



BOARD OF ADJUSTMENT AGENDA

**BOARD OF ADJUSTMENT
PUBLIC HEARING
THURSDAY, OCTOBER 21, 2010
9:00 AM**

**COUNCIL CHAMBERS
201 S. CORTEZ STREET
PRESCOTT, ARIZONA
(928) 777-1207**

The following agenda will be considered by the **BOARD OF ADJUSTMENT** at its **PUBLIC HEARING** to be held at **9:00 AM** on **OCTOBER 21, 2010**, in **COUNCIL CHAMBERS, CITY HALL, 201 S. CORTEZ STREET, PRESCOTT, ARIZONA**. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

I. CALL TO ORDER

II. ATTENDANCE

Members

Cal Fuchs, Chairman	Mike Klein
Duane Famas, Vice Chairman	Dick Rosa
Johnnie Forquer	George Wiant
Tom Kayn	

III. REGULAR AGENDA

- 1. Approve the minutes** of the July 15, 2010 public hearing.
- 2. V10-001, 112 Garden Street.** APN: 113-11-031 and totaling ±0.12 acre. Zoning is Business General (BG). *LDC* Section 9.13. Request variance to reduce the interior side setback from 7'9" to 1'2" and the corner side setback from 8' to 1' to facilitate the construction of a guest house. Owners are Donald and Kay Knight. Applicant/agent is Norman 'Skip' Meyer. Community Planner is Ryan Smith (928) 777-1209.

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. WITH 48 HOURS ADVANCE NOTICE, SPECIAL ASSISTANCE CAN BE PROVIDED FOR SIGHT AND/OR HEARING IMPAIRED PERSONS AT PUBLIC MEETINGS. PLEASE CALL 777-1272 OR 777-1100 (TDD) TO REQUEST AN ACCOMMODATION TO PARTICIPATE IN THIS MEETING.

3. Approve Amendment to the Board of Adjustment Bylaws.

IV. REVIEW ITEMS

None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

VI. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall and on the City's website on October 8, 2010 at 1:00 PM in accordance with the statement filed with the City Clerk's Office.

Kathy Dudek, Administrative Assistant
Community Development Department

**BOARD OF ADJUSTMENT
PUBLIC HEARING
JULY 15, 2010
PRESCOTT, ARIZONA**

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on July 15, 2010 in COUNCIL CHAMBERS, CITY HALL located at 201 S. CORTEZ STREET, Prescott, Arizona.

I. CALL TO ORDER

Chairman Fuchs called the public hearing to order at 9:00 AM. The Pledge of Allegiance was recited followed by a moment of silence for our troops.

II. ATTENDANCE

MEMBERS PRESENT

Cal Fuchs, Chairman
Duane Famas, Vice Chairman
Johnnie Forquer
Mike Klein

MEMBERS ABSENT

Tom Kayn
Dick Rosa

OTHERS PRESENT

Tom Guice, Community Development Director
Matt Podracky, Sr. Asst. City Attorney
George Worley, Planning Manager
Dick Mastin, Development Services Manager
Ryan Smith, Community Planner
Kathy Dudek, Administrative Assistant and
Recording/Transcribing Secretary

III. REGULAR AGENDA

1. **Approve the minutes** of the April 15, 2010 public hearing.

Mr. Klein, **MOTION: to approve the minutes** of the April 15 public hearing. Mr. Famas, 2nd. **Vote: 4-0.**

2. **CUP10-001, 202 S. Montezuma St., (Eco3 Oil Change).** APN: 109-02-046A, and totaling ±0.25 acres. *Land Development Code* Section 2.3. Zoning is Downtown Business (DTB). Request is for an amendment to mobile vendor / hot dog cart CUP09-006 to include: additional freestanding vendors, add a canopy cover, and allow for extended hours of operation. Owner is Montezuma Goodwin, LLC. Applicant is Diane Rosito. Community Planner is Ryan Smith (928) 777-1209.

Mr. Smith reviewed the staff report and noted:

- the applicant is requesting an amendment to an original Conditional Use Permit (CUP) CUP09-006 which allows for a hot dog cart with a single umbrella and hot dogs and hot dog-related food items;
- the applicant is requesting that she be allowed to sell additional food items, extend her operational hours until 2 a.m., and add a canopy with additional carts, storage items and tables to augment the hot dog cart;
- specifically, the applicant would like to add a barbecue or grill to sell tacos,

a preparation table, a set of two coolers and an ordering table in addition to the requested canopy;

- a Special Use Permit (SUP) was granted in August, 2009 for an automotive-type service followed by a CUP for the hot dog cart in February 2010;
- since the approvals, the applicant has several violation notices for both the CUP and City Code which include some of the items that are being discussed today;
- the applicant has applied for a building permit for the existing canopy/shade structure as well as an electrical outlet to be located near the cart for lighting both the cart and the canopy;
- the original approval did not allow for the cart to be lighted, and, if approved, staff felt the lighting could be on the canopy;
- the Prescott Preservation Commission (PPC) heard the request for the canopy at its July 9 meeting, and they made a positive recommendation to the BOA for the canopy;
- the PPC did not discuss any other items as the items are not in that commission's purview;
- the applicant is in violation of the original CUP because she is selling other food items and has added umbrellas, coolers, barbecue, and canopy;
- staff is providing a neutral recommendation;
- no written comments to date have been received;
- two persons have verbally expressed opposition, two have expressed support of the existing cart;
- the BOA could deny the request, approve with/without conditions, and/or start proceedings to void the original CUP;
- staff is suggesting six conditions should the Board wish to approve the request:

- 1) The applicant must secure an approved building permit for the canopy within 30 days.
- 2) At no time may the service area be extended beyond the canopy as noted on the site plan revised 7-9-10. If the canopy cannot be fire rated, then the hotdog cart may be placed outside of the canopy with a single cart umbrella as required by the County Health Department.
- 3) The CUP shall be in strict conformance to the applicant's site plan revised 7-9-10 regarding the hotdog cart, hotdog-related items and all sales of additional food items.
- 4) At no time shall this CUP be construed to allow sales of non-food retail items.
- 5) Violations of any and all City Codes shall be deemed in direct conflict with this CUP.
- 6) The BOA shall review CUP09-006 / CUP10-001 in 90 days, or it's nearest meeting thereafter, to determine the disposition of mobile food vending at this site;

- the applicant has not specifically indicated the food items but has indicated the desire to try different types of things to see what is viable at her location;
- retail sales are permitted at this business only if sold from inside the building;
- whenever a SUP or CUP is approved, there is the expectation that the applicant will follow required codes;
- since the applicant is in nonconformance, it would be prudent for the Board to review the CUP application in 90 days.

Board members queried and remarked on:

- the 10' x 30' area for booths [Mr. Smith: there was an original request for the applicant to have vendors selling leather, flowers, etc. The appropriate venue for that request would fall under a request for a variance. The applicant does not wish to request a variance at this time];
- in looking at the original application for a "mobile food vendor" which was granted for a "mobile food vendor," and when reading this proposal, it appears that it is no longer a mobile food vendor in the terms of the *LDC* [Mr. Smith: the *LDC* terms specify that the mobile food vendor must be self contained. If the applicant starts using the canopy, which is anchored to the asphalt of the parking lot, lights, etc., it is no longer a self-contained mobile food vending cart. With the additional amount of items to augment the request, the applicant is creating a large service area for the cart. This is no longer a self-contained food vending cart];
- under what *LDC* classification would the request fall if all the items were to be approved by the Board [Mr. Smith: it is not a self-contained food vending cart any longer, if allowed it would be a CUP. None of the material is permanent, it can all be unplugged, unbolted and removed]; and,
- if the unit is not a self-contained, how can it be a mobile food vendor [Mr. Smith: that is up to the Board to determine].

Chairman Fuchs asked the applicant if she would like to address the Board.

Ms. Diane Rosito, Eco3 Oil, 2155 Chickadee Creek stated:

- her thanks to the Board for taking time to listen to this request;
- as a business owner starting a new business, she learned as she went along;
- she used most of her savings to renovate the building and start the business;
- she felt that utilizing the area for a mobile food cart was a good business idea and it would supplement revenue in the poor economy;
- she realizes the shade structure/canopy was out of sequence with the process;
- she wants to address some of the violations and items in the request:
 - a) the purchased umbrellas were damaged by high winds and even the sandbags didn't hold the umbrellas from receiving wind damage;
 - b) the shade structure was for sun protection for her daughter and the customers;
 - c) the use of canvas in a neutral color was encouraged, and no additional umbrellas are being used at this time;
 - d) the coolers did not keep the beverages cool and approximately \$6.00 per day was spent purchasing ice;
 - e) stainless steel coolers were used to look more professional;
 - f) the cart, initially appeared to be self sufficient, but a larger cart should have been purchased that would offer more options and space;
 - g) the allowed space is 40 square feet, the current food cart is 12 square feet, and the requested items will still fall under 40 square feet;
 - h) tacos would be added for the evening, as people get tired of eating hotdogs, we get tired of making hotdogs, and the tacos are excellent;
 - i) the hours would be extended not only to make money, but to feed people who are out that late;
 - j) the variety would keep the corner in the evening when Eco3 is closed;
 - k) her original request should have been for more things, but it was a new

- venture for her;
- l) she leases the property and has to make her rent each month;
- m) why non-food items (condition #4) are not allowed, as others can make and sell t-shirts;
- n) the automotive business has existed in the past, and the CUP wouldn't be needed for selling t-shirts;
- o) she is aware that there are other complaints from restaurants, but the overall picture of the downtown is more interesting and more people will come here.

When Mr. Klein asked about the umbrellas in the pictures and whether they would be taken down, Ms. Rosito responded that they have been down for a few days.

Mr. Martin Anthony Guess, 212 S. Montezuma Street, Prescott Wellness Center, noted he lives two buildings down the street and is the next door neighbor to Coyote Joe's. He is concerned that there will be more garbage, bodily fluids, etc., that will add to the already-existing problem if the hotdog cart stays open until 2 a.m. Later in the meeting, Mr. Anthony noted that he is not opposed to the hotdog stand, he is only opposed to the extension of hours.

Ms. Connie Humphrey, 206 S. Montezuma, is located next door to the hotdog stand and feels it enhances the corner. Previously, it was weed filled, trash and debris littered the lot, and an ugly chain link fence was on the property. The current owner has cleaned up the lot and made it desirable for people to cross Montezuma and continue on down the block.

Mr. Michael J. Collins, 355 Country Club Circle, stated he is in a recovery program and that the recovering community brings money to Prescott. He is in favor of the hotdog stand and extended hours so that others in recovery have a place to go late at night to have a cup of coffee and smoke. He feels those in recovery would prefer to sit under the canopy to socialize. He indicated that the coffee is affordable, and he and others in recovery cannot afford Starbucks.

Chairman Fuchs proffered that the LDC was enacted by the City Council which has made a determination that, in this particular zoning designation, a mobile food may be appropriate depending on the circumstances of a particular request. Earlier, the Board approved having the mobile hotdog vendor at the location. In so doing, we did not waive the obligations that the applicant has to comply with the City Code. For example, a typical CUP would be offered for putting a church in a residential area. The church has to be built to code, the church cannot then expand its operation to include a school, a daycare center, or provide parking for the downtown, or anything else. What we have here is a request to expand to what we had originally authorized; and, it appears to change what the original idea was of having a mobile food vendor at this location.

Chairman Fuchs noted he appreciates the comments from those who have spoken but reiterated that the Prescott City Council has determined that a mobile food vendor can be downtown and that was approved. What we are looking at today is whether the CUP should be amended in such a way that, according to

the staff report, actually violates the City Code. That is the issue we are talking about.

Ms. Liz Castro, 105 S. Alarcon Street, feels that the owner's vision has given her the opportunity to work as part of a team. She has met many new persons and has received suggestions from the community. She feels that the owner should be able to add additional items as requested and recommends approval of this item.

Ms. Caroline Rosito, 2155 Chickadee Creek, daughter of the applicant remarked that she has been given the opportunity to manage the small business at all levels. She meets many interesting people and is grateful for the opportunity her mother has given her.

Mr. Reagan Schmissrayder [signature not legible on attendance roster], 410 S. Marina Street, works at the Sacred Bean Coffee Shop, and frequents other coffee shops. He feels that all the coffee shops are struggling. One way to put a lot of businesses out of operation is by having the hotdog stand offer coffee in the morning. This is putting a strain on the other businesses.

Mr. David Humphrey, 206 S. Montezuma Street, owns the adjacent building. He noted that there was no business on the corner for two of the three years he has owned the building. Ms. Rosito fixed up the corner and has done so with her own money, and other business owners should be thanking her for her efforts. He supports the request.

Ms. Yvonne Dorman, 1335 Mullen Way, hopes the Board will approve the request. She feels the owner worked very hard to make it beautiful. When the beautiful banners were against code, the owner took them down. Whenever something comes up, she [Ms. Rosito] does her best to fix it.

Ms. Marian Cucinotta, 234 S. Montezuma, ACM Realty, property management, commented that two of her properties include Sacred Bean and Sweet Caesar's. If this request were about hotdogs, she wouldn't be here. She feels the A-frame at the front advertises lots of other items. What person wants to buy a hotdog at 7:30 in the morning—they are offering many other items that are not related to the sales of hotdogs. When they were told not to do that last week, they continued to do so this week up until yesterday. The owner now wants a food court at that location with sales of retail items. If she wanted a retail spot, that is what she should have opened. Ms. Cucinotta also has a problem with the applicant staying open until 2 am, and she would like the request to be denied.

Chairman Fuchs noted that a number of different views have been presented. He noted that the Board does not make economic decisions. In a capitalistic society, good businesses will thrive and bad businesses will fail. The City Council makes the determination of what types of businesses will be allowed in different types of areas, and that is not the Board's job. Persons cannot come in front of the Board, in situations like this, and ask to be absolved from zoning violations because that is not the Board's job. A variance can be given, in certain instances, based on statutory requirements; however, code violations are not dealt with by the Board under the CUP process. If you have a business in

Prescott, you are required to follow the rules and regulations. You cannot get relief by this Board.

Further questions and comments by Board members included:

- if the existing canopy can be placed there for patrons of the business irrelevant to the hotdog stand, but for her oil change business [Mr. Smith: yes, she could. At this time she does not have a building permit. We are here because the applicant wants to use the canopy as part of the hotdog cart, it is not part of the other business];
- how the coolers tie into the hotdog cart [Mr. Smith: the LDC and the prior CUP approval specifically stated a hotdog cart with a single umbrella. The unit is to be self contained. When the cooler was added, the hotdog cart became no longer self contained. The Board can condition the approval allowing the coolers];
- the application that was approved for the food vendor is being called a "hotdog cart"—is there a distinction between hotdogs or tacos [Mr. Smith: there is not. In the prior approval, the request was tied to the applicant's wording and was for the hot dog cart and hotdog-related items and nothing more. It is very specific, and in order to sell anything more, she needed this amendment];
- is there a reason for the 10 p.m. sales time deadline [Mr. Smith: no, again this was in the original application]; and,
- if the sales of tacos are out of the cart, would the grill be eliminated [Mr. Smith: the grill is needed to make fresh taco meat. This renders the cart not self contained where the LDC requires the cart to be self contained].

Mr. Klein made a motion and was seconded by Mr. Famas. The motion was amended and eliminates condition #3 of the staff report.

Mr. Klein, **MOTION:** to approve CUP10-001 subject to the following five conditions:

1. The applicant must secure an approved building permit for the canopy within 30 days.
2. At no time may the service area be extended beyond the canopy except as noted on the site plan revised 7-9-10. If the canopy cannot be fire rated, then the hotdog cart may be placed outside of the canopy with a single cart umbrella as required by the County Health Department.
3. At no time shall this CUP be construed to allow sales of non-food retail items.
4. Violations of any and all City Codes shall be deemed in direct conflict with this CUP.
5. The BOA shall review CUP09-006 / CUP10-001 in 90 days, or it's nearest meeting thereafter, to determine the disposition of mobile food vending at this site.

Mr. Famas, 2nd. **Vote: 3-1** (Fuchs). *Motion fails to carry as four affirmative votes are needed to approve an item.*

3. **CUP10-002, 741 Downer Trail.** APN: 111-10-027, and totaling ±1.36 acres. *Land Development Code Table 2.3 and 2.5.6.* Zoning is Single-Family 35 (SF-35). Request is for Conditional Use Permit for a detached guesthouse. Owner is

Bentivegna Family Trust. Applicant is Distinctive Homes, Inc. Community Planner is Mike Bacon (928) 777-1360.

Mr. Bacon reviewed the staff report and noted:

- a previous guesthouse permit was issued for a property at 696 Downer Trail
- the site plan calls out a larger home with attached garage and a separate 700 square foot guesthouse accessed by a winding driveway;
- the lot contains large boulders and native vegetation;
- the proposal meets all the requirements for a CUP including the General Plan and *LDC*;
- staff is suggesting three conditions of approval; and,
- the applicant is here today.

There were no questions or comments by Board members.

Chairman Fuchs asked if the applicant wished to speak, and the applicant declined.

Mr. Klein, **MOTION: to approve CUP10-002** for a detached guest quarters with the following conditions of approval:

1. The project be constructed in substantial conformance with the Site Plan, "Exhibit A," dated July 17, 2010;
2. The project be in accordance with Section 2.5.6 (Guest Quarters) of the *Land Development Code*; and,
3. Site development must be within the approved building envelope (or approved, adjusted building envelope) on file with the Community Development Department.

Ms. Forquer, 2nd. **Vote: 4-0.**

4. Approve Amendment of the Board of Adjustment Bylaws.

A consensus was reached to defer this item until the August 19, 2010 public hearing.

IV. SUMMARY OF CURRENT OR RECENT EVENTS

None.

V. ADJOURNMENT

Chairman Fuchs adjourned the public hearing at 10:05 a.m.

E. Calvin Fuchs, Chairman

VAR # V10-001 VARIANCE Agenda # 2

Reduction of the required side yard setbacks to facilitate the construction of a guesthouse.

COMMUNITY DEVELOPMENT – PLANNING AND ZONING DIVISION
BOARD OF ADJUSTMENT MEETING FOR October 21, 2010.

STAFF REPORT

TO: Board of Adjustment

FROM: Tom Guice, Community Development Director *TG*
George Worley, Planning Manager *GW*
Ryan Smith, Community Planner *RS*

Date: October 14, 2010 **Parcel Number:** 113-11-031

Location: 112 Garden St **Zoning:** BG (Business General)

Owner: Donald and Lay Knight **Applicant/Agent:** Norman "Skip" Meyer
112 Garden St. 5367 Western Blvd.
Prescott, AZ 86305 Prescott Valley, AZ 86315

REQUEST:

The applicant is seeking a variance approval to reduce the required side yard setbacks from 7'9" to 1'2" on the interior side and from 8' to 1' on the corner side. A guesthouse replacing a similarly placed grandfathered garage / storage shed is proposed. Adequate parking is available for both the house and the proposed guesthouse.

ZONING CODE REQUIREMENTS:

Section 4.7.3(F) – Minimum Setbacks: The required residential setbacks for a detached accessory structure within the BG zoning district is 8' for the corner side and 10% of the lot width, with a minimum 5' and a maximum of 12', along the interior side. The lot at it's widest point is 78' 5" in width, therefore, the interior side setback is approximately 7' 9".

PAST BOARD OF ADJUSTMENT ACTIONS ON SUBJECT PROPERTY: None.

PAST BOARD OF ADJUSTMENT ACTIONS ON PROPERTIES NEARBY:

A variance has been granted on a nearby property allowing for a 7' front setback and a 2' side setback for an attached garage. Several other variances exist in the vicinity allowing for setback encroachments.

BACKGROUND:

The subject property is a corner lot, located on a horseshoe shaped frontage road, at the Northwest corner of the intersection of W. Gurley Street and Garden Street. The BG zoning district allows for a detached guesthouse. The lot is triangular in shape,

narrowing to 9' at the rear. There are several businesses neighboring the property on the Gurley street frontage. On Garden Street, residential uses are prevalent.

The applicant had originally proposed to refurbish the garage / storage shed structure. However an inspection by the Chief Building Official revealed significant structural issues due to age and lack of building safety standards at the time of construction. Staff recommends removal of the structure, however, doing so would negate its grandfathered status. The unusual shape of the lot and the current setback requirement prohibit the rebuilding of the structure. Therefore, a variance is required.

HISTORIC PRESERVATION:

The subject property is in the Prescott Original Townsite. It is also in the North Prescott National Register District. The garage and additions for storage have been determined to not be of historic value by the City Historical Preservation Specialist.

VARIANCE CRITERIA:

Variances may be granted for special and unique circumstances to the property;

There are no topographic conditions present on the property that constrain development.

Variances may be granted which will not be detrimental to the public health safety and welfare of the areas or be materially injurious to nearby properties;

Impacts are expected to be minimal to nearby properties. The removal of the existing garage structure will eliminate a possible safety hazard. The sight-distance triangle of the alley and Gurley Street frontage will be improved.

Variances may be granted when doing so does not grant a special privilege inconsistent with other properties in the area;

The Prescott Original Townsite existed at the turn of the previous century. Many examples exist of pre-existing encroachments into the modern setback requirement. Other homes on the street have additional dwelling units and guesthouses. There are also apartments nearby. The overall design of the proposed guesthouse in context to other properties in the neighborhood supports the notion that granting the variance will not constitute a special privilege.

Variances may be granted if there is no self induced hardship resulting from the applicants own actions;

The applicant did not anticipate the need for a guesthouse, which will be used for family members.

Variances may be granted with substantial compliance with the General Plan;

The guesthouse is in conformance with the General Plan.

Variances may be granted for extraordinary conditions affecting the land such as size and shape, and strict application of the code will deprive the applicant of the reasonable use of his land;

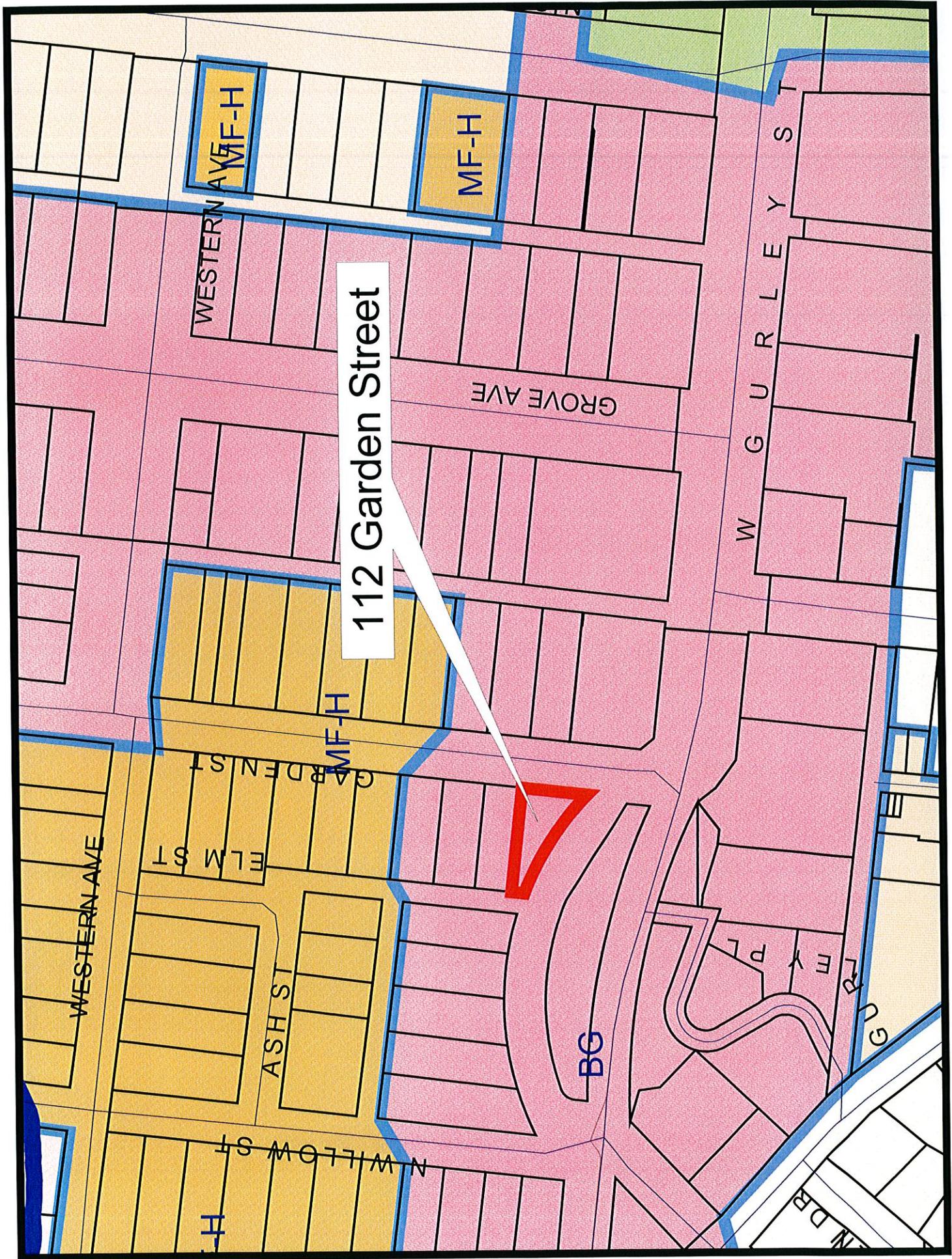
A unique circumstance may exist due to the unusual shape of the triangular lot, which combined with the current required setbacks, creates a limited building envelope. The Prescott Original Townsite plat approved in 1903 shows this lot as it appears today. The

neighboring lots on this street are larger rectangular lots (measuring 50'x125') and would not require a variance for similarly placed structures.

NEIGHBORHOOD COMMENTS: The adjacent property owner to the north, who is most directly affected by the request, telephoned and requested general information about the variance. She expressed no objection to the request. No other comments or inquiries have been received as of this writing.

STAFF RECOMMENDATION: Staff recommends approval based on a review of the request's consistency with the provisions contained in the Land Development Code as expressed above.

Attachments: Vicinity & Zoning Map
Site Plan
Aerial View Showing the Existing Garage
Narrative



112 Garden Street

WESTERN AVE
MF-H

MF-H

WESTERN AVE

MF-H

GROVE AVE

W G U R L E Y S

MF-H

GARDEN ST

WESTERN AVE

ELM ST

ASH ST

BG

N W I L L O W S T

F E Y D L

G U R L E Y S

N D B R

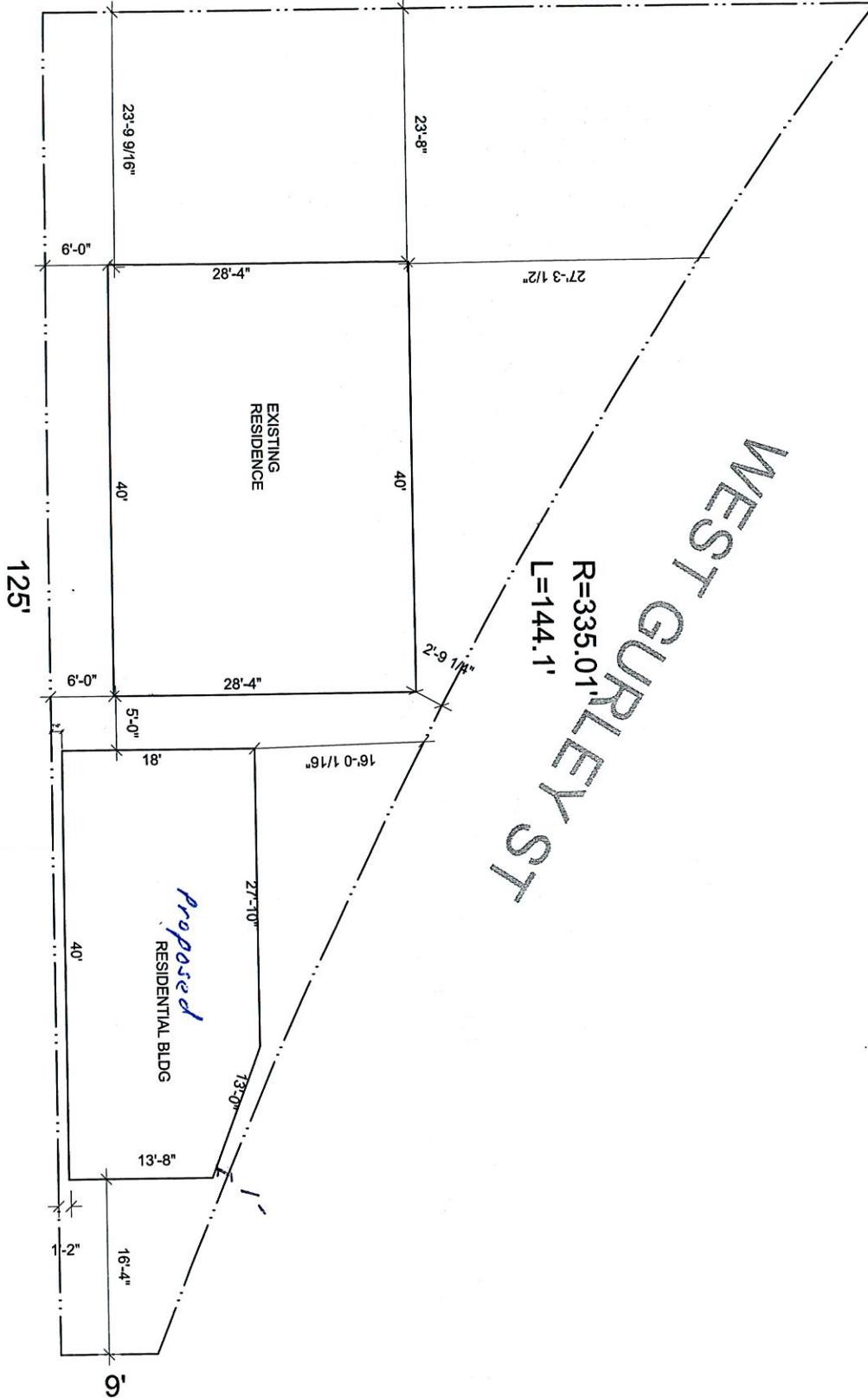


116

112

GARDEN ST

78.5'



WEST GURLEY ST
R=335.01'
L=144.1'

ALLEY

VARIANCE QUESTIONNAIRE ANSWERS

KNIGHT RESIDENCE

STEVE & KAY KNIGHT

112 GARDEN ST., PRESCOTT, AZ.

A.P.N.# 113-11-031

1. Lot comparison sheet (enclosed) indicates that all lots on Garden St. are rectangular in shape and allow ample room for out buildings. Subject lot (112) was drastically reduced in the early 1900's to allow for the curvature of the old Gurly St. route, which no longer runs it's original course. By today's setback standards, the entire rear half of this parcel is virtually unusable land. Since about 1967, Gurley St. is now approximately 150' further to the south and separated by Cannon Park. Existing side street, still called Gurley St., is a minimally used access road. Because of the lot's shape, today's code provisions would greatly restrict the owners' use of half of their lot.
2. Existing parking and storage structures at east end of parcel located at 112 Garden St. are presently built on or near lot boundaries. A short walk down the alley located at the east side of Garden St. (borders the rear yards of Garden St. homes) shows that all neighboring home lots contain various "out" buildings located on or just inside lot lines. Buildings range from parking structures to efficiency suites to art studios. Immediately next door at 116 Garden St., there is a studio apartment/ art studio, which has a south wall, located within 24" of subject properties' north garage wall. Property at 118 Garden St., has a garage built right on alley and has perimeter walls sitting on north, south and west lot lines. Approximately fifteen years ago, a chimney fire at 128 Garden St. consumed the home and it was rebuilt on the rear (east), north and south lot lines leaving a front yard approximately 90 feet from street to front door.
3. In order for homeowners to bring existing structures into compliance (they are currently under built and not safe) , these buildings will need to be razed and rebuilt. Since removal of structures also removes grandfather rights, homeowners will lose desired rights to do anything with the rear area of their property because of today's setback regulations. Proposed plans are for a studio efficiency suite and by approving this lot design, rear setback will be 20' off alley, as parking needs to be created, bringing this setback into compliance. Proposed building design is of a early American design and , if approved, will create a much more pleasant atmosphere than what exists today.
4. As mentioned earlier, all surrounding parcels contain different "out" buildings on their parcels with many being located in violation of today's setback standards, as well as subject property at 112 Garden St. These buildings on subject property already exist so they are not asking for any more than they already had. They do want to make better usage of the structure in order to accommodate much needed help for family medical crisis' going on at present as well as improve current condition of existing structure. There are no requests for special privileges in this matter, simply wanting to upgrade what already exists.

5. Since there is already an existing structure, there would be no change for surrounding neighbors than what exists today. By repositioning new structure closer to existing residence, the rear or west property line at the alley would actually be brought into compliance according to today's setback requirements and since existing lot is somewhat pie shaped, the proposed structure would still be in need of a variance, but less so than existing parking and storage structure that exists today.

**BOARD OF ADJUSTMENT
AMENDED
BY-LAWS**

**ARTICLE I
Name**

The name of this Board shall be: the BOARD OF ADJUSTMENT, City of Prescott, Arizona.

**ARTICLE II
Purpose**

The Board is responsible for acting in accordance with the provisions of the Arizona Revised Statutes Section 9-462 *et seq.* and the City Code Title I, Chapter 7, and the *Land Development Code* of the City of Prescott for the purpose of taking action on all matters which properly come within the purview of the Board.

**ARTICLE III
Membership**

- A. Members shall be appointed by the Mayor, with the advice and consent of the City Council, in accordance with City Code and Council policy.
- B. The Board shall consist of seven (7) members to serve without compensation, who shall be residents of the City of Prescott, each to be appointed by the City Council for a term of three (3) years. Vacancies shall be filled in the same manner. Terms shall expire in March of the respective year. (Ord. 364, 12-45; amd. Ord. 737, 8-23-65; amd. Ord. 4737-1034, eff. 04-13-2010).

**ARTICLE IV
Vacancies**

- A. Board members may resign from their appointed post for any reason. It is requested that thirty (30) days written notice of resignation be given to the Chairman of the Board.
- B. If any member shall be absent for more than two (2) consecutive meetings without notifying the Chairman or the Community Development Director, or shall be absent for more than thirty percent (30%) of all meetings during any one twelve-month period for any reason, he or she shall thereupon automatically cease to hold membership on the Board of Adjustment without any further action being taken by either the Board or the City Council. It shall be the responsibility of the Chairman of the Board to so notify the City Council immediately upon the creation of a vacancy pursuant to this Section.

Meetings as used in this Section shall include all regular and special meetings, study sessions and field inspections. (City Code, Section 1-7-6/Ord. 2278, 6/25/91)

ARTICLE V Officers and their Duties

- A. The City Council shall appoint a Chairman and Vice-chairman in March of each year and such other officers as it deems necessary and shall prescribe the duties of said officers; the Chairman of the Board of Adjustment shall have the power to administer oaths and to take evidence. (Ord. 364, 12-10-45; amd. Ord. 4737-1034, eff. 04-13-2010).
- B. The Chairman shall:
 - (1) Preside at all meetings.
 - (2) Coordinate agenda with Planning and Zoning Division.
 - (3) Coordinate with the Community Development Director to provide the Board current information about planning and zoning regulations, policies, and City Council actions.
 - (4) Review and sign all minutes of Board meetings.
- C. The Vice-chairman shall act for the Chairman in his/her absence.
- D. The Secretary, who shall be appointed by the Community Development Director, shall keep a record of proceedings of all meetings, send out all meeting notices required, compile agenda, records, files, indexes, and shall perform the clerical work of the Board. The Secretary shall not be a member of the Board.
- E. The Prescott City Attorney shall be legal counsel for the Board.

ARTICLE VI Meetings

- A. All meetings and hearings of the Board shall be subject to the Arizona Open Meeting Law.

- B. Each member of the Board will be expected to make individual field inspections to examine the properties for which variances, conditional use permits and appeals are requested; and, if there should be a need for a group field inspection, staff will notify Board members by phone or in writing.
- C. Regular Board meetings will be held on the third Thursday of every month.
- D. Changes in the date of field inspection meetings may be made by the Chairman or four (4) members of the Board. Special meetings may be held on call of the Chairman or four (4) members of the Board.
- E. Voting: A majority of the total members of the Board (4) must vote for a request for approval. Members shall only refrain from voting due to a substantial conflict of interest, as defined in A.R.S. Section 38-502, and shall state that fact for the record. The Chairman may request a show of hands to clarify the vote.
- F. Agenda Format
 - (1) Call to order
 - (2) Recording of members present/absent, staff, and public in attendance
 - (3) Approval of the minutes
 - (4) Administering oath
 - (5) Other items, such as variances, conditional use permits, appeals, parking requirements, screening plans, etc.

ARTICLE VII
Code of Ethics

- (A) Board of Adjustment members occupy positions of public trust. Board members shall strictly adhere to both the letter and the spirit of the laws of the State of Arizona pertaining to conflicts of interest and open meetings.
- (B) Board members shall refrain from making use of special knowledge or information before it is made available to the general public.
- (C) Board members shall refrain from using their influence as members of the Board in attempts to secure favorable municipal action for themselves, friends, immediate family members, or business associates.

- (D) Board members shall be disqualified from participation in any manner in the decision of the Board when such action will violate sections A through C of this Article.
- (E) A member of the Board shall not initiate, permit or consider *ex parte* communications, or consider other communications made to the Board member outside the presence of a quorum of the Board, concerning a pending or impending matter or proceeding before the Board of Adjustment. This policy does not prohibit:
 - (1) *Ex parte* communications to determine from the applicant or a member of the public a factual matter which does not deal with the merits or issues of a particular matter.
 - (2) Communications with City Staff, Council or members of other City boards or commissions.
 - (3) Communications with a disinterested third party, who is neither opposed nor in favor of the particular matter, in order to seek advice or comments from said disinterested party.

**ARTICLE VIII
Amendments**

Amendments to these By-laws shall be made by a majority vote of the full Board.

These By-laws have been presented to the Board. All By-laws dated previous to July 15, 2010 are null and void.

Approved on the 15th day of July, 2010 by a quorum of Board of Adjustment members.

E. Calvin Fuchs
Chairman of the Board of Adjustment

Date

Thomas A. Guice
Community Development Director

Date

APPROVED AS TO FORM:

Gary D. Kidd, City Attorney

DRAFT