

# Board of Adjustment Minutes



## City Council Chambers, Lower Level February 10, 2004

### **Board members Present:**

Jared Langkilde, Chair (arrived 5:50 pm) David Shuff  
Roxanne Pierson, Vice Chair Mike Clement  
Greg Lambright  
Dianne von Borstel

### **Board members Absent:**

Webb Crocket (excused)

### **Staff Present:**

John Gendron  
Gordon Sheffield  
Krissa Hargis  
Jim Smith  
John Wesley

### **Others Present:**

Michael Fraccola  
Jarl Knag  
Michelle Knag  
Patrick Sherry  
Sally Stephens  
Others

The study session began at 4:35 p.m. The Public Hearing meeting began at 5:35 p.m. Before adjournment at 6:20 p.m., the following items were considered and recorded on Board of Adjustment Tape # 299.

### **Study Session 4:30 p.m.**

- A. The study session began at 4:35 p.m. The items scheduled for the Board's Public Hearing were discussed.

### **Public Hearing 5:30 p.m.**

- A. Consider Minutes from the January 13, 2004 Meeting  
It was moved by Boardmember Shuff and seconded by Boardmember von Borstel, that the minutes of the January 13, 2004 Board of Adjustment meeting be approved. **Vote:** Passed 5-0
- B. Consider modifications of the Board of Adjustment By-Laws  
It was moved by Boardmember Lambright and seconded by Boardmember Clement, that the By-Laws be continued to March 9, 2004. **Vote:** Passed 5-0.
- C. Consent Agenda  
Approval of the Consent Agenda, with the conditions noted in the staff reports, was moved by Boardmember Shuff, seconded by Boardmember von Borstel. **Vote:** Passed 5-0
- D. Public Hearing Agenda  
Chairman Langkilde arrived at 5:50p.m. Vice chairman Pierson presided as Chairman during the public hearing. The following items were considered:

**Board of Adjustment Meeting  
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**Case No.:** BA03-019

**Location:** 5237 E. McDowell Rd.

**Subject:** Requesting a modification of the Apache Wells Planned Area Development (PAD) to allow the development of a employee parking lot and maintenance yard in conjunction with an existing golf course in the R1-7-PAD-DMP-AS district.

**Decision:** Approved with conditions.

**Summary:** This case was on the Consent Agenda, and was not heard on an individual basis. This case involved the development of an employee parking lot for the Apache Wells golf course. The original plan had been revised to delete the proposal to pace a maintenance yard at this site.

**Motion:** It was moved by Mr. Shuff, seconded by Ms. von Borstel that this case be approved, subject to the revised submittal, dated "Received January 20, 2004".

**Vote:** Passed 5-0

**Finding of Fact:**

- 1.1 A golf course is a permitted use in the R1-7 zoning district when a Development Master Plan Overlay District is also approved. At the time the overlay district is approved, set functions of the golf course are also reviewed to determine compatible land uses. The placement of a maintenance yard next to a single residence lot is generally a situation to avoid because of nuisance related issues such as loud single event noises, noises at inconvenient times and odors from piles of materials.
- 1.2 Employee parking is a necessary accessory use for a golf course. With appropriate screening and buffering, employee parking can be a compatible use adjacent to a single residence lot.
- 1.3 The recycled asphalt paving will provide sufficient dust control for the small amount of vehicular traffic on the site. The lot is intended for employees only, and not for the general public. The lot will have limited use.

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**Board of Adjustment Meeting  
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**Case No.:** BA03-044

**Location:** 1959 East Main Street

**Subject:** Requesting a Development Incentive Permit (DIP) to allow for the development of an automotive dealership in the C-3 district.

**Decision:** Approved with conditions.

**Summary:** This case was on the Consent Agenda, and was not heard on an individual basis. This case involved the development of a “Just Truck’s” automotive dealership.

**Motion:** It was moved by Mr. Shuff, seconded by Ms. von Borstel that this case be approved, conditioned upon the following:

1. Compliance with the revised site plan and elevations submitted, except as modified by the conditions below;
2. Compliance with all requirements of approval for Design Review Board case DR03-95; and
3. Compliance with all requirements of the Mesa Sign Ordinance (Chapter 11-19 of the Mesa City Code).

**Vote:** Passed 5-0

**Finding of Fact:**

- 1.1 The previous use of the case site is as a gas station. The proposed use is for a automotive sales facility. Based on Section 11-1-3, both the change in use, and the expanded size of the use require the owner to bring the development standards of the property into complete conformance with current Zoning Ordinance requirements.
- 1.2 The case site meets the definitional requirements of an “Infill” parcel, as described by Section 11-1-6.
- 1.3 The applicant has proposed several improvements that will bring the site into a greater degree of conformance with current requirements. These improvements include reducing the existing canopy that encroaches out into the front setback by 23’, increasing the amount of landscaping around the perimeter of the lease site, and improvements to the elevations of the building.
- 1.4 The site is zoned C-3, which permits limited outdoor display, including the sale of automobiles. The proposed use complies with the list of permitted land uses for the C-3 district. The use of the site as an automobile sale facility should be compatible with and not detrimental to surrounding land uses.
- 1.5 The case site is eligible for consideration of a DIP because it is less than 2.5 acres in size and it is surrounded by development in excess of 10 years old. If the site is combined or assembled with the surrounding parcel, which is also owned by the applicant, and is used for a similar use, then the property owner should be required to make arrangements to comply with site development standards. We also understand that the neighboring car lot is operated by the intended tenant of the case site.

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- 1.6 Consideration of deviations from site development standards authorized by a DIP is predicated on the idea that smaller sites do not have the physical room to accommodate the larger setbacks called for with the recent revisions. If this site is assembled or combined as a single development site, the basis for the DIP will be removed because the resulting group development will have sufficient room to meet the revised standards.

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**Case No.:** BA03-054

**Location:** 549 East Garnet Avenue

**Subject:** Requesting a variance to allow a structure to encroach into the front yard setback in the R1-6 district.

**Decision:** Approved with conditions.

**Summary:** This case was on the Consent Agenda, and was not heard on an individual basis. This case involved encroachment of the porte cochere into the front yard setback.

**Motion:** It was moved by Mr. Crockett, seconded by Ms. von Borstel, that this case be approved, subject to moving the porte cochers back 13' from the front property line.

**Vote:** Passed 5-0

**Finding of Fact:**

- 1.1 The applicant's house is setback farther from the front property line than is typical of lots in this zoning district. In addition, the house was constructed originally with a one-car carport.
- 1.2 The encroachment into the front setback will be consistent with the intent of other encroachments permitted under Section 11-13-2. No special advantage or privilege will be granted.
- 1.3 The carport will remain open on three sides, and will not have a substantial visual impact on other homes aligned along this same street.

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**Case No.:** BA03-059

**Location:** 1149 East Southern Avenue

**Subject:** Requesting a Special Use Permit to allow an electronic variable message sign to display a static message for a period of less than one hour.

**Decision:** Continued for 30 days.

**Summary:** The applicant requested an additional continuance to allow time for a sign ordinance revision to be considered by the City Council. The request for continuance was on the Consent Agenda, and it was not discussed as an individual case.

**Motion:** It was moved by Mr. Shuff, seconded by Ms. von Borstel, that this case be continued to the Board's March 9, 2004 meeting.

**Vote:** Passed 5-0

**Finding of Fact:** N/A

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**Case No.:** BA04-001

**Location:** 9925 E. Baseline Rd.

**Subject:** Requesting a Special Use Permit for a Comprehensive Sign Plan for the development of the Augusta Ranch Marketplace.

**Decision:** Continued for 30 days

**Summary:** The applicant requested an additional continuance for 30 days. The requested continuance was on the Consent Agenda, and was not heard individually.

**Motion:** It was moved by Mr. Shuff, seconded by Ms. von Borstel, that this case be continued to the March 9, 2004 meeting.

**Vote:** 5-0

**Finding of Fact:** N/A

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**Board of Adjustment Meeting  
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**Case No.:** BA04-002

**Location:** 1806 E. 1st Place.

**Subject:** Requesting a variance to allow a structure to encroach into the side and rear yards and to exceed the maximum allowable roof coverage in the R1-6 district.

**Decision:** Denied.

**Summary:** Mr. and Mrs. Jarl Knag, applicants, explained the request to allow a carport, storage shed, and patio ramada to encroach into the side and rear yards. They explained that they purchased this home in 2001 and were not aware that these structures encroached and that the roof area exceeds the maximum allowed lot coverage.

Mr. Knag stated the following reasons as justification for the variances:

- 1) The structures were built in the early 1990's and the ownership of the lot has changed at least twice since they were constructed.
- 2) They did not build the structures.
- 3) They would not have a location to park their vehicles, if the variances were denied.
- 4) They purchased the home because of the extra buildings on the site.
- 5) They would just like to keep what it existing on the site.
- 6) The demolition of these buildings would pose a financial hardship to them.
- 7) Tearing down the structures would reduce the overall value of the property.
- 8) They are willing to comply with all Building Safety requirements, such as fire-rating the walls.

Ms. Knag stated that they had two letters from adjacent property owners stating support for the variances and gave them to the Board.

Boardmember Shuff asked Mr. Sheffield who would be responsible regarding the false information that Mr. and Mrs. Knag received at the purchasing of the home. Mr. Sheffield stated that Mr. and Mrs. Knag were given a disclosure that stated that the property was in compliance with all zoning regulations. He further stated that the real estate agent or the seller are generally responsible for the accuracy of information given to the buyer.

Mr. Knag stated that he was aware that he can sue, but the financial responsibility would still be difficult.

Boardmember Langkilde stated that he believed that there was no justification for the variances and that the Board could not approve them. He further stated that any recourse should be with the real estate agent and previous owner.

Boardmember Lambright stated that a previous variance has already been approved (BA84-114). He further stated that there are many issues in

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regards to setbacks and Building Code requirements. In his opinion, all structures would need to be removed and replaced and was not in support of granting the variances.

Mr. Sheffield pointed out that even if the variances were approved, the applicants would still have to comply with all Building Code requirements and get building permits for all of the structures.

Boardmember Clement stated that it appeared the applicant's main concern is to keep covered parking. He asked if it would be possible to allow for some alterations to allow for a single-bay carport. Mr. Knag stated that they would really like to keep the carport and bathroom. They would be willing to move the carport and reduce the storage shed.

Mr. Sheffield stated that he would be willing to work with the applicants for a compromise, if that was the Board's direction. But, he further stated that staff is still recommending denial of the case.

Boardmember Clement stated that he would like to see a compromise, but did not see support for all of the variances. Boardmember Langkilde stated that nothing conforms and it would be best to start over.

**Motion:** It was moved by Mr. Langkilde, seconded by Ms. von Borstel, that this case be denied.

**Vote:** Passed 5-1(Clement vote nay)

**Finding of Fact:**

- 1.1 The case site has a regular rectangular shape, and is 64' wide and 100' long. It meets the minimum width, depth and area requirements for lots located in the R1-6 district.
- 1.2 The Board of Adjustment has previously granted a variance for this site. The approval for case BA84-114 permitted a room addition to encroach into a required street side yard (A 10' side yard is required adjacent to the street. The variance authorized a 5' encroachment) and allowed the roof area to exceed the 2560 sqft maximum for this lot, up to 2800 sqft. The variance did not approve additional roof area above 2800 sqft or additional setback encroachments intom the rear, front or interior side yards.
- 1.3 The applicant has not provided adequate justification that relates to the criteria needed to grant a variance. No special circumstances or conditions exist on the site that would justify the request as presented, or as revised.

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**Case No.:** BA04-009

**Location:** 5901 E. McKellips Rd.

**Subject:** Requesting a Special Use Permit to allow a commercial communication tower to exceed the maximum height permitted in the C-2 district.

**Decision:** Continued for 30 days.

**Summary:** The applicant requested a continuance for 30 days. The requested continuance was on the Consent Agenda, and was not heard individually.

**Motion:** It was moved by Mr. Shuff, seconded by Ms. von Borstel, that this case be continued to the March 9, 2004 meeting.

**Vote:** 5-0

**Finding of Fact:** N/A

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**Board of Adjustment Meeting  
February 10, 2004**

**Case No.:** BA04-010

**Location:** 1855 North Power Road

**Subject:** Requesting a Special Use Permit to allow a modification of a Comprehensive Sign Plan for a group commercial center in the C-2 district.

**Decision:** Approved with conditions.

**Summary:** Boardmember Lambright declared a conflict of interest and abstained from any discussion regarding this case. Mr. Patrick Sherry, applicant, stated that they have been working with staff since May of 2003 to allow for a modification of a Comprehensive Sign Plan. They have modified their request to comply with staff's recommendations. Mr. Sherry inquired if they removed sign 'C2', could they add 'Food & Drug' as long as they met the 260sqft. recommendation by staff. Mr. Sheffield stated that was the intent of the staff's recommendations.

**Motion:** It was moved by Mr. Langkilde, seconded by Mr. Shuff, that this case be approved, conditioned upon the following:

- 1) Compliance with the revised sign plans for the Safeway anchor tenant space and the Safeway Fueling Station, as depicted in plans submitted, except as modified by the conditions listed below;
- 2) Attached signs for the Safeway anchor tenant space as to be limited to no more than eight, and the total sign area for the eight signs is too be limited to no more than 260 sqft.
- 3) The variable price light emitting diode (LED) units for the gasoline price sign in Power Road shall be designed with a software program that will limit the light intensity emanating from the sign. Prior to the issuance of a sign permit, the sign manufacturer shall provide written certification that the light intensity of the LED price units have been factory pre-set not to exceed the levels specified in the table below, and that the intensity level is protected from end-user manipulation by password protected software or some other method as deemed appropriate by the Building Safety Director. The software shall include automatic intensity level changes between daytime and nighttime use, as specified:

Maximum Light Intensity Level (Measured in NITS)

<b>Color</b>	<b>Daytime</b>	<b>Nighttime</b>
Red Only	3,150	1,125
Green Only	6,300	2,250
Amber Only	4,690	1,675

**Vote:** Passed 5-0-1 (Lambright abstaining)

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**Finding of Fact:**

- 1.1 The Board previously approved a comprehensive sign plan for this site (case BA01-33). This plan permitted three signs totaling up to 200 sqft to be placed on the front of a 36,000 sqft anchor tenant.
- 1.2 The anchor tenant space for the site has increased up to 56,000 sqft (a 55% increase in floor area). The width of the front of the store has also increased, now totaling about 275 sqft. The building is still between 400 and 450 linear feet away from Power Road.
- 1.3 The Board's approval amounts to a 27% increase in total sign area, and an almost three-fold increase in the number of signs permitted (from 3 to 8).
- 1.4 The four "modifier" signs are to be placed on a designated "sign" band, as depicted on the front elevation drawings. This band is about 10 to 12' above grade, and will be visible from the street, but in a limited fashion. Because of the distance from the street, and the limited height, these signs should be considered "visibility restricted" signs, because parking lot landscaping and other intervening items will partially block visibility from the street. To further limit visibility from the street, these signs should be limited in size to 24 sqft or less.
- 1.5 The proposed gas station signs are consistent with similar sign programs, four signs on the canopy and a reduction of the ground sign from a 12' high maximum to an 8' high sign.
- 1.6 The increases approved by the Board over the previously approved sign plan are consistent with the changes that have taken place to the anchor building since the original case was approved two years ago. When compared to similar sites in the vicinity, the total size and total number of attached signs are consistent with other neighboring anchor tenant buildings.

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Respectfully submitted,

Gordon Sheffield, AICP  
Senior Planner

Minutes written by Krissa Hargis, Planning Assistant

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