

Zoning Administrator Hearing



Minutes

**John S. Gendron
Hearing Officer**

March 23, 2010 – 1:30 p.m.

View Conference Room, 2nd Floor
55 North Center Street
Mesa, Arizona, 85201

Staff Present

Angelica Guevara
Lesley Davis
Wahid Alam
Mia Lozano-Helland

Others Present

Vince DiBella
Jerry Bouck
Richard Clay
Betty Kemp
Rulon Anderson

CASES:

Case No.: ZA10-014

Location: 141 North MacDonald

Subject: Requesting: 1) a Substantial Conformance Improvement Permit (SCIP); and 2) a variance to parking requirements; both in conjunction with the expansion and relocation of a school and new parish center in the TCR-2 zoning district. (PLN2010-00418)

Decision: Approved with the following conditions:

1. *Compliance with Council Use Permit approval Z10-07 (PLN2009-00418).*
2. *Compliance with the project narrative as submitted except modified by the following conditions.*
3. *Compliance with the site and landscape plans submitted, except as modified by the conditions below.*
4. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*
5. *Provide setback of minimum 5' landscape yard along the entire east property line per TCR-2 zoning district.*

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6. *Provide landscape islands for maximum 8 contiguous parking spaces per Section 11-15-3(B)2.*
7. *Provide five (5') minimum column base setbacks from drive aisles and parking stalls per Section 11-15-3(C).*
8. *Install 6 feet high perimeter wall along east property line where it is missing.*
9. *The time limit for exercising the parking variance shall be extended from one to three years from date of this approval, March 23, 2010.*

Summary:

Vince Di Bella, the project architect, represented the case and stated he had no further questions or comments. Mr. Gendron asked the applicant to clarify the phasing plan for the project. Mr. Di Bella explained that due to finances the church had chosen to develop the project in two phases. Mr. Di Bella explained the phasing plan and potential schedule. Discussion ensued regarding the parking variance including the parking amounts. Mr. Gendron pointed out that variances expire after one (1) year and asked if an extension of the one year expiration was appropriate. Staff agreed and requested that the parking variance be given a three (3) year expiration date to allow the completion of the project from the date of approval. Mr. Gendron approved case ZA10-014 with staff conditions.

Finding of Fact:

- 1.1** The Town Center Concept Plan focuses on creating an urban village that will encourage commercial redevelopment and improve living, working, and recreational opportunities in a village community. This overall concept is reinforced by focusing on three distinct elements, residential development, commercial development, and cultural development. Within this village concept the need for educational opportunities is necessary in order to create a vibrant and active community in the Town Center.
- 1.2** In 2000, the zoning code was updated to require the approval of a Council Use Permit for all schools within any Town Center district. The Queen of Peace School has been in operation since before this zoning code amendment and has operated as a legal non-conforming use. The expansion of the existing school within the TCR-2 district required the approval of a Council Use Permit for the entire site.
- 1.3** The Planning and Zoning Board recommended approval with conditions of the Council Use Permit (Z10-07, PLN2009-00418) to allow relocation and expansion of an existing school in the Town Center.
- 1.4** The addition and expansion to the existing Queen of Peace Church did not meet the City's current codes. The applicant required a SCIP to facilitate the development without full compliance with current development standards. The Substantial Conformance Improvement Permit (SCIP) allows the existing church to build a new Parish Center and a Community Gymnasium by substantially conforming to the current code.
- 1.5** The church is improving the vehicular circulation by removing an existing driveway on 1st Street and revising the layout for 90 degree parking instead of existing angle parking spaces. Also the access to the parking area is controlled by only one driveway from 1st Street and another from

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2nd Street.

- 1.6** The applicant has a 0' building setback along the McDonald Street ROW. The Zoning Ordinance requires a 15' setback from the right of way line in the Town Center Residence (TCR-2) zoning district.

- 1.7** This development qualified for a Substantial Conformance Improvement Permit, allowing the existing school that has been in operation since 1940 to build much needed class rooms and library facilities in a new building. There will also be a parish center and community gymnasium for the neighborhood built. The location of the school in the downtown area brings additional activity to the area and helps provide an overall mix of uses that supports continued development activity. Further, this redevelopment will enhance the streetscape along McDonald Street, improve the parking area and provide open space by adding a new play ground.

- 1.8** This redevelopment is in the Mesa downtown area and has access to public parking along streets and close proximity to the public garage on Pepper Place. The Downtown Mesa Association manages public parking spaces in the Town Center.

- 1.9** The site plan, including the conditions of approval, achieves substantial compliance and justification for on-site reduced parking.

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Case No.: ZA10-015

Location: 1525 North Power Road

Subject: Requesting a Special Use Permit to allow a commercial communication tower to be placed in the R1-35 zoning district. (PLN2010-00045)

Decision: Approved with the following conditions:

1. *Compliance with the site plan submitted except as modified by the conditions below.*
2. *The monopalm shall have a maximum height of sixty-five (65') at the top of the pole and top of the antennas.*
3. *The antennas shall not exceed 4'-4" in length, 1'-1" in width, and 4" in depth.*
4. *The microwave dishes shall not exceed 2'-2" in diameter.*
5. *The antennas will be screened with a minimum of 55 palm fronds.*
6. *The antennas shall be painted to match the color of the palm fronds.*
7. *The antenna standoff assembly shall not extend more than 8" from the pole.*
8. *The operator of the monopalm shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problems.*
9. *Compliance with all requirements of the Development Services Division with regard to the issuance of sign permits.*

Summary: Rulon Anderson represented and clarified the details of the request. He explained that the existing verticality did not offer an opportunity for co-location. Mr. Gendron voiced concern that the existing structure could not be utilized.

Jerry Bouch, whose property is adjacent to the site, voiced his opposition based on health hazards. Mr. Gendron explained that under the Federal Communications Act he is unable to take health issues into account in decisions regarding telecommunication towers. Mr. Bouch cited several issues regarding the church and asked about the tower appearance.

Mr. Gendron clarified the inability of municipalities to prohibit telecommunication towers based on the Federal law. Mr. Gendron found that the facility meets or exceeds the guidelines set forth by City Council and approved ZA10-015 with staff conditions.

Finding of Fact:

- 1.1 The Special Use Permit (SUP) allows the placement of a 65-foot high commercial communication tower on an existing church property. The applicant will install a Monopalm rather than a typical monopole so that there will be less impact on the neighborhood.
- 1.2 The applicant notified all property owners within 300-feet of the request. Staff was not contacted by any property owners regarding this request.

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- 1.3** The Monopalm is 65-feet high. The project consists of three sectors, with three antennas, three daps, and three microwave dishes. The antennas are 4' 2" in length, 1' 1" wide, and 4" deep. A condition of approval was added requiring the antennas and microwave dishes be painted to match the color of the faux palm branches and requiring a minimum of 55 palm fronds to screen the antennas.
- 1.4** The applicant is installing an equipment cabinet that is screened with a 6' high masonry screen wall. The elevation drawing shows a 6' tube steel gate with metal backing. The gate is painted to match the screen wall.
- 1.5** The monopalm is located east of the church building in a wide landscape area that separates the two large parking lots. The monopalm is located within the fenced lease area.
- 1.6** The monopalm is located more than 340' from the R1-35 property to the north. The R1-35 property to the east is 131' away from the monopalm and the vacant R1-35 property to the south is located more than 300' away. Across Power Road there is property zoned R1-9. The monopalm is 423' from those properties. The Commercial Communication Tower Guidelines identify that the minimum distance from residential properties should be two feet for every foot of height. The monopalm is 65'; therefore the minimum distance from residential properties would be 130'. The monopalm complies with the Commercial Communications Towers Guidelines.
- 1.7** The monopalm is located within the parking lot at an existing church. There are other palm trees in the adjacent neighborhoods. As a result, the monopalm is compatible with, and not detrimental to, adjacent properties or the neighborhood in general.

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Case No.: ZA10-016

Location: 6364 East Halifax Street

Subject: Requesting a variance to allow an addition to encroach into the required front yard in the R1-9 zoning district. (PLN2010-00034)

Decision: Approved with the following conditions:

1. *Compliance with the site plan submitted.*
2. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

Summary: Richard Clay represented the case and provided associated details. There was discussion regarding the age of the house and the fact that it was built prior to annexation of the subdivision. Staff member Angelica Guevara explained that there are several homes in the neighborhood that have the same reduced front setback and this was an existing condition at the time of annexation. After a brief discussion, Mr. Gendron approved case ZA10-016 with staff conditions.

Finding of Fact:

- 1.1 The approved variance allows an existing carport to be enclosed into a garage in the R1-9 zoning district.
- 1.2 Justification for the variance relates to the existing home encroaching nine feet (9') into the front yard setback as well as several existing homes within the subdivision encroaching into the front setback.
- 1.3 The current code requires a minimum front yard of twenty-five (25') feet. The home was developed in the county in the mid-70's and was annexed into the City of Mesa in 1979. The requested nine-foot encroachment allows the existing carport to be enclosed into a garage. The exterior walls of the garage enclosure are finished to match the existing residence.
- 1.4 A garage that complied with the setback requirements, in the same location, would result in a reduced garage size that would not allow the parking of two vehicles.
- 1.5 There were special circumstances that applied that were pre-existing and not self-imposed. Strict compliance with the Code requiring the property owner to adhere to the 25' front setback would deprive the property of privileges enjoyed by other properties in the same zoning district. This variance does not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property .

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Case No.: ZA10-017

Location: 3520 East Brown Road

Subject: Requesting a Special Use Permit to allow a commercial communication tower to be placed in the AG zoning district. (PLN2010-00052)

Decision: Approved with the following conditions:

1. *Compliance with the site plan submitted except as modified by the conditions below.*
2. *The monopalm shall have a maximum height of sixty-five (65') at the top of the pole and top of the antennas.*
3. *The antennas shall not exceed 4'4" in length, 1'1" in width, and 4" in depth.*
4. *The microwave dishes shall not exceed 2'2" in diameter.*
5. *The antennas will be screened with a minimum of 55 palm fronds.*
6. *The antennas shall be painted to match the color of the faux palm fronds.*
7. *The antenna standoff assembly shall not extend more than 8" from the pole.*
8. *The operator of the monopalm shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problems.*
9. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

Summary: Rulon Anderson represented the case and stated the distances from the communication tower to the adjacent parcels. He also stated that there was no existing verticality to be utilized. Mr. Gendron noted for the record that there were two letters in opposition from Elizabeth Kennedy and John Bacakalukas resident of the adjacent neighborhood.

Betty Kemp, 3332 E. Fairbrook, voiced her opposition to the very tall communication tower. She stated that the tower would diminish the character of the neighborhood and opposed the commercial use in a residential area. She further asked if the applicant could find a commercial location for the tower.

Mr. Gendron asked the applicant why the tower needs to be 65' high. Mr. Anderson explained the height was required to provide coverage in the area. Staff member Lesley Davis provided the staff report and staff conditions. Based on the staff report Mr. Gendron approved ZA10-017 with conditions. He also reminded the citizens present that there is an appeal process and it must be acted upon within 30 days of the approval.

Finding of Fact:

- 1.1** The Special Use Permit (SUP) allows the placement of a 65-foot high commercial communication tower within on an existing church site. The applicant will install a Monopalm rather than a typical monopole so that there will be less visual impact on the neighborhood.

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- 1.2** The applicant notified all property owners within 300 feet of the request and no comments or concerns were received.
- 1.3** The Monopalm is 65 feet high and the array consists of three sectors, with three antennas, three daps, and three microwave dishes. The antennas are 4'-2" in length, 1'-1" wide, and 4" deep, the microwave dishes are 2'-2" in diameter. A condition of approval was added requiring that the antennas and microwave dishes be painted to match the color of the faux palm branches as well as requiring a minimum of 55 palm fronds to screen the antennas.
- 1.4** The applicant is installing an equipment cabinet screened with a 6' high masonry screen wall. Access is provided by an 8' wide tubular steel gate with metal backing painted to match the screen wall.
- 1.5** The Monopalm location is at the west side of the parking lot adjacent to a large retention area and within a 15' x 15' fenced lease area.
- 1.6** The Monopalm location is more than 220' from the R1-35 PAD property to the north. The R1-35 PAD property across Val Vista Drive to the east is 1,111' away from the Monopalm. The AG property to the west is 179' away. Across Brown Road there are properties zoned R1-9 and the Monopalm is 384' from those properties. The Commercial Communication Tower Guidelines identify that the minimum distance from residential properties should be two feet for every foot of height. This Monopalm is 65'; therefore the minimum distance from residential properties is 130' This Monopalm complies with the Commercial Communications Towers Guidelines.
- 1.7** The Monopalm is located within the parking lot of an existing church. There are other palm trees in the adjacent neighborhoods making this Monopalm compatible with and not detrimental to the adjacent properties or the neighborhood in general.

There being no further business to come before the Zoning Administrator, the hearing adjourned at 2:50 p.m.

The cases for this hearing were digitally recorded and are available upon request.

Respectfully submitted,

John S. Gendron
Hearing Officer

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