



# BOARD OF ADJUSTMENT MARICOPA COUNTY, ARIZONA

205 W. Jefferson Street, Phoenix, Arizona  
and by GoToWebinar

**October 13, 2022**

## **Minutes**

### **CALL TO ORDER:**

Chairman Loper called the meeting to order at 10:02 a.m.

### **MEMBERS PRESENT:**

#### **In-person**

Mr. Greg Loper, Chairman

Ms. Fern Ward

#### **GoToWebinar**

Mr. Craig Cardon

### **MEMBERS ABSENT:**

Ms. Heather Personne, Vice Chair

Mr. Jeff Schwartz

### **STAFF PRESENT:**

Mr. Tom Ellsworth, Planning & Development Director

Mr. Darren Gérard, Planning Services Manager

Ms. Rachel Applegate, Senior Planner

Mr. Daniel Johnson, Planner

Mr. Joel Landis, Planner

Mr. Andrew Lorentzen, Planner

Mr. Martin Martell, Planner

Mr. Joseph Mueller, Planner

Mr. Nick Schlimm, Planner

Ms. Rosalie Pinney, Recording Secretary

### **COUNTY AGENCIES:**

Mr. Wayne Peck, County Attorney

Mr. David Anderson, Business Engagement Manager, OET

Ms. Pearl Duran, Technical Team

Mr. Martin Camacho, Technical Team

### **ANNOUNCEMENTS:**

Chairman Loper made all standard announcements.

### **AGENDA ITEMS:**

BA2022053, BA2022036, BA2022031, BA2022034, BA2022037,  
BA2022040, TU2022034, TU2022047, TU2022048

Mr. Gérard said item #5 – BA2022053 and item #9 – BA2022036 will be moved from the regular agenda to the continuance agenda. The applicants requested a 2-month continuance.

### **CONTINUANCE AGENDA**

**BA2022053**

**Thomas Property**

**District 4**

**Applicant:**

Michael Thomas

**Location:**

APN 211-45-296 @ 5943 E. Rancho Del Oro Ct. in the Cave Creek area

**Request:**

Variance to permit:

- 1) Proposed east side setback of 23' where 30' is the minimum permitted per MCZO Article 503.4.2

The property owner requested a continuance to the December 15, 2022 hearing. No action required by the Board.

**BA2022036**                      **Wise Family Trust (Cont. from 9/15/22)**                      **District 2**  
**Applicant:**                      Shaine Alleman, Tiffany & Bosco  
**Location:**                      APN 220-20-023J @ 948 N. Crismon Rd. – south and west of the SWC of Elmwood St. & Crismon Rd. in the Mesa area.  
**Requests:**                      Variances to permit:  
    1) Proposed lot 1 to be 21,776 sq. ft. where 43,560 is the minimum required and;  
    2) Proposed lot 2 to be 21,758 sq. ft. where 43,560 is the minimum required and;  
    3) Proposed lot 3 to be 18,661 sq. ft. where 43,560 is the minimum required and;  
    4) Proposed lot 1 width to be 142.8' where 145' is the minimum lot width required and;  
    5) Proposed lot 1 front yard setback of 11' to accommodate the existing dwelling unit where 40' is required and;  
    6) Proposed lot 1 side yard setback of 3' to accommodate the existing dwelling unit where 30' is required and;  
    7) Proposed lot 2 side yard setback of 22.3' to accommodate the existing dwelling unit where 30' is required

The property owner requested a continuance to the December 15, 2022 hearing. No action required by the Board.

### CONSENT AGENDA

**BA2022031**                      **MacKenzie Property**                      **District 4**  
**Applicant:**                      Douglas Ward MacKenzie  
**Location:**                      APN 219-16-116A @ 22929 E. Laurel Ln. – State Route 87 & East Pleasant View Rd. in the Fort McDowell area  
**Requests:**                      Variance to permit:  
    1) Rear (east) setback of 24' where 60' is the minimum permitted per MCZO Article 501.4.3 and;  
    2) Hillside disturbance of 5,454 sq. ft. outside of the lot's principal buildable envelope where prohibited per MCZO Article 1201.6.1.1

Mr. Gérard presented the consent agenda.

Chairman Loper asked if anyone from the public wished to speak on the consent agenda. None.

**BOARD ACTION: Member Ward motioned to approve the consent agenda - BA2022031 with conditions 'a'-'b'. Member Cardon second. Approved 3-0. Ayes: Cardon, Ward, Loper.**

- a) Variance approval establishes a 24' east (rear) setback line for APN 219-16-116A.
- b) Variance approval allows for 5,454 sq. ft disturbance of hillside outside of the principal buildable envelope for APN 219-16-116A.

**REGULAR AGENDA**

**BA2022034**

**Krespis Property**

**District 2**

**Applicant:**

Charles Nibley, ANCO Homes, LLC

**Location:**

APN 219-40-443A @ 30827 N 136<sup>th</sup> St. – 136<sup>th</sup> St. and Rio Verde Rd., in the Scottsdale area

**Request:**

Variance to permit:

- 1) Proposed lot width of 101.47' where 145' is the minimum required per MCZO 503.5.2

Mr. Mueller presented BA2022034 and noted the variance would allow the applicant to move forward with building permit B20226602 for a single-family residence. The applicant has failed to demonstrate there is a peculiar condition facing the property because the non-conforming lot width of 101.47' was created because of poor lot splitting practices. The subject parcel has been a part of four separate minor land divisions since 2017 which has resulted in a corner lot with a substandard lot width. The applicant has not demonstrated applying the requirements of Maricopa County Zoning Ordinance (MCZO) to this property that has these peculiar conditions and undue physical hardship exists because there are alternatives available such as recording a Non-Vehicular Access Easement (NVAE) along the western boundary of the parcel, which would alter the determination of the "front" lot line from the western lot line to the northern lot line. Doing so would render the lot width in conformance with the MCZO. The applicant has failed to demonstrate that the peculiar condition / physical hardship is not self-created because the lot width was a result of poor lot splitting practices.

Mr. Charles Nibley, the applicant said a letter was submitted by their civil engineer which state conditions of traversing the wash creates an unsafe condition. A complete drainage report was done on the property. The whole reason for the variance is to keep the access on the western side in accordance with the safety of the lot and safety of the downstream lots, and safety of the home. The civil engineer doesn't feel comfortable with designing access from the north to the south across the underlying wash.

Ms. Fotini Krespis said she is the property owner, and they sold their home in California and are in the process of selling their business and recently relocated here. Her husband has been dealing with health issues and is traveling a lot to see his doctors in California and has been a setback for the family.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Member Cardon said the wash is a good reason for a variance and without the variance this property becomes unusable.

**BOARD ACTION: Member Cardon motioned to approve BA2022034 with condition 'a'. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Loper.**

- a) Variance approval establishes a 101.47' lot width (with west lot line designated the front) for APN 219-40-443A.

**BA2022037**

**Goettl Property**

**District 3**

**Applicant:**

George Everland, Everland Engineering

**Location:**

APN 211-24-104E @ 33804 N. 3<sup>rd</sup> Dr. – Rock View Rd. and 3rd Dr. in the Desert Hills area

**Requests:**

Variance to permit:

- 1) Front (northeast) setback of 20' where 40' is the minimum permitted per MCZO Article 503.4.1.A and;
- 2) Side (northwest) setback of 20' where 30' is the minimum permitted per MCZO Article 503.4.2 and;
- 3) Height of 34' where 30' is the maximum permitted per MCZO Article 503.3

Mr. Landis presented BA2022037 and noted approving this request would allow for a 20' front setback from the northeast, a 20' side setback from the northwest, and a 34' maximum height on a hillside encumbered parcel to allow for the permitting of a new single-family residence and a detached casita on an RU-43 zoned parcel. The 'Homeplate' shaped lot was created as part of a parcel split in 2017. The applicant has chosen the northeastern lot line to be considered the front and has drawn a vehicular non-access easement along the northwestern parcel line. The proposed casita along the northwestern parcel line would be allowed without a variance as a detached accessory structure but parts of the proposed primary residence extend into this setback. The parcel is 100% encumbered by hillside conditions. In 2017, a different applicant applied and received a variance to allow for disturbance of up to 9,980 sq. ft outside of the buildable envelope for the development of the lot to the northwest and in preparation to develop the subject lot. The applicant for that variance did not request for any variances to any required setback standards and were intending to build within the existing RU-43 zoning standards. While that applicant did file and receive a permit to grade the site, they did not proceed with filing for building permits. This project does not meet the statutory requirement for a variance as the lot conditions were self-created in the line of title. The lot was created as the result of a poor lot split. Staff does believe development of the lot would be possible without a variance to meet the required setbacks and it would be a matter of designing to meet those setbacks.

Mr. David Goettl, the property owner said he and his family has been longstanding residents of Phoenix. He's served in the military for 21 years and has always maintained a home and raised a family in the North Valley. This hillside lot presents several obstacles, and the same obstacles were raised by the previous owners and applied for similar variances. They have a home design that is less disruptive and preserves more of the natural hillside landscape than the previous owner's plan. We met with the immediate neighbors and have their approval and need these variances to move forward with this design.

Mr. George Everland, the civil engineer said some of the neighbors had certain concerns which we met and are happy with the proposed design. We are asking to exceed the 30' height up to 34', and a flat roof was designed to maintain a lower profile and 252 square feet is why they are asking for the height variance. We shaped the house to fit the lot. The areas in the front were already disturbed under the previous permit. We are trying to preserve that area in those setbacks like the ordinance was intended, and to do that we need to ask for the front variances.

The lot was left disturbed by the previous owners, and it wasn't graded to plan. We will not be disturbing to what was already disturbed, and we are leaving the intent of the hillside ordinance by preserving that area. We aren't building a large house; it is 3,436 square feet of living space. We are just asking for 252 square feet for the height variance which will go from 4' to 0' and in the front 928 square feet.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Member Cardon said he did read the one letter in opposition. The applicant showed significant challenges with development and they are limiting the disturbance on the property to allow the natural state of the lot.

**BOARD ACTION: Member Cardon motioned to approve BA2022037 with condition 'a'-'c'. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Loper.**

- a) Variance approval establishes a 20' northeast setback line for APN 211-24-104E.
- b) Variance approval establishes a 20' northwest setback line for APN 211-24-104E.
- c) Variance approval establishes a 34' permitted building height for APN 211-24-104E.

<b>BA2022040</b>	<b>Morning Vista Homes Property</b>	<b>District 2</b>
<b>Applicant:</b>	Andrei Polukhtin, Morning Vista Homes, LLC	
<b>Location:</b>	APN 219-37-105F@ 28709 N. 158th St. – 158th St. & Brookhart Way in the Rio Verde area	
<b>Request:</b>	Variance to permit: <ul style="list-style-type: none"><li>1) Side (south) setback of 20' where 30' is the minimum permitted per MCZO Article 503.4.2</li></ul>	

Mr. Johnson presented BA2022040 and noted the request would accomplish a proposed custom single-family house to be built with an interior side setback of 20 feet. Staff received one letter in opposition from the property owner adjacent to the south with concerns over the reduced setback to their side of their property, citing privacy concerns. Based upon what the applicant has submitted and the staff analysis, staff finds that the request meets the statutory test for variance approval. The applicant has demonstrated that there is a peculiar condition facing the property in that the location of a wash running through the northern half of the property establishes a unique topographical challenge to the construction of a single-family dwelling, pushing the practical building envelope southward. The applicant has demonstrated applying the requirements of the MCZO to this property has a peculiar condition creating an undue physical hardship that prevents the development of the property. If the proposed dwelling were to observe the minimum setback requirement, and be further north, it would be located too close to the wash, and should the retaining wall fail, the house would be destroyed in the event the wash floods. The applicant has demonstrated the peculiar condition / physical hardship is not self-created in the line of title and has demonstrated that the general intent and purpose of the MCZO will be preserved despite the variance because the variance would allow for the sustainable development of a residential use on a Rural-43 property.

Mr. Andrei Polukhtin, the applicant said this is a nice area, but some lots are difficult to develop with multiple washes. The issues to be addressed is safety and sustainability. There is a huge wash

going through the middle of the lot. They plan to have a retaining wall 6 to 8 feet in height and the house is a few feet away from the retaining wall. The county had concerns with the safety and stability of the wall. The retaining wall might change the natural flow of the water. They obtained a second opinion from a geotechnical engineer and in his opinion, he said the wall is stable enough, but the house is imposing additional force on the wall. If something happens to the wall due to unforeseen geotechnical or hydraulic conditions, it would be catastrophic due to relatively short distances between the wall and the house. He suggested we move the house as far away as possible by 5 to 10 feet. The 10-foot variance will provide a buffer zone between the wall and the house and reduce or eliminate the risk of the house in the unlike event of failure or the retaining wall and will allow for preserving the natural flow channels. The code clearly promotes sensible and sustainable development of residential property, and without the variance the safety and sustainability cannot be achieved.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Member Cardon said he read the letter of opposition and they had concerns with preserving the 30-foot setback rather than allow the variance to 20-feet, and they don't want it moved closer to their own lot by 10 feet. The issue here is with the drainage and the wash and dealing with the flow of water and flooding.

**BOARD ACTION: Member Cardon motioned to approve BA2022040 with condition 'a'. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Loper.**

- a) Variance approval establishes a 20' (south) setback line for APN 219-37-099C.

<b>TU2022034</b>	<b>Nelson Laydown Yard</b>	<b>District 1</b>
<b>Applicant:</b>	Cody J. Nelson, Northstar Communications	
<b>Location:</b>	APN 304-76-015Z @ 15953 E. Lonesome Ln. – southwest corner of Greenfield Rd. & Lonesome Ln. in the Gilbert area	
<b>Request:</b>	Temporary Use Permit to allow for temporary construction office/yard complex for a period not to exceed May 31, 2023.	

Mr. Landis presented TU2022034 and noted approving this request would allow the continued operation of the Nelson Laydown Yard until May 31, 2023 per the terms of an executed compliance agreement between the County and Mr. Nelson to resolve an existing violation. The Nelson's have used this parcel as a laydown yard for the storage of construction materials related to their business. The active violation case was filed in 2019 for the running of their business on the parcel without proper zoning entitlements. The failure to comply with the terms of the compliance agreement led to a hearing judgment against the Nelson's in April of 2022 with the hearing officer ordering the Nelson's to obtain an Special Use Permit or remove all business property from the premises no later than November 28, 2022. In July of 2022, opposition from neighbors and the Town of Gilbert led to the Nelson's to withdraw the special use case. The Nelson's entered into a second compliance agreement in September of 2022 to allow for continued commercial operations while the Nelson's cleaned the property by removing all commercial business equipment, materials, vehicles, and items non-accessory to a single-family residence no later than May 31, 2023. It is staff's judgment that honoring the terms of the compliance agreement through the approval of the temporary use permit is the best path forward for all parties. Staff agrees this site is inappropriate for use as a laydown yard given its adjacency to denser residential subdivisions within the Town of Gilbert and rural zoned properties

within Maricopa County jurisdiction. Staff has put reasonable conditions on the usage of the yard, including limiting work hours, eliminating access and usage of the site beyond these work hours, and enacting reasonable penalties through the executed compliance agreement if these terms are not met. This will allow the Nelson's to wind down operations on the site and either seek appropriate entitlements or bring the property into compliance with the existing Rural-43 zoning standards. Staff will not support any continued use of this site as a laydown yard past May 31, 2023.

Member Ward asked if the hours of operations are from 7 a.m. to 5 p.m. Monday through Friday? Mr. Landis said yes.

Mr. Cody Nelson said they've been at this location for several years, and he did receive letters of support from some of the neighbors. The opposition had concerns with visibility when they pull in and out of the property. The business they provide are services for traffic signals, streetlights, communication towers and utilities. If there's an accident where streetlights go out and they help with fiber optics. They work from 6 a.m. to 6 p.m. unless there is an emergency response. The property is used for an equipment laydown yard to store all their equipment and the warehouse/office is located at a different location. Our primary goal was to get a 12-month Temporary Use Permit. The hours that were presented by staff are times during rush hour with a lot of families coming home. He requested those hours be expanded. This would benefit the traffic flow and the neighbors going in and out during rush hour. They posted signs with their contact information for the neighbors and any concerns will be addressed within 24 hours. It is their intent to be kind to the neighborhood and bring additional benefits with our presence that may not otherwise be available, such as security and neighborhood support. They have helped the neighbors with needs and projects in the neighborhood and want to be a good neighbor.

Member Ward asked how many entrances and exits to the property and which ones are used. Mr. Nelson said there is one to the north side to access Lonesome Lane which is a county road.

Member Cardon asked do they travel farther west on Lonesome Lane than the western property line with equipment. Mr. Nelson said only to assist a neighbor or help with the well, but usually never.

Member Cardon asked with this Temporary Use Permit everything will be done by May 31 or are you trying to preserve this use on the property. Mr. Nelson said it is not an ideal situation to have their office and yard in two different locations and they have been looking for another property for the past 2-1/2 years to consolidate operations. It is a tough market to find a property, and if it goes past May, they could possibly seek another TUP.

Member Cardon said another TUP would not be considered as he read in the staff report. Time was given to you to get the Special Use Permit to allow for this type of use, and the Temporary Use Permit is intended to be temporary. This will give you until May 31 to move to a different location. There are eight letters in opposition in the packet and it seems to be an uphill battle. Mr. Nelson said they have been looking for a different location, but the market is tough. They did look at a property yesterday and signed a letter of intent. It is a priority to have both of their operations in one location.

Member Cardon asked what hours they would propose. Mr. Nelson said 6 or 7 p.m. would make more sense instead of creating a bottle neck with traffic at 5 p.m.

Chairman Loper asked other than their emergency response, do they typically work Monday thru Friday. Mr. Nelson said yes, if a traffic signal goes out or an emergency fiber splice one truck and trailer would have to go out to help with that.

Ms. Carla Nelson asked is it still an option to get a Special Use Permit. Mr. Gérard said yes, but they would need to cease and desist the operation by May 31, 2023 or have an approved Special Use Permit.

Ms. Nelson said they will have the same number of trucks as it has been so there will not be an increase in traffic.

Mr. Ben Webb said he works with the Nelson's at Northstar. The emergency's they provide is for 911 first responders, fire, and police for these cell sites and they do not do any work at this location; they are picking up their truck and trailers and heading to the job site. Getting onto the property as early as possible is ideal, so it they don't interfere with the school and work traffic. They have been looking for property to combine both of their locations.

Mr. Eric Monroe said he is the neighbor closest to the site and lives north off Lonesome Lane. He is opposed to the TUP and extension. He has been monitoring this for over two years, and he would like a better dialogue, and has safety concerns with the site ingress/egress. An 18-wheel tractor trailer parks on Lonesome Lane and a forklift blocks Lonesome Lane in both directions. He also has concerns with the equipment damaging the road with the excessive weight. It is difficult for their trucks coming out of the yard to turn out and have clipped the trees on the subdivision property to the north. They provide a needed service, but this isn't in the right location. They erected a light pole fixture which wasn't permitted. This isn't a way to earn trust and good faith. He asked the Board to deny the request for an extension and he wants them to move immediately.

Ms. Erin Kitchen said she and her husband Mr. James Moss are speaking in opposition of the TUP. Mr. Moss said he's been a resident of Lonesome Lane for 42 years and grew up in this area. Lonesome Lane is a private driveway for the residents only. They have problems with getting in and out of their own driveway. The contractor trucks block the driveway daily which is a major safety issue and the trucks have been damaging the road. The residents paved that private road with their own money, and the Nelson's have made no attempt to repair it. They continue to bring in more trucks, equipment, people, and fuel up their trucks. They are in and out of their all day every day and it's become a huge safety issue. He is unsure if they have been paying to use the water from the private well. They are not a good neighbor, and he doesn't want them to have any extension of this TUP. All the neighbors are opposed to this.

Mr. Nelson said the comments are opinionated and not factual. He does have support from neighbors along Lonesome Lane.

Member Cardon asked about the big trucks parked on Lonesome Lane. Mr. Nelson said that has happened with delivery trucks delivering to the other businesses along Lonesome Lane. It has happened with us where they were unsure of the access since there are so many businesses along Lonesome Lane.

Member Cardon asked there are other business on Lonesome Lane. Mr. Nelson said yes.



Member Ward asked if they have a fueling station on the property. Mr. Nelson said it is a portable fuel cell unit and not a fixed unit. Approximately 5'x5' in size. Member Ward asked about the lighting. Mr. Nelson said they have lighting for security purposes and if they would have known it was a concern it could have been addressed.

Member Ward asked about the restrictions to have fueling station. Mr. Gérard said there will be construction safety codes on how it is placed on the property with spill containment.

Mr. Gérard said nothing that is out there today is permitted through the County for commercial operations. Industrial zoning with a Temporary Use Permit is what's needed and there would be paving and retention requirements. Before the use is properly established there would be a construction permit paving and grading that would authorize occupancy of the site for a commercial operation. Long term would be a Plan of Development and Special Use Permit with improvements that would coordinate with the Town onto the arterial. There is a zoning violation for this use without proper zoning entitlement on a rural/residential property. If the Temporary Use Permit is approved, we will conduct a site inspection to make sure they have removed everything after May 31. If the TUP is not approved, we have set up a schedule that the south half of the property must be cleaned by the end of February and around March 1 we would check if it's been cleaned. If not, they would not be non-compliant with terms of the Compliance Agreement with financial penalties and daily fines until that term is met. Then they would inspect the north half on June 1 to make sure that part of the site has been cleaned.

Chairman Loper said the Temporary Use Permit would allow them a few extra months to remain in operation. Mr. Gérard said yes and presumably be pursuing a Special Use Permit for the long-term operation.

Mr. Peck said the TUP will allow them to continue to operate, but they still must follow the contract. The reason for TUP is to hold off being penalized by the County while either they get off or get entitlement.

Mr. Nelson said he would like the letters from those in support be read that way both sides are equally heard. Chairman Loper said the letters were in the staff report and sent to the Board.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Chairman Loper said he is in support of small businesses, but this needs to be in a place with the correct zoning. He does support the Temporary Use Permit and the hours of operations could use some discussion.

Member Cardon said this use is too intense for this location and there is significant opposition. He did read the two letters in support from the property owners to the south and they don't use Lonesome Lane to access their property. The TUP will help them not to be penalized and will go until May 31 as an end date. He would not support any future Temporary Use Permit but does support this one to allow them to find another location and not be penalized. He recommends the hours of operation 7 a.m. to 6 p.m.

**BOARD ACTION: Member Cardon motioned to approve TU2022034 with conditions 'a'-'g' with modification to condition 'e' to change the hours of operation from 7 a.m. to 6 p.m. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Loper.**

- a. Development and use of the site shall be in substantial compliance with the entitled site plan, "Site-Plan-2", consisting of 1 8.5" x 11" page, received 9/13/22, except as modified by any condition identified herein.
- b. Use of the site shall be in conformance with the Narrative Report entitled, "Narr-Rprt-2", consisting of 3 pages, received 9/13/22, except as modified by any condition identified herein.
- c. This Temporary Use Permit is authorized for a temporary construction yard and shall expire on **May 31, 2023**. 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. The hours of business operation shall be 7am to ~~5~~6pm daily. No personnel will be allowed on-site and all lighting must be switched off outside of these hours.
- f. The property owner must abide by all conditions set forth by the compliance agreement signed on September 6, 2022.
- g. The site must be completely clear of all commercial related equipment and vehicles by June 1, 2023.

**TU2022047**

**Rodeo & Entertainment**

**District 4**

**Applicants:**

Heliodoro Arcos Gonzalez & Sonia Bustos

**Location:**

APN 504-13-021E @ 33250 W. Pima St. in the Tonopah area

**Request:**

Temporary Use Permit to allow for rodeo events on November 12, 2022

Mr. Schlimm presented TU2022047 and noted the parcel is approximately 6 acres and is currently vacant. Two prior Temporary Use Permits for rodeo events, were administratively approved on the site earlier this year. The proposed rodeo is planned for Saturday, November 12<sup>th</sup>, between the hours of 8:00 a.m. and 11:00 p.m., with up to 500 guests expected to attend. The applicants will have food trucks, sanitation facilities, tables, chairs, bleachers, and trash cans. A security company will be hired for the event and will assist with parking and traffic control. Parking will be provided on the western half of the parcel. Illumination will be provided, and overnight camping will not be permitted. The applicants are coordinating with the Buckeye Valley Fire District to provide first aid and fire protection for the events and are in the process of obtaining a Special Event Permit from MCDOT for access to County right-of-way. Staff received 3 letters in opposition and 6 in support. The letters of opposition express concerns over noise, pollution, traffic, late hours, inadequate security and facilities, and a general disregard for the concerns of neighboring residents. The letters of support attest that the prior events were well-organized and professional, with adequate amenities, security, and traffic control provided onsite. They did not experience issues regarding noise, traffic, or litter, and attest prior events provided a safe and family-friendly environment for the surrounding community. Staff believes the applicant has satisfied the requirements of the Zoning Ordinance for temporary events, and staff recommends approval.

Ms. Merari Votello said she is representing her uncle the property owner. They did read the letters of opposition and they do pick up as much trash as possible at night. They try to be respectful of the neighbors and have never had any incidents. They hire private security to help with traffic control, parking, and safety. They contracted with the Buckeye Valley Fire for paramedics in case of an emergency. They are insured for the event and follow the restrictions with the permit and are planning on gating the property before the November event. They also bring in water to keep the dust down.

Chairman Loper asked if anyone from the public wished to speak on this case. None.

Chairman Loper asked if the applicant is aware of the conditions for the TUP. Mr. Gérard read the conditions to the applicant. Ms. Votello said yes.

**BOARD ACTION: Chairman Loper motioned to approve TU2022047 with conditions 'a'-'o'. Member Ward second. Approved 3-0. Ayes: Cardon, Ward, Loper.**

- a. Development of the site shall be in substantial conformance with the entitled site plan, "Site Plan", stamped received September 9, 2022, consisting of two 8.5" x 11" pages, except as modified by any condition identified herein.
- b. Use of the site shall be in substantial conformance with the Narrative Report entitled, "Project Narrative", consisting of two pages, stamped received September 9, 2022, except as modified by any condition identified herein.
- c. This Temporary Use Permit is authorized for Heliodoro Arcos Gonzalez and Sonia Bustos for a temporary event, as outlined in the Narrative Report and pursuant to the conditions herein, for Saturday, November 12, 2022, only. 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 owners and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with any condition.
- e. This Temporary Use Permit is authorized for an event on the following date: **Saturday, November 12, 2022**, with a start time of 8:00 am and an end time of 11:00 pm. Changes in proposed dates shall be provided to staff at least two weeks in advance of the change in event dates.
- f. Traffic Control is the responsibility of the owners/applicants, who shall employ qualified personnel as required or necessary to control & direct traffic.
- g. No road closures/obstructions shall be permitted; and no signs or any other event related objects shall be placed within the public right-of-way unless a Special Events Permit is procured from the MCDOT Permitting Branch. (<https://www.maricopa.gov/499/Permits>).

Owners/applicants shall refer to Chapter 5 of the MCDOT Traffic Control Manual: Work Zone and Special Events.

(<https://www.maricopa.gov/DocumentCenter/View/300>) for more information.

- h. This Temporary Use shall in no way be construed to indicate the approval to construct any new buildings on site.
- i. Upon abandonment of the temporary use, the site shall be restored to its existing condition.
- j. Structures erected pursuant to an approved Temporary Use Permit shall not require a building permit if standing for a period not to exceed 96 contiguous hours. The responsible party shall provide the Affidavit of Structures for Temporary Events documentation, as specified in the Temporary Use Permit that said structures were erected and maintained subject to all applicable building safety codes and manufacturer's specifications. The documentation shall be provided to the Department within two working days following the end of the special event to be filed with the Temporary Use Permit. Failure to provide the required documents will render the Temporary Use Permit null and void and constitute a zoning violation in accordance with Chapter 15 of the Maricopa County Zoning Ordinance.
- k. The Temporary Use must be removed at the end of the approved time period. All temporary structures must be removed, and the site returned to its original condition or better upon completion of each event. No structures shall be erected more than 72 hours before the start of the event from which this permit is issued. All structures shall be removed within 72 hours following the end of the event for which this permit is issued.
- l. Prior to any event, food concessions shall be permitted by the Maricopa County Environmental Services Department (MCESD).
- m. Alcohol is not permitted on site unless a Liquor License is obtained through the Clerk of the Board.
- n. The applicants or property owners will be responsible for contacting their applicable emergency and fire protection agency for medical/emergency services and fire protection.
- o. The Temporary Event or Special Event shall adhere to the Board of Supervisors Resolution, December 1980 as applicable, which establishes guidelines and conditions for temporary uses. The following conditions shall apply:

#### Security

- 1. At least one patrolman or security guard for every 500 persons in attendance.

#### Access to Event

- 2. The applicant shall provide adequate ingress and egress to the premises and parking areas. Traffic guards shall be employed to ensure orderly traffic movement and relieve traffic congestion onto public rights-of-way.

Water and Wastewater

3. The applicant shall provide an ample supply of water for drinking and sanitation purposes. The quality and quantity of water and location of facilities shall be approved by the Maricopa County Environmental Services Department.
4. Supplemental toilet facilities must be provided for every special event. At least one closed toilet facility marked MEN and at least one closed toilet marked WOMEN shall be provided. A toilet for each 40 males and for each 40 females expected to attend the event may be required; the number and location of toilets shall be approved by the Maricopa County Environmental Services Department.

Concessions

5. Concessionaries must be licensed. The quality and quantity of food and location of concessions shall be approved by the Maricopa County Environmental Services Department.

Refuse

6. At least one trash can with 32 gallons capacity for every 25 persons expected to be in attendance shall be provided. Trash and refuse disposal shall be pursuant to procedures established by the Maricopa County Environmental Services Department.

Outdoor Lighting

7. Temporary uses conducted after dark shall provide lighting to ensure public areas are adequately illuminated. All outdoor lighting shall be shielded so that it is directed downward below the horizontal plane of the fixture and does not trespass onto adjacent properties.

Camping

8. No overnight camping is allowed with this Temporary Use Permit.

**TU2022048**

**Cowboy Mounted Shooting**

**District 5**

**Applicant:**

Carrie Hirshberg

**Location:**

APN 506-40-156A @ 3499 N. 359<sup>th</sup> Ave. in the Tonopah area

**Request:**

Temporary Use Permit to allow for training of area horse mounted shooting

Mr. Martell presented TU2022048 and noted the property owner is requesting the extension of a Temporary Use Permit that allows arena horse mounted shooting training in the Rural-43 zoning district. The current temporary use on this property was approved on May 19, 2022 and was determined by the Zoning Administrator at the time as an appropriate short-term temporary use not to exceed a six-month duration. In the interim the property owner was to obtain a Special Use Permit for long term zoning entitlement and the ongoing use on site. The property owner is a professional horse trainer/coach who specializes in training individuals to shoot firearms at targets while riding horses. The operation trains five to ten individuals per month and the lessons take place in an arena where the individual shoots two or three patterns in a 20 second practice run. Then the targets are replaced, and the rider reloads for another 20 second practice run takes place on the site. The training does not use live ammunition and will use only blanks which will eliminate the

percussion that emanate from live ammunition. Staff recommends denial of the requested TUP extension. Longer term zoning entitlement in the form of a Special Use Permit is appropriate for continued use and activity on site. Staff urges the Board to not consider an extension longer than three months. The SUP case is scheduled for the December Board of Supervisors. If the SUP is not approved the use and activity must cease and desist. Staff has received seven letters of opposition for this TUP extension and eight letters of support. The previous TUP administrative appeal was appealed by neighbors after it was approved. The temporary use presents concern for the residential harmony of the neighborhood. The ongoing use/activity should be subject of an SUP with robust public participation process to allow for a well-informed legislative decision by the Board of Supervisors. Staff is of the opinion the applicant has not satisfied the requirements of the zoning ordinance regarding temporary horse mounted shooting training, and staff recommends denial of the Temporary Use Permit.

Chairman Loper asked when the existing TUP expires. Mr. Martell said October 17. The SUP will go before the Planning and Zoning Commission in November and in December before the Board of Supervisors.

Chairman Loper asked if this TUP is not approved, they will need to cease operations until the Board of Supervisors take action. Mr. Martell said if this is denied today, the original TUP will expire, and they would have to cease and desist until the Board of Supervisors decides to approve the Special Use Permit.

Ms. Carrie Hirshberg, the applicant said live ammunition is never used in this sport, full loads are the certified ammunition used for Cowboy Mounted Shooting. She used to live in Mesa and would train there but then moved to Tonopah. There are many ranches in the neighborhood with several arenas and the area was created for equine sports plus there's an RV camp down the street. She didn't know there was a zoning ordinance for Cowboy Mounted Shooting and received a violation, so she ceased and desisted. She contacted the county to see what she needed to do to maintain her livelihood and was told to apply for a Special Use Permit. The SUP was going to be a long process and was told she can apply for a Temporary Use Permit which she did receive, but now her time ran out since the SUP process has taken a while. She is asking for an extension of 3 months. She explained to the Board the equine sport of Cowboy Mounted Shooting and the horsemanship aspect. The certified blanks of full loads reach 15 feet, and she will be using the half loads which only reach 10 feet. She competes and trains in many other disciplines and Cowboy Mounted Shooting is a family friendly sport. She promotes riders to be safe and effective. She does gun break the horses with a CO2 gun with a little compression 1 to 3 times a week. The guns hold 6 shots each for a total of 12 shots. She also does 3-hour clinics and 80 percent is dedicated to horsemanship and they will do dry fire drills to learn the patterns. Then the other 20 percent she sets up a course and her students will go through a stage once or even twice. She has been going through the proper steps, but the SUP process is taking a long time, and she only needs 3 more months. Ms. Hirshberg said she did go speak to some of the neighbors in opposition and said one lady in opposition was 'crazy' and she doesn't leave her house and she didn't believe what she said was true. She has closer neighbors than that and they can't hear the noise in their house. There are two other people in opposition with the same address, but they are violators with an illegal structure. They said their residence is 120 feet from her arena, but that's not true their property fence is 220 feet from her arena.

Chairman Loper said let's open the public hearing and hear from those that wished to speak and she will be given time for rebuttal.

Ms. Michele Holley said she is the direct neighbor from the Hirshberg's. Ms. Holley played a video of Ms. Hirshberg shooting in her arena displaying the gun fire that she can hear in her own home. This activity has been going on since the Hirshberg's moved in a couple of years ago. The Hirshberg horses are used to the noise of gun fire, but Ms. Holley said her horses are not. She has two young grandchildren and have said her house is scary because of the gun fire. This used to be a quiet community, and this is not appropriate in a residential neighborhood. Nobody should be used to hearing gun fire and she hears it constantly. The noise is very disruptive, and she is strongly opposed to any extension to this activity.

Member Ward asked how far away they live from the Hirshberg's. Ms. Holley said 140 feet and she can see them riding in the arena from her front porch. She is the direct neighbor right next door.

Mr. Jeff Friday said he lives northwest of the property. The dust, noise, traffic, and declining property values is his major concerns. In early June, Trevor Hirshberg knocked on his door and told him they stopped with the full loads and now only use the half loads. When they talked Trevor wasn't familiar with the dust in Arizona that will create a Valley Fever condition that affects children, adults, and animals. Mr. Friday said he expressed his concern with them using loud rap and rock n' roll music during their horse training and he was told it wasn't for the training it was to annoy the neighbor. That statement told him a lot about his character. The three neighbors to his right have young children and are opposed to the noise but didn't want to get involved. He hears the noise in his house and in his garage.

Mr. Jeffrey Ryan Clark said he is a neighbor close to Hirshberg residence. He has no interest in Cowboy Mounted Shooting and no interest in horses or farm activities. He understood when moving to Tonopah it is a horse community. When he moved in, he was unaware of this type of training taking place. He received a visit from a disgruntled neighbor that Cowboy Mounted Shooting was taking place and he was told he has a right to complain about it. He didn't know what he was talking about and wasn't going to complain about something he wasn't even aware of. He thought he lived in a community that supports activities like this and how can someone that lives further away complain about the noise. He believes this type of use should be allowed, especially in Tonopah, if not where else could it take place. It is the perfect place for activities like this. The dogs in the neighborhood bark 24/7 and is far more disturbing than a few hours of per week. The Hirshberg's have already done compromise and he hasn't heard any from the opposing neighbors. He supports the renewal of their TUP.

Chairman Loper asked if anyone from the public wished to speak on this case.

Ms. Anita Fogelsong said when she first heard the shooting, she was very disturbed, both her and her husband are retired and are home all day. They have lived in this neighborhood for 24 years and over time it's evolved into a horse neighborhood. She's not opposed to the Cowboy Mounted Shooting sport just the noise it makes and it's not a comforting sound to hear in her own home. The noise is very disturbing and raises their heart rate. There are also other retired horse-oriented people in the neighborhood.

Ms. Hirshberg said she is following the guidelines. The Holley's won't talk to her and come to a common ground. She is just asking for a 3-month extension and to continue her training until she gets her SUP. She is cognizant of the neighborhood and most of them can't believe they are getting opposition to this use in this type of neighborhood.

Chairman Loper asked is her main training the shooting. Ms. Hirshberg said she does other types of horse training, but she specializes in the Cowboy Mounted Shooting.

Chairman Loper asked what time she trains during the week. Ms. Hirshberg said she doesn't shoot before 8 a.m., but if she has a clinic, they start at 7 a.m. and usually don't start shooting until 9 a.m. until 10:30 a.m. She shoots 0 – 3 times per week. She is willing to go less than half-loads if needed.

Member Ward said she also lives on horse property, and she didn't like how she talked about the house bound neighbor; this is the person to be concerned about. Ms. Hirshberg does other types of training, and she is inclined to deny this. This is a residential neighborhood, and she doesn't believe you should be shooting in a neighborhood.

Member Cardon said it is unfortunate this is dividing the neighborhood. The TUP is supposed to be temporary and not a long-term solution. A Temporary Use Permit was already granted, and they went as far as they did with the Special Use Permit, but it is not done yet. This will be resolved with an SUP and he's not in favor of extending the time of the TUP.

Chairman Loper said there was a time Tonopah was low density but there's been a lot of homes being developed. This is a residential neighborhood, and the homes are built close to each other. The gunfire doesn't personally bother him, but today random gunfire peaks everyone's attention. He is glad they are seeking an SUP, but it doesn't involve this Board. He is in favor of the extension timed to the decision on the SUP. He appreciates the neighbors coming and speaking and encourages the applicant to continue to work with the neighbors and come up with some common ground.

**BOARD ACTION: Member Ward motioned to deny TU2022048. Member Cardon second. Denied 2-1. Ayes: Cardon, Ward. Nays: Loper.**

**Adjournment:** Chairman Loper adjourned the meeting of October 13, 2022 at 1:18 p.m.

Prepared by Rosalie Pinney  
Recording Secretary

October 13, 2022