

**BOARD OF ADJUSTMENT OF  
THE TOWN OF DEWEY-HUMBOLDT  
REGULAR PUBLIC MEETING NOTICE  
Friday, January 20, 2012, 2:00 P.M.**

**BOA REGULAR PUBLIC MEETING  
2735 S. HWY 69**

**COUNCIL CHAMBERS, TOWN HALL  
DEWEY-HUMBOLDT, ARIZONA**

## **AGENDA**

The issues that come before the Board of Adjustment are often challenging and potentially divisive. In order to make sure we benefit from the diverse views to be presented, the Board believes that the meeting be a safe place for people to speak. With this in mind, the Board asks that everyone refrain from clapping, heckling and any other expressions of approval or disapproval. Please turn off all cell phones. The Board meeting may be broadcast via live streaming video on the internet in both audio and visual formats. A majority/quorum of the Dewey-Humboldt Town Council may be in attendance at this meeting, but no Council deliberation will occur. During recess of a BOA Hearing, a BOA Member shall not communicate with any BOA Member or applicant, witness or the Planning Administrator. **NOTICE TO PARENTS:** Parents and legal guardians have the right to consent before the Town of Dewey-Humboldt makes a video or voice recording of a minor child. A.R.S. § 1-602.A.9. Dewey-Humboldt Council Meetings are recorded and may be viewed on the Dewey-Humboldt website. If you permit your child to participate in the Council Meeting, a recording will be made. You may exercise your right not to consent by not permitting your child to participate or by submitting your request to the Town Clerk that your child not be recorded.

**1. Call To Order.**

**2. Pledge of Allegiance.**

**3. Roll Call. Board Members Judy Davidson, and Frank Davidson; Vice Chair Jack Hamilton; and Chair Lydia Chapman.**

Page **4. Consent Agenda.**

3 **4.1. Approval of minutes from the November 21, 2011 meeting.**

**5. Discussion Agenda – Unfinished Business. Discussion and Possible Action on matters previously presented to the Board.**

5 **5.1. Resolve “Board of adjustment Case Studies” Frank Cassidy et al; pages 37 & 38 Mueller’s case.**

**6. Discussion Agenda-New Business- Discussion and Possible Action on matters not previously presented to the Board.**

7 **6.1. Review “meeting Procedures” “Typical hearing process” - Questions**

11 **6.2. “Mock Hearing: Case # 07-V-02; Cary, No Carolina; Char V. and Debra D. Ward**

**6.3. “Evaluate Planners Processes and Board of Adjustment”.**

**7. Planners Report – Discussion and Possible Action.**

19 **7.1. Hearing Application-brief Report**

25 **7.2. Review of new application, packet forms and sample Planner’s hearing report.**

**7.3. How Board of Adjustment and Planner can best work collaboratively and establishing guidelines.**

**7.4. Review time-lines for packet distributions; Planner’s Pre-Application review and Interview; Guidelines for Board of Adjustment site visits**

**8. Times of Meetings**

- 8.1. Reschedule regular meeting times to reflect new operating hours for Town Hall.**
- 8.2. Hearing Dates: (a) which fall within 30 days of application (b) time convenient for applicant (c) regular meeting time if (a) and (b) fulfilled.**
- 8.3. Projected 2012 Board of Adjustment hearing dates**

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**THIS CONCLUDES THE LEGAL ACTION PORTION OF THE AGENDA.**

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**9. Comments from Public**

**10. Comments from Board-no discussion.**

**11. Adjourn.**

**For Your Information:**

Next Town Council Meeting: Tuesday, February 7, 2012 at 6:30 p.m.

Next Town Council Work Session: Tuesday, February 14, 2012 at 2:00 p.m.

Next Planning & Zoning Commission Meeting: Thursday, February 9, 2012 at 6:00 p.m.

If you would like to receive Town Council agendas via email, please sign up at [AgendaList@dhaz.gov](mailto:AgendaList@dhaz.gov) and type Subscribe in the subject line, or call 928-632-7362 and speak with Judy Morgan, Town Clerk.

**Certification of Posting**

The undersigned hereby certifies that a copy of the attached notice was duly posted at the following locations: Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, Arizona, Chevron Station, 2735 South Highway 69, Humboldt, Arizona, Blue Ridge Market, Highway 69 and Kachina Drive, Dewey, Arizona, on the \_\_\_\_ day of \_\_\_\_\_, 2012, at \_\_\_\_ p.m. in accordance with the statement filed by the Town of Dewey-Humboldt with the Town Clerk, Town of Dewey-Humboldt.

By: \_\_\_\_\_, Town Clerk's Office.

**TOWN OF DEWEY-HUMBOLDT  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
NOVEMBER 21, 2011, 2:00 P.M.**

**A MEETING OF THE DEWEY-HUMBOLDT BOARD OF ADJUSTMENT WAS HELD ON FRIDAY, OCTOBER 21, 2011, AT TOWN HALL, 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. CHAIRPERSON, LYDIA CHAPMAN PRESIDED.**

1. **Call to Order.** The meeting was called to order at 2:00 p.m.
2. **Pledge of Allegiance.** Made.
3. **Roll Call.** Board of Adjustment Members Frank Davidson, Judy Davidson, Vice Chair Jack Hamilton, and Chair Lydia Chapman were present.
4. **Consent Agenda.**
  - 4.1. Approval of minutes from the October 21, 2011 meeting. Frank Davidson made a motion to approve the October 21 2011 Minutes. Jack Hamilton seconded the motion and the vote was unanimously approved.
5. **Discussion Agenda – Unfinished Business.** Discussion and Possible Action on matters not previously presented to the board.
  - 5.1. Review of Planning and Zoning Handbook “Board of Adjustment”. Discussed the planning and zoning handbook. This was mainly for Judy and Frank Davidson so they understood it.

At 3:00 p.m. the BOA took a 5 minute recess. They returned back into session at 3:08 p.m.

- 5.2 “Norse v. Santa Cruz” pp 20084-20090. Discuss 1<sup>st</sup> Amendment Rights; Judges’ opinions; D-H experiences applicable to conduct of Board of Adjustment (BOA) at hearings. Discussed what is considered a disruption of a meeting and how it should be handled.
  - 5.3 “Boards of Adjustment” pp 2-11 from September 27<sup>th</sup> Arizona Planners Association (APA) Conference. Application to BOA hearings, and on worksheets preceding; discuss written findings. Discussed what occurred at the Board of Adjustment part of the September 27 2011 Arizona Planning Association conference. The part of discussing written findings was put off until the next meeting.
6. **Discussion Agenda – New Business**
    - 6.1. Invite new Town Manager to January 2012 meeting. Discussion.  
Will talk about inviting the Town Manager to a meeting at the next meeting. Decided the next meeting will be in January but the date is uncertain at this time.

7. **Recommendations for Future Meeting Items.** Next meeting will need clarification of when to issue variances due to zoning changes. Need to find out if Real Estate Agents need to disclose if a lot is unbuildable when being sold.
8. **Adjourned.** The meeting was adjourned at 4:10

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Lydia Chapman, Chairperson

ATTEST:

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Jack Hamilton, Vice Chairman

## **Variance for undersized, unimproved waterfront lot**

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- Muellers build summer home on lot 66
- Muellers then buy adjacent lot 67
- Area then rezoned; lot 66 and lot 67 are each below minimum lot size & width, but they conform if they're combined
- Muellers then sell lot 66 & seek variances to make vacant lot 67 buildable
- Several homes in the area are built on combined lots

## **Variance for undersized, unimproved waterfront lot**

- Is a variance appropriate?
- BOA: Yes, variance granted
- Lower court: BOA reversed; variance denied as being a self-imposed hardship
- Court of Appeals: Lower court reversed; variance granted; not a self-created hardship:

The typical self-created hardship arises from an act of commission by the owner or his predecessor. Here, the Muellers acquired lot 67 years after building their residence on lot 66. When lot 67 was acquired, it was buildable. Neither lot 66 nor lot 67 was rendered nonconforming by virtue of actions taken by the Muellers after the zoning law was enacted

*Mueller v. People's Counsel for Baltimore County, 2007 WL 3227552 (Md.App. 2007)*

## MEETING PROCEDURES

1. For each Action item, staff should present the facts of the case with their recommendations. The Board should ask any questions of staff before turning to the applicant to present their case. Board members may then ask questions to the applicant.
2. The applicant is then given an opportunity to present their case. The Board may consider setting a time limit on the applicant's presentation or directing them to state only those facts other than what staff presented.
3. Before the Board votes on the case, the Chair should allow anyone in the audience wishing to speak regarding the case, the opportunity to do so. However, a time limit should be set (5 minutes maximum per person) for those wishing to speak. The limit and procedure should be outlined in the adopted Board bylaws. Speakers representing a group may be allowed more time than individuals.
4. Anyone wishing to speak should state their full name and address for the record. Individuals holding the floor should be allowed to direct questions through the Board Chair to anyone they wish, if the responses will provide factual information that will be of assistance to the Board in reaching a decision.
5. Rebuttals should be allowed only if they present new and relevant factual information for the Board's benefit. The Chair should not allow anyone to filibuster, harangue the audience, deal in personal insults or exchanges, or read long documents like the names on a petition (the petition may be entered into the record).
6. When in doubt as to how to proceed, the Board should recess for an opinion from the city attorney. Do not act on legal advice from anyone else's attorney.



# TYPICAL HEARING PROCESS



*Note: Some communities hold a worksession immediately prior to the hearing. The worksession is noted on the agenda and announcement that is posted. The applicant and public can attend the worksession, however, any and all communication with the Board/Commission/Council is reserved for the public hearing.*

## 1. CALL TO ORDER - BY CHAIR

Note - If a study session is held, the Board members review agenda items. The chair closes the study session, typically takes a 5 minute break, then calls to order the regular meeting.

Chair can review the format of the hearing and lay the ground rules.

## 2. QUORUM - CHAIR NOTES IF QUORUM IS PRESENT

## 3. CALL TO PUBLIC OR COMMUNICATION FROM CITIZENS

Board hears comments from the public. Discussion does not occur.

## 4. CONSENT CALENDAR

Typically items for action by motion with minimal discussion

Minutes - Review, amend, edit, or revise. A motion to accept is given, seconded, and the Board votes. Chair verbalizes the outcome of the vote for the record.

Projects may be placed on the consent calendar which have been deliberated in detail at previous meetings. A motion, second, and vote occurs.

## 5. PUBLIC HEARINGS - EACH AGENDA ITEM IS TAKEN THROUGH STEPS W TO (G)

- a) Staff reviews project - Board may ask questions through the Chair. Chair may declare time limits for presentations by applicant and those speaking in favor or opposing the project.
- b) Applicant presents evidence- Staff or Board may ask questions through the Chair.
- c) Chair opens the public hearing - Chair asks if any public wish to speak.
- d) Rebuttal - Chair asks the applicant if he wishes to respond to any of the public's comments.
- e) Chair may ask Board members for comments or questions.
- f) Chair asks if there are any more public comments, if none closes the public meeting.
- g) Chair asks the Board for discussion, then a motion - Board members may discuss all information at hand, review stipulations, consider additional conditions, and/or consider continuance. A Board member (in most communities it is someone other than **the Chair**) **makes a motion to grant, grant with stipulations, deny, or continue the proposal.** After a Board member (typically, someone other than the Chair) seconds the motion, the Board may discuss the motion, and make amendments if desired. The Chair restates the contents of the motion (if needed) and a vote is taken. The result of the vote is announced.
- h) *All items in Step 4 are repeated for each case on the agenda.*

## 6. ANNOUNCEMENTS

Staff or Board may exchange information, request a concern be passed on to council, request information, etc.

## 7. ADJOURNMENT-MEETING CAN END BY VOTE OR GENERAL CONSENT.

# DECISION MAKING PROCESS

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- I. The Decision Making Process
  - A. **Pre-application Process/Meeting**
    - i. Pre-App Meeting. Applicant meets with staff (sometimes at the site, depending on the circumstances of the request) to determine the nature of the request. Staff provides guidance on the variance process, and overview of the variance statutory and zoning ordinance requirements. Staff may assist in completing the application. Staff review timeline hearing schedule with the applicant.
  - B. **Application Submittal.**
    - i. Staff reviews application
    - ii. Accepts or denies the application based on completeness  Be sure your zoning ordinance clearly states the procedures or justification for denying an incomplete application and that the instructions are clearly marked on the application.
    - iii. Staff schedules the case for an upcoming hearing.
  - C. **Application Review and Fact Finding**
    - i. Staff reviews the application completes case history
    - ii. Site visit performed; photographs taken
    - iii. Identification of special considerations that justify variance request
    - iv. Application is distributed to affected departments and/or other agencies for review and comment.
    - v. Property Posting and Notification procedures
  - D. Staff Report Prepared Sent to Board of Adjustment 5-7 days in advance of the hearing.
- II. **Board's Decision Making Process**
  - A. Review Staff Report
  - B. Prepare Questions for Staff based on the staff report's analysis.
  - C. If time, contact staff regarding questions or clarification in the staff report
  - D. Site Visit.
  - E. Review the Findings of Fact necessary to grant a variance- Ask yourself the question: "Does this request meet all, some or none of the statutory findings necessary to grant a variance?"

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## TOWN of CARY

> Home > Departments > Planning Department > Board of Adjustment Cases > 2007 Cases > 07-V-02

07-V-02

ZONING BOARD OF ADJUSTMENT HEARING  
CASE NO. 07-V-02  
APRIL 9, 2007  
VARIANCE WORKSHEET

IN THE MATTER OF:

TOWN OF CARY

STATE OF NORTH CAROLINA

## APPLICANT NAME(S) AND ADDRESS OF SUBJECT PROPERTY:

Charles V. and Debra D. Ward  
205 Barons Glenn Way  
Cary, NC 27513

PROPERTY OWNER NAME(S)/ADDRESS (if different from above): n/a

## STAFF REPRESENTATIVE:

Lawrence Hardee, Zoning Compliance Supervisor  
phone: (919) 462-3885  
e-mail: lawrence.hardee@townofcary.org

## PRESENT ZONING/SETBACKS:

Zoning: PDD (PDD Equivalent R-12)  
Front: 25'  
Rear: 20'  
Side: Min. 10' Aggregate 15'  
Side St.: 20'

## VICINITY MAP

**REQUEST:** The applicants, Charles V. Ward and Debra D. Ward, are also the owners of the property which consist of a detached single family residence at the above stated address. The applicants are requesting a variance to encroach 14' into a 15' required Buffer setback. The encroachment would be as shown on the attached survey.

**THE VARIANCE PROCESS** is intended to provide limited relief from the Land Development Ordinance (LDO) in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the LDO. Variances are not intended, and should not be used, to remove inconveniences or financial burdens that the requirements of the LDO may impose on property owners in general. Instead, a variance is intended to be used to provide relief where the requirements of the LDO render land difficult or impossible to use because of some unique physical attribute or the property itself or some other factor unique to the property for which the variance is requested. Neither state nor federal law requirements may be varied by the Town. [3.20.1]

Only the following standards are eligible for a variance [3.20.2]:

- Lot width, setback, height, building coverage, or structure spacing standards set forth in Chapters 6 and 7;
- Buffer width standards set forth in Section 7.2.3 when the Minor Modification procedures are unable to address the hardship;
- Off-street parking and loading standards set forth in Section 7.8 when the Minor Modification procedures are unable to address the hardship;
- Setback standards for real estate signs in Section 9.3.2 (R)
- Square footage standards of wall signs in Section 9.3.2 (W) and (X)
- Signage requirements in Town Center area set forth in Section 9.6 provided the request has been reviewed and recommended for approval by the Town Center Review Commission

The Board may not grant a variance to allow a use expressly or by implication prohibited under the LDO for the zone district containing the property for which the variance is sought [3.20.4(E)]. The Board may not grant a variance from any written conditions attached by the Council to its approval of a Special Use, subdivision plat or site plan, conditional use district, or aspect of an approved planned development master plan [3.20.4(F)]. There may be no variance from the Overlay District regulations unless specifically permitted in Section 4.4. There may be no variance that modifies the thoroughfare buffer or vegetation [4.4.4(E)].

**BACKGROUND:** The house located at 205 Barons Glenn Way was built in 1995. The setback requirements shown on the recorded plat were: Front – 25', Rear – 20', Side aggregate – 15', Side Minimum – 10', Corner side – 20', Buffer (Building) – 15', Buffer (All other structures) – 5'. The house was approved for construction with the house being shown 9.37' from the buffer and the deck being shown 1' from the buffer. Our foundation survey requirement we have today, that would catch this sort of error, did not take effect until March 2000. Sometime before the Ward's purchased the property, an addition was added to the house without a permit. Furthermore, when they purchased the property in June 2006 they were not aware of the setback problem. It was not until Mr. Ward came in to apply for a Building Permit to correct some code violations in the added addition that he learned of the setback issues. Mr. Ward was unable to get the permit due to the setback violation.

UNDISPUTED FACTS:

1. The application for a variance was filed by all the owners for the land affected by the variance;
2. The applicant took part in the pre-application conference required by LDO Section 3.20.3 (B).
3. The property is described as follows:  
Site Address: 205 Barons Glenn Way  
PIN: # 0743868625  
Lot: # 25  
Subdivision: Avalon II  
Total lot/tract size: .32 acres  
Existing Zoning District: PDD with R12 equivalent
4. The property is located in a Planned Development District (PDD).
5. The property is improved with a detached single-family dwelling unit.
6. The variance requested is 14' into a required 15' Buffer set back, which has been in existence since 1995. The property is currently an illegal structure and will continue to be so without a variance. The applicants/owners will not be eligible for a permit required prior to correcting the existing code violations without the variance.
7. Minor Modification procedures were unable to address the hardship.
8. Homeowner's Association approval has been obtained and a copy is attached.
9. There are no written zoning conditions or conditions that are part of a special use permit, a PDD approval, or subdivision or site plan approval that will be varied by this request.
10. A Survey of the variance requested is attached.

The Board May Approve the Variance ONLY if it Finds that ALL of the Criteria Below Have Been Met [Section 3.20.5 of Town of Cary Land Development Ordinance states]:

**3.20.5 Approval Criteria**

**A. Special circumstances or conditions exist (e.g., narrowness, exceptional topographic conditions, or the shape of the property) that are not common to other areas or buildings that are similarly situated and practical difficulty may result from strict compliance with the LDO standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, the LDO, or the Comprehensive Plan. In determining "practical difficulty", the Board shall consider the following factors:**

1. Where there can be any beneficial use of the property without the variance; and
2. Whether the essential character of the neighborhood would be substantially altered or whether the adjoining properties would suffer a substantial detriment as a result of the variance; and
3. Whether the variance would adversely affect the delivery of public services such as water and sewer; and
4. Whether the applicant purchased the property with knowledge of the requirement; and
5. Whether the applicant's predicament can be mitigated through some method other than a variance.

**B. No variance shall be granted if the conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.**

**C. If authorized, the variance shall represent the least deviation from the regulations that will afford relief.**

Therefore, if you are inclined to GRANT the variance request, follow this route (you must find ALL of the following):

11. Special circumstances or conditions exist that are not common to similarly situated areas or buildings.

**Applicants' Position:** Property built prior to buffer requirements, previous owner failed to get proper permits to build the addition, I simply seek a variance to bring the addition into code.

**Staff's Position:** There are 10 out of 86 total lots in the Avalon II Subdivision that back up to Cary Parkway. These 10 lots are the only ones that have a 50' buffer. The owners were unaware of the set back issues and the fact that the addition was constructed without a permit until they came into the Inspections and Permits Department to get a permit to fix some code violations. They could not get the permit due to the set back violation.

12. Practical Difficulty may result from strict compliance with the Ordinance's standards.

(The Board must consider the following to determine if there a Practical Difficulty may result.)

- a. Whether there can be any beneficial use of the property without the variance.

**Applicants' Position:** If I fail to get improvements made with variance, damage will result to existing structure and civil liability would result from my selling this property.

**Staff's Position:** Since the lot is developed with a single family dwelling there is beneficial use of the property; however, the house is an illegal structure since it does not comply with the setback requirements.

- b. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

Applicants' Position: No

Staff's Position: No changes are proposed to the existing structure. The house is existing and has not met the required setbacks on the recorded plat since it was built. The character of the neighborhood would not be substantially altered and the adjoining property owners would not suffer a substantial detriment as a result of the variance.

- c. Whether the variance would adversely affect the delivery of public services such as water and sewer.

Applicants' Position: No.

Staff's Position: The variance would not adversely affect the delivery of public services such as water and sewer.

- d. Whether the applicant purchased the property with knowledge of the requirement.

Applicants' Position: No

Staff's Position: The property owners did not know about the setback problem until they came in to get a building permit to correct the building code violation for an addition that had been built without a permit.

- e. Whether the applicants' predicament cannot be mitigated through some method other than a variance.

Applicants' Position: No

Staff's Position: The applicant cannot get approval of their building permit with out the variance being granted.

AND

- 13. The requested variance will not have the effect of nullifying or impairing the intent and purposes of the specific standards, the Ordinance or the Comprehensive Plan.

Applicants' Position: None

Staff's Position: Since the encroachment is in the rear of the house and is between the house and a 50' buffer that runs parallel to Cary Parkway , the intent of ordinance to protect the adjoining neighbors remains in tact.

AND

- 14. The conditions or circumstances found to affect the applicant's property are not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation to address the conditions or circumstances.

Applicants' Position: None

Staff's Position: The house was built prior to foundation surveys being required by the Town. There is no regulation that can be created to alleviate the predicament. This is a situation where the house was built and does not conform to the required setbacks, therefore making it an illegal structure.

AND

- 15. The variance shall represent the least deviation from the regulations that will afford relief.

Applicants' Position: None

Staff's Position: The existing house encroaches 14' into the 15' required buffer setback. The house will still be illegal if the variance is denied.

If you desire to attach conditions to the grant of the variance:

Requiring certain conditions to be met will alleviate the problems with granting the variance. Conditions:

- a.
- b.
- c.

If you are inclined to DENY the variance request, follow this route (You need only find ONE of the following):

- 16. No special circumstances or conditions exist that are not common to other similarly situated areas or buildings.

OR

17. There is no practical difficulty that may result from strict compliance with the Ordinance's standards (*The Board must consider the following to determine if there a Practical Difficulty may result*).

a. Whether there can be any beneficial use of the property without the variance.

Applicants' Position:

Staff's Position:

b. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.

Applicants' Position:

Staff's Position:

c. Whether the variance would adversely affect the delivery of public services such as water and sewer.

Applicants' Position:

Staff's Position:

d. Whether the applicant purchased the property with knowledge of the requirement, and;

Applicants' Position:

Staff's Position:

e. Whether the applicant's predicament can be mitigated through some method other than a variance.

Applicants' Position:

Staff's Position:

OR

18. The requested variance will have the effect of nullifying or impairing the intent and purposes of the specific standards, the Ordinance or the Comprehensive Plan. The purpose of a variance to the LDO is to provide relief to a property owner who has a parcel whose physical characteristics make development impossible or nearly so.

Applicants' Position:

Staff's Position:

OR

19. The conditions or circumstances found to affect the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation to address the conditions or circumstances.

Applicants' Position:

Staff's Position:

OR

20. The variance does not represent the least deviation from the regulations that will afford relief.

Applicants' Position:

Staff's Position:

**MOTION TO GRANT VARIANCE WITH/WITHOUT CONDITIONS**

After conducting a duly advertised public hearing and reviewing the application materials, testimony and evidence, and the approval criteria of Section 3.20.5, I move that we grant the variance

\_\_\_\_\_ with/without conditions for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

RESOLUTION

~~Based on the application, testimony and evidence, the general purposes of the LDO, and the above findings, the Board finds proposed findings 1-10 and 11-15 and concludes that the applicant meets each of the approval criteria set forth for a variance in Section 3.20.5 of the Town of Cary LDO.~~

2. The applicant is hereby granted a variance to

3. This variance is conditioned upon:

\_\_\_ a fence being constructed \_\_\_\_\_

\_\_\_ a buffer to be installed \_\_\_\_\_

\_\_\_ other \_\_\_\_\_

**MOTION TO DENY VARIANCE**

After conducting a duly advertised public hearing and reviewing the application materials, testimony and evidence, and the approval criteria of Section 3.20.5, I move that we deny the variance request for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RESOLUTION**

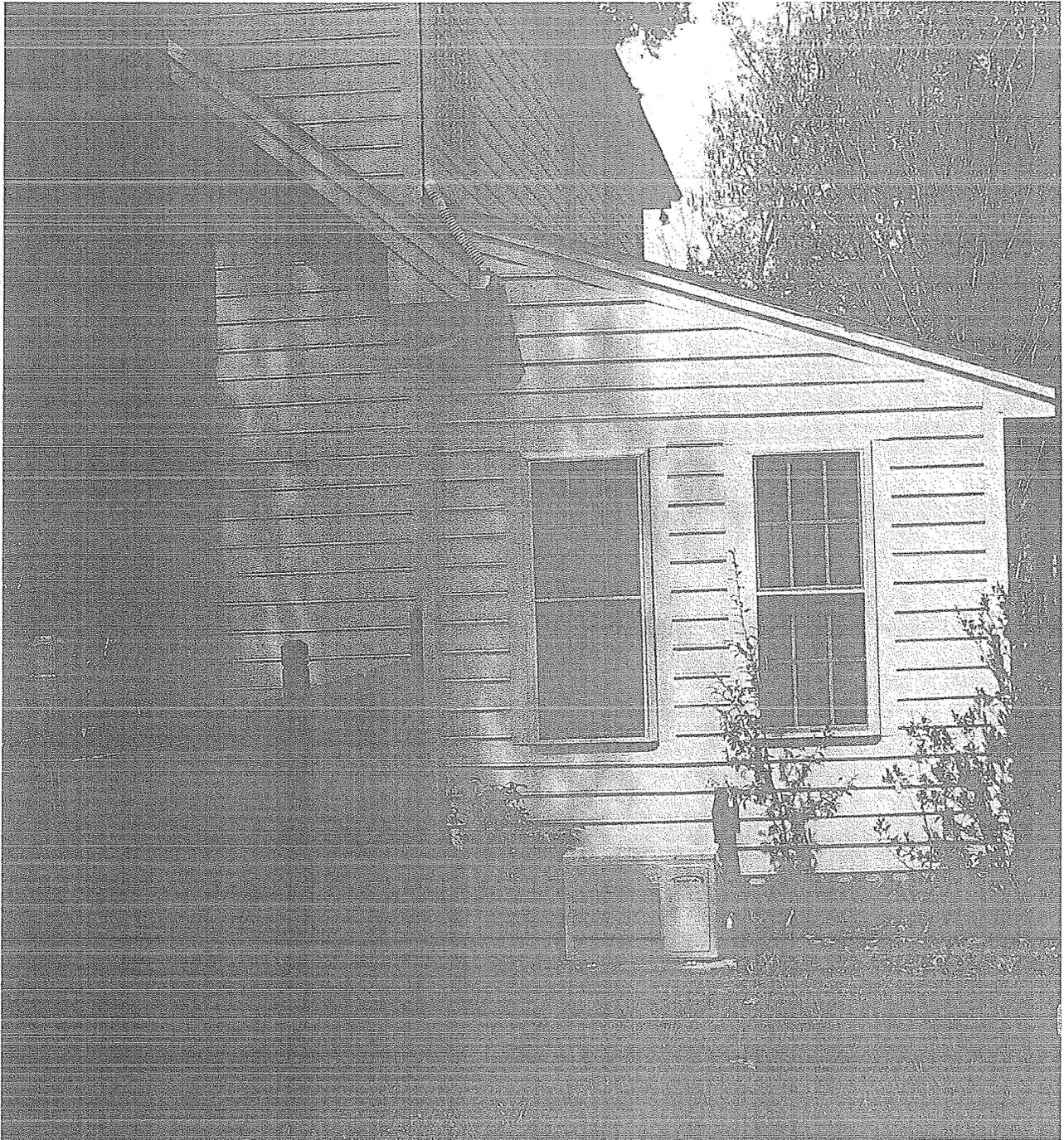
Based on the application, testimony and evidence, the general purposes of the LDO, and the above findings, the Board finds proposed findings 1-10 and 11-15 and concludes that the applicant has not met the approval criteria set forth for a variance in Section 3.20.5 of the Town of Cary LDO, and the application is DENIED.

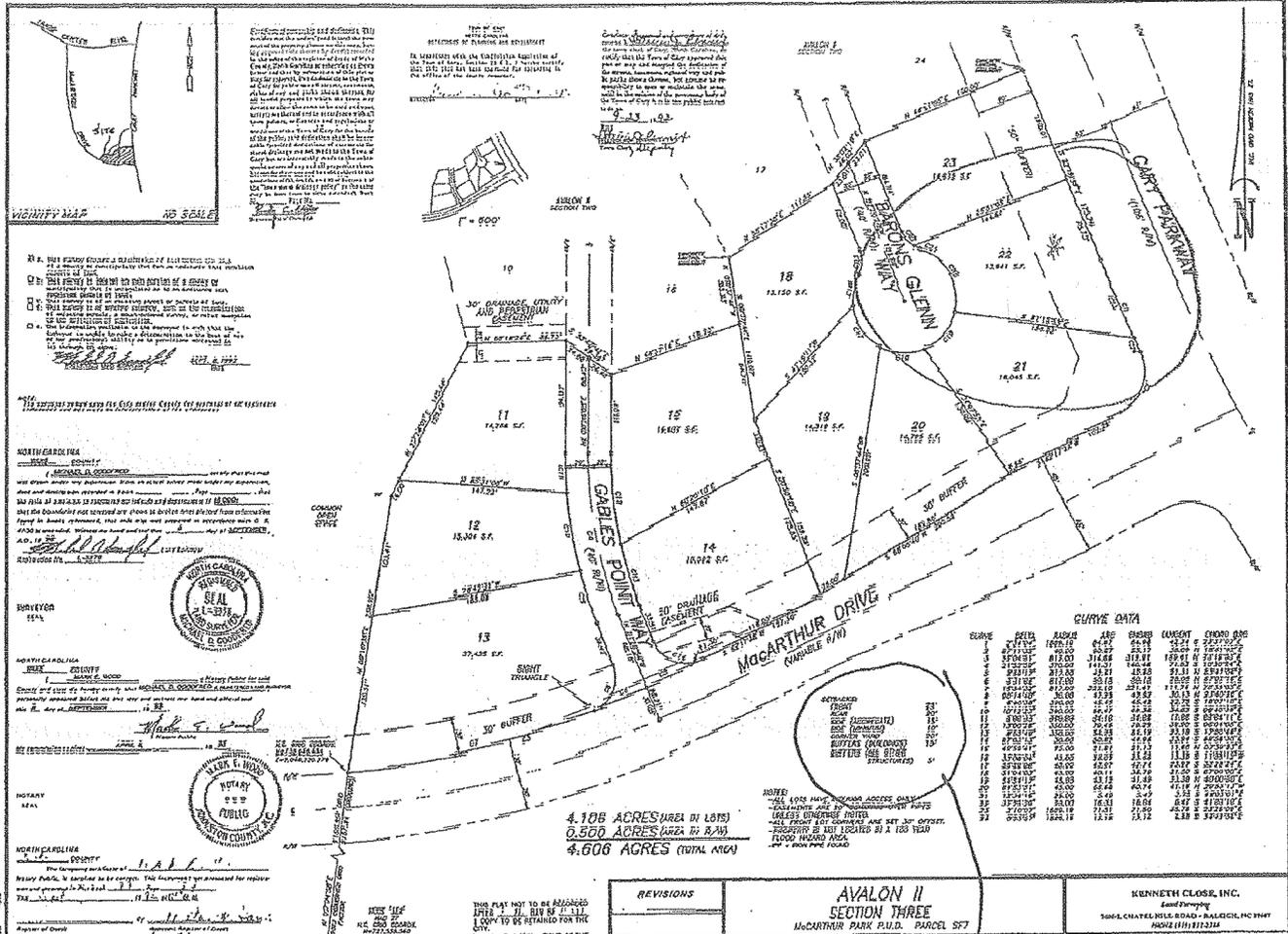
Additional surveys

Photo of patio (from side)



Cary Town Hall, 316 N. Academy St., Cary, NC 27513 (919) 469-4000.  
About the Site | Privacy & Security | Feedback

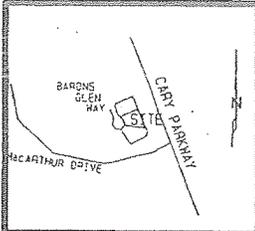




UDO

Set backs

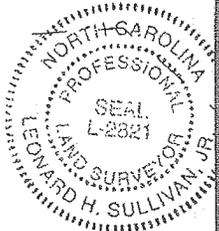
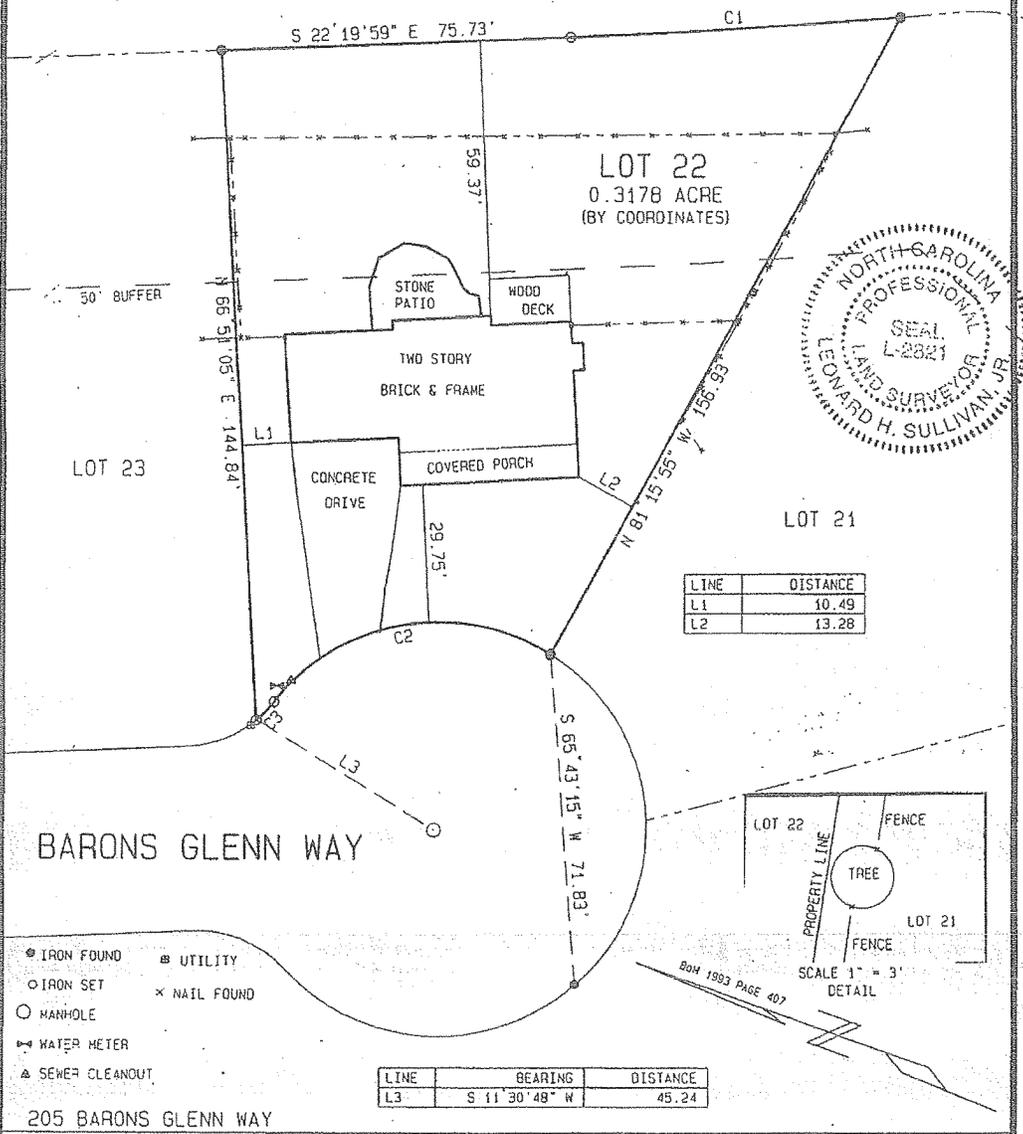
- Front 25'
- Rear 20'
- Side Avg. 15'
- Side Min. 10'
- Corner yrd 25'
- Buffer (Building) 15'
- Buffer (All other Structures) 5'



CURVE	ARC	RADIUS	CHORD LENGTH	CHORD BEARING
C1	71.50	1889.19	71.50	S 23° 25' 09" E
C2	66.67	45.00	60.74	N 29° 53' 13" W
C3	5.48	25.00	5.47	N 66° 03' 01" W

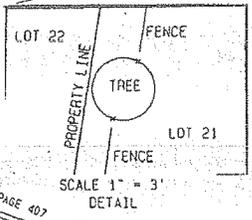
VICINITY MAP  
NOT TO SCALE

CARY PARKWAY  
106' R/W



LINE	DISTANCE
L1	10.49
L2	13.28

LINE	BEARING	DISTANCE
L3	S 11° 30' 48" W	45.24



- IRON FOUND      ■ UTILITY
- IRON SET        × NAIL FOUND
- MANHOLE
- ⊕ WATER METER
- ▲ SEWER CLEANOUT

205 BARONS GLENN WAY

THIS PLAT IS OF A SURVEY OF AN EXISTING PARCEL OR PARCELS OF LAND NOT FOR RECORDATION  
 BO#M 1993 PAGE 407 DEED BOOK 8871 PAGE 2383 WAKE COUNTY

LOT 22 SECTION THREE AVALON II SUBDIVISION

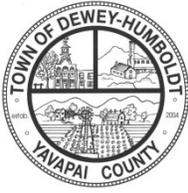
I HEREBY CERTIFY THAT THIS MAP IS CORRECT AND THAT THE BUILDING FOUNDATION LIES WHOLLY ON THE LOT AND THAT THERE ARE NO ENCROACHMENTS ON SAID LOT EXCEPT AS SHOWN.

SURV'D FLA    DRAWN LYNNIE    CHK'D LHS    JOB #4276603    02 MAY 2003    SCALE: 1" = 30'

SULLIVAN SURVEYING  
 LAND SURVEYORS  
 1143-D EXECUTIVE CIRCLE  
 CARY, NORTH CAROLINA 27511  
 TELEPHONE: 919/ 469-4738

SURVEY FOR:  
 M. BRABHAM CROOKS III  
 MARGARET CROOKS

CARY      WAKE COUNTY      NORTH CAROLINA



# DEWEY-HUMBOLDT BOARD OF ADJUSTMENT HEARING APPLICATION

Date of Application \_\_\_\_\_; Case # \_\_\_\_\_; Parcel Number/s \_\_\_\_\_

Name of Appellant (applicant) \_\_\_\_\_

Is appellant owner? \_\_\_\_\_ Other (explain) \_\_\_\_\_

\_\_\_\_\_

Current Zoning District \_\_\_\_\_ Year of Purchase \_\_\_\_\_ Year of Construction \_\_\_\_\_

Is the appellant requesting a Variance? \_\_\_\_\_; an interpretation of a zoning ordinance? \_\_\_\_\_

Or an appeal from an Administrative Decision? \_\_\_\_\_

**(See Pages Three and Four of this application for specific information)**

~~If a Variance is being sought for~~ Describe relief required if a variance is being sought, setbacks give current setbacks and requested setbacks if applicable. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Did the reason for this application exist before the current purchase of this property? Explain

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe existing uses of the parcel: size and location of existing structures and buildings on  
It. Reference maps, diagrams, drawings, photos submitted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BOARD OF ADJUSTMENT AND APPEALS APPLICATION**

**For the Town of Dewey/Humboldt**

If other than a setback, briefly describe what is being appealed: (Interpretation of an Ordinance; an Administrative error; decision; order; or enforcement). Give Dates.

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If this is an appeal from the decision of the Zoning Administrator, please attach a copy of the Zoning Administrator's Final Determination.

Phone #'s: Home \_\_\_\_\_ Cell \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_ Other \_\_\_\_\_

Convenient Time/s Property May be Visited \_\_\_\_\_

Signature of Applicant or Representative \_\_\_\_\_

## APPLICATION INFORMATION

### Purpose of the Board of Adjustment

The purpose of the Board of Adjustment is to provide a quasi-Judicial body to the residents, so that they can ask for relief from the sometimes harsh effects of a zoning law. In cases where the strict and literal application would impose an unfair burden on a particular individual group, the Board may be able to alleviate this.

The Board of Adjustment must hold a public hearing on all appeals, and usually it is thirty days after the appeal is filed. The Board may decide to grant, modify or deny any appeal, and may also defer any action on any appeal when it decides that additional evidence is needed or that alternative solutions need further study

The legal authority of the Board is granted through A.R.S. 9-462.06:

**\*To Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of an adopted zoning ordinance. The following are reasons for seeking an appeal:**

-An abuse of the official's discretion if it violates the intent and the policy of the statute that granted the decision-making authority. If an appellant can demonstrate that the decision was unreasonable, arbitrary, unfair, capricious, or discriminatory, then the decision should be reversed.

-Exceeding the official's power or authority outside the limits imposed on it by the statute or the ordinance that granted the authority.

-An error of law if it was based on an erroneous interpretation of statutes, ordinances, or regulations, or if any of these were wrong statutes, wrong ordinances, or wrong regulations.

-Fraud or bad faith or malice can invalidate an official decision, if they have influenced a decision or the manner in which it was made.

-Lack of evidence or any reasonable basis in fact invalidates a decision. Arbitrary judgment can reverse a decision

**\*To Hear and decide appeals for variances from the terms of the zoning ordinance.**

Four Key Criteria Standards to Apply:

- (1) A variance may be warranted if the property in question is associated with "special circumstances" that are inherent in the property – such as its size shape, topography or location, (surroundings) – that deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.

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**APPLICATION INFORMATION-CONT.**

2) A variance may be granted if its authorization is necessary to ensure the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, without constituting a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.

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3) The special circumstances applicable to the property may not be self-imposed or created by the owner or applicant in order to receive a variance. **It is important to note that circumstances created by the previous property owner are applicable to the current owner.**

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4) The granting of a variance should not be materially detrimental to persons residing or working in the vicinity, to adjacent property to the neighborhood, or to the public welfare in general.

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**Hearings and Rulings:** Public Notice to parties of interest and to the public will be given within a minimum of seven (7) to fifteen (15) days after application by posting at the property of application, (if property is involved) and by publishing once in a newspaper of general circulation in the Town. The Board of Adjustment shall hold an initial public hearing within thirty (30) days after receiving the application, and shall render a decision either at the initial public hearing, or a subsequent hearing/s on a date agreed upon by the Applicant and the Board.

In approving an application (all or part) the Adjustment Board may designate such conditions that will maintain the integrity of the Ordinance and will ensure that such conditions are complied with. Once approved, variances stay with the land and do not expire unless stipulated otherwise. (Conditions applied to the Variance at Hearing Date of the Board of Adjustment) **Conditions applied to the variance at Hearing Board by the Board of Adjustment, applicant must request an additional extension if unable to meet stipulated conditions.**

A vote of three (3) members of the Board shall be necessary to render a ruling.

**Appeal to the Courts** Within 30 days after the board has made a decision and has filed this decision, a person aggrieved by the decision of a municipal officer may file a complaint for special action in the Superior Court for review of the Board's decision. Filing the complaint does not stay proceedings on the decision appealed. The Court may, however, grant a stay upon application and on final hearing, may affirm or reverse, in whole or in part, or modify the decision reviewed.

## **STAFF REPORT**

Staff Report: Staff should create his own format for reporting at the Public Hearing. This would be a part of the public record and of a Court Record. This report should include these items, and if there is an item of importance, in your judgment, please include in the appropriate place.

-Brief Identifying Data

-History of the property (zoning, land splits, use now, past use, non-conforming-why? Etc.)

-What are applicant's plans for further use of the property?

-Your observations of the property (use photos, maps, drawings, etc.)

-Four Criteria Standards that apply to the property, (see pp. 3 and 4) Be descriptive in your discussion of "special circumstances", - describe rather than label, to avoid difficulty in case the Board does not concur with your assessment, and the applicant therefore reacts.

-Be thorough in writing up Criteria Standards, 2, 3, 4, since this may be information that the Board does not have a familiarity with.

-Give any reasons that are restrictive if there were no variance granted.

-Give a staff position on why a variance should or should not be granted.

-How is variance consistent with the Community Plan?

-Will integrity of the zoning district be maintained?

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**VARIANCE HEARING  
APPLICATION CHECK LIST**

1. A FEE IN THE AMOUNT OF \$\_\_\_\_\_.

2. APPLICATION FORMS TO BE COMPLETED AND SIGNED BY THE APPLICANT:

HEARING APPLICATION (~~three pages~~)

Provide evidence that there are special circumstances or conditions applicable to the property of application, or to adjacent property, or to the neighborhood, that justify a variance from the requirements so that strict application thereof would work an unnecessary hardship, and that the granting of the request is necessary for the preservation and enjoyment of substantial property rights, and that granting of the request is necessary for the preservation and enjoyment of substantial property rights, and that granting will not materially affect the health or safety of the area residents nor the public welfare or be injurious to property or improvements.

**\*To Hear and decide appeals for variances from the terms of the zoning ordinance.**

Four Key Criteria Standards to Apply:

(1) A variance may be warranted if the property in question is associated with "special circumstances" that are inherent in the property – such as its size shape, topography or location, (surroundings) – that deprive the property of privileges enjoyed by other property of the same classification in the same zoning district.

2) A variance may be granted if its authorization is necessary to ensure the preservation of privileges and rights enjoyed by other property of the same classification in the same zoning district, without constituting a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located.

3) The special circumstances applicable to the property may not be self-imposed or created by the owner or applicant in order to receive a variance. **It is important to note that circumstances created by the previous property owner are applicable to the current owner.**

4) The granting of a variance should not be materially detrimental to persons residing or working in the vicinity, to adjacent property to the neighborhood, or to the public welfare in general

DIRECTIONS TO PROPERTY

PERMISSION TO ENTER PROPERTY (~~MUST BE NOTARIZED~~)

PLOT PLAN DRAWN TO ~~ENGINEER'S~~ SCALE (no smaller than 1" = 60')

**3. DOCUMENTS TO BE SUBMITTED BY THE APPLICANT:**

- AGENT AUTHORIZATION (if applicable)
- RECORDED DEED AND LEGAL DESCRIPTION
- ~~PHYSICIAN'S LETTER OF RECOMMENDATION FOR SUPERVISORY CARE  
(if applicable—Secondary Medical Dwellings)~~
- LETTERS OF SUPPORT (optional)

**4. FORMS INCLUDED FOR APPLICANT'S REVIEW:**

SECTION 207 E. – HEARINGS AND RULINGS  
CHECKLIST FOR PLOT PLAN AND EXAMPLE PLOT PLAN FORMS

**PLEASE NOTE:**

**ALL VARIANCE APPLICATION REQUESTS ARE REVIEWED PRIOR TO ANY SCHEDULED PUBLIC HEARINGS. ALL RELATED CONCERNS AND/OR QUESTIONS NEED TO BE ADDRESSED BETWEEN THE APPLICANT AND STAFF AND/OR THE REVIEWING AGENCY.**

\*\*\*\*\*ALL FORMS IN BLACK INK ONLY, PLEASE\*\*\*\*\*  
**QUESTIONS OFTEN ASKED ABOUT THE BOARD OF ADJUSTMENT**

**WHAT ARE THE POWERS AND DUTIES OF THE BOARD OF ADJUSTMENTS?**

Board of Adjustment members are appointed by the Town Council and serve without pay.

***THE BOARD HEARS:***

~~Anyone who feels that an error has been made by the Land Use Specialist in enforcing the Code; and~~

~~Anyone who feels that special conditions of their property make it necessary to receive a variance to the terms of the Code; and~~

~~Questions and render and advisory decision on any matter referred to it by the Land Use Unit Manager.~~

**~~WHEN CAN THE BOARD OF ADJUSTMENT GRANT A VARIANCE?~~**

~~A variance can be granted when it can be demonstrated that ALL of the following criteria can be met:~~

~~Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other land, building or structures in the district; and~~

~~The literal interpretation of the Code would deprive the applicant of right commonly enjoyed by other properties in the same district under the terms of the Code; and~~

~~The alleged hardships caused by interpretation of the Code include more than personal inconvenience and financial hardship and do not result from actions of the applicant; and~~

~~Granting the variance will not confer upon the applicant any special privilege that is denied by the Code to other lands, structures or buildings in the district; and~~

~~The granting of the variance requested will not interfere or injure the rights of other properties in the same district.~~

**HOW DOES ONE APPLY TO THE BOARD OF ADJUSTMENTS?**

1. Obtain an application provided by the Development Services Department.
2. Fully identify the premises in question.
3. Fully complete the application by clearly stating the request and reasons why the Board should approve the request.
4. Submit the application together with the filing fee.
5. Attend the Public Hearing before the Board of Adjustment and be prepared to present your request.

## **MAY A DECISION BY THE BOARD OF ADJUSTMENT BE APPEALED?**

Yes. An appeal requires that a petition be filed with the jurisdictional County Superior Court within thirty days of the decision made by the Board of Adjustment.

### **TIPS ON APPEALING TO THE BOARD OF ADJUSTMENT:**

- Read the application carefully and submit all requested information.
- Make the application as clear and concise as possible.
- Bring relevant supporting materials (graphics and maps) to the Public Hearing.
- Clarify to the Council if you are requesting a variance, an appeal, or an advisory opinion.

### **SECTION 207 – ADJUSTMENT BOARD**

~~E. HEARINGS AND RULINGS: The Board of Adjustments shall hold at least one (1) public hearing, within a reasonable time from the date of application after giving a minimum of seven (7) days' notice thereof to parties of interest and the public, by posting at the property of application (if property is involved) and by publishing once in a newspaper of general circulation in the Town. The Board of Adjustment shall render a decision within thirty (30) days after the initial hearing on same, unless an extension is agreed to by the Board and the applicant.~~

~~1. In approving an application (all or part) the Adjustment Board may designate such conditions in conjunction therewith that will, in its opinion, secure substantially the objectives of this Ordinance and may require guarantees in such form as it deems proper under the circumstances to ensure that such condition be complied with. Where any such conditions are violated or not complied with, the approval shall cease and the Land Use Specialist shall act accordingly.~~

~~2. In granting of permission to proceed on a specific development scheme or of a permit for a construction variance, the same shall be contingent upon permits being obtained and work commenced within SIX (6) MONTHS and being diligently pursued. Failure of such shall void the ruling unless a longer time had been granted or an extension in time is secured.~~

~~3. The concurring vote of three (3) members shall be necessary to render a ruling.~~

**TOWN OF DEWEY-HUMBOLDT**  
**Hearing Application for Variance**

Case.# \_\_\_\_\_ Assessor's Parcel# \_\_\_\_\_

Name \_\_\_\_\_ Supervisor District \_\_\_\_\_  
(Print)

~~In accordance with A.R.S. 9-462.06, a variance may be granted from the terms of the Town Planning and Zoning Ordinance if the following requirements are satisfied to the Board of Adjustments and Appeals by the applicant.~~

~~PLEASE ANSWER THE BELOW REQUIREMENTS.~~

~~— 1. The peculiar conditions that make it necessary for you to request a Variance from the Ordinance are:~~

~~— 2. The unnecessary hardship that would be created if you cannot obtain a Variance:~~

~~— 3. The general intent and purpose of the Zoning Ordinance (which is to conserve and promote the public health, safety, convenience and general welfare by coordinated and harmonious growth and development) will be preserved because:~~

NOTE: Generally, the peculiar condition, special circumstances and unnecessary hardship are situations that run-with-the-land, i.e., rocks, ditches, hills, washes, etc... that would prevent enjoyment of property rights if strict interpretation of the Ordinance were enforced. Personal and/or self-imposed conditions or hardships may be given consideration but may not be valid or substantial reasons for a Variance.

\_\_\_\_\_  
Applicant Sign and Date



**PERMISSION TO ENTER PROPERTY**

APPLICATION #: \_\_\_\_\_ PARCEL #: \_\_\_\_\_

LEGAL DESCRIPTION: \_\_\_\_\_

NAME(S): \_\_\_\_\_

ADDRESS: \_\_\_\_\_ PHONE: \_\_\_\_\_

~~I, undersigned, hereby give permission to the Town of Dewey Humboldt Land Use Specialist (or any Deputy Specialist) in the discharge of his duties as stated herein, and for good and probable cause, to enter the above described property to inspect same in connection with the enumerated application made under the terms of the Town of Dewey Humoldt Planning and Zoning Ordinance; or for any investigation as to whether or not any portion of such property, building or other structure is being placed, erected, maintained, constructed or used in violation of the Town of Dewey Humboldt Panning and Zoning Ordinance; or for any investigation for conditions, compliance, and stipulations under the terms of the Town of Dewey Humboldt Planning and Zoning Ordinance and public hearings concerning this pareel. Such entry shall be within 60 days of the date of my signature (below) or within 60 days of the scheduled date of a public hearing for review, transfer, or renewal of the application. Such entry shall be limited between the hours of 7a.m. and 6p.m. MST. I understand that this permission to enter property is OPTIONAL and VOLUNTARILY GIVEN and may be withdrawn or revoked (either in writing or verbally) at any time.~~

APPLICANT'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

(Check one)

OWNER \_\_\_\_\_  AGENT FOR \_\_\_\_\_

STATE OF ARIZONA \_\_\_\_\_ )  
\_\_\_\_\_ ) ss  
COUNTY OF YAVAPAI \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me the undersigned

~~Notary Public personally appeared \_\_\_\_\_, who executed the foregoing instrument for the purpose therein contained. In witness whereof, I hereby set my hand and official seal,~~

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
DATE COMMISSION EXPIRES

## PLOT PLAN CHECKLIST

NOTE: PLOT PLAN MUST BE DRAWN TO SCALE IN BLACK INK ON THE FORM PROVIDED ~~THAT INCLUDES ALL OF THE FOLLOWING INFORMATION.~~

- ~~(-) Property dimensions~~
- ~~(-) Indicate scale used (Engineer's Scale 1" = 20' 30' 40' 50' 60')~~
- ~~(-) Indicate North with directional arrow~~
- ~~(-) Proposed structures with all dimensions, including Pools~~
- ~~(-) Existing structures with all dimensions, including Pools~~
- ~~(-) Distances between structures~~
- ~~(-) Distance from all structures to the property lines~~
- ~~(-) Description of each structures use~~
- ~~(-) Adjacent streets/roads~~
- ~~(-) Driveway(s) and material used (i.e. gravel, concrete...)~~
- ~~(-) Location, Size, Dimensions of Septic System with Leach Area~~
  - ~~== Pere test holes~~
  - ~~== 100% Expansion area (minimum distance from septic and leach)~~
  - ~~== Length and slope of outlet lines (5 foot min.)~~
  - ~~== Distribution Box/Diversion Valve~~
  - ~~== Inspection Pipe(s)~~
  - ~~== Length and number of leach lines; distance between trenches~~
  - ~~== Degree of slope in leaching area~~
  - ~~== Length and slope of building sewer line (max 100 feet)~~
  - ~~== Cleanout pipe in building sewer lines~~
  - ~~== Setbacks from property lines, buildings wells, dry washes, other sewage systems, water lines.~~

~~(NOTE: If individual wells provide water, maintain minimum septic setbacks of 50' from property lines and 100' from all wells including neighboring wells).~~

- ~~(-) Location of all utilities, poles, meters and lines~~
- ~~(-) All easements, regardless of purpose (i.e. roads, utilities)~~
- ~~(-) Slope information~~
  - ~~== Indicate High and Low points~~
  - ~~== Indicate by arrows direction of slope~~
  - ~~== Indicate difference in elevation between high and low points~~
- ~~(-) Distance from the closest structure to the top of bank of any watercourse(s)~~
  - ~~— (i.e. washes, streams, creeks, arroyos, rivers, drainage ways and slews)~~
- ~~(-) Location where orange Pre-issue card will be posted~~

This is a guideline for the Order of the Findings when reviewed for approval. All members should participate by taking notes.

### Board of Adjustments Notes

Hearing date: \_\_\_\_\_

1. Property, Parcel \_\_\_\_\_

2. Relief sought: \_\_\_\_\_

3. Applicant/s Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

4. All Parties giving evidence (including Applicant): ( S=Sworn In)

S \_\_\_\_\_ Name: \_\_\_\_\_

Address: \_\_\_\_\_



6. Before granting or not granting relief – discuss and note the following:

a) Is the hardship self-created? If “yes” why? (Remember chain of ownership.)

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b) Is the hardship created by land use? Will strict interpretation of the code create an unnecessary hardship due to “special circumstances”? (size; shape; topography; location/surroundings) Describe.

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c) Will special circumstances “deprive the property of privileges enjoyed by other property of the same classification in the same zoning district without granting special privileges inconsistent with limitations upon other properties in the vicinity and zone in which the subject property is located?”

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d) Is granting a variance materially detrimental to persons residing or working in the vicinity; to adjacent property; to the neighborhood, or to the public welfare in general? Describe.

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e) In granting a variance is the integrity of the ordinance maintained? If not, explain.

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**BOARD OF ADJUSTMENT  
STAFF REPORT**

**Agenda #**

**TO:** BOARD OF ADJUSTMENT  
**FROM:** YVONNE KIMBALL, TOWN MANAGER  
**THROUGH:** GREGORY ARRINGTON, CODE ENFORCEMENT/COMMUNITY OUTREACH  
COORDINATOR  
**MEETING DATE:** JANUARY 20, 2012  
**SUBJECT;** VARIANCE REQUEST FOR

**REQUEST**

**(Brief identifying data)**

Sample

## APPLICANT/OWNER

## HISTORY

**(Zoning, land splits, current use, past use, non-conforming-why, etc.)**

**CURRENT ZONING REQUIREMENTS**

**REQUESTED VARINANCE**

## PUBLIC PARTICIPATION

## STAFF RECOMMENDATION

### Conditions

**Is variance consistent with community plan?**

**Will integrity of the zoning district be maintained?**

## EXHIBITS

**Photos**

**Maps**

**Documents**

**County Parcel Information**