

Minutes

City Council Chambers, Lower Level
April 13, 2010

Board Members Present:

Garrett McCray, Chair
Scott Thomas, Vice Chair
Nicholas Labadie
Greg Hitchens
Judah Nativio
Diane von Borstel
Tyler Stradling

Staff Present:

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

Others Present:

Marisela Talamante
Jon Richards
Jeff Welker
Bob Giguere
Grace Giguere
Jose A. Gomez
Jim Dunne
Marla Richards
Michael Fries

The study session began at 4:30 p.m. The Public Hearing meeting began at 6:08 p.m. Before adjournment at 8:35 p.m., the following items were considered and recorded.

Study Session 4:30 p.m.

It was moved by Boardmember Hitchens, seconded by Boardmember Labadie that the Board adjourn the Study Session at 4:35 p.m. and enter into Executive Session.

- a. Discussion or consultation for legal advice with City Attorney (A.R.S §38-431-03A(3)). Discussion or consultation with the City Attorney regarding the Telecommunications Act of 1996 (the 'Act'). (A.R.S §38-431-03A(3)).

The Executive Session adjourned at 5:15 p.m.

It was moved by Boardmember von Borstel, seconded by Vice Chair Thomas to reconvene the Study Session at 5:20 p.m.

- A. The items scheduled for the Board's Public Hearing were discussed.
- B. Mr. Sheffield advised the Board on the progress of the Zoning Code Update and passed out copies of the 'Public Review Draft'.

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Public Hearing 6:08 p.m.

- A. Consider Minutes from the March 9, 2010 Meeting A motion was made to approve the minutes, subject to a minor edit, by Boardmember Nativio and seconded by Boardmember von Borstel. Vote: Passed 7-0

- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Labadie. Vote: Passed 7-0

**Board of Adjustment Meeting
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Case No.: BA10-011

Location: 7543 East Dewan Circle (PLN2010-00053)

Subject: Requesting a variance to allow an addition to encroach into the required side yard in the R1-6 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 Labadie to approve BA10-011 subject to the following conditions.

1. *Compliance with the site plan and exhibits submitted.*
2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 7-0

Findings:

- 1.1 The applicant requested a variance to allow an existing carport to be enclosed into a living room in the R1-6 zoning district. The subdivision "Linda Vista Unit 2" was developed in the early 70's under jurisdiction of Maricopa County. The area was annexed into the City of Mesa 1979. The existing home was constructed with a carport to accommodate one car.
- 1.2 Current code requirements for minimum side yards are five (5) and ten (10) feet with both sides totaling fifteen (15) feet. The home averages a 5 foot setback on one side and an 8 foot setback on the other side. The existing carport encroaches 2 feet into the 10' foot side yard. The 2 foot encroachment allows the enclosure of the existing carport into a living room. The exterior walls of the enclosure are finished to match the existing residence.
- 1.3 An addition that complied with setback requirements in the same location would result in a living room width reduced by two feet. The applicant considered that and decided to proceed with the variance upon realizing that placing the new wall to comply with Code would look odd due to the existing roof line and posts remaining eight feet from the property line. The two foot area remaining outside of the wall would be unusable space the length of the carport with the existing storage room located at the rear of the home eight feet from the property line.
- 1.4 The lot has frontage on a cul-de-sac and has a unique front property line. This allows for a longer driveway and sufficient area for the provision of the required parking spaces out of the front yard.
- 1.5 Primary justification for the variance relates to the existing home encroaching two feet into the side yard setback and being surrounded by many homes within the subdivision that were

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constructed with encroachments into the side setbacks.

- 1.6** The applicant noted justification for the variance as follows: 1) the original house was built eight feet from the property line; 2) the lot is at the end of a cul-de-sac and has an odd shape lot; 3) the lot has a bigger front yard than most in the subdivision; 4) the conditions were pre-existing; 5) the applicant recently purchased the home; 6) strict compliance with the current Code does not allow the applicant to construct something that was previously allowed in 1979 when the home was constructed; 7) all homes within the subdivision were constructed with encroachments into what is now considered a required side yard; 8) the request is not asking for special privilege since it was allowed previously; and 9) the request is not unusual since all other homes in the subdivision have this condition.

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Case No.: BA10-012

Location: 1 to 270 West Main Street

Subject: Requesting a Special Use Permit to allow a Special Event to exceed the number of events allowed in a calendar year in the TCC zoning district. (PLN2010-00057)

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 Labadie to approve BA10-012 with the following conditions:

1. *Compliance with all health, building, fire safety, and tax and licensing regulations of the City of Mesa.*
2. *Compliance with the site plan, and narrative which delineates the operational locations of the 'Motorcycles on Main' event.*
3. *The City shall reserve the right to make necessary adjustments to the Special Use Permit or the site plan to ensure pedestrian safety and that the landscaping is properly maintained.*
4. *The 'Motorcycles on Main' event shall follow the Good Neighbor Policy aspects of the MAC fest event including:*
 - a. *Parking --- Patrons of the event and customers of the downtown businesses will be directed to the public parking lots located north and south of Main Street.*
 - b. *Circulation --- All activities will meet the Americans with Disabilities Act requirements.*
 - c. *Safety --- Fire extinguishers will be at every table where food is prepared.*
 - d. *Coordination with the Downtown Businesses --- The applicant will work with the Downtown Mesa Association, the Planning division, and business owners to coordinate the event.*
 - e. *Solid Waste Management Plan --- Downtown Events will monitor themselves and will provide waste management as needed.*
 - f. *Set-up may begin at 4:30 p.m. Vendor breakdown will begin immediately after the event ends at 10:00 p.m. Vendors will be allowed one and one half (1½) hours for breakdown and cleanup.*
5. *The Special Use Permit shall expire on May 30, 2014.*

Vote: Passed 7-0

Findings:

- 1.1** This Special Use Permit will allow more than four Special Events within a calendar year. The event "Motorcycles on Main" involves the closure of Main Street to thru traffic between the hours of 6:00 pm and 10:00 pm in the area between Center Street and Robson. The events are held the first Tuesday of the month.

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- 1.2 Downtown Events is a non-profit organization whose mission is to promote awareness to the Downtown area. "Motorcycles on Main" allows the motorcycle enthusiast to gather to "park and show" their motorcycles. The fundamentals of the event are Motorcycles, Food, and Live Music to attract foot traffic to the area. The event provides four bands coupled with six local restaurants and two outside food vendors clustering activity within a two-block area.

- 1.3 Food vendors are minimized and limited to two to maximize sales of the local restaurants until additional food vendors are required. Snack vendors are limited to four vendors to also maximize the use of the local restaurants.

- 1.4 Non-food vendors include motorcycle dealers, apparel, jewelry, artists, and RV rentals. The motorcycle vendors are Mesa's Chester's Harley Davidson and Victory Motorcycles.

- 1.5 Non-profit groups are provided free space in the event for the purpose of fund raising, membership drives, and for raising general awareness.

- 1.6 Downtown Events has operated three "Motorcycles on Main" events this year with the approval of a "Special Event" License and has received no complaints from the surrounding property owners/tenants. The inquiries received by the Tax & Licensing Office have been from interested musicians and vendors.

- 1.7 Each event requires the issuance of a "Special Event" License from the Tax & License Office and is limited by the Zoning Code to a maximum of four events per calendar year on the same premises. There are several organizations operating "Special Events" in the public space in the Downtown area they are:

Event Name	Day	Organization
MAC Fest	Every Saturday	Arts Center
MacDonald Street Farmer's Market	Every Saturday	Downtown Mesa Association
2 nd Friday Night Out	2 nd Friday	Downtown Mesa Association
Motorcycles on Main	1 st Friday	Downtown Events

This Special Use Permit is required to allow more than four events per calendar year. The Special Use Permit allows Downtown Events to use the public space on Main Street between Center Street and Robson for up to twelve events per year with the expiration of the Special Use Permit on May 30, 2014.

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Case No.: BA10-014

Location: 2343 West Main Street

Subject: Requesting a variance to allow a fence to exceed the height allowed within the front setback in the R-3 zoning district. (PLN-2010-00061)

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 Labadie to approve BA10-014 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.*
3. *Compliance with the Preliminary Plan Review Team comments dated March 11, 2010.*
4. *Eliminate the 3 feet high solid base from the fence design to make it 6 feet high view fence with masonry pilasters.*
5. *Provide masonry pilasters at an interval of at least 30 feet in fence design. Pilaster material and color shall match the existing building in color and texture.*
6. *Provide pedestrian links between internal sidewalks public sidewalks directly connected to the bus stop on Main Street by access gates through the proposed view fence.*
7. *The abandoned trash enclosure outside the proposed vehicular gate shall be removed and the vacated area shall become a raised landscape island.*
8. *Restore landscape materials, trees, shrubs and ground covers along Main Street per Perimeter Landscaping Standards Section 11-15-3 (A).*

Vote: Passed 7-0

Findings:

- 1.1** This variance is for the following site improvements:
- a. A 6 feet high fence along Main Street. The fence design is a 3 feet high view fence with a 3 feet high solid wall at the base.
 - b. Pedestrian access with keyed entry near the intersection of Roosevelt Road and Main Street.
 - c. Close driveway access from Main Street by a 6 feet high vehicular gate (automatic exit only) at a setback of 35 feet from the face of the curb of Main Street.
 - d. Landscape restoration of 10 Palm trees, 11 Agaves, 13 Natal Plum, 6 Red Bird of Paradise, 52 Rosemary, 65 Purple Lantana, 7 Boulders and Decomposed Granite.
- 1.2** The applicant completed the Citizen Participation requirement by mailing notification of this request to all neighboring property owners within 300'. The applicant did not report any concerns. Likewise, the Planning Division did not receive any comments from neighborhoods.
- 1.3** The Zoning Code allows a maximum 3'-6" high fence in the front yard. The applicant found that this was not high enough to deter to the property crime and vandalism problem experienced.

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- 1.4** The applicant noted that Commander Stahl, with Mesa Police Department, commented that the fence will help further clean up the site.
- 1.5** The introduction of the Light Rail along Main Street has limited vehicular access to the subject property from Main Street.
- 1.6** The main entrance to the Coral Point apartment complex is from Roosevelt Road, and is very well maintained with a lush boulevard like access.
- 1.7** The applicant stated that the bus stop in front of the subject property has no shelter and creates a problem. The bus stop serves the community including school children. The applicant stated that bus riders and the school children trespass and loiter in the apartment complex stairwells, breezeways and patios seeking shelter from the sun.
- 1.8** The applicant submitted sketches for a bus shelter that they are interested in building to mitigate some of the problems and improve the curb appeal of their property. The applicant was advised to work with the City of Mesa Transportation and Engineering to coordinate the permit process.
- 1.9** The applicant maintained that landscaping along Main Street was destroyed by bus riders and school children.
- 1.10** There are a limited number of large apartment complexes, such as Coral Point, that are along Main Street with view fences in their front yard.

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**Board of Adjustment Meeting
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- Case No.:** BA10-015
- Location:** 616 North Mountain Road
- Subject:** Requesting a Special Use Permit to allow a commercial communication tower to be placed in the R1-43 zoning district. (PLN2010-00059)
- Decision:** Approved
- Summary:** Michael Fries represented the case for AT&T Wireless and provided the history related to the request. He stated that staff has requested that the design be something other than a palm stealth design due to the desert character of the area. He further stated that his client is agreeable to this change.
- Boardmember Nativio asked Mr. Fries if there were any design ideas or examples for the site. Mr. Fries stated that he was open to ideas and gave various examples his company had previously designed. He also pointed out that the communication tower location is within a fenced storage yard with no access to students.
- Chair McCray asked about the public notification process that was used to notify the surrounding property owners. Ms. Guevara explained that notification letters are mailed by City staff two weeks prior to the hearing to all property owners within a 300 foot radius of the site. Chair McCray also voiced concern for the height and visibility of the antennas.
- Boardmember Nativio asked if Mesa Public Schools Administration had any concerns with the communication tower. Mr. Fries replied that both the school administration and the school principal had no concerns. Mr. Sheffield pointed out that the Sousa Elementary School principal was in agreement with the design ideas and the location of the communication tower.
- Motion:** It was moved by Vice Chair Thomas, seconded by Boardmember von Borstel to approve BA10-015 with staff recommendation the following conditions:
1. *Compliance with the site submitted except as modified by the following 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 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.*
 4. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*
- Vote:** Passed 7-0

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Findings:

- 1.1** In place of a 65-foot high Commercial Communication Tower (CCT) designed as a monopalm, staff recommended the antennas and dishes be concealed within an architectural element. The CCT is located at the northwest portion of this property between the schools main building and a portable classroom building. The Commercial Communication Tower Guidelines recommend 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 65 foot tall CCT is on R1-43 zoned property that allows CCTs provided they do not exceed 30' in height. An approved Special Use Permit (SUP) is required for CCTs that exceed the maximum permitted height.
- 1.3** Based on the submitted plans, identified as PHNX-PHNXAZ-X098-T-1 dated January 20, 2010, the CCT is located within a 474 square foot lease area along with the associated ground mounted equipment. The array on the monopalm consists of three sectors, with 2 antennas per sector. Each antenna measures 4'4" L x 1'2" W x 4" D.
- 1.4** The CCT 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.
- 1.5** The CCT location complies with the Commercial Communications Towers Guidelines in that it is approximately 204 feet from the nearest residential property to the north, where 130 feet would be required, and approximately 377 feet from the Mountain Road right-of-way, where 65 feet would be required.
- 1.6** The Desert Uplands Sub-Area is 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 located in this Desert Uplands Sub-Area which prohibits all types of palm trees.
- 1.7** In addition to compatibility with surrounding properties, the SUP must be consistent with City Council policies. The CCT was to utilize a monopalm design in 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, including 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 the proposed monopalm is not a living palm tree, it does utilize a monopalm design, which is not consistent with the Upper Sonoran Desert plant types.
- 1.8** The applicant indicated that this site is necessary to provide the surrounding area with wireless service.
- 1.9** Staff had concerns related to the use of the monopalm design in the Desert Uplands area. Current standard policy on CCTs within the City of Mesa requires stealth facilities in all zoning districts except industrial. This property is zoned R1-43 and therefore requires a stealth facility. Staff spoke with the principal of this school and the principal had no concerns with the design of the

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CCT. The only concern identified is to be sure that any design installed assures that no one will be able to use the CCT as a way to gain access to the school roof.

- 1.10** There were other design alternatives available to wireless communication providers that would provide a more appropriate camouflage or method of concealment of the CCT and be more consistent with the Desert Upland environment and development criteria. Staff recommended approval of this request conditioned upon concealing the antennas and dishes within an attached or freestanding architectural and/or sculptural element consistent with the Desert Uplands Development Standards. The specific design shall be approved by the Design Review Board as a condition of approval of the Special Use Permit.
- 1.11** The CCT is an allowed use in the R1-43 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 proposed CCT exceeds the recommended setbacks from adjacent roads and residential uses. While use of a faux Palm Tree would be effective in camouflaging the CCT, such design limits the co-location of additional wireless carriers and does not integrate the design into the existing desert theme of the development. Given the distance from 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 proposed CCT is compatible with and not detrimental to surrounding properties. The 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.: BA10-016

Location: 309 South Windsor

Subject: Requesting a variance to allow an addition to encroach into the required side yard in the R-4 zoning district. (PLN2010-00070)

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 Labadie to approve BA10-016 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 7-0

Findings:

- 1.1** The applicant recently replaced an existing single wide manufactured home, with a new Cavco double wide unit with a carport awning.
- 1.2** A Variance was approved in July of 2009 to allow the construction of a carport that would encroach in the required side yard setback up to 5-feet. A 230 square-foot garage and 144 square foot screen room have been created in this area.
- 1.3** As shown on the site plan, the manufactured home and conventionally constructed addition have an overall width of 43.75 feet at the widest point and result in side setbacks of 5-feet on either side. Mesa Mobile Estates Subdivision requires side setbacks of 5-feet and 10-feet.
- 1.4** The subject lot is tapered with a minimum width of 48.62 feet at the front and 54.76 feet at the rear. The lot is significantly narrower than lots required by current Code in a Manufactured Home Subdivision. The lot width represents a unique condition not created by the property owner and does not allow the owner to place a normal size manufactured home with a garage on the lot without encroaching into the required setback.
- 1.5** Current Code requires lots within a Manufactured Home Subdivision be a minimum of 60-feet wide and be zoned R1-6PAD. This subdivision is zoned R-4, based on a previous zoning standard for any manufactured home use. The R-4 district is still the standard zoning district for a Manufactured Home Park, with minimum space width of as little as 40-feet wide. The side setbacks for MH Parks are 5-foot on each side, which is more consistent with the size of the lot.
- 1.6** While the home by itself is able to conform to current setback requirements for the subdivision, the addition necessitates encroachment into the required 10-foot side yard. Typically the 10-foot side yard is to provide access to the rear yard. The encroachment of the garage and screen room will

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not restrict access to the rear yard because there is a public alley at the rear of the property. Compliance with current Code severely limits the property owner's ability to have an enclosed garage.

- 1.7** Staff felt it is important to mention the width of the single wide unit of the past was 12-feet vs. the current standard double-wide units, which average around 28-feet (two 14-foot wide half units), but vary slightly by manufacturer. This lot was created back when single wide units were the standard. The standards and regulations dealing with the construction of the newer manufactured homes exceed the construction standards of the older single wide units. The newer standards regarding electrical wiring and fire construction make the new manufactured home a much safer and suitable home within the subdivision.

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Case No.: BA10-017

Location: 29 East Broadway Road

Subject: Requesting a Special Use Permit to allow vehicle sales in the TCB-2 zoning district. (PLN-2010-00073)

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 Labadie to approve BA10-017 with the following conditions:

1. *Compliance with the site and landscape plans submitted, unless modified by the conditions below.*
2. *Removal of all non-conforming signs on the site to come into compliance with the City of Mesa Sign Ordinance.*
3. *Replacement of the existing chain link fence and gate at the entrance to the site along the north property line with a masonry wall or wrought iron gate to come into conformance with the current City of Mesa Design Guidelines.*
4. *Right-of-way landscaping to be installed in front of the wall located west of the entrance gate.*
5. *Display of vehicles in designated spaces behind the gate and wall. Vehicles are not permitted to be displayed in the right-of-way.*
6. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Passed 7-0

Findings:

- 1.1 This Special Use Permit allows vehicle sales in an existing TCB-2 zoned parcel. The site has historically operated as a plumbing shop, tire and auto service store, and within the last 12 years as a vehicle sales lot.
- 1.2 The site is surrounded by TCB-2 zoning M-1 zoning with existing land use compatible with the proposed auto sale use for this site. There exists industrial property to the north and south, and auto-oriented uses to the east and west. This site is compatible with and not detrimental to the surrounding properties or neighborhood.
- 1.3 The site is consistent with the intent of the Mesa 2025 General Plan. The General Plan designates this site as part of the Town Center Area. The Town Center Concept Plan designates this site for Business Park and industrial uses.
- 1.4 The site meets the intent of the zoning ordinance upon compliance with the conditions of approval bringing the signage, fencing, landscaping into conformance with the current zoning code requirements.

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Case No.: BA10-018

Location: 722 East 1st Avenue

Subject: Requesting a variance to allow an addition to encroach into the required side yard in the R1-6 zoning district. (PLN-2010-00075)

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 Labadie to approve BA10-018 with the following conditions:

1. *Compliance with the site plan and exhibits submitted.*
2. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 7-0

Findings:

- 1.1 The existing house structure (1200 square foot) was built in 1954 with a one-car carport and front and side yard setbacks similar to other houses in the vicinity on both sides of the street (1st Avenue).
- 1.2 The carport (30'x10') is entirely under the existing roof of the house. The carport has attic area with a finished ceiling and lattice screen enclosure between the posts along the west side. The enclosure takes only a portion of the carport, 200 sq.ft. of a possible 300 sq.ft. within the carport, and leaves sufficient space for a single car carport.
- 1.3 The addition does not create any additional impact on the surrounding neighbors.
- 1.4 The side yards do not meet the minimum 10 foot side yard requirement per current city code. The front and rear setbacks of this house are significantly larger than current code requirements.
- 1.5 The houses on this street (1st avenue) were built in the 1950's, and do not meet current city code, in particular the side yard setback requirements. The subject parcel (60'x 135') is of similar size and orientation as other parcels in the vicinity, and the existing side yard setbacks are similar to the neighboring homes.
- 1.6 The addition of 200 square foot living space/family room to the existing house is built by enclosing a portion of the existing carport. The addition is entirely under the current roof.
- 1.7 The maximum aggregate roof area for R-2 zoning district is 45% of the lot coverage for the primary dwelling. The roof area for the entire primary dwelling including the addition is only 22.5 percent of the lot area 8,129 square foot.
- 1.8 The addition to the home has not exceeded the maximum lot coverage permitted (45%).

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- 1.9** The reduced side yards were pre-existing and were not created by the home owner. The use of the existing carport roof does not enlarge the existing non-conforming condition. The only change is that a portion of the open carport is now an enclosed living space.

- 1.10** Many of the adjacent and surrounding properties do not comply with current code setback requirements. This project creates a condition that is consistent with similar conditions and setback encroachments in this vicinity.

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Case No.: BA10-019

Location: 2059 East Brown Road

Subject: Requesting a Minor Modification of a Planned Area Development (PAD) to allow the adjustment of an approved landscape plan in the R1-6-PAD zoning district. (PLN-2010-00076)

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 Labadie to approve BA10-019 with the following conditions:

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

Vote: Passed 7-0

Findings:

- 1.1 Villas Valencia was developed in the early 1980's. This subdivision is a townhome development, and each unit is individually owned and maintained. At the time of development citrus was a major theme of the area. A stipulation of the ordinance referenced a letter from the developer to the neighbors committing to maintain citrus on the property for the perimeter.
- 1.2 As originally required, the landscaping on the perimeter of the development and throughout is primarily citrus with turf. Over the years, much of the citrus on the property died and was not replaced. The Association was attempting to replace many of the trees to be in compliance with the original landscape plan and the number of trees and shrubs required for the development, however the applicant stated that replacing all of the lost citrus was cost prohibitive and impractical. The landscaping plan is being changed to a more drought tolerant landscape plan that will still have a lush green appearance.
- 1.3 The character of the area has evolved over the years and although there is still citrus in the area, this neighborhood is not located within the Citrus Sub-area, where preservation of citrus is required. The Citrus Sub Area begins at 32nd Street, which is more than a mile to the east.
- 1.4 The HOA notified all property owners and residents within the subdivision and property owner's within 300', of the site received no negative comments from the residents. Staff was not contacted by any homeowner's or neighbors regarding the project.
- 1.5 The PAD modification only affects the landscaping for the common areas for the perimeter of the subdivision as shown in the landscape plan submitted. The modification is compatible with, and not detrimental to, adjacent properties or the neighborhood in general.

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Case No.: BA10-013

Location: 256 East Broadway Road

Subject: Requesting a Special Use Permit to allow auto repair and vehicle sales in the TCB-2 zoning district. (PLN-2010-00058)

Decision: 30-day continuance to May 11, 2010 meeting.

Motion: It was moved by Boardmember Nativio, seconded by Vice Chair Thomas to continue BA10-013 to the May 11th, 2010 meeting.

Vote: Passed 7-0

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**Board of Adjustment Meeting
April 13, 2010**

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. (PLN-2009-00200)

Decision: Approved with conditions.

Summary: Mr. Jim Dunne, the property owner, represented the case and gave a history of the events leading up to the appeal. He stated he purchased his property in November 1998 and the house was built in 1930. He explained that initially, there were very large trees between the two properties. He stated that he received an approval from Town Center Preservation staff in January 2000 that was required prior to obtaining a building permit. Mr. Dunne stated that he did not have documentation for this approval. In February 2000 he submitted plans for the RV carport/patio to the Building Safety Division and was issued footing and framing inspections and all were passed. On May 9th, 2000 his project was inspected by the encroachment into the side yard setback by the Zoning Administrator Hearing Officer. Mr. Dunne stated that he was never advised that there was a problem with the setbacks. He said he agreed that there were errors made by both himself and the City Building Safety Division regarding the setbacks and inspection approvals. Mr. Dunne claimed that being required to raze and remove the 11 year-old structure would make it difficult to have access for an RV and trailer. He further stated that he has gained preliminary approval from Building Safety for a 1-hour fire rated wall in an effort to remedy the encroachment at the east part of the wall. Mr. Dunne stated that his structure is not on his neighbor's property, but is in fact encroaching into the side setback and a portion of the overhang is hanging across the property line.

In March 2009, Mr. Dunne explained that after being informed of a complaint about his RV structure, he met with City inspectors and a plan examiner to work out corrective actions. Mr. Dunne said he was instructed to remove some of the overhang and to install gutters and down spouts, which he did. The work was inspected by a Building Inspector and was approved. Later, he again met with Building Safety staff and was told he needed to apply for a variance. After the denial of his variance he was advised by the Deputy Building Safety Director, Tammy Albright, to seek mediation services in an attempt to come to a mutually agreeable resolution with his neighbor, the complainant. The mediation attempt was not successful. Mr. Dunne then presented support for his application by providing the locations of similar encroachment situations in the neighborhood surrounding his property.

Boardmember Nativio asked Mr. Dunne if the approved site plan indicated an 8 foot side setback, how did he ultimately only provide a 2 foot setback. Mr. Dunne stated that he did not have his lot surveyed plus, the large trees between the properties led him to believe that the property line was between the two driveways. Boardmember Nativio asked if any part of the structure was on the property line, Mr. Dunne replied that only the overhang is over the line.

Boardmember Hitchens asked if the overhang encroachment had been remedied. Mr. Dunne replied that according to the last Building Inspector it had been, but he was willing to take off more of the overhang if needed.

Chair McCray asked for comments from the public.

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Bob Giguere, the son of the of the property owner who resides at 264 N. MacDonald, spoke in opposition to the case. He provided a brief history of his mother's property and stated that a garage located on the west side of her property has been damaged by water flowing off Mr. Dunne's garage. He stated that Mr. Dunne's building permit never received a final inspection and was expired. Mr. Giguere cited the fire risk to Mrs. Giguere's property by having a structure with an RV parked in it so close to the property line. He also pointed out that should Mrs. Giguere decide to sell her property she would have to disclose the issues related to the setback encroachment. He also claimed that Mr. Dunne moved a fence that was between the properties so that it appeared that the setback was being maintained.

Mr. Dunne provided his rebuttal and stated that there is no water draining off his roof onto Mrs. Giguere's property and that he would move the fence if required.

Boardmember Nativio asked why the final inspection was never completed. Mr. Dunne replied that he had to leave town for an extended period and never re-scheduled the inspection.

Boardmember Labadie asked Mr. Dunne if he knew that not completing the inspection process could result in it expiring. Mr. Dunne replied that he did not give it a thought.

Boardmember Thomas asked if the overhang is not on the property line why did he need to cut it back. Mr. Dunne clarified that he meant that the overhang was not overhanging over her garage roof, but that the overhang, is in fact, over the property line.

Boardmember Labadie asked for clarification of the RV structure in relation to the house. Mr. Dunne provided explanation and photos.

Gordon Sheffield provided a clarification of the action the Board was being asked to decide, that being, whether the addition should be allowed to encroach into the required side yard. Mr. Sheffield commented on the zoning history in this area and the many non-conforming conditions that exist. He also commented on the circumstances that led up to this case.

Boardmember Hitchens asked about the notification process for a case like this. Mr. Sheffield responded that adjacent property owners within 150 feet would need to be notified. Boardmember Hitchens also asked about the lot splits that have occurred on the property that may have contributed to the confusion. Boardmember Hitchens also asked about the survey. Staff member Wahid Alam explained that there were two surveys done, one by Mrs. Giguere and one by the City. Boardmember Hitchens further asked what the distance was from Mrs. Giguere's structure to the property line. Mr. Dunne responded that it is approximately 4 feet. Mr. Sheffield explained that the detached structure is in the rear one-quarter of the property and has some exceptions from the setbacks.

Boardmember Labadie asked what is south of the properties. Mr. Dunne responded that there is a three-story assisted living facility and another TCR-1 property.

Chair McCray asked about the uncompleted final inspection situation. Mr. Sheffield explained that the final inspection should not be a part of whether the variance is to be granted or not.

Boardmember Nativio felt that there seemed to be an honest attempt to build within the proper setbacks, but due to errors by Mr. Dunne and the City a mistake was made.

Boardmember Stradling stated that he was comfortable granting the variance if; (1) there is no overhang

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onto the adjacent property and (2) that there is no risk of drainage off the roof onto Mrs. Giguere's property. He further stated that he would be comfortable moving forward with these conditions.

Boardmember Labadie agreed that it would be possible to support the variance with the same conditions; however, he explained that if this request had come before the Board prior to being built he would not have supported it because it is too close. He explained that this point is causing him concern.

Boardmember Hitchens agreed that a variance of this degree would never have come before the Board if the structure was not already built. He stated he did not feel that an applicant would ever think that there was a chance of getting such a variance approved.

Vice-Chair Thomas stated that he could not support the variance. He explained that over the past two years the Board has not supported these types of requests and also felt that the estimates that Mr. Dunne provided were way too high.

Boardmember von Borstel stated that she could not support the variance. She explained that the Board must view requests as a plan on paper and not something that has already been built.

Chair McCray pointed out some issues and clarifications regarding the case. Discussion ensued between Boardmembers regarding the intent, and special circumstances. Chair McCray asked for a motion. Due to a tie vote there was more discussion among the Boardmembers that resulted in a second motion.

1st Motion: It was moved by Boardmember Nativio, seconded by Boardmember Stradling to approve BA10-010 with the following conditions:

1. *Ensure that there is no drainage of rainwater onto the adjoining property.*
2. *Adjust the overhang to be pulled back to applicant's property line*
3. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits.*

Vote: Failed, 3-3 (McCray, von Borstel and Labadie voting nay, Thomas left prior to vote)

2nd Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Nativio with the following conditions:

1. *Reduce the RV garage overhang so that it is two (2) feet from the property line.*
2. *Ensure that there is no drainage of rainwater onto the adjoining property.*
3. *Compliance with all requirements of the Building Safety Division with regard to the issuance of building permits*

2nd Vote: Passed, 4-2 (von Borstel and Labadie voting nay, Thomas left prior to vote)

Findings:

- 1.1** The subject property is located within the West 2nd Street Historic District in the Mesa Town Center Redevelopment area zoned TCR-1. The property/lot is 14,810 square feet in size and the original house was built in 1930. The Town Center Residential District, TCR-1 for single residence requires a minimum setback of 15 feet in front and rear and 5 feet on each side.

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- 1.2** In February of 2000 the applicant received a building permit # 189072 to build a RV garage and a semi-enclosed patio. The site plan submitted with the approved permit indicated an 8 foot side yard setback along the east property line.
- 1.3** At the time of construction it was determined that the 8-foot setback, in reality, was only 2 feet. Therefore the existing RV garage was encroaching into the required side yard for TCR-1 Zoning District. The building permit expired and the construction that had been initially authorized never received a final inspection.
- 1.4** After the construction of the RV garage, the City received complaints regarding the encroachment. The applicant requested a variance to resolve the existing RV garage encroachment into the required side yard.
- 1.5** The applicant's primary justification was related to a survey marker 8-feet west of the driveway apron that was mistaken as the property boundary. The justification also provided a history of the inspections that occurred for the addition without enforcement of the setback requirements. Further, the applicant provided evidence of a similar setback for a carport at 112 W. 3rd Place as evidence that such setbacks have been historically allowed.
- 1.6** In addition to the confusion related to the location of the boundary marker, the applicant notes that the location of the historic driveway and the location of the flood irrigation valve make it difficult to provide a straight approach path for the RV storage, and that several buildings within this historic district do not conform to standard setback requirements of the zoning ordinance, which were established several years after the residences in this neighborhood were built.
- 1.7** Additionally, the addition to this historic property, originally constructed in 1930, requires historic clearance from the City for its appropriateness in scale, context and character.
- 1.8** A recent survey conducted by the City of Mesa on October 13 & 14, 2009 resulted in the following:
 - 1.8.1** The northeast corner of the house/RV garage addition is 2 feet, 2 inches from the property line to the east; and
 - 1.8.2** The southwest corner of the house/RV garage addition is 1 feet, 9 inches from the property line to the east.
 - 1.8.3** The roof overhang of the RV garage addition encroaches into the neighbor's property to the east. The northeast corner encroaches by 0.084 feet, and the southeast corner encroaches by 1.25 feet.

* * * *

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A. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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