



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

January 23, 2020

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

MEMBERS PRESENT: Mr. Jason Morris
Mr. Greg Loper
Ms. Fern Ward

MEMBERS ABSENT: Mr. Craig Cardon
Mr. Jeff Schwartz

STAFF PRESENT: Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Eric Smith, Planner
Mr. Sean Watkins, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney

ANNOUNCEMENTS: Chairman Morris made all standard announcements.

AGENDA ITEMS: BA2019052, BA2019056, BA2019059, V201901149, BA2019054,
BA2019055, BA2019057, BA2019014

APPROVAL OF MINUTES: December 19, 2019

Chairman Morris said this will be his last hearing and requested the election of officers for 2020.

BOARD ACTION: Member Ward motioned to elect Vice Chairman Loper to Chairman for 2020. Member Morris second. Approved 3-0.

BOARD ACTION: Chairman Loper motioned to elect Member Ward to Vice Chair for 2020. Member Morris second. Approved 3-0.

Chairman Loper requested a motion to approve the December 19 minutes.

BOARD ACTION: Member Morris motioned to approve the December 19, 2019 minutes. Chairman Loper second. Approved 2-0.

CONSENT AGENDA

BA2019052
Applicant:

Hinkes Property
Cynthia & Michael Hinkes

District 2

Location: 43820 N. Beeline Hwy. – 2,000' north of the NWC of Beeline Hwy. & Whitney Lane in the Goldfield Ranch area
Zoning: Rural-43
Requests: Variance to permit:
1) Existing lot width of 31' where 145' is the minimum permitted, and
2) 3,942 sq. ft. of existing Hillside disturbance outside the building envelope and not associated with a driveway where no Hillside disturbance is allowed outside the building envelope

BA2019056 **McNeil Property** **District 2**
Applicant: Jim McNeil
Location: 21511 E. Northwood Pass – in the Goldfield Ranch area
Zoning: Rural-190
Requests: Variance to permit:
1) Proposed front yard (west) setback of 5' where a minimum of 60' is required for an accessory structure (RV garage) and,
2) Proposed additional driveway for RV garage access where only one combined parking area entrance and exit (driveway) is allowed

BA2019059 **Snead Property** **District 4**
Applicant: Rhett Webb, Kowalski Construction, Inc.
Location: 10023 N. 109th Ave. in Sun City
Zoning: R1-6 RUPD SC
Request: Variance to permit:
1) Proposed front setback of 16' where 20' is the minimum permitted

Mr. Gerard presented the consent agenda.

BOARD ACTION: Member Morris motioned to approve the consent agenda - BA2019052 with conditions 'a'-'c', BA2019056 with conditions 'a'-'c', and BA2019059 with conditions 'a'-'c'. Vice Chair Ward second. Approved 3-0.

BA2019052 conditions;

- a) General compliance with the site plan stamped received December 3, 2019.
- b) Obtain permits and complete construction for all existing and proposed Hillside disturbance and all other construction currently proposed on the property that requires permitting. Failure 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.

BA2019056 conditions;

- a) General compliance with the site plan stamped received January 14, 2020.

- b) All required building permits for the proposed and existing 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 permits 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.

BA2019059 conditions;

- a) General compliance with the site plan stamped received December 23, 2019.
- b) Failure 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.

CODE COMPLIANCE REVIEW

V201901149	Code Compliance Review
Respondent:	Reid Stewart
Location:	47840 N. 31 st Ave., New River, AZ 85087 (Parcel 202-11-068J)
Request:	Appeal of the Hearing Officer's Order of Judgment

Mr. Gerard presented V201901149 and noted the respondent has verbally cancelled the request, but staff has never received anything in writing. The case was opened June 10, 2019 due to citizen complaint for alteration of a natural wash and junk, trash and debris on the property. The violation was verified on June 18, and a Notice of Order to Comply was mailed. The case was set for administrative hearing on September 26, 2019. The hearing was cancelled and was rescheduled for November 14. The respondent and his son attended the hearing and the hearing officer found the respondent responsible for the violation and was ordered to pay \$100 non-compliance fine immediately, and daily non-compliance fine of \$30. The initial non-compliance fine was paid on December 13, 2019 and the site had been brought into compliance prior to the judgment deadline. No additional fines are due and the matter can be closed. The hearing officer made a finding of fact and reached his conclusion pursuant to the ordinance. The Board may affirm the hearing officer's order of judgment, or remand it to the hearing officer due to finding of a procedural error. There are no administrative or procedural errors. Staff recommends the Board affirm the hearing officer's order of judgment, and after today's action the violation case can be closed.

BOARD ACTION: Member Morris motioned to affirm V201901149 the Hearing Officer's order of judgment. Vice Chair Ward second. Affirmed 2-0-1 (Loper abstained).

REGULAR AGENDA

BA2019054	Foti Living Trust Property	District 2
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Applicant: Dennis Husted, P.E., Husted Engineering
Location: 14016 E. Villa Cassandra Dr. – 139th Way & Villa Cassandra Dr. in the Rio Verde area
Zoning: Rural-43
Request: Variance to permit:
1) Existing 1,075 sq. ft. of Hillside disturbance outside the principal building envelope where no Hillside disturbance outside the building envelope is permitted

Mr. Watkins presented BA2019054 and noted there is an open violation on the property for grading and culvert without the benefit of permits. This variance is pursuant to resolving the open violation. There is no known opposition and staff could not recommend approval based on the technical merits. The single-family residents was built in 2009, and the aerial photography shows that unpermitted 1,075' of hillside disturbance occurred between November 2009 and October 2010. The current owners purchased the property in November 2016, and the violation associated with the property came in October 2018. A grading permit - B201903097 was submitted, and that's when the hillside disturbance became known. The variance request was received in December 2019, and the site has been posted. Based on the technical merits of the case staff cannot recommend approval.

Chairman Loper asked if engineering had objection to this, and if the culverts they put in were fine with no adverse impact on adjacent properties. Mr. Watkins said correct. Staff did receive an e-mail from a neighbor in regards to the posting. The e-mail was discussing that one of the culverts extends off the subject property and on to a neighboring property, but that is a civil matter and it's not directly related to this variance.

Mr. Gerard said our engineering group is looking into that matter to see if there is any authority regarding changes to the culverts. This is separate matter, and it's on the other side of the property.

Ms. Carol Foti, the applicant said during a community meeting with the fire department they suggested in order to keep our property safe we should remove 100 feet of brush. The property to the north of us is all brush, and there's no homes on those two parcels. If a fire starts in that area it will be very dangerous situation. The fire department is not located near them and they do not have fire hydrants. They live six miles from Rio Verde Drive and the fire department is on 168th Street. A fire would be very detrimental, and that is the reason this was done for a firebreak.

BOARD ACTION: Vice Chair Ward motioned to approve BA2019054 with conditions 'a'-'c'. Member Morris second. Approved 3-0.

- a) General compliance with the site plan stamped received December 10, 2019.
- b) Obtain permits and complete construction for all grading and construction that has occurred and any other grading and/or construction on the property that requires permitting. Failure to complete necessary construction and permitting, 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.

BA2019055

LaCasse Property

District 4

Applicant:

Robert LaCasse

Location:

15014 W. Heritage Dr. – 151st Ave. & Heritage Dr. in the Sun City West area

Zoning:

R1-7 SC

Request:

Variance to permit:

- 1) Proposed front setback of 14' where 20' is the minimum permitted

Mr. Smith presented BA2019055 and noted there is no known opposition or support. This property developed as a single-family residence in 1989. The applicant proposes a workshop for a car restoration area at the front of the residence with a front setback of 14 feet where 20 feet is required. Staff cannot support the request because the applicant has not provided a hardship nor peculiar circumstance.

Mr. Bob LaCasse, the applicant said he purchased the property because he wanted a garage and it was a large lot. When working with Sun City West Property Owners and Residents Association (PORA), they were telling him he could have a garage in the backyard, and that is where he really wanted it. They told him he needed a 10-foot setback, but in Sun City West you are required to attach any building to the existing structure. He went ahead and purchased the property. As he worked with the County staff, Farhad told him if it is attached it has to be 25 feet from the property line. The second option was with that entire frontage, so he got a plot map of the property. There was a gap between what is considered his property line and the sidewalk. PORA said 20 feet from the backside edge of the sidewalk you cannot build on. Then he figured he could do a front garage. After more research with a builder, he then discovered an 80-foot easement for a roadway that nobody told him about and now he can only do an 18-foot garage. He has 25 or 26 feet of driveway in front of that addition, and that would not affect a sidewalk or roadway.

Member Morris asked what is the total square footage of the addition portion in the setback. Mr. LaCasse said it would be six feet into the setback.

Chairman Loper asked if staff received anything from PORA on this case. Mr. Smith said no.

Chairman Loper asked is Heritage Drive a collector roadway or simply a residential roadway. Mr. Gerard said it appears to function as a local street and there is an 80-foot full width right-of-way dedication.

Member Morris said he did not see any letters of support or opposition from the neighbors, and asked if there was any contact from the neighboring property owners. Mr. LaCasse said after the signs were posted, the neighbor to his east came and looked at it and he never made any comments. His concern was with the neighbor to the west because it is right next to his driveway. He told the neighbor if you do not want me to do this to let him now, so he does not waste \$400 and a bunch of people's time. He was fine with it.

Chairman Loper said he would be more comfortable if they had something in writing from PORA and the property owner to the west. There is another remedy to this and that is seeking abandonment of six feet of right-of-way in front of the property. It is an administrative process from MCDOT and it goes to the Board of Supervisors for approval, but it takes a couple of months.

It is tough for him to see a hardship if there are other options available. You can get something from PORA and the neighbor to the west, but when you talk to PORA you can see what stance they will take if you abandon six feet of right-of-way or all the way to the back of sidewalk.

Member Morris said with his experience with MCDOT if there is any interest in abandoning that, they would probably want a joint application with other homeowners in the area, or they would simply say they're not interested. In either event, the Board would weigh that as part of justification.

Chairman Loper said he recommends a continuance for one month.

BOARD ACTION: Member Morris motioned to continue BA2019055 to the February 20, 2020 hearing. Vice Chair Ward second. Continued 3-0.

BA2019057

Curry Storage

District 1

Applicant:

Keoki Enlow / Rincon Partners

Location:

935 E. Curry Road - Scottsdale Rd. & Curry Rd. in the Tempe area

Zoning:

IND-2 IUPD

Requests:

Variance to permit:

- 1) Proposed wall sign that is not on an arterial, secondary or local road as required, and
- 2) Proposed wall sign face area of 177.7 sq. ft. where 120 sq. ft. is the maximum permitted, and
- 3) Proposed wall sign height of 48' where 40' is the maximum permitted

Mr. Smith presented BA2019057 and noted there is no violation or no known support or opposition. The site is part of the Fruitland Farms, Lot 3 on the north side of Curry Rd., approximately 1,000' north of the Loop 202 Red Mountain Freeway, and 270' east of Scottsdale Rd. The site has been developed with a three-story structure with basement under permit B201811520. The property slopes downward from north to south. The subdivision is primarily industrial and developed with existing commercial uses and a few residences. No peculiar topographical conditions are present on the property, where the application of the zoning district requirements imposes a hardship to the property that warrants relief. Staff understands the request, but the ordinance specifically states building wall signs are to be located in the front of the building along an arterial, secondary or local road, to be no higher than zoning requirement of 40' limit and the face area of the sign is limited to 122 sq. ft. Such deviations from the base IND-2 development standards should've been addressed with the site's IUPD overlay. The request fails to meet the statutory test for variance approval.

Mr. Jason Ottman, the applicant said the photos presented do not do them justice; there is a building on the site today. They have been constructing a 100,000 sq. ft. storage facility for the preceding nine months. They are in the process of seeking the certificate of occupancy later this month and opening the first week of February. That is why they have a request for a sign. A number of signs received approval and staff flagged the sign in question because it deviated from the standards. In the narrative, we noted arguments as to why we felt we satisfied the two requirements necessary. A peculiar condition is creating a hardship and not creating a condition that goes against the intent of the zoning district. The massing of our building compliments the industrial nature of the neighborhood. It is a large rectangular building, three-story in height,

approximately 40 feet along Curry Road. Because of the sites topography, the building actually grows in height and that's where we requested a sign height of 48'. The building looks a lot like an industrial structure, but we operate as a retail business. We will have customers trying to locate our site, and people who are traversing the area. For those reasons, the sign is very important to us. Most industrial uses are being trafficked by large trucks not by retail consumers. The absence of the sign will create a hardship to the business, because people won't be able to identify that our business is there and open. It will also make it difficult for customers to find our location. For those reasons, they find a variance is justified.

Member Morris asked if he could expand on the topography and how it would impact the height of the building or the visibility of the sign. Mr. Ottman said they have 12 feet of fall from the north end of the site along Curry Road to the south end of the site. Gently sloping terrain feeds down into the Salt River before the dam was there, and that topography exacerbates the height of the building at its rear face. Our building height is 40 feet along Curry Road, and if you take that same elevation above being sea level, that becomes 48 feet at the south end of the building because the topography is changing so significantly.

Mr. Gerard said there was an IUPD overlay zone applied to this property last year, and staff considered that to have very de-maximum building height because of the slope. The building height is higher than the base-zoning district normally allowed. The zoning ordinance itself limits building wall signs to the maximum height permitted on the base-zoning district. In order to include that, the IUPD would have to be called out as a varied development standard. This proposed sign was not be part of the IUPD, and it could be part of an IUPD amendment. This site is not adjacent to the freeway and the frontage is Curry Road.

Ms. Darlene Justice said she lives in north Tempe, there is an effort right now in the County Island where lots are being assembled, and there is hope for annexation at some time. She is concerned putting in a sign that could be like a billboard and it would be facing other lots that are going to be developed there. The neighborhood did support this business and we are glad they are coming in. They are not along Gilbert Road, which would be close to the 202.

Chairman Loper stated the 202 is elevated and the overpass over Scottsdale Road has better visibility then if it were at grade. Mr. Gerard said it is an elevated freeway along this segment.

Chairman Loper said it slopes from Curry Road substantially going to where the 202 is, and asked does Scottsdale Road at the 202 is lower than it is at Curry. Mr. Gerard said that is correct.

Member Morris said this is not about visibility of the freeway so much, this is more about visibility for a buried parcel in an area that has an unusual lot split non-platted area on this County Island.

Member Morris asked if there is any access from Scottsdale Road or is the access from Curry Road. Mr. Ottman said the only access points are on Curry.

Member Morris said he can see where the applicant is coming from. If we have some signage that is visible because the parcel is buried and the odd platting in the area and topography. It does make sense to put the sign at that height and perhaps make it more visible because they are not a Scottsdale Road frontage parcel. It all makes sense from his standpoint and he can see the hardship.

Member Morris said this is an IUPD and ideally, this would have been included in the original IUPD. He asked is this something staff would recommend if it were part of the IUPD. Mr. Gerard said he has not had any contact with the applicant, and it was not part of the IUPD. The IUPD is a legislative matter, and it can be negotiated with neighbors and can seek support. It is not just simply the statutory test of whether or not we should allow the back of the building to have a sign.

Member Morris said Ms. Justice has been a stalwart in this part of the city and probably has done more for the neighborhood than anybody else has. He gets the sense that Ms. Justice and her group was supportive of the original IUPD that permitted this use, and it is unfortunate this sign variance wasn't included as part of this IUPD. Given the slight modification, this may be the most efficient way to address it.

Chairman Loper said he echoes some of the concerns about addressing IUPD standards through a variance yet there are hardships on this particular property due to topography and the placement. It wouldn't be the first time someone constructed something and realized how it fits in the character of an area and something else is needed. He is torn on altering an IUPD and has a sense that the outcome probably would not be substantially different.

Vice Chair Ward said she does not like big signs, but she also understands the hardship of it being buried at Curry and not being able to see it from the surrounding areas.

BOARD ACTION: Vice Chair Ward motioned to approve BA2019057 with conditions 'a'-'c'. Member Morris second. Approved 3-0.

- a) General compliance with the site plan stamped received December 23, 2019.
- b) Failure 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.

BA2019014	XLNT Investments, LLC (cont. from 6/20/19)	District 1
Applicant/Owner:	Timothy A. La Sota, PLC / XLNT Investments LLC	
Location:	825 N. Scottsdale Rd. – approx. 400' south of Curry Rd. in the Tempe area	
Zoning:	IND-2	
Requests:	Variance to the development standards to permit: <ul style="list-style-type: none">1) A proposed medical marijuana dispensary and cultivation site to be separated 251' from an existing medical marijuana facility and;2) A proposed medical marijuana dispensary and cultivation site separated 1,294' from an existing park and;3) A proposed medical marijuana dispensary and cultivation site separated 83' from an existing adult oriented business where 1,500' is required per MCZO	

Member Morris recused himself from this item due to a conflict of interest.

Mr. Gerard presented BA2019014 and noted this case was continued from the June 20, 2019 hearing. The variance request is for a proposed medical marijuana dispensary and cultivation site to be separated 251' from an existing medical marijuana facility and a 1,294' from an existing public park, and 83' from an existing adult oriented business where a 1,500' minimum separation is required from those critical uses. The site is zoned IND-2, and is located in the North Tempe County Island. There are seven letters of opposition and one additional handout letter of concern from Mr. Anton a neighboring property owner. The request fails to meet the statutory test for approval. There are no peculiar topographical conditions present on the property such that applying the requirements according to its terms would impose any hardship to the property that warrants relief from the separation standards. The applicant's argument would appear to be that the size of the property presents a peculiar condition, but staff notes the lot size does not constitute a valid argument to support the request. The lot size is well over the minimum 6,000 sq. ft. permitted in industrial zoning district. IND-2 allows for commercial uses and the property has been used in accordance with the IND-2 requirements for many years. The Staff recommendation was for denial of all three (3) variances.

Mr. Tim La Sota said he is here on behalf of the applicant and Mr. Eric Borowsky, one of the principals of JD's River Bottom wishes to speak.

Chairman Loper asked staff if the other approved medical marijuana site to the south open. Mr. Gerard said that is correct, the Certificate of Occupancy has been open. There is a redevelopment proposal going through.

Mr. Eric Borowsky said he is one of the two members of JD's River Bottom LLC. His son Todd is the other member of the LLC. In late 2018, they leased the building at 825 N. Scottsdale Road Scottsdale Road was a very narrow road but, today it has been widened into six lanes, and that is one of the things that has created a hardship on this building. As Scottsdale Road got wider, it encroached on the property. The parking that used to be substantial enough for a major nightclub was gradually eroded over time. The owner of the building XLNT Investments purchased the building 30 years ago, reconstructed it, and operated a furniture manufacturing business. The building is very unusual, it is approximately 10,000 feet at ground level on Scottsdale Road, and there is 10,000 square feet basement. This property is difficult to use for many applications. After the owner retired and closed the furniture business, he had great difficulty finding a tenant for the building because of the lack of parking and basement. His son talked to the owner with the idea of leasing the building, applying for a variance for a medical marijuana dispensary, and to have the growing facility down in the basement. The owner agreed and we leased the building.

Mr. La Sota said zoning is fundamentally about fairness. The Department of Health Services (DHS) said we need a third dispensary in this North Tempe Community Health Analysis Area (CHAA) and we would be the third dispensary. We do not know what is going on with the other dispensary. We added a third variance because according to staff, that other marijuana facility is an approved use and we need a variance from that location. Papago Park is 1,300 feet away from this site and there is quite a bit of distance from JD's. Variance 2 and 3, the Dream Palace and the other dispensary. We do have a letter of support from the Dream Palace owner who talks about a number of the challenges that face businesses in this County Island. The peculiar condition on the property is we have a very small parcel, and Mr. Borowsky talked about that. The parcels and area are very challenging, and there has been hope for this area to be annexed by somebody for many years. It is zoned industrial and the uses are airports, aircraft sales, dairies

and farms. The existing building has very few uses and the hope is we repurpose it into a medical marijuana dispensary. He knows the Board will hear from a competitor, and he thinks what the Department of Health Services has to say is more important than the concerns of another dispensary. The County staff did talk previously about some of the concerns with the North Tempe CHAA, and those concerns remain. There are only two dispensaries in the North Tempe CHAA. DHS says we can use a third dispensary and it is an area where there's demand. The building configuration is very challenging for this day and age and the prospects of redevelopment are minimal. The ramp that comes in can only accommodate light pickups. The space is very cramped and very little space. The frontage on Scottsdale Road is contrary to the way it used to be. The unnecessary hardship is the current uses are limited. There is far fewer negative impacts with this type of use than other uses and the letter from Dream Palace talks about the challenges getting good neighbors in here and asks approval of this dispensary. We want to repurpose the building and make a dispensary out of it. We request the Board approve all three variances, and request the vote be separate for each of the three variances.

Mr. Gerard said the separation requirements in the ordinance are the same as adult oriented businesses, and medical marijuana dispensaries are permitted by right in commercial industrial zone, subject to those conditions. It is just consistency in the ordinance. Mr. Gerard noted one of the slides shown in the presentation was a quote from him, and for clarification, it appears to be an excerpt from the hearing minutes. In context, he is summarizing the applicant's presentation for a motion that was being made; it is not the staff analysis.

Mr. Peck said he would like to correct some things, there was no condition imposed on the other variance that a 12,500 square foot building be constructed. The condition in almost all variances, it be in substantial conformance with the submitted site plan. Counsel's quote that zoning is about fairness, variances are about statutory tests. He has concern with what was heard, the presentation was about the use of the building. In fact, law prohibits you from granting variances that allow a use that otherwise does not go there. The Board has to decide if based on a peculiar condition of the land, and applying the strict requirements of the ordinance would create a hardship. The presence or absence of a building is irrelevant. The presence or absence of a similar variance on other pieces of property is also irrelevant. Each variance must stand on the land for which it is applied. There was an argument about other municipalities not having these same requirements. The Board does not have the jurisdiction to decide whether an imposed condition by the Board of Supervisors is a good condition or a bad condition, you have to take that as the ordinance. You must take the other dispensary as existing and Mr. La Sota apparently does not agree. He has two options either staff improperly applied the requirements of the ordinance in which case he can file an appeal in court, because this Board has no jurisdiction over the application of the ordinance by the staff. Or he feels that the staff misinterpreted the ordinance in which case you would have jurisdiction, but they have to file an application for an interpretation, which they have not done. He needs the Board to focus on what their job is as the Board of Adjustment.

Mr. Ryan Hurley said he is here on behalf of the Holistic Patient Wellness Group, which does business as Sol Flower Dispensary on McClintock Drive, north of the 202. They are a DHS licensed dispensary operating in that location since July. His primary reason for being here to be aware they exist, since they were not referenced in the record. They are in the City of Tempe and not in the County. They have gone through extraordinary lengths and efforts to find a site in this CHAA that would comply with the zoning requirements. The reasons they did not go to this County Island is that none of these spots met the zoning ordinance. This is the reason they went

to Tempe and worked so hard to make the lot they found work. It concerns him if these variances are approved they will have the highest clustered density of dispensary's in the entire state within one-mile of this facility. That would be four dispensaries within a one-mile radius. There is little justification for these variances; this land is nearly a perfect square, it has perfect access from a major arterial and it can be a number of other uses. It does not require variance approval so the applicant can do the use they want to do. There was discussion of the CHAA system and how many dispensaries the CHAA should have, and the reality of it is the CHAA system is no longer applicable. The Department of Health Services allows any license to move after it has been issued for three years. All of the licenses from DHS were issued in 2016 or prior and every single one of those licenses is movable and can go anywhere in the state. They are not required to be located in the Tempe CHAA.

Chairman Loper asked if their current location is their original location. Mr. Hurley said no, they moved into that CHAA.

Chairman Loper asked is it accurate there is not a limitation. Mr. Gerard said yes, it would be a state matter.

Chairman Loper said when the applicant talked about a third dispensary he thought it was Sol Flower, but you are the fourth one in the area. Mr. Hurley said they would have been the second, and the Sunday Goods site would have been the third, and this application would be the fourth. The other dispensary is SWC located in Tempe on the other side of the 202.

Vice Chair Ward asked if it's been verified the CHAA no longer applies. Mr. Peck said the CHAA never really had anything to do with this. When the voters approved medical marijuana, the Department of Health were needing to get regulations done in a hurry. One of the things about the referendum it limited the number dispensaries by ten percent of the number of licensed pharmacies and it turned out to be 125, and there were 126 CHAA's. Despite protests from everyone that used that, they said one per CHAA. The CHAA still exists but they just don't govern the number of medical marijuana dispensary licenses that the Department of Health will issue.

Mr. Justin Cohen said he is speaking on behalf of his family and they own a business and property 100 feet away from the proposed location. They are in favor of the dispensary as long as no other licensed business is operating on the premises, and want that stated in the variance. Mr. Peck said the Board could not impose such a limit if the other proposed use met all of the requirements of the zoning ordinance.

Chairman Loper asked what the business name is. Mr. Cohen said Elite Jewelry and Loan.

Mr. Ian Chait said he is a designated broker at Equity Arizona Real Estate and he has been trying to get this building leased for years. The hardship is overwhelming and you cannot get any big semi-truck around it. When Scottsdale Road was widened it took away a third of his property and half of the parking here. Any vacant building along that area is a detriment to the neighborhood. A facility with a special low volume retail use, with high security would benefit the neighborhood than deter from it. He thinks these variances should be approved.

Chairman Loper asked has the building been designated a local historic landmark or is it on the national register. Mr. Gerard said not to his knowledge.

Ms. Darlene Justus said she helped her daughter get a medical marijuana card, and they have not had any difficulty finding a nearby dispensary. She has other family members that benefited from medical marijuana, and she is not against medical marijuana. She does support the separation requirements in Maricopa County and in Tempe. She has served on the North Tempe Neighborhood Association for 16 years and has lived in Tempe for 55 years. Citizens of North Tempe have worked with County Supervisors, the City of Tempe, and the North Tempe Neighborhood Association in multiple cleanups and betterments in this County Island for many years. The applicant is requesting three variances that all require a 1,500-foot separation. They are too close to Papago Park, and 85 feet from an adult oriented business, and 251 feet from another previously approved dispensary. Tempe requires 5,257 feet separation between two dispensaries. Maricopa County requires 1,500 feet, and 251' is less than five percent of the County's required separation. A dispensary with cultivation will cement a district along Scottsdale Road with two medical marijuana dispensaries, a strip club and a pawnshop. Separation requirements were established to also prevent clustering, which is in the ordinance. Tempe city councilmembers, Adams, Arredondo, Keating and Navarro all sent in letters of opposition to these variances. This County Island is surrounded by Tempe, and they already approved a dispensary too close to Papago Park and an adult oriented business. We tried to intercede but found it was too late. There are many other uses for this site and building, even redevelopment. Tempe is booming in redevelopment right now and they are building all over. There is no real hardship with this site. There are many reports of odors with cultivation and Scottsdale Road is not an agricultural region. Tempe Town Lake is the location for many outdoor activities and events. The risks with our enjoyment to Tempe Town Lake is certainly real. Unwanted odors are addressed in any permit under review at the City of Tempe. She heard if they do not succeed in getting their approval from Maricopa County, they will get it in court where they are familiar with litigation. She is not intimidated and hopes the Board is not either, and please consider their concerns and uphold the separation requirements.

Chairman Loper asked does Tempe look at odor as part of a review of this particular use. Ms. Justus said in use permits it states odor. She is not against this use, but it does not belong in this area, and we certainly do not need one with cultivation.

Chairman Loper said he has another speaker card in support from Mr. Chuck Huus. Mr. Gerard said he believes he would like to show a video. Chairman Loper asked if the video relevant to the variance. Mr. Huus said it is a video about JD's nightclub showing the history.

Chairman Loper asked does it address the hardship or peculiar conditions of the property, or is it more informational. Mr. Huus said informational.

Chairman Loper said it is not appropriate for this venue and asked if he wanted to make a comment. Mr. Huus said he is in favor, and JD's should be a landmark.

Ms. Kim Gaffney-Loza said she is a member of the North Tempe Neighborhood Association and they were responsible in making Papago Park a preserve. They have been very active in their area with so much development going on This is a very bad use of this property along Scottsdale Road, and it would really affect ASU, which is just down the street.

Mr. Peck said the application is for a variance of three distance separations, the applicant has no obligations to demonstrate how they were going to cultivate, and what services they were going to use. All that is required is a plan that shows lines with what their distances are. He

understands the concerns, but he knows the Board is trying to keep everything germane to the request of the variances.

Vice Chair Ward said, she does not see a hardship. Having the neighborhood association here in opposition, and the letters from the Tempe councilmembers who is a forward-looking progressive group and she respects their request for denial. Her recommendation is to deny the request.

Mr. La Sota said the other parcel is two doors down from their proposed site, and the Board decided it actually had peculiar conditions that warranted the two variances. Every argument he has made were made by the other applicant. When Withey Morris applied these were peculiar conditions, now a matter of fairness it is the same, and there is no difference between our application and the Withey Morris application. There are peculiar conditions and consistency dictates that this Board credit the same peculiar conditions. The letters of objection center on this one, they talk about this dispensary being open, and it is not open. According to the County code, medical marijuana dispensaries shall not be located within 1,500 feet of any other medical marijuana dispensary, and it defines dispensary as acquires, possesses, cultivates, manufactures, delivers, transfers and transports. None of this is happening at the other site that was granted variances. Having to locate in a certain CHAA that is true, it does not exist anymore. Department of Health Services identified this CHAA area in need of a third dispensary, today we do not have a third dispensary in that area, and we want to be that third dispensary. He does not know if cultivation will happen, they would be happy to stipulate to the same requirements that the City of Phoenix or Tempe. The other site according to staff would be entitled to cultivation. There is really no distinction in the code, and no distinction in Arizona law. We have the exact same parcel as theirs two doors down from us, with the exact same arguments as to hardship and peculiar conditions.

Vice Chair Ward said, she would like to stick to what she previously motioned and she moves deny the request.

Mr. Peck said under the statute impact on the area or the neighborhood is not relevant. It is impact on the zoning ordinance or the zone plan. He understands Mr. La Sota's confusion and that is a proper consideration for a municipal variance, but the statute is different.

Chairman Loper said this particular application is not a reintroduction of JD's or going to be called JD's and there is no mention of that at all. The building may have historical significance and that stopped when JD's closed. Our purview is not necessarily the impact on the neighbors, but this Board looks at that if it is a tipping point. In this case, the neighborhood association opposed to it and so did the City of Tempe. Yet we have people right next to it that are in favor of it. Highest and best use is not applicable to a variance request, but can be argued in different ways. There is something for that site if not this. He does not believe the applicant demonstrated specific hardships. The variance for the other medical marijuana facility remains in effect.

Chairman Loper said the first variance request, a proposed medical marijuana dispensary and cultivation site to be separated 251' from an existing medical marijuana facility where 1,500' is required.

BOARD ACTION: Vice Chair Ward motioned to deny request #1 - BA2019014. Chairman Loper second. Denied 2-0.

Vice Chair Ward said the second variance request, a proposed medical marijuana dispensary and cultivation site separated 1,294' from an existing park.

Chairman Loper said he does not have an issue with this variance, it is not really a line of site at 1,294'. As it supports the overall variance application, he cannot support this.

Chairman Loper said any comments that we played favorites or did a back room deal, he is offended of that. Four of the five member's livelihood is based on land use, and we know all too well not to be involved in that.

BOARD ACTION: Vice Chair Ward motioned to deny request #2 - BA2019014. Chairman Loper second. Denied 2-0.

Vice Chair Ward said the third variance request, a proposed medical marijuana dispensary and cultivation site separated 83' from an existing adult oriented business where 1,500' is required per MCZO per Article 901.2.20.a, 901.2.20.b.4, and 901.2.20.b.5.

BOARD ACTION: Vice Chair Ward motioned to deny request #3 - BA2019014. Chairman Loper second. Denied 2-0

Adjournment:

Chairman Loper adjourned the meeting of January 23, 2020 at 11:53 a.m.

Prepared by Rosalie Pinney
Recording Secretary
January 23, 2020