation style.

Mr. Peck said if this is owned by a corporation or anything to do with short term rentals, it's irrelevant. An Airbnb is only if you rent it to one individual for a residential purpose, this is not, and that's why it is before the board. You have to consider this in total if this is the right place for what they want to do at this event. Don't get hung up on the Airbnb because this doesn't fall under that. If they were to have people over for a party that is something that happens in residences and we would not be involved.

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

Member Schwartz said this is his district and he is familiar with this area. This is clearly a commercial activity and typically not done in a residential home. This type of activity is normally done in a dentist office or a meeting center. He is not in favor to approve this case.

Member Ward said she agrees with Member Schwartz. This is a money saving way for a conference, and she doesn't believe you can take a residential home and turn it into a conference center.

BOARD ACTION: Member Schwartz motioned to deny TU2022008. Member Ward second. Denied 3-0. Nays: Schwartz, Ward, Loper.

Chairman Loper announced starting in April our public hearings will be a hybrid format to allow staff and the public for in-person attendance or virtually by GoToWebinar.

Adjournment: Chairman Loper adjourned the meeting of March 17, 2022 at 10:53 a.m.

Prepared by Rosalie Pinney
Recording Secretary

March 17, 2022