

## Board of Adjustment

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### *Minutes*

#### City Council Chambers, Lower Level June 3, 2015

**Board Members Present:**

Trent Montague – Chair  
Mark Freeman - Vice Chairman  
Wade Swanson  
Greg Hitchens  
Tony Siebers  
Ken Rembold

**Board Members Absent:**

Tyler Stradling-excused

**Staff Present:**

Gordon Sheffield  
Angelica Guevara  
Wahid Alam  
Kim Steadman  
Kaelee Wilson  
Margaret Robertson  
Charlotte McDermott  
Michael Gildenstern

**Others Present:**

Richard Dyer  
Shawn Williams  
Michael Pate  
Nelson Tressler  
Dan Dolan

The study session began at 4:32 p.m. and concluded at 5:18 p.m. The Public Hearing began at 5:31 p.m. Before adjournment at 6:09 p.m., the following items were considered and recorded.

**Study Session began at 4:32 p.m.**

- A. The items scheduled for the Board's Public Hearing were discussed.

**Study Session adjourned at 5:18 p.m.**

**Public Hearing began at 5:31 p.m.**

- A. Consider Minutes from the May 6, 2015 Meeting -A motion was made by Boardmember Swanson and seconded by Boardmember Freeman to approve the minutes. Vote: Passed 6-0
- B. Consent Agenda -A motion to approve the consent agenda as read was made by Boardmember Swanson and seconded by Boardmember Siebers. Vote: Passed 6-0

**Case No.:** BA15-001 **TABLED**

**Location:** 2816 and 2828 South Country Club Drive

**Subject:** Requesting a Special Use Permit to modify and/or remove an existing comprehensive sign plan in the LC zoning district. (PLN2014-00640).

**Decision:** Tabled

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to table case BA15-001.

**Vote:** Passed (6-0) (Boardmember Stradling-excused)

**Case No.:** BA15-015 **WITHDRAWN**

**Location:** 2222 East Main Street

**Subject:** Requesting: 1) a Variance to allow a fence to exceed the maximum height permitted; 2) an interpretation of the term “electric fence” as found in Section 8-6-3(I) related to Prohibited Public Nuisances; 3) the provisions related to “determining setbacks for yards” as found in Section 11-2-3(I); 4) the provisions related to “maximum height of fences and freestanding walls” as found in Section 11-30-4(B); and 5) an interpretation of the defined term “adjoining” as found in Chapter 87 of the Mesa Zoning Ordinance, all in the GC district. (PLN2015-00120)

**Decision:** Withdrawn by Applicant

**Summary:** The applicant Shawn Williams, at 3854 E. June Circle, Mesa; and consultant Michael Pate, at 3131 Hayward Street, Columbia, SC presented their case to the Board.

Boardmember Hitchens informed the consultant, Mr. Pate, that since the property lines were not surveyed, he would not be able to determine if the proposed fence was within proper setbacks. He went on to ask if the proposed fence would be able to be de-electrified, and the consultant informed him that it could be, but that it would become much less effective in deterring theft.

The consultant, Mr. Pate, confirmed for Boardmember Siebers that it is to his belief that the definition of “electrification” should be evaluated by the NEC standard that provides that any device emitting under 50 volts is not addressed by the International Electric Code, and therefore the proposed 12 Volt fence should not be seen as an electrical device by the Board and Staff.

Boardmember Swanson confirmed with Mr. Pate that staff was supportive of a 10’ fence as long as it was constructed out of the required setback. Mr. Swanson also stated that if one was to read the code in its plain language when it addresses “electric”, but doesn’t directly define it, that it is implied that you are to take the plain language meaning of the provision. Mr. Swanson also gave the example that if a vehicle is driven by an electric battery, then it should be interpreted as an electric car.

Mr. Pate stated that he didn’t know anything about electric cars, except that they have batteries in them, and he knew that they’re not powered by 12 volt batteries. He reasserted that he didn’t know anything about electric cars, and stated that he owns a V-8 Ford F-150 and that he burns lots of gas.

Zoning Administrator Sheffield stated to the consultant that the Electrical Code that he was referring to is under Title 4 of the Mesa City Code, which also contains things like the International Building Code and the International Energy Code. He went on to explain that what was being discussed in the Hearing was Title 8 of the Mesa City Code, which provides for Nuisance Laws. Mr. Sheffield explained that the idea behind the nuisance laws may relate back to Title 4 if a reference is specified, but the interpretation of the Nuisance Title,

is to be kept as a plain reading. Any technical reading of the Electric Code would come from the Building Official. Mr. Sheffield concluded that the intent behind this interpretation is one of plain reading, so the deliberations of the Board should be confined to the definition of an electric fence provided in Title 8 of the Ordinance.

Mr. Pate confirmed for Boardmember Swanson that there are no electric fences in Mesa, but around 40 in Phoenix. He admitted that he has had to defend his product as it has been seen as a nuisance by other municipalities, but he maintained that his fences are truly just alarmed fences, and that they operate under international standards for electrical security fences, and the electrical controllers are tested by labs like UL, under the auspices of OSHA. The consultant also stated that he could turn off the electric shock function and just run it as an alarmed fence, but restated, in his view, that it would not be as effective.

Boardmember Siebers expressed his concern for the proposed signage that reads, "Warning Electric Fence, 7,000 Volts" that would be placed at intervals along the fence, and to the observer, that would violate the Nuisance Code that prohibits an electric fence and raise an issue of interpretation and enforcement.

Mr. Pate maintained that it is merely an alarmed fence, even though something else is indicated on the signage, and he confirmed for Boardmember Rembold that if someone were to clip the fence when not electrified, the fence would still be alarmed.

Mr. Pate confirmed for Boardmember Freeman that a livestock electric fence operates at a higher voltage, and by using a capacitor, takes 120 volts and amplifies it to around 14,000 volts. Mr. Pate explained that his product is similar, in that it features a mechanical capacitor that is regulated to 5 joules of electrical charge per international standards, and once it hits maximum voltage, releases it down the line. He went on to say that what makes his device safe is that the electricity is released for a very short period of time. (3/10,000 of a second) and won't even affect a pacemaker. He confirmed that the potential thief will get a shock, because the power is amped up by the capacitor, but because the primary power source is a 12 volt battery, the product is not regulated by the International Electrical Code.

Boardmember Swanson suggested to the applicant that since he has met such resistance from municipalities, that he should approach City Council and request that they create an exception in the code that defines and addresses products like the one marketed by Electric Guard Dog.

Mr. Pate explained that he is in the process to do so, but that he hasn't been able to speak with the District 2 Councilman as of yet. He also mentioned that it could be a long process, and his client is dealing with something that's happening right now, and that he risks future break-ins until something is done.

Chairperson Montague stated to the applicant that he likes the facility at 2222 E. Main, and that no one is interested in standing in the property owner's way to secure his property, but that the Board is a panel charged with interpretation of the City Code.

Mr. Sheffield explained that people often think the property line is measured from the back of sidewalk, but in reality setbacks are measured from property lines, and the extra Right of Way (ROW) can often measure between 3' to 10' from behind the back of sidewalk to provide for underground utilities. He went on to explain that the property line lies somewhere between 5' to 8' behind the back of sidewalk on the property at 2222 E. Main Street. Mr. Sheffield added that as long as the setbacks with the canal and the 20' setback on the co-terminus northern residential property line were met, staff would have no issue with the 10' fence; the issue remains only with the electrification of the fence.

Staffmember Guevara added that the Zoning Ordinance requires landscaping and building setbacks to be measured from the future ROW line, so the applicant would be required to provide site plan dimensions showing current and future ROW and measurements of their setbacks from that future width line as it applies to Main Street and 22<sup>nd</sup> Place.

Mr. Pate stated that he agreed with Staff's assessment of the required setbacks, but suggested that if he wasn't granted permission to electrify the fence, that the Board would make a recommendation to Staff to explore allowing electric fences in the city of Mesa.

Mr. Sheffield informed Mr. Pate that Staff takes direction from the Mayor, City Council, and the City Manager, so the item would have to be initiated along one of those channels. He went on to explain that a Councilmember could place the item on a subcommittee agenda, the subcommittee would vote, and then the decision would be made whether to pass it on to City Council. Mr. Sheffield concluded by saying that the proper route is through Council to change the policy as opposed to trying to interpret this existing policy to fit this particular circumstance.

In summary, Boardmember Hitchens stated that even if the Board votes to deny electrification, the applicant could still install a fence, and deter some of the theft.

Boardmember Freeman added that he has personally worked with Staff to change City Code provisions, and regardless of the outcome, the Board of Adjustment is a great platform to initiate review of existing codes.

Boardmember Swanson initially moved to uphold and confirm the interpretation of the Development and Sustainability Director that the proposed security fence is determined to be an electric fence pursuant to Mesa City Code 8-6-3(I), but then moved to approve the applicant's request to withdraw his variance request to give the applicant the ability to revisit the variance for placement of the fence within the setback, if he should choose to do so in the future.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Freeman to uphold the Director's interpretation of Section 8-6-3 (I) and withdraw the variance request for case BA15-015.

**Vote:** Passed (6-0) (Boardmember Stradling-excused)

**The Board's decision is based upon the following Findings of Fact:**

- A. The security fence proposed is an electric fence as it is proposed to include 20, 12.5 gauge, galvanized steel wires running horizontally between the poles which would be connected to a 12 volt battery, that when touched, the wires would release a burst of voltage for duration of four-ten-thousandths of one second (.00004). The temporary pulse of voltage is similar to a slap on the hand from a ruler and warning signs in English and Spanish would be attached to the fence a minimum of 60 feet apart.
- B. Electric fences are prohibited by the City of Mesa Code Section 8-6-3(l).
- C. The site is approximately 26.4± acres in area and is an RV sales and display facility on a site that does not have significant changes in grade elevations to justify a taller fence placed within the required setbacks.
- D. Due to the size of the RV's the business owner has decided to display inventory outdoors.
- E. Many existing RV and vehicle sales lots display inventory outdoors and do not require security fencing taller than 8-feet.
- F. The site can be secured with an 8-foot tall security fence within the setback. A 10-foot tall fence is also permitted if it is placed in compliance with the required setback without needing a variance.
- G. Fences up to 30-feet in height are permitted on the site as long as they are placed out of the setbacks.

**Case No.:** BA15-018 **CONTINUED**

**Location:** 60 North Gilbert Road

**Subject:** Requesting: 1) a Substantial Conformance Improvement Permit to allow the redevelopment of a commercial building; and 2) a Special Use Permit to allow a reduction in the minimum number of required parking spaces, both in the GC zoning district. (PLN2015-00115)

**Decision:** Continuance to the July 1, 2015 Meeting

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to continue case BA15-018.

**Vote:** Passed (6-0) (Boardmember Stradling-excused)

**Case No.:** BA15-020 **APPROVED WITH CONDITIONS**

**Location:** 2930 South Alma School Road

**Subject:** Requesting a Substantial Conformance Improvement Permit to allow the development of a pad site in an existing commercial center. (PLN2015-00042)

**Decision:** Approved with conditions

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to approve case BA15-020 with the following conditions:

1. *Compliance with the project narrative, site plan, floor plan, and elevations submitted except as modified by the following conditions.*
2. *Compliance with all conditions of approval associated with cased: Z15-016 and DR15-019*
3. *A lot split shall be approved prior to the issuance of building permits.*
4. *Compliance with all requirements of Development Services regarding the issuance of building permits.*

**Vote:** Passed (6-0) (Boardmember Stradling-excused)

**The Board's decision is based upon the following Findings of Fact:**

- H. The development of a vacant pad site invoked conformance with current development standards on the entire site.
- I. At the time of initial site plan approval and subsequent administrative site plan modifications, the setbacks, foundation base, and landscape requirements of the Zoning Code varied when compared to the development standards of the current Code.
- J. Requiring compliance with current code would require the removal of existing improvements that benefit the entire group commercial center.
- K. The proposed improvements with the recommended conditions of approval help brought the site into a closer degree of conformance with current standards.
- L. The proposed use would not be detrimental to surrounding properties.

**Case No.:** BA15-021 **CONTINUED**

**Location:** 4418 East University Drive

**Subject:** Requesting a Development Incentive Permit to allow the development of a commercial building in the LC zoning district. (PLN2015-00119)

**Decision:** Continued to the July 1, 2015 meeting

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to continue case BA15-021

**Vote:** Passed (6-0) (Excused-Boardmember Stradling)

- Case No.:** BA15-023 **APPROVED WITH CONDITIONS**
- Location:** 3143 South Power Road
- Subject:** Requesting a Special Use Permit for a Comprehensive Sign Plan in the RSL-2.5-PAD zoning district. (PLN2015-00190)
- Decision:** Approved with Conditions
- Summary:** This item was on the consent agenda and was not discussed on an individual basis.
- Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to approve case BA15-023 with the following conditions:
1. *Compliance with the Comprehensive Sign Plan submitted.*
  2. *Subdivision entry sign shall not exceed 30 s.f. and letters shall not be taller than 20-inches in height.*
  3. *Compliance with all requirements of the Development Services Division with regard to the issuance of sign permits.*
- Vote:** Passed (6-0) (Excused-Boardmember Stradling)

**The Board's decision is based upon the following Findings of Fact:**

- A. The Zoning Code would allow up to two subdivision entry signs, each 12 square feet in area per recorder subdivision with a maximum of 24 square feet in area
- B. The development is approximately 16.38± acres in area with approximately 800 linear feet of street frontage. The lots were subdivided with one recorder subdivision plat.
- C. The applicant was proposing one residential subdivision sign to identify the main entrance.
- D. The number of signs proposed was less than would be allowed by Code, therefore the additional sign area is justified
- E. The scale and placement of the signage was also proportional and works well with the overall design and layout of the subdivision.
- F. The Special Use Permit for the Comprehensive Sign Plan would not be detrimental to the surrounding properties.

**Case No.:** BA15-024 **APPROVED WITH CONDITIONS**

**Location:** 719 East Main Street

**Subject:** Requesting a Special Use Permit for a Comprehensive Sign Plan (CSP) in the T4MS zoning district. (PLN2015-00191)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to approve case BA15-024 with the following conditions:

1. *Compliance with sign plan submitted, except as modified by these conditions.*
2. *Compliance with all requirements of Development Services in the issuance of sign permits.*

**Vote:** Passed (6-0) (Excused-Boardmember Stradling)

**The Board's decision is based upon the following Findings of Fact:**

- A. The proposed CSP did not include any detached signage.
- B. The proposed CSP included only attached signs – This CSP identified two (2) specific attached signs for the apartment building. The aggregate total area of these two (2) signs was 220 square feet (El Rancho at 117 square-feet + “Del Arte” at 104 square-feet )
- C. The LC District would allow for 160 square-feet of sign area for attached signage and 80 square-feet of signage for a detached sign, which totaled 240 square-feet. The applicant proposed sign area that was less than what would be allowed if you totaled the allowable sign area for a detached sign when combined with the attached signage.
- D. The signage is located on wall that is recessed 9-feet, which mitigates the impact of the increased sign area.
- E. The CSP is seen as a tool to promote superior design throughout a development. This CSP identifies architecturally-integrated signs and specifies location, size, height, construction material, color, type of illumination and orientation of proposed signs. The proposed sign is of superior quality and is an exemplary example of unique and architecturally integrated signage. A reduction of the size of the letters in the sign would detract from the overall design of the “Art Screen” and would have a detrimental effect on the overall project.
- F. The proposed CSP was compatible with the apartment project as well as surrounding properties, and will not be detrimental to adjacent development.
- G. The apartment project exceeds 3-stories in height and therefore required a Comprehensive Sign Plan for any attached signage that displays information other than the project name. (section 11-41-8(D)3)

**Case No.:** BA15-025 **APPROVED WITH CONDITIONS**

**Location:** 3660 East Inverness Avenue

**Subject:** Requesting: 1) a Special Use Permit to allow an animal kennel; and 2) a Special Use Permit to allow a small animal day care; both in the LC zoning district. (PLN2015-00194)

**Decision:** Approved with Conditions

**Summary:** The applicant Nelson Tressler, at 5600 Ambrosia Stream Avenue, Las Vegas, NV presented his case to the Board.

Mr. Dan Dolan at 1746 S. Gilmore Circle, was concerned that the dogs being kenneled on the site would run through the adjacent apartment property and the neighborhood park. He was also concerned that an abundance of animal waste would overwhelm the dumpster on the property and the smell would permeate the neighborhood. He was concerned that these factors would negatively affect apartment leasing and property values.

Mr. Dolan confirmed for Boardmember Freeman that his property was within 500' of the proposed project and explained for Boardmember Siebers that he is also concerned about the additional animal noise at night, and restated his concern for dogs wandering off of the property.

The applicant confirmed that he is raising the wall so the dogs can't escape, and that they will never be let off the property until the owner picks them up, and added that he will offer a good neighbor discount to the residents of the apartment complex next door. He concluded by saying that the waste will be removed immediately; the affected area disinfected, odor-neutralized, and it will be disposed of in a dumpster onsite.

**Motion:** It was moved by Boardmember Freeman seconded by Boardmember Swanson to approve case BA15-025 with the following conditions:

1. *Compliance with the site plan exhibit and narrative submitted.*
2. *After 7 p.m. the maximum number of dogs in the outdoor play area shall not exceed two.*
3. *Provide evidence of sound attenuation of the indoor kennel area at the time of submitting for building permits.*
4. *Compliance with all requirements of the Development Services Division in the issuance of any necessary building permits.*
5. *Compliance with the Title 6-12-2 of the Mesa City Code which addresses the noise ordinance.*
6. *All dead and missing landscape material along the street frontage and within the parking area of the site shall be replaced.*

**Vote:** Passed (6-0) (Excused-Boardmember Stradling)

**The Board's decision is based upon the following Findings of Fact:**

- A. The facility is proposed to be manned 24 hours a day 7 days a week. Dogs are supervised at all times in the outdoor play area. Hours of operation are from 6:30 am to 7 pm and according to the narrative, no dogs are allowed outside after hours.

- B. The location of the business is a free-standing building. The proposed use of the outdoor play area was over 60 feet away from any residential structure. Adjacent to the north and west property line there is landscape and driveway between the outdoor play area and the multi-residence buildings.
- C. The outdoor space was previously utilized as an outdoor play area for children.
- D. To the east is an existing open space that serves the Brigata residential subdivision.
- E. The dogs will be kenneled inside the building. The building was proposed to be sound attenuated as required by the Zoning Ordinance.
- F. There is an 8' high masonry wall surrounding the outdoor play area.
- G. Based on these findings the use was not detrimental or injurious to any surrounding properties.

**Case No.:** BA15-026 **APPROVED WITH CONDITIONS**

**Location:** 1465 West Southern Avenue

**Subject:** Requesting a Substantial Conformance Improvement Permit to allow the redevelopment of a commercial site in the LC zoning district. (PLN2015-00195)

**Decision:** Approved with Conditions

**Summary:** This item was on the consent agenda and was not discussed on an individual basis.

**Motion:** It was moved by Boardmember Swanson seconded by Boardmember Siebers to approve case BA15-026 with the following conditions:

1. *Compliance with the site plan submitted except as modified by the conditions below.*
2. *Compliance with all requirements of the approved Administrative Site Plan Modification.*
3. *Compliance with all requirements of the Development Services Division in the issuance of building permits.*
4. *Compliance with all requirements of the Design Review approval for case DR15-22.*

**Vote:** Passed (6-0) (Excused-Boardmember Stradling)

**The Board's decision is based upon the following Findings of Fact:**

- A. Approval of the proposed project would advance the goals and objectives of and is consistent with the policies of the General Plan and any other applicable City plan and/or policies;
- B. The location, size, design, and operating characteristics of the proposed project were consistent with the purposes of the district where it is located and conformed with the General Plan and with any other applicable City plan or policies;
- C. The proposed project would not be injurious or detrimental to the adjacent or surrounding properties in the Fiesta Mall area, nor would the proposed project or improvements be injurious or detrimental to the neighborhood or to the general welfare of the City; and
- D. Adequate public services, public facilities and public infrastructure are available to serve the proposed project.

OTHER BUSINESS:

None

ITEMS FROM CITIZENS PRESENT

None

Respectfully submitted,

Gordon Sheffield, AICP CNU-a  
Zoning Administrator