



---

# MEMORANDUM

## PUBLIC WORKS - DEVELOPMENT SERVICES

---

DATE: June 23, 2015

TO: BOARD OF ADJUSTMENT District #4

FROM: Tom Drzazgowski – Deputy Chief Zoning Inspector

SUBJECT: **Co10(4)15-01 EL CORTIJO LLC – SOUTH OLD SPANISH TR.**  
Scheduled for public hearing on July 14, 2015.

---

### **LOCATION:**

The applicant's property is located at 3700 S. Old Spanish Tr. on the eastern side of Tucson. The property that the applicant is appealing an interpretation on is located at the northwest corner of Old Spanish Tr. and Escalante Rd. The site is directly west of the main entrance to Saguaro National Park. The zoning on the property is SR (Suburban Ranch).

### **SURROUNDING ZONING / LAND USES:**

Properties to the north, south and west are also zoned SR. To the east is Saguaro National Park which is zoned IR (Institutional Reserve). On the corner to the southeast is a 1.7 acre property that is zoned CB-1 (Local Business).

### **QUESTION**

The question before the Board of Adjustments is whether the property at 3700 S. Old Spanish Tr. is entitled to a non-conforming use permit and permitted to a 100% expansion of the property.

### **CONSIDERATION**

Staff's determination is that there currently is no legal non-conforming use on the property. In 1955, staff agrees a non-conforming use permit was issued for a motel, gas station and café. In 1955 the definition of a motel, per the Pima County Zoning Code (PCZC) stated:

Tourist Court (Including "Motel", "Auto Court" and "Automobile Court": A building or group of buildings on the same lot, whether detached or in connected rows, containing individual sleeping or dwelling units and designed for or occupied by automobile travelers or other transient tenants.

The definition of Motel from 1955 and today's version, include the word "Transient". While the PCZC does not provide for a definition of transient, staff looks to common usage of the term like Merriam-Webster Dictionary which states:

Transient: Not lasting long, staying somewhere only a short time.

Staff also reviewed the American Planners Association (APA) Dictionary for further guidance. The APA dictionary sites a definition from Sedona, Arizona which states:

Transient Person: Any person who, either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel for any period of less than 30 consecutive days.

Since the non-conforming use permit was issued, the motel use was clearly discontinued for a period greater than 12 months. This is evidenced by a series of permits, the most telling a permit from 1960, signed and requested by Bert Calvert, for a sign with the copy "Houses for Rent". In addition, some of the later permits were for "Residence", "Build 2<sup>nd</sup> Residence" and "Add Residence". No comments or other information on the permits reference a motel use. In addition, no other documentation has been provided to evidence the motel use has been continuous and is still occurring on the property. Staff contends the non-conforming use for a motel was discontinued and the site was used for an allowed use of residences in accordance with the PCZC.

The PCZC does not regulate whether an owner lives in a residence or rents out a residence. Eight residences on 45 acres were a permitted use in 1955 and have been a permitted use since the adoption of the PCZC. In addition, the owners of the property would be permitted to have a total of 13 residences on the property based on the acreage and minimum area per dwelling unit. The owner's representative is in error for stating "...the property would have to be platted and now approved as a subdivision to be brought into compliance with the zoning code." While a plat would be required for the owners to divide the property into more than five lots for sale, or lease, a plat would not be required if the owner wanted to maintain ownership of the property and increase the number of residences on the property to the maximum permitted for long term rental purposes. Only a Development Plan per Chapter 18.71 of the PCZC would be required. The PCZC provides standards as to when a development plan is required to be submitted. The standards are:

1. A development plan shall be submitted to the development services center for review and approval for any proposed development other than three residential units or less located on an individual lot.
2. This requirement shall also apply to substantial expansion of an existing development other than three residential units or less on an individual lot. Substantial expansion shall be defined as greater than two thousand square feet of gross floor area or land use area.
3. Refer to Section 18.71.060 for development plan requirements and procedures for RVC zoning.

At the time the structures were permitted, the development plan portion of the zoning code did not exist. If in the future the property owner wants to increase the number of units they would be subject to the development plan process.

The owner's representative seems to imply that more than one dwelling on a property is not a permitted use in the SR zone and therefore the property would be entitled to a non-conforming use permit. This assessment is not accurate for two reasons. One is that SR zoning provides for

a minimum site area and a minimum area per dwelling unit. Both are listed at 144,000 square feet. For each 144,000 square feet a dwelling unit is permit. Second, the SR zone provides a setback for a minimum distance between main buildings of twenty feet in Section 18.17.040F. This minimum distance is for main buildings on the same lot and would not be needed if multiple main buildings were not permitted on the same lot.

The owner's representative on Page 3, Line 6 states, "Subdivision of real property is required any time there is a sale, or lease of real property." The PCZC currently states the following on subdivision plats:

Subdivision: Improved or unimproved land or lands divided or proposed to be divided for the purpose of sale, lease, or for cemetery purposes, whether immediate or future, into six or more lots, parcels or fractional interests.

The definition has remained consistent since at least 1960. Staff has included previous definitions of subdivision from previous versions of the PCZC. One definition is from 1975 and a second is from 1960. In all versions of the definition the word "**divided**" is included in the definition. The owner's representative did not include the word divided in their statements. Divided is the key term in the definition since 3700 S. Old Spanish Tr. has not been divided into 6 or more lots or parcels. Therefore no subdivision plat would have been required.

Additionally, staff contends that the original non-conforming use for motel, gas station and café was a related group of uses that were permitted as a non-conforming use in total. In the late 1980's, the 1.7 acres in the southeast corner were rezoned and subsequently severed from the larger property that hosts the rental homes. Further, the motel use, like the gas station, has been discontinued for decades and cannot simply be restarted on a portion of the original property based on a 1955 non-conforming use permit.

When there are questions of a non-conforming use, staff does extensive research of permits and other material to determine if there is a non-conforming use. When staff cannot, or does not believe there is a non-conforming use, the burden is on the applicant to provide documentation that the use has not been discontinued or altered for more than 12 months. In reviewing the material submitted by the applicant's representative, there is no mention that the use of the property is still a motel. Additionally, no documentation has been provided showing that the motel use has continued to operate continuously on the property. As such, staff believes that Sections 18.01.030D2 and 18.01.030D3 apply and any existing non-conforming use was lost when the use of the property for the non-conforming use was discontinued for a period of 12 months. Therefore, all future development and uses must comply with the standards for SR zoning.

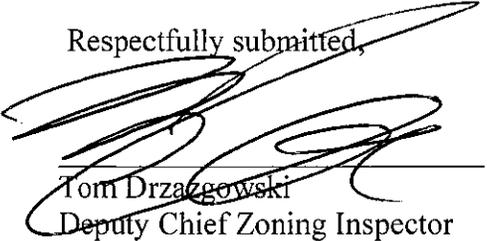
Lastly, there are numerous options for the property owner to expand the project and convert it back into a motel. The PCZC allows a minor resort as a Type II Conditional Use. The current owners had submitted a conditional use permit application and requested it be withdrawn after the hearing administrator's hearing and prior to the Board of Supervisors' hearing. The Type II Conditional Use process is a public participation process where the owners can work collaboratively with neighboring property owners and Saguaro National Park. This process can ensure that concerns of adjacent land owners are heard and the owners can attempt to mitigate them. A minor resort can allow up to 50 units through the conditional use process. The

conditional use process takes approximately 3 months. Another option would be to rezone the property to Major Resort Zone (MR) to allow a resort with more than 50 units.

**CONCLUSION**

Staff requests that the Board of Adjustment uphold the Deputy Chief Zoning Inspector's decision that the property located at 3700 S. Old Spanish Tr. does not meet the criteria to be granted a non-conforming use permit. The use of the property as a motel has been discontinued for many years and decades. When a non-conforming use that has been discontinued for a period of more than 12 months any future use must meet all requirements of the zoning code. And, the requirement for a plat would not have been required as suggested by the applicant. Staff has explained that the PCZC only required subdivision plats for property that was "divided" for sale or lease. The PCZC has always permitted multiple residences on SR zoned property when the minimum area per dwelling unit is met.

Respectfully submitted,



Tom Drzaggowski  
Deputy Chief Zoning Inspector

18.01.030 - Application of zoning code.

D. Provisions for Nonconforming Uses and Buildings.

1. Nonconforming Uses Exempted.

- a. As specified in A.R.S. Section 11-812, the provisions of this code shall not affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used on February 16, 1953, or for any other use of the same or a more restrictive classification.
- b. A nonconforming business use within any district or zone shall have the right to expansion, provided it does not exceed one hundred percent of the area of the original business. Area of the original business is defined as being any land or building, or both, improved for a business purpose.
- c. The term "business use," as used in this subsection, shall be limited to the uses described in Sections 18.31.010(B) (TR transitional zone), 18.43.030(B) (CB-1 local business zone), 18.45.030(B) and (C) (CB-2 general business zone), 18.51.030(B) and (C) (CI-1 light industrial/ware-housing zone), and 18.43.030(B), (D) and (F) (CI-2 general industrial zone) of this code.

2. Nonconforming Use of Land. The lawful use of land existing at the time this code or any preceding Pima County zoning ordinance became effective, or on the effective date of any amendment of the text or of the maps hereof, although such use does not conform to the provisions hereof for said land, may be continued, but if such nonconforming use is discontinued for a period of twelve months, any future use of said land shall be in conformity with the provisions of this code.

3. Nonconforming Use of Buildings.

- a. The lawful use of a building existing on February 16, 1953, although such use does not conform with the provisions hereof for such building and such use, may be continued provided no structural alterations, except those required by law or ordinance or permitted by the board of adjustment (Chapter 18.93, boards of adjustment and appeals) under this code, are made herein.
- b. If any such nonconforming use is discontinued for a period of twelve months, any future use of said building shall be in conformity with the provisions of this code; provided, that the owner of any building which was under construction or vacant on February 16, 1953, and was designed for a use not in conformity with the zoning classification in which it was located on said date, may, upon application, have a certificate of nonconforming use issued by the zoning inspector within sixty days from February 16, 1953, which certificate shall establish the nonconforming character of said building for a period not to exceed twelve months from February 16, 1953. Occupancy of said building by a use permitted under said certificate during said period shall establish said use as a nonconforming use under this subsection. A certificate for an additional period of not more than twelve months may be granted by the board at or before the expiration of the original certificate upon the showing of extreme hardship and that the surrounding area would not be subject to additional damage thereby.

4. Plans for Nonconforming Use.

- a. Any owner of land zoned under this code shall file in writing with the planning and zoning commission within one hundred eighty days after February 16, 1953, a plan of development for such land, including uses not permitted by the zoning, shall be issued a special nonconforming hardship use permit by the board of adjustment for said proposed development, or any part thereof, at any time within two years from February 16, 1953.
- b. If any temporary governmental regulation prohibiting the proposed development is in full force and effect during said two-year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after February 16, 1953.

- c. Said plan of development with necessary plans and sketches shall show the legal description of the land and the location of proposed buildings and improvements in sufficient detail to determine the conformity or nonconformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be a nonconforming use under this code.
5. **Alteration of Nonconforming Buildings.** No existing building designed, arranged or intended for or devoted to a use not permitted under the regulations of this code for the zone in which located shall be enlarged, extended, reconstructed or structurally altered unless such building and such enlargement, extension, reconstruction and structural alterations, and the further use thereof, conform in every respect with the regulations specified by this code for such zone in which said building is located, except a nonconforming business use as provided in Section 18.01.030(D)(1) and except as provided in Section 18.01.030(D)(7), but nothing in this subsection shall authorize the violation of any setback, health or sanitary law, ordinance or regulation not a part of this code.
6. **Destroyed Nonconforming Buildings.**
  - a. If, at any time, any building in existence or maintained on February 16, 1953, and which does not conform to the regulations for the zone in which it is located, shall be destroyed by fire, explosion, act of God or act of the public enemy to the extent of one hundred percent of its value, according to the appraisal thereof by competent appraisers, then and without further action by the board of supervisors the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all of the regulations specified by this code for the zone in which such land and building are located.
  - b. In the event a building is destroyed to the extent of one hundred percent of its value, the owner thereof shall have the right to rebuild for said use; provided said structure is rebuilt in conformance with the requirements of the most restrictive zone in which said nonconforming use would otherwise be permitted and provided permits for such construction is obtained within three months of the date of destruction and such construction is started within six months of the date of destruction.
7. **Exception for Green Building Upgrades and Renovations that Reduce Energy or Water Consumption.** Notwithstanding Sections 18.01.030(D)(3)(a) or 18.01.030(D)(5), structural alterations, excluding enlargement and extension except as provided below, necessary for green building upgrades and renovations that reduce energy or water consumption are permitted without the requirement for the lawful nonconforming aspects of the building or use to be brought into conformance with the regulations specified in this code and shall not require submittal of a development plan for review and approval in accordance with Section 18.71.010(B). For the purposes of this section, permitted enlargement and extension includes the installation of rainwater harvesting systems, ground- or roof-mounted solar energy systems, roof eaves or overhangs, attached shade structures or detached shade structures extending three feet or less from the main building, roofed porches, and green roofs. Green building upgrades and renovations must reduce energy or water consumption. Examples include, but are not limited to, lighting, air barrier, duct insulation, duct sealing, attic insulation, wall insulation, plumbing fixtures, windows, HVAC, domestic solar hot water system, solar photovoltaic system, water harvesting cistern, roof eaves or overhangs, attached shade structures or detached shade structures extending three feet or less from the main building, roofed porches, vegetated roofs, and Energy Star qualified roof product, or as determined by the chief zoning inspector or designee.

## ARTICLE 33

## SUBDIVISION STANDARDS, PROCEDURES, AND REQUIREMENTS

DEFINITIONS

- Sec. 3300 For the purpose of this article certain words and phrases shall have special meaning as defined herein, unless the context otherwise requires.
- Sec. 3301 "SUBDIVISION" shall mean the division of a parcel of land into 4 or more lots or parcels for the purpose of transfer of ownership or development, or, if a new street is involved, any division of a parcel of land, provided that a division of land for agricultural purposes into lots or parcels of 5 acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision, and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided. (Ord. No. 1972-112 - 9-18-72)
- Sec. 3302 "MASTER PLAN" shall mean the master plan or any part thereof adopted pursuant to the County Planning and Zoning Act of 1949, as amended.
- Sec. 3303 "STREET" shall mean a way for vehicular traffic, whether designated as a street, highway, thorofare, parkway, throughway, freeway, road, boulevard, avenue, lane, place, or however otherwise designated.
- Sec. 3304 "MAJOR STREET" shall mean such major street, highway, thorofare, parkway or boulevard so designated on the master plan.
- Sec. 3305 "COLLECTOR STREET" shall mean a street collecting traffic from local streets, and connecting the same with a major street, or another collector street.
- Sec. 3306 "LOCAL STREET" or "MINOR STREET" shall mean a street exclusively or primarily providing access to abutting properties.
- Sec. 3307 "LOCAL SERVICE STREET" or "LOCAL ACCESS STREET" shall mean that part of a major street right-of-way, separated from the main flow of traffic and designed exclusively or primarily to provide access to abutting properties.
- Sec. 3308 "ALLEY" shall mean a minor way designed or used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

## ARTICLE 33

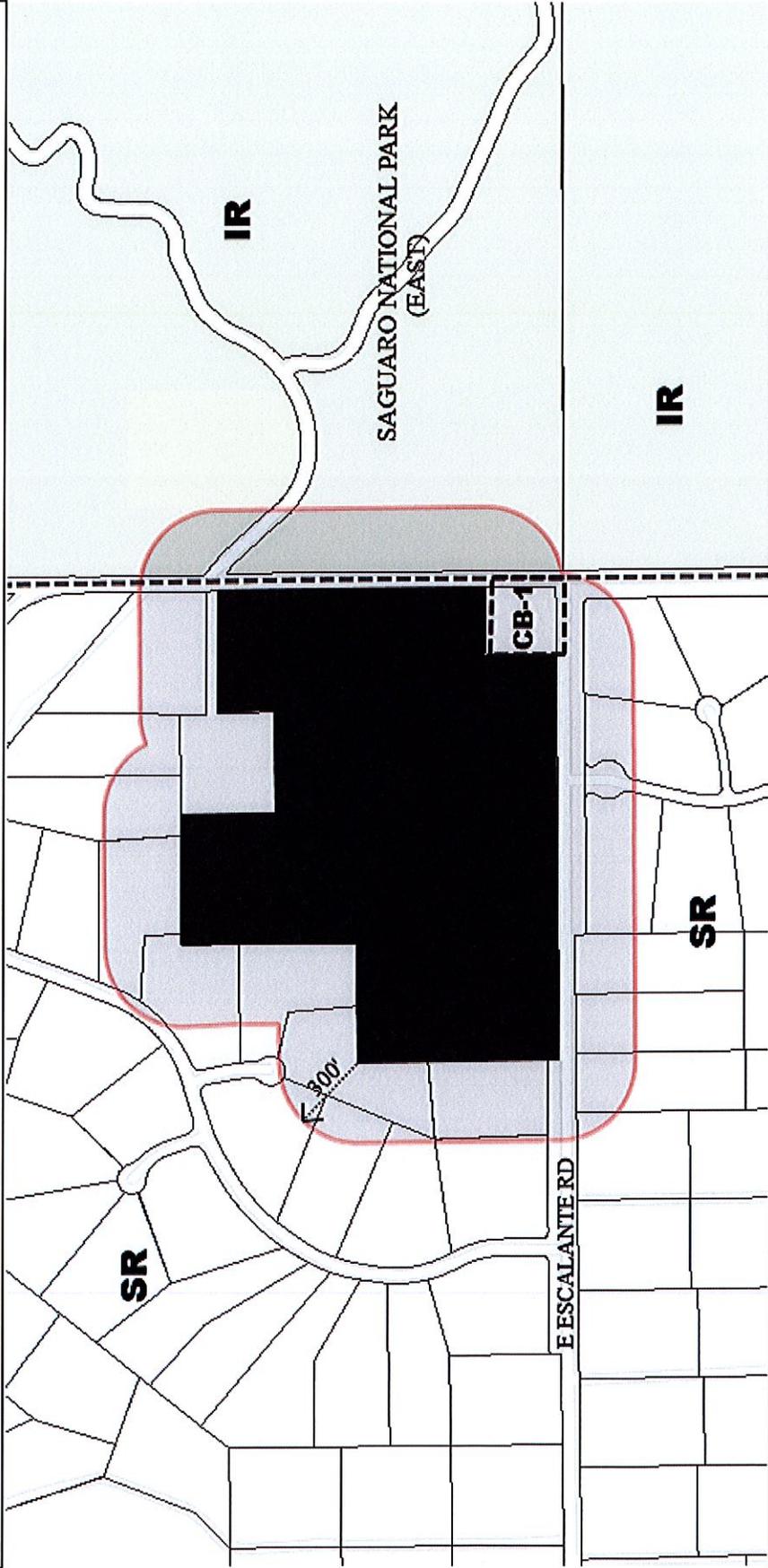
## SUBDIVISION STANDARDS, PROCEDURES, AND REQUIREMENTS

DEFINITIONS

- Sec. 3300 For the purpose of this article certain words and phrases shall have special meaning as defined herein, unless the context otherwise requires.
- Sec. 3301 "SUBDIVISION" shall mean the division of a parcel of land into 5 or more lots or parcels for the purpose of transfer of ownership or development, or, if a new street is involved, any division of a parcel of land, provided that a division of land for agricultural purposes into lots or parcels of 5 acres or more and not involving a new street shall not be deemed a subdivision. The term includes resubdivision, and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.
- Sec. 3302 "MASTER PLAN" shall mean the master plan or any part thereof adopted pursuant to the County Planning and Zoning Act of 1949, as amended.
- Sec. 3303 "STREET" shall mean a way for vehicular traffic, whether designated as a street, highway, thorofare, parkway, throughway, freeway, road, boulevard, avenue, lane, place, or however otherwise designated.
- Sec. 3304 "MAJOR STREET" shall mean such major street, highway, thorofare, parkway or boulevard so designated on the master plan.
- Sec. 3305 "COLLECTOR STREET" shall mean a street collecting traffic from local streets, and connecting the same with a major street, or another collector street.
- Sec. 3306 "LOCAL STREET" or "MINOR STREET" shall mean a street exclusively or primarily providing access to abutting properties.
- Sec. 3307 "LOCAL SERVICE STREET" or "LOCAL ACCESS STREET" shall mean that part of a major street right-of-way, separated from the main flow of traffic and designed exclusively or primarily to provide access to abutting properties.
- Sec. 3308 "ALLEY" shall mean a minor way designed or used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

# NOTIFICATION MAP

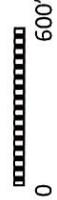
EL CORTIJO LLC—S. OLD SPANISH TRAIL



## LEGEND

- Petition Area
- Notification Area

## NOTES

<b>File no.:</b>	Co10(4)15-01	<b>Tax Code(s):</b>	205-62-159G
<b>Application:</b>	INTERPRETATION	<b>Base Map:</b>	88
		<b>Drafter:</b>	A.H.



6/3/2015

**STUBBS & SCHUBART, P.C.**

ATTORNEYS AND COUNSELLORS AT LAW  
340 NORTH MAIN AVENUE  
TUCSON, AZ 85701

G. Lawrence Schubart\*  
Thomas M. Parsons  
Robert C. Stubbs  
(1927 - 2012)

LSchubart@StubbsSchubart.com

(520) 623-5466  
Fax: (520) 882-3909  
[www.StubbsSchubart.com](http://www.StubbsSchubart.com)  
\*Also admitted in Pennsylvania

May 29, 2015

By HAND DELIVERY

Celia Turner, Secretary  
Pima County Board of Adjustment #4  
201 N. Stone Avenue  
Tucson, AZ 85701-1207

Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*  
**Notice of Appeal**

Dear Celia:

This letter constitutes of Notice of Appeal by El Cortijo, L.L.C., the owner of the approximate 45-acre parcel at 3700 South Old Spanish Trail, Tucson, Arizona, to the Pima County Board of Adjustment #4. El Cortijo is appealing the interpretation rendered by Tom Drzazgowski, Deputy Chief Zoning Inspector, dated April 21, 2015. A copy of that interpretation is included with this appeal as Attachment 1.

The appeal was predicated upon request for interpretation filed March 25, 2015. That request for interpretation together with supporting documents is also included as Attachment 2. The information in that letter and those supporting documents are incorporated herein as support for this appeal.

The March 25 request for interpretation, simply stated, sought a decision “reflecting the fact that the development of the property was done legally, with permits, and in a fashion non-conforming with the SR zoning code provisions.” The Deputy Chief Zoning Inspector acknowledged the accurateness of the applicant’s historical analysis and validity of the exhibits attached, but concluded erroneously the previous non-conforming status has been eliminated. Specifically, the Deputy Chief Zoning Inspector stated “any non-conforming uses have been either discontinued, severed, or brought into compliance.” This conclusion is in error and

it is the applicant's belief the existing uses on the property remain non-conforming under the Suburban Ranch (SR) zoning code provisions and are entitled to be recognized now as a non-conforming use of real property.

The non-conforming use doctrine is predicated upon the constitutional protection afforded property that once a use is established prior to the adoption of a zoning ordinance or any amendment thereof, it may continue. *Kubby v. Hammond*, 68 Ariz. 17, 198 P.2d 134, 138 (1948). Counties were first authorized to regulate the uses of land through zoning enactments when the Arizona Legislature adopted the County Planning and Zoning Act of 1949. Thereafter the Pima County Board of Supervisors approved the first zoning ordinance on August 6, 1952, which became effective February 16, 1953. Pima County Ordinance #1952-111. At the time of the initial adoption of zoning the subject property was zoned Suburban Ranch (SR).

The original zoning code did allow owners to submit plans for non-conforming uses if it was done within 180 days after the effective date of the initial ordinance. Historical records show that this was the method employed by the owner to develop the property. The Deputy Chief Zoning Inspector agrees with this fact. Bert Calvert submitted plans to allow the construction of the gas station, café, motel and initially six dwelling units. Although the permit reflecting approval of this proposed development is dated June 13, 1955, the historical records of the Board of Adjustment reflect the initial request was timely filed with Pima County and that the owner was allowed to proceed with this non-conforming development.<sup>1</sup>

Further historical information established the fact that by 1957, the owner determined he would like to reconfigure the location of the dwelling units so they would not be "in a string" but be separated. Unfortunately we have no plot plan that shows what was intended but the narrative description in the Board of Adjustment records reflects that the units would be build separately, but still on a single parcel of property.

Over time Bert Calvert developed on the property eight residential units that were rented under the name Saguaro Corners Rentals.<sup>2</sup> At the northwest corner of Escalante Road and Old Spanish Trail, there was a restaurant (café) together with a gasoline service station. Obviously, none of these uses conformed to the adopted SR zoning code which allows a one-family dwelling and does not allow

---

<sup>1</sup> See Attachment 2, the Request for Interpretation, Exhibit 3 thereto.

<sup>2</sup> See Pima County Building Permit No. 24764, included as Attachment 3.

a restaurant or gasoline service station. Nevertheless the Deputy Chief Zoning Inspector now concludes "the uses have long since been brought into conformance with the zoning code, changed or discontinued." This conclusion defies logic. It is acknowledged the gasoline service station was eventually abandoned, and the café was part of the rezoning that brought that 1.7 acre parcel into conformance under the CB-1 zone.<sup>3</sup> There is nothing in the record though that indicates the balance of the property was brought into conformance, which could not be done so without obtaining subdivision approval.

Since 1960 the State of Arizona has regulated the subdivision of real property. A.R.S. § 32-2101 was adopted in 1960. See Legislative Session, 1960, Chapter 129, Section 1. Similarly, Pima County has been authorized and has regulated the division of real property since 1974. The County enabling legislation was added in Laws 1973, Chapter 178, Section 2, which became effective January 1, 1974. Subdivision of real property is required any time there is a sale, or lease of real property. Nothing has been done to bring the property into compliance with the subdivision laws, and thus the provisions in the SR zoning code that allows only a one-family dwelling controls. The error on the part of the Deputy Chief Zoning Administrator was to conclude merely because there is sufficient area, the existence of eight dwelling units conforms to the SR zoning code. This conclusion overlooks the requirement that the property would have to be platted and now approved as a subdivision to be brought into compliance with the zoning code.

The reasons for this request are obvious: the non-conforming use is constitutionally protected; it has rights vested and is allowed to continue, be repaired or altered, and it has the right to expand. See A.R.S. §11-812. Legally the property is entitled to the status of a non-conforming use, and it was error on the part of the Deputy Chief Zoning Inspector to contend that somehow the property had been brought into compliance with the zoning code, and thus, lost its non-conforming status. The Board of Adjustment should agree with the applicant and rule: the existing development is non-conforming under the provisions of the Suburban Ranch zone.

---

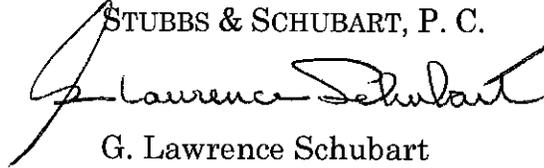
<sup>3</sup> In rezoning CO9-88-3, Bert Calvert sought and received CB-1 zoning for a parcel 300 feet by 250 feet (1.7 acres). At the time of that rezoning the gasoline service station had been abandoned, and the stated intention for rezoning was to further expand the restaurant in conformance with the CB-1 zone.

STUBBS & SCHUBART, P. C.  
ATTORNEYS AND COUNSELLORS AT LAW

Included with this letter is the required fee payable to Pima County. If there is anything additional necessary to perfect the appeal, please let me know.

Very truly yours,

STUBBS & SCHUBART, P. C.

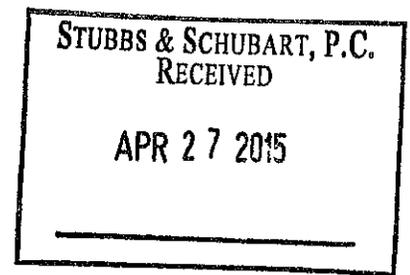
A handwritten signature in black ink, appearing to read "G. Lawrence Schubart". The signature is written in a cursive style with a large initial "G".

G. Lawrence Schubart

GLS/kp  
Enclosures

cc: El Cortijo





April 21, 2015

Stubbs & Schubart P.C.  
Attn: Larry Schubart  
340 N. Main Av.  
Tucson, AZ 85701

RE: 3700 S. Old Spanish Trail - Interpretation

Dear Mr. Schubart:

I have provided a brief history of staff's interactions with the current property owner and have outlined my interpretation regarding the nonconforming status of 3700 S. Old Spanish Trail.

In early 2014, Development Services had numerous discussions with your clients, the owners of 3700 S. Old Spanish Trail. The original scope of the discussion with your client, included remodeling and expansion of the existing residences. At the time of this discussion, staff was supportive of the proposed changes. Over the next months, the scope of the project changed from minor expansions of the existing rental homes to building a 50 to 100 unit resort for bicyclists. The project included other uses such as a restaurant, bike barn and training facility. Ultimately your clients decided to pursue a conditional use for a minor resort to allow 50 units plus other amenities. The result of the conditional use permit hearing was a recommendation of denial by the Hearing Administrator. The applicant requested the project be withdrawn the day before the Board of Supervisors was to hear the case.

After reviewing the information you provided in your letter dated March 25, 2015, staff agrees with portions of the history and exhibits that were provided. At one point in time, there was a non-conforming use permit issued for "1 gas station, 1 café and 1 motel with six dwelling units". We do not dispute the non-conforming uses that previously existed on the property. However, the uses have long since been brought into conformance with the zoning code, changed or discontinued.

On September 9, 1960, Pima County issued a permit as requested by the owner, Bert Calvert, for a sign "Houses for Rent". This permit clearly demonstrates that the "motel" use was discontinued and the property was used for traditional rental homes. The gas station and café were part of a rezoning submitted in 1988 that was approved to expand the restaurant. The gas station use was discontinued per a condition of the rezoning. At that time, the rental homes were severed from the restaurant use that was made conforming through the approved rezoning.

Rental homes that meet the minimum area per dwelling unit are permitted and have been permitted since the adoption of the Pima County Zoning Code in 1953. Suburban Ranch (SR) requires a minimum area per dwelling unit of 144,000 square feet. Your client's property, at approximately 45 acres, would permit

13 rental homes. At this time, your clients are under the maximum allowed and in compliance with the Pima County Zoning Code.

Lastly, the size and configuration of the property has changed numerous times since the non-conforming use permit was approved in the 1950's. The southeastern property which contains the now conforming restaurant has been split from the original property. In addition, changes have been made to northern and western boundaries of the property, which have changed the size and configuration from what it was in the 1950s as reflected in a rezoning submitted by the owner in the early 1970's. These changes have altered the property which eliminated the previous nonconforming status

In conclusion, staff has determined that any non-conforming uses have been either discontinued, severed or brought into compliance.

If you have any questions, please call me at (520)-724-6675

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Drzazgowski', with a stylized, cursive script.

Tom Drzazgowski  
Deputy Chief Zoning Inspector

c: C. H. Huckelberry, County Administrator



**STUBBS & SCHUBART, P.C.**

ATTORNEYS AND COUNSELLORS AT LAW  
340 NORTH MAIN AVENUE  
TUCSON, AZ 85701

G. Lawrence Schubart\*  
Thomas M. Parsons  

---

Robert C. Stubbs  
(1927 - 2012)

[LSchubart@StubbsSchubart.com](mailto:LSchubart@StubbsSchubart.com)

(520) 623-5466  
Fax: (520) 882-3909  
[www.StubbsSchubart.com](http://www.StubbsSchubart.com)  
\*Also admitted in Pennsylvania

March 25, 2015

**BY HAND DELIVERY**

Tom Drzazgowski, Acting Chief Zoning Inspector  
PIMA COUNTY DEVELOPMENT SERVICES  
201 North Stone Avenue  
Tucson, AZ 85701

Re: *El Cortijo, L.L.C. – 3700 South Old Spanish Trail*

**REQUEST FOR INTERPRETATION**

Dear Tom:

As you know from prior communications, including correspondence, I represent El Cortijo, L.L.C., the owner of the approximate 45-acre parcel at 3700 South Old Spanish Trail, Tucson, Arizona. The purpose of this letter is to request an official interpretation confirming the non-conforming status for the development of this property. The parcel is presently, and has been since adoption of the initial Zoning Ordinance, zoned Suburban Ranch (SR).

After discussing the development of the property with the previous owner, Dale Calvert, and hearing his observations I pursued a more thorough review of the Pima County records. The irrefutable fact is that zoning was first adopted in 1952, pursuant to Ordinance #1952-111, which became effective in February, 1953. My review required a reading of the initial Code and an understanding of how Pima County attempted to soften the transition of regulating land through the initial adoption of zoning codes.<sup>1</sup> The initial permit for the development of the property was issued by Pima County on June 13, 1955. A copy is attached as **EXHIBIT 1**. If you refer to this Building Permit, that bears the Record #048309, you will see the reference to a Board of Adjustment case heard in 1955 and a second Board of Adjustment case heard in 1957. Those records supplied the essential information in arriving at the proper conclusion.

The initial Zoning Code, Article 24, referenced general provisions and exceptions to development of the property, subsequent to the adoption of zoning.

<sup>1</sup> The County Zoning Plan, Ordinance #1952-111, is recorded in Book 507 at pages 35-108, records of the Pima County Recorder's Office.

STUBBS & SCHUBART, P. C.  
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski, Acting Chief Zoning Inspector  
PIMA COUNTY DEVELOPMENT SERVICES  
Re: El Cortijo, L.L.C. - 3700 South Old Spanish Trail  
REQUEST FOR INTERPRETATION

March 25, 2015  
Page 2 of 3

The obvious purpose of that provision was to avoid the harsh effect of impeding planned development that was reasonably anticipated before the adoption of Zoning. Section 2406, which I have copied and provided in its entirety as EXHIBIT 2, allowed an owner to file within 180 days after the adoption of zoning "a plan of development for such land, including uses not permitted by the zoning. . . ." These would be viewed as a non-conforming development and the use permit was to be issued by the Board of Adjustment. That is why the permit, EXHIBIT 1, referred to Board of Adjustment decision 55-33 and subsequently Board of Adjustment decision 57-29. The Minutes for those two Board of Adjustment meetings conclusively establishes what occurred.

On April 14, 1955, Bert Calvert appeared before the Board of Adjustment, together with the notable attorneys, Edward Scruggs and Edgar F. Rucker. (EXHIBIT 3) The record reflects, based upon Mr. Rucker's testimony, the file (before the Board of Adjustment) contained a sketch, timely filed with Pima County, which shows a non-conforming development for the property. Mr. Rucker continued that the only reason Mr. Calvert had not yet commenced development was because the building inspector felt the proposed development did not conform to zoning and a permit under Section 2406 had not been issued by the Board of Adjustment. *Id.* After arguing that the issuance of the permit was mandatory once the criteria for a timely submittal was made, the Board of Adjustment voted stating: "That the permit be granted." Thus, it was recognized in 1955 the property **could** be developed in a manner **not** conforming with the SR provisions of the Zoning Ordinance.

There is a second reference to the Board of Adjustment decision in 1957. (EXHIBIT 4) Here, again, the record reflects the permit was, in fact, issued on June 15, 1955, but that Mr. Calvert decided it would be a better development if the dwellings were separated, "instead of being in a string." The record further reflects that due to the delay in his construction, the Zoning Inspector sought review of his own action, questioning whether he had the authority to allow the development to proceed.

The 1957 Minutes continue with a discussion regarding the amount or value of the work that had been done and, ultimately, the Board of Adjustment, again, agreed with Mr. Calvert to allow the construction. As we can see from the Building Permit issued and inspection records, the non-conforming development was authorized.

My interpretation of the historical records does not stand alone. Dale Calvert, a responsible and respected certified public accountant and prior owner of the property, re-confirmed this information based upon his knowledge not just as the prior owner, but also upon information derived as the accountant for the

STUBBS & SCHUBART, P. C.  
ATTORNEYS AND COUNSELLORS AT LAW

Tom Drzazgowski, Acting Chief Zoning Inspector  
PIMA COUNTY DEVELOPMENT SERVICES  
Re: El Cortijo, L.L.C. - 3700 South Old Spanish Trail  
REQUEST FOR INTERPRETATION

March 25, 2015  
Page 3 of 3

corporation that held title for his parents, and also from visiting his grandfather before moving to Tucson in 1963. He clearly remembered the development was undertaken in the mid-1950's. This Affidavit confirms the facts necessary to conclude the non-conforming status of the property.

On behalf of El Cortijo, L.L.C., I respectfully request an official determination from the Chief Zoning Inspector, reflecting the fact that the development of the property was done legally, with permits, and in a fashion non-conforming with to the SR Zoning Code provisions. I also request that the opinion reflect the non-conforming status of this development is a right that inures to the property and runs with the land.

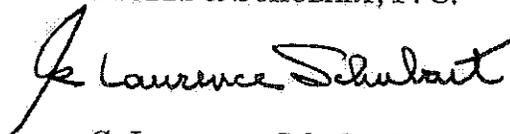
I can make available to you the initial Zoning Code and ensuing amendment, if you need them, but these records, together with the Minutes of the Board of Adjustment Hearings, should already be available as a resource for Pima County. Nevertheless, I would be happy to provide additional copies of whatever it is you might otherwise need.

If there is a fee for providing this interpretation, let me know and payment will be submitted forthwith.

Thank you.

Very truly yours,

STUBBS & SCHUBART, P. C.



G. Lawrence Schubart

GLS/bmmh  
Attachments

- EXHIBIT 1 Copy of Pima County Permit 6984, issued 6/13/1955
  - EXHIBIT 2 Copy of County Zoning Plan, Cover Page and Sec. 2406
  - EXHIBIT 3 Copy of 4/15/1955 Board of Adjustment Meeting Minutes
  - EXHIBIT 4 Copy of 6/13/1957 Board of Adjustment Meeting Minutes
- Original Affidavit of Dale Calvert

IT: BUILDING  USE  OCCUPANCY

Pima County, Tucson, Ariz.

3780 ~~Spanish Trail~~ 6984  
FEE \$ 8.00

Street & No. ~~Spanish Trail~~

(NEW CONSTRUCTION)

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ Zone SR

Subdivision: \_\_\_\_\_ Parcel No. 181

Part of SR1 SR4 Section 30

Township 11 Range 16

Owner: Port Calvert AM 89900

Address: 65 W. Alameda

Builder: Sany

To Permit: 1 gas station, 2 cars, hotel with 6 dwelling units

Est. Cost (Labor & Material) 30,000.00 048300

Date Issued: 6-13-55

Date Expires: 10-14-55 048300

Inspection Date \_\_\_\_\_

Conditions Imposed by B/A Case 5-13 approved permit

for above under Section 2106

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant \_\_\_\_\_

Owner  Builder  Agent

Zoning Inspector: [Signature]

Sanitary Facilities: Sewer  Septic

Remarks: Permit granted 4/14/55  
Refer to 55-33  
57-19  
[Signature] (over)

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACK		9-27-55			JZ	footings poured
Concrete 24 hrs old		10-25-55			JZ	17 hrs. H.O. in
15 x 15		11-22-55			JZ	no more done than previous
						This section

See Permit # 15223

Project to replace cabin  
regal unit & complete planning  
11-9-57

10-19-57 Station + Cafe + 1 Cabin

90% Completed

Complete 2-13-57

Balance no stand.

~~Completed cafe + station~~

1 Res unit. J. S. D.

Balance sufficient —

5-23-59 Expiration card ready  
for Bert Colvest. J. S. D.

018810

Library Copy -- Pima County,  
Planning & Zoning Dept.

COUNTY ZONING PLAN  
Pima County, Arizona  
\*\*\*\*\*

As Revised by:  
County Planning and Zoning Commission  
April 1952

\*\*\*

Planning Department.  
89 North Court Street  
Tucson, Arizona

[Effective on  
Feb. 16, 1953] *BM*

Library Copy -- Pima County  
Planning & Zoning Dept.

0765  
8-26  
85950

Sec. 2403-b (cont'd)

necessary fencing shall be set at a distance not closer to a street lot line than the minimum front and side yards of the zone.

Sec. 2404 GRAVEL PITS, QUARRIES, GAS OR PETROLEUM DRILLING PERMITTED: Clay, sand or gravel pits, rock or stone quarries and drilling for petroleum or natural gas may be permitted by the Board of Adjustment in any zone, except MU, subject to the provisions of Article 25.

Sec. 2405 PARKING LOTS IN RESIDENCE ZONES: Land in a residence zone contiguous to a business or industrial zone and not exceeding 30,000 square feet in area, may be used for automobile parking space; provided the conditions of Sec. 2203 are complied with, that a front yard of 20 feet be provided, planted and maintained in keeping with the residential neighborhood, that side and rear yards of 10 feet each be provided, and that no entrance be provided from an alley at the rear of said parking lot.

Sec. 2406 PLANS FOR NON-CONFORMING USE: Any owner of land zoned under this Ordinance who shall file in writing with the Planning and Zoning Commission within 180 days after the effective date of this Ordinance a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development, or any part thereof, at any time within two years from the effective date of this Ordinance; and if any temporary governmental regulation prohibiting the proposed development is in full force and effect during said two year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development with necessary plans and sketches shall show the legal description of the land and the location of proposed buildings and improvements in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be a conforming use under this Ordinance.

Sec. 2407 HEIGHT LIMIT EXCEPTIONS: The height limits of this Ordinance shall not apply to:

-a. Barns, chimneys, conveyors, cupolas, derricks, domes, flag poles, observation towers, parapet walls extending not more than 4 feet above the height limit of the building, radio or television towers, masts and aeriels, silos, smokestacks, transmission towers, windmills and power transmission poles.

-b. Churches, hospitals, sanatoriums, schools or other public and semi-public buildings. Any such building may be erected to a height not exceeding 40 feet, provided the minimum side and

55-31 WERNER C. HUCK: to build 5 stores at 2334 N. Ralph Ave. in CR-4 under Sec. 2406.

Mr. Huck was present in behalf of his petition and there was quite a bit of discussion regarding the proposed widening of Grant Rd. He was informed that he would need one parking space for each 200 sq. ft. of floor area, plus access, or 39 complete parking spaces. He was asked to present a better plan and to take into consideration the widening of that road. A letter from Mr. Ensign, notarized by John Jannetto, stated that Mr. Ensign was heartily in favor of Mr. Werner having his property approved for business.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the case be postponed until the May meeting, as long as there was no particular rush concerning the matter.

55-32 STEVE ELCHUCK: to build 3 stores at 4901-5 E. 5th St. in CR-4 under Sec. 2406.

Mr. Elchuck was present on behalf of his petition. There being no opposition to this case, on motion by Mr. LaForce, seconded by Mr. Eagle, it was

VOTED: That this petition be granted.

Mr. Schreurs informed Mr. Elchuck that he would have to pick up his permit in 60 days and would be required to start construction within 6 months, but that there was no completion date.

55-33 BERT CALVERT: to build gas station, cafe, and motor court at 11,851 E. Houghton Road in SR zone under Sec. 2406.

Mr. Calvert was present in behalf of his petition, with his attorney, Mr. E. Rucker. Mr. Rucker wanted the record to show that Mr. Calvert was present with his attorneys, E. Scruggs and E. Rucker and that the file contains a sketch which was filed 180 days after the effective date of the County Zoning Ordinance, and which shows the non-conformity of a business area in an SR zone, and that they assert that it is in sufficient detail to establish the non-conformity in this zone. He would also like the record to show that they had filed an application on behalf of Mr. Calvert to build this particular area out on Houghton Rd. and that it was denied by the Building Inspector for the reason that it did not conform or needed a 2406 permit and that Mr. Calvert was the owner of the land at the time the Zoning Ordinance was enacted and that to date he is still the owner of the land.

Mr. Kenneth R. DeHaven was present, representing himself and Dr. H. S. Rhu, as opposing this case and he asked if Mr. Calvert owned all of Section 30, to which the reply was, "Practically, yes".

When the word "Practically" was questioned, it was brought out that Mr. Calvert had sold a small amount of it to two people within the last two years since he first filed his application.

It was also asked if this was the most apropos location for this type of venture, that is, to travel, to need, and to location, and the reply was, "From the standpoint of this application, it is."

As this was filed as a hardship permit under 2406, Mr. DeHaven asked if there was a hardship in this case.

Mr. Rucker felt the answer lay in the Ordinance itself, which says, "Any owner of land zoned under this Ordinance, who shall file in writing, a plan of development, etc., shall be issued a special non-conforming use," and then under Sec. 401 of the Ordinance, it says "The word 'shall' is mandatory and not directory" so they have taken the position, and it has been their understanding that the Board took the same position, that it was bound to comply and grant the permit without any question as to whether it was appropriate, or wise, or anything else. He stated further that the provision 2406 was placed in the Ordinance for the benefit of those who owned land at the time of the enactment, and if they complied with the matters set in there, after filing their plans within a certain length of time, "they shall be issued" and he did not think there was any question of intent.

The question was asked, "Does the tenor of the voices of the community in any way dictate the feeling of the Board? In other words, if the community as a whole is against it, can it be developed?"

The answer was given that this is a law and as a law, it operates as it says. If the public does not like this law, the answer lies in amending the law, but that the Board does not have power to disregard a provision of this statute and say, "Well, the people don't like the law, so we aren't going to pay any attention to it." They are still a body governed by law and not by anything else.

The Board further stated in answer to Mr. DeHaven's question, that they do, of course, like to hear all sides of these stories, as it sometimes has some bearing on the conditions which we impose upon the granting of these permits.

Mr. LaForce asked how many people out there objected to this, to which Mr. DeHaven replied, "In the vicinity of 30 people." Mr. Garcia stated that there was not yet any petition to this effect, of record.

Mr. Karl Barfield stated that as a property owner nearby, he wished to say that he has talked to most of the neighbors regarding business zoning in that neighborhood and believes all of them are opposed to it.

He further stated that there is no need at the present time for business zoning at that corner; that there is no business to be served to anyone at that corner by any business zoning. If properly surveyed from a business standpoint, it will be found that the entire area east of there is government property and there never will be any house built on it, nor will there be any drawing power there for business at that corner.

He considers it a very unwise selection for the owner of the land in the first place and also very unwise to set it in the extremely east end of a very good

residential section. This entire section from Freeman Road and the Old Spanish Trail back to Houghton Road is all residential property, the Rincon Ranch Estates being a nice subdivision, highly restricted, and in asking to place a piece of property 600' by 600' right in their front or back yard is what they are objecting to:

Mr. Eagle asked if he might read the Ordinance in this regard, stating that at the time the Ordinance was enacted, 2406 was a way of escape for people owning property at that particular time, as it planned for non-conforming uses, as follows:

"Any owner of land zoned under this Ordinance, who shall file, in writing, with the Planning and Zoning Commission, within 180 days after the effective date of this Ordinance, a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development or any part thereof, at any time within two years from the effective date of this Ordinance, and if any temporary governmental regulation permitting the proposed development is in full force and in effect during said two-year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development, with necessary plans and sketches shall show the legal description of the land and the location of the proposed buildings and improvement in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be in conforming use under this Ordinance."

Mr. Eagle added that there has to be some very serious reason why the Board cannot grant it, such as a nuisance or a hazard.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the permit be granted.

55-34 CHARLES WILSON: to build 5 stores at 966-990 S. Craycroft Road in TR zone under Sec. 2406.

Mr. Wilson was present on behalf of his own petition. Mr. LaForce asked if this case had not been passed on before, to which Mr. Wilson replied that the first store passed on was with the condition that he build a fence directly behind that store itself. Then he applied for another store about 100 ft. down which the Board passed with the condition that he build a fence all along the 600 ft. Now he is applying for five stores in between the two. That was to make it one consolidated unit.

Mr. LaForce asked if he had not agreed and promised an alley at one time, but Mr. Wilson stated that when they made him put in a fence, he then took out the alley. There is no alley in there, but an easement. However, he has been approached by the property owners affected by the fence, and they agreed to come down here to

Mr. Armstrong pointed out that it would improve the situation by putting this house 9½' from the line as it would maintain the character of the neighborhood and give a comparable house to all the people in the same general area.

Mr. Armstrong said the FHA is very particular about a variation of front line setback and that is the reason for the reverse curves. This is where the buyer purchases a complete package. The minor variation will not violate the intent of zoning.

Mr. Volk added that this is a subdivision of 1500 homes and 50 or 60 are already built.

Mr. Garcia mentioned the fact that if this is taken into the City, it will not be a problem, as City side yard requirements are much less.

There being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-28 CHESIN CONSTRUCTION CO.: to construct dwellings with side yards of 9.5' at 6958-66, 7002-10-18-26 Calle Canis, 6957-58, 6965, 7001-9-17-25 Calle Denebola and at 6957 Calle Jupiter in CR-3. Sec. 1107 requires 10' side yards.

As this case was identical to the previous one, except for locations, there being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-29 BERT CALVERT: appealing decision of Zoning Inspector to continue construction on Permit No. 6984 at 11851 E. Houghton Road in SR, under Sec. 2503-c.

Mr. Scruggs of Scruggs, Rucker and Ackerman, represented Mr. Calvert, who was also present on behalf of this petition. He stated that Mr. Calvert had filed for a permit under Sec. 2406, which provided for one gas station, one cafe, one motel with six dwelling units, and was issued June 14, 1955. Later it was decided that it would look better if the dwellings were separated instead of being in a string.

As Mr. Calvert was not very prompt in his construction, but within the statutory time, he got his work under way and has completed a service station, cafe and one dwelling unit. They are here basically because of the legal and administrative confusion due to the uncertainty of the law itself, and are appealing for an interpretation of the Ordinance by the Zoning Inspector, asking for a variance and a reversal of his action, believing he acted beyond his authority.

Although the permit was outstanding, it was finally revoked on May 23, 1957, following a request by Mr. Calvert, who asked for permission to build four houses on this area, using as his index, the law itself in SR which calls for four acres for each house, but not giving the required 144,000 sq. ft. for each house, which he could build without any variance of any question.

Since they have the right under 2406 to have this type of operation there, they now want permission to build five dwelling units such as the one already there, complete with bedroom, bath, kitchen, living room, and carport for storage.

Mr. Scruggs further stated that there is a letter in the file from Mr. Dunipace, concerning the question of when a building permit can be revoked. However, he does not cite any authority in the law, for the legal case of this permit. Their first contention is that the Zoning Inspector does not have the power to revoke the permit, but assuming that he might have, following Mr. Dunipace's opinion, he points out that after a person holding a permit has advanced to the point where he is financially apt to be seriously damaged, by the regulations becoming effective, because if he has progressed, he has spent money on the proposition that certain things were permitted and then with the administrative action coming along permeating those rights, it is a serious question as to whether or not it is not an action in violation of the law and constitution.

Mr. Dunipace points out that \$100.00 is a pretty good index as to whether the man has advanced too far or not, and in this case, he has advanced to the amount of \$25,000.00 and wants to continue with this plan as originally set up and requests to be permitted to put the houses within that 600' x 600'.

They also contend that the permit is still good, but if the Inspector is right, and it has expired, they contend that the Board has the power to grant a variance and grant this request from which they did not appeal, as it was not formally turned down. They, therefore, ask the Board to declare this permit still in effect, permitting him to go ahead.

Mr. Desmond A. Williams came forward, as he owns property immediately adjacent to this tract, and stated he believed Mr. Calvert intends to develop this into a very fine project on the permit which was granted at that time. Mr. Williams also hopes to develop his acreage into high grade home sites and therefore has no personal objections.

When asked by Mr. Wilson if they were going to follow the original plan, Mr. Scruggs said they will, if they have to, but would prefer to break up the plan and scatter the houses around to make an attractive corner, grouping the houses as permitted under SR zoning, with the 20' minimum distance between them.

Mr. Schreurs explained that they do not want to expand this area, but merely want to erect five houses. SR permits single family dwellings on four acre sites and he is asking for a permit to build a non-conforming use because he had such a plan before the Ordinance came into effect, and had applied for a non-conforming use to build on less than four acres per unit. He said a memorandum dated December 12, 1955 states that they called for an inspection of a gas station.

He further stated that when a regular permit is issued, they have nine months in which to start construction, and if the foundation is in within the nine months, there is no deadline as to when it has to be finished. A footing and stem wall is considered a vested right, as it shows that construction has been started.

In this particular case, he was granted a permit in 1955, by the Board of Adjustment, and was supposed to show that the whole project was started by December of that year, which was six months after being granted by the Board. However, they found that the whole project was not started, as the foundation was not in.

Mr. Scruggs stated they had a permit for six dwelling units and then felt it would look better to have separate houses, and in effect, they were permitted to have separate units.

Mr. Wilson was of the opinion that a project is started when the foundation of one building is started but that they would not need a foundation for every unit as they could not do everything all at once.

Mr. Schreurs said he found a memorandum dated December 9, 1955 with the notation on it that he had talked to Mr. Dunipace, who ruled that date of issuance of a permit is the date the permit is actually issued, and that Mr. Calvert can change his plans as long as he does not have more than the number of units approved by 2406, but that construction must be started on all of them by December 14, 1955.

Mr. Ackerman felt that because \$25,000.00 worth of work had been done, there was no question but that the permit was a vested right, but Mr. Schreurs said that only trenches had been dug by the end of six months.

Mr. Scruggs said they would like a declaration by this Board that this permit is good, as the law does not allow the Zoning Inspector to terminate a permit once construction has started.

Mr. Schreurs contended that the Ordinance says the permit expires, while Mr. Scruggs stated that Mr. Dunipace agrees that the permit must be used and once you have a vested right in it, you can't take it away.

After considerable discussion, there being no one else to be heard, on motion by Mr. Wilson, seconded by Mr. Royal, it was

VOTED: That Mr. Calvert be allowed to continue construction with the provision that a plan for five units be submitted to the Zoning Inspector for his approval.

The motion was declared carried.

57-30 BILL RAPPAPORT: to allow open porch to remain attached to rear of residence with deficient rear yard at 1527 Avenida Sirlo in CR-3. Sec. 1108 requires 40' rear yard.

Mr. Rappaport was present on behalf of this petition.



my father and, ultimately, included in the Calvert Family Trust, which held title as Saguaro Corners Rentals, Inc., an Arizona corporation. As the Trustee of the Trust that owned and operated these facilities, I can attest to the fact that these units consistently were used as rental units. Later, the Saguaro Corners Café was severed off and sold as an independent site which, prior to the time of sale had been rezoned in 1989 from SR to CB-1. This rezoning changed the non-conforming status to a conforming use. Prior to 1989 we, as the owners, always viewed the use as a non-conforming use under the adopted Suburban Ranch Zoning Ordinance standards.

8. It was intended by my grandfather that the existing development would be expanded further to include additional rental units. In furtherance of this plan for expansion, Bert Calvert installed additional waterlines to increase the number of residential units, but he passed away before that proposal could be implemented.

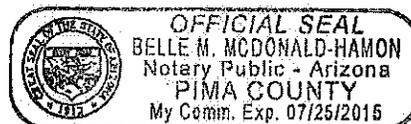
9. The information contained in this Affidavit is based upon the records in the possession of Pima County, which includes building permits issued in 1955; inspection records indicating the date the construction was undertaken and completed; various permits for later-improvements and additions to the units; the Board of Adjustment records of 1955 and 1957, respectively; and, a portion of the historical Pima County Zoning Ordinance. In addition to those public records, the information in this Affidavit is also based upon my own personal observations and information, which has been established as being the accountant for the Corporation.

Further Affiant sayeth not.

Dale R. Calvert  
Dale Calvert

SUBSCRIBED AND SWORN to before me on March 17, 2015.

Belle M. McDonald-Hamon  
Notary Public  
My Commission Expires:



IT: BUILDING  USE  OCCUPANCY

Pima County, Tucson, Ariz.

3700 *Old Spanish Trail* 6984  
~~Street & No.~~

Street & No. ~~\_\_\_\_\_~~ FEE \$ 0.00  
(NEW CONSTRUCTION)

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ Zone SR

Subdivision: \_\_\_\_\_ Parcel No. \_\_\_\_\_

Part of SR 1st Section 30

Township 11 Range 16

Owner: Port Calvert AM 89900

Address: 65 W. Alameda

Builder: Caro

No. Permit: 1 gas station, 1 car, motel with 6 dwelling units

Est. Cost (Labor & Material) 30,000.00 048300

Date Issued: 6-13-55

Date Expires: 10-14-55

Inspection Date: \_\_\_\_\_

Conditions Imposed by B/A Case: As-is approved permit

for above under Section 2406

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the Inspector.

Applicant: \_\_\_\_\_

Owner  Builder  Agent

Zoning Inspector: [Signature]

Sanitary Facilities: Sewer  Septic

Remarks: Permit granted 4/14/56  
Refer to 57-33  
57-29  
(over)

ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS		9-27-55	<input checked="" type="checkbox"/>	<input type="checkbox"/>	JZD	footings parallel
Concrete 24 hrs old		10-25-55	<input checked="" type="checkbox"/>	<input type="checkbox"/>	JZD	160% M.P.C.
15 x 15		11-22-55	<input checked="" type="checkbox"/>	<input type="checkbox"/>	JZD	no more done than previous
						This section not set out

See Permit # 15223

Project notes & compliance planning  
11-9-57

10-19-57 Station & Cafe + 1 Cabin

90% Completed

2-23-57

Balance no stand.

~~Completed Station~~

1 Res unit. J. D.

Balance approved —

5-23-57 Expiration card ready  
for Bert Calvert. J. D.

018310

BOOK 5117 PAGE 35  
Exhibit A

Library Copy--Pima County  
Planning & Zoning Dept.

COUNTY ZONING PLAN  
Pima County, Arizona  
\*\*\*\*\*

As Revised by  
County Planning and Zoning Commission  
April 1952

\*  
\*  
\*

Planning Department-  
89 North Court Street  
Tucson, Arizona

[Effective on  
Feb. 16, 1953] *om*

Library Copy--Pima County  
Planning & Zoning Dept.

0765  
9.26  
85950

EXHIBIT 2

County Zoning Plan - Jan. 1952 - Rev. 4-24-52

-55-

## Sec. 2403-b (cont'd)

necessary fencing shall be set at a distance not closer to a street lot line than the minimum front and side yards of the zone.

Sec. 2404 GRAVEL PITS, QUARRIES, GAS OR PETROLEUM DRILLING PERMITTED: Clay, sand or gravel pits, rock or stone quarries and drilling for petroleum or natural gas may be permitted by the Board of Adjustment in any zone, except MU, subject to the provisions of Article 25.

Sec. 2405 PARKING LOTS IN RESIDENCE ZONES: Land in a residence zone contiguous to a business or industrial zone and not exceeding 30,000 square feet in area, may be used for automobile parking space; provided the conditions of Sec. 2203 are complied with, that a front yard of 20 feet be provided, planted and maintained in keeping with the residential neighborhood, that side and rear yards of 10 feet each be provided, and that no entrance be provided from an alley at the rear of said parking lot.

Sec. 2406 PLANS FOR NON-CONFORMING USE: Any owner of land zoned under this Ordinance who shall file in writing with the Planning and Zoning Commission within 180 days after the effective date of this Ordinance a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development, or any part thereof, at any time within two years from the effective date of this Ordinance; and if any temporary governmental regulation prohibiting the proposed development is in full force and effect during said two year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development with necessary plans and sketches shall show the legal description of the land and the location of proposed buildings and improvements in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be a conforming use under this Ordinance.

Sec. 2407 HEIGHT LIMIT EXCEPTIONS: The height limits of this Ordinance shall not apply to:

-a. Barns, chimneys, conveyors, cupolas, derricks, domes, flag poles, observation towers, parapet walls extending not more than 4 feet above the height limit of the building, radio or television towers, masts and aeriels, silos, smokestacks, transmission towers, windmills and power transmission poles.

-b. Churches, hospitals, sanatoriums, schools or other public and semi-public buildings. Any such building may be erected to a height not exceeding 40 feet, provided the minimum side and

55-31 WERNER G. HUCK: to build 5 stores at 2334 N. Ralph Ave. in CR-4 under Sec. 2406.

Mr. Huck was present in behalf of his petition and there was quite a bit of discussion regarding the proposed widening of Grant Rd. He was informed that he would need one parking space for each 200 sq. ft. of floor area, plus access, or 39 complete parking spaces. He was asked to present a better plan and to take into consideration the widening of that road. A letter from Mr. Ensign, notarized by John Jannetto, stated that Mr. Ensign was heartily in favor of Mr. Werner having his property approved for business.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the case be postponed until the May meeting, as long as there was no particular rush concerning the matter.

55-32 STEVE ELCHUCK: to build 3 stores at 4901-5 E. 5th St. in CR-4 under Sec. 2406.

Mr. Elchuck was present on behalf of his petition. There being no opposition to this case, on motion by Mr. LaForce, seconded by Mr. Eagle, it was

VOTED: That this petition be granted.

Mr. Schreurs informed Mr. Elchuck that he would have to pick up his permit in 60 days and would be required to start construction within 6 months, but that there was no completion date.

55-33 BERT CALVERT: to build gas station, cafe, and motor court at 11,851 E. Houghton Road in SR zone under Sec. 2406.

Mr. Calvert was present in behalf of his petition, with his attorney, Mr. E. Rucker. Mr. Rucker wanted the record to show that Mr. Calvert was present with his attorneys, E. Scruggs and E. Rucker and that the file contains a sketch which was filed 180 days after the effective date of the County Zoning Ordinance, and which shows the non-conformity of a business area in an SR zone, and that they assert that it is in sufficient detail to establish the non-conformity in this zone. He would also like the record to show that they had filed an application on behalf of Mr. Calvert to build this particular area out on Houghton Rd. and that it was denied by the Building Inspector for the reason that it did not conform or needed a 2406 permit and that Mr. Calvert was the owner of the land at the time the Zoning Ordinance was enacted and that to date he is still the owner of the land.

Mr. Kenneth R. DeHaven was present, representing himself and Dr. H. S. Rhu, as opposing this case and he asked if Mr. Calvert owned all of Section 30, to which the reply was, "Practically, yes".

When the word "Practically" was questioned, it was brought out that Mr. Calvert had sold a small amount of it to two people within the last two years since he first filed his application.

It was also asked if this was the most apropos location for this type of venture, that is, to travel, to need, and to location, and the reply was, "From the standpoint of this application, it is."

As this was filed as a hardship permit under 2406, Mr. DeHaven asked if there was a hardship in this case.

Mr. Rucker felt the answer lay in the Ordinance itself, which says, "Any owner of land zoned under this Ordinance, who shall file in writing, a plan of development, etc., shall be issued a special non-conforming use," and then under Sec. 401 of the Ordinance, it says "The word 'shall' is mandatory and not directory" so they have taken the position, and it has been their understanding that the Board took the same position, that it was bound to comply and grant the permit without any question as to whether it was appropriate, or wise, or anything else. He stated further that the provision 2406 was placed in the Ordinance for the benefit of those who owned land at the time of the enactment, and if they complied with the matters set in there, after filing their plans within a certain length of time, "they shall be issued" and he did not think there was any question of intent.

The question was asked, "Does the tenor of the voices of the community in any way dictate the feeling of the Board? In other words, if the community as a whole is against it, can it be developed?"

The answer was given that this is a law and as a law, it operates as it says. If the public does not like this law, the answer lies in amending the law, but that the Board does not have power to disregard a provision of this statute and say, "Well, the people don't like the law, so we aren't going to pay any attention to it." They are still a body governed by law and not by anything else.

The Board further stated in answer to Mr. DeHaven's question, that they do, of course, like to hear all sides of these stories, as it sometimes has some bearing on the conditions which we impose upon the granting of these permits.

Mr. LaForce asked how many people out there objected to this, to which Mr. DeHaven replied, "In the vicinity of 30 people." Mr. Garcia stated that there was not yet any petition to this effect, of record.

Mr. Karl Barfield stated that as a property owner nearby, he wished to say that he has talked to most of the neighbors regarding business zoning in that neighborhood and believes all of them are opposed to it.

He further stated that there is no need at the present time for business zoning at that corner; that there is no business to be served to anyone at that corner by any business zoning. If properly surveyed from a business standpoint, it will be found that the entire area east of there is government property and there never will be any house built on it, nor will there be any drawing power there for business at that corner.

He considers it a very unwise selection for the owner of the land in the first place and also very unwise to set it in the extremely east end of a very good

residential section. This entire section from Freeman Road and the Old Spanish Trail back to Houghton Road is all residential property, the Rincon Ranch Estates being a nice subdivision, highly restricted, and in asking to place a piece of property 600' by 600' right in their front or back yard is what they are objecting to:

Mr. Eagle asked if he might read the Ordinance in this regard, stating that at the time the Ordinance was enacted, 2406 was a way of escape for people owning property at that particular time, as it planned for non-conforming uses, as follows:

"Any owner of land zoned under this Ordinance, who shall file, in writing, with the Planning and Zoning Commission, within 180 days after the effective date of this Ordinance, a plan of development for such land including uses not permitted by the zoning, shall be issued a special non-conforming hardship use permit by the Board of Adjustment for said proposed development or any part thereof, at any time within two years from the effective date of this Ordinance, and if any temporary governmental regulation permitting the proposed development is in full force and in effect during said two-year period, the time limit shall be extended for an additional period equal to the time said governmental regulation is in effect, but no such permit shall be issued more than five years after the effective date of this Ordinance. Said plan of development, with necessary plans and sketches shall show the legal description of the land and the location of the proposed buildings and improvement in sufficient detail to determine the conformity or non-conformity of the proposed uses. Any use proposed in any such plan of development shall conform to the minimum standards of the most restrictive zone in which said use would be in conforming use under this Ordinance."

Mr. Eagle added that there has to be some very serious reason why the Board cannot grant it, such as a nuisance or a hazard.

On motion by Mr. Eagle, seconded by Mr. LaForce, it was

VOTED: That the permit be granted.

55-34 CHARLES WILSON: to build 5 stores at 966-990 S. Craycroft Road in TR zone under Sec. 2406.

Mr. Wilson was present on behalf of his own petition. Mr. LaForce asked if this case had not been passed on before, to which Mr. Wilson replied that the first store passed on was with the condition that he build a fence directly behind that store itself. Then he applied for another store about 100 ft. down which the Board passed with the condition that he build a fence all along the 600 ft. Now he is applying for five stores in between the two. That was to make it one consolidated unit.

Mr. LaForce asked if he had not agreed and promised an alley at one time, but Mr. Wilson stated that when they made him put in a fence, he then took out the alley. There is no alley in there, but an easement. However, he has been approached by the property owners affected by the fence, and they agreed to come down here to

Mr. Armstrong pointed out that it would improve the situation by putting this house 9½' from the line as it would maintain the character of the neighborhood and give a comparable house to all the people in the same general area.

Mr. Armstrong said the FHA is very particular about a variation of front line setback and that is the reason for the reverse curves. This is where the buyer purchases a complete package. The minor variation will not violate the intent of zoning.

Mr. Volk added that this is a subdivision of 1500 homes and 50 or 60 are already built.

Mr. Garcia mentioned the fact that if this is taken into the City, it will not be a problem, as City side yard requirements are much less.

There being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-28 CHESIN CONSTRUCTION CO.: to construct dwellings with side yards of 9.5' at 6958-66, 7002-10-18-26 Calle Canis, 6957-58, 6965, 7001-9-17-25 Calle Denebola and at 6957 Calle Jupiter in CR-3. Sec. 1107 requires 10' side yards.

As this case was identical to the previous one, except for locations, there being no one else to be heard, on motion by Mr. Sayles, seconded by Mr. Royal, it was

VOTED: That the petition be granted.

The motion was declared carried.

57-29 BERT CALVERT: appealing decision of Zoning Inspector to continue construction on Permit No. 6984 at 11851 E. Houghton Road in SR, under Sec. 2503-c.

Mr. Scruggs of Scruggs, Rucker and Ackerman, represented Mr. Calvert, who was also present on behalf of this petition. He stated that Mr. Calvert had filed for a permit under Sec. 2406, which provided for one gas station, one cafe, one motel with six dwelling units, and was issued June 14, 1955. Later it was decided that it would look better if the dwellings were separated instead of being in a string.

As Mr. Calvert was not very prompt in his construction, but within the statutory time, he got his work under way and has completed a service station, cafe and one dwelling unit. They are here basically because of the legal and administrative confusion due to the uncertainty of the law itself, and are appealing for an interpretation of the Ordinance by the Zoning Inspector, asking for a variance and a reversal of his action, believing he acted beyond his authority.

Although the permit was outstanding, it was finally revoked on May 23, 1957, following a request by Mr. Calvert, who asked for permission to build four houses on this area, using as his index, the law itself in SR which calls for four acres for each house, but not giving the required 144,000 sq. ft. for each house, which he could build without any variance of any question.

Since they have the right under 2406 to have this type of operation there, they now want permission to build five dwelling units such as the one already there, complete with bedroom, bath, kitchen, living room, and carport for storage.

Mr. Scruggs further stated that there is a letter in the file from Mr. Dunipace, concerning the question of when a building permit can be revoked. However, he does not cite any authority in the law, for the legal case of this permit. Their first contention is that the Zoning Inspector does not have the power to revoke the permit, but assuming that he might have, following Mr. Dunipace's opinion, he points out that after a person holding a permit has advanced to the point where he is financially apt to be seriously damaged, by the regulations becoming effective, because if he has progressed, he has spent money on the proposition that certain things were permitted and then with the administrative action coming along permeating those rights, it is a serious question as to whether or not it is not an action in violation of the law and constitution.

Mr. Dunipace points out that \$100.00 is a pretty good index as to whether the man has advanced too far or not, and in this case, he has advanced to the amount of \$25,000.00 and wants to continue with this plan as originally set up and requests to be permitted to put the houses within that 600' x 600'.

They also contend that the permit is still good, but if the Inspector is right, and it has expired, they contend that the Board has the power to grant a variance and grant this request from which they did not appeal, as it was not formally turned down. They, therefore, ask the Board to declare this permit still in effect, permitting him to go ahead.

Mr. Desmond A. Williams came forward, as he owns property immediately adjacent to this tract, and stated he believed Mr. Calvert intends to develop this into a very fine project on the permit which was granted at that time. Mr. Williams also hopes to develop his acreage into high grade home sites and therefore has no personal objections.

When asked by Mr. Wilson if they were going to follow the original plan, Mr. Scruggs said they will, if they have to, but would prefer to break up the plan and scatter the houses around to make an attractive corner, grouping the houses as permitted under SR zoning, with the 20' minimum distance between them.

Mr. Schreurs explained that they do not want to expand this area, but merely want to erect five houses. SR permits single family dwellings on four acre sites and he is asking for a permit to build a non-conforming use because he had such a plan before the Ordinance came into effect, and had applied for a non-conforming use to build on less than four acres per unit. He said a memorandum dated December 12, 1955 states that they called for an inspection of a gas station.

He further stated that when a regular permit is issued, they have nine months in which to start construction, and if the foundation is in within the nine months, there is no deadline as to when it has to be finished. A footing and stem wall is considered a vested right, as it shows that construction has been started.

In this particular case, he was granted a permit in 1955, by the Board of Adjustment, and was supposed to show that the whole project was started by December of that year, which was six months after being granted by the Board. However, they found that the whole project was not started, as the foundation was not in.

Mr. Scruggs stated they had a permit for six dwelling units and then felt it would look better to have separate houses, and in effect, they were permitted to have separate units.

Mr. Wilson was of the opinion that a project is started when the foundation of one building is started but that they would not need a foundation for every unit as they could not do everything all at once.

Mr. Schreurs said he found a memorandum dated December 9, 1955 with the notation on it that he had talked to Mr. Dunipace, who ruled that date of issuance of a permit is the date the permit is actually issued, and that Mr. Calvert can change his plans as long as he does not have more than the number of units approved by 2406, but that construction must be started on all of them by December 14, 1955.

Mr. Ackerman felt that because \$25,000.00 worth of work had been done, there was no question but that the permit was a vested right, but Mr. Schreurs said that only trenches had been dug by the end of six months.

Mr. Scruggs said they would like a declaration by this Board that this permit is good, as the law does not allow the Zoning Inspector to terminate a permit once construction has started.

Mr. Schreurs contended that the Ordinance says the permit expires, while Mr. Scruggs stated that Mr. Dunipace agrees that the permit must be used and once you have a vested right in it, you can't take it away.

After considerable discussion, there being no one else to be heard, on motion by Mr. Wilson, seconded by Mr. Royal, it was

VOTED: That Mr. Calvert be allowed to continue construction with the provision that a plan for five units be submitted to the Zoning Inspector for his approval.

The motion was declared carried.

57-30 BILL RAPPAPORT: to allow open porch to remain attached to rear of residence with deficient rear yard at 1527 Avenida Sirio in CR-3. Sec. 1108 requires 40' rear yard.

Mr. Rappaport was present on behalf of this petition.



Unit  
F

PERMIT: BUILDING  USE  OCCUPANCY

88 Pima County, Tucson, Arizona  
3700 ~~ROAD~~  
*Old Spanish Trail* No. 24764  
FEE \$ 7.50

Street & No. \_\_\_\_\_ (NEW CONSTRUCTION)

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_ Zone *DR*

Subdivision: *Part of 113* Parcel No. \_\_\_\_\_  
*DR* Section *30*

Township *14* Range *16*

Owner: *Bert Calvert* PH: *200173*

Address: *Box 317*

Builder: *None*

To Permit: *Build 2nd residence / Keypart*  
(Block)

Est. Cost (Labor & Material) *7500*

Date Issued: *12-9-58*

Date Expires: *9-9-59*

Inspection Date: \_\_\_\_\_

Conditions Imposed by B/A Case: \_\_\_\_\_

This permit is issued on the basis of your application and plot plan. Any changes must be cleared by the inspector.

Applicant: \_\_\_\_\_

Owner  Builder  Agent

Zoning Inspector: \_\_\_\_\_

Sanitary Facilities: \_\_\_\_\_ Sewer  Sepsic

Remarks: \_\_\_\_\_

*Build home total 8 units + corner*

### ZONING INSPECTION RECORD

	DATE REQUESTED	DATE INSPECTED	Conform		INSPECTOR'S INITIALS	REMARKS
			Yes	No		
FOUNDATION SET BACKS	<i>5-7-59</i>	<i>8-9-59</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>JD</i>	<i>Foundation</i>
		<i>8-9-59</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>J.P. Conpton</i>	

18594

FORM 300