



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

March 21, 2019

CALL TO ORDER: Chairman Harris called meeting to order at 10:01 a.m.

ROLL CALL/
MEMBERS PRESENT: Mr. Abe Harris
Mr. Greg Loper
Ms. Wendy Riddell

MEMBERS ABSENT: Mr. Craig Cardon
Mr. Jason Morris

STAFF PRESENT: Ms. Jen Pokorski, Planning & Development Director
Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Glenn Bak, Planner
Mr. Farhad Tavassoli, Planner
Ms. Julia Jett, Administrative Assistant

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney

ANNOUNCEMENTS: Chairman Harris made all standard announcements.

APPROVAL OF MINUTES: December 20, 2018

AGENDA ITEMS: BA2018073, BA2019004, BA2019005, TU2018029

Ms. Jen Pokorski, the Planning and Development director announced Mr. Bob Swan is retiring April 1 and Mr. Wayne Peck will be the new attorney supporting the Board. She also has a special recognition for Member Riddell for her service on the Board.

Mr. Gerard said Member Riddell has served on the Board for a half decade. She has provided common sense leadership, and has kept the Board focused on the variance test.

Member Riddell said serving on the Board gave her a different perspective as a zoning attorney to sit behind the dais. She has enjoyed working with everyone and hopes they have done a little bit of good for the past half-decade.

Chairman Harris requested a motion for approval of the December 20 minutes.

BOARD ACTION: Member Riddell motioned to approve the December 20, 2018 minutes. Member Loper second. Approved 3-0.

Mr. Peck said since Member Loper wasn't present at the December 20 hearing Chairman Harris would need to second the motion to approve the minutes.

BOARD ACTION: Member Riddell motioned to amend the motion for the December 20, 2018 minutes. Chairman Harris second. Approved 3-0.

REGULAR AGENDA

BA2018073

Holmes Property

District 3

Applicant/Owner:

Joanna McBride, TR Architecture / Theoni & Curtis Holmes

Location:

3010 W. Feather Sound Dr. in the Anthem area

Zoning:

R1-35 RUPD

Requests:

Variance to permit:

- 1) Proposed terrace wall 2 feet from side (southeast) property line where 14 feet is the minimum required per R1-35 RUPD standards as approved with Z95-53 and;
- 2) Proposed hillside disturbance of 1,438 sq. ft. outside the lot's buildable area

Mr. Bak presented BA2018073 and noted the request fails to meet the statutory test.

Ms. Joanna McBride, the applicant, said last May she went down to Maricopa County Planning and Zoning and met with Martin Martell and Kevin Bischel in Engineering. She also spoke with Glenn Bak on several occasions regarding the pre-application and variance submittal. The house, the pool and patio were beyond the rear setback line, and the rear setback line was a random line that didn't reflect to what was in the zoning ordinance or the HOA. She thought maybe that was something they could adjust, and she didn't know why it was there. She also explained this to the various people she met with and showed them the sketch and explained they wanted to build outside of that line. They wanted the rear and side setbacks to be as they are from the HOA showing as the proposed setbacks. The HOA guidelines say its 18 feet for side yard setbacks and 28 feet for rear. She asked if they saw any reason why it would be an issue and nobody said it looked unreasonable. They suggested she submit for a pre-application meeting but first get a civil engineer to determine if the lot is hillside, and building outside of the building envelope is not allowed. She applied for the pre-application meeting and at that time no one ever mentioned adjusting those setbacks and that it was outside of the Board's authority. Never did anyone say that the plat had a note on it and said it can't be done. We had to apply for a re-plat but instead of applying for the variance she should have taken the time to apply for the re-plat instead.

Member Riddell asked if she has a civil engineer. Ms. McBride said yes.

Member Riddell asked what the civil engineer told you. Ms. McBride said they didn't say anything about the setback lines. They were asked a number of times to show the hillside disturbance, and they had to keep showing the hillside information.

Member Riddell said typically the consultants that you hire should be able to tell you what those setbacks are. Ms. McBride said they showed the setback line, but she wasn't aware there was

a note on the plat and the fact they couldn't adjust the setback lines was outside of the Board's authority.

Member Riddell asked when she says it was beyond our authority does she mean the pre-plat? Mr. Gerard said correct. There are RUPD zoning issues that vary the setbacks in this zoning district. The developer, Anthem by Del Webb delineated building envelopes on these plats specifically, and it's not part of the RUPD it's a separate issue. These aren't 15 percent hillside slope they are 10 percent, so it's different than the zoning ordinance.

Member Riddell said she would have to re-plot their lot to adjust the building envelope or modify it all together, and be under the new hillside ordinance. Mr. Gerard said to change the plat notes is a hundred percent sign off from all the lot owners of the plat.

Member Riddell asked for clarification. Mr. Gerard said it's just the single plat itself.

Member Loper said the lots within that plat.

Mr. Peck said all of the lots that are affected by that particular plat note would have to consent. If there's a hundred lots in the subdivision but the plat only covers 30 only those 30 would have to do it. An individual property owner cannot adjust plat notes. If there was a plat note specific to that lot, which is unusual but it does happen, then they could do that.

Member Riddell asked isn't that what we are talking about a note specific to their lot. Mr. Gerard said there's several lots that are at 10 percent slopes.

Mr. Peck said staff cannot offer legal advice, so if you raise a question about a variance they can tell you what the ordinance says, and even if they knew there was a plat note they could tell you how to re-plot, but for them to tell you to re-plot is outside of their expertise.

Ms. McBride said when they received the staff report it said asking for that is outside of the Board's jurisdiction. If it is outside of your jurisdiction why is she here? She could have saved a lot of time by just knowing that. Member Loper said there are two components to this, one is the setback variance which we absolutely can hear and the other is the note on the plat which we absolutely cannot.

Member Loper asked who enforces that. Mr. Gerard said the property owners.

Ms. McBride said when she initially started this she called the HOA and they said they would go along with what the County decides, so she felt she was on the right path. When she did the layout for the variance but she didn't design the entire house since she didn't want her clients to pay her architectural fees. She told her clients she will do a layout showing where the pool, the house, and the driveway will be and see if they get approved, and if they don't get approved they'll start over. If we were granted approval we would have 120 days to submit for permit and one year to complete construction, but it takes about six months to prepare construction documents for the permit, then go through the review time that's another month and a half. Then to squeeze all that into 120 days, it wouldn't happen. When they applied for the pre-application they submitted an estimated construction schedule of 18 to 20 months, so neither of those two deadlines would be met. As far as the terrace site wall goes, its two feet from the property line and the reason it is there is to serve as protection for the driveway edge. There's a

steep drop and it is necessary to have it. If the driveway is allowed outside of the building envelope then it would only make sense that those site walls would be allowed because they are necessary for the safety of the driveway.

Member Riddell asked are the setbacks notes on the plat? Mr. Gerard said there is a delineated building envelope and some of it is following the zoning RUPD setback lines and some of it is not, and some of it is separate from that such as the rear.

Member Riddell asked from staff's perspective, to build the plan we've seen here today the only variance required is what's reflected in this report. Mr. Gerard said no, to build what they have illustrated a third of it is outside the building envelope.

Mr. Peck said the only relief the applicant can get from the Board relates to the setbacks established in the RUPD. If you are to grant the variance, that would mean they could have the terraced wall two feet setback and not be in violation of the zoning ordinance. The other issue is perfectly acceptable for CC&R's or the developer to place more stringent requirements on a lot than the zoning ordinance. That appears to be what occurred here and they would have to go elsewhere to get that relief.

Member Riddell asked is the building envelope established through CC&R's or through the zoning. Mr. Peck said through the plat. How they enforce that we have no idea and that is really not our concern. That is something when they go build the house they are going to have to satisfy. They probably have three layers to get through, they have the ordinance, they have the building envelope on the plat, and according to the testimony there is a problem with the HOA as well. The Board can only handle one of those three.

Member Riddell said she is still perplexed about the building envelope on the plat. She said she recognizes we cannot modify plats and asked if that's standard on the plat, and are we seeking to vary that? Mr. Peck said we're not.

Member Riddell said that is how it was advertised, a hillside disturbance outside the lots buildable area. Mr. Peck said that's a zoning ordinance requirement. You can't disturb hillside outside the buildable envelope. The buildable envelope for that ordinance enforcement is it's created by the RUPD. Whether it lines up with the building envelope on the plat or not he doesn't know and it doesn't really matter.

Mr. Gerard said it appears the site plan that was submitted and prepared by an engineer there is hillside disturbance on this lot 15 percent or greater. The lot itself in several of these subdivisions they did building envelope delineations on the plat for lots that had 10 percent slopes or greater. In this instance, there is potential for the Board to approve two variances. One is for hillside disturbance outside the setback line, and that is separate from this disturbance that they want to do outside the delineated building envelope which they have no authority over.

Member Riddell said it seems staff would have approved the plat in conformance with the zoning stipulations so that building envelope theoretically matches the zoning stipulations. Mr. Peck said no because of the RUPD. There may be reason on particular lots, but the developer felt it was necessary to establish a building envelope that wasn't the same as the RUPD. It's a difference between doing it globally and doing it locally.

Mr. Gerard said that is correct, for instance the RUPD would have had a 20 foot rear setback, but these building envelopes are drawn however they are drawn it's just what the developer did.

Ms. McBride said it's that line that cuts across at that random angle.

Member Riddell said she understands her frustration. We can only address the setback requirements in the ordinance. The research shows us it's unrelated to what's shown on the plat and that's something she would have to address with Anthem directly. Mr. Gerard said or redesign, and there still are variances for hillside disturbance and the wall location.

Ms. McBride said if we can't do that she would have to redesign this layout.

Member Loper asked if the variance request are the site plans they have in front of them. Mr. Bak said what's on the monitor and also on page four of the report is the larger yellow area that you do not have the authority over. It is the lower portion of that of what's being heard today.

Ms. McBride asked if the driveway is allowed outside the building envelope, and is a site wall to the edge of it allowed as well. Mr. Gerard said they would view anything that is necessary for the safety of the driveway to be part of the driveway allowance. In regard to the variances, and respective to jurisdiction staff's recommendation is for denial. It is a big building envelope within its design.

Ms. McBride asked if the driveway is allowed outside the envelope and could it go to the yellow portion above the lot. Mr. Gerard said the driveway would be determined the shortest and safest route if it's in hillside, and it'll be based on an engineered plan. Anything associated with the safety of the driveway such as culverts and head walls and retaining walls are part of the driveway and could be in that disturbance area.

Member Riddell asked if a continuance would make sense, then she could go back and speak with Anthem and figure out what has to be done to modify the layout. Then she could be certain when she comes back before the Board, and you're asking the bare minimum of what you would really need. Ms. McBride said that would be helpful.

Mr. Gerard said an indefinite continuance would be appropriate.

Member Riddell said the applicant needs time to probably consult with legal counsel since these are pretty complicated issues to what's going on with Anthem and the plat.

Member Loper said he does believe there are hardships that exist with this site and he is willing to take positive action.

Chairman Harris asked the applicant which she would prefer to do. Ms. McBride said if there's a chance to get the setbacks the way it is listed in the HOA's guidelines, then they would prefer to have that layout but she would have to consult with her clients.

Chairman Harris said it would be a good idea to discuss this with your clients and Anthem. This will give you the time you need to do what is best for your client.

BOARD ACTION: Member Riddell motioned to continue indefinitely BA2018073. Member Loper second. Continued 3-0.

BA2019004

Gerhardt Property

District 4

Applicant/Owner:

Bill Gerhardt

Location:

8627 N. 193rd Dr. – 193rd Ave. & Olive Ave. In the Waddell area

Zoning:

Rural-43 RUPD

Request:

Variance to permit:

- 1) Proposed disturbance outside the principle building envelope where no disturbance is permitted (ref. Zoning case Z2000188)

Mr. Tavassoli presented BA2019004 and noted the variance request proposes construction of a CMU block fence outside the building envelope. The fence would be eight feet from the South property line and six feet from the north side, where requirement for side setback is 15 feet per the Rural-43 RUPD standards for Sonoran Ridge Estates. Staff believes the request does not result from an unnecessary hardship and fails to meet the statutory test.

Member Loper said he previously worked for a company that processed variances and amendments in Sonoran Ridge Estates 3, and he doesn't have any monetary or other interest in the property. He asked if he needed to recuse himself. Mr. Peck said this is a private homeowner seeking to adjust something for their benefit and he doesn't see that as a conflict.

Mr. Gerard said this building envelope disturbance is completely RUPD zoning related.

Mr. William Gerhardt, the applicant, said they started to put the fence in and the sides of the house are 50 to 60 feet long and the straight sides of the fence are virtually the same. This would give them close to 100 feet of lineal wall space on either side of the house. There's already been six other fence variances given in Sonoran Ridge Estates for similar situations. They are just trying to make it look nice from the street. The area they are encroaching upon is behind the house about 30 to 40 feet then it comes back in within the setback area.

Member Loper said he believes there's peculiar conditions with the property with the wash to the rear.

BOARD ACTION: Member Loper motioned to approve BA2019004 with conditions 'a'-'e'. Member Riddell second. Approved 3-0

- a) General compliance with the site plan stamped received February 7, 2019.
- b) All required building permit for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Any subsequent building permit(s) will need to include a sealed set of engineered Grading & Drainage Plans.

- d) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- e) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2019005	Kleber Property	District 4
Applicant/Owner:	Thomas Kleber	
Location:	6427 N. 186 th Ave. – 186 th Ave. and Maryland Ave. in the Waddell area	
Zoning:	Rural-43	
Request:	Variance to permit: <ul style="list-style-type: none"> 1) Proposed side yard setback of 23' where 30' is the minimum required 	

Mr. Bak presented BA2019005 and noted the request fails to meet the statutory test.

Member Loper asked if the addition of the addition causes the variance and the home itself is in compliance. Mr. Bak said the house is in the building envelope and it's not the entirety of the addition, it's a portion thereof.

Member Riddell asked if it's an accessory building. Mr. Bak said it is attached to the house.

Ms. Monica Kleber, the applicant, said last year her mom got sick and they needed to figure out how they can bring her to their house, but they needed another room. They looked at all the other options to where to put it, and their friend a contractor helped them figure out the best place to put it. They are asking for 23 feet where 30 feet is required. They do know they could build a casita five feet from the property line, but they can't have her mom in a separate place.

Mr. Thomas Kleber, the applicant, said if we build a casita in that area it would impede on the driveway going to the RV garage.

Ms. Kleber said they went to the HOA and got it approved, and if the variance gets approved they'll be starting the permit process to build this addition as soon as possible.

Member Riddell asked if they talked to the neighbor immediately to the south. Mr. Kleber said no they work odd hours so they took it to the Homeowner's Association meeting which most people show up and everybody there did not have any problem with it.

Member Loper said it looks like putting the addition on any of the other sides probably won't work. It's a corner lot so the front is the west versus Maryland Avenue being the front. He agrees there is a hardship that exists under the existing design of the lot and there's certainly a hardship with the familial with the mom.

Member Riddell said she agrees except for the familial part isn't necessarily a hardship, but having a frontage on all three sides coupled with the placement of the RV garage with the necessity to access that does create a hardship.

BOARD ACTION: Member Loper motioned to approve BA2019005 with conditions 'a'-'c'. Member Riddell second. Approved 3-0.

- a) General compliance with the site plan stamped received February 14, 2019.
- b) All required building permit for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

TU2018029	Johnson Property	District 4
Applicant/Owner:	Samantha Johnson	
Location:	28921 N. 259 th Ave. in the Wittmann area	
Zoning:	Rural-43	
Request:	1) Temporary Use Permit (TUP) for an RV for living quarters during construction of single-family residence	

Mr. Bak presented TU2018029 and noted there was one item of opposition received. Staff's recommendation is to approve the request.

Member Loper asked if they've applied for a building permit. Mr. Bak said yes, it's been issued.

Ms. Patricia Johnson, the applicant, said somebody has a problem with them living in an RV, and she doesn't know if it's stemming from another project down the street where they have been living in their RV for four years.

Ms. Samantha Johnson, the applicant, said they were told they have a junk pile, where they only have two vehicles and a large tractor parked on the property for construction, and a small dump truck and a flat bed. All the vehicles are licensed and insured. They have a couple of 10'x20' storage sheds on the property to store equipment. It's taken a year to get all the permits and to finally get started. By living there, it will make it easier to stay there and work instead of wasted time commuting.

Chairman Harris asked if they will be done in 18 months. Ms. Samantha Johnson said it should be done. They hired a contractor to come in to do all the sub-work so it should go a lot quicker.

Mr. Scott Delisser said he's not opposed to them living on the property, he just doesn't want this to drag on. He has a \$450,000 home next door and there is equipment and trash piling up and this is what he has to look at when he comes home from work. He is concerned about the value of his property and concerns of it dragging on and getting multiple extensions. He asked how long this will go on for 1-1/2 years, or 4 years like the other neighbor.

Member Riddell asked staff if they know what is going on with the other property taking 4 years. Mr. Bak said this is the first he's heard of it.

Member Riddell said perhaps staff could look into it to see if they are operating legally or illegally.

Mr. Gerard said building permits issued are valid for a year and if they pass inspections it is extended. Member Riddell said the Temporary Use Permit isn't. They are saying somebody is living in an RV on site for four years, not the construction of the home.

Mr. Gerard said we'll speak to them afterwards to make sure we are looking at the right parcel. Member Riddell said that would be a good idea.

Member Riddell said allowing them to construct for 18 months is reasonable and they're not getting an extension. If everybody works together and to make sure they don't have the 4 year scenario.

Member Loper said he is sympathetic to the owner to the north but there's a lot of vacant land around you and it's going to be developed. He is in favor of the temporary use, but he would like to offer a change to stipulation 'c' for two years. Things happen and if they get two years then they won't have to come back. If they only need 18 months everybody is happy.

Member Riddell said with a change from 18 months to 24 months she would like to know if the gentleman that took his time to come down here is okay with 24 months.

Mr. Delisser said if they are asking for 18 months then he doesn't know why you would add another 6 months? Member Loper said he would modify his motion to approve as is.

BOARD ACTION: Member Loper motioned to approve TU2018029 with conditions 'a' - 'i'. Member Riddell second. Approved 3-0.

- a. Development of the site shall comply with the entitled site plan, stamped received on January 14, 2019, consisting of 1 sheet, except as modified by any condition identified herein.
- b. Use of the site shall be in conformance with the Narrative Report and Supplemental Questionnaire, consisting of 2 pages, stamped received on August 31, 2018, except as modified by any condition identified herein.
- c. This Temporary Use Permit is authorized for eighteen months and shall expire on September 21, 2020. The Temporary Use Permit approval letter must be visibly displayed at the front of the property at all times. Failure to meet this display requirement shall result in revocation of the Temporary Use Permit if a Zoning Citation is issued.
- d. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with any condition.
- e. Approval of the Temporary Use is not an approval to construct. Prior to construction, development or use of the property, the applicant/owner shall obtain all necessary clearances and construction permits.

- f. All development and engineering design shall conform with the Drainage Regulation, Drainage Policies and Standards and current engineering policies, standards and best practices at the time of application for construction.
- g. Prior to zoning clearance approval, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from the appropriate Fire District, Department or Company servicing the site.
- h. Extension of an approved Temporary Use Permit shall only be extended by the Board of Adjustment upon submittal of a new Temporary Use Permit application. The Board of Adjustment may grant a one-time extension for up to two years with all requirements of the original Temporary Use Permit met and the applicant/owner provides justification for unusual or exceptional circumstances not of the owner's creation. Request for time extension must be applied for prior to the expiration of the current Temporary Use Permit.
- i. Upon expiration or termination of the Temporary Use Permit, the temporary use shall cease. Any temporary or mobile structures shall be removed within **ten days** of said expiration or termination. Any alterations to the principal or accessory buildings or structures should be issued permits within **ten days** and shall be completed and finalled within 30 days of expiration.

Adjournment:

Chairman Harris adjourned the meeting of March 21, 2019 at 10:59 a.m.

Prepared by Rosalie Pinney
Recording Secretary
March 21, 2019