



## MEMORANDUM

**TO:** Cochise County Board of Supervisors  
**THROUGH:** Richard G. Karwaczka, County Administrator  
**FROM:** Daniel Coxworth AICP, Development Services Director  
**SUBJECT:** SUA 23-03 (Ocotillo Storage Appeal), An Appeal of a Planning & Zoning Commission Decision  
**DATE:** July 25, 2023

### Appeal of a Planning and Zoning Commission Special Use Authorization Application

The appellants, Kathy Glidwell and Karen Mulholland, have filed an appeal against a decision made by the Planning and Zoning Commission. At the June 14, 2023, meeting, the Commission unanimously approved a request (9-0) for Special Use Authorization from Caleb Malboeuf to establish a mini-warehouse (707.21) on a 15-acre parcel zoned R-36 (Residential, minimum 36,000 square feet) on APN: 123-09-010A near Benson.

Establishing a mini-warehouse (707.21) is subject to Special Use Authorization from the Planning and Zoning Commission in an R-36 zoning district. Currently, the parcel is vacant.

Section 1716.04 of the Zoning Regulations states that the Board of Supervisors shall hear appeals of Special Use decisions 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.

### Planning And Zoning Commission Hearing

During the June 14, 2023, Planning and Zoning Commission meeting, the Applicant (Caleb Malboeuf) requested a Special Use Authorization to approve the mini-warehouses.

Because of their unique characteristics and often high potential to adversely impact surrounding properties, Special Use (SU) may be permitted only when they can demonstrate that potentially negative offsite impacts can be mitigated. The Commission's role in a SU is to evaluate whether negative impacts can be successfully mitigated. To assist this analysis, the Zoning Regulations include 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 SU factors focus on how a proposed land use will impact its neighbors, including the effects on traffic, demand on County services, and the degree to which the proposed use creates negative offsite impacts.

Most SUs have both factors in favor and factors against them that are used by the Planning & Zoning to make a decision.

### **Factors in Favor of Approving the Special Use as Presented to the Planning & Zoning Commission**

1. The project, with the recommended conditions, complies with ten (10) of the ten (10) criteria used to evaluate special use requests;
2. The project is consistent with the goals and policies of the Comprehensive Plan;
3. The project will be a locally owned business and provide a service to local citizens;

### **Factors Against Approving the Special Use as Presented to the Planning & Zoning Commission**

1. Two letters of opposition were received.

After considering all the facts, the Commission voted 9-0 to approve the request. The appellants are a neighbor of the subject parcel for the special use request who were allowed to address the Commission during the hearing.

### **Appeal Requirements**

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

- 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 the attached Appeal Application.*

### **Appeal**

The appeal list impacts the appellant believes were not considered during the meeting, such as traffic, environmental impact, and property values in the area. The appellant also raises concerns that the area was zoned TR-36 (Transitional Residential, 36,000 square feet) when they purchased their property and believed it was illegally rezoned to R-36 (Residential, 36,000 square feet).

**Staff Response:** Staff uses ten factors to evaluate Special Use applications. Staff uses these factors to help determine the suitability of a given Special Use request, whether to recommend approval for a Special Use Authorization, and to determine what Conditions or Modifications may be needed. The letter from Arizona Game and Fish provides standard **recommendations** that are provided to the Applicant.

Article seven of the Zoning Regulations allows the Applicant to apply for Special Use approval for mini-warehouses. Concerning the title change of Article 7 in the Zoning Regulations from TR-36 to R-36, the Board of Supervisors is aware that on a fairly routine basis, staff proposes updates and amendments to the Zoning Regulations to the Planning & Zoning Commission and Board of Supervisors. In 2007 (Docket R-07-05), the Zoning Regulations Article 7 was changed from TR to R, and seven Special Uses were added, including mini-warehouses. Per A.R.S 11-813.E.1 (attached), written notice of the Zoning Regulation amendment to affected property owners was **not** required. In addition, the appellant's property is not the subject of the Special Use approval.

At the Planning & Zoning Commission meeting, the Applicant is allowed 10 minutes to present and explain the project to the Commission. Members of the public are provided five minutes to explain why they support or oppose a request.

### **Factors in Favor of Appeal Approval**

1. The appellant has submitted a rationale for why they feel 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 of the appeal would affirm a unanimous 9-0 approval decision by the Planning and Zoning Commission, the Board that is designated to consider all special use authorizations.
2. The Zoning Regulations allow for an application for Special Use approval by the Planning & Zoning Commission.
3. Staff and the Planning & Zoning Commission appropriately used the ten factors, per Section 1716.02 of the Zoning Regulations, to evaluate the request.

**Staff Recommendation**

Based on the Factors, Staff recommends **Denial of the Appeal** (SUA-23-03), **affirming** the Planning and Zoning Commission's unanimous **Approval** of SU-23-12, and attaching the original Conditions of Approval to the Special Use request.

The original conditions were as follows, **with two additional conditions (11 and 12)** recommended by staff for BOS consideration:

1. The Applicant shall dedicate the necessary right-of-way Ocotillo Road;
2. The Applicant shall obtain a right-of-way permit for the driveway and any required improvements;
3. A paved (to match Ocotillo) driveway, a minimum of 24- feet wide width, adequate turn radius, and a sight distance triangle taken into consideration is required;
4. Dimensions shall be added showing the distance from the edge of the pavement to the property line and the edge of the pavement to the gate;
5. Dimensions for Four Feathers Lane need to be added;
6. Plans need to show the dedication of Ocotillo Road;
7. Change Ocotillo Street to Road;
8. The 20-foot setback line shall be revised to show the distance as measured from the edge of the road travel way or property line, whichever is greater;
9. The site plan submitted with each phase shall provide a table showing cumulative square footage and percentage breakdown.
10. In conjunction with the commercial permit, the Applicant shall provide a landscape plan demonstrating that a minimum of a five-foot landscape strip is provided along both Ocotillo Road and Four Feathers Lane. A table shall also demonstrate that a minimum of 5% of the site is landscaped.
- 11. Provide a 100-foot setback from the east property line shared with the resident to the east, APN 123-09-011.**
- 12. Install an 8-foot block wall along the east property line shared with the resident to the east, APN 123-09-011, if requested by the property owner, before the permit application is submitted to the County.**

