

Board of Adjustment



Minutes

City Council Chambers, Lower Level
March 9, 2010

Board Members Present:

Garrett McCray, Chair
Nicholas Labadie
Greg Hitchens
Diane von Borstel
Tyler Stradling

Staff Present:

Gordon Sheffield
Angelica Guevara
Mia Lozano-Helland
Lesley Davis
Tim Lillo
Tom Ellsworth

Board Members Absent:

Judah Nativio - excused
Scott Thomas - excused

Others Present:

Jerry & Linda Mann
Pat Mann
Roger Kittrell
Pam Kittrell
Douglas Kittrell
Rulon Anderson
Milo LeBaron

The study session began at 5:00 p.m. The Public Hearing meeting began at 5:35 p.m. Before adjournment at 6:55 p.m., the following items were considered and recorded.

Study Session 5:00 p.m.

- A. The study session began at 5:00 p.m. The items scheduled for the Board's Public Hearing were discussed.

Zoning Administrator Update –

Mr. Sheffield provided brief comments regarding the Zoning Code Update and mentioned to the Board that a discussion regarding the By-laws and Procedures would be held at next months' meeting.

Public Hearing 5:35 p.m.

- A. Consider Minutes from the February 9, 2010 Meeting A motion was made to approve the minutes, subject to minor edits, by Boardmember Stradling and seconded by Boardmember Labadie. Vote: Passed 5-0 (Nativio and Thomas absent).
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Hitchens. Vote: Passed 5-0 (Nativio and Thomas absent)

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Case No.: BA10-006

Location: 2723 North Power Road (PLN2010-00002)

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

Decision: Approved

Summary: Rulon Anderson represented the case for Clearwire and stated his objections to staff's recommendation. Mr. Anderson provided information and details regarding cell towers and also stated that the location was not in the Desert Uplands. Mr. Anderson explained that he is unable to produce a functional communication tower within an architectural element and asked the Board to approve a monopalm.

Chair McCray asked Mr. Anderson if there were no other free-standing structures that would accomplish what both he and staff were looking for. Mr. Anderson replied that he did not have the room to place a clock or bell tower.

Gordon Sheffield, Zoning Administrator, provided a history of cell towers in Mesa and the various styles that have evolved over the years. He also explained that the Desert Uplands is a longstanding policy of the City Council and the freeway location predates the Desert Uplands policy. He further explained the specifics of comments made earlier regarding an existing cell tower at the canal and McDowell Road that is on federal land and was never reviewed or approved by the City of Mesa. Mr. Sheffield commented on the "Gateway to the Desert Uplands" phrase and stated that McDowell Road, from Power Road, is a transitional area that brings you immediately into the Desert Uplands. Mr. Sheffield explained that a palm tree would not be appropriate for this site. Mr. Sheffield clarified the applicant's request and stated that staff recommendation was to use an architectural feature that would elevate the equipment to an appropriate level for the applicant's project. Mr. Sheffield stated that staff recommended conditions of approval 3 and 4 are not necessary and could be removed.

Board Member Hitchens asked about other communication towers that were developed as architectural features in the City. Mr. Sheffield replied that there is an existing clock tower at Power and Thomas Roads that was approved by the Zoning Administrator Hearing Officer. Board Member Hitchens also asked about the monopalm on the west side of Power. Mr. Sheffield explained that it was also approved by the Zoning Administrator Hearing Officer.

Board Member Labadie asked why that monopalm was different. Mr. Sheffield explained that non-native, desert compatible, vegetation is more prominent on the west side of Power Road and that there are some palms in this area. Board Member Labadie also asked if there were other communication towers in the Desert Uplands area. Mr. Sheffield explained that there is a monopole at the Fire Station at McDowell Road that is a public safety communication tower. Mr. Anderson added that there is also one at the SRP substation. Mr. Sheffield clarified that in or about 1997 the Board of Adjustment gave a

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blanket approval to every SRP substation in the City of Mesa.

Board Member Stradling clarified that the existing monopole on federal land is located on the canal and McDowell Road northeast of the Blockbuster and Albertson's and that the City of Mesa was not able to review or approve due to the federal ownership of the land. Mr. Sheffield confirmed.

Board Member Hitchens asked for confirmation of the Desert Uplands boundary. It was confirmed that the boundary is the canal and abuts the east side of the subject property.

Chair McCray summarized the request and stated that the issues are related to design. He stated that he was in favor of a design that is in character with the area while allowing the applicant creativity in meeting the recommended conditions of approval.

Board Member Labadie commented that the Board is not making the design decision and the existing area plan does not allow the use of a monopalm. He stated that a different design was not an 'onerous' request.

Board Member Stradling stated that he lives in the area and that the transitional area is not that lengthy that it could not be avoided. He added that refraining from using a palm structure was a fair request.

Chair McCray asked for a motion.

Motion: It was moved by Boardmember Stradling to approve BA10-006 subject to the conditions identified in the staff recommendation minus conditions 3 and 4, and seconded by Boardmember Labadie.

1. *Compliance with the site and landscape plans submitted except as modified by the conditions below.*
2. *The commercial communication antennas and dishes shall be concealed within an attached or freestanding architectural and/or sculptural element consistent with the Desert Uplands Development Standards to be reviewed and approved by the Design Review Board in place of the proposed monopalm.*
3. *The antennas shall not exceed 4'-2" in length, 1'-1" in width, and 4" in depth.*
4. *The operator of the CCT shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problem.*
5. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 5-0 (Nativio and Thomas absent)

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Findings:

- 1.1** The applicant proposed installing a 65-foot high Commercial Communication Tower designed as a monopalm. Staff recommended that the antennas and dishes be concealed within an architectural element. The CCT installation is east of the buildings wedged between the building walls. The Commercial Communication Tower Guidelines recommends the use of alternative design to conceal CCTs, setbacks from streets, and setbacks from residential properties in an effort to mitigate the visual impact of CCTs.
- 1.2** The site was approved for the C-2 zoning district and site plan in the 1990's. Cases Z94-01 and Z97-43 were approved with stipulations requiring a well-designed development compatible with the Desert Uplands Area and compliance with all requirements of the Design Review Board. Based on that, the City Council granted approval and set the development criteria for the development. The development consists of earth tone colors and materials compatible with the desert theme. The plant palette approved by the Design Review Board (cases DR97-35, DR98-38, and DR99-102) consists of plants from the upper Sonoran Desert with many Saguaros adjacent to the Power and McDowell Road frontages.
- 1.3** The applicant is installing a 65 foot tall CCT on the C-2 DMP zoned property, which allows CCTs provided they do not exceed 30' in height. The approval of a Special Use Permit (SUP) is required for CCT's which exceed the maximum permitted.
- 1.4** Approval of this SUP required finding the CCT compatible with and not detrimental to surrounding properties and consistency with the General Plan and other recognized plans and City Council policies, including the Commercial Communication Tower Guidelines, adopted in 1997.
- 1.5** The location of the CCT complies with the Commercial Communications Towers Guidelines as it is approximately 240 feet from the McDowell Road right-of-way and approximately 500 feet from the Power Road right-of-way, where 65 feet is usually required. In addition, the CCT is a minimum of 1200 feet from the existing residential parcels to the east and approximately 400 feet from proposed residential condominiums to the south, where 130-feet is usually required.
- 1.6** The Desert Uplands Sub-Area is generally defined as that area lying east of Power Road and the Central Arizona Project (CAP) Canal, and north of University Drive, extending east to Maricopa County's Utery Mountain Regional Park and north to the Tonto National Forest. Development standards exist for the Desert Uplands area requiring environmentally sensitive development in order to retain the native desert character of the area. This development site is directly adjacent to the boundary of the Desert Uplands Sub-Area which prohibits all types of palm trees.
- 1.7** In addition to compatibility with surrounding properties, the SUP is required to be found consistent with City Council policies. The CCT proposed by the applicant utilizes a monopalm design immediately adjacent to a sub-area designated as the Desert Uplands. The Desert Uplands Development Standards section of the Subdivision Regulations, adopted by the City Council on July 12, 2004, includes a native plant preservation section that contains a prohibited plant list, which includes all types of palm trees. The native plant preservation section is intended to preserve the unique plant types found in the Upper Sonoran Desert. While monopalm is not a living palm tree, it does utilize a monopalm design, which is not consistent with the Upper Sonoran Desert plant types. It is also important to note, there are very few palm trees in the general vicinity of the subject site (within ¼ to ½ mile).

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1.8 The applicant indicated that this site is necessary to provide service to the homes located to the west and south of the site. He also indicated that due to the elevation of the site, the antennas and dishes will transmit in a downward direction to other facilities located to the south and west of this site.

1.9 The immediate parcels to the north and west of this site are commercial developments. The existing development to east (across the CAP canal and the 202 Freeway) and the approved development to the south of this development are residential. The nearest single residence development is approximately 1,200 feet to the east of the site. There is a residential condominium development approved (but not constructed) to the immediate south of this development.

1.10 There are other design alternatives available to wireless communication providers that provide a more appropriate camouflage or method of concealment of the CCT and are consistent with the Desert Upland environment and development criteria. Staff provided the Board with various pictures of roof mounted and free standing concealment devices fabricated from microwave radio frequency friendly composite materials which address the issue of aesthetics and architectural standards.

1.11 The CCT is an allowed use in the C-2-DMP Zoning District subject to granting of a Special Use Permit. Consistent with the Commercial Communication Tower Guidelines adopted by the City Council May 19, 1997, the location of this CCT exceeds the recommended setbacks from adjacent roads and residential uses. Given the distance from commercial and residential uses, the context of the site, and the use of an attached or freestanding architectural and/or sculptural element consistent with the Desert Uplands Development Standards to conceal the antennas and dishes, the CCT is compatible with and not detrimental to surrounding properties. A revised design will also allow future co-locations which are encouraged wherever possible by the Commercial Communication Tower Guidelines.

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Case No.: BA10-007

Location: 1047 South Blossom

Subject: Requesting a variance to allow an addition to encroach into the rear yard in the R1-7 zoning district. (PLN2010-00041)

Decision: Approved

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

Motion: It was moved by Boardmember von Borstel , seconded by Boardmember Hitchens to approve BA10-007 with the following conditions:

1. *Compliance with the site and landscape plans submitted.*
2. *Compliance with all City of Mesa codes and Regulations..*
3. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 5-0 (Nativio and Thomas absent)

Findings:

1.1 The site is a 7,200 s.f. lot zoned R1-7 surrounded by existing single family residences also zoned R1-7. The adjacent lots on Blossom Street are of similar size and shape. The parcels within the R1-7 zoning district require a minimum of a 20 foot rear yard setback and are all allowed an open patio within 15' of the rear property line. The site plan includes the location of the existing home, the existing covered patio, and the addition. The addition is permitted provided a minimum 20-foot rear yard setback is maintained from the rear (eastern) property line.

1.2 As justification for the variance, the applicant has noted:

- a) The addition does not interfere with the neighbors;
- b) This is a model and only has a 12' X 14' master bedroom. More room is needed for the applicant's disabled wife;
- c) The addition encroaches onto a very small percentage of the rear setback;
- d) This home's square footage is 1441 and there are some homes in this subdivision with over 2000 square feet;
- e) The addition is designed to look like original construction and not an afterthought. It will add to the resale value of the home and the surrounding homes.

1.3 While not justification for a variance, it is important to note that given the size of the lot and other lots in the area, this is a relatively minor encroachment of 18 inches into the rear yard setback. If the homeowner wanted to build an open patio of the same area and in the same location, it would be allowed.

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- 1.4** The Board took into account the disabilities of the applicant when considering this variance request. The encroachment is relatively minor in scale, and will not create a detrimental impact to adjacent properties.

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Case No.: BA10-008

Location: 2021 East Covina Street

Subject: Requesting a variance to allow a fence to exceed the maximum allowed height in the front yard in the R1-9 zoning district.

Decision: Approved

Summary: Linda Mann and her son Pat Mann represented the case and explained the background of the property and the City constructed sound wall on Gilbert Road. They stated that they needed the wall to protect their property from trespassers cutting across from Gilbert Road. They further explained that there had been some confusion regarding the allowable height of the fence and the point from where the 25' setback was to be measured. Staff member Angelica Guevara explained that based on the lot configuration, staff originally determined that the Gilbert Road side was considered to be the front yard. She also stated that a permit is not required for a residential fence that is 6' or less in the rear and side yards, and 3'-6" in the front yard. She further stated that after additional research, it was determined from the recorded plat for the subdivision that the lot actually fronts on Covina and not Gilbert Road.

Milo LeBaron, a neighbor, voiced his support for the fence.

Board discussion followed:

Boardmember Labadie stated that he felt the variance was approvable but, that it was unfortunate that knowing that there were necessary steps needed before the wall could be built, it was constructed anyway. He further stated that the wall location made sense and was in favor of approving the variance.

Boardmember Hitchens stated that he was in agreement with Board member Labadie and was also in favor of the variance due to the commercial property across Covina to the north. Board member Hitchens then proposed a motion to approve case BA10-008.

Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Labadie to approve BA10-008 with the following conditions:

1. *Compliance with all City development codes and regulations.*
2. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 5-0 (Nativio and Thomas absent)

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Findings:

- 1.1** This variance permits an existing block wall that exceeds 3'-6" in height to remain within the required front setback.

- 1.2** As justification for the requested variance, the applicant noted:
 - a. The fence provides some level of security for the family from incidents with trespassers since they side on Gilbert Road; and
 - b. The City of Mesa recently constructed an 8' sound wall along Gilbert Road that extends across the front setback along the west property line.

- 1.3** In its current state the extended fence required the granting of a variance. The Board of Adjustment found the following conditions existed in granting the variance:
 - a) There are special conditions that apply to the land or building.
 - b) The special condition was pre-existing and not created by the property owner.
 - c) That strict compliance with the Code would deprive the property of privileges enjoyed by other properties in the same zoning district.
 - d) The variance would not constitute a special privilege unavailable to other properties in the vicinity and zoning district of the subject property.

- 1.4** The applicant's justification for the increased wall height primarily relates to safety concerns for the family and their children from trespassers. The unique condition for this property is that it sides onto Gilbert Road and that the City of Mesa has installed an 8' high sound wall along the west property line.

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- Case No.:** BA10-009
- Location:** 1042 North Higley Road
- Subject:** Requesting a Special Use Permit to allow a commercial communication tower to exceed the maximum height allowed in the C-2 zoning district.
- Decision:** Approved
- Summary:** This case was on the consent agenda and not discussed on an individual basis.
- Motion:** It was moved by Boardmember von Borstel , seconded by Boardmember Hitchens to approve BA10-009 with the following conditions:
1. *Compliance with the site and landscape plans submitted, unless modified by the conditions below.*
 2. *The commercial communication tower shall utilize a faux date palm design with a minimum of 55 palm fronds, bark cladding to resemble the bark of a natural palm tree, and all antennas, radio heads, and microwave dishes shall be painted to match the color of the palm fronds.*
 3. *The commercial communication tower shall have a maximum height of sixty-five feet (65') at the top of the pole and top of the antennas.*
 4. *The antennas shall not exceed 4'-4" in length, 1'-2" in width, and 4" in depth.*
 5. *The antenna standoff assembly shall not extend more than 8" from the pole.*
 6. *The operator of the monopalm shall respond and complete all identified maintenance and repair of the facility within 30-days of receiving written notice of the problem.*
 7. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*
- Vote:** Passed 5-0 (Nativio and Thomas absent)

Findings:

- 1.1 The 65-foot high commercial communication tower is located towards the rear southwest portion of the parcel behind the in-line retail building within a lease area surrounded by a 6 foot high CMU wall.
- 1.2 The property is zoned C-2, and allows commercial communication towers provided they do not exceed 30' in height. A Special Use Permit (SUP) is required for commercial communication towers that exceed the maximum permitted height of 30, this is a 65' high Commercial Communication Tower.
- 1.3 A SUP requires that the commercial communication tower is compatible with and not detrimental to surrounding properties and is consistent with the General Plan and other recognized plans and City Council policies, including the Commercial Communication Tower Guidelines, adopted in 1997.
- 1.4 Based on the submitted plans, identified as AZ-PHX5182B and dated August 27, 2009, the commercial communication tower and associated ground mounted equipment are located within

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a designated lease area. The lease area is surrounded by a six-foot tall CMU screen wall painted to be compatible with the existing walls and buildings on the site. The array on the monopole consists of three sectors, each with three antennas and three microwave dishes. The antennas each measure 4'2" L x 1'1" W x 4" D and each of the microwave dishes measure 2'2" in diameter.

- 1.5** As justification, the applicant noted that this site is necessary to meet the requirements for their system and to accommodate future co-location.

- 1.6** The location of the commercial communication tower complies with the Commercial Communications Towers Guidelines and is approximately 585-feet from the right-of-way, where 65-feet are required. In addition, the commercial communication tower is a minimum of 149-feet from the nearest residential parcels, where 130-feet are required.

- 1.7** The commercial communication tower is an allowed use in C-2 zoning district subject to the granting of a Special Use Permit. Consistent with the Commercial Communication Tower Guidelines adopted by the City Council May 19, 1997, the location of the commercial communication tower exceeds the recommended setbacks from adjacent roads and residential uses. Given the distance from commercial and residential uses, the context of the site, and the use of a stealth design, the commercial communication tower is compatible with and not detrimental to surrounding properties.

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Case No.: BA10-010

Location: 119 West 3rd Place

Subject: Appeal of Zoning Administrator Hearing Officer decision regarding a variance request to allow a garage addition to encroach into a required side yard in the TCR-1-HP zoning district.

Decision: 30-day continuance to April 13, 2010 hearing.

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

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Hitchens to continue BA10-010 to the April 13, 2010 hearing.

Vote: Passed 5-0 (Nativio and Thomas absent)

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B. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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