

NOTICE OF A REGULAR MEETING
OF THE BOARD OF ADJUSTMENT OF THE TOWN OF CLARKDALE

In accordance with Resolution #215 of the Town of Clarkdale, and Section 38-431.02, Arizona Revised Statutes,

NOTICE IS HEREBY GIVEN THAT THE Board of Adjustment of the Town of Clarkdale will hold a REGULAR Meeting on Wednesday, October 23, 2013, at 6:00 p.m., in the Men's Lounge of the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale.

The undersigned hereby certifies that a copy of this notice was duly posted on the Town Hall bulletin board, located at 890 Main Street, Clarkdale, Arizona on the 14th day of October, 2013 at 10:00 a.m.

Dated this 14th day of October, 2013, by:

Vicki McReynolds

Vicki McReynolds
Administrative Assistant II

ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR DISCUSSION AND POSSIBLE ACTION, UNLESS OTHERWISE NOTED

1. CALL TO ORDER:

2. ROLL CALL:

3. PUBLIC COMMENT – The Board of Adjustment invites the public to provide comments at this time. Action taken as a result of public comment will be limited to directing staff to study the matter, or scheduling the matter for further consideration and decision on a later agenda, as required by the Arizona Open Meeting Law. Each speaker is asked to limit his or her comments to FIVE minutes.

4. MINUTES: Consideration of the Regular Meeting Minutes of July 25, 2012.

5. REPORTS:

- a. Chairperson's Report:
- b. Staff Report:

6. NEW BUSINESS

- a. WELCOME NEW BOARD MEMBER
- b. ELECTIONS
- c. BOARD OF ADJUSTMENT INFORMATION HANDOUT

7. FUTURE AGENDA ITEMS:

8. ADJOURNMENT:

Reasonable accommodations may be requested by contacting the town hall at 634-9591 (TTY: 1-800-367-8939) at least 72 hours in advance of the meeting.

MINUTES OF A REGULAR MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF CLARKDALE HELD WEDNESDAY, JULY 25, 2012, IN THE MEN’S LOUNGE OF THE CLARK MEMORIAL CLUBHOUSE, 19 N. NINTH STREET, CLARKDALE, AZ.

A REGULAR Meeting of the Board of Adjustment of the Town of Clarkdale was held on Wednesday, July 25, 2012, at 6:00 p.m. in the Men’s Lounge of the Clarkdale Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, AZ.

Board of Adjustment:

Chairperson	Lee Daniels	Present
Vice Chairperson	Pete Cure	Present
Board Members	Rick Morris	Present
	Craig Backus	Present
	Aaron Midkiff	Absent

Staff:

Senior Planner	Beth Escobar
Director	Jodie Filardo

Others in Attendance: Applicant-Charles Pacey.

- 1. AGENDA ITEM: CALL TO ORDER:** The Chairperson called the meeting to order at 6:00 p.m.
- 2. AGENDA ITEM: ROLL CALL:** The Senior Planner called roll.
- 3. AGENDA ITEM: PUBLIC COMMENT:** The public is invited to provide comments at this time on items that are not on this agenda. Action taken as a result of public comment will be limited to directing staff to study the matter, or scheduling the matter for further consideration and decision on a later agenda, as required by the Arizona Open Meeting Law. Each speaker is asked to limit his or her comments to FIVE minutes. **There was no public comment.**
- 4. AGENDA ITEM: MINUTES:** **Consideration of the Regular Meeting Minutes of June 27, 2012.** Board Member Backus motioned to approve the Regular Meeting Minutes of June 27, 2012. Board Member Cure seconded the motion. The motion passed unanimously.
- 5. AGENDA ITEM: REPORTS:**

Chairperson’s Report: None

Staff Report: None

NEW BUSINESS

6. AGENDA ITEM: PUBLIC HEARING: Discussion/possible action regarding a Variance request to reduce the 20-foot front setback requirement, involving parcel number 406-26-281 in the Town of Clarkdale. This parcel is located at 380 Celestial Drive in Clarkdale and zoned R-4, Manufactured Home Residential. The variance request is to reduce the required 20-foot setback from the front property line to 10 foot 9.5 inches to allow for a front porch addition.

OPEN Public Hearing: The Chairperson opened the Public Hearing.

Staff Report: Senior Planner Escobar provided a summary of the staff report:

Charles Pacey, the applicant and property owner of 380 Celestial Drive is requesting a variance to reduce the required front setback to allow for a front patio.

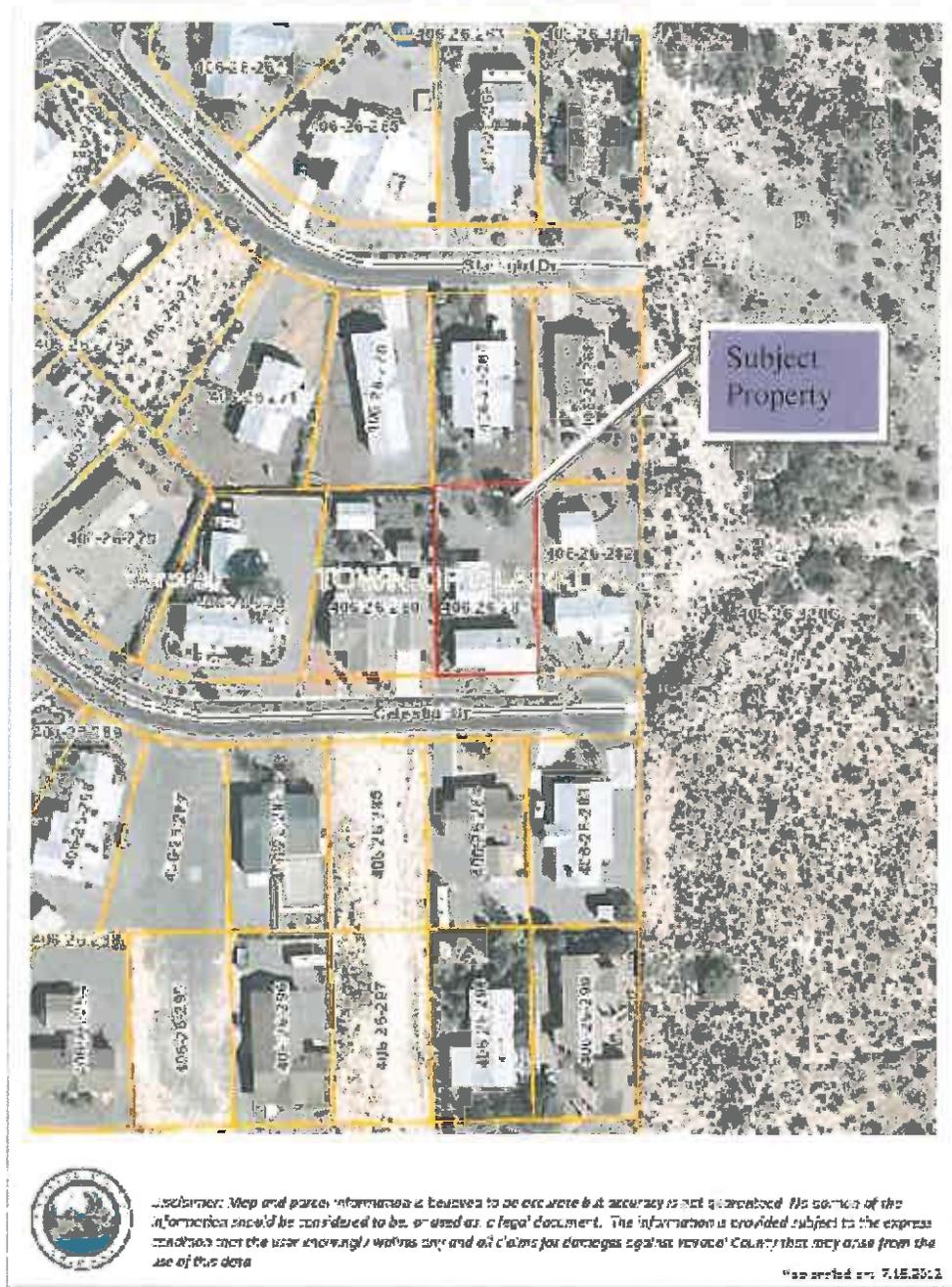
The subject property is located in the Mingus Shadows Unit 3 subdivision. There is an affixed mobile home at this property that was set in 1999. There is an approximately 500 square foot garage in the rear of the property.

The subject property is zoned R4 – Manufactured Home Residential. The front setback requirement for this zoning district is 20 feet.

In early 2011, the property owner submitted a permit for a front porch on the existing mobile home. The permit was denied by the Community Development Department because the porch as design infringed on the required 20-foot front setback. Upon a visit to the property, the Town’s Building Official noted that footings with anchor straps had been poured and a ledger was attached to the front of the home. The property owners assured the Building Official that the ledger, since it was part of the patio structure, would be removed.

On June 6, 2012, the Building Official was in the Mingus Shadows neighborhood conducting an inspection at another property, and noted a completed porch cover at 380 Celestial Drive.

The Building Official sent a notice of violation letter to the owners regarding construction of the porch cover without a permit and violation of the 20-foot front setback requirement. The property owner responded within the required time period, and filed a variance request application to reduce the required 20-foot setback. Although the plot plan submitted with the variance application indicates that the setback from the front property line to the front edge of the patio post in 12 feet, 6 inches, a field measurement by the Building Official indicates the actual measurement from the front of the post to the edge of the sidewalk, which is the front property line, is actually 10 feet, 9.5 inches.



http://gis.co.yavapai.az.us/print_image.aspx?imageID=YCMsp8415ce46-b669-4324-9ad0-... 7/18/2012

Staff Comments:

The applicant mentions in his application letter that ‘other properties have been allowed to have structures within 20 feet of the road’. Staff would point out that the side setback requirement in this zoning district is 10 feet, so it is possible that other porches and covered patios in this neighborhood are closer to the road than 20 feet because they are on the side of the home.

Subsequent to the filing of the variance, the Building Official conducted a drive through of the Mingus Shadows neighborhood and was not able to identify any other properties with visible code violations regarding setbacks. Staff has informed the applicant that we would investigate any specific property if given an address. The possibility that other code violations in this subdivision may exist, does not impact the findings listed below that the Board must use to make a determination on this variance request.

A front setback is defined in the Town’s zoning code as:

The minimum distance from the front lot line to the nearest point of the allowable principal building measured to the front lot line.

A building is defined as:

Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal process, equipment, goods or materials of any kind.

Additionally, Section 4-10, a copy of which is attached with this report, allows for various yard (or setback) encroachments for architectural features and uncovered porches. None of these exemptions apply to the subject property.

A reduction of the required 20-foot front setback to 10 feet, 9.5 inches is a reduction of 55 percent.

If the variance is approved, the applicant will be required to submit a permit application and a double permit fee would be applied since it is an after-the-fact permit. If the Board was to deny the variance request, the applicant would be required to remove the existing porch structure. A demolition permit would be required for this removal.

Board Responsibilities:

The Board of Adjustment shall have the powers and duties as prescribed by law and ordinance including, according to Town Code, Section 17-2-2 C:

“To hear and decide on requests for variances from the strict application of the Zoning Code as adopted by the Town of Clarkdale where by reason of exceptional narrowness, shallowness, shape, or topography, or a property’s location and surroundings the strict application of said standards will deprive the subject property of privileges lawfully permitted other properties in the same zone district or immediate vicinity. Decisions shall be based upon a review of the application in conformance with the following criteria:

1. **SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property which are not applicable to other properties in the area or within the same zone district. The special circumstances must be related to the physical characteristics of the property including its shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.

Staff comment: Staff does not believe there are any special circumstances that apply to the subject property.

2. **UNDUE HARDSHIP:** If special circumstances attributable to the property exist, they must be of such a nature that the strict application of the development standards will result in an undue hardship. An undue hardship exists when the strict application of the Zoning Code is so unreasonable that it renders the property unusable without the granting of a variance. Hardship relates to the physical characteristics of the property, not the personal circumstances of the property owner or applicant.

Staff comment: Staff has not identified any undue hardship related to this property. The applicant’s desire to provide shade to the front of the house could have been achieved with a roll out window shade. Rain gutters and swales could be used to direct rainwater away from the property.

3. **PUBLIC HEALTH, SAFETY AND WELFARE:** A variance may be granted only if it can be done without substantial detriment to public health, safety or welfare and without substantial departure from the intent of the standard from which relief is requested.

Staff comment: If this variance was granted, the existing porch does not have a negative impact on public health and safety.

4. **ADEQUATE FINANCIAL RETURN:** The applicant's need for an adequate financial return on investment shall not be considered justification for the granting of a variance.

Staff comment: Not applicable.

5. **SELF-IMPOSED SPECIAL CIRCUMSTANCES:** A variance shall not be granted when the special circumstances, from which relief is requested, have been self-imposed by a current or former property owner or applicant.

Staff Comment: The orientation of the home and the drainage plan for the property existed prior to the applicant's purchase of the home.

6. **USE VARIANCE:** A use variance may not be granted. (A use variance is one which would allow, as an example, a retail commercial establishment in a single family residential zone district).

Staff comment: This is not a use variance request.

The Board must consider the findings listed above in any variance approval and must be able to make the findings that are required by law.

Also, according to ARS 9-462.06, "Any variance granted is subject to such conditions as will assure the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located."

In addition, because specific questions regarding setbacks on other properties within the subdivision were raised to staff by the Applicant prior to the meeting, staff reviewed each property in question and found all properties to be in compliance.

Summary: Staff notified property owners within 300 feet of the subject property regarding the requested variance. Two responses have been received and are included in the Board Member's packets.

Applicant Presentation:

The applicant presented his position on the matter and distributed copies of support letters he had received from his neighbors to the Board Members.

Invite Public to Speak:

There was no public comment.

CLOSE Public Hearing: The Chairperson closed the Public Hearing.

Questions May Be Directed to Staff / Applicant:

Board Members requested of staff whether or not there was room for any porch covering. Staff indicated there was room to locate porch cover supports behind the setback minimum and there was also room to cantilever a porch cover beyond the supports located in the proper place. The Board also asked for clarification on the front versus side setbacks for other homes in the subdivision.

Discussion:

The Board congratulated the homeowner on the appearance of his home. They also recommended the owner work with the Town to affect a solution. The Board believes there are alternative ways to provide shade to the front of the home and meet the all zoning requirements.

ACTION: Board Member Morris motioned to deny the variance request of reducing the required 20-foot setback from the front property line to 10 foot 9.5 inches to allow for a front porch addition located at 380 Celestial Drive, Clarkdale, parcel number 406-26-281, based on the fact that no special circumstances or undue hardship are applicable to this property. Board Member Backus seconded the motion. The motion passed unanimously.

7. **AGENDA ITEM: FUTURE AGENDA ITEMS:** None at this time.

8. **AGENDA ITEM: ADJOURNMENT:** Board Member Backus motioned to adjourn the meeting. Board Member Cure seconded the motion. The motion passed unanimously. The meeting adjourned at 6:34 p.m.

APPROVED BY:

SUBMITTED BY:

Lee Daniels
Chairperson

Beth Escobar
Senior Planner

Article 17-2 BOARD OF ADJUSTMENT

17-2-1	Creation
17-2-2	Powers
17-2-3	Appeals to the Board of Adjustment
17-2-4	Date of Hearing and Notice
17-2-5	Meetings
17-2-6	Appeals From the Board of Adjustment

Section 17-2-1 Creation

The Common Council of the Town of Clarkdale does hereby create a Board of Adjustment to be composed of five (5) residents of the Town of Clarkdale. The Common Council of the Town of Clarkdale shall serve as the Board of Adjustment until such time as they are replaced by private citizens. The Board of Adjustment shall elect a Chair and Vice-Chair from among its members. The appointments to the Board of Adjustment shall be for a term of two (2) years each, with the terms of members so staggered that no more than three (3) member's terms expire in any given year. In the event of death or resignation of a member, the Common Council shall appoint a replacement to serve the unexpired portion of the term. Members shall serve without compensation.

- A. "If any member shall be absent for three (3) consecutive regular meetings, or a cumulative total of seven (7) meetings throughout the fiscal year, he or she shall automatically cease to hold membership without further action being taken by either the Commission or the Town Council. It shall be the responsibility of the Chairperson of the Board or Commission to so notify the Town Council immediately upon the creation of a vacancy pursuant to this section."

Section 17-2-2 Powers

Upon application, the Board of Adjustment shall have the powers and duties as prescribed by law and ordinance including those more specifically set forth as follows:

CHAPTER 17 BOARDS AND COMMISSIONS

- A. To hear and decide appeals in which it is alleged, by the applicant, there is an error in an order, requirement or decision made by an administrative official based on the enforcement of the Zoning Code or Chapter 7 of the Town Code.
- B. To interpret the boundaries of the zoning districts as depicted on the Zoning Map.
- C. To hear and decide on requests for variances from the strict application of the Zoning Code as adopted by the Town of Clarkdale where by reason of exceptional narrowness, shallowness, shape, or topography, or a property's location and surroundings the strict application of said standards will deprive the subject property of privileges lawfully permitted other properties in the same zone district or immediate vicinity. Decisions shall be based upon a review of the application in conformance with the following criteria:
 - 1. **SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property which are not applicable to other properties in the area or within the same zone district. The special circumstances must be related to the physical characteristics of the property including it's shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.
 - 2. **UNDUE HARDSHIP:** If special circumstances attributable to the property exist, they must be of such a nature that the strict application of the development standards will result in an undue hardship. An undue hardship exists when the strict application of the Zoning Code is so unreasonable that it renders the property unusable without the granting of a variance. Hardship relates to the physical characteristics of the property, not the personal circumstances of the property owner or applicant.
 - 3. **PUBLIC HEALTH, SAFETY AND WELFARE:** A variance may be granted only if it can be done without substantial detriment to public health, safety or welfare and without substantial departure from the intent of the standard from which relief is requested.
 - 4. **ADEQUATE FINANCIAL RETURN:** The applicant's need for an adequate financial return on investment shall not be considered justification for the granting of a variance.
 - 5. **SELF-IMPOSED SPECIAL CIRCUMSTANCES:** A variance shall not be granted when the special circumstances, from which relief is requested, have been self-imposed by a current or former property owner or applicant.

CHAPTER 17 BOARDS AND COMMISSIONS

6. **USE VARIANCE:** A use variance may not be granted. (A use variance is one which would allow, as an example, a retail commercial establishment in a single family residential zone district).

- D. To permit the extension of a nonconforming use throughout an existing structure or parcel subject to such conditions as the Board of Adjustment shall deem just and proper. Any extension of a nonconforming use shall comply with all bulk standards of the Zoning Ordinance and all development standards of other codes adopted by the Town of Clarkdale.

Section 17-2-3 Appeals to the Board of Adjustment

Appeals to the Board of Adjustment may be taken by any owner of property, any person having a contract or an option to purchase the subject property, or any agent of the above persons who may be aggrieved by a decision of any administrative officer made in the enforcement of the Zoning Ordinance or Chapter 7 or Article 12-4 of the Town Code as adopted by the Town of Clarkdale. Appeals to the Board of Adjustment may also be taken by any administrative officer, department, commission or board of the Town of Clarkdale affected by the granting, or refusal, of a permit or other decision of an administrative officer in the course of administration or enforcement of the Zoning Code or Chapter 7 of the Town Code as adopted by the Town of Clarkdale. Appeals to the Board of Adjustment must be made in writing, on forms approved by the Board of Adjustment must be made in writing, on form approved by the Board, and filed with the Planning Director within 60 days of the date of the act, or failure to act, or decision which is the cause of appeal. Every application for appeal, or variance, shall refer to the specific provision of the Ordinance from which an appeal is requested, and shall specifically set forth the interpretation which is claimed; or in the case of a variance request how and why the review criteria set forth in Section 17-2-2 above justifies the granting of a variance. An appeal stays all enforcement proceedings until a final decision is reached by the Board of Adjustment. Decisions of the Board shall be filed by case number, under one of the following headings, appeals or variances; and case files shall be kept in the Planning Department.

Section 17-2-4 Date of Hearing and Notice

All hearings of the Board of Adjustment upon any appeal shall be held no sooner than 20 days from the date of application for appeal. Notification of the hearing shall be published once in a newspaper of general circulation in the area not less than fifteen (15) days prior to the date of hearing. In addition, notice shall be posted on the property affected, when applicable, in a manner readily visible to the general public.

CHAPTER 17 BOARDS AND COMMISSIONS

Section 17-2-5 Meetings

Meetings of the Board of Adjustment shall be conducted in the manner prescribed in the most current "Bylaws-Board of Adjustment" as adopted by the Board of Adjustment and approved by the Common Council of the Town of Clarkdale.

Section 17-2-6 Appeals From the Board of Adjustment

Any person aggrieved by a decision of the Board of Adjustment may, at any time within thirty (30) days after the Board has rendered a final decision, file a complaint with the Superior Court, Yavapai County, State of Arizona, to review the decision of the Board of Adjustment. Filing a complaint does not stay any proceedings on the decision sought to be reviewed, but the court may, upon petition by the applicant, grant a stay. On final decision the Superior Court may approve or reverse, whether in whole or in part, or may modify the decision of the Board.