

Board of Adjustment Minutes



City Council Chambers, Lower Level
January 11, 2005

Board Members Present:

Jared Langkilde, Chair	Dianne von Borstel
Roxanne Pierson, Vice Chair	Mike Clement
David Shuff	Carie Allen
Greg Lambright	

Staff Present:

John Gendron
Jim Smith
Gordon Sheffield
Krissa Hargis
Amy Veith

Others Present:

Vernon Nicholas	Patricia Brown
Bruce Brown	Vickie Brown
Heber Allen	Janine Crum
Robert Birdsong	David Morales
Norman Brown	Others

The study session began at 4:30 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 6:30 p.m., the following items were considered and recorded on Board of Adjustment Tapes # 320 and # 321.

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.

Public Hearing 5:30 p.m.

- A. Consider Minutes from the December 14, 2004 Meeting
It was moved by Boardmember Clement and seconded by Vice Chair Pierson, that the minutes of the December 14, 2004 Board of Adjustment meeting be approved. **Vote:** Passed 7-0
- B. Consent Agenda
Approval of the Consent Agenda, with the conditions noted in the staff reports, was moved by Boardmember Shuff and seconded by Boardmember Lambright. **Vote:** Passed 7-0

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Case No.: BA04-038

Location: 1710 South Greenfield Road

Subject: Requesting a Special Use Permit for a Comprehensive Sign Plan for a commercial development in the M-1 district.

Decision: Continued to the February 8, 2005 hearing.

Summary: This case has been continued since the August 10, 2004 hearing. This case was on the consent agenda, with a recommendation for another continuance, and was not heard on an individual basis.

Motion: It was moved by Boardmember Shuff and seconded by Boardmember Lambright that this case be continued to the February 8th, 2005 meeting.

Vote: Passed 7-0.

Finding of Fact: N/A

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**Board of Adjustment Meeting
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Case No.: BA04-058

Location: 660 West Fairway Drive

Subject: Requesting a variance to allow a fence to exceed the maximum height permitted in the R1-9 district.

Decision: Approved with conditions.

Summary: Prior to the applicants presenting their case, Mr. Sheffield advised the Board that there were three determination options available for this case. The first option would be to deny the variance request. If the case were denied the applicants would be allowed, by right, to build a 6' high wall on the property line, along McLellan, he stated. This would mean that, should the applicants choose to have a 6' high wall along this property line, the wall would have to step with the land in order to maintain the maximum height of 6' because the land is sloped and not level. The second option would be to approve the variance request with no conditions of approval. This would mean that the wall could be 6' high on the east end and approximately 8.5' to 9' high on the west end, he said. The third option would be to approve the variance request with staff's five recommended conditions of approval, as noted in the memorandum to the Board dated January 7, 2005.

Both the attorney for Mesa County Club (MCC), Vernon Nicholas, and Bruce Brown, MCC's General Manager, spoke on behalf of this case. Mr. Nicholas stated that they had read the memo and had no objections to staff's recommended conditions of approval but that they did have a concern with the requirement for the wall to be level across the top (Condition #3). Bruce Brown explained that they were not sure what the City's Building and Safety Division would require them to do to the wall when they apply for a building permit, and so they were concerned that Building and Safety might require them to step the wall. He asked that if the case were approved with these conditions, would they be able to step the wall if they were required to do so for the building permit. Mr. Sheffield said that staff did not know if Building Safety would require the wall to be stepped because that is a structural matter. Chairman Langkilde asked if they thought that with the building permit application, they might even be required to redo the footings. Bruce Brown stated that they would only step the wall if they had to and if they did they would hang vines over the stepped area to make the stepping less visible.

Chairman Langkilde asked the applicants what the breaking point would be. Bruce Brown stated that at the breaking point they would revert back to a 6' high wall. Boardmember Clement asked them to clarify if what they were saying was that the wall would be straight unless it had to be stepped. Mr. Nicholas stated that they would prefer to have the wall all one level with a decorated top and vines to make it attractive, but if the requirements were to do something else for the building permit, they would have to do that instead. Again Mr. Nicholas stated that they would like the case to be approved with the recommended conditions.

Bruce Brown brought up the issue with the telephone poles, which are located north of the wall adjacent to the south of McLellan Road and a part of the City's project in making improvements to McLellan Road. Mr. Brown said that if they had to change the wall later on because the telephone poles had to be relocated, they would like the variance to be remanded. Boardmember Clement asked the applicants to clarify their position once again. Mr. Brown said that MCC did not want to get involved with moving the telephone poles. Boardmember Clement said that he still did not understand what they were ultimately saying. Mr. Brown responded that they wanted to build according to Building Safety's requirements.

Boardmember Allen said that it seemed like the applicants were concerned because there is a potential for conflict later on because of one of the conditions of approval. Mr. Brown said that that was correct.

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There was a potential for conflict because of one area of the wall, which might have to be stepped. Boardmember Clement asked Mr. Sheffield if there could be a conflict. Mr. Sheffield said that the Design Review Board (DRB) staff could monitor the final design of the wall, if the variance is approved. He added that the condition could be modified to say something like the top of the wall shall be level and that any modification to that would have to be approved by the DRB staff. Boardmember Allen said that she had experience with the DRB, and that she thought that they would prefer a stepped wall, and that architects and other designers would also argue that a stepped wall is more aesthetically appealing. At this point, Chairman Langkilde announced that there were a number of neighbors present wishing to speak and that he would begin calling them up. He advised the neighbors that their speaking time would be limited to three minutes.

Heber Allen was the first neighbor to speak. He showed an outline of his presentation on the overhead machine and began by discussing what he learned at the Wednesday (neighborhood) meeting held on January 5, 2005 at MCC. He said that he learned that it had always been MCC's intent to build an 8.5 high wall. He said that the neighbors were not brought in prior to construction of the wall, and that if they had all of this could have been avoided. He said that if the variance is denied, MCC will continue playing golf as usual, and therefore denial of this variance would not cause them to not enjoy the full use of their property. He said that he learned that the City staff felt that the requested variance should be compared to other golf course properties and not residential properties. He said that at the meeting MCC said that the footers were built for an 8.5' high wall, so the foundation would not have to be redone. He stated that if MCC had handled all of this earlier, they wouldn't be facing the issues they are facing today.

Next Mr. Allen said that he did not believe the variance meet all four points of the variance test. He said that there would be no deprivation because MCC would continue to operate as normal. He said that no other properties in the area have an 8.5' high wall, and that the twelve closest golf courses in Mesa do not have any 8.5' high walls. He said that the Board should deny the variance because not having the variance would not cause any deprivation. He added that there is not sufficient evidence to grant approval of the variance, that the variance would give MCC special privilege, and that MCC would have a special privilege that even the twelve closest golf courses in Mesa do not have. Mr. Allen said that the wall should be 3.5' high at one end and 6' at the other, to be level. He said that at the neighborhood meeting MCC had mentioned that they did not have any money, and he said that he would pay the application fee for MCC to request a variance to allow for nets (in excess of the allowed height) instead of the wall. Finally he asked that the Board to deny the variance so that the wall could not exceed 6' in height, and again he stated that he did not believe that there were sufficient grounds to grant the variance.

Chairman Langkilde asked Mr. Allen if he understood that the denial of the variance meant that MCC would probably have a 6' high stepped wall instead. Mr. Allen responded that MCC had mentioned that they wanted to be a good neighbor, and that the petition signed by the neighbors asks for strict enforcement of the zoning regulations. Chairman Langkilde asked Mr. Allen if he understood that if the variance is not granted, the Board would not have any power to make MCC improve the appearance of the wall. Mr. Allen said that that was clear to him.

Robert Birdsong spoke next. He said that he was opposed to the fence and the variance. He noted that MCC has been constructing the wall for a long time, and that since the project began, MCC has had ample opportunity to apply for a variance and meet with the neighbors. But instead they chose to construct the fence higher than 6,' he stated. He said that he was not present at the neighborhood meeting but heard that MCC had said that it was always their intent to put up an 8.5' to 9' high fence. He said that he did not believe that MCC's argument about safety holds any water. He mentioned that there is an elevated tee somewhere else on the golf course. He said that there are four steps over the length of the property.

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Boardmember Lambright told Mr. Birdsong that MCC might not be able to construct an 8' high wall on the existing footings, that there are several recommended conditions of approval and, that if the variance is not approved MCC can proceed without any decorative treatments to the wall. Mr. Birdsong replied that as he understood the "approval package" allows a wall in excess of 6' and that no one wants an 8.5' high wall directly across the street from their property. He said that his concern was the effect the wall will have on the neighborhood. He also said that the neighbors would be willing to dress up the wall and incur the expenses. Boardmember Clement asked Mr. Birdsong if he could talk about the neighbor's willingness to contribute money. Mr. Birdsong said that he wasn't sure. Chairman Langkilde asked if had been discussed at the neighborhood meeting. Mr. Birdsong said that the purpose of the meeting was to reach a compromise but that a compromise was not reached. He said that the memo clearly states the summary of what happened at the meeting. Finally he said that in the past he had been happy with MCC as a neighbor but was compelled to come to the meeting tonight.

Heber Allen then asked Mr. Sheffield whether or not it could be if there would be vegetation on the north side of the wall. Mr. Sheffield said that a condition can be added to the variance to require MCC to do landscaping on the south side of the wall, which is their property, but not on the north side because it is not their property, it is the City's property. He added that the City is looking into putting in landscaping on the north side, but there is no guarantee.

Norman Brown was the third and final neighbor to speak. He said that the issue is safety. He said that one of the first things MCC talks about is safety. He said that if that is the case then there are better options available. He showed a picture of a ball and said the other day this ball came over 180' from the golf course, over the wall, and landed next to his car. He noted that he had looked at the golf course to see the layout and learned that the course has 18 holes, which are mostly oriented south to north. He said that he has had many windows broken by golf balls. He said that his dog was hit by a golf ball and that also one man was hit three times by a golf ball. Mr. Brown said that his issue is not with the fence but that MCC should stick to what's mandated by law. He said that they need an extra 3' because the ground is not level. Who's responsible if some one gets hit by a ball, he asked. No one wants to take responsibility he said and asked what needs to happen. He suggested that MCC have a wire mesh net instead and showed pictures of a 10' high mesh fence at a school. Mr. Brown also stated that the taxpayers money helped pay for MCC's wall because the City had given them money. He said that there has to be a balance. Finally he said that he had talked to the mayor, that his brother is a member of a city council, and asked that if any of the Boardmembers were members of MCC to please recuse themselves from voting. Chairman Langkilde responded that none of the Boardmembers were members of MCC.

Mr. Sheffield noted that Heber Allen had stated that there was no justification for the variance and that there were no special circumstances present. Contrary to Mr. Allen's recommendation, he explained that staff believes there are special circumstances present and that the variance is justified. He said that the golf course has been there since prior to the time a Special Use Permit was required. It was built sometime in the 1940s and initially had only nine holes, he said. He also noted that the golf course pre-dates the Mesa Zoning Code and is located in a residential district, and is therefore a grandfathered use. For these reasons, Mr. Sheffield stated, there are unusual circumstances present and staff believes that the variance is justified. Under current ordinance requirements, a similar use would be reviewed for such things as the proximity of the fairways and greens to a right-of-way or adjacent residence. Because this course is so old, it has never undergone a city-required hearing or review for the purposes of determining setbacks. He said that the concern is safety and that the layout of the golf course is a factor. There is a fairway orientated east to west adjacent to McLellan Road, he said, and another green that sets back about 30 feet from McLellan Road. (He showed the golf course plan on the overhead machine.) He explained that a golfer teeing off could "hook" the ball, causing it to curve to the left, towards the McLellan Road sidewalk. Under some circumstances, such a struck ball could hit

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and injure someone walking along the new sidewalk. Furthermore, the golf course did not create that condition. The City is building the new sidewalk because of federal requirements related to the Americans with Disabilities Act, he stated. He also explained that if the golf course were located in a commercial zoning district, it would be allowed to have an 8' high wall as a use by right. It said that the situation is unusual because the golf course is an institutional use located in a residential district.

Chairman Langkilde asked if the safety issue that staff was concerned about regarding the variance included golf balls flying across the street, and he asked if MCC was concerned about the golf balls that fly across the street. Mr. Sheffield responded that that is not the safety concern that staff is trying to address. Staff is concerned with protecting the heads of people walking along the new sidewalk immediately north of the new wall.

Boardmember Shuff asked how the verbage of Condition #3 would be changed. Mr. Sheffield said that the condition would state that the wall shall not be stepped, and that any modification would have to be reviewed and approved by the Planning Director. Mr. Nicholas said that he had no objection to that change. Boardmember Allen asked if stepping were required, would it occur at quarters along the wall. Mr. Brown responded that they did not know. Boardmember Shuff stated that he hoped that MCC has learned a lesson from all of this, and said that given the comments and circumstances he does believe that there is justification for the variance, and made a motion to approve the case with the recommended conditions, including modified Condition #3. Boardmember Lambright asked if it was possible to add a stipulation requiring there to be landscaping on the north side of the wall. Mr. Sheffield said that they could not do that because the land is owned by the City, and that is the purview of the City Council. Boardmember Clement seconded the motion.

Motion: It was moved by Boardmember Shuff, and seconded by Boardmember Clement that this case be approved subject to the following conditions:

1. Compliance with the plans submitted, except as modified by the conditions listed below; and
2. Compliance with all requirements of the Building Safety Division; and
3. The wall shall not be stepped. The top of the wall shall be level across the entire length where it is adjacent to McLellan Road, and shall have a top course consisting of decorative block or a block design that contrasts with the smooth face of the remainder of the wall. Should the Building and Safety Division require that the wall be stepped for the building permit, a request for a modification of this condition shall be reviewed and approved by the Planning Director; and
4. The north side of the wall shall be painted or stained. The paint or stain color shall be approved by the City of Mesa Design Review staff; and
5. Mature vines (minimum size: 5 gallon) shall be planted adjacent to the south side of the wall, spaced at an interval of one vine planted every twenty-five feet on center (25' o.c.). The species and varieties of vines shall be coordinated with any landscape plans developed by the City of Mesa landscape architect for the north side of the wall. The species and varieties of vines shall include those that will grow over the top of the wall and cascade down the opposite side.

Vote: Passed 5-2. (Langkilde and Allen voting nay).

Finding of Fact:

- 1.1 The MCC golf course is zoned R1-9 and is surrounded by, for the most part, residential lots zoned R1-9. MCC has historically maintained a chain link fence and large oleander bushes along the McLellan Road portion of the golf course for some time. Until the City decided to build a sidewalk adjacent to the golf course, MCC had no plans to remove the fence and replace it with a solid wall.
- 1.2 The sidewalk is a new condition, not created by the applicant, which qualifies as a special

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circumstance, which, in part, justifies the need for the requested variance. Because of the location of the planned sidewalk and MCC's concern with liability and errant golf balls hitting pedestrians walking along the new sidewalk, MCC decided to replace the chain link fence with a solid wall.

- 1.3 The wall is located on the property line. Only a portion of the wall will be over 6' in height. The height of the wall gradually increases from 6' to 8'-6" from east to west. The Board believes that this wall will help provide a measure of protection for people walking along the sidewalk on the south side of McLellan Road.
- 1.4 The Board determined that no special privilege would be given to the applicant by granting the variance. The proximity of the existing fairway and green were existing circumstances, exacerbated by the construction of a new sidewalk nearby. The construction of the golf course predates current review requirements that may have assured a larger setback of the fairway from adjacent lot lines or rights-of-way if the golf course had been proposed under present standards. Those neighboring owners most affected by the fence height increase are located across an 80' wide right-of-way (for McLellan Road). As conditioned, the use of decorative top block, the use of an alternative fence color to the standard grey concrete block, and the eventual growth of vines over the top of the fence should help mitigate the appearance of the fence. The requirement to meet Building Code requirements should assure a safely built fence.

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**Board of Adjustment Meeting
January 11, 2005**

Case No.: BA05-001

Location: 7525 E Broadway Road

Subject: Requesting an appeal of Zoning Administrator Case ZA04-075, which was a request for a Special Use Permit to allow a commercial communication tower (monopalm) to exceed the maximum height permitted in the O-S district.

Decision: Affirm the Zoning Administrator's decision.

Summary: The person who requested the appeal, Louis G. Greco, was not present at the hearing. Cliff Nordyke, the applicant who applied for the Special Use Permit (ZA04-075), was present at the hearing. He stated that the proposed communication tower was a stealth monopalm. He explained that the chosen site is an important link in their network. He said that there were few site options available in that neighborhood and that there weren't any co-location options available in that area either. He also stated that they had moved that proposed location for the monopalm 60' to the north, away from the neighbors to the south, as was suggested by staff. Finally, he added that the facility would be unmanned and self-contained.

Boardmember Lambright asked Mr. Nordyke if the facility would only be used by AT&T/Cingular. Mr. Nordyke responded that each company typically had their own facilities, but that this site was co-locatable.

Chairman Langkilde asked if the Zoning Administrator had already approved the Special Use Permit for the communication tower. Mr. Sheffield stated that he had and that the case had been appealed.

Motion: It was moved by Boardmember Allen and seconded by Vice Chair Pierson to affirm the Zoning Administrator's decision to approve the Special Use Permit as submitted.

Finding of Fact:

- 1.1 The Board found that the proposed monopalm met the criteria set forth in the Communication Tower Guidelines. The proposed communication tower is of a stealth design; it is a monopalm.
- 1.2 The proposed location for the monopalm is a commercial site. The guidelines highly encourage the location of communication towers on properties zoned for commercial uses or industrial purposes or placed on sites with public facilities.
- 1.3 The location of the proposed monopalm exceeds the minimum setback requirements from adjacent residential properties, and from the only street that the property borders.

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Case No.: BA05-002

Location: 220 South Chestnut Street

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) in conjunction with the expansion of an existing church in the R1-6 district.

Decision: Continued to the February 8, 2005 hearing.

Summary: The applicant and the representatives for the church were not present at the hearing to speak because the case was on the consent agenda with a recommendation for a continuance to the February 8, 2005 hearing. However two neighboring property owners had shown up at the hearing and requested to speak because they had concerns with the church's proposed site plan. Therefore, the case was taken off the consent agenda and heard on the regular agenda.

David Morales was the first neighbor to speak. He stated that he lived at 2142 E. Birchwood Ave., which is one of the lots directly south of the church site. He said that the back wall of his property backs up to the church. He said that he had received their letter in the mail, advising them of the church's proposed plans, and that he had questions regarding the planned parking area, particularly in regards to security. He said that he wanted to know if the parking lot would have lighting and that he was worried about having a vacant parking lot in the corner of the property like that. He stated that the church only meets once a week.

Chairman Langkilde asked Mr. Sheffield if staff could coordinate with Mr. Morales and any other concerned neighbors. Mr. Sheffield said that staff would work with the neighbors.

Janine Crum spoke next. She stated that she lived at 2126 E. Birchwood Ave., which is another one of the lots directly south of the church property. She said that she had the same concerns as Mr. Morelas. She said that her property also backs up to the church, that her property is directly south of the proposed parking lot area, and that presently she does not have a block wall on her rear property line. Therefore she can see right into the church property and would be highly concerned with security if there were a parking lot back there.

Motion: It was moved by Boardmember Shuff and seconded by Boardmember Lambright that this case be continued to the February 8th, 2005 meeting

Vote: Passed 7-0.

Finding of Fact: N/A

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Respectfully submitted,

Gordon Sheffield, AICP
Senior Planner

Minutes written by Amy Veith, Planner I
G/Board of Adjustment/Minutes/2005/01 January