



City of Apache Junction
Development Services Department



**PLANNING AND ZONING COMMISSION
PUBLIC HEARING ITEM**

DATE: September 25, 2018

CASE NUMBER: CUP-1-18

REQUEST: A staff recommended revocation of P&Z Commission Resolution #CUP-1-18 that allows the placement of 4 temporary cargo containers on a commercial property for personal use.

PROPERTY OWNER: Dean and Bonnie Varga

REPRESENTATIVE: Michelle Dahlke, Arizona Planning and Paralegal Solutions

LOCATION: The subject site is located at 2090 W. Superstition Boulevard (Assessor parcel 100-36-025A)

**GENERAL PLAN/
ZONING DISTRICT:** Designated "Medium Density Residential"/Zoned General Commercial ("B-1")

**SURROUNDING
LAND USES:**

- NORTH: Cholla Vista Estates Subdivision zoned Medium Density Single-Family Detached Residential with a minimum lot size of 10,000 sq. ft. (RS-10)
- SOUTH: Various commercial lots (B-1)
- EAST: Various commercial lots (B-1)
- WEST: Various vacant commercial lots (B-1)

RECENT BACKGROUND INFORMATION

The subject site is located at 2090 W. Superstition Boulevard, on the northeast corner of Superstition Boulevard and Ocotillo Drive and is approximately 0.57 acres. The property is primarily vacant, except for four existing Conex cargo storage containers

recently allowed by CUP-1-18 on April 10, 2018; one 8' by 40' container and three 8' by 20' containers. There is also a chain link fence on the west and south side property line and a block wall on the north and east side property lines.

According to aerial photos from past years, up until around 2003 or 2004 the property had been developed with a building and yard, possibly an auto repair business. It was in relation to that business that landscaping and screening improvements were constructed on the property, including a block wall. Then as recently as 2005 to 2010 the property was used for storage and/or contractor yard uses, allowed under the old CB-2 zone.

Dean and Bonnie Varga, the property owners acquired the property in August 2017 as vacant land. Under the city's new zoning ordinance, a CUP is required for storage lot uses. A separate administrative use permit ("AUP") is also required for established businesses who want to use cargo containers for business storage purposes. This property came to staff's attention because after Mr. Varga bought the property, and he installed the cargo containers without CUP and AUP approvals. CUP-1-18 sought to remedy those issues.

CUP-1-18 PROPOSAL

Dean and Bonnie Varga requested a conditional use permit to allow for the placement of eight temporary (3 to 5 years) Conex storage containers on their property, for personal use. The applicants wanted to place two 8' by 40' and six 8' by 20' cargo containers on the property.

The applicants indicated that they would improve landscaping and appropriately screen the cargo containers per regulations. The cargo containers would be a temporary use until a more permanent use of the property could be financially feasible for the property owners.

The applicants amended their request when they learned that staff was recommending approval for only four cargo containers. Their new request was for the placement of four temporary (2 years) cargo containers, including two 21' long trailers and one 24' enclosed trailer for personal use.

PLANNING AND ZONING COMMISSION PUBLIC HEARING - MARCH 27, 2018

During the Planning and Zoning Commission public hearing held on March 27, 2018 staff gave a presentation on the case. During the public hearing the commission had questions about limiting the size of the cargo containers. Staff responded that they were not recommending a size limit for the cargo containers, just a number. Another question that the commission had was about any proposed business for the property, and staff was not made aware of any at that time. Other comments and concerns were made about the cargo container code (Section 1-6-8), about not having an established business and that cargo containers need to be incidental to a business. Also, that the property owners did not do their due diligence. Lastly, no one from the public spoke during the public hearing portion.

The case was continued per request from the applicant, to the next public hearing on April 10, 2018. The commission voted 7-0 to continue the item.

PLANNING AND ZONING COMMISSION PUBLIC HEARING - April 10, 2018

During the Planning and Zoning Commission public hearing on April 10, 2018 the commission heard staff's presentation of the case again, which was very similar to what was heard on the March 27th meeting. However, the applicant did revise their request for the placement of four temporary (2 years) cargo containers and two 21' long trailers and one 24' enclosed trailer for personal use. The commission heard from the applicant's representative and no one from the public spoke during the public hearing portion. The commission still had reservations about the lack of a proposed business use, and using the property strictly for personal storage. The commission voted 4-3 to approve the CUP with the following findings and conditions;

Approved Findings:

- 1) With regard to Criteria A: Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare, the commission does recognize the potential dust issue and will be addressing that through a condition that there be dust proofing done on the property.

- 2) Criteria D: Compatibility with surrounding uses and structures. While the commission recognizes that a number of the surrounding properties are vacant, there are still concerns about how this subject property will be used in terms of adding the trailers or changing the cargo containers, and believes that needs to be addressed through the conditions.
- 3) Criteria E: Conformance with the General Plan and City policies. The commission recognizes that the general use being identified, for placing cargo containers on a commercial property that have personal possessions or belongings inside, is vague or is not in the true spirit of the General Plan or the city code for the use of the cargo containers. However, that will be addressed through the conditions.

Approved Conditions:

- 1) The applicants shall not be allowed more than four (4) temporary cargo containers on the property, which are to be painted a neutral desert tone color in accordance with Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-6, Supplemental Regulations, Section 1-6-8 Cargo Containers, within 90 days of approval of this CUP. In addition, the four (4) cargo containers currently on this site will not be substituted for cargo containers of any other size or appearance.
- 2) The chain link fence on the west and south property lines shall be completed and slatted with wood or vinyl slats within 90 days of CUP approval and no razor wire shall be permitted.
- 3) There shall be a one (1) year time limit for the temporary use of the cargo containers. The applicant will schedule a meeting with the Planning and Zoning Commission within 180 days of approval of the CUP to provide a proposed business plan or business strategy for the use of the subject property.

- 4) The cargo containers shall only be used for personal use of the applicants and no other tenants shall be allowed use of the cargo containers.
- 5) The applicants shall be limited to the four Conex cargo containers, and no other outside personal storage shall be allowed.
- 6) The applicants shall refurbish and replace any missing landscaping or irrigation improvements in compliance with Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8, Landscape Regulations within 6 months of approval of this CUP.
- 7) The site shall be treated for dustproofing in accordance with options obtained in the city's engineering guidelines for dust control mitigation pursuant to Apache Junction City Code, Volume 1, Chapter 9, Health and Sanitation, Section 9-1-3(B) Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the Development Services Engineer.
- 8) The Planning and Zoning Commission shall reserve the right to reconsider or overturn the Conditional Use Permit approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-1-18 permit approval.

PLANNING DIVISION ANALYSIS AND FINDINGS

Evaluation of Criteria for a CUP Revocation:

Section 1-16-12-D-6 of the Zoning Ordinance establishes certain criteria for the Commission to consider when revoking Conditional Use Permits. Staff's analysis of said criteria, with regard to this use, is as follows:

1. 6. Revocation. An approved CUP may be revoked by the Commission following public hearing and a finding that there had been material noncompliance with any condition prescribed in the permit and/or the use generates a demonstrated public safety, health or welfare concern.
[The applicants have failed to meet condition #1 and #2 of resolution #CUP-1-18 which both had 90 day compliance deadlines. Resulting in the ability for staff to bring back the CUP for revocation. Additionally, it was made

known to staff that the applicant is planning on selling the property and is in the process of removing the cargo containers (see email correspondences). Also, the person holding the note on the property made contact with staff, requesting information about of the CUP and made it known that the applicant had stopped making payments on the note (see email correspondences). All of these factors justify revocation.]

PUBLIC INPUT

Public hearing notices were mailed to all property owners within 300 feet of the site and the case was also advertised in the newspaper. Staff received one phone call inquiring about the case.

PLANNING DIVISION RECOMMENDATION

Staff recommends that the Planning and Zoning Commissions revoke CUP-1-18 due to the fact that the Vargas have missed two time sensitive conditions as well as their apparent plan to sell the property. The CUP was originally approved to allow the temporary use of the cargo containers in efforts to bring in future business on the property. However, since the approval of the CUP staff has had no contact with the applicant or his representative about making progress towards a business plan.

RECOMMENDED MOTION

I move that the Planning and Zoning Commission REVOKE Planning and Zoning Commission Resolution #CUP-1-18, that allowed the placement of 4 temporary cargo containers for personal use, with conditions, at 2090 W. Superstition Boulevard, zoned General Commercial (B-1), based on the following findings:

Findings:

- a) Not abiding by conditions with deadlines within them. Specifically, condition #1 and #2 which called for painting the cargo containers a neutral desert tone and completing and adding wood or vinyl slats to the west and south chain link fence within 90 days of CUP approval. That date would have been July 10, 2018.

- b) Through communications it was made known that the property owners are planning on selling the property, which no longer warrants the need for the four cargo containers.

The Commission's decision is final, unless an aggrieved individual or party appeals said decision (in writing, with reasons and accompanied by all applicable appeal fees) to the City Council within 20 calendar days of the Commission action, and in accordance with the applicable procedures set forth in the Apache Junction Zoning Ordinance, Section 1-16-12 (attached).



Prepared by Danielle Jordan
Planning Intern

Attachments:

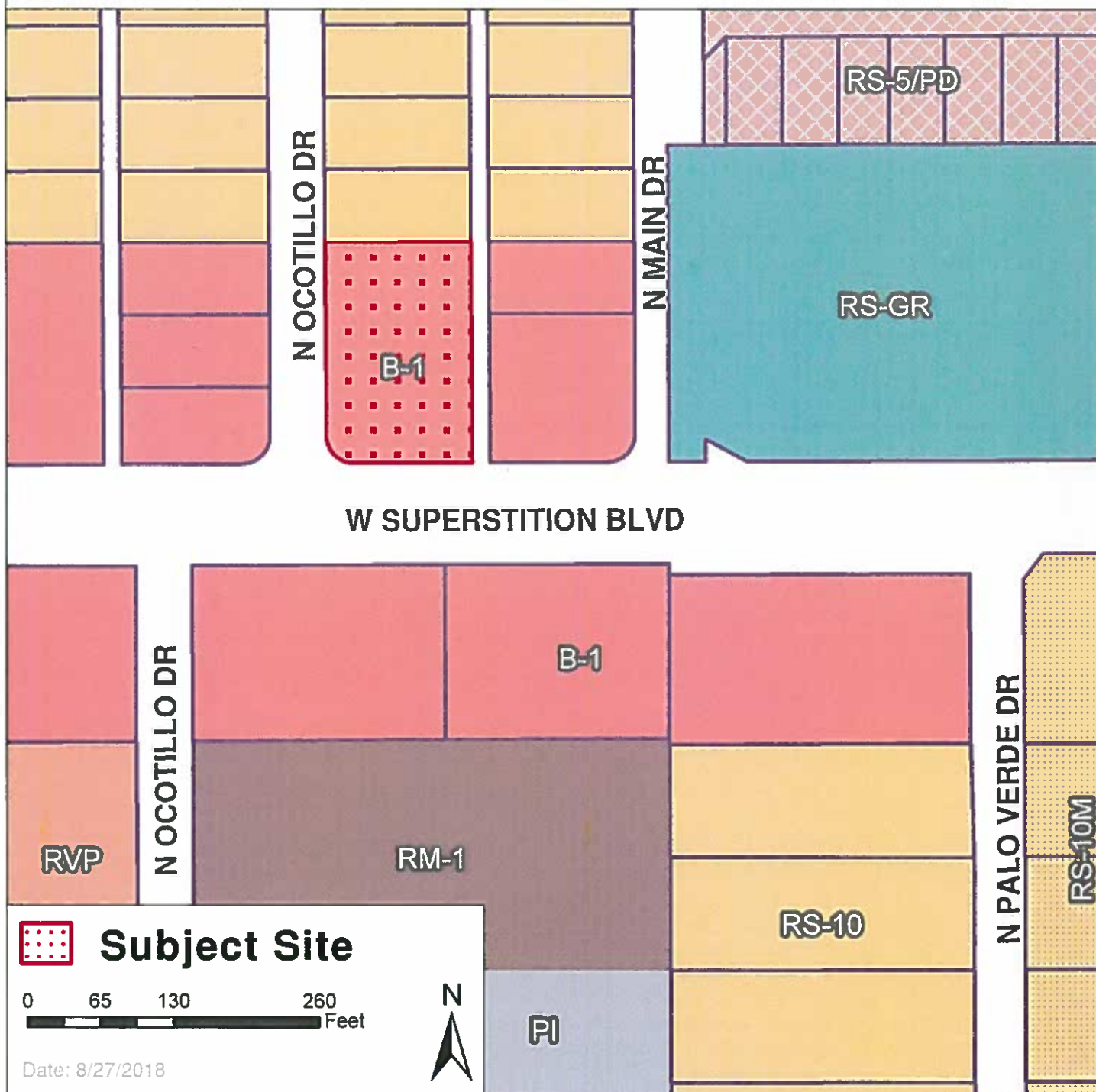
- Exhibit #1 - CUP-1-18 Revocation Vicinity Map
- Exhibit #2 - CUP-1-18 Aerial Map
- Exhibit #3 - CUP-1-18 Zoning Map
- Exhibit #4 - Assessor Parcel Map 100_36
- Exhibit #5 - Email Correspondences
- Exhibit #6 - Resolution #CUP-1-18
- Exhibit #7 - Section 1-16-12 Conditional Use Permits (zoning ordinance excerpt)



Vicinity Map

CUP-1-18

Revocation of Resolution #CUP-1-18 which allows the placement of four temporary cargo containers for personal use at 2090 W. Superstition Blvd





City of Apache Junction

Aerial Exhibit

CUP-1-18

LEGEND

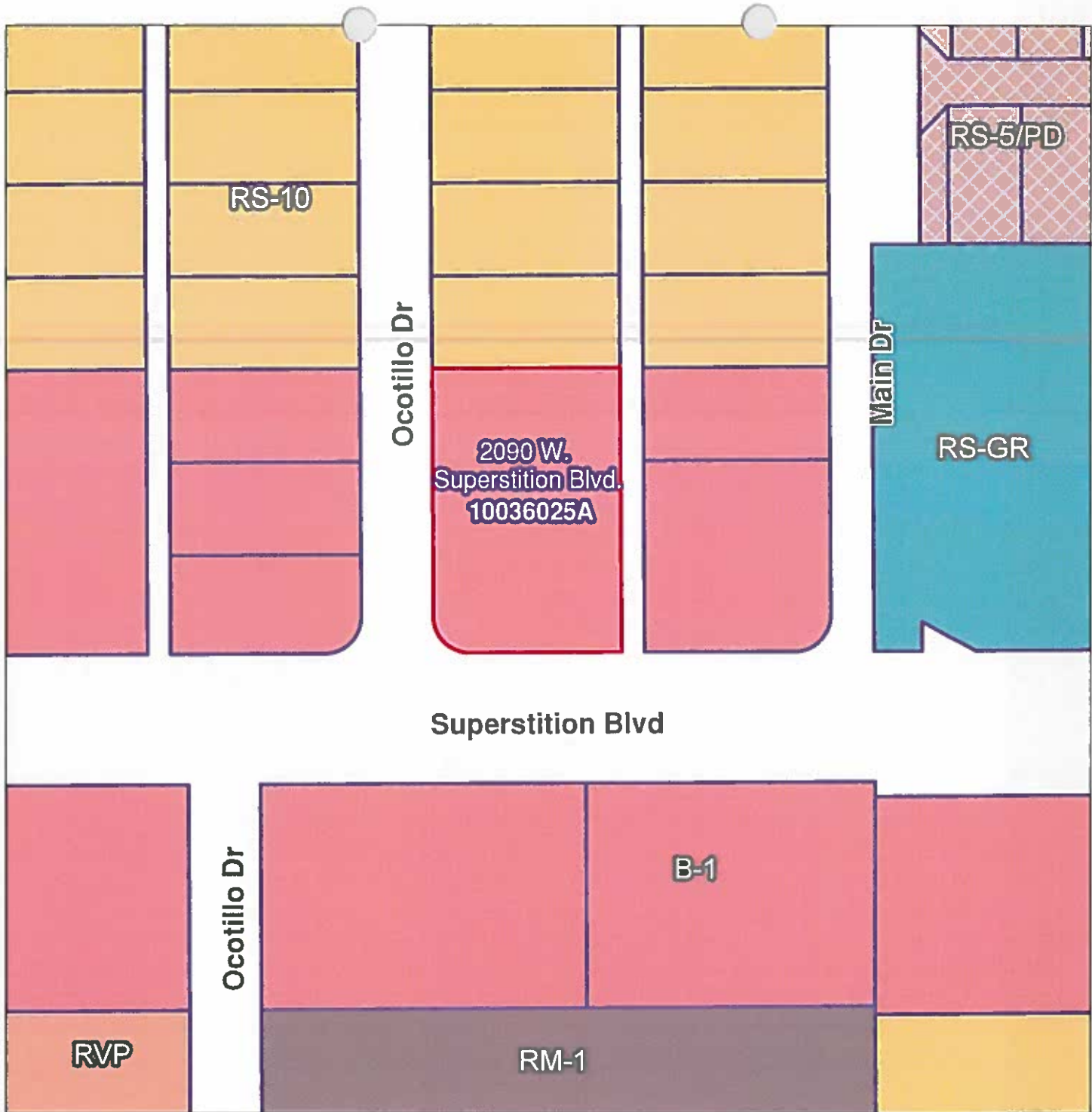
- Subject Site
- Parcel

DISCLAIMER: This exhibit was produced without benefit of a field survey and is not intended to represent a survey document of any kind. Distances shown hereon are approximate. Parcel lines shown hereon are approximate and may not reflect the exact position or alignment of parcel lines, roadway center lines, or easement lines.



February 28, 2018

0 50 100 200 Feet



City of Apache Junction Zoning Exhibit CUP-1-18

LEGEND

- Subject Site
- Parcel
- Zoning**
- B-1
- RM-1
- RS-10
- RVP
- RS-5/PD
- RS-GR

DISCLAIMER: This exhibit was produced without benefit of a field survey and is not intended to represent a survey document of any kind. Distances shown hereon are approximate. Parcel lines shown hereon are approximate and may not reflect the exact position or alignment of parcel lines, roadway center lines, or easement lines.



February 21, 2018

0 50 100 200 Feet

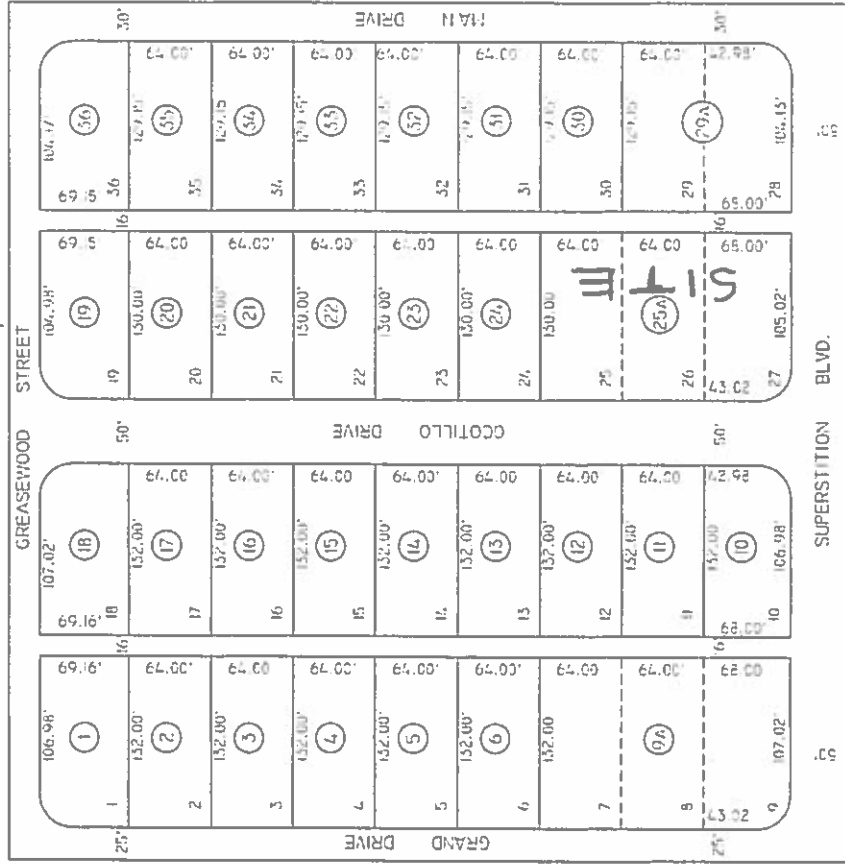
Created By Joseph Kiner

SEC. 18 SE SW SE TN.1N RG.8E

100-36

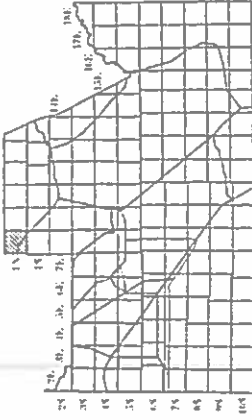
CHOLLA VISTA ESTATES

SEE MAP 100-35_3



LOCATION MAP

SEE MAP 100-35_3



VICINITY MAP

SEE MAP 100-35_3



10-29-2009
UPDATED BY CC
THIS MAP IS FOR VALUATION PURPOSES ONLY.
THIS OFFICE WILL NOT ASSUME LIABILITY FOR
REPRESENTATIONAL MEASUREMENTS OR ACREAGE.
SURVEYS AND DIVISION PLATS ARE ON FILE
WITH THE PINAL COUNTY RECORDERS OFFICE.

PINAL COUNTY ASSESSORS MAP

Danielle Jordan

From: Michelle Dahlke [michelledahlke@gmail.com]
Sent: Wednesday, September 05, 2018 3:20 PM
To: Larry Kirch
Cc: Danielle Jordan; Rudy Esquivias; Sidney Urias
Subject: Re: CUP-1-18

Okay, thank you Larry. Dean will go ahead and take care of the sign.

Michelle

On Wed, Sep 5, 2018, 1:21 PM Larry Kirch <lkirch@ajcity.net> wrote:

Michelle,

Other than taking down the informational sign for the CUP Hearing, there is nothing else. The city can take that down if he would like us to.

Thank you, Larry

From: Michelle Dahlke [mailto:michelledahlke@gmail.com]
Sent: Wednesday, September 5, 2018 12:50 PM
To: Danielle Jordan <djordan@AJCity.Net>
Cc: Rudy Esquivias <resquivias@ajcity.net>; Larry Kirch <lkirch@AJCity.Net>; Sidney Urias <surias@AJCity.Net>
Subject: Re: CUP-1-18

Thank you. Is there anything further that needs to be done on Mr. Varga's part except for wait for the outcome of that meeting?

Michelle

On Wed, Sep 5, 2018, 12:36 PM Danielle Jordan <djordan@ajcity.net> wrote:

Hi Michelle,

The case will be going back to P&Z Commission on September 25, 2018 for revocation.

Danielle Jordan

From: Rudy Esquivias
Sent: Wednesday, September 05, 2018 12:35 PM
To: 'Michelle Dahlke'
Cc: Larry Kirch; Danielle Jordan; Sidney Urias
Subject: RE: CUP-1-18

Danielle, please update Michelle on this case. Thanks. – Rudy -

From: Michelle Dahlke [<mailto:michelleldahlke@gmail.com>]
Sent: Wednesday, September 05, 2018 11:28 AM
To: Rudy Esquivias
Cc: Larry Kirch; Danielle Jordan; Sidney Urias
Subject: Re: CUP-1-18

Rudy,

Has a date been set to bring the CUP revocation to the P&Z Commission? I need to let Mr. Varga know.

Thank you,

Michelle

Michelle L. Dahlke

Zoning Specialist/Real Estate Paralegal

Arizona Planning and Paralegal Solutions

480-228-2150

michelleldahlke@gmail.com

On Tue, Aug 28, 2018 at 5:56 PM Rudy Esquivias <resquivias@ajcity.net> wrote:

Michelle, to clarify even more, staff plans to take this CUP back to the P&Z Commission for revocation as soon as possible and then give Mr. Varga a specific time frame to remove the containers from the property. We will advertise the case and send out the appropriate public hearing notices because a new hearing is required. Thanks. – Rudy -

From: Larry Kirch
Sent: Tuesday, August 28, 2018 12:48 PM
To: 'Michelle Dahlke'; Rudy Esquivias
Cc: Danielle Jordan; Sidney Urias
Subject: RE: CUP-1-18

Michelle, the one question I/we had for Joel was weather we had to notify the neighbors. Joel said it was not a requirement but that we should send out a notice to the neighboring property owners within 300'. Not sure if there were other questions to Joel or not, this was my one question.

Larry Kirch

From: Michelle Dahlke [<mailto:michelleldahlke@gmail.com>]
Sent: Tuesday, August 28, 2018 12:08 PM
To: Rudy Esquivias <resquivias@ajcity.net>
Cc: Danielle Jordan <djordan@AJCity.Net>; Larry Kirch <lkirch@AJCity.Net>; Sidney Urias <surias@AJCity.Net>
Subject: Re: CUP-1-18

Hi Rudy,

Any update on this (you were going to check with Joel).

Thank you,

Michelle

Michelle L. Dahlke

Zoning Specialist/Real Estate Paralegal

Arizona Planning and Paralegal Solutions

480-228-2150

michelleldahlke@gmail.com

On Wed, Aug 22, 2018 at 2:09 PM Rudy Esquivias <resquivias@ajcity.net> wrote:

Hi Michelle:

Thanks for the update. We are running a couple of questions by Joel. We'll have a response soon.

Rudy

From: Michelle Dahlke [mailto:michelleldahlke@gmail.com]

Sent: Wednesday, August 22, 2018 8:25 AM

To: Rudy Esquivias

Cc: Danielle Jordan

Subject: Re: CUP-1-18

Rudy,

Mr Varga has removed one container and is in the process of moving the rest of the containers off of the property. The property should be container free within the next few weeks and the property put up for sale. Is there anything in particular that needs to be done to note this in the City Records?

Michelle

On Mon, Aug 20, 2018, 3:06 PM Rudy Esquivias <resquivias@ajcity.net> wrote:

Mr. Giemsoe:

Attached please find the final signed resolution which approved the conditional use permit ("CUP") for Dean and Bonnie Varga. Conditions 1, 2, 3 and 6 have timelines on them. The Vargas have already missed 2 deadlines (conditions 1 and 2). We're keeping a close eye on this property. Please contact me with any questions. Thanks.

Rudy Esquivias

Senior Planner/Zoning Administrator

City of Apache Junction

300 E. Superstition Blvd.

Apache Junction, AZ 85119

480-474-2645

resquivias@ajcity.net

SERVICE OVER AND ABOVE THE REST

(Development Services Department office hours: Monday through Thursday from 7:00am to 6:00pm, closed Fridays and Holidays.)

From: Barbara Kelly
Sent: Monday, August 20, 2018 10:38 AM
To: ghiemsoe@gmail.com
Cc: Rudy Esquivias; Larry Kirch; Sidney Urias
Subject: CUP-1-18

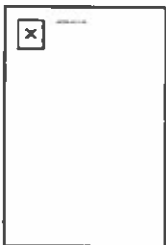
Mr. Giemsoe –

Attached is the staff report (4/10/2018 P&Z meeting) and the approved meeting minutes from the 4/10/2018 meeting.

The staff report lists the conditions approved for CUP-1-18 while the meeting minutes shows the changes to condition nos. 1 and 3.

Please do not hesitate to contact Rudy Esquivias if you have further questions regarding this case.

Thank you,



Barbara Kelly | Senior Administrative Assistant

Development Services

City of Apache Junction

300 E. Superstition Blvd.

Apache Junction, AZ 85119

Office Number 480.474.5083

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City Hall Hours of Operation 7AM-6PM, Monday through Thursday, closed on Fridays.

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PLANNING AND ZONING COMMISSION
RESOLUTION NO. CUP-1-18

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING A CONDITIONAL USE PERMIT, CASE NO. CUP-1-18, FOR DEAN AND BONNIE VARGA, REPRESENTED BY MICHELLE DAHLKE OF ARIZONA PLANNING AND PARALEGAL SOLUTIONS, TO ALLOW THE TEMPORARY PLACEMENT OF FOUR CARGO STORAGE CONTAINERS FOR PERSONAL USE, ON THEIR PROPERTY LOCATED AT 2090 W. SUPERSTITION BOULEVARD, ON THE NORTHEAST CORNER OF W. SUPERSTITION BOULEVARD AND N. OCOTILLO DRIVE, ZONED GENERAL COMMERCIAL ("B-1").

WHEREAS, a Conditional Use Permit ("CUP") application was submitted on February 8, 2018, to the Planning Division of the City of Apache Junction Development Services Department, by Dean and Bonnie Varga, through their representative, pursuant to the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits, and Building Permits, requesting to place a maximum of 8 cargo storage containers on their property for personal use, for a temporary period of 3 to 5 years, as described in the materials submitted with case file CUP-1-18 and as otherwise conditionally approved herein, for the property which is legally described as follows:

Lots 25, 26, 27, CHOLLA VISTA ESTATES, according to Book 15 of Maps, Page 30, records of Pinal County, Arizona (Pinal County Assessor Parcel Number 100-36-025A); and

WHEREAS, the public hearing for CUP-1-18 was originally scheduled for March 27, 2018, but the case was continued to April 10, 2018, upon request of the applicant in order to revise the project narrative and request in response to staff's recommended conditions; and

WHEREAS, on April 3, 2018, the applicant submitted a revised project narrative and request for four cargo storage

containers, two 21' trailers and one 24' enclosed trailer for a two year time period; and

WHEREAS, on April 10, 2018, the commission, after: 1) receiving satisfactory responses to the questions raised at the public hearing; 2) hearing, considering and discussing all of the facts and comments presented by staff and applicant; and 3) reviewing the land use criteria relevant to the granting of a CUP, as contained in the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12-D-3, and the evaluation of said criteria in the staff report dated April 4, 2018, voted 4-3 in favor of case CUP-1-18, citing the following findings:

- 1) With regard to Criteria A: Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare, the commission does recognize the potential dust issue and will be addressing that through a condition that there be dust proofing done on the property.
- 2) Criteria D: Compatibility with surrounding uses and structures. While the commission recognizes that a number of the surrounding properties are vacant, there are still concerns about how this subject property will be used in terms of adding the trailers or changing the cargo containers, and believes that needs to be addressed through the conditions.
- 3) Criteria E: Conformance with the General Plan and City policies. The commission recognizes that the general use being identified, for placing cargo containers on a commercial property that have personal possessions or belongings inside, is vague or is not in the true spirit of the General Plan or the city code for the use of the cargo containers. However, that will be addressed through the conditions.

NOW, THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission that Dean and Bonnie Varga, be granted a CUP for temporary cargo storage containers located at 2090 W. Superstition Boulevard, subject to the following conditions of approval:

- 1) The applicants shall not be allowed more than four (4) temporary cargo containers on the property, which are to be painted a neutral desert tone color in accordance with Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-6, Supplemental Regulations, Section 1-6-8 Cargo Containers, within 90 days of approval of this CUP. In addition, the four (4) cargo containers currently on this site will not be substituted for cargo containers of any other size or appearance.
- 2) The chain link fence on the west and south property lines shall be completed and slatted with wood or vinyl slats within 90 days of CUP approval and no razor wire shall be permitted.
- 3) There shall be a one (1) year time limit for the temporary use of the cargo containers. The applicant will schedule a meeting with the Planning and Zoning Commission within 180 days of approval of the CUP to provide a proposed business plan or business strategy for the use of the subject property.
- 4) The cargo containers shall only be used for personal use of the applicants and no other tenants shall be allowed use of the cargo containers.
- 5) The applicants shall be limited to the four Conex cargo containers, and no other outside personal storage shall be allowed.
- 6) The applicants shall refurbish and replace any missing landscaping or irrigation improvements in compliance with Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8, Landscape Regulations within 6 months of approval of this CUP.

- 7) The site shall be treated for dustproofing in accordance with options obtained in the city's engineering guidelines for dust control mitigation pursuant to Apache Junction City Code, Volume 1, Chapter 9, Health and Sanitation, Section 9-1-3(B) Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the Development Services Engineer.
- 8) The Planning and Zoning Commission shall reserve the right to reconsider or overturn the Conditional Use Permit approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-1-18 permit approval.

PASSED AND ADOPTED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 10th DAY OF April, 2018.


SIGNED AND ATTESTED TO THIS 18th DAY OF April 2018.


THERESA NESSER, Chairwoman
Planning and Zoning Commission

ATTEST:


LARRY KIRCH
Development Services Director

APPROVED AS TO FORM:

 4-18-18
RICHARD JOEL STERN
City Attorney

§ 1-16-12 CONDITIONAL USE PERMITS, ADMINISTRATIVE USE PERMITS AND BUILDING PERMITS.

(A) *Authorization and applicability.* It shall be unlawful to erect, construct, reconstruct, alter or change the structure, land and/or use of any property within the city without first obtaining the required building permit, administrative use permit, and/or conditional use permit from the Development Services Department.

(B) *Building permits.* The City of Apache Junction Building Official and the city's adopted building codes establish the requirements and procedures for building permits.

(C) *Administrative use permits.* An Administrative Use Permit ("AUP") may be approved by the Zoning Administrator following review of the application and a finding that the use and/or structure complies with specific standards specified for such use and/or structure in the Zoning Code. Uses and/or structures requiring approval of an AUP, along with permit approval criteria, are identified in Tables 5-1 and 5-3 (see Vol. II, §§ 1-5-1 and 1-5-3).

(D) *Conditional use permits.* Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual Planning and Zoning Commission review and Conditional Use Permit ("CUP") approval of their location, design, operation and configuration along with the imposition of conditions in order to ensure the appropriateness of the use at a particular location. Uses requiring a CUP are identified in Tables 5-1 and 5-3 (see Vol. II, §§ 1-5-1 and 1-5-3). The CUP application and process requirements are as follows:

(1) *CUP application.* An application for a CUP shall be filed with the Development Services Department in accordance with the "City of Apache Junction Conditional Use Permit Application Checklist" available at the Development Services Department.

(2) *CUP public hearing and notice.* The Commission shall hold a public hearing on any proposed CUP or CUP amendment, and provide the following notice. The failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the Commission or Council.

(a) *Newspaper publication.* Notice of the time, date and place of the hearing, including a general description of the matter to be considered and a general description of the area affected, shall be published in a newspaper of general circulation that is published or circulated in the community. The publication notice shall be at least 15 calendar days before the hearing, and shall be published as required by A.R.S. § 9-462.04, as amended.

(b) *Property posting.* The notice of public hearing shall be posted by the applicant in accordance with the instructions provided in the application form.

(c) *Mailing notice.* The city shall notice by first class mail each real property owner, as shown on the last assessment of the property, within 300 feet of the property subject to the CUP proposal.

(3) *Findings.* A CUP may be granted upon a finding by the Commission that the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. In arriving at the above determination, the Commission shall consider but not be limited to the following factors:

- (a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use;
- (b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare;
- (c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values;
- (d) Compatibility with surrounding uses and structures;
- (e) Conformance with the General Plan and city policies;
- (f) Screening and buffering of uses; and
- (g) Unique nature of the property, use and/or development's physical characteristics.

(4) *CUP modification of dimensional zoning standards.* When a proposed development exhibits unique characteristics related to land, topography, architectural style, scale, historical interest or other distinguishing feature that necessitates a measure of regulatory relief, CUP modification of certain dimensional zoning standards may be approved by the Commission in accordance with the findings

described above in Vol. II, § 1-16-12(D)(3). The following dimensional zoning standards may be subject to this type of modification:

- (a) *Accessory dwelling units.* Accessory dwelling unit size and height standards required in Vol. II, § 1-6-19 of this Chapter may be modified.
- (b) *Accessory structures.* Accessory structure size, height, design and setback standards required in Vol. II, § 1-6-5 may be modified.
- (c) *Landscaping.* Landscaping size, type, amount and location standards required in Vol. II, Article 1-8 may be modified.
- (d) *Signs.* Sign size, type, amount and location standards required in Vol. II, Article 1-11 may be modified.
- (5) *Expiration.* CUPs granted by the Commission shall be void if the use is not commenced within 12 months of the approval date or within the time stipulated by the Commission.
- (6) *Revocation.* An approved CUP may be revoked by the Commission following public hearing and a finding that there has been material noncompliance with any condition prescribed in the permit and/or the use generates a demonstrated public safety, health or welfare concern.
- (7) *Appeal and City Council review.* The approval or denial of a CUP by the Commission shall be final unless, within 20 calendar days from the date of the Commission's decision, the applicant or any persons aggrieved by the decision appeals the decision to the Council. The appeal shall be in writing, filed with the Development Services Department, and shall indicate how the Commission was in error. The appeal shall be accompanied by a fee equal to 50% of the original filing fee. The appeal shall require a Council public hearing and notification provided in the same manner as required for the Planning and Zoning Commission hearing. The Council, at its public hearing, shall uphold, modify or overrule the decision of the Commission. The decision of the Council shall be final.

(Ord. 1402, passed 5-6-2014)