

## MINUTES

### BOARD OF ADJUSTMENT HEARING

November 4, 2009

#### ATTENDANCE Board Members

##### ATTENDED

1. Bill Arendell, Chairman
2. Carla Bowen
3. Hartley Turley

##### ABSENT

##### Staff Attendance

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

Meeting held at the Navajo County Board of Supervisors Chambers, Holbrook, Arizona  
Time: 10:05.

**Bill Arendell** called the meeting of the Navajo County Board of Adjustment to order and explained the meeting procedures to the public.

**Item #1 – ACTION: USE PERMIT APPLICANT/OWNER:** Jill Buckley & Richard Nelson  
**PARCEL INFORMATION:** Address: 1076 Mogollon Circle, Linden area  
APN: 409-19-045C Legal Desc: Lot 46 of the Pine Ridge Estates subdivision; Section 4,  
(NE ¼, SE ¼) Township 10 North, Range 21 East, of the Gila and Salt River Meridian.  
District: IV Directions: Hwy 260 west from Show Low to Pine Ridge Drive, turn right  
and go to Pearce Drive, turn left to Mogollon Circle 1<sup>st</sup> gate on left. Parcel Size: 1.5  
Acres

**STATED REASON FOR REQUEST:** To allow placement of a 2<sup>nd</sup> dwelling as Guest  
Quarters for family members on the site noted above.

**SITE CHARACTERISTICS:** The subject site is 1.5 acres. This property and all  
properties surrounding it are zoned A-General. There is an existing manufactured home  
used as the primary dwelling. The proposed site for the Guest Quarters is approximately  
97' from the north east 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):** A-General Uses: Residential Single-family dwellings, schools, parks, churches, public utility buildings, accessory buildings, playgrounds, farms, ranching, public riding stables and other community buildings, and Guest Houses subject to acquiring a Use Permit.

**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. The guest quarters will utilize the main driveway to the property off of Mogollon Circle, and staff expects that there will be minimal additional traffic. Negative impacts are anticipated to be minimal, if any at all.

**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 A-General, 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. It is difficult to understand the five-year limitation (Stipulation # 6). If a site-built Guest Quarters is constructed, what is the owner realistically going to do with it if the Use Permit terminates in five years? It seems to me that the Use Permit should run with the land.

**ENGINEERING:** The Engineering Department has no objections to this Use Permit.

**DRAINAGE & TRAFFIC:** The Engineering Department has no objections to this Use Permit.

**FLOOD CONTROL:** The FEMA floodplain map does not show a flood hazard area for this parcel. However there is a watercourse located within 300 ft of the property. Precautions such as elevating the structure should be taken to avoid flood damage. The Flood Control Staff has no objections to the proposed Use Permit

**PLANNING & ZONING DEPARTMENT:** The Planning staff has reviewed the Use Permit application and finds it ready for processing. This is an allowed use in A-General zoning with a Use Permit.

**PUBLIC WORKS DEPARTMENT RECOMMENDATION:** Should the Board grant this Use Permit request, staff recommends the following conditions be applied: 1. The applicant must adhere to all Navajo County permit and code requirements for construction or placement of the Guest Quarters. 2. The Use Permit is solely for use as Guest Quarters and shall be allowed to occur only in the location shown on the site plan. The Guest Quarters (structure) shall not be allowed to be used as a rental unit. 3. The Guest Quarters shall be limited to a site-built home, a manufactured home or a rehabilitated mobile home and shall not be greater than 70% of the square footage of the principal dwelling. 4. Grading and drainage information shall be provided concurrently with building permit submittal. 5. The Use Permit shall automatically expire if substantial construction has not been completed, or if the Guest Quarters are a manufactured home, a placement permit has not been acquired, within one year from the date on which the use permit is granted. 6. The Use Permit shall run with the land.

**Linda Elliott** gave a brief description of the property and displayed a map of the parcel. She stated that the owners will use the guest quarters for an Uncle to live on site and will be using the existing power and water and they do have an existing septic for the guest quarters already installed. She added that they are going to enclose it and make it look like the primary dwelling once they get approval so that it will match and look better in the neighborhood.

**Hartley Turley** asked if the mobile home has been rehabbed to meet Navajo County standards

**Ms. Elliott** answered that it was in the process of being rehabbed

**Mr. Turley** stated then that will all be taken care of.

**Bill Arendell** commented that the Navajo County Attorney addressed the 5 year limitation issue which was a good idea

**Carla Bowen** made a motion to approve the Use Permit.

**Mr. Turley** seconded the motion. **Use Permit passes unanimously by Resolution #09:07B.**

**Item #2 – ACTION: VARIANCE. APPLICANT/OWNER:** Wade T. Accomazzo  
**PARCEL INFORMATION:** Address: 3231 White Oak Drive, Pinetop area APN: 411-45-462C Legal Desc: Lot 468 of the White Mountain Summer Homes subdivision; Section 9, Township 8 North, Range 23 East, of the Gila and Salt River Meridian. District: V Directions: Pinetop State Hwy 260 to Country Club Circle. Follow to White Oak Road. Property is on the right. Parcel Size: 0.69 Acres

**STATED REASON FOR REQUEST:** To allow for a variance from the required 20-foot rear yard setback to allow an 8-foot rear yard setback for the placement of an

existing deck on the east side of the property; and to allow an existing porch cover to encroach 2-foot into the rear yard setback.

**SITE CHARACTERISTICS:** The subject site is within the White Mountain Homes subdivision. The property and all properties surrounding it are zoned R1-10. There is an 800' Forest Service buffer between Hwy 260 and the rear property line.

**GENERAL CHARACTER OF AREA:** The area surrounding White Mountain Summer Homes subdivision is comprised of single family, (R1-10), site built homes.

**ZONING DISTRICT(S):** R1-10: Uses: Single family dwellings, accessory buildings, churches, home occupations, post offices, schools and public utility buildings & facilities

**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 Navajo County setbacks and allow encroachment into the required setbacks.

**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 presented for the Board's purposes. The subject property is zoned R1-10, and the proposed use is one for which a Variance may properly be granted pursuant to Section 2802. The subject property has an existing dwelling and the development of the subject property with an existing deck and porch cover will encroach into the required yard setbacks. The rear property line adjoins the Forest Service property.

**COUNTY ATTORNEY:** This appears to be a matter of the owner's mere convenience. No information indicates that this request meets any of the standards for a Variance as set forth in the Zoning Ordinance. Legally, this Variance should be denied.

**ENGINEERING:** The engineering staff has reviewed the variance request and we have no concerns.

**DRAINAGE & TRAFFIC:** The engineering staff has reviewed the variance request and we have no concerns.

**FLOOD CONTROL:** The Flood Control Staff has reviewed the application and site plan for this variance submitted 8/3/09. A review of the FEMA floodplain map shows that this property is not in a floodplain. The Flood Control Staff has no objection to the proposed Variance.

**PLANNING & ZONING DEPARTMENT:** The Planning staff has reviewed the variance request and notes the following issues: The deck was built 12-feet into the

setback. The addition of a porch cover encroaches 2-feet into the setback. Construction of the deck began without obtaining a building permit. The existing porch was also constructed without obtaining a building permit. A stop work order has been issued for these structures. Both of these encroachments are considered to be self-imposed hardships and do not have staff support.

**PUBLIC WORKS DEPARTMENT RECOMMENDATION:** Staff does not support the Variance request. However, should the Board grant this Variance request, staff recommends the following conditions be applied: 1. Building permits shall be obtained as needed and occupancy of the dwelling shall not be approved until all inspections have been conducted and a Certificate of Occupancy has been issued. Should the Board deny this Variance request, staff would recommend the following conditions be applied: 1. Structures encroaching into the setback must be removed within 30 days.

**Linda Elliott** gave a brief description of the property and displayed a map. She stated that there was a letter of opposition from Kelly McKenna, and that she had also received a phone call from the neighbor north of Mr. Accomazzo.

**Wade Accomazzo**, owner of the property, came forward to speak to the board. He stated that they did an addition to their house on the south side and got a building permit for that and completed construction on it about this time last year. He further explained that his contractor had told him that the existing permit for the home would be sufficient for the deck as well. They started building the deck in November of last year (2008) and then it snowed so they had to stop until the area thawed. Additionally, the HOA required them to stop construction and also informed them that HOA approval was required, as well as a Variance from Navajo County. The HOA approval, when granted, required the removal of 10 boards from the deck, which essentially took off 5 feet from the encroachment and as far as the stipulations that are on the variance request. He added that he is not asking for an 8 foot setback, but rather he is asking that the deck be allowed to extend into the setback 8 feet, which would then provide for a 12 foot setback. Additionally, this is consistent with the Zoning Ordinance, Section 2507, item 2G (which was read by Mr. Accomazzo). He stated that the issue isn't necessarily that the deck itself is extending into the setback line, they are allowed to do that, the issue that he is running into is that the HOA said that they couldn't have it more than 3 feet (36 inches) high and his deck is not 3 feet/36 inches high in some areas it is 28, 29 or 30 inches high, and at its farthest point it is roughly about 20 inches high. He then stated if they are allowed to have the deck and allowed to have it 3 ft. high then does that include railings or not and that is the issue that they have been dealing with for the last 6 months. He stated that in the current statute it says 3 ft. above grade and he can have a deck that is 3 ft. high but legally can because any deck that is 30 in. requires a 36 in. hand rail so there is an arbitrary view that says they can have a deck that is 36 in. with no railing but in the building code, according to public safety, they can't have one that is above 30 in. without having a railing and would like to put a railing on it. The portion of the deck that does not extend into the setback has a railing, so what he has is a completed deck that a little over half of it has a railing and a part that sticks into the setback that doesn't have a railing and would like to put one up, that is the stipulation. As far as him wanting a maximum of 74 in. currently

the deck, at the farthest point, is not higher than 20- 24 in. so if he puts a railing it will be 60 in. or roughly 5 ft. The issue he has is that he has 3 small children and doesn't want a deck that is 30 in. high that his children can play and fall off of. The setback line in issue is not a side setback; it is a rear setback so the neighbors to the north and to the south are not being affected by encroaching onto their property by going into the side setback at all. The rear property line butts up along Hwy. 260 and roughly around 8 ft. from the highway and 8 ft. Forest Service property easement of which no one will ever be able to build upon in the future. So as far as any encroachment of a potential property owner behind them that might end up building a home in the future, there will not be any. His neighbor to the north, which is Susan Mackas, sits on the architectural review committee of the HOA which approved the variance but put a personal call in on behalf of herself to oppose it. He has taken pictures of the views from his neighbor's houses. The neighbors to the north do not have a window on the south wall and the neighbor to the south does not have a window to the north wall so they cannot see his property from the inside of their house. The HOA have gone in and measured their lots as well and determined that their homes sit in the setback and their decks are not even on their property lines and apparently that was approved at sometime in the past or whenever the homes were built. When his house was originally built, White Oak Drive on the front part of the lot, extends roughly 18 ft. of the greatest portion of his property therefore the previous land owner or the home builder tucked the home as far back away from the road as they possibly could and the original deck that was built on it was very small, it was 12 ft. off the back of the house and was very tight quarters. The way that the property line runs in the back of the house is roughly about a 30 degree angle so if he was to go directly on the property line he would have a squared up house also with a deck that had a 30 degree angle to it and would not look aesthetically appealing which is why he is trying to match it up on both sides and still have something that looks good as well as a benefit to the community. The deck is not visible from the road. He stated that he had applied for the permit months ago and everything has been inspected to date and the only thing that hasn't been finished is the skirting on the bottom of it since they were not sure if they were going to be able to keep it. The question to be answered is not whether or not he is able to have it, but if he is allowed to have a railing that extends to protect his kids or anyone from falling off of the deck.

**Ms. Bowen** asked the homeowner who his contractor was.

**Mr. Accomazzo** answered that it was Anderson Quality Builders that did the addition to their house but is not on the project anymore and had someone else come in when he removed the 10 boards that had to be done with the stipulations of the HOA. The pole that is in question sticks 2 ft. into the setback is on the north eastern corner of the deck and it runs at a diagonal so the pole sticks in about 2 ft. into the setback and 2 ft. to the side and the whole deck sets in about 5 sq. ft.

**Mr. Turley** asked if this was part of the original permit applied for.

**Mr. Accomazzo** answered that it was not, they did this whole deal based off of what his contractor said was to run it under the permit of the extension of the house which was on the south side of the house.

**Mr. Turley** asked what the extension of the house permit was.

**Mr. Accomazzo** answered that they added two rooms and two bathrooms on the south side of the house.

**Greg Loper** stated that there are still encroachments.

**Mr. Accomazzo** stated that the 8 ft. is to the point of the triangle. It starts off an inch and stretches out to 8 ft.

**Ms. Bowen** asked if he has permission from the HOA.

**Mr. Accomazzo** answered that he did and read the letter that they sent out.

**Ms. Bowen** asked that if Mr. Accomazzo did basically what the HOA told him to do which was to remove the 10 boards and petitioned the County for the railing and asked if he has applied for any of the permits.

**Mr. Accomazzo** answered yes that the permit has been applied for and has been granted and everything has been inspected to date but do not have a final on it because he has not done the skirting on the bottom of it in case he was going to have to pull some of it off but the deck issue extending into the back isn't the issue, it is the height restriction with the railing. He also stated that when it says a deck or terrace can be 36 in. high in the section doesn't say including railings or anything so when you allow it to be 36 in. high and in other portions of the code says that over 30 has to have a railing and everything under 30 doesn't have to it is at the homeowners discretion whether they want to do it or not but anything over 30 has to.

**Mr. Arendell** asked "so it does have to have it?"

**Mr. Accomazzo** answered "yes".

**Mr. Arendell** added so that goes together once the deck is 30 in. high and that increased the height.

**Mr. Accomazzo** stated that anything over 42 in. or actually 5ft. 10 has to have a 42 in. railing that would be a deck that is hanging over a ravine but he is just asking to put a railing on it to keep his kids from falling off.

**Mr. Arendell** asked that if it were a concrete slab then there would not be a problem.

**Mr. Accomazzo** answered “no” and that he is not going to do a step down out of his house that is sitting on 30 in. stem walls into a concrete slab he is going to walk out directly out of his house. His front deck looks exactly like it and has the same split rail.

**Ms. Bowen** stated that she has been over to see the house and is definitely an improvement from when he bought it.

**Mr. Arendell** stated that he was distraught that Mr. Accomazzo did not go through proper permitting process.

**Ms. Bowen** asked if his contractor was from the valley.

**Mr. Accomazzo** answered that he was from the area which was disconcerting for him and when he applied for the permit he paid the appropriate penalties and everything for starting the building process without the permit and when they put the stop order in he has not done anything, the railings have been setting there since he got the stop order and made sure with Ron that he was not going to put the railings on anywhere on the setback area until he got the variance request. He added that Building & Safety is saying one thing and Planning & Zoning is saying things the other way and the fact of the matter is there is an arbitrary deal and an overlap of the two sections.

**Mr. Arendell** asked if they have to approve the location of this or the handrail situation.

**Mr. Loper** answered that they cannot approve the handrail situation because it is a building code issue and is outside the preview of this Board’s jurisdiction. Mr Loper stated that Mr. Accomazzo does bring up some very valid points, and that it has been the policy of the department that the handrail does contribute to the overall height. However, upon further review it does appear that the intent of the original ordinance was that the deck itself was not to exceed that height because clearly the railing is a safety feature required by the building code. Mr. Loper went on to say that Mr. Accomazzo is being penalized for having to meet a building code and also having to go through a variance, but that the variance portion is clearly a self-imposed hardship, and that Mr. Accomazzo boxed himself in a corner by not going through the permitting process where this could have all been explained before hand as we are now forced to deal with all of this “after the fact”, and that is never an easy thing to do. The same goes with the pole itself. If Mr. Accomazzo had applied for a permit prior to construction, staff could have let him know to bring the pole back a foot and then it would not encroach, he could have cantilevered the covering or other options could have been discussed. He added that moving forward on the hand railing part, they are going to revisit that, but to answer the question you cannot rule on the hand rail either way, you have to say whether or not they can have the variance for the deck under the current interpretation.

**Ms. Bowen** added that it was what she assumed they were doing which was the variance because the railing was not their deal.

**Mr. Arendell** stated that since it was brought up in the letter.

**Mr. Loper** stated that if it was they could look at this a whole different way but that they are kind of boxed in a corner themselves.

**Mr. Accomazzo** added that no one wanted to step on anyone's toes and was just decided that it would be better that they would come before the BOA to get a ruling once and for all and unfortunately he put the tail before the dog and that was something that was created and he could have done something to stop it but he trusted his contractor in that deal and that he lives in Phoenix and when you hire somebody 200 miles away from a project you are more hands off and trusting in somebody else in what they know to do or not to do.

**Mr. Loper** wanted to point out some things on the exhibit that was not explained well on the staff report and they were that this is an odd shaped lot and there is an encroachment in the street into the property, and that this is an older development. He would like the board to consider these and to rule on it. It is not a great situation all the way around. He stated that it is clearly self imposed and at the same time there are a lot of extenuating circumstances.

**Ms. Bowen** made a motion that the 8 ft. variance be granted.

**Mr. Turley** seconded the motion. **Variance passes unanimously by Resolution #09:08B.**

**Item #3 – Possible approval of Board of Adjustment Meeting Schedule for 2010.**

**Mr. Turley** made a motion to approve the schedule as noted and bring up changes later.

**Ms. Bowen** seconded the motion. Motion passes unanimously.

**Item #4 – Possible approval of the minutes for the July 8, 2009 meeting.**

**Mr. Arendell** made a motion to approve the minutes.

**Mr. Turley** seconded the motion. Motion passed with a vote of 3 to 0.

**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 10:46 a.m. by **Mr. Arendell**.

Approved this 14<sup>th</sup> day of April, 2010.

Bill Wendell

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Chairman, Navajo County  
Board of Adjustment

ATTEST:

Lois Hernandez

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Secretary, Navajo County  
Board of Adjustment