MINUTES

HEARING OF THE NAVAJO COUNTY BOARD OF ADJUSTMENT

November 10, 2010

ATTENDANCE:

Board Members

ATTENDED:
Bill Arendell, Chairman
Hartley Turley

ABSENT:
Carla Bowen

Staff Attendance:
Greg Loper, P&Z Deputy Director
Bill Fraley, Planner II
Doris Hernandez, Secretary

Meeting held at the Navajo County Board of Supervisors Chambers, Holbrook, Arizona – Time: 10:07.

Bill Arendell called the meeting of the Navajo County Board of Adjustment to order at 10:07 a.m., and explained the meeting procedures to the public. **Mr. Arendell** then led the Pledge of Allegiance.

Item # 1 - VARIANCE: Case #10-29. Discussion and possible Board action on a request by Roger Brown, R & T Family, L.P., for the following variances pursuant to Section 2802.2 of the Navajo County Zoning Ordinance:

- Allow the construction of an accessory building in a required front yard, when accessory buildings are limited to the required rear yard (Section 2503: General Provisions – Accessory Buildings & Uses).

- Allow for a 6-foot high wall in the required front yard, where the maximum height is 3-feet, 6-inches in the required front yard (Section 1102: R1-10 zoning district – Use Regulations).

- Allow for a corral for the keeping of horses within the side and front yard with a setback of 0 feet, when said corral is restricted to the rear yard and shall be setback 40 feet from all lot lines (Section 1102: R1-10 zoning district – Use Regulations).

The property is described as 8541 Javelina Drive; APN: 304-26-247A; Lots 247 & 248 (combined into Lot 247A) of Silver Lake Estates; a portion of Section 35, Township 11 North-Range 22 East; in the Silver Lake Estates / White Mountain Lake area.

Greg Loper gave a brief overview of the staff report and a description of the request. He noted the rural character of the area, and added that the driving reasons behind the request were to segregate uses within the property and to provide for security of the property as there are a large number of code enforcement violations in the area as well as a number of vacant properties and absentee property owners. **Mr. Loper** noted that the applicant himself has a residence in the valley and comes and goes between the two locations and seeks to better secure their property.

Mr. Loper noted that should the Board grant these Variance requests, staff recommends the following stipulations be applied:

1. Building permits, and any building related permits, shall be obtained as required and occupancy or use of the facilities shall not be approved until all inspections have been conducted and a Certificate of Occupancy has been issued.
2. No "splitting" or subdividing of this lot (247A) shall occur.

Hartley Turley questioned the ability of the White Mountain Lake Fire District to serve the residence if a 6' high fence is approved along the front of the lot. **Mr. Loper** answered that he did not know the answer to that specific question, but was aware of other properties in the area that also have 6' fences and other tall structures.

Bill Arendell asked if any of the variances that they are applying for caused by changes that have come about recently in the P&Z requirements for the area. **Mr. Loper** answered that these are standards that have been in the zoning district for a number of years, likely since the Zoning Ordinance was created.

Roger Brown, applicant and owner of the property, came forward to speak. He stated that he is technically in the White Mountain Lake Fire District, but that whenever there is a fire in the area it is the Show Low Fire Department that responds. **Mr. Arendell** mentioned that it looks as though the property is sufficiently large to locate the requested items in different places, and that the whole purpose of the variance is to help people with unusual geographical or topographical issues that keep them from building a house or a building similar or comparable to people next to them. **Mr. Arendell** stated that from his point of view, all 3 of the requests under this application do not meet the requirements for a variance as they are self imposed, they represent things that Mr. Brown would like, and that there is no precedence to allow this to be put in place. He further stated that the people that have lots around him or own property have conformed to these same guidelines, and that they are expecting these guidelines to be maintained and he does not feel comfortable in granting any 3 of the variances.

Mr. Brown stated that the only location for the observatory is in the front because of the trees. **Mr. Turley** explained that trees can come down. **Mr. Brown** stated that there are also trees on the adjacent property and he cannot chop their trees down. He added that the front of the lot is clear of trees, with a clear view of the sky, but that the rear yard area

has a significant amount of trees with limited viewing area of the sky. Additionally, he stated that the front yard area is approximately 30-feet lower than the rear yard area. Mr. Brown stated that the preserve was put in the back just to keep it away from the road so that it wouldn't be disturbed by persons utilizing the observatory, which will be available to be used by the public under his supervision, He stated that the there is sufficient area to accommodate the horse if required. **Mr. Hartley** asked that if the zoning were different would it allow for all of these things. **Mr. Loper** answered that if it was Rural-1 then the horse would not be an issue and the fence would not be an issue. It is really because of it being R1-10. **Mr. Turley** asked staff if all of these would pass if it were a Rural-1 instead of R1-10. **Mr. Loper** responded by saying "largely yes", and then explained that the applicant had submitted an application for Rural zoning, but that the request was recommended for denial by both the Commission and staff due to issues related to spot zoning. Staff does recognize that the area is rural in nature, and that the disparity between the existing zoning and the actual character of the area does represent somewhat of a hardship.

Mr. Brown related that the R1-10 zoning was placed on the area back in the 1960's by the developer who proposed an urban-type development that was to include a lake and a recreation center, but that these had never occurred but the zoning remains R1-10. He further added that there are a number of problem properties in the area in terms of junk, abandoned vehicles, and litter, and that he had turned to Navajo County for help. He further stated that previous Navajo County Code Enforcement staff had recommended placing a fence on the property and had wrongly-advised him that a 6' high fence along the front of the property was acceptable. **Mr. Loper** confirmed that the area has a high number of Code Enforcement complaints and violations, but that he could not comment on previous staff decisions.

Mr. Arendell asked if the corral area would affect anyone that is going to use the property next to him, and reminded the applicant that the required corral setback from the property line is there to offer the adjacent property owner relief from noises, flies and smells associated with horses. **Mr. Brown** stated that if necessary, he has sufficient area on his property and could comply with the R1-10 zoning district standards for the corral.

Mr. Turley asked staff what the setbacks are in the R1-10 zoning district. **Mr. Loper** answered the setbacks are 20-feet in the front, 10-feet on the sides, and 20' in the rear for a building, and 40-feet for a corral.

Mr. Arendell explained that he realizes that Mr. Brown is in a tough spot so they want to work with him on this. **Mr. Brown** added that he realizes that this is a problem for everyone and apologizes. **Mr. Arendell** asked Mr. Brown if he would be able to live with the front fence if it was 20ft. across the front with a 6ft. fence which would meet the requirements. **Mr. Loper** stated that this would meet the requirements but you kind of create a "no mans land" in that area and that is one of the reasons they are going with recommending an approval on the variance because given the code enforcement issues that have been stated with the neighbors that has been a problem. We did not want to

create an alley which is his property but it is outside of the fence so it is kind of an area where people can do things, but this is up to the board to go with as they want. This is why they were going with the 6ft. fence at the property line. **Mr. Fraley** added that we are talking about a fence being setback 20ft. and can be 6ft. high but doesn't think that we addressed the area of the corral for the front 20ft., how much of a setback do they want there. **Mr. Loper** answered that he would leave it entirely up to the board; the requirements are 40ft. **Mr. Turley** stated it was 40ft. around and on the side. **Mr. Brown** mentioned that 40ft. would not be a problem. **Mr. Arendell** added that this would not require a variance. **Mr. Loper** stated that it would. He added that there are two parts to the variance, one is that the corral is supposed to be in the rear yard so the variance is to allow it to in the front and side and the other component to that is the 40ft. setback from the corral in which Mr. Brown was requesting 0. If the board took any action they could say that it is placed on the side or rear or front or side but they would require it be at 40ft. or whatever setback they decide on. **Mr. Brown** indicated that moving the setback 20ft. would be cost prohibited since he lost his job a couple of years ago and now lives on Social Security. It would cost about $7,000 to take the fence up and just move it back 20ft. He has looked into the issue several years ago and probably would cost more now. **Mr. Turley** asked if there was a 6ft. fence there now. Mr. Brown answered yes. **Mr. Loper** explained that there appears that some bad advice was given to Mr. Brown by code enforcement years ago.

Mr. Arendell commented that he is leaning towards requiring the 40-foot corral setback, but allowing the 6-foot high fence to remain along the front of the property, due to the nature of the neighborhood.

Mr. Turley asked if the observatory is considered an accessory building and is that why it is illegal. **Mr. Loper** answered that it is called an accessory building and accessory buildings are largely limited toward the rear of the property. He explained that in most zoning districts there are two types of structures: there is the principal structure, and everything else becomes an accessory building whether it is a detached garage, an observatory or a barn. He further explained that the setbacks define a "building envelope" in which anything can be built, whether it is a principal or accessory structure, but if it is located outside of the building envelope it must be located in the rear yard. As requested, the observatory appears to be within the building envelope, but it is also located to the front of the principal structure. Staff is reviewing the interpretation internally, but felt it best to bring this to the Board of Adjustment for a determination on this particular site.

Mr. Loper asked Mr. Brown if there is lighting issues associated with any of the residents behind him. **Mr. Brown** stated that there are several lots in the back that have mercury vapor lights which are very bright and that was part of the reason for wanting to place the observatory in the front yard area; the other reasons were for ease in access by the public, for security so that persons using the observatory would not have to go anywhere near the house, and so that parking could be located near the street.

Mr. Arendell made a motion to approve the following variances under **Resolution #10:07B**:

1. Allow the construction of an accessory building in a required front yard, when accessory buildings are limited to the required rear yard (Section 2503: General Provisions – Accessory Buildings & Uses), and;

2. Allow for a 6-foot high wall in the required front yard, where the maximum height is 3-feet, 6-inches in the required front yard (Section 1102: R1-10 zoning district – Use Regulations), and;

3. Allow for a corral for the keeping of horses within the side and front yards with a setback of 40 feet, when said corral is restricted to the rear yard (Section 1102: R1-10 zoning district – Use Regulations).

Subject to the stipulations noted in the staff report, which are as follows:

1. Building permits, and any building related permits, shall be obtained as required and occupancy or use of the facilities shall not be approved until all inspections have been conducted and a Certificate of Occupancy has been issued.

2. No "splitting" or subdividing of this lot (247A) shall occur.

Mr. Turley seconded the motion. The motion passed unanimously (2 to 0).

Item #2 – MEETING SCHEDULE: Discussion and possible Board action setting the Board of Adjustment meeting dates for the 2011 calendar year. **Mr. Turley** made a motion to adopt the meeting schedule. **Mr. Arendell** seconded the motion. Motion passed unanimously (2 to 0).

Item #3 – Possible approval of the minutes for the October 13, 2010 meeting. Mr. Arendell made a motion to approve the minutes. **Mr. Turley** seconded the motion. Motion passed unanimously (2 to 0).

Item #4 – 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 Planning & Zoning Staff to study or provide additional information on topics of the Boards' choosing.

Mr. Fraley informed the Board that the department has not issued the building permit to Mark Allen. One of the stipulations of his variance approval was that the property must be split, which has been done. He was also directed to get with the fire department to

determine what was needed in order for the fire department to provide fire service Mr. Allen met with the fire department and said they had come to terms with a couple of improvements (build a driveway that would be wide enough and with a base to support the fire vehicles, a level area beside the house and a turnaround) that would allow the department to provide service; However, the letter received from the fire department did not satisfy the BOA stipulation. Mr. Fraley will continue to work with the department on the language of the letter. **Mr. Loper** added that fire protection is critical. Our difficulty is a policy where we don't want to hand off control of our processes to the Fire Districts and the Fire Department. We will start doing our best to include Fire Departments when we route variances so we can get comment back from them early in the process. We do not implement or enforce Fire Department practices or rules. In the Allen case they got a variance so that was a stipulation on the variance. Whatever the fire department stipulates in the Allen case, we will ask the fire department to inspect and approve before the County building department will issue a Certificate of Occupancy.

With there being no further business to come before the Board of Adjustment, the hearing was adjourned at 11:01a.m. A motion was made to adjourn the meeting by **Mr. Arendell**. **Mr. Turley** seconded the motion. Motion passed unanimously (2 to 0).

Approved this 11 day of May, 2011.

Bill Arendell

Chairman, Navajo County
Board of Adjustment

ATTEST:

Laurie Fernandez

Secretary, Navajo County
Board of Adjustment