

## MINUTES

### BOARD OF ADJUSTMENT HEARING

July 8, 2009

#### ATTENDANCE Board Members

##### ATTENDED

1. Bill Arendell, Chairman
2. Hartley Turley

##### ABSENT

Carla Bowen

##### Staff Attendance

1. Greg Loper, P&Z Deputy Director
2. Linda Elliott, Planner I
3. Doris Hernandez, Secretary

Meeting held at the Navajo County Board of Supervisors Chambers, Holbrook, Arizona – Time: 10:17.

**Bill Arendell** called the meeting of the Navajo County Board of Adjustment to order and explained the meeting procedures to the public. **Mr. Arendell** then led the Pledge of Allegiance.

**Item #1–APPLICANT/OWNER:** Diane G. Dalton **PARCEL INFORMATION:** Address:4274 Black Mesa Valley Road APN: 403-31-009 Legal Desc: Section 15, T13N, R23E: NE4 SE4 AKA: Tract 9. Township 13 North, Range 23 East, Section 15 of the Gila and Salt River Meridian in the Snowflake area. District: III Directions: Concho Hwy east from Snowflake past MM 11 to Black Mesa Valley Rd., turn right and go a mile to Meade, turn right to 1<sup>st</sup> gate on left. Parcel Size: 40.74 Acres **STATED REASON FOR REQUEST:** To allow placement of a yurt, as a 2<sup>nd</sup> dwelling, on the 40.74 acre parcel to provide caretakers quarters for caretakers employed on the premises. **SITE CHARACTERISTICS:** The subject site is 40.74 acres. This property and all properties surrounding it are zoned RU-20. There is an existing manufactured home used as the primary dwelling. The site for the caretaker’s quarters is approximately 215’ from the west property line. The property is surrounded by a fence. **GENERAL CHARACTER OF AREA:** The area surrounding the proposed site is comprised of single family dwellings, with site built homes and some manufactured homes, ranching, farms, public riding stables, churches, accessory buildings and other community buildings. **ZONING DISTRICT(S):** RU-20 Uses: Residential Single-family dwellings, schools, parks, churches, public utility buildings, accessory buildings, playgrounds, farms, ranching, public riding stables and other community buildings. **ZONING ORDINANCE:** Article(s): 28 – Board of Adjustment Section(s): 2802 – Power and Duties **CHANGING CONDITIONS:** The proposed use permit will allow a second dwelling on the property. There will be additional cars accessing the driveway off of Meade. The caretaker’s quarters will utilize the main driveway to the property. **FINDINGS OF FACT:** The legal for this item has been properly noticed in the Holbrook Tribune and placards were posted in the neighborhood in compliance with Arizona Revised Statutes and Article 28. The applicant has submitted the plans and supporting documents required by Section 2804, and said plans and supporting documents are adequate for the Board’s purposes. The subject property is zoned RU-20, and the proposed use is one for which a Use Permit may properly be granted pursuant to

Section 2804. The subject property has an existing house and the development of the subject property with a second dwelling will have impacts such as increased traffic and drainage issues. The staff and the applicant have considered these issues, and after due consideration, staff finds that the public health, safety and general welfare will not be adversely affected by the issuance of a Use Permit and that the conditions set forth herein will provide adequate protection for adjacent properties and the permitted uses thereof. **COUNTY ATTORNEY:** No legal issues. **ENGINEERING:** The Engineering staff has no comments concerning general engineering issues for this Use Permit. **DRAINAGE & TRAFFIC:** The Engineering staff has no comments concerning drainage issues for this Use Permit. **FLOOD CONTROL:** The Flood Control staff has reviewed the Use Permit Application submitted 5/19/09. A review of the FEMA floodplain map panel number 4075E shows that this property is not in a floodplain. A review of the USGS Quad Map shows there is a watercourse on the property near the location of the second residence. A more detailed review of the onsite drainage will be necessary before a building permit is issued. Flood Control has no objection to the proposed Use Permit given that all Recommendations listed below are met. **PLANNING & ZONING DEPARTMENT:** The Planning staff has reviewed the Use Permit application and finds it ready for processing. This is an allowed use in RU-20 zoning with a Use Permit. The yurt is a non conventional type construction, wood framed with canvas type exterior siding, fully engineered dwelling that meets wind, snow and seismic categories and is fully compliant as required by the International Residential Code. **PUBLIC WORKS DEPARTMENT RECOMMENDATION:** Should the Board grant this Use Permit request, staff would recommend the following conditions be applied: The applicant must adhere to all Navajo County permit and code requirements for construction of the guest quarters. The Use Permit is solely for use as caretaker's quarters and shall be allowed to occur only in the location shown on the site plan and the structure shall never be used as a rental unit. Grading and drainage information shall be provided concurrently with building permit submittal. The use permit shall automatically expire if substantial construction has not been completed within one year from the date on which the use permit is granted. **Linda Elliott** gave a brief description of the property and also displayed a site plan of the parcel. She stated that Ms. Dalton has a lot of property and would like to create orchards and gardens and she needs someone to take care of these. She stated that the area has single family dwellings which are mostly manufactured homes also there is a senior citizens building on the corner on Concho Highway and Black Mesa Valley Road and other manufactured homes sparsely on the street going to Ms. Dalton's property. **Ms. Elliott** stated that all of the staff is in favor of approving the Use Permit for a yurt. The Flood Control staff does have a watercourse showing on the USGS Quad Map and are asking for a more detailed review of the drainage when the building permits are requested. She added that the yurt is a nonconventional type of construction, wood framed with canvas type exterior siding and is fully engineered and meets the wind, snow and size met categories and is fully compliant as required by the international residential code. Ron Gates, Building Department, checked into the requirements and this does meet all of the requirements. The homeowner is going to try to use solar for power. Also there is an existing mobile home and will use the existing driveway for the other residence. She pointed out where the two washes were that Flood Control is concerned with. She stated that there will be a drainage statement that is required when the homeowner submits the building plans. There was no one in favor or opposed to the Use Permit in attendance. **Bill Arendell** asked if the mobile home already has its own independent septic system. **Ms. Elliott** answered yes. **Hartley Turley** made a motion to approve the Use Permit. **Bill Arendell** seconded the motion. **Use Permit is passed unanimously by Resolution #09-05B.**

**Item #2 –APPLICANT/OWNER:** Paul Plovick **PARCEL INFORMATION:** Address:2237 Rodeo Rd., Heber APN: 206-42-089 Legal Desc.: Lot # 89 of Pinecrest Lake, as recorded

in Plat 16-27, 28 & 29 on June 10, 1986. Township 12 North, Range 17 East, Section 33 of the Gila and Salt River Meridian in the Heber area. District: IV Directions: Heber – State Hwy 260 to Pony Express Road. Follow to Rodeo Road. Property is on the left. Parcel Size: 0.07 Acres.

**STATED REASON FOR REQUEST:** To allow for a variance from the required 5-foot rear yard setback to allow a 2-foot rear yard setback, and from the required 5-foot side yard setback to allow a 2-foot side yard setback, to allow for the placement of a proposed 9-foot x 11-foot storage building on the south side of the property. To allow for a variance from the required 10' separation between buildings on the same lot to a 3' separation between buildings on the same lot.

**SITE CHARACTERISTICS:** The subject site is 2600 square feet in size (40' wide x 65' deep), and is part of Pinecrest Lake, a 200 lot subdivision, which was established as an RV subdivision and platted in June 10, 1986. The park is made up of Recreational Vehicles and Park Models. The site and Pinecrest Lake subdivision, is zoned S.D. (Special Development, which allows a development to establish its own development standards.)

**GENERAL CHARACTER OF AREA:** The area surrounding Pinecrest Lake subdivision is comprised of single family, (R1-10) and commercial (CR) uses, with site built homes and some manufactured homes.

**ZONING DISTRICT(S):** Special Development (S.D.): Uses are as specified at time of zoning approval. For Pinecrest Lake, approved uses include: Manufactured housing, recreational vehicles, park models, accessory buildings, playgrounds, and other community buildings such as a clubhouse.

**ZONING ORDINANCE:** Article(s): 28 – Board of Adjustment Section(s): 2802 – Power and Duties

**CHANGING CONDITIONS:** The proposed variance would allow a deviation from the required Special Development setbacks as approved for Pinecrest Lake.

**FINDINGS OF FACT:** The legal for this item has been properly noticed in the Holbrook Tribune and placards were posted in the neighborhood in compliance with Arizona Revised Statutes and Article 28. The applicant has submitted the plans and supporting documents required by Section 2802, and said plans and supporting documents are adequate for the Board's purposes. The subject property is zoned SD, and the proposed use is one for which a Variance may properly be granted pursuant to Section 2802. The subject property has an existing park model and the development of the subject property with a storage building within the required yard setbacks will have impacts, such as the minimum building separation not being met. The staff and the applicant have considered these issues, and after due consideration, staff finds that the public health, safety and general welfare will not be adversely affected by the issuance of a Variance. This type of variance within Pinecrest Lake has occurred numerous times since the Park's inception. Staff is working with the HOA to address variances in general and to possibly modify the site as approved plan under the Special Development zoning to amend setbacks.

**COUNTY ATTORNEY:** It is marginal as to whether this request qualifies for a variance under the criteria in Section 2802(2) of the Zoning Ordinance. The parcel is small and narrow, but that is how it was platted -- there is nothing "exceptional" about it, or any particular "hardship" to the owner. In short, this request seems like a matter of "personal preference or mere inconvenience" for which a variance is not allowed. I don't feel strongly about it, but the Board should be aware that the granting of a variance would potentially be subject to a legal challenge.

**ENGINEERING:** The Engineering Division cannot support this self-imposed hardship caused by partial building of a storage shed within the side and rear yard setback. The owner knew of the setback requirements. New additions to the Park Model areas on the lot severely restrict its buildable area, making the actual storage building footprint very small and skewed towards the east and south side of the lot. The majority of the storage building will be intruding into both the side and rear setback zone. Adjacent private property could be affected with the roof overhang on or near the property line not allowing for defensible fire space between parcels.

**DRAINAGE & TRAFFIC:** The Engineering staff has no comments concerning drainage issues for this Variance.

**FLOOD CONTROL:** A review of FEMA map panel 4168E shows that this property is not in a Floodplain. To our knowledge there are no problems with flooding on this lot. The Flood Control District has no objection to this variance.

**PLANNING & ZONING DEPARTMENT:** The Planning staff has reviewed the

variance request and we have concerns. The typical lot layout is 40' x 65' with a 15' front yard setback, and a 5' rear and side yard setback. The dimension of the park model pad is 40' x 14' with a 10' x 10' accessory building located in the rear yard. There is a 20' x 20' parking area located in the front. As noted previously under the Findings of Fact above (#5), this type of variance within Pinecrest Lake has occurred numerous times since the Park came into existence. Staff is working with the Homeowners' Association (HOA) to address variances in general, and to possibly modify the site as approved plan under the Special Development zoning to amend setbacks. **PUBLIC WORKS DEPARTMENT RECOMMENDATION:** Should the Board grant this Variance request, staff would recommend the following conditions be applied: The variance shall automatically expire if construction, in accordance with the plans for which the variance is granted, has not been completed within one year from the date on which the variance is granted. No building or structure may be occupied prior to complete compliance with all appropriate Public Works Department requirements, including approval of grading and drainage plans, addressing flood control issues as needed, and the issuance of any building permits for the proposed structures (electrical, etc.). **Linda Elliott** displayed a site plan and gave a brief description of the parcel. **Ms. Elliott** stated that she did receive one letter of opposition from a neighbor to the east whose name is Sherri Toussaint. She also has a letter from the Pinecrest Lake RV Resort HOA, Mr. Mann, stating that there was a decision made by the Pinecrest Board of Directors that they are in agreement that the 2 ft. side and 2 ft. rear yard setback and the proximity of the structure to the addition that is presently under construction is in accordance to the requirements of their community and understand that a building permit is required and inspections on this structure will insure compliance with local building and electrical and plumbing codes. **Mr. Plovick** owner of the property is in attendance as well as his builder, **Mike Jackson**. **Hartley Turley** asked if there were any issues with fire protection. **Ms. Elliott** answered that they are looking at the 10 ft. separation between buildings and the owner has stated in the letter of intent that he will use a type of hardie board on the side of the room addition which will be closest to the property which is a type of board that is fire retardant cement product. **Mr. Turley** asked about access for the fire department. **Ms. Elliott** answered that basically he is on a wide road and the fire department can come in through the front. There is 11 feet on one side and the fire truck would be on the street and they have enough hose to meet the lot requirements if there should be a fire. She added that most of the lots in Pinecrest Lakes are built out. **Mr. Arendell** asked what she meant by built out. **Ms. Elliott** answered that it means adding additional room additions. The typical lot layout shows one manufactured home and one accessory building. **Mr. Arendell** asked if that is what their CC&R's dictate. **Ms. Elliott** answered that this is why they are trying to get them to amend the site plan. **Mr. Plovick** came forward and stated that they submitted for a building permit in February and put the building according to the drawing per the CC&R's. **Mr. Arendell** asked if the county actually approved the plan. **Mr. Plovick** answered "yes". **Mr. Arendell** asked Ms. Elliott if the setbacks were shown and she stated that as far as she knew. The site plan that they had was the site plan that was submitted to the building department. **Mr. Arendell** stated that in his opinion this does not meet the criteria to stand up for a variance approval and is a self imposed hardship. The county has some responsibility here for approving this when they shouldn't have done that. **Greg Loper**, P&Z Director, came forward and added that there is some culpability on the county's part. There actually is a previous site plan that didn't reflect the correct conditions on the lot that caused the construction to start and that included a deck there were some drum setback issues and the county was not diligent in going out and verifying some of those issues with it and we have since corrected it and directed the property owner to proceed with the variance. Pinecrest Lakes was an area damaged by the Rodeo-Chedeski fire and they have been working with the overall development and trying to get it reestablished. Setbacks are an issue, there is a number of people that have put in accessory buildings without meeting the setback requirement but if it is under 144 sq. ft. a permit is not required so a lot of times these get set without anybody ever knowing that

they had to meet the setback requirements and actually has been the HOA or the design review committee that has come forward to tell them that they have to go forward and get a permit or you have to get a variance and get the setbacks across. We are trying to address this globally and actually get a standard site plan approved that would reflect the setbacks that everybody is utilizing today with a rider for wrong and also try to address fire department requirements with access between buildings as well as protecting standards for the accessory building as it relates to the Arizona rules as well. It is one that staff is supporting and recognize the strict criteria isn't quite there and also recognize the responsibility on their part for all of this to happen and in defense to the property owner it is not their fault in this case. **Mr. Arendell** asked that their CC &R's once they are adopted are standards and the county accepts them as what we would backup. **Mr. Loper** answered that he wants to stay out of the business of regulating CC&R's, in this particular case they have Special Development zoning which means that they can write their own stuff. Their CC&R's today match what they would like to do. The problem is that Special Development does not; they have amended those since the zoning has been installed so he is trying to go back and amend the zoning so that he does not have to go through this again. **Mr. Arendell** said so the CC&R's are different in special subdivisions. **Mr. Loper** stated that they are a private agreement between the property owner and the master developer, actually between the property owner and the community as a whole and so if they violate the CC&R's the county does not get involved this is a civil matter. **Mr. Arendell** asked if we need to be harder on this so that we push ahead on their plans to put the appropriate numbers in place. **Mr. Loper** stated that the difficulty in doing that would be that this particular application deals with this particular lot so in essence whatever your action is today that sets the tone for this particular lot going forward so if the entire development comes back and they amend their setbacks that doesn't really hold for this lot. This lot has been established and whatever the board action is so if you denied it and the overall development said that they are going to allow subject to conditions x, y and z that wouldn't help this property they would be with what it was board actions today presumably they can come back and apply for a variance to then come back in but we would be facing the same set of circumstances in judging that as you are today. **Mr. Turley** asked if we approve this today are we going to have a flood of these people coming in and having to go through with them doing this against the rules because we have set precedence here. **Mr. Loper** stated that in actuality precedence has been already set for this, there has been a series of variances and this is his second go around with Navajo County and actually found a letter back in 1990 which talked about variances and that they were trying to clamp down on them, at that point it was a different variance and they did come forward and amended this special development but we periodically see them and there are a number of them that should have been variances but haven't because they are an accessory building under 144 sq. ft. and nobody knew. They are already aware that we are trying to amend the special development and we are trying to keep it from becoming a flood of variance requests so your action today helps out one property owner if you choose to go that route but doesn't mean that you would give 10 next month or 10 the month after that. **Mr. Arendell** stated that he has served on fire departments and spacing is an issue and has seen 7 houses burn in a row because of spacing and has some issues with that and the safety of the firefighters. It really doesn't meet the conditions of the variance to be granted but the county does have some culpability here because of their failure to pick that up and grant the building permit initially. He added that he is torn on this. **Mr. Turley** replied that it does not meet the criteria yet the county allowed this to go forward. **Mr. Arendell** asked if they turn this down will this enhance the chances of them to move forward and update their special development setbacks to represent what they want it to represent. **Mr. Loper** answered that he thinks in a lot of respect it probably has no impact either way, Mr. Mann is aware that they need to go through this process and they want to do that but they have to deal with all of the property owners and there are some people who really don't understand what is really going on and they have to process to go through. The difficulty is that should you choose to deny the variance but then the Pinecrest

Lakes HOA says lets amend this and they are successful in getting this amended it would not help this property owner because the board's action today would have been no so he would have to come back before you and apply for another variance to say now since everybody else around me legally can do it so I can now legally do it because the board's action is for this particular piece of property so the zoning would override your action. The application for the variance, because the process is special development is fairly time consuming and he had already started the deck and the buildings with permits from the county, it's the County's fault for not verifying that prior to issuing a permit. He felt that it was best that he go for the variance so that he doesn't have a project that's in limbo while we wait for the zoning action because they foresee that zoning action taking 3-6 months at a minimum to get verified so it is kind of our best that this is worked out. Part of the hardship being that the county allowed it to go forward and then also we're working to get the zoning amended which means if you grant that variance today and that zoning gets approved, the variance almost becomes moot because it just brings it into performance with the zoning in the future. **Mr. Turley** asked how far is this into construction. **Mr. Loper** answered that the deck is completed but that is not for discussion today. **Mike Jackson** indicated that the accessory building is framed better than halfway, concrete, rebar it is just not sheeted or sided. **Mr. Jackson** added that he went to a J. Hardie seminar and their new products do exceed the one hour codes for fire. He understands that the fire part was a huge ordeal and his next door neighbor is a fireman and he came out and looked at the job and asked him if this was a real issue does this concern him from getting from one building to the other because it had been brought up by other people, and he stated that it did not concern him because the back property is against the forestry service and for them to get in from the back is not an issue they can only attack it from the front anyway. This property is right at the corner and they have a huge area to have staged for the fire situation. Access between the building, the livable building and the utility building is 3-foot or better. **Mr. Plovick** added that the fire hydrant is right across the street. **Mr. Arendell** stated that it sounds like staff is supporting this. **Mr. Loper** answered that this was correct. **Mr. Arendell** mentioned that the other people like the people next door, that the expectations of setbacks are one thing and we are changing it midstream without their approval. **Mr. Turley** stated that his thought is that if they approve this there is no incentive to go forward and get the county to fix it. **Mr. Loper** stated that actually the attempt to change the Special Development zone is to "grandfather" those who are in. The significant portion of the park was burned in the Rodeo/Chede ski fire and the haste to get things rebuilt and because of some of the accessory buildings didn't get any permits. If you go out there today you will find this request replicated over significant portions of the properties so actually the special development is to "grandfather" or to make correct those that have been done as well as for those going forward. To deny the variance does not have any bearing on whether or not they will precede forward, they are already moving towards that. It's really an effort to help out this one particular person being that they have a variance application that we said that they should submit since they had already started construction the hope is that should you approve it that when the special development gets amended they will just be in conformance with that. **Mr. Arendell** indicated that based on what Mr. Loper is telling him he will support this. Due to the unusual circumstances and the culpability of the county. **Mr. Turley** added that he would like to see Mr. Plovick have his building more than anything and that he is between a rock and a hard spot, but the situation given he will be 99.5 in favor. **Mr. Arendell** made a motion to accept the variance. **Mr. Turley** seconded the motion. **Variance passes unanimously by Resolution #09-06B.**

**Item #3 – Possible approval of the minutes for the June 10, 2009 meeting.** **Bill Arendell** made a motion to approve the minutes. **Hartley Turley** seconded the motion. Motion passed with a vote of 2 to 0.

**Item # 4 – Department report to Board.** No report

**Item #5 – Board Members comments and/or directions to staff.** The Board Members may use this time to offer additional comments regarding any item on this agenda or any other topic; and the board may direct Development Services Department Staff to study or provide additional information on topics of the Boards' choosing.

With there being no further business to come before the Board of Adjustment, the meeting was adjourned at 10:48. A motion was made to adjourn the meeting by **Hartley Turley**. **Bill Arendell** seconded the motion. Motion passed with a unanimous vote.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Chairman, Navajo County  
Board of Adjustment

ATTEST:

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Secretary, Navajo County  
Board of Adjustment