



Board of Adjustment Minutes

**City Council Chambers, Lower Level
August 14, 2007**

Board members Present:

Dina Higgins, Chair
Mike Clements, Vice Chair
Garrett McCray
Mike Garcia
Dianne von Borstel
Terry Worcester

Board members Absent:

Scott Thomas (excused)

Staff Present:

Gordon Sheffield
Jeff McVay
Jim Hash
Rob Dmohowski
Constance Bachman

Others Present:

Danny Rosetta	Al Wilsey	Margaret Ritter
Jerry Walker	Scott Wunderlich	Jacqueline Hager
Keith Lynch	Jody Merrix	Art Baril
Melinda Yarbro	M. Carnicelli	Linda Allen
John S Guinn	David Woods	Sharon Trites
Kimberly Phillippi	Thomas Huston	Ralph Trites
Denny Thomason	Ben Thomason	Chuch Terry
Roberta Wilsey	Lisa Lintz	Thomas M. Huston
Jim Ball	David Shultz	Ken Grochoeki
Marilyn Pershing	Jerry Ritter	Marge Grochocki
Sean Anderson	Joeseeph Carnielli	Jonathan Cooper
Alan Torgerson	Kenneth Guill	Betsy Lewis
Joe Comparin	Scott Portrey	Don Lewis
Steve Maiorana	Toni Portrey	Myra Bellamy
Larry Marris	Bruce Hager	Christine Cleavenger
Scott Jones	Honeylynn Terry	Douglas Vincent
Angela Vincent	Charles Agnew	Shirley Kelly
Mary Newton	Paul Kelly	Gregg Newton
Jim Evanoff	Rob Borucki	Deborah Molique
Lucille Evenoff	Sandra Huston	Lori Bloomo
Lois Cooper	Jerry Walker	Joe Hernandez
Richard Tracy		

The study session began at 4:30 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 7:15 p.m., the following items were considered and recorded on Board of Adjustment CD #2.

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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 July 10, 2007 Meeting A motion was made to approve the minutes by Boardmember Von Borstel and seconded by Boardmember Worcester. Vote: Passed 6-0
- B. Chair and Vice Chair Elections A nomination to re-elect Ms. Higgins as chair was made by Boardmember Von Borstel and seconded by Boardmember Clements Vote: Passed 6-0.
A nomination to re-elect Clements as Vice-chair was made by Boardmember Higgins and seconded by Boardmember Worcester Vote: Passed 6-0.
- C. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember McCray and seconded by Boardmember Worcester. Vote: Passed 6-0

**Draft
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Case No.: BA07-013

Location: 3215 South Sossaman Road

Subject: Requesting: 1) variances to allow reductions in the landscape setbacks and landscape plantings along the north and east property lines; and 2) a Special Use Permit, both to allow the development of athletic facilities in conjunction with a place of worship in the AG zoning district.

Decision: **Approval** of the requested Special Use Permit and variance, *conditioned upon the following:*

1. *Compliance with the site plan submitted, except as modified by the conditions below.*
2. *Compliance with current Code requirements related to landscape requirements within the landscape setbacks adjacent to the north and east property lines.*
3. *Compliance with conditions of approval from zoning case Z05-81 and subsequent Administrative Reviews.*
4. *The sports fields must be constructed after or concurrently with the worship center building and may not be utilized until the worship center is complete.*
5. *Use of the sports fields shall be based directly on activities organized and managed as a ministry outreach of Paloma Community Church.*
6. *No sound amplification systems shall be permitted.*
7. *No bleachers shall be permitted between baseball or soccer fields.*
8. *Berms shall not exceed twelve inches (12") in height between baseball fields.*
9. *Hours of operation shall be between the hours of 7:00am and 10:00pm seven days a week*
10. *Field lighting shall be reduced to sixty percent (60%) intensity no later than 10:00pm and turned off no later than 10:15pm.*
11. *Field light poles shall not exceed seventy-feet (70') in height.*
12. *Lighting levels at the northern property line shall not exceed zero (0) foot-candles, not including pre-development ambient light.*
13. *Compliance with all requirements of the Building Safety Division in the issuance of Building permits.*
14. *All Play will occur in the south fields first before moving over to the north field.*
15. *No game will start after nine pm.*
16. *Lights will be turned off no more than 30 minutes after completion of the game.*
17. *The east gate will remain locked at all time except for emergency use.*
18. *No Alcohol*
19. *Installation of signs that say no ball play in greenbelt areas.*

Summary: This request for a Special Use Permit and variance was originally presented to the Board of Adjustment at the April 10, 2007 hearing. At that hearing, the applicant accepted a continuance in order to initiate further communication with the surrounding residential community regarding the project. The case was next presented at the July 10, 2007 Board of Adjustment hearing. However, the applicant requested a continuance to the August 14, 2007 hearing to benefit from a vote of the full Board. Since the July 10, 2007 hearing, staff has communicated with the applicant and received a letter describing the ministry of Paloma Community Church and Paloma

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Sports Outreach and a letter of proposed conditions. A summary of the citizen participation, revised proposal, and staff recommendations is presented below.

The applicants provided 54 letters of support of the proposal and the following people spoke in favor of the ballfields:

Danny Rosetta	Jerry Walker	Keith Lynch
Melinda Yarbrow	John Guinn	Kimberly Phillippi
Alan Torgerson		

Ben Thomason and Lisa Lintz spoke on behalf of the following people in opposition of the ballfields:

Bruce Hager	Myra Bellamy	Sharon Trites
Denny Thomason	Honeylynn Terry	Jacqueline Hager
Dennis Monce	Charles Terry	Lisa Lintz
Ken Grochocki	Sandra Huston	Scott Portrey
Mary Newton	Ralph Trites	Shirley Kelly
Ryan Woods	Aaron Jacobs	Ben Thomason
Alan Torgerson	David Woods	Jeff Taylor
John King	Roseann Taylor	Thomas M. Huston
Tracy Taylor	Larry Merrix	Greg Newton
Donna Corsaro	Jim Ball	Marge Grochocki
Don Hendrickson	William Lagoon	Joe Comparin
Christine Clevenger	Karen Kerr	M. Carnicelli
Rafael Casillas	John Corsaro	Jane DeCola
David Shultz	Jerry Ritter	Joe Carnicelli
Kenneth Guill	Margaret Ritter	Art Baril
Linda Allen	Chuch Terry	Jonathan Cooper
Betsy Lewis	Don Lewis	Myra Billary
Don Vincent	Angela Vincent	Charles Agnew
Jim Evenoff	Rob Burucki	Deborah Molique
Lucille Evenoff	Lois Cooper	Jerry Walker

Mr. Sheffield noted that the Board must determine if the Ballfields are a primary or accessory use to the church, the proposed plan is teetering very delicately on the edge of that line. The Church needs to show that they both the organizer and the proprietor of the leagues that play on the fields in order for the fields to be considered as an accessory use to the Church itself, therefore the conditions that are written in the staff report are to ensure the fields remain an accessory to the Church.

Motion: It was moved by Boardmember Clements, seconded by Boardmember Worcester to Approve this case with the conditions listed above.

Vote: Passed 4-2

Finding of Fact:

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- 1.1 Operation is from 7am to 10:00pm seven days a week, with the lights being turned off 30 minutes after the completion of the game. The approved operating hours are commensurate with standard operating hours of City of Mesa parks and recreational facilities.
- 1.2 The facility will utilize Musco brand lighting that utilizes light control technology to increase usable light on the playing field while decreasing off-site light spillage. The lights are designed to keep light on the field and away from neighboring properties, prevent glare, and preserve the night view by preventing sky glow. The applicant has lowered the maximum light pole height from 80ft to 70ft in order to reduce light spillage onto adjacent properties.
- 1.3 The photometric light study submitted meets Mesa City Code requirements for light spillage. Light spillage on the north property line adjacent to single residence zoning does not exceed 0.01 foot-candles and light spillage on the east, west, and south property lines does not exceed .5 foot-candles. According to Section 4-4-1 (H) of the City Code, "The light level at any property line, measured thirty-six inches (36") above ground level, shall not be more than 0.5 foot-candles (5 Lux) above ambient light level, except for property lines adjacent to residential use property, the light level shall be not more than 0.3 foot-candles (3 Lux) above ambient light level requirement."
- 1.4 The applicant has further stated that light from the sport fields and parking lots shall not exceed zero foot-candles at the north property line.
- 1.5 The required access gates for the driveways along Sossaman Road will be beneficial in preventing unauthorized access into the sports complex when the facility is closed.
- 1.6 The applicant has received permission from SRP to install fences and gates at the west and east sides of the SRP easement.

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Case No.: BA07-017

Location: 1441 East Broadway Road

Subject: Requesting a variance to allow two storage buildings to encroach into required landscape areas in the O-S zoning district.

Decision: **This case is continued to the September 11, 2007 hearing.**

Motion It was moved by Boardmember Von Borstel, seconded by Boardmember Garcia to approve this case with the following conditions:

Vote Passed 6-0

Findings N/A

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Case No.: BA07-034

Location: 1551 East Lynwood Street

Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow the redevelopment of a restaurant use in the C-3 zoning district.

Decision: Approved with conditions

Summary:

The applicant is requesting a variance to allow an existing detached accessory building to exceed the maximum height permitted in the R1-15 zoning district. The applicant has stated: 1) that the structure has been in place for 15 years in its current state; 2) and the structure has become an essential part of the families lifestyle; 3) removal of the shade structure would place a considerable burden on the family due to the amount of time that the structure is utilized for hobbies and activities; 4) shade is critical to health in Arizona; and 5) neighboring property owners have provided a letter in support of the requested variance.

Board member Von Borstel questions how the firewall requirements play into Building Code issues and how those issues will come into play if approved.

Mr. Hash explains the construction requirements that would have to be met to make the structure meet current fire code requirements.

Boardmember Worcester asks for staff to explain how this case came about after being constructed for 15 years.

Mr. Hash explains that the case is being brought forward to the Board as a result of an open Code Compliance case.

Mr. Sheffield adds that in a case such as this one, a structure that is constructed without a building permit is not afforded grandfathered protection, therefore is a considered non-compliant building .

Chair Higgins asks that if the structure were lowered to meet the current code requirement, would the applicant still have to got through the issues with Building and Safety.

Mr. Sheffield explains that the applicant would still be required to apply for and receive a legal building permit for the structure.

Applicant asks the difference concerning cover or not covered? If there is still and RV allowed to park there then there is still a fire code issue.

Motion: It was moved by Boardmember Von Borstel, seconded by Boardmember Garcia to approve this case with the following conditions:

1. *Compliance with the site plans submitted, except as modified by the conditions below.*

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2. *Landscape plantings shall complement existing landscaping in the vicinity.*
3. *Compliance with all requirements of an Administrative Design Review.*
4. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 5-0, with Mr. Clement Abstaining.

Finding of Fact:

- 1.1 The structure was constructed approximately 15 years ago without benefit of a building permit and was brought forward for variance as a result of a Code Compliance case (COD2007-00984). While the structure currently exists, the Board should review this case as if it were still just a plan on paper, giving neither penalty nor concern for having to maintain the applicant's investment.
- 1.2 City of Mesa Code § 11-13-2, *Additional Provisions and Exceptions* states a detached accessory building: may be located in the required side and rear yards provided it is within the rear one quarter (¼) of the lot and does not exceed ten feet (10') in height. The proposed detached accessory building encroached into the side and rear yards, is located in the rear ¼ of the lot, and has a defined building height of 13'-6", or 3'-6" over the maximum height allowed.
- 1.3 The structure is in the southeast corner of the applicant's lot, adjacent to an LDS church parcel. The accessory structure is approximately 102 feet from the nearest off-premises building, which is located on the far northeast corner of the Church parking lot.
- 1.4 The shade cover is a simple structure, which does not impose a detrimental impact on adjacent properties.

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Case No.: BA07-035

Location: 6915 East University Drive

Subject: Requesting a Special Use Permit (SUP) to allow a manufactured home or recreational vehicle to be used as quarters for a night watchman in the C-2 zoning district.

Decision: **This case is continued to the September 11, 2007 hearing.**

Motion It was moved by Boardmember Von Borstel, seconded by Boardmember Garcia to approve this case with the following conditions:

Vote Passed 6-0

Findings N/A

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Case No.: BA07-038

Location: 1927 North Ashland Circle

Subject: Requesting a variance to allow a single residence to encroach into the required side yard in the R1-6-BIZ zoning district.

Decision: **The applicant has withdrawn this case.**

Motion It was moved by Boardmember Von Borstel, seconded by Boardmember Garcia to approve this case with the following conditions:

Vote Passed 6-0

Findings N/A

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Case No.: BA07-040

Location: 1335 thru 1365 South Alma School Road

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

Decision: **Continued to the Sept 11, 2007 meeting**

Summary: This request involves a proposed Comprehensive Sign Plan for Mesa Fiesta, a group commercial center located on the east side of Alma School Road between Southern Avenue and US 60. The proposed Comprehensive Sign Plan (CSP) would allow two detached signs along Alma School Road, two detached signs along Grove Avenue, and two detached signs along Holmes Avenue. No signs have been proposed along the Westwood frontage. The proposed aggregate sign area and height of detached signs along each street frontage is less than would be allowed by current Code maximums.

The proposed CSP would allow attached signage greater than would be allowed by current Code maximums in both number of attached signs and in the aggregate sign area permitted for each Major, Mini-Major, and Pad Tenant space.

Motion: It was moved by Boardmember McCray, seconded by Boardmember Von Borstel to continue this case 30 days for redesign.

Vote: Passed 6-0

Finding of Fact: N/A

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Case No.: BA07-041

Location: 4365 North Power Road

Subject: *Requesting a Special Use Permit to allow development of a Commercial Communication Tower (35-foot faux saguaro) in the R1-90-DMP zoning district.*

Decision: Approval with Conditions

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 Garcia to approve this case with the following conditions:

- 1. Compliance with the site plan submitted.*
- 2. Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 6-0

Findings:

- 1.1** The proposed 35-foot tall Commercial Communication Tower has been located and designed to minimize visual impact to neighboring properties and is compatible with and not detrimental to surrounding properties.
- 1.2** The CCT is an allowed use in the R1-90 Zoning District subject to granting a Special Use Permit. This application complies with the Commercial Communication Towers Guidelines adopted by City Council, and would be compatible with and not detrimental to surrounding properties.
- 1.3** The communication tower will be designed and concealed as a faux saguaro designed to be compatible with the site and in a manner that is sensitive to the context presented by the surrounding environment.

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Case No.: BA07-042

Location: 2238 South Cottonwood

Subject: Requesting a variance to allow a patio enclosure to encroach into the required rear setback in the R1-6-DMP zoning district.

Decision: **30 day continuance for redesign.**

Summary: The requested variance would permit a reduction of the rear yard setback to 13.5 feet for the purpose of enclosing a patio for an additional bedroom. As justification for the requested variance, the applicant has noted that: 1) the original construction of the home was designed for a physically disabled individual; 2) the wheelchair accessible construction has limited the useful size of the rear bedroom; 3) the proposed room is not visible from the street; and 4) the addition would be an improvement to the home. The applicant's submittal includes letters of approval from the Dobson Ranch Architectural Review Board and from neighbors immediately to the rear and side.

Mr. Tracy stated a disabled man constructed the house in his eighties and the interior of the house is such that it won't accommodate his exercise equipment.

Mr. McVay explains to the board the current rear yard setback for the property is 20 feet. An open patio in this zoning district is able to encroach up to 15 feet of the property line but all enclosed structures have to maintain 20-foot to setback be compliant without a variance.

Chair Higgins states then currently Mr. Tracy's patio is in non-compliance because it is currently 13.5 feet from the property line.

Mr. Sheffield states that currently the patio is in compliance due to the fact that the patio was most likely signed off by planning at the time of the homes construction.

Mr. McCray states that in this case that the encroachment, if enclosed, would extend 6.5 feet into the rear setback.

Mr. Tracy states that the variance should be approved on its merits and that this is the place of the board to make exceptions to the laws when those laws aren't fair to the property owner.

Motion: It was moved by Boardmember McCray, seconded by Boardmember Worcester to continue this case to the September 11, 2007 hearing for redesign.

Vote: Passed 6-0

Finding of Fact: N/A

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Case No.: BA07-043

Location: 1662 East Hope Street

Subject: Requesting a variance to allow a garage addition to encroach into the required side setback in the R1-9 zoning district

Decision: Approved with conditions

Summary: The requested variance would allow a reduction to the side setback requirement from 10 feet to 5 feet. The reduced setback would allow the conversion of the existing garage into additional living space and the addition of a new two-car garage.

Motion: It was moved by Boardmember Worcester, seconded by Boardmember Von Borstel to approve this case with the following conditions:

1. *Compliance with the site plan submitted.*
2. *Dead restriction placed on the neighboring property at 1652 E. Hope for a 15-foot no build easement with the agreement of the owner.*
3. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 6-0

Finding of Facts:

- 1.1 The requested variance would allow a garage addition to encroach into the side setback of the applicant's property. The applicants are proposing to enclose the current garage, located on the west elevation of the home, to add a new bedroom. Following that enclosure, they would extend new construction from the west elevation, to provide a replacement garage. The garage addition would encroach into the required side yard setback by five feet.
- 1.2 As justification for the requested variance, the applicant noted that size of their lot is 1,000 – 1,300 square feet smaller than neighboring lots. While lot size can justify a variance, in this case the lot still exceeds the minimum size for the R1-9 zoning district. It has no distinguishable features that prohibit construction or expansion within the buildable lot area.
- 1.3 Strict Application of the Zoning Ordinance would not deprive the property of privileges available to other similar lots. While not in the preferred location, the applicant has the ability to construct an addition that accomplishes the intended goal without the need for a variance. The additional floor space requested is below the total lot coverage allowance for the R1-9 zoning district.

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**Draft
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Case No.: BA07-044
Location: 59 S Horne St
Subject: Requesting a Substantial Conformance Improvement Permit (SCIP) to allow redevelopment of a preschool/daycare use in the R-2 and R-4 zoning districts.
Decision: **Continued to the October 9th meeting**
Summary: Mr. McCray asks about the non-valid certificate of occupancy and why this was stated.

The pastor stated that she has everything posted on the front door that shows the certificate of occupancy so she does not know why that was indicated.

Chair Higgins states that Mahoney Street will never widen and why that dedication needs to take place?

Staff states that may be the case but in any regard the City of Mesa is still requiring the dedication and the board doesn't have the authority to change that decision.

Chair Higgins asks the applicant if they are willing to go back and redesign a smaller building to provide more parking and better meet the intent of the code

The applicant replied with that they are willing to do that if that is what it going to take to get it approved.

Motion It was moved by Boardmember Von Borstel, seconded by Boardmember Garcia to approve this case with the following conditions:

Vote Passed 6-0

Findings N/A

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Respectfully submitted,

Jeffrey McVay, AICP
Senior Planner
Secretary, Board of Adjustment

Minutes written by Jim Hash, Planner 1
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