



Board of Adjustment Minutes

December 9, 2003

Board members Present:

Jared Langkilde, Chair
David Shuff
Greg Lambright
Mike Clement
Webb Crockett
Dianne von Borstel

Board members absent:

Roxanne Pierson, Vice Chair (Excused)

Staff Present:

John Gendron
Gordon Sheffield
David Nicolella
Krissa Hargis
John Wesley
Gabriel Medina
Jim Smith

Others Present:

Michael Fraccola	Jenny Gordon
Miguel Galindo	Mary Dewald
Ronald Pine	Kemp Morris
Greg Kentgen	Denny Dobbins
Margie R. Frost	Bill Krah
Others	

Before adjournment at 7:30 p.m., the following items were considered and recorded on Board of Adjustment Tape # 297.

Study Session 4:30 p.m.

- A. The study session began at 4:30 p.m. The items scheduled for the Board's Public Hearing were discussed.
- B. Senior Planner Gordon Sheffield spoke to the Board about the reconsideration of case BA03-049, located at 653 East Gable Avenue. (Council District 4). The Board had denied a variance to allow a carport to encroach into the side yard. The applicant was not present and the Board took no further action.

Public Hearing 5:30 p.m.

- A. Consider Minutes from the November 4, 2003 Meeting:

It was moved by Boardmember Crockett and seconded by Boardmember Clement, that the minutes of the November 4, 2003 Board of Adjustment meeting be approved.

Vote: Passed 6-0

- B. Consent Agenda

Cases BA03-051 and BA03-053 were removed from the consent agenda.

**Board of Adjustment Meeting
December 9, 2003**

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: Continued to the January 13, 2004 hearing.

Summary: This case was on the consent agenda and was not discussed individually.

Motion: It was moved by Mr. Crocket, seconded by Mr. Shuff, that this case be continued for 30 days.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-045
Location: 1409 South Nassau

Subject: Requesting a variance to allow a carport to encroach into the front yard.

Decision: Tabled

Summary: This case was on the consent agenda and was not discussed individually.

Motion: It was moved by Mr. Crocket, seconded by Mr. Shuff, that this case be Tabled indefinitely.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-050
Location: 307 South York.

Subject: Requesting a variance to allow a structure to encroach into the front setback in the R-4 district.

Decision: Denied

Summary: Harold Bliss addressed the Board stating that this structure has existed since 1984 and should be allowed to remain because it has been there for such a long time. Mr. Bliss thanked the Board for their time and stated that he would do whatever needs to be done to make things right. He assured the Board that he had no intension of breaking the law. Mrs. Marcy Bliss stated that they were told that the structure was grandfathered and asked for clarification on what a self-imposed hardship was.

Boardmember Crockett explained to Mr. and Mrs. Bliss that if a variance were granted to allow the structure to encroach 16 feet into the front yard then everyone else in the subdivision would be entitled to the same request. If this were the case, then the Zoning Ordinance would not be useful. Based on his assessment of the request he finds no justification for the variance.

Motion: It was moved by Mr. Crockett and seconded by Mr. Lambright, that this case be denied.

Vote: Passed 5-1 (Shuff nay)

Finding of Fact:

- 1.1 The lot is a typical lot in terms of size and shape and there are no apparent land based hardships present. It is relatively flat, with no sharp changes to slope or topography on the site. No special circumstances exist on the site that justifies the approval of a variance.
- 1.2 Application of Zoning Ordinance requirements will not deprive the applicant of privileges enjoyed by other properties in the same zoning district.
- 1.3 The approval of a variance in this situation would grant the applicant special privileges or unusual favor over other sites with similar circumstances and zoning.

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-051
Location: 6711 S. Mountain Road

Subject: Requesting variances to: 1) delete a portion of the required landscaping and screen wall on the north and south property line; and 2) to allow a drive aisle to encroach into the required landscape setback all in conjunction with the development of a waste transfer station in the M-2 CUP zoning district.

Decision: Approved with conditions:

Summary: Boardmember Lambright pulled this case from the consent agenda to request that some kind of stipulation be placed on the applicant to assure that the waste transfer station picks up any trash that escapes their boundaries. Mr. Sheffield stated the adopted Council Use Permit stipulated that the applicant pick up any trash within a 600-foot radius of their site. This information satisfied Boardmember Lambright's concerns.

Motion: It was moved by Mr. Lambright, seconded by Ms. von Borstel, that this case be approved with the following conditions:

1. Compliance with all City development codes and regulations;
2. Compliance with all requirements of the Design Review Board; and
3. Compliance with all requirements of the Council Use Permit.

Vote: Passed 6-0

Finding of Fact:

- 1.1 The proposed zoning and use permit appear to be compatible with other zoning and uses in the area and with the present General Plan as well as the Mesa 2025 Land Use Plan. The adjacent land parcels are zoned AG, Agriculture, but are designated on the Mesa 2025 General Plan as being appropriate for General Industrial uses. M-1 or M-2 zoning districts would typically be used to implement the General Industrial land use category. As proposed, the perimeter landscape and building setbacks are largely met if the plan would be reviewed as if the adjoining sites were zoned M-2.
- 1.2 The City Council approved the basic site plan that included the deletion of the 6-foot concrete masonry unit (CMU) wall and landscaping along the north and south property line for that portion of the site designated for second phase construction.
- 1.3 The applicant has proposed to phase the development the site.

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-053
Location: 1630 North Revere

Subject: Requesting a variance to allow a room addition to encroach into the rear and side yard setback in the R1-9 district.

Decision: Approved with conditions:

Summary: Because citizens in the audience requested to speak, this case was pulled from the consent agenda. Robert Christopher and his mother, Kasinee Christopher, addressed the Board stating that they understand that the addition cannot be rented and agree to the conditions of approval recommended by staff. Ms. Jenny Gordon voiced her concerns about the home being a duplex, light from the addition shining into her home, and wonders how many people will live in the addition. Margie Frost stated that her biggest concern was that the structure was built without a building permit. Greg Kentgen asked why the structure wasn't built on the other side of the house. At this time, Ms. Kasinee Christopher, began to have a medical problem and paramedics were called to assist. After a 15 minute recess the meeting was continued. Boardmember Crockett asked Mr. Sheffield to explain, again, why staff is supporting the request. Mr. Sheffield stated that the site consists of an odd shaped lot in a cul-de-sac, the home is placed on the northern half of the site, there is a power line that connects to the back of the home from the alley, and an existing swimming pool. The combination of these factors lead staff to believe that there are special circumstances that justify the granting of a variance. Boardmember Shuff asked if there was a way to assure that the addition would not be rented. Mr. Sheffield stated that the applicant is required to get an over the counter Use Permit to allow the room addition to be used as an Accessory Living Quarters (ALQ). If any violations occur pertaining to the six-part test that regulate an ALQ, the Use Permit can be revoked.

Motion: It was moved by Mr. Crocket seconded by Mr. Shuff, that this case be approved with the following conditions:

1. The removal of the two entries into the addition and the creation of an entryway from the primary dwelling.
2. Compliance with all requirements of the Building Safety Division.

Vote: Passed 6-0

Finding of Fact:

- 1.1 Special circumstances exist because of the shape of the property and an existing overhead power line that connects to the back of the house from an alley.
- 1.2 The existing home is placed on the northern portion of the lot with a pool and overhead power lines on the southern portion.
- 1.3 The two-corner portion of the addition that would encroach into the setbacks total approximately 105 sq. ft. of area. The proposed addition total 680 sq. ft.
- 1.4 The strict application of the Zoning Ordinance would deprive the applicant of privileges enjoyed by other properties in the same zoning district. The irregular shape of the lot and the placement of the home make it difficult to construct an addition.
- 1.5 No special privilege will be created as a result of approving this case.

**Board of Adjustment Meeting
December 9, 2003**

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**Board of Adjustment Meeting
December 9, 2003**

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: Continued to the January 13, 2004 meeting.

Summary: The applicant, Miguel Galindo, asked the Board if anyone speaks Spanish. Boardmember Langkilde stated that he speaks a little Spanish. Mr. Sheffield asked the applicant if he would like to continue the case to next month's hearing so a translator can be provided? Mr. Galindo agreed.

Motion: It was moved by Mr. Shuff, seconded by Mr. Crockett, that this case be continued for 30-days.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-055
Location: 3050 East Irwin Avenue

Subject: Requesting: 1) a Special Use Permit to allow a detached accessory living quarters; and 2) a variance to allow an accessory living quarters (ALQ) to encroach into the required side and rear yards in the R1-35 district.

Decision: Denied

Summary: Mr. Dobbins, the applicant, was present and stated that he disagrees with staff analysis about the ALQ direct accessibility. Based on his analysis, he believes that the accessory structure is directly accessible by walking out of the main house and down a sidewalk. Another area that he disagreed with staff was that the site does not have special circumstances. He stated that the following special circumstances exist: 1) the site is in a flood plain; 2) there is an irrigation port in the northwest corner of the site; and 3) 10 feet from the neighbor to the north's property line exists a two-story building. This building will buffer any disturbances created by the ALQ encroaching 13 feet into the setback. Mr. Dobbins indicated that licensed contractors had told him a building permit was not needed to convert the detached garage building into an ALQ. In addition, the structure is architecturally compatible with the home in terms of color and materials. Boardmember Shuff questioned why a licensed contractor would indicate a building permit was not needed when a plumbing or electrical permit, at minimum would be required, and wondered if the contractor was liable. Mr. Dobbins stated that he is not here to get anyone in trouble. Jim Smith, an Assistant Mesa City Attorney, stated that the contractors' liability is not a factor for the Board to consider. Kemp Mooris and Bill Krah spoke in support of the applicant. Mr. Dobbins reiterated that a variance should be granted for the ALQ because it is directly accessible; the site does have special circumstances, and because of the large building to the north eliminates the need for the ALQ to be setback the full 30 feet. Mr. Sheffield stated that Mr. Dobbins is unintentionally trying to do an end around the code requirements that state that livable space shall be placed within the livable area of a lot. If a variance is approved, he has concerns about the precedent being set.

Motion: It was moved by Mr. Lambright, seconded by Mr. Shuff that this case be denied.

Vote: Passed 6-0

Finding of Fact:

- 1.1 A Special Use Permit is required for the ALQ because it is not directly accessible from the primary dwelling unit and is located in the required rear yard setbacks.
- 1.2 The case site is a typical rectangular lot in Heritage Acres subdivision (zoned R1-35). There are no special circumstances that apply to this lot that fit the criteria for a variance.
- 1.3 The conditions cited to support the requested variance are self-imposed. There is sufficient room on the property to create an attached ALQ or develop plans for a detached ALQ that is placed within the required building setbacks.
- 1.4 If a variance were issued, special privileges would be granted to the applicant.

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-056
Location: 606 South Esquire Way

Subject: Requesting a variance to allow a structure to encroach into the required side yard in the R1-9 district.

Decision: Continued to the January 13, 2004 hearing.

Summary: This case was on the consent agenda and was not discussed individually.

Motion: It was moved by Mr. Crocket, seconded by Mr. Shuff, that this case be continued for 30 days.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-057
Location: 6502 East Brown Road

Subject: Requesting: 1) a variance to allow less than the minimum required number of parking spaces; and 2) a Substantial Conformance Improvement Permit (SCIP) to allow the development of a school in the R1-9 and O-S districts.

Decision: Approved with conditions

Summary: This case was on the consent agenda and was not discussed individually.

Motion: It was moved by Mr. Crocket, seconded by Mr. Shuff, that this case be approved with the following condition:

- 1) Compliance with the submitted site plan;
- 2) Compliance with all requirements of the Building Safety Division;
- 3) Review and approval by Planning Division staff of both the existing parking requirements and parking conditions in the event that either the church or the school constructs buildings over and above the floor areas shown on the site plan submitted. Appeal of the Planning Division staff decision may be made to the Board of Adjustment.

Vote: Passed 6-0

Finding of Fact:

- 1.1 The number of parking spaces provided exceeds the minimum number required for either the school or the church use, based on the size of each respective use calculated individually.
- 1.2 In circumstances in which schools have occupied church education buildings after the church education building has been constructed and approved for occupancy, the church education building has not been included in the floor area requirements to calculate the minimum number of spaces for the church use.
- 1.3 Although this school and this church are to occupy separate lots, the school site is still functioning as part of the church site in a manner similar to schools that utilize church education buildings on weekdays
- 1.4 Permitting the use of shared parking will permit a larger part of the site to be used for open space. Larger play yards and landscaping will be adjacent to neighboring residential parcels rather than the possible use of larger parking fields.
- 1.5 If concurrent events would take place, there does exist opportunities for on street parking in sufficient quantities and immediately adjacent to the school/church site.

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-058
Location: 5602 East Broadway Road
Subject: Requesting a Development Incentive Permit (DIP) to allow the development of a medical office in the C-2 district.
Decision: Approved with conditions

Summary: This case was on the consent agenda and was not discussed individually.

Motion: It was moved by Mr. Crocket, seconded by Mr. Shuff, that this case be Approved with the following conditions:

- 1) Compliance with the site plan and elevations submitted, except as modified by the conditions listed below;
- 2) Compliance with all requirements of the Design Review Board, including modification of the location of parking spaces adjacent to the trash dumpster enclosure;
- 3) Review and approval of a variance by the Board of Adjustment for a reduction in the required number of parking spaces if there is a change in the building code occupancy classification of the ambulatory surgical center from "I" to "B".

Vote: Passed 6-0

Finding of Fact:

- 1.1 The case site is a vacant parcel of less than 2.5 acres. In excess of 75% of the parcels within 1200' of the case site are developed, and 50% of these parcels were developed in excess of 15 years ago. The site meets the definitional requirements for a Development Incentive Permit. The only commercial or office development within 1200' of the site is located directly across 56th Street. This small strip retail development was constructed before the recent revision to the Mesa site development standards.
- 1.2 The applicant has designed a plan that largely complies with the previous standards, except for the use of parking islands.
- 1.3 A parking study of the owners existing practice has been submitted. This study indicated that alternate transportation is not used that often to access the office site where the owner's practice is currently located.
- 1.4 The applicant has indicated that the surgical center would be utilized by medical staff that would normally work elsewhere on the site when not staffing the surgical center. Phrased another way, when in use, a portion of the medical office portion of the building would not be generating a demand for parking spaces.
- 1.5 The outpatient surgery center will require a different building code occupancy classification than will the medical office building. Any change of the surgery center back to an office use will require a change to the certificate of occupancy, which requires a building plan review. By conditioning the approval to require a second review of the project in the event of conversion of the surgery center to a medical office, the premise by which the applicant justifies the parking deviation can be tracked and enforced.
- 1.6 The other incentives requested are consistent with the development standards used for similar projects within 1200' of the case site.

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**Board of Adjustment Meeting
December 9, 2003**

Case No.: BA03-060

Location: 253 West 9th Street

Subject: Requesting a variance to allow a structure to encroach into the required side yard in the R1-6 district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and was not discussed individually.

Motion: It was moved by Mr. Crocket, seconded by Mr. Shuff, that this case be

Approved with the following conditions:

1. The posts for the carport are placed 3 feet from the property line with a one-foot roof overhang.
2. Compliance with all requirements of the Building Safety Division.

Vote: Passed 6-0

Finding of Fact:

- 1.1 The case site is a single residence lot constructed in 1950 and zoned R1-6. The house was built before the adoption of the present side yard setbacks of 10' and 5' for the R1-6 district. Under side yard requirements in place before the 1970's, a open carport would be allowed to encroach to within 3' of a side property line
- 1.2 Special circumstances exist because the original placement of the home is 12 feet from the side property line, and no covered parking was provided. Providing a 5-foot setback could result in a carport that is too narrow to be used.
- 1.3 Application of Zoning Ordinance requirements will deprive the applicant of privileges enjoyed by other properties in the same zoning district.
- 1.4 The approval of a variance in this situation would not grant the applicant special privileges or unusual favor over other sites with similar circumstances and zoning.

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Respectfully submitted,

Gordon Sheffield, AICP
Senior Planner

Minutes written by David J. Nicolella, Planner I