

**TOWN OF DEWEY-HUMBOLDT  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
APRIL 16, 2012, 2:00 P.M.**

**A SPECIAL VARIANCE HEARING OF THE DEWEY-HUMBOLDT BOARD OF ADJUSTMENT WAS HELD ON MONDAY, APRIL 16, 2012, AT TOWN HALL AT 2735 S. HIGHWAY 69, DEWEY-HUMBOLDT, ARIZONA. CHAIR LYDIA CHAPMAN PRESIDED.**

1. **Call To Order.** The meeting was called to order at 2:00PM.
2. **Opening Ceremonies.**
  - 2.1. **Pledge of Allegiance.** Made.
3. **Roll Call.** Board Members Judy Davidson, Frank Davidson, Vice Chair Jack Hamilton, and Chair Lydia Chapman were present.
4. **Consent Agenda.**
  - 4.1. **Minutes.** Minutes from the February 21, 2012 BOA Meeting.  
  
Board Member Judy Davidson made a motion to approve the minutes from the February 21, 2012 Board of Adjustment Meeting; Vice Chair Jack Hamilton seconded. The vote passed unanimously.
5. **Discussion Agenda – Unfinished Business.** Discussion and Possible Action on matters previously presented to the Board. None.
6. **Discussion Agenda-New Business-** Discussion and Possible Action on matters not previously presented to the Board.

**6.1 Public Hearing - Variance Request from the side yard and building separation setback requirements.**

The Public Hearing was opened at 2:03PM.

Chair Lydia Chapman stated the hearing is for discussion and action on a variance for parcel number 402-03-281A, zoning case #ZV2012-1 filed by Stuart and Tanya Ott for a hearing on April 16, 2012 requesting a side yard setback and a setback to the house. She stated the hearing will begin with Mr. Arrington's Planner's Report (attached).

Mr. Arrington read his report. Variance request for APN: 402-03-281A; request to approve a conditional variance to allow for a reduction in the side yard and a separation setback requirement for the property located at 11965 E. Yavapai Drive. The property is currently zoned R1-70 and is 2.12 acres in size.

Request: For approval of a reduction in the required twenty-five (25) foot side yard setback at the west property line and the required ten feet separation between the home and the proposed accessory structure.

**History**

Current Zoning: R1-70

Land Splits: None

Current Use: Single Family Residence

## Past Use: Vacant Property

On June 14, 2010, there was a building permit applied for to construct a 1,566 square foot manufactured home. The project was completed on October 27, 2010. At its completion the project met all required setbacks for the zoning. On October 15, 2010, applicant applied for an electrical permit to provide service to the structure. The project was completed on October 27, 2010.

Zoning Violations: None

### Surrounding Land Use Designation:

North - Single Family Residence

East - Single Family Residence

South - Single Family Residence

West - Single Family Residence

### Surrounding Zoning Classification:

North - R1-35/70

East - R1-35/70

South - R1-70

West - R1-70

### Current Zoning Requirements:

The current zoning requirements for R1-70 are 70,000 square foot minimum lot size and 200-foot minimum lot width. Front setback of 50 feet; rear setback of 50 feet; interior side setback of 25 feet; exterior side setback of 30 feet. Vice Chair Jack Hamilton asked for clarification on interior side setback. Mr. Arrington stated that is the designation for side by side lots. The maximum building height is two stories/30 feet and maximum lot coverage 15%.

### Current Building Separation Requirements:

The current building separation requirements for this parcel are 10 feet between the primary structure and an accessory building.

### Requested Variance:

The applicant is requesting relief from both the building and zoning codes of the Town. The aspect of the building code pertains to the 10 foot separation requirement between structures. The current regulations for the side yard setback in the R1-70 zoning district requires a 25-foot setback from the proposed structure to the property line. The applicant is requesting a side yard setback of 10 feet and a building separation setback between the primary structure and the proposed accessory structure of 3 feet.

### Public Notification:

A sign was posted April 2, 2012. Since the posting of the property, one adjacent property owner (anonymous) discussed the case with staff and did not give an opinion either way. The applicant provided one letter of support from the property owner at 11795 E. Yavapai Drive. No objections to the proposed relief have been received on this case.

Chair Lydia Chapman asked if Mr. Arrington wanted to save his recommendation until after the presentation; he agreed.

Chair Chapman invited the Board and the applicant to ask questions of Mr. Arrington.

Vice Chair Jack Hamilton asked why the Town requests a 10 foot setback. Mr. Arrington responded he believes it is because this is a rural community with primarily R1-70 zoning;

the setbacks maintain the open space feel of the community and the current building codes require at least a 3 foot separation for non-combustible structures.

Board Member Frank Davidson asked what the number 15 referred to in the Planner's Report. Mr. Arrington responded it is the maximum lot coverage; only 15% of the lot may be covered with structures.

Board Member Judy Davidson asked to define combustible vs. non-combustible. Mr. Arrington stated that the applicant is proposing a metal and steel structure which is considered non-combustible.

Chair Chapman stated it appears 2/3 of what is required in setbacks is being eliminated. Mr. Arrington confirmed.

Chair Chapman asked Mr. Ott if they had any representatives speaking on their behalf; he responded no. Chair Lydia Chapman stated the instructions for the hearing and swore in Mr. Ott.

Mr. Ott stated several things have changed since they purchased the property in 2007, one change being the setbacks were 10 feet at that time. He stated he appreciated this process. He noted the structure is a flat-top metal carport with a concrete floor. The land is not level and is quite steep. The spot chosen for the structure is the most beneficial for the applicant.

Vice Chair Hamilton asked Mr. Ott if he put in the pad for the mobile home and if he did the grading for the lot. Mr. Ott responded that when it was purchased it already had a flat spot on the top and the road. A contractor was used for the wall.

Vice Chair Hamilton asked Mr. Ott when they put the mobile home on the pad, if he gave thought to where he would place utilities, house, garage, septic. Mr. Ott responded, yes, and noted it is a very small area, but they were able to get everything in that small pad. Mr. Ott stated it became obvious that putting a full size enclosed garage was not practical so they decided on the metal structure.

Vice Chair Hamilton asked Mr. Ott if he realized there was a problem why did he not make a larger pad. Mr. Ott responded they were looking at the cost of doing that compared to the cost of the current proposal; they did not fully realize what would happen with the space on the lot.

Vice Chair Hamilton asked Mr. Ott if the carport is going to have a cement base. Mr. Ott responded yes. Vice Chair Jack Hamilton asked Mr. Ott if the structure is open on all four sides. Mr. Ott responded yes.

Board Member Frank Davidson asked Mr. Ott if he considered building a smaller carport. Mr. Ott responded, no.

Vice Chair Hamilton asked Mr. Ott if he could create a spot lower on the property to put a carport. Mr. Ott responded that the shape of the lot was not conducive to doing so because of the well and the septic placement and setbacks; the structure would sit almost in the middle of the road and the further away it gets, the less useful it becomes.

Vice Chair Hamilton asked Mr. Ott if he considered bringing in fill dirt. Mr. Ott stated it comes down to cost and shape of the lot. He stated it is mostly road coming up to the pad. The further away the structure is placed from the house, the less useful it becomes. Mr. Ott stated it is very steep in the area indicated by Vice Chair Jack Hamilton. He stated they

originally considered putting the septic there but getting to that area to do the work was problematic. The current plan is practical and gives access to the front of the house.

There was discussion about which side of the house is considered the front. Mr. Arrington stated the front of the house is the access from the street (Yavapai). Chair Lydia Chapman asked all to refer to that as the front of the house (which is what the Ott's consider the back).

Chair Chapman asked Mr. Ott the width between the boundary line of the property and the ravine where the land drops off. Mr. Ott stated the width across is about 100 feet.

Chair Chapman asked the width from the porch facing east to the drop-off. Mr. Ott stated it is about 15 feet. Chair Lydia Chapman stated a variance in this case substantially changes the zoning and the Board is counting it as one variance but it is two and it is limiting 2/3 of the setbacks.

Mr. Ott stated there is a small area at the front for visitor parking, access for well maintenance, for power, etc. There is a very steep drop off on one side requiring a lot of work. Placing a large structure at the front would interfere with the views. Placing it at the back would make it difficult to back out; it is not a large area.

Board Member Judy Davidson asked Mr. Ott if he would need to grade or slope the land again. Mr. Ott responded yes, more work will need to be done, moving dirt almost all the way to the property line to allow for proper run-off and to level it.

Mr. Ott stated their neighbors built before the Town was incorporated and have a garage 10 feet from the property line. Mr. Ott did not feel that this variance would change how the area looks since the neighbors have a 20x25 foot garage at a 10 foot setback which was grandfathered before the Town's incorporation.

Chair Chapman stated there is no grandfathering in zoning or variances.

Mr. Arrington stated the accessory building to the west that Mr. Ott is referring to was permitted through the Town in 2006; there are provisions in the current zoning ordinance for lots with unusual configurations that would allow structures to be within 10 feet of a rear property line. It is called "density districts" which is what the neighbor's property fell within.

Vice Chair Hamilton asked Mr. Arrington if that is currently in Town Code or it existed before the Town incorporated. Mr. Arrington stated it is in current Town Code. Mr. Arrington provided copies to the Board (attached). Vice Chair Jack Hamilton read the footnote of the chart presented, "detached accessory structures...may encroach within 5 feet to rear lot line to maintain a 10 foot building separation". Mr. Arrington stated the neighbor's lot has a rear lot line so the Town Code applied and the Town issued a permit.

Chair Chapman stated the code is not pertinent to Mr. Ott's request; it refers to the rear property line and the current request is referring to a side setback. The Board agreed it was not applicable.

Chair Chapman stated the presentation was concluded.

Chair Chapman asked if any Board members had ex parte knowledge, or knowledge not in evidence, and if they discussed their decision with anyone. All Board members responded no. Chair Lydia Chapman stated she had discussion with Mr. Arrington and Yvonne Kimball, Town Manager, about the high density areas. She stated she also spoke with Cathy Kelley, Magistrate, about the zoning regulation. Chair Lydia Chapman directed the Board Members

to the Board of Adjustment Notes document (attached), page 3 for the following questions. Mr. Ott received a copy of the document for reference.

Chair Chapman asked the Board Members, "Is the hardship self-created?"

Vice Chair Hamilton stated yes, he believed the hardship was self-created because Mr. Ott said cost is the reason he did not increase the size of the lot, knowing he may have problems trying to put everything on the pad. In order to save money Mr. Ott kept the lot small instead of increasing it, and stated it would be expensive to bring in dirt on the east side, and it would block his view. View and cost is the reason and therefore it is a self-created hardship.

Board Member Judy Davidson stated based on the information presented and what she saw at the lot, she concurs with Mr. Hamilton that it was self-created.

Board Member Frank Davidson stated he concurred with Mr. Hamilton, it is a self-created situation.

Chair Chapman stated she concurred with Mr. Hamilton. To Mr. Ott she stated that if there is a hardship that is moved by cost the Board cannot take that into account, noting the decision must be based solely on the details of the land, size, shape, topography, geography.

Chair Chapman asked the Board members, "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)."

Vice Chair Hamilton stated he believes strict interpretation of the code does not prevent Mr. Ott from putting a structure on his property, it just has to be relocated, noting that may be difficult, but there is plenty of room on the property. It is not a hardship of the property; it is a hardship Mr. Ott created. It may cost a little more; it may ruin the view, but it is not a hardship of the land.

Chair Chapman asked the Board if anyone does not concur with Mr. Hamilton's statement. None heard.

Chair Chapman asked the Board members, "Will special circumstance 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?"

Vice Chair Hamilton stated the applicant presented an argument about the neighbor's land being close to the property line which has the same zoning, but according to the code that was presented, it was permissible; that does not apply to the current case. The neighbor's situation followed the code, whereas Mr. Ott's case does not.

Chair Chapman asked if there were any other comments. None heard.

Chair Chapman asked the Board members, "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?"

Vice Chair Hamilton responded no, it is not detrimental. If a variance was granted, it would not be detrimental to people residing or working in the vicinity; his neighbor indicated support. It does not affect the public welfare in general.

Chair Chapman asked the Board members if they all concurred. All agreed.

Chair Chapman stated she noticed when looking at the area that it appeared very dense already. Because of the Ott's home, the neighbor's garage/home and the way they are situated, the structures appeared in a row and very close. The Town's community plan talks about maintaining low density/low intensity and the Board should consider that also.

Chair Chapman asked the Board members, "In granting the variance is the integrity of the ordinance maintained?"

Board Member Judy Davidson stated she felt there was an issue and the way the applicant's lot was graded has added to the situation, making it much more dense. Mr. Arrington stated the configuration of the lot makes it difficult. From Yavapai Road to the pad is a drastic 60 foot change in grade elevation; it makes it difficult and a challenge which is why the applicant has requested a variance. It could have been done several different ways but that is the challenge with the site.

Chair Chapman asked Mr. Arrington if there is anything that would deter any kind of development of a structure or anything that would deter any other alternative.

Mr. Arrington stated it is a matter of expense; there are other methods to achieve the same goal. There are a number of lots in town with similar configuration; many are left undeveloped because of these restrictions. It is a matter of what the homeowner wants to take on.

Vice Chair Hamilton stated he did not believe the question was answered. The question is, is the ordinance maintained? The ordinance is setbacks and the Board would not be maintaining the integrity of the ordinance if the variance was granted. It would be a dual change in the ordinance.

Chair Chapman asked the Board members if there was concurrence or disagreement with Mr. Hamilton's statement. Board Members Frank and Judy Davidson concurred with Mr. Hamilton. Chair Lydia Chapman stated this is a large subtraction from what is required and did not feel it maintains the integrity, citing the reasons already given. Chair Chapman noted it would not necessarily be the deciding factor but it does not support the variance at this time.

Mr. Ott noted that the structure is not a garage, it is a carport, a covered structure with space for a couple of cars underneath.

Chair Chapman asked the Board Members if a covered structure that is open would change anyone's consideration; cement or walls would likely not be visible, perhaps a roof, and the applicant's neighbor does not mind. The Board understood and did not change their consideration.

Chair Chapman called for the end of any discussion or debate.

Mr. Arrington resumed with the conclusion of his report. If the variance request is approved, the applicant must obtain a building permit within 60 days (attached staff report accurately reflects **six months**) from approval date. Current design documents call for 20 pounds per square inch (attached staff report accurately reflects 20 pounds per square **foot**) snow load roof design and they would need to comply with the Town's 30 pound per square inch (attached staff report accurately reflects per square **foot**) design criteria. In regards to the integrity of the zoning district being maintained, the fact that they requested a variance makes it a no. The request is a 60% reduction in side yard, and 70% on the separation between primary and accessory building. The building code does allow a 3 foot separation

as long as the structure is not combustible. It is up to the Board to decide based on what the applicants and staff have presented.

Chair Lydia Chapman made a motion to end discussion; seconded by Board Member Judy Davidson. The vote passed unanimously by roll call vote.

Chair Lydia Chapman read the variance request, to approve or disapprove the variance request for APN: 402-03-281A to approve a conditional variance to allow for a reduction in the side yard and separation setback requirement for the property located at 11965 E. Yavapai Drive. Case #ZV2012-1. Chair Lydia Chapman asked the Board if there was a motion to vote for approval or disapproval as previously dictated to the minute-taker. Vice Chair Jack Hamilton stated, so moved; seconded by Board member Frank Davidson. Mayor Terry Nolan, who was seated in the audience raised a point of order, noting that the motion should state approval of the variance and take a vote on that motion or the motion should state disapproval of the variance and take a vote on that motion, not both options in the same motion. Therefore, no vote was taken on this motion.

There was discussion about the wording of the motion.

Vice Chair Jack Hamilton made a motion to vote on the request by Mr. Ott for a variance and to give a reason for our vote. Chair Lydia Chapman stated more information on the variance should be included in the motion. There was further discussion about the wording of the motion. No vote was taken on this motion.

Vice Chair Jack Hamilton wished to re-state the motion. Vice Chair Jack Hamilton made a motion to vote on the variance request for APN: 402-03-281A request to approve a conditional variance to allow for a reduction in the side yard and separation setback requirement for the property located at 11965 E. Yavapai Drive. The property is 2.12 acres in size. Case #ZV2012-1. Chair Lydia Chapman noted that Mr. Hamilton's motion was to approve the variance. The motion failed for lack of a second.

Vice Chair Jack Hamilton made a motion not to approve the variance request for APN: 402-03-281A, the variance is to allow for a reduction in the side yard and separation setback requirement for the property located at 11965 E. Yavapai Drive. The property is 2.12 acres in size. Case #ZV2012-1; seconded by Board member Frank Davidson.

Board member Judy Davidson voted yes, to not approve the variance, based on it being a self-imposed situation and it was not because of the land.

Board member Frank Davidson voted yes, to not approve the variance, as it was a self-imposed problem and not caused by the land.

Vice Chair Jack Hamilton voted yes, to not approve the variance, because it was a hardship created by the owner, not the land.

Chair Lydia Chapman voted yes, to not approve the variance, based on a) the hardship is self-created, b) land-use is secondary to self-creation, c) privileges enjoyed by others can also be enjoyed by the applicant with different planning, d) it is not detrimental to other residents, and e) it would affect the integrity of the zoning.

The vote passed unanimously.

The public hearing ended at 3:12PM.

7. **Planner's Report.** Mr. Arrington stated he will no longer be attending BOA meetings.
8. **Comments from the Public.** Mr. Ott thanked the Board for their time and stated he understood their reasons.
9. **Comments and Recommendations from Board Members for Future Meetings.** The next BOA meeting will be held on Monday, April 23, 2012 at 1:30PM to approve the meeting minutes. Chair Chapman informed Mr. Ott that if he wished to appeal the decision made in the meeting he should contact Mr. Arrington for further information on recourse.
10. **Adjourn.** The meeting was adjourned at 3:16 PM.

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Lydia Chapman, Chair

ATTEST:

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Mandi Garfield, Administrative Assistant