



BOARD OF ADJUSTMENT AGENDA

**BOARD OF ADJUSTMENT
PUBLIC HEARING
THURSDAY, JULY 15, 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 **JULY 15, 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	Tom Kayn
Duane Famas, Vice Chairman	Mike Klein
Johnnie Forquer	Dick Rosa

III. REGULAR AGENDA

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

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. **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.
4. **Approve Amendment of the Board of Adjustment Bylaws.**

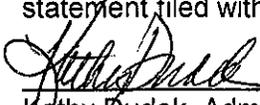
IV. **REVIEW ITEMS**

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 July 8, 2010 at 3:00 PM in accordance with the statement filed with the City Clerk's Office.



Kathy Dudek, Administrative Assistant
Community Development Department

CUP10-001

**CONDITIONAL USE PERMIT
AMENDMENT to CUP09-006
202 S. Montezuma Street**

Agenda # 2

COMMUNITY DEVELOPMENT – PLANNING AND ZONING DIVISION
BOARD OF ADJUSTMENT MEETING FOR July 15, 2010

STAFF REPORT

TO: City of Prescott Board of Adjustment (BOA)

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

DATE: July 8, 2010

APPLICATION: CUP10-001 **ZONING:** Downtown Business District (DTB)

APN: 109-02-046A **AREA:** 0.25 acres

Owner: Brad Christensen **Agent:** Diane Rosito
3599 Lee Circle
Prescott, AZ 86301 202 S. Montezuma St.
Prescott, AZ 86301

REQUEST:

An amendment to an existing Conditional Use Permit, CUP09-006 which allows for a mobile food vendor / hotdog cart. The applicant wishes to use a 10x10 canopy as an accessory structure to replace the umbrella used for the hotdog cart and extend operating hours to 2am. The County Health Department requires an umbrella or other protection to shield the food area from bird droppings and other debris. If the hotdog cart cannot be placed under the canopy, then the applicant has expressed a desire to place seating under the canopy.

The applicant narrative asks for additional freestanding vendors for retail and other food items. However, the Land Development Code states that, with exceptions such as mobile food vending, other uses permitted in the DTB must be enclosed within a structure. Therefore, the retail request is more appropriately addressed as a variance. The applicant has not expressed interest in applying for a variance at this time.

According to the applicant, additional food items may include donuts, muffins, tacos or other food items that may be marketable at this venue. Staff believes food items are within the purview of a CUP amendment, but only as long as the food is contained within the mobile food cart.

PAST COUNCIL ACTIONS, BOA ACTIONS and BACKGROUND:

Council granted a Special Use Permit, SP09-003, to allow for Automotive Service as a primary use in the DTB - as required in the LDC table 2.3. Due to the structure and parking lot

pavement, the applicant was unable to provide required landscaping on the property. Therefore, the Council allowed required landscaping to be in the planters adjacent to the property in the sidewalk right-of-way (ROW). The SUP shall not extend beyond September 8, 2014 unless extended by Council.

On February 18, 2010, the BOA approved a CUP for an accessory use to allow for mobile food vending for hotdogs and related items - as required in the LDC section 2.5.13. Conditions contained in the Staff Report and in the LDC include: limiting food for sale to hotdogs / hotdog related items, limiting the cart size to 40 square feet, the cart must be self sufficient in it's operational context, menus / signs must be an integral part of the cart and the umbrella is limited to 6 feet in size. Operating hours are allowed until 10pm as specified in the applicant's narrative. The CUP is tied to the SUP in that an accessory use is not permitted unless there is a primary use.

OTHER ACTIVITY:

Staff has observed the addition of an ordering table, BBQ and 2 stainless steel soda coolers to augment hotdog cart sales. Flowers have been sold from the cart as well as muffins and coffee in the morning before the cart is brought out. There is an increased service area around the cart including 4 tables and 4 umbrellas in addition to the currently unpermitted canopy cover. The applicant indicated that a band had performed in the parking area. There have been several discussions with the applicant regarding these activities which violate the conditions of the CUP or other City codes.

On June 16, 2010, a Notice of Violation was issued by the Building Department for the unpermitted canopy which still remains. The safety of the canopy is in question due to the lack of wind tolerance information. The Fire Department expressed concern about the cart's propane cooking units and the BBQ which were initially placed under the canopy. The current Building Code wind tolerance requirement is 90mph. Should the hot dog cart be again placed under the canopy, the Fire Department will require that the fabric be fire rated as a safety measure regarding the propane cooking units. Staff has requested wind tolerance and fire rating specifications, however, no application has been submitted for the canopy nor has this information been provided. The applicant has indicated that the canopy may not have a fire rating and that she now intends to place the hotdog cart out of the canopy under the existing umbrella. The canopy will then be used for seating.

Also on June 16, 2010, a Courtesy Notice of Action, CE1006-041, was issued by the Code Enforcement Department regarding 6 banner / flags located in the ROW planters. The LDC allows for one banner or flag within the property boundary, permitted for 45 days per calendar year with an approved temporary sign permit. Banners, flags and other signage are prohibited within any ROW. Flags have been observed in the ROW by staff in the days following the notice.

On June 24, 2010, the applicant submitted a building permit application, B1006-096, for an electrical outlet and lighting for the hotdog cart.

On July 1, 2010, a Final Notice of Code Violation was issued for continued use of banners / flags in the ROW.

CONDITIONAL USE REVIEW CRITERIA:

Conditional uses require special consideration regarding the effect on surrounding properties and the use in relation to the objectives of the ordinance. A conditional use permit may be

granted only when the Board of Adjustment finds the proposal meets the certain general criteria as described in Section 9.3.5 of the LDC:

- A. Effect on the environment:** The area is zoned DTB which allows for mobile food vending subject to the conditions in the CUP. The impact of an additional accessory structure by itself is minimal. The use does not create a nuisance that may arise from noise, smoke, odor, dust vibration or illumination. However, the BOA may wish to consider the expanded service area in it's determination.
- B. Compatible with surrounding area:** The canopy is near an intersection where there is considerable traffic, however, it does not constitute a sight triangle problem. The canopy is a single story structure, 100 square feet in area and approximately 12 feet in height. There are no floodways or easements that interfere with the structure.
- C. External impacts minimized:** The canopy is approximately 6' away from the front and corner side property line and meets current setback requirements. However, the added seating and umbrellas increase visual impact and are beginning to encroach the parking lot. Additional food items are being sold without the cart present with an a-frame sign advertising "Courthouse Coffee". The existing CUP prohibits encroachment of the parking / maneuvering area, additional mobile food vendors and signage not on the cart.
- D. Infrastructure impacts minimized:** The infrastructure needs are minimal. However, the applicant has requested electrical and lighting. The existing CUP prohibits hotdog cart lighting.
- E. Consistent with General Plan and Code:** The request is consistent with the General Plan.
- F. Parcel size:** The subject property is adequately sized for this use. In light of the hot dog cart expansion that is requested, the parcel size maybe questionable for more than one food vendor.
- G. Site Plan:** The site plan shows the canopy located on the northeast corner of the property. The hotdog cart, coolers, A-frame signage and seating are indicated to be near the canopy. Adequate parking for the business is available.

NEIGHBORHOOD COMMENTS:

Staff has sent mailings to the owners of record within 300' of the property, posted the property, published notices in the local paper and hand distributed notices to local businesses. Two downtown businesses have expressed verbal support for the cart and canopy with extended hours. Two other businesses, both restaurants, expressed opposition regarding the cart itself. No written comments have been received as of this writing.

STAFF FINDINGS AND RECOMMENDATIONS:

The BOA has several options available:

1. Denial of this request.
2. Approval of this request with or without conditions.

Continued violations of CUP conditions and City Codes will also allow the BOA the additional option to revoke a CUP as described in section 9.3.7.C of the LDC.

SUGGESTED MOTION OF DENIAL:

Move To Deny Conditional Use Permit Amendment CUP10-001.

SUGGESTED MOTION OF APPROVAL WITH CONDITIONS:

Should the BOA desire to approve this request, staff offers several conditions as specified in the motion below. Move To Approve Conditional Use Permit Amendment CUP10-001, subject to the following 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. The CUP shall be in strict conformance to the applicants 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.

Attachments:

Original CUP Approval and Staff Report
LDC Section 2.5.13 and Section 9.3.7.C.
Site Plan Revised 7-9-10
Applicant Narrative
Supplemental Narrative Received 7-9-10



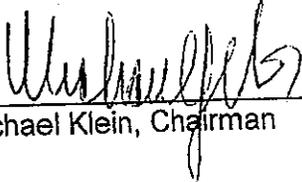
DECISION OF CITY OF PRESCOTT BOARD OF ADJUSTMENT

The request to approve Conditional Use Permit CUP09-006, filed by applicant Diane Rosito for property located at 202 S. Montezuma Street, APN: 109-02-046A, having come for review by this City of Prescott Board of Adjustment public hearing on February 18, 2010, the Board of Adjustment having heard and considered the testimony and evidence presented, and the majority having concurred in the finding and decision;

THE CITY OF PRESCOTT BOARD OF ADJUSTMENT approves Conditional Use Permit Number CUP09-006 subject to the conditions contained in the Staff Report dated January 21, 2010.

IT IS HEREBY ORDERED that the application filed by Diane Rosito, be hereby **GRANTED**.

DATED this 18th day of February, 2010.



Michael Klein, Chairman

Concurring Board of Adjustment members:
Duane Famas, Johnnie Forquer, Calvin Fuchs,
Tom Kayn, Mike Klein, Ken Mabarak and Bill Warren.

Attachment: Staff Report

cc: Brad Christiansen, Property Owner
3599 Lee Circle
Prescott, AZ 86301

CUP09-006

CONDITIONAL USE PERMIT
202 Montezuma St. (Eco 3 Oil)

Agenda# 4

COMMUNITY DEVELOPMENT - PLANNING AND ZONING DIVISION
BOARD OF ADJUSTMENT MEETING FOR January 21, 2010

STAFF REPORT

TO: City of Prescott Board of Adjustment

FROM: Tom Guice, Community Development Director *TG*
George Worley, Assistant Community Development Director *GW*
Wendell Hardin, Community Planner *WH*

DATE: January 21, 2010

REQUEST: CUP09-006

ORIGINAL APPROVAL

PARCEL NUMBER: 109-02-046A

ZONING: DTB (Downtown Business)

AREA: 0.25 acres

Owner: Brad Christiansen
3599 Lee Circle
Prescott, AZ 86301

Applicant: Diane Rosito
202 S. Montezuma St.
Prescott, AZ 86303

REQUEST:

This is a request for a Conditional Use Permit to allow a Mobile Food Vendor (proposed Hot Dog Cart). The Cart is proposed to be in operation on various days throughout the year. The Hot Dog Cart is proposed to be sited along the northeast corner of the property fronting W. Goodwin to the north and S. Montezuma to the east. This request complies with the Land Development Code as well as ARS 9-462.06 regarding applications heard by the Board of Adjustment.

PAST BOARD OF ADJUSTMENT ACTIONS: No recent actions proposed to the Board of Adjustment..

CONDITIONAL USE REVIEW CRITERIA:

Conditional uses require special consideration regarding the effect on surrounding properties and the use in relation to the objectives of the ordinance. A conditional use permit may be granted only when the Board of Adjustment finds the proposal meets the certain general criteria as described in Section 9.3.5 of the LDC:

- A. **Effect on the environment:** The area is zoned Downtown Business (DTB) which requires the intended use, a Mobile Food Vendor, to come before the Board of Adjustment to seek a Conditional Use Permit. The impact of the proposed Mobile Food Vendor (Hot Dog Cart) is minimal due to patrons being primarily foot traffic in nature. Article 2 / Use Regulations, Section 2.5.13 / Mobile Food Vendors call out a maximum

area of operation which includes not lighting, minimal signage, and that trash containers be provided by the vendor.

B. Surrounding Zoning and Land Uses:

Direction	Land use	Zoning
North:	Whiskey Row (various shops and Restaurants)	DTB
South:	Adjacent to the property is a strip-like building with multiple types of Retail/Restaurants shops.	DTB
East:	Vacant corner adjacent to the Chamber of Commerce	DTB
West:	Eco-3 Oil Change and High School Athletic Field	DTB/MF-M

C. External Impacts minimized: The placement of the Hot Dog Cart will have little to no impact from a hazardous or noxious point of view to the surrounding area. The Cart will be located outside of the Visual Triangle as described in Article 6/ General Standards, Section 6.3 Access Management.

D. Infrastructure impacts minimized: There will be no requirement of new infrastructure for the proposed CUP request. The Hot Dog Cart is self-contained. The Cart is to be no greater than 40 Square feet in size and must be self-sufficient in its operational context. Currently, fire hydrants are available adjacent to the parcel.

E. Consistent with General Plan and Code: The General Plan shows this area as commercial, while zoning of the property is DTB. The subject parcel as a whole is consistent with the 2003 General Plan policies. The LDC allows for Mobile Food Vendor with an approved CUP. The conditional use permit process allows neighbors an opportunity to voice their opinions about the proposal. At this time only the Downtown Partnership has asked for a technical review with staff.

F. Parcel size: The subject property is adequately sized for this use. No excess area exists that may allow for any future lot splits or additional Mobile Food Vendors.

G. Site Plan:

- The maximum allowed footprint of a Mobile Food Vendor Cart is 40 Sq. Ft. with the proposed Hot Dog Cart meeting this requirement.
- The site plan clearly indicates the cart being out of any ingress/egress access points complying with safety regulations.
- The site plan indicates no loss of required parking spaces for the existing business (Eco3 Oil) on site.

NEIGHBORHOOD COMMENTS:

Met with a representative of the Downtown Partnership for a technical review of the proposed Hot Dog Cart.

STAFF FINDINGS AND RECOMMENDATION: The CUP application is complete. Staff recommended that the parking stripping and block be removed at the closest point to the Hot Dog Cart for safety purposes, applicant complied with this request. The height of the canopy and square footage is within the guidelines allowed by the LDC. Staff recommends approval of the requested CUP.

Land Development Code

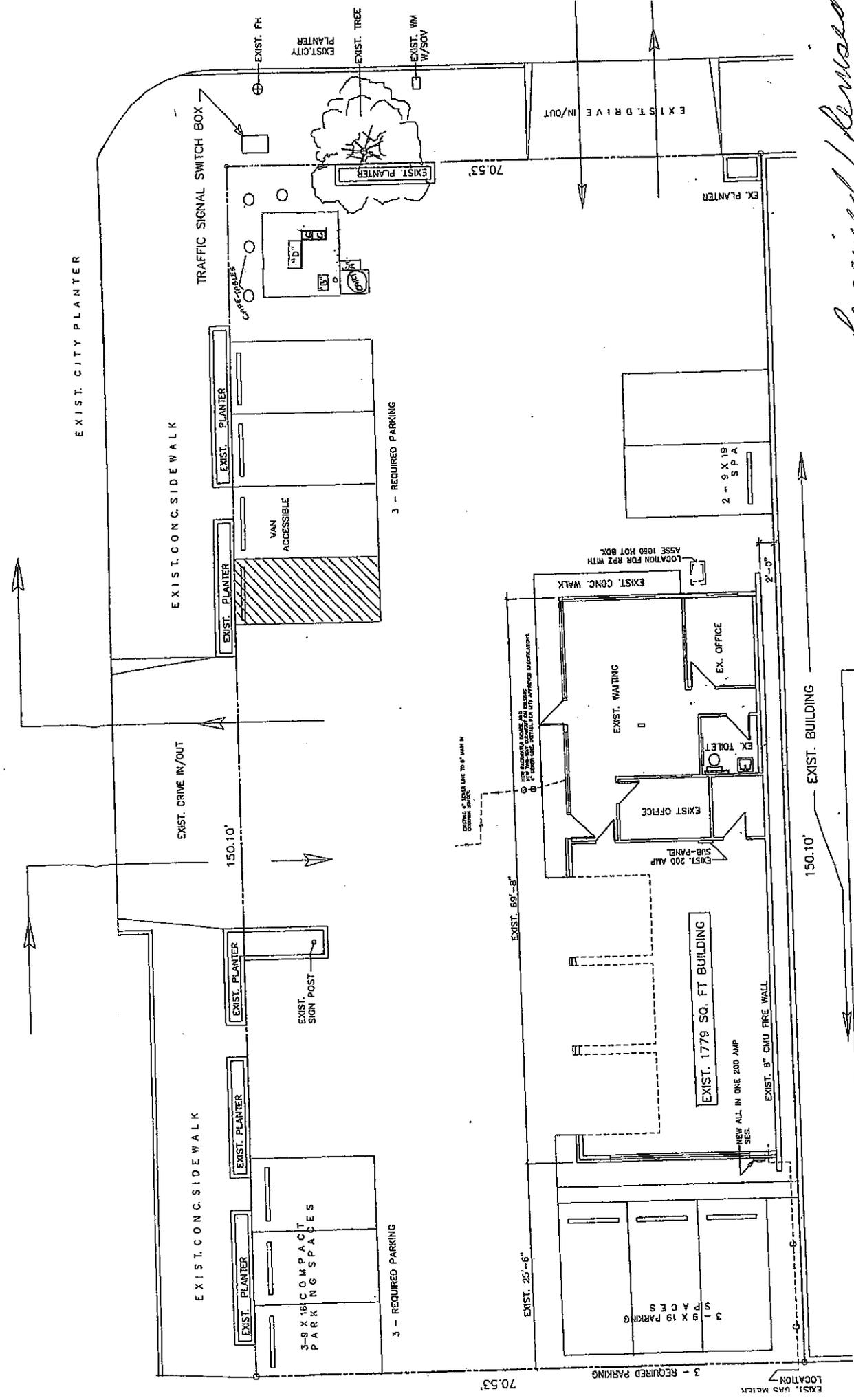
LDC Section 2.5.13 / Mobile Food Vendors

A two- or four-wheeled vehicle designed to carry foods and permitted by the County's Health Department. Such vehicles shall not be self-propelled. The dimensions of such vehicles shall not exceed 8 feet by 5 feet for a total of 40 square feet of footprint. Umbrellas shall not be greater than six feet in diameter. All mobile food vendors are subject to the following standards:

- A. Mobile Food Vendors are only allowed to operate on private property of an existing operating business.
- B. Mobile Food Vendors must either be located adjacent to the principal structure or within the confines of the parking lot of the existing business.
- C. Mobile Food Vendors shall require a Conditional Use Permit according to Sec. 9.3 / Conditional Use Permits with the exception of those Mobile Food Vendors operating within those Zoning Districts identified as a permitted use in Table 2.3 / Permitted Use Table.
- D. Mobile Food Vendors shall not operate within the public right-of-way.
- E. Mobile Food Vendors shall not encroach into any parking spaces required by the existing business and shall not impede vehicular circulation within the parking area of that business.
- F. Mobile Food Vendors signs shall be an integral part of the vending cart with lettering not exceeding ten inches in height. Only the name of the vendor or the vending company, the products offered, and the price of the products shall be included on the sign.
- G. Mobile Food Vendors signs shall not be internally illuminated or make use of flashing or intermittent lighting, animation, or noisemaking devices. Graphic illustrations shall display only the products being offered.
- H. Mobile Food Vendors shall keep the area within 15 feet of the location of the vending cart free from all litter and debris resulting from the operation.
- I. Mobile Food Vendors shall maintain a clearly-marked trash container near their cart for litter. Use of public trash receptacles for this purpose is prohibited.
- J. Mobile Food Vendors shall not sell to vehicular traffic at any location.

LDC Section 9.3.7 / Expiration/Revocation of Approval

- C. The Board of Adjustment may revoke a Conditional Use Permit in the event of a subsequent failure by the property owner or person in possession to comply with an on-going condition of approval. Such revocation shall not occur without written notice to the property owner, at least 20 calendar days prior, advising of the revocation consideration and an opportunity to appear before the Board. Revocation procedures shall be subject to the Public Notice requirements set forth in Sec 9.1.8A.



Revised / Revised
 17-9-10

SITE PLAN NOTES:

EXIST. GAS METER
 3 - REQUIRED PARKING
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Re: Conditional Use Permit expansion

I, Diane Rosito, respectfully request permission to expand the existing **Conditional Use Permit** to include the following proposals:

*1) Add an area for free standing vendor(s) to display and sell various goods on the southeast corner of the parking lot. *Shown on site plan*

Details: The proposed use would be to allow one or more vendors in a 10' by 30' area of the southeast corner of the parking lot to display and sell various goods such as custom leather goods, jewelry, quality shirts, freshly made donuts, etc. The vendors would utilize a canopy similar to the canopies used for the 'Western Arts Fair'. Each vendor would be self contained and the display would be attractive in appearance. The vendors would primarily set up on weekends and special occasions. Priority will be given to local vendors.

This would be a good utilization of this space as it would add variety to the downtown area and add consistency to the flow of foot traffic to our neighboring businesses on south Montezuma. From a visitor's perspective, this would show the Prescott downtown area to be vibrant and growing and therefore, generate tourism. Ultimately, this would bring more revenue and therefore the collection of more taxes.

*2) Add a free-standing canopy that measures 10' by 10' to cover the hot dog stand. *Shown on site plan*

Details: The Downtown Dog tries to keep a small quaint, café-like setting with bistro tables and chairs and umbrellas. The area, including the planters, is well maintained and we believe that the hot dog stand has been a good addition to this downtown corner. Unfortunately, the high winds have taken a toll on the new umbrellas and we now have several that are bent or broken.

While most people understand the wind damage to the umbrellas, we feel it looks unsightly and would like to respectfully request a 10' by 10' canopy be placed in that area over the hot dog cart (picture attached). This canopy would be overall, more attractive and sturdy. An added bonus would be that my daughter, Caroline would deal with less sun exposure.

3) Allow the hot dog stand to stay open until 2:00 am.

Details: As the warm weather is here and people are staying out later in the evening, the Downtown Dog respectfully requests operation until 2:00 am. This corner will be a good source for a bite to eat when people have been out drinking or not, especially after the other restaurants have closed. This request is primarily for Friday and Saturday evenings during the summer.

All the above requests will be compatible with the surrounding areas and businesses. The vendor(s) and the canopy would not have any impact on emergency services or prohibit access to this property. Parking requirements would be fulfilled and there would not be any health or safety issues.

Vendors could very well change from time to time and it is in the best interest of all concerned to choose vendors based on quality and appearance.

As I have shown in the last year, through hard work and high standards, that I will continue to develop a beneficial and attractive corner for the people of Prescott and visitors alike in the downtown area.

I respectfully request that the board give full consideration to this proposal and that your consideration is greatly appreciated.

Sincerely,



Diane Rosito

Eco 3 Oil Change / The DownTown Dog

LETTER OF CLARIFICATION

Received
7-9-10

To: Board of Adjustment

We would like to add the following food items to the conditional use permit:

- From 6 am to 10 am (Daily) sell reasonably priced coffee and donuts.
- From 6 pm to 2 am (Thursday thru Sunday) sell Tacos with condiments.

Of the allowable 40 sq ft ^{cart size} for the CUP, we are currently using 12 sq ft.

Shown on
site plan as:

✓ We would like to augment the hot dog cart with the following:

- "A" - 3' x 2' propane griddle to grill meat for tacos OR propane grill to grill sausage and hot dogs
- "B" - 2' x 2.5' Prep table
- "C" - 1' x 2.5' Cooler for soda/water (2)
- "D" - 3' x 2.5' Order table

After utilizing the existing mobile food cart it is apparent that we cannot effectively prepare, store, and sell the current food items and the above food items without a cost to quality of food. The approval of the above items would allow for better organization and more conveniently serve the customer.

Sincerely,

Diane Rosito

COMMUNITY DEVELOPMENT - PLANNING & ZONING DIVISION**BOARD OF ADJUSTMENT****STAFF REPORT**

Meeting Date: 7/17/10

TO: Board of Adjustment Members
FROM: Tom Guice, Community Development Director *TG*
George Worley, Assistant Director *GW*
Mike Bacon, Community Planner *MB*
DATE: 7/17/10

Location: 741 Downer Trail **Zoning:** SF-35 **APN:** 111-10-027
Applicant: Tom Terry, Distinctive Homes, P.O. Box 3988, Prescott, AZ 86302
Owner: Bentivegna Family Trust, 3046 W. Eagle Claw Drive, Phoenix 65086

REQUEST/ Project Description. The applicant is requesting a Conditional Use Permit for a 700 sq. ft., one-story guest quarters located to the side of the proposed 2,599 sq. ft. home with a breezeway/covered walkway attached 2,212 sq. ft. garage and recreation room on a ±1.36 acre (±59,241.6 sq. ft.) lot facing Downer Trail. Total lot coverage is ±9.5% and 35% is allowed by Code. A site plan and elevations are attached.

STAFF ANALYSIS.**Compliance with Zoning Code and ARS 9-462.06.** Yes**Past Board of Adjustment Actions.** None**Area CUP's for guest quarters.** None within the immediate area.**Land Development Code Requirements. Section 2.5.6 Guest Quarters**

Guest quarters may be attached or detached from the principal single-family dwelling unit and shall be considered accessory use to such a dwelling unit (principal use). All guest quarters shall be subject to the following standards:

- A. Guest quarters may be attached or detached from the principal single-family dwelling.
- B. Guest quarters shall be subject to the size limitations of Sec. 2.5.2B.
- C. Guest quarters may be utilized by guests and persons employed on site by the resident family of the principal dwelling, and **may not be rented** separately from the principal dwelling unit.
- D. Detached guest quarters shall meet all development standards generally applicable to accessory buildings or structures, including minimum building setbacks and building height.
- E. Guest Quarters and the primary residence shall share utilities. Separate utility meters shall not be allowed.
- F. Guest Quarters include a kitchen. However, such quarters shall not be utilized as separate rental units.
- G. One off-street parking space shall be required for each guest quarters, in addition to that required for the primary dwelling unit. The additional required parking space shall be located on the same lot as the primary dwelling unit. Tandem parking shall be allowed.

H. Where 2 complete dwelling units are attached to each other on the same lot, they shall be considered a Duplex, without consideration to the relative size of each attached unit. A Duplex shall meet all development standards for the district, including minimum building setbacks and limitations on overall density.

Zoning & Uses. The site is located within a SF-35 zoning district with surrounding single family uses.

Hillside Development. This parcel is located within the Downer 16 subdivision which has numerous building envelopes. The guest quarters will be located within the building envelope.

Neighborhood Comments. No comments have been received to date.

Conditional Use Review Criteria (Section 3.5 Land Development Code)

The Board of Adjustment may approve an application for a conditional use where it reasonably determines that there will be no significant negative impact upon residents or other owners of surrounding property or upon the public. The Board of Adjustment shall consider the following criteria in its review and approval shall be contingent upon compliance with the site plan and any conditions of approval:

(Note: Staff comments are *italicized*)

A. Effect on Environment

The location, size, design, and operation characteristics of the proposed use shall not be detrimental to the health, welfare, and safety of the surrounding neighborhood or its occupants, nor be substantially or permanently injurious to neighboring property. The proposed use is addressed within the code as being an accessory dwelling for members, guests or on-site employees of the family. *There are no detriments.*

B. Compatible with Surrounding Area

The proposed site plan, circulation plan, and schematic architectural designs shall be harmonious with the character of the surrounding area with relationship to landscaping, scale, lot coverage, and the like. *There is one other BOA approved guest quarters in the area and it is located at 635 Downer Trail that was approved in 1996. The proposal is considered compatible with the surrounding area if it meets all the LDC requirements for accessory buildings. Many surrounding lots within this subdivision are vacant at the present time.*

C. External Impacts Minimized

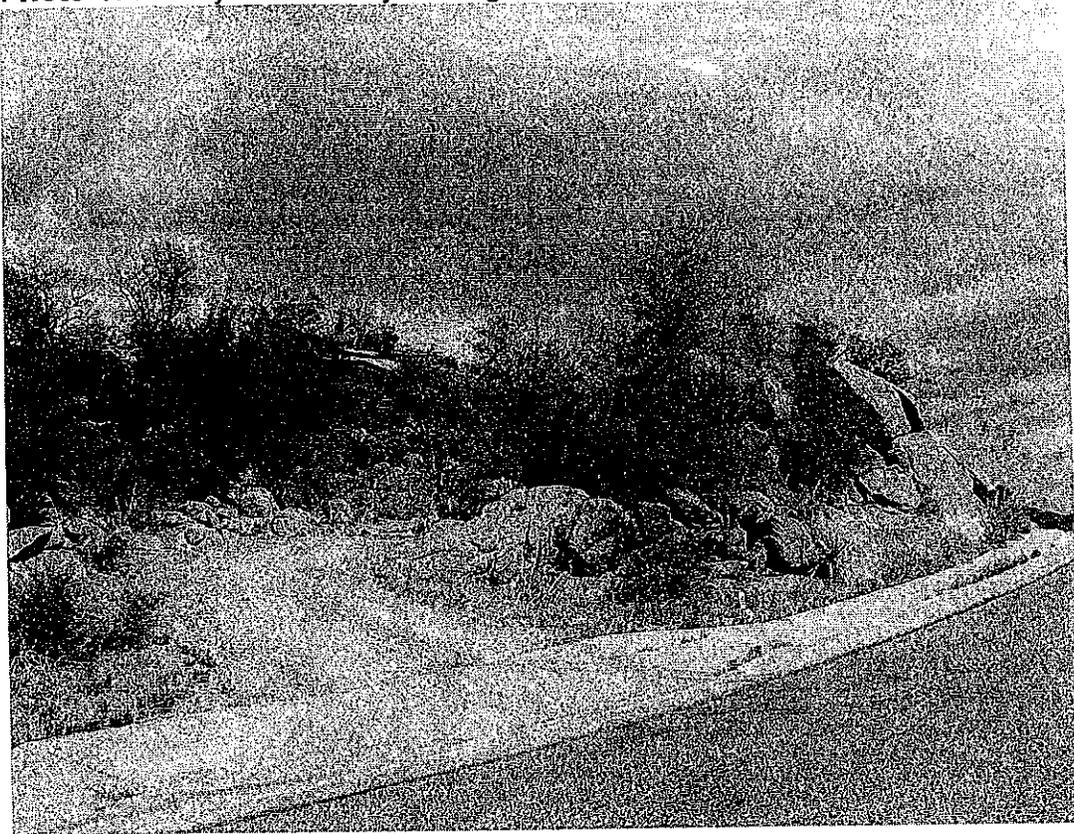
The proposed use shall not have negative impacts on existing uses in the area and in the City through the creation of noise, glare, fumes, dust, smoke, vibration, fire hazard, or other injurious or noxious impact. The applicant shall provide adequate mitigation responses to these impacts. *The proposal is compatible and has little impact. Rock outcrops with a change of elevation will conceal much of the building from Downer Trail.*

D. Infrastructure Impacts Minimized

The proposed use shall not have negative impacts on existing uses in the area and in the City through impacts on public infrastructure such as roads, parking facilities and water

and sewer systems, and on public services such as police and fire protection and solid waste collection, and the ability of existing infrastructure and services to provide services adequately. *The proposed guest quarters will not generate any additional traffic that is not normally otherwise associated with a residential unit, nor will it generate any significant impact on the existing infrastructure.*

Photo 1: Front yard driveway looking Southeast from Downer Trail



E. Consistent with General Plan and Code

The proposed use will be consistent with the purposes of this Code, the General Plan, Area Plans, and any other statutes, ordinances or policies that may be applicable, and will support rather than interfere with the uses permitted outright in the zone in which it is located. If the use is permitted outright in another zone, there must be substantial reason for locating the use in an area where it is only conditionally allowed. *This zone permits detached quest quarters as an accessory use by Conditional Use Permit so that surrounding residents may voice their opinions on the type, intensity, and other impacts the proposed project may have on their individual properties. The Board of Adjustment may establish additional reasonable conditions of approval to mitigate project impacts.*

F. Parcel Size

The proposed use may be required to have additional land area, in excess of the minimum lot area otherwise required by the underlying zoning district, as necessary to ensure adequate mitigation of impacts on surrounding land uses and the zoning district. No additional land area is required by the Land Development Code. *The ±1.36 acre parcel exceeds the minimum lot size required for the SF-35 zoning district.*

G. Site Plan

The proposed use shall comply with the procedures and requirements of Sec. 9.8, Site Plan Review. *This is done at the time of Building Permit application*

Additional Conditions.

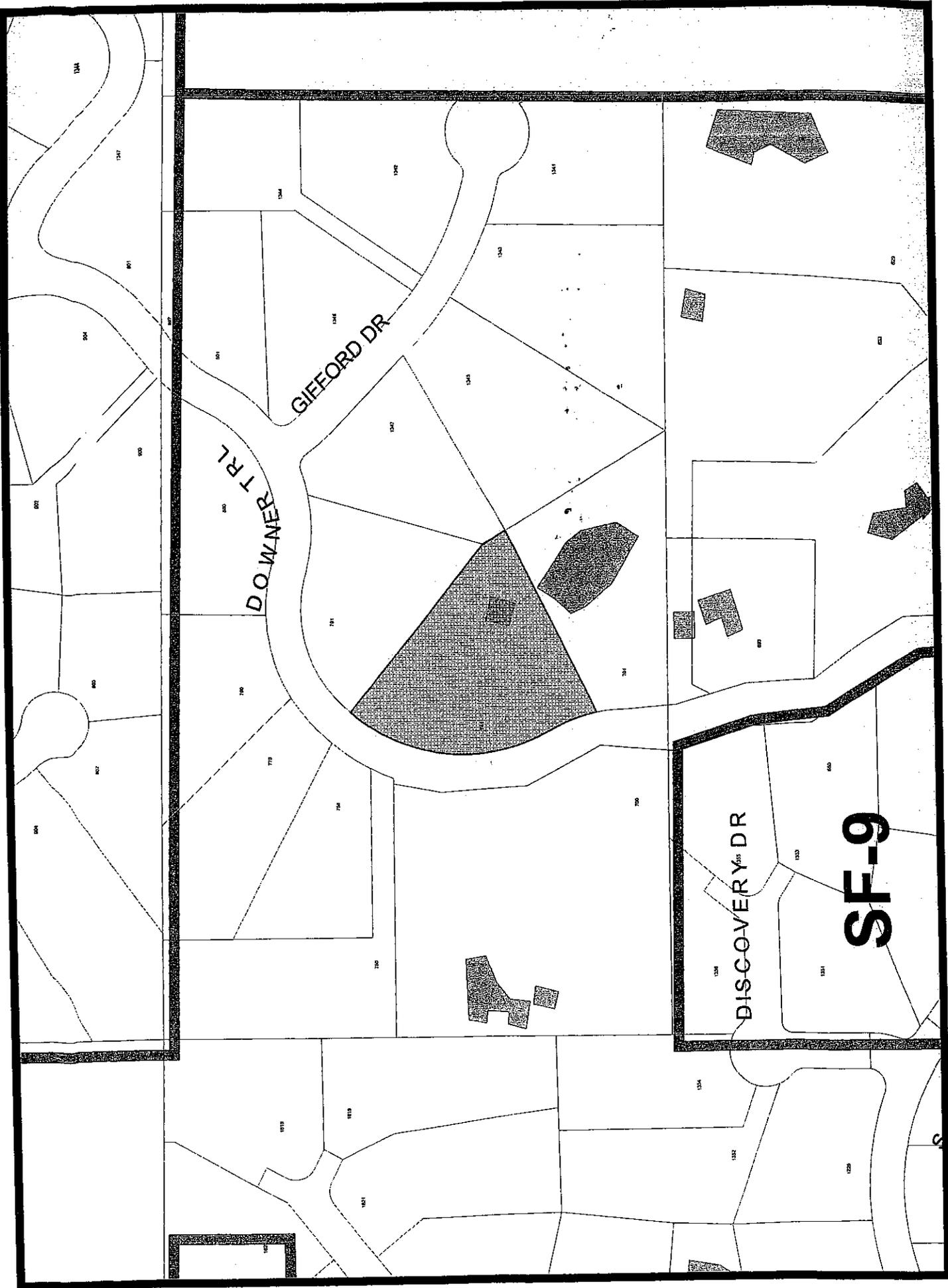
The Board of Adjustment may impose additional reasonable conditions to carry out the spirit and intent of this Code and to mitigate adverse effects of the proposed use. These requirements may include, but are not limited to, increased open space, loading and parking requirements, additional landscaping or buffering, and additional improvements such as curbing and sidewalks.

STAFF RECOMMENDATION. Staff recommends approval.

SUGGESTED MOTION

Move to APPROVE Conditional Use Permit CUP10-002 for a detached quest quarters with the following Conditions of Approval:

1. In substantial accordance with the Site Plan Exhibit A dated July 17, 2010;
2. In accordance with Section 2.5.6 (relating to Guest Quarters) of the Land Development Code; and,
3. Site development must be within the approved Building Envelope on file with the Community Development Department.



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DOWNER TR L

DISCOVERY DR

SF-9

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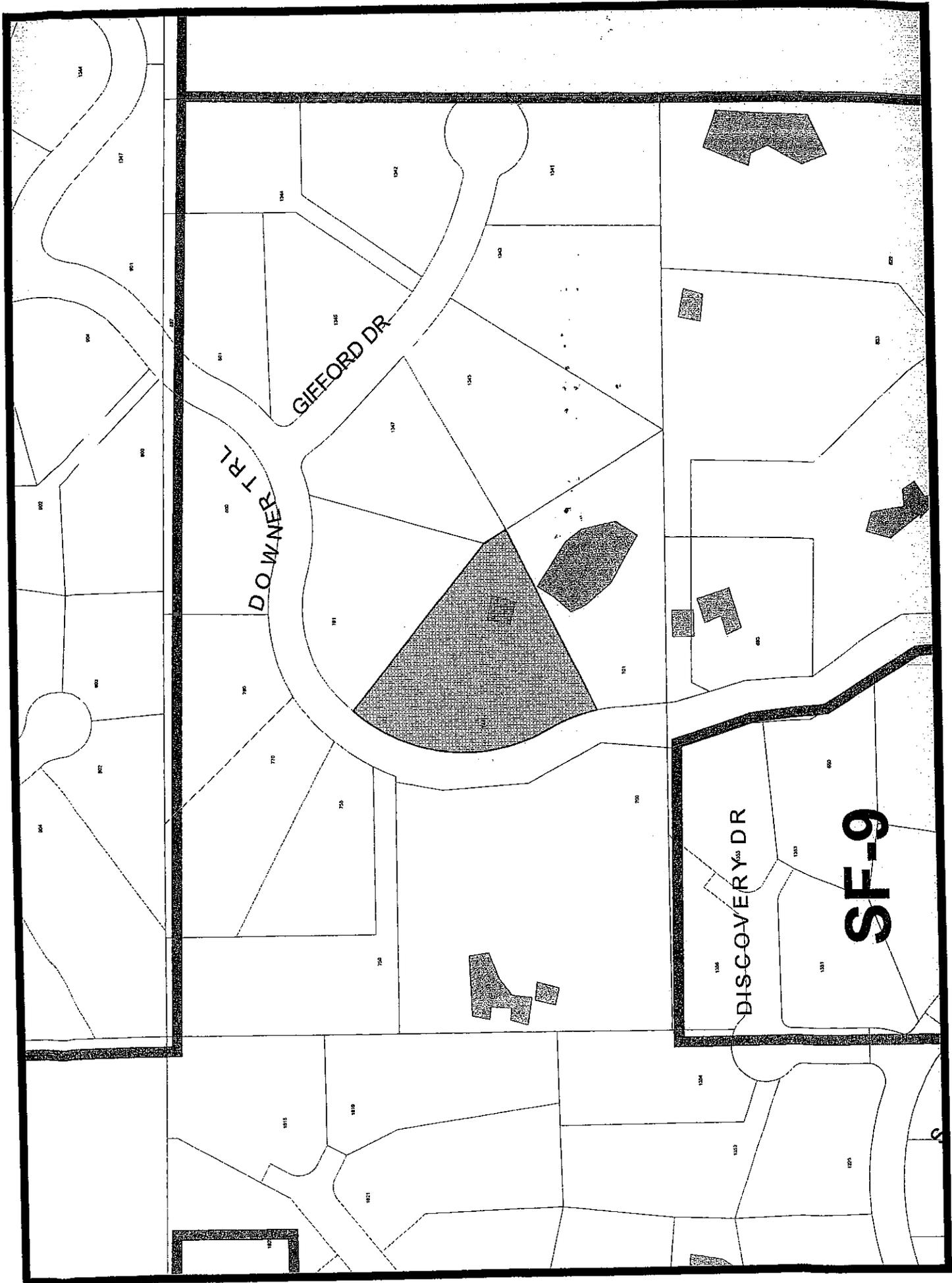
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GIFFORD DR

DOWNER TRL

DISCOVERY DR

SF-9

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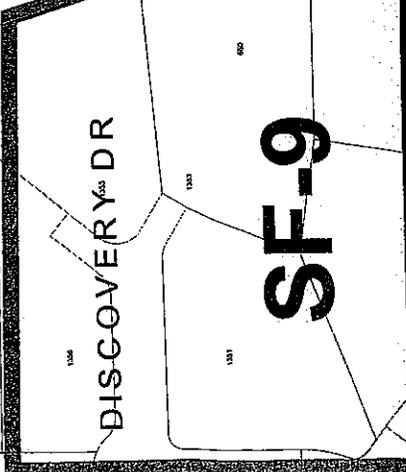
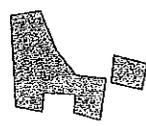
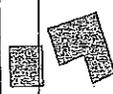
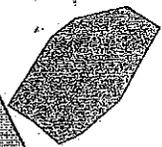
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**CITY OF PRESCOTT
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
201 S. Cortez, Prescott, AZ 86301 (928) 777-1356**

CONDITIONAL USE PERMIT APPLICATION

CUP# 10-002

Property Address: 741 DOWNER TRAIL

Assessor's Parcel Number (s)(APN): 111-10-027

Township _____ Section _____ Range _____ Zoning: SINGLE FAMILY 35

Subdivision Name: DOWNER 16 LOT 15

		For Staff Use Only
Owner Name & Address: <u>SAL & GRACE BOUTIVEGNA</u> <u>3046 W. BAGLE CLAY DR</u> <u>PHOENIX, AZ 85086</u> Phone: <u>602-499-4979</u> Fax: _____ Email: _____		Date Received: _____ Taken In By: _____ Assigned To: _____ Date Application Complete: _____
Applicant/Agent Name & Address (If different than property owner, Agent letter must accompany submittal): <u>DISTINCTIVE HOMES TOM TERRY</u> <u>P.O. BOX 3908</u> <u>PRESCOTT, AZ 86302</u> Phone: <u>928-771-0948</u> Fax: <u>771-0948</u> Email: <u>DHOMES@COMMSPEED.NET</u>		Fees & Charges: _____ Receipt #/Date: _____ PAC Date: _____ BOA Date: _____

Description of Request: PERMISSION TO BUILD A 700 SQ. FT. DETACHED GUEST HOUSE ALONG WITH A 2599 SQ. FT. MAIN HOUSE AND WITH GARAGE & RECREATION ROOM

Total Acres: 1.36 Total Lots: 1

Existing Zoning: S.F. 35

Name _____ Signature _____ Date _____

BOARD OF ADJUSTMENT
AMENDED
BY-LAWS

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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 Zoning 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 ~~Planning and Zoning Director~~ 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

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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 Board City Council shall elect appoint from its members a Chairman and Vice-chairman at the first regularly scheduled meeting in January 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). Term of office shall be one (1) year. A chairman shall not serve more than two (2) consecutive full terms. In the event of the vacancy of the office of chairman, the current vice-chairman shall fulfill the unexpired term of the chairman and a new vice-chairman shall be elected at the next meeting of the Board.~~
- B. The Chairman shall:
- (1) Preside at all meetings
 - (2) Coordinate agenda with Planning and Zoning Division.
 - (3) Coordinate with the Planning and Zoning 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. ~~Secretary.~~ The Secretary, who shall be appointed by the ~~Planning and Zoning 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. ~~Legal counsel.~~ The Prescott City Attorney shall be legal counsel for the Board.

ARTICLE VI Meetings

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- 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 (~~normally 9:00 A.M.~~)
 - (2) Recording of members present/absent, staff, and public in attendance
 - (3) Approval of the minutes
 - (~~3~~ 4) Administering oath
 - (4) ~~Deferred items~~
 - (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.

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- (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 ~~February 20, 2003~~ July 15, 2010 are null and void.

Approved on the ~~20th day of February, 2003~~ 15th day of July, 2010 by a quorum of Board of Adjustment members.

E. Calvin Fuchs
Chairman of the Board of Adjustment

Date

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Board of Adjustment
By-Laws
Page 5

Thomas A. Guice
Community Development Director

Date

APPROVED AS TO FORM:

Gary D. Kidd, City Attorney