



MEMORANDUM

TO: Cochise County Board of Supervisors
THROUGH: Richard G. Karwaczka, County Administrator
FROM: Christine McLachlan, AICP, Planner II
FOR: Daniel Coxworth AICP, Development Services Director
SUBJECT: SUA 23-02 (Kaibab Manuf Appeal), An Appeal of a Commission Decision
DATE: April 7, 2023, for the April 25, 2023, Meeting

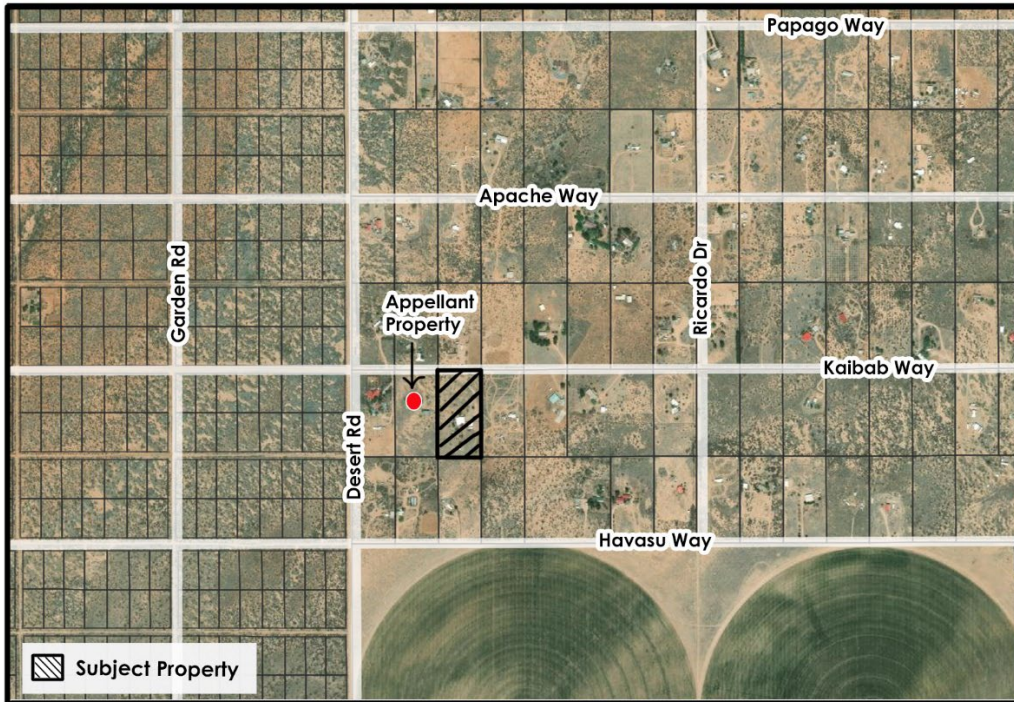
Appeal of a Planning and Zoning Commission Special Use Authorization Application

The appellant, Willie Navarro, has filed an appeal against a decision made by the Cochise County Planning and Zoning Commission. At the March 8, 2023 meeting, the commission unanimously approved (8-0/approval, denial) a request by Christopher and Gloria Beth Rush for Special Use Authorization to operate a manufacturing business, not to exceed 5,000 SF on a 5-acre parcel (APN 206-22-115) in unincorporated Cochise, Arizona.

The establishment of a manufacturing business (607.17) is subject to Special Use Authorization from the Planning and Zoning Commission in a rural zoning district. The business is proposed to be co-located on a parcel with an existing home at 372 W. Kaibab Way Cochise, AZ. Currently, the parcel has a manufactured home, detached garage, small storage buildings, septic and well, which will remain. The applicant proposes construction of a steel building, not to exceed 5,000 SF in size, to conduct a business that manufactures/assembles electrical components, including thermostatic switches, thermal resistors, electromagnetic solenoids, relays and PC boards

Section 1716.04 of the Zoning Regulations states that appeals of Special Use decisions shall be heard by the Board of Supervisors at a duly noticed public hearing. Following its deliberations on the date of the decision, the Board of Supervisors shall either affirm, reverse, or modify the decision of the Planning and Zoning Commission.

In this case, Christopher and Gloria Beth Rush are the special use applicants, whose use was approved by the commission. The appellant is, Willie Navarro, a neighbor that is aggrieved by the approval.



Location
SUA 23-02 Kaibab Manufacturing Appeal



Planning And Zoning Commission Hearing

During the March meeting of the Planning and Zoning Commission, the Applicant requested a Special Use Authorization (SUA) to approve the operation of a manufacturing business on their property.

Because of their unique characteristics and often high potential to adversely impact surrounding properties, SUAs may be permitted only when they can demonstrate that potentially negative off-site impacts can be mitigated. The Commissions' role in a SUA is to evaluate whether negative impacts can be successfully mitigated. To assist this analysis, the Zoning Regulations includes ten special use factors. These factors represent policy decisions by the Commission and the Board, reducing uncertainty concerning their probable response to a given request. The SUA Factors focus on how a proposed land use will impact its neighbors, including the effects on traffic, demand on County services, and whether and/or the degree to which, the proposed use creates offsite nuisances.

Most SUAs have both factors in favor and factors against. In this case, planning staff determined the SUA:

- Fully complied/four factors (Compliance with duly adopted plans, compliance with the zoning district purpose, significant site development standards, water conservation)
- Fully complies with three factors (compliance with duly adopted plans, compliance with the zoning district purpose, adequate services and infrastructure, public input)
- Does not comply/one factor (public input)
- Not applicable/ two factors (hazardous materials, development along major streets)

The Planning and Zoning Commission held a public hearing on March 8, 2023. At the hearing, the commissioners considered both verbal and written testimony. After considering all the facts, the commission voted 8-0 (approval, denial) in support of the request. The appellant is a neighbor of the applicant for the special use request who was present online and allowed to address the commission during the hearing for a statement.

Appeal Requirements

According to Section 1716.04 of the Zoning Regulations, an application for an appeal of a special use authorization must include:

- A complete statement of all reasons why the appellant believes that the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion; and
- Written presentation of additional testimony and evidence, a full explanation of the additional testimony and evidence that will be submitted, with an explanation of why this was not presented to the Planning Commission.

The applicant has provided a complete application for the board's review. *Please see attachment SUA23-02 appeal application.*

Meeting Protocol, Rules of Procedure and Public Notice Requirements

For the benefit of the Board who may not be familiar with the requirements of the Planning and Zoning Commission, staff would like to refute some of the claims made by the appellant that fall under the category of meeting protocol, rules of procedure, and public notice requirements within their appeal application.

Public Notice:

Per Section 1716.03 of the Zoning Regulations, public notice is required. The specific type of notice required, the timing of that notice, and when the notice occurred within this particular case is provided as follows:

- Applicant must mail notice to adjacent property owners within no less than a 300' radius, prior to application submittal: The applicant letter was mailed on 1/20/23 to all property owners within a 750' radius. This is one week prior to the application submittal deadline.
- The case planner must mail notice to the same property owners prior to the meeting date: The case planner letter was mailed on 1/30/23. The notice stated that all written comments received by 2/27/23 would be included in the staff report to the commission. Written submissions can be mailed or emailed to the case planner. Email responses are instantaneous. Mailed responses were received by the case planner as soon as 2/9/23.
- Newspaper notice is required no less than 15 days prior to the meeting: Notice was published on 2/15/23, 20 days prior to the meeting.
- Notice was also posted on the County legal notice page on 2/9/23 (26 days prior to the meeting), where it remained until the date of the commission hearing (3/8/23).
- A physical sign posting on the site is required no less than 15 days prior to the meeting: The parcel was posted on 2/13/23, 22 days prior to the meeting, where it remained until the date of the commission hearing (3/8/23).

Meeting Protocol and Rules of Procedure:

The Planning and Zoning Commission and the staff that serve it, follow the procedure outlined within the "Planning and Zoning Commission By-Laws and Rules of Procedure." This document is available on the County's website for public review. It stipulates who may speak, when they may speak, and whom questions may be directed towards. The rules are summarized at the beginning of every meeting.

All documents related to the case, including the staff report (including recommended conditions), powerpoint presentation, application, agency comments, and public comments are posted online for review by the

commission and public alike at least 24-hours prior to the meeting. This March commission meeting agenda was posted online 3/1/23, one week prior to the meeting. The public was notified of this posting within the case planner letter, which provided a direct link to where it would be posted.

Factors in Favor of Appeal Approval

1. The appellant has submitted a rationale for why they feel why the decision, or any part of the decision, was erroneous, arbitrary, capricious, or an abuse of discretion.

Factors in Favor of Appeal Denial

1. A denial would overturn a unanimous 8-0 (approval, denial) decision by the Planning and Zoning Commission, the board that is designated to consider all special use authorizations
2. Staff refutes claims that meeting protocol and the rules and procedure were improper. Staff also refutes claims that the public notice was inadequate or improper.

Staff Recommendation

Based on the Factors in Favor of An Appeal Approval, Staff recommends **Denial of the Appeal** (SUA-23-02), thereby affirming the Planning and Zoning Commission's Approval of SU-23-05, attaching the original Conditions of Approval to the special use request.

The original conditions were as follows:

1. The applicant will be required to enter into a Private Maintenance Agreement to participate in the maintenance of the non-maintained roadway.
2. The proposed building shall be no greater size than 5,000 SF, it shall be no higher than one-story (20' above grade) and the outside shall be earth-toned in color.
3. All manufacturing activity shall be completed indoors, within the proposed insulated building, and there shall be no outdoor storage of business products.
4. Hours of operation shall be limited to weekdays between 7am and 5:30pm.
5. The commission grants a parking requirement waiver granting a 28% reduction in the required parking, bringing the required number of spaces from 9 to 7 total.