

# Board of Adjustment Minutes

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City Plaza, Rooms 170 East and West  
July 11, 2006

**Board members Present:**

Craig Boswell  
Garrett McCray  
Randy Carter  
Mike Clement  
Dina Higgins  
Dianne von Borstel  
Roxanne Pierson

**Board members Absent:**

(None)

**Staff Present:**

Gordon Sheffield  
Jeff McVay  
Lena Butterfield  
John Wesley

**Others Present:**

Michael Hartline  
Kim Pippett  
Steve Bostic  
Scott Quinn  
Reese Anderson  
Lyman Nelson  
Bob Weigel  
Tony Livesay  
Thomas Eells

The study session began at 4:30 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 7:20 p.m., the following items were considered and recorded on Board of Adjustment CD #1.

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

The study session began at 4:30 p.m. The items scheduled for the Board's Public Hearing were discussed.

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

A. Election of Officers

It was moved by Boardmember Pierson, seconded by Boardmember von Borstel, that Dina Higgins act as Chair of the Board of Adjustment for the next 12 months. **Vote: Passed 7-0**

It was moved by Boardmember Carter, seconded by Boardmember Boswell, that Mike Clement act as Vice Chair of the Board of Adjustment for the next 12 months. **Vote: Passed 7-0**

B. Consider Minutes from the June 13, 2006 Meeting A motion was made to approve the minutes by Boardmember von Borstel and seconded by Boardmember Carter. **Vote: Passed 7-0**

C. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember Carter and seconded by Boardmember McCray. **Vote: Passed 7-0**

**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-025

**Location:** 660 East University Drive

**Subject:** Requesting a Substantial Conformance Improvement Permit (SCIP) to allow for the conversion of an existing single residence into a day care center in the R-4 zoning district

**Decision:** Tabled indefinitely

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

**Motion:** It was moved by Boardmember Carter, seconded by Boardmember McCray to table this case.

**Vote:** Passed 7-0

**Finding of Fact:** N/A

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**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-27

**Location:** 2737 South Ellsworth Road

**Subject:** Requesting: 1) a Special Use Permit and 2) a Substantial Conformance Improvement Permit (SCIP); both in conjunction with the redevelopment of an automobile service station and carwash in the C-2-DMP.

**Decision:** Approved with conditions

**Summary:** Boardmember Boswell recused himself from the discussion and vote due to a conflict of interest.

Mr. Reese Anderson, representing the applicant, explained that the owner of the Classic Car Spas changed the site plan to comply with the Board's suggestions from June 13, 2006. He further explained the owner would like to keep the existing fence in order to keep the mature landscaping that is currently in the area. Additionally, he agreed with the staff recommended conditions of approval.

The Board expressed gratitude for the willingness of the applicant to make the changes to the site plan.

**Motion:** It was moved by Boardmember von Borstel, seconded by Boardmember Pierson to approve this case with the following conditions:

1. *Compliance with the revised site and landscape plans submitted, except as modified by the conditions listed below.*
2. *A minimum five-foot (5') wide foundation base adjacent to the north elevation shall be provided.*
3. *Compliance with current Code requirements related to the number of plants provided within landscape setbacks, foundation base, and landscape islands.*
4. *Parking lot landscape islands with a pedestrian route shall have a minimum size of twelve feet (12') by fifteen feet (15').*
5. *Gas pumps shall be separated from vehicular traffic through the use of a raised landscape planter or irrigated pots.*
6. *Compliance with all requirements of the Design Review Board.*
7. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

**Vote:** Passed 6-0

**Finding of Fact:**

- 1.1 The proposed automobile service station and carwash are allowed uses, subject to the granting of a Special Use Permit. Such uses are consistent with the General Plan designation of Neighborhood Commercial. Additionally, the subject site is part of a larger group commercial center and is located approximately 330 feet from the nearest residential use.

**Board of Adjustment Meeting  
July 11, 2006**

- 1.2** The applicant has proposed deviations from current Code requirements related to foundation base and parking lot landscape islands. The provided foundation base and parking lot landscape islands, including staff recommended conditions of approval, represents substantial conformance with current Code requirements.
- 1.3** The proposed site and landscape plans, including staff recommended conditions of approval, would substantially conform to the intent of the Code and provide a development that is consistent with and not detrimental to adjacent properties.

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**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-029

**Location:** 2160 North Power Road

**Subject:** Requesting a Special Use Permit to allow a commercial communication tower in the R1-9 zoning district.

**Decision:** Approved with conditions

**Summary:** Mr. Quinn, applicant, explained that he met with the neighbors to come up with a design that will work for the tower. He further explained that he and the neighbors agreed upon a “mono-cross” design and provided a photo simulation of what it would look like.

In response to a question from Mr. Clement, Mr. Quinn informed the Board that the main pole would have a diameter of approximately 30 inches.

In response to a question from Mr. Boswell, Mr. Quinn confirmed that a mono-cross design would be harder use to co-locate other carriers.

The Board had discussion on the design of the “mono-cross”. Mr. McVay recommended, that if approved with a mono-cross design, the Board should include a condition of approval that requires staff review of final site plan and elevations to ensure they meet the intent of the Board’s approval, prior to applicant submittal for building permits.

Mr. McVay confirmed with the Board that such a staff review would include Design Review staff.

**Motion:** It was moved by Boardmember Clement, seconded by Boardmember McCray to approve this case with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *The final site plan and elevations shall be submitted for Planning Division staff and approval prior to submittal for building permits.*
3. *Compliance with all Federal Aviation Administration regulations.*
4. *Compliance with all Federal Communications Commissions regulations.*
5. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

**Vote:** Passed 7-0

**Finding of Fact:**

- 1.1 The proposed 65-foot tall Commercial Communication Tower has been located and designed to minimize visual impact.
- 1.2 The CCT is an allowed use in the R1-9 Zoning District subject to granting of a Special Use Permit and complies with the Commercial Communication Towers Guidelines adopted by City Council.

**Board of Adjustment Meeting  
July 11, 2006**

- 1.3** The communication tower will be designed to conceal the antennas within a mono-cross that is sensitive to the visual impact of communication towers. The location is consistent with criteria set forth in the Mesa Commercial Communication Tower Guidelines. Therefore, the proposal should be compatible with and not detrimental to surrounding properties.

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**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-32  
**Location:** 2154 East Fountain Street  
**Subject:** Requesting a variance to allow a carport to encroach into the required side and rear yard.  
**Decision:** Continued to August 8, 2006

**Summary:** Mr. Eells, applicant, explained that the carport had been constructed about 12 years ago and was built in the current location because of the location of his RV gate and without a building permit on the advice of the carport dealer. Additionally, he explained that there is an application to the Real Estate Department to abandon the alley to the rear of his property, which would preclude the access to his rear yard from the alley. He presented signed statements in support of the carport from his neighbors.

Mr. Sheffield suggested a continuance to allow staff some time to research how the alleyway abandonment may affect the requested variance.

In response to a question from Mr. Boswell, Mr. Eells informed the Board that he accesses the carport from 22<sup>nd</sup> St.

Mr. McVay explained that the subdivision was platted with a vehicular non-access easement along the east property boundary, which prohibits vehicular access to 22<sup>nd</sup> St.

Mr. Bostic, 2138 E Fountain St, expressed support for the carport and explained that when Mr. Eells had the carport built he went around to the neighbors to insure that it would not negatively impact them.

Mr. Carter explained that the Board of Adjustment is required to make decisions on variances based on hardships, regardless of the amount of time the structure has existed or potential costs to bring the structure into compliance with the Code.

**Motion:** It was moved by Boardmember von Borstel, seconded by Boardmember Pierson to continue this case for 30 days.

**Vote:** Passed 7-0

**Finding of Fact:** N/A

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**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-033

**Location:** 2332 East Alpine Avenue

**Subject:** Requesting a variance to allow a detached accessory building to exceed the maximum height permitted in the R1-6 zoning district.

**Decision:** Continued to September 12, 2006

**Summary:** Mr. Livesay, applicant, explained that the proposed garage was designed with this size and height based off information provided by City staff and would be placed in the most useful place in the yard. Additionally, he explained that moving the garage to another part of the rear yard would force him to relocate the gate at the rear of his property and could be affected by the location of overhead utility lines and the sewer connection. He added that he would like some direction from the board in what he should do.

Mr. McVay explained that to the Board that they can only continue, deny, or approve the case. Additionally, staff is willing to work with the applicant to develop options that would work within the requirements of the Zoning Ordinance.

In response to a question from Ms. Higgins, Mr. McVay described some of the options available to Mr. Livesay to build a garage so that he would be in conformance with code.

**Motion:** It was moved by Boardmember Boswell, seconded by Boardmember McCray to continue this case for 60 days:

**Vote:** Passed 7-0

**Finding of Fact:** N/A

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**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-034

**Location:** 3762 East Dragoon Avenue

**Subject:** Requesting 1) an interpretation of the legal lot frontage; and 2) a variance to allow a fence to exceed the maximum height allowed in the front yard in the R1-9 zoning district

**Decision:** Approved with conditions

**Summary:** Mr. Nelson, applicant, explained that he believed that he constructed his fence in conformance with City code, and did not know the legal front of his lot was the Dragoon Ave cul-de-sac until a Code Compliance inspector contacted him. Mr. Neilson further explained the orientation of his home and the curve of the lot make the interpretation and variance necessary.

Ms. Pippet was in attendance and supported the case, but did not wish to speak.

Mr. Hartline expressed concern with the aesthetics of the fence, as well as the location creating a hazard for people entering Dragoon Ave from the cul-de-sac.

Mr. McVay explained that the issue before the Board the requested variance and not the aesthetics of the fence. Additionally, staff has insured that a proper site triangle is still maintained with the current location of the fence.

In response to concerns raised by Ms. Higgins, Mr. McVay and Mr. Sheffield explained that current code allows 6 foot high fences to be located in front of the front line of the home as long as it doesn't encroach into the requires front setback.

The Board discussed the location of the fence and the interpretation of the legal front of the property further. During the discussion Mr. Clement expressed support for the variance.

In response to the Boards discussion, Mr. McVay suggested a condition of approval that the fence shall not encroach further in the side or rear yard setbacks as shown on the site plan.

**Motion:** It was moved by Boardmember Carter, seconded by Boardmember vonBorstel to approve this case conditioned upon: *The six-foot high fence not encroaching further into the required side or front yard than shown on the plans submitted.*

**Vote:** Passed 7-0

**Finding of Fact:**

- 1.1 The subject parcel was developed as a corner lot with frontage on Dragoon Avenue and Dragoon Avenue cul-de-sac. The Zoning Code defines the front line of a corner lot as the shorter of the two adjacent lines to the street, which is Dragoon Avenue cul-de-sac. The parcel has been developed with the front of the home oriented towards Dragoon Avenue and meets the setback requirements for an R1-9 lot oriented towards Dragoon Avenue.

**Board of Adjustment Meeting  
July 11, 2006**

- 1.2** Should the front line of the subject parcel be interpreted as Dragoon Avenue, an approximately 12-foot section of an existing six-foot high fence would exceed the maximum height permitted in the front yard. As justification for the requested fence height variance the applicant has noted the irregular shape of the parcel.
- 1.3** The irregular shape of the parcel affects the location orientation of the fence. A conventionally shaped lot of similar size could construct a fence along a straight line that matches the front line of the house and complies with Code.
- 1.4** The curve of the lot is a pre-existing condition that was not created by the property owner. Strict application of the Code would deprive this property owner of privileges enjoyed by other properties in the vicinity and same zoning district that were developed as conventional lots on non-curvilinear streets.

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**Board of Adjustment Meeting  
July 11, 2006**

**Case No.:** BA06-35

**Location:** 8701 East Brown Road

**Subject:** Requesting a Special Use Permit to allow a Commercial Communication Tower in the R1-43 zoning district.

**Decision:** Continued to August 8, 2006

**Summary:** Mr. Rulon Anderson, representing T-Mobile, explained that the proposed mono-palm tower is going as far away from residential and the church as they can put it. Further adding that the location of the mono-palm is on the edge of the desert uplands, so there are a few palm trees in the area.

Mr. Anderson provided photographs of existing palm trees in the area of the proposed mono-palm and noted that a neighborhood meeting had no opposition to the proposed tower.

In response to a question from Mr. Anderson, Mr. Sheffield explained that City Council passed the initial Desert Uplands ordinance about 1993. Mr. Anderson explained that ideally he would like to locate on an existing vertical element or structure, but is limited because none exists on the site being proposed.

In response to a question from Mr. Carter, Mr. Anderson noted that the freeway will be sunk at this location with a sound wall, and that a mono-palm design was chosen to allow more antennas is more attractive than other designs, and the Church and neighbors have approved the design.

In response to a question from Mr. McCray, Mr. Anderson agreed that the Desert Uplands regulations are in the Subdivision Ordinance, but stated he did not feel the Desert Upland standards anticipated a case such as this or is intended to prohibit mono-palm designed communication towers. He also expressed the opinion that the City Council did not set a policy to prohibit palms in the Desert Uplands with the intent to prohibit mono-palms, and if this were presented to the Council would receive approval. Further he stated that, appeals to Board decisions to Federal Court, it was his understanding that the 9<sup>th</sup> Circuit Court has ruled that a communication tower cannot be denied based on aesthetics alone.

Mr. McVay and Mr. Sheffield explained that the Board was reviewing the case for compatibility with the neighborhood, for compliance with City Council policies, which includes consistency with the Desert Uplands requirements. Mr. Sheffield suggested that the question is whether a palm tree design is appropriate and compatible with a sub-area of the City in which the Council had passed an Ordinance that prohibits planting palm trees as part of a subdivision landscape plan.

In response to a question from Mr. Carter, Mr. Sheffield stated the Board of Adjustment is charged with deciding the case, and should not defer the decision to the Design Review Board. Mr. Sheffield further stated that the Board of Adjustment is charged with determining if the City Council policy to prohibit organic palm trees at the proposed location of the communication tower is transferable to placing a faux palm tree designed cell tower at this site.

**Motion:** It was moved by Boardmember Carter, seconded by Boardmember von Borstel to continue this case to allow the applicant a chance to redesign the cell tower in a manner that does not resemble a palm tree.

**Board of Adjustment Meeting  
July 11, 2006**

**Vote:** Passed 7-0

**Finding of Fact:** N/A

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**Case No.:** BA06-036

**Location:** 1240 West Southern Avenue

**Subject:** Requesting a Special Use Permit for modification of a Comprehensive Sign Plan in the C-2 zoning district.

**Decision:** Approved with conditions

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

**Motion:** It was moved by Boardmember Carter, seconded by Boardmember McCray to approve this case with the following conditions:

1. *Compliance with the sign plan submitted.*
2. *Compliance with current Code requirements unless modified by the comprehensive sign plan or the conditions listed below.*
3. *Compliance with all requirements of the Building Safety Division with regard to the issuance of sign permits.*

**Vote:** Passed 7-0

**Finding of Fact:**

- 1.1 The Zoning Code would allow a detached monument sign with a maximum height of 12 feet and 80 square feet in sign area. The Comprehensive Sign Plan proposes one detached monument sign with a height of 11 feet and 63 square feet in sign area.
- 1.2 The proposed Comprehensive Sign Plan proposes attached tenant signage that complies with current Code requirements.
- 1.3 The proposed Comprehensive Sign Plan represents one part of a planned improvement of the Fiesta Village building, which also includes an update of the building façade. The planned improvements represent a significant improvement over the existing conditions.
- 1.4 The owner of the Fiesta Village building has met with representatives of the Grace Company, the owner of the majority of the group commercial center, who expresses no plans to update the remainder of the center or the center's signage.

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Respectfully submitted,

**Board of Adjustment Meeting  
July 11, 2006**

Gordon Sheffield, AICP  
Zoning Administrator

Minutes written by Lena Butterfield, Planning Assistant  
G:Board of Adjustment/Minutes/2006/07 July 11