

**Summary Minutes  
City of Sedona  
Board of Adjustment Hearing Officer Meeting  
Vultee Conference Room, Sedona City Hall, Sedona, AZ  
Monday, July 31, 2017 – 10:00 a.m.**

**1. Verification of Notice, Call to Order, Pledge of Allegiance and Roll Call.**

Hearing Officer Plotkin called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance.

**Roll Call:**

**Hearing Officer present:** John Plotkin

**Staff present:** Warren Campbell, Audree Juhlin, Donna Puckett and Mike Raber

**Councilor(s) Present:** Councilor Scott Jablow

**Applicant(s) present:** Brian Alcorn, authorized agent for Sri Ganesha, LLC. and Samantha Alcorn

**2. CONSIDERATION OF THE FOLLOWING REQUEST (S) THROUGH PUBLIC HEARING PROCEDURES:**

**Request for approval of a Variance to subsection 1203 (Non-Conforming Signs) of the City of Sedona Land Development Code (LDC), to allow for re-wording and redesign of a non-conforming sign, pursuant to the LDC Subsection 404, Variances and Appeals. The subject property is located at 500 N SR 89A, Sedona, AZ 86336, is approximately 0.36 acres, is zoned L (Lodging) and is further identified as Assessor's Parcel 401-14-018A. Applicant: Brian Alcorn, authorized agent for Sri Ganesha, LLC. Case Number: VAR17-00001**

Mike Raber indicated that the packet for today's meeting includes a Staff Report, Vicinity Map and aerial, Variance application, Applicant's Letter of Intent, letters of support and photos, plus an additional letter just received in support. He then provided an overview of the request for approval of a variance to Subsection 1203 of the Land Development Code regarding nonconforming signs to allow for the rewording and redesign of a nonconforming sign. If approved, it would allow the existing nonconforming sign structure to remain in place while allowing the sign copy to be redesigned to reflect the name of the new hotel business, La Petite Sedona hotel that was the La Vista motel.

Mike Raber then discussed the subject property's location, size, L zoning for lodging, and noted that the parcel size is less than the minimum lot size, and the front setback is also less than the minimum setback requirement, so essentially the property line is right on the highway right-of-way. Mike pointed out that the GIS map is a little off from where the building is, and that is kind of typical. It is not encroaching as much as it appears.

Hearing Officer Plotkin asked if it is on the property lot line or actually goes over the property lot line, and Mike Raber responded that we don't know exactly. It is really close to either being on the line or right over it.

Mike Raber explained that because of the front setback and lot depth, etc., the parcel and building are considered to be legal nonconforming, and the property includes the hotel with 12 units in the main structure and a separate structure with two additional units. The original hotel was built in 1951 and most recently known as the La Vista motel. The access from the highway is along the east property line, and the parking is both in front of the building in the right-of-way and in the rear of the property. The property drops off sharply from the front property line about five ft. on the east side to more about eight ft. on the west side, and the free-standing sign structure is about 14 ft. from the northbound travel lane, entirely within the right-of-way. The Sign Regulations in our Land Development Code does not allow signs in that right-of-way, so the sign is considered legal nonconforming for its location.

Mike then indicated that the height of the sign structure is 16 ft. to the top of the post and the Sign Regulations allow a maximum height of eight ft., so the sign structure is also legal nonconforming. Mike added that the new sign text, according to the applicant, is approximately 17 sq. ft. and the Sign Regulations allow a maximum of 20 sq. ft.

Mike Raber stated that due to the location and height of the existing sign, it is considered nonconforming to our current Land Development Code, so in Section 1203, an existing nonconforming sign cannot be reworded or redesigned, unless the entire sign and structure are brought into conformance with the Sign Regulations. There are some exceptions to that, and one is that an individual business could change the copy if it is a multi-tenant sign, but that isn't applicable in this case.

Mike indicated that in November of last year, the applicant replaced the insert on the original sign with a new panel and name of the new hotel, and staff had previously informed the applicant that rewording and re-designating of that sign would require a sign permit and the sign and structure would have to conform to our Sign Regulations, so following the changes made to the sign in 2016, the applicant filed a variance request citing that there were no other options to replace the existing sign structure and bring the new sign into compliance.

Mike Raber explained that the applicant's primary concern is that to comply with current standards, the new free-standing sign would obstruct the visibility of the driveway on the north side of the property and pose a risk to others trying to exit or cause guests to miss the entrance. Another concern is that the visibility of the sign would be greatly diminished from having to lower the sign structure to eight ft. in height. The applicant included a letter from a local engineering consultant that recommends against lowering the sign due to obstructed views and encroachment into the sight triangle.

Mike indicated that one issue is that to fully conform to the Land Development Code, the applicant could not keep a free-standing sign in its current location, because it is within the City's right-of-way and if a new free-standing sign is located within 10 ft. of the entrance to the property and its intersection with the highway, it can only be three ft. in height, if it is within the visibility triangle. If a new sign is located outside of the visibility triangle, it could be eight ft. in height; however, there is a five ft. change in grade, so options for relocating a free-standing sign are constrained by the sight triangle and the change in grade. Placement below the grade with an eight ft. sign would not leave a lot of sign protruding above the highway. Additionally, there is a similar situation on the left side where the topography is about eight ft. below the highway.

Other options for the applicant, although significantly less visible, would be to install a wall-mounted sign, and they could have up to 45 sq. ft. of wall coverage; however, the applicant has stated that mounting a sign on the wall would not be viable, because it would not be very

visible to both north and southbound traffic during the day and nearly invisible at night. Plus, the end of the building would be blocked by trees and other buildings for northbound traffic. Staff agreed that this might not be a good option, because visitors might not see the sign in time when northbound, and there are no good turnaround options past this point on the highway.

Mike explained that the applicant asserts that the existing panel for the hotel was faded and brittle, and their replacement won't shatter and will hold up better in the weather, and it also provided an opportunity to enhance the aesthetics of the sign with the new hotel name, and reduced the sign's square footage from approximately 25 or 26 sq. ft. to about 17 sq. ft., which is closer to the current 20 sq. ft. requirement; however, although the revised sign copy might be closer, it is really the height of the sign structure and its location that are considered nonconforming and the biggest issues with the sign.

Mike Raber then referenced the following findings for variances:

- A. Due to special circumstances applicable to the subject property, including its size, shape, topography, location, and surroundings, the strict application of this Code will deprive this property of privileges enjoyed by other properties of the same classification in the same zoning district.

Mike indicated that the topography of the site, location of the access drive, and proximity to the right-of-way would make it difficult to install a free-standing sign that would conform to the current Code without being substantially below the grade of the highway or within the sight triangle. The applicant is permitted to do a wall-mounted sign.

- B. Any variance is subject to the conditions that will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the subject property is located.

Mike pointed out that Section 1203 of the Code provides that all nonconforming single-tenant signs cannot be enlarged, reworded, redesigned or altered in any way, unless the sign is brought into conformance with the Sign Regulations.

- C. Special circumstances applicable to the property are not imposed by the property owner/applicant.

Mike stated that although there are special circumstances applicable to the property that make it difficult to relocate a free-standing sign, the applicant does have other options. If the variance is not granted, the applicant has the following alternatives to comply with the Land Development Code:

1. Restore the sign to its previous square footage, sign copy, design and color.
2. Replace the current sign structure with a new sign that complies with the current Land Development Code.
3. Replace the current sign structure with a wall-mounted sign that complies with the current Code.

Mike added that if the variance is granted, staff would recommend that it be conditional upon obtaining a sign permit for the new insert.

Mike Raber stated that in summary, the intent of the nonconforming section of the Code is to bring noncompliant situations into compliance as changes are made, and in this case, due to the circumstances beyond the control of the applicant, they are unable to comply with the

Code requirements for a free-standing sign, and these factors include the fact that the building is already constructed on the property, the parking and free-standing sign are located in the right-of-way, the existing sign structure is over height and size, and most of the property is substantially below the grade of the highway. Those items are cited as circumstances that really make a free-standing sign difficult to identify the business in any kind of practical or reasonable manner, and although a wall sign is an option, the building and surrounding vegetation make it difficult to find a location that would make the business identifiable from the highway.

Hearing Officer Plotkin asked if Mike Raber would offer the packet he was sent into evidence for the hearing today and Mike Raber said yes, for the public record. Mr. Plotkin then stated that it is accepted.

Hearing Officer Plotkin then invited the applicant to make a presentation, and Brian Alcorn stated that he really didn't prepare a presentation, as things in here covered pretty much everything that they would say. The Hearing Officer requested that Mr. Alcorn introduce himself for the record, and noted that he does have the record, so he has reviewed it. Mr. Alcorn then introduced himself as Brian Alcorn, La Petite Sedona, and Ms. Alcorn introduced herself as Samantha Alcorn, La Petite Sedona, and stated that basically the City covered it and they have been very supportive of their business as well as other businesses, and they do support the City. The Recording Secretary asked if she could speak a little louder, and Ms. Alcorn restated that the City has covered everything that they would generally cover, and they have supported their business as well as other businesses in the area.

Brian Alcorn added that overall he has letters of support that he named, which were really about an option of making the property better and about their relationship with the City as a business partnership, meaning that they support the City and the City supports them, and at the end, it is providing jobs, and as an entrepreneur, it is about making decisions and making things better and beautifying everything, and making things better

*Hearing Officer Plotkin opened the public comment period at 10:18 a.m.*

**Steven Segner, Sedona, AZ:** Mr. Segner indicated that he owns a hotel in Sedona and he is also President of the Sedona Lodging Council. He is here for support today. One thing he would like to talk about a little bit is the zoning of signs. He understands that it is very difficult to make rules that work for everything in town; the town has been around since the 40s and has changed. One of the things he thinks is important is that some these older signs in Uptown have character and they add a character district in the sense that this is the older section of town, and it is different than Tlaquepaque. Some of these old signs have character and add character, so he would like to see them not disappear just because of wind damage or they need to change the name. A prime example might be the Matterhorn; it has an old-fashioned 50s sign, but it is a very nice sign, and they support the idea of trying to work around some type of solution to keep these signs in place, so we don't end up looking totally like Scottsdale where everything is just of the current age. They support this and want to see him be in business. Where he is, the very last location in town as you leave, you have to be able to see the sign; otherwise, they will zoom right by, so keep him in business and viable, and keep a little family business going. He would like to see the City approve it.

*Hearing Officer Plotkin closed the public comment period at 10:20 a.m.*

Hearing Officer Plotkin indicated that he understands the notion that a wall sign could be put on the building and the limitations on that, and then there is also the potential to put a sign in

the front of the building, but as he sees the materials, that sign in front of the building might actually be in the right-of-way. He then asked if he is correct, so that would make it nonconforming also, and Mike Raber noted that is something he actually hadn't thought about, but that is possible; it is probably right on the line.

Hearing Officer Plotkin noted that his other questions are more general, but will help him evaluate in the standard that he needs to apply for variances. For other properties on the 89A corridor in Uptown nearby, what is the percentage of them that meet the front setback requirements now? Mike Raber stated that he doesn't really have an estimate off the top of his head, but the property immediately to the southwest of the applicant is in the same exact place. He is assuming that we have several in Uptown that don't meet that; they may not be as close as this one, but our whole commercial area where all the parking is, was once part of the ADOT right-of-way, and a good portion of that is not meeting that 15 ft. requirement. He just can't say that the majority is not, but there are several properties.

Warren Campbell indicated that staff could pull up GIS and show the main street, if that would be helpful. Hearing Officer Plotkin explained that he lives in Uptown and has been up and down this a lot, so he has a pretty good sense of it, but he just wanted to get confirmation from staff that right now you have a neighborhood that probably conformance with the setback requirements would be the exception rather than the rule; that would be his sense of it. He then asked if staff would disagree with that, and Mike Raber stated that he didn't know if he could go quite that far, but he knows there is more than one property. Mike Raber indicated that staff could look at it, and he started accessing an aerial view of the 89A corridor.

Hearing Officer Plotkin stated that while Mike was accessing the aerial, his next question would be to what extent existing signs in this corridor comply with the existing Zoning Ordinance and to what extent are they nonconforming?

Mike Raber pointed out the property line for one segment of the Uptown area and indicated that the buildings are very close to the property line. Mr. Plotkin indicated that the line would suggest that there is a lot of property development that intrudes into the right-of-way; however, Mike Raber clarified, not necessarily into the right-of-way, but built within the 15 ft. setback.

Hearing Officer Plotkin then asked, with respect to nonconforming signs, to what extent are there existing nonconforming signs along the 89A corridor, and Audree Juhlin stated that there are a number of signs that are considered legal nonconforming, and Mr. Segner brought up one of them and a motel down the street on S.R. 179 is another; however, this is a unique situation in that most of the signs in Uptown are wall-mounted and not free-standing, for the very reason that they can't. This one of the last remaining free-standing signs; there are three or four other ones that are legal nonconforming.

Hearing Officer Plotkin asked specifically to the class of hotels, to what extent in Sedona, not just on 89A, but for hotels generally, do we have legal nonconforming signs in the lodging industry. Audree Juhlin indicated that in Uptown, we have about four that are legal nonconforming off the top of her head, and she doesn't think we have any other legal nonconforming in the rest of City

Mr. Plotkin then asked if the applicant or the owner acquired the property within the last couple of years, and Mr. Alcorn stated three years ago. Mr. Plotkin then asked if the Sign Ordinance as it currently stands was in existence at that time, and Audree stated that it was

in existence. The Hearing Officer then asked the applicant if, when they acquired the business, they also acquired the right to use the existing name of the hotel. Mr. Alcorn stated yes; they slightly changed it when they bought it to La Vista Sedona, and they changed all of their marketing materials at that time, so people wouldn't be confused between La Vista Motel and La Vista Sedona. Mr. Plotkin then restated his question as to if, when they acquired property, they also acquired the right to use the existing name on the sign, and Mr. Alcorn stated that he believed so; it was something that wasn't trademarked, but with the acquisition of the business, they felt they had to rename it to have their own DBA.

Hearing Officer Plotkin indicated that he was ready to rule. As he understands the Variance Ordinance, he is required to consider whether granting a variance would create special privileges inconsistent with other properties in the vicinity and in the zoning district, and prior to the hearing he did ask for some guidance from the City Attorney, and he was not aware of any case law or other such guidance, so that leaves him in the position of having to consider that himself, and there are a couple of different ways to read that. One reading would be that any time one grants a variance, it is creating special privilege, but he can't imagine that is the intent, because then there would be no reason to have a variance section at all. Then, he has to consider, in his opinion, the context of the other properties in the vicinity and other properties in the zoning district, and the notion of special privilege suggests that this would be unique or close to unique, and based upon what he heard today, that does not seem to be the case. There seems to be other nonconforming signs, both within this area in terms of proximity of the road, etc., and also within the zoning district, the Lodging district generally.

Hearing Officer Plotkin stated that he didn't think that to grant a variance would create special privileges, and he is also mindful of the fact that there was an exception made for multi-tenant signs. He is not suggesting that a hotel has got multi-business tenants; it doesn't, but it suggests to him that the purpose of having or changing a sign was something contemplated and not inconsistent with the overall purpose; the same thing with movie signs. He doesn't think changing it is really something that the Council, when they adopted this Ordinance, intended to prohibit altogether.

Hearing Officer Plotkin added that there was a comment in the package that is a suggestion as to why can't we just wait until the Sign Ordinance happens, since it is being redone, and he would say yes, that is true, but you couldn't because of the timing of this, but that would have been desirable on some level to do that. All he would say is that this is an interesting test case as an example for Council to consider when looking at the Sign Ordinance -- this and other instances like this.

Mr. Plotkin stated that his other required findings for a variance would be that there are special circumstances applicable to the property, and he thinks the evidence is pretty clear that either you have a sign where it is now or close to it, or you are not going to have a sign at all -- that is his take, so the only way is to make them put up a sign of a prior business that no longer exists, and frankly that doesn't make any sense to him under the circumstances.

Hearing Officer Plotkin added that also with respect to due to special circumstances depriving the property of privileges enjoyed by other properties in the same classification, he is satisfied that this topography is prohibitive to do something that would now conform. Where they put the sign up to begin with was pretty mindful of safety considerations, but having said that, the City could decide ultimately that it doesn't want to have all of these properties along this section for safety reasons or cosmetic reasons or whatever it may be -- health, safety and welfare, but the nonconforming use phasing out of properties when somebody finds the sign is in disrepair or a business changes is a clumsy way to do it, and in

any case, he as a hearing officer is not going to deny a variance in order to force businesses out of business, because of their sign.

Having said that, he finds that the applicants have made a showing and is supported by the staff findings that justify granting the requested variance. He will also make that variance conditional on obtaining a sign permit as requested by staff, and he will ask counsel or staff to submit a proposed Form of Order for him that will satisfy the requirements, but that will be his ruling that the variance be granted subject to the condition about getting a sign permit.

**3. Adjournment.**

Hearing Officer Plotkin adjourned the meeting at 10:33 a.m.

I certify that the above is a true and correct summary of the meeting of the Board of Adjustment Hearing Officer held on July 31, 2017.

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Donna A. S. Puckett, *Administrative Assistant*

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Date