

MINUTES OF A REGULAR MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF CLARKDALE HELD WEDNESDAY, JULY 22, 2015, 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 July 22, 2015, at 6:00 p.m. in the Men's Lounge of the Clark Memorial Clubhouse, 19 N. Ninth Street, Clarkdale, AZ.

Board of Adjustment:

Chairperson	Lee Daniels	Absent
Vice Chairperson	Rick Morris	Present
Board Members	Aaron Midkiff	Present
	John Kinnamon	Absent
	Peter deBlanc	Present

Staff:

Building Official	Paul Grasso
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Others in Attendance: Applicant - Town of Clarkdale Police Chief Randy Taylor and Mr. Rob Weisenberger, a representative from Creative Com. Applicant Jeffrey Swartz.

AGENDA ITEM: CALL TO ORDER: The Vice Chairperson called the meeting to order at 6:00 p.m.

AGENDA ITEM: ROLL CALL: The Building Official called roll.

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.**

AGENDA ITEM: MINUTES: **Consideration of the Regular Meeting Minutes of June 24, 2015.** Board Member Midkiff motioned to approve the Regular Meeting Minutes of June 24, 2015. Board Member deBlanc seconded the motion. The motion passed unanimously.

AGENDA ITEM: REPORTS:

Chairperson's Report: None.

Staff Report: Building Official Grasso mentioned that there were two Board Member terms expiring. The paperwork to renew was distributed to Board Members deBlanc and Midkiff.

NEW BUSINESS

AGENDA ITEM: PUBLIC HEARING: Discussion/Possible Action: A Variance request to reduce the 20-foot rear setback requirement to allow the placement of a patio cover involving parcel number 406-29-258 in the Town of Clarkdale. This parcel is located at 1960 Wildflower Lane and zoned R-1 Single-Family Residential. The variance request is to reduce the required 20-foot rear setback from the property line, per section 3-1-I of the Town of Clarkdale Zoning Code, to 10 feet from the rear of the property.

a. **OPEN Public Hearing:** The Vice Chairperson Morris opened the Public Hearing.

b. **Staff Report:**

Building Official Grasso stated that Mr. Swartz visited the Community Development Department several weeks ago to discuss the rear patio cover at his property. Upon reviewing the property file, it was determined that the rear setback followed exactly the shape of the existing rear patio cover. The design of the home with the patio exactly on the lot line would make it difficult for Mr. Swartz to improve the existing patio cover and to protect the rear portion of his home. The shape of the lot also appeared to be a factor.

Mr. Swartz completed the application for the Board of Adjustment. Once received, the newspaper notification was published, the property was posted, and the neighbors within 300' of the parcel were notified by mail. Two parties contacted the Community Development Department expressing that they had no issue with the variance request.

Background:

Jeffrey Swartz, the applicant and property owner of 1960 Wildflower Lane, would like to construct a patio cover in the backyard of the subject property.

The subject property is located in the Mingus View Estates subdivision. The single family home, approximately 2100 square feet, was constructed in 1999, and purchased by the applicant in 2004. The subject property is approximately 12,200 square-foot and located at the southwest corner of Wildflower Lane and Casner Drive.

The plot plan of lot 63 shows that the original placement of the home is up against the rear setback. This prohibited the original patio cover to be rectangular, instead being designed to match the required rear setback.

**BOARD OF ADJUSTMENT
JULY 22, 2015**

The applicant would like to replace the substandard existing patio cover, which has an open lattice design that has outlived its usefulness, with a new properly constructed solid roof. The applicant is asking the Board grant this variance request to allow for a rectangular patio cover, thereby reducing the 20' rear setback to 10'.

Staff Comments:

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

“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 is 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: It appears that the original placement of the home was done due to the odd shape at the rear corner, and the placement of the septic tank and leech lines. Historically, corner lots prove to be challenging, as competing setbacks come into play.

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: This property would not be rendered unusable should this application be denied.

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 is granted, the new patio cover would be constructed in full compliance with the building code.

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: As stated in the applicant's letter of intent, the Swartz family desires to improve the use of their backyard for the enjoyment and safety of their family.

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: It appears that the special circumstance that impacts this property was created when the subdivision was platted.

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: No use variance is being requested.

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."

Summary:

Per section 17-2-3 of the Town of Clarkdale Town Code, notification of this hearing was published once in the Verde Independent on July 8, 2015. In addition, notice was posted on the subject property, and letters were mailed to those property owners within 300 feet of the subject property notifying them of the requested variance.

Two property owners contacted the office by phone stating that they had no objection to the granting of this variance.

c. Applicant Presentation:

Mr. Swartz spoke to the group explaining that the irregular shape of the patio cover made it difficult to protect the two rear doors of his home; so much so that he had to replace both doors at great expense. He explained that the patio cover should be replaced with a properly constructed one that would enhance the use of the area without creating a nuisance for his neighbors. He also stated that his neighbors expressed agreement to the proposed change in the design of the patio and the extension into the setback.

d. Invite Public to speak:

No members of the public were present.

e. CLOSE Public Hearing: The Vice Chairperson Morris closed the Public Hearing.

f. Discussion:

Vice Chairperson Morris asked Building Official Grasso whether the site had special circumstances that could have been prevented when the home was originally built. Mr. Grasso explained that it appeared that the location and shape of the lot and the placement of the septic tank and leech lines made it appear that the home was located without taking advantage of the front setback. The homes along Wildflower are staggered along the front setback, with this parcel being placed more to the rear than the neighboring parcel. Board Members deBlanc and Midkiff asked if the rear lot line adjustment was all encompassing and if a variance were to be approved, could Mr. Swartz or a future owner modify other portions of the structure to 10' from the property line. Vice Chairperson Morris also stated that he felt that if approved, the Town should be clear exactly what could and couldn't be constructed.

Building Official Grasso explained that the Board could approve a variance with the stipulation that the approval was for the patio cover only. The wording of the approval would be specific and become part of the permanent property file. Mr. Swartz commented that he had no issue with the stipulations.

Board Member Midkiff commented that the action the Board would like to take would be an encroachment to the rear property setback and not a blanket approval to the adjustment of the rear property setback. Vice Chairperson Morris and Board Member deBlanc agreed.

ACTION: Board Member Midkiff motioned to approve an encroachment of ten feet into a portion of the rear yard setback for the construction of a patio cover at 1960 Wildflower Lane as requested, based on Special Circumstances.

Board Member deBlanc seconded the motion. Vice Chairperson Morris called the matter to vote with the motion passing unanimously.

AGENDA ITEM: PUBLIC HEARING: Discussion/Possible Action: A variance from Section 3-11.C.6 of the Town of Clarkdale Zoning Code restricting the height of a wireless communication tower to a 65 foot maximum This variance is being requested to allow the installation of a 2.72 inch diameter public safety repeater antenna to exceed the maximum permitted height by approximately 60 inches (5 feet). This property is located at 1450 SR 89A, assessor parcel number 406-26-010Y.

a. **OPEN Public Hearing:** The Vice Chairperson Morris opened the Public Hearing.

b. **Staff Report:**

Building official Grasso explained the history of the CUP by the Planning Commission, and the approval by the Town of Clarkdale Town Council. Also, the fact that the Clarkdale Fire District, and the Clarkdale Police department had hoped to use part of the approved tower for a public safety antenna. Mr. Grasso also reported that the property had been posted with notice, the surrounding property owners within a 300' radius were notified by mail, and the newspaper publication was made.

Background:

Pursuant to Section 3-11 of the Town of Clarkdale Zoning Code, initially the Town of Clarkdale received a Conditional Use Application requesting permission to install a 65-foot cellular tower and a supporting facilities building on Yavapai County Parcel Number 406-26-010Y at 1450 SR 89A in Clarkdale.

Notices of the public hearing regarding the CUP application were mailed to 108 property owners within 1,000 feet of the subject property. Per state statute, the Town is required to notify property owners within 300 feet. The Community Development Department policy is to extend the notification distance to 1,000 feet for all public hearing items. The public hearing notices were mailed on Wednesday, February 11, 2015.

Included with the public hearing notice was information regarding the neighborhood meeting hosted by the applicant on Tuesday, February 17, 2015.

Two legal notices of the public hearing were published in the Verde Independent on February 15 and March 1, 2015. The Zoning Code requires only one legal notice be published.

In addition, the property was posted at two locations on February 27, 2015 with information regarding the public hearing.

On February 17, 2015, the Planning Commission conducted a site visit of the requested location to view a balloon installed on the location at a height and of a dimension to approximate the visual impact of the cell tower being proposed.

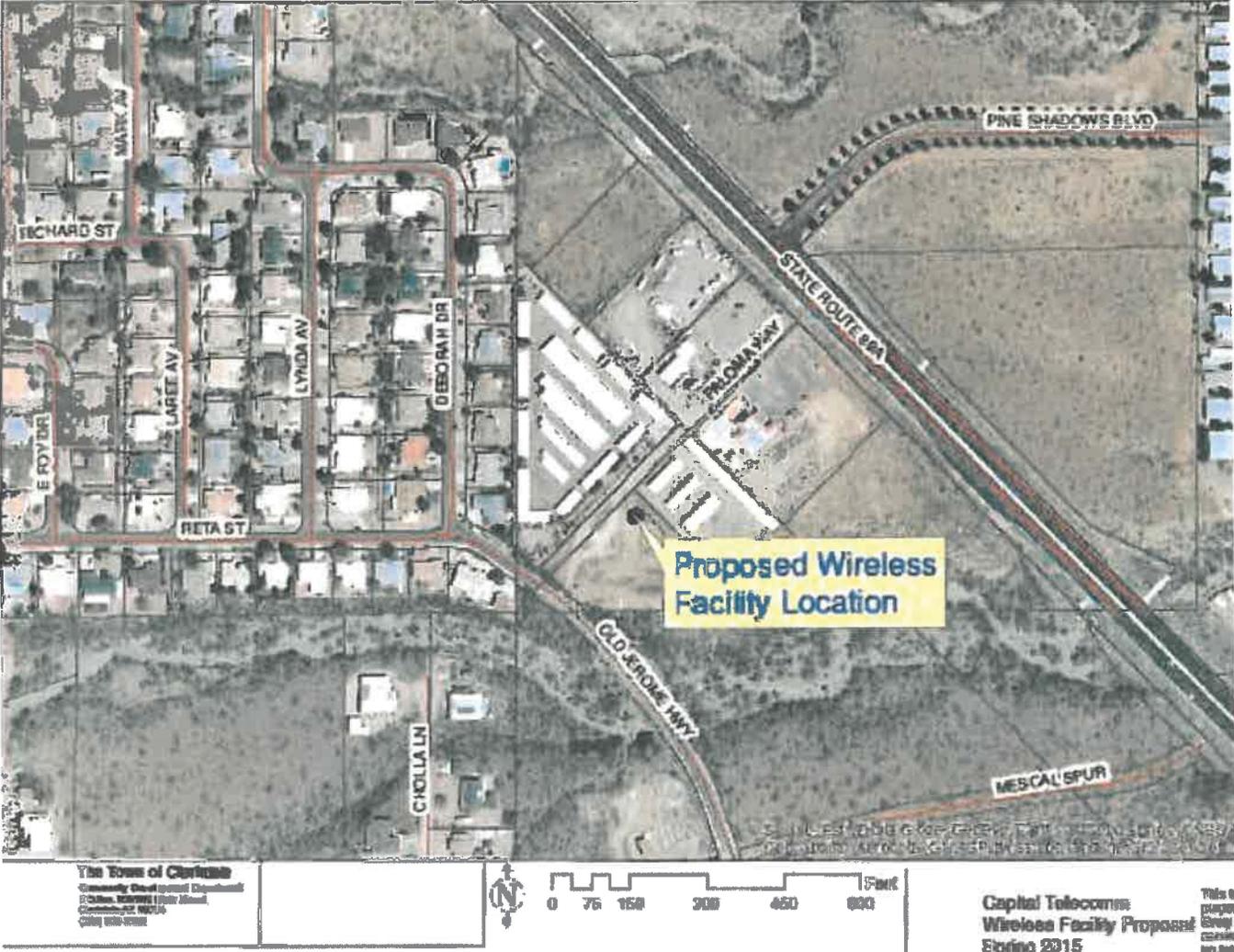
**BOARD OF ADJUSTMENT
JULY 22, 2015**

On March 17, 2015, the Planning Commission then considered the CUP application in a Public Hearing. At that meeting 19 members of the public spoke in opposition to the application. 3 members of the public were in support of the application. The Planning Commission recommended the application move forward to the Town Council for consideration with the following stipulations:

1. A building permit be issued prior to construction of the facility
2. No lighting other than motion sensor emergency lighting described in the staff report be installed.
3. All components of the facility shall be removed at the expense of the applicant/property owner if the facility is decommissioned and not used for 180 consecutive days.
4. Any substantial change to the project dimensions by more than 10 percent of the design of the facility as approved will require an additional Conditional Use Permit application.
5. The applicant will grant an easement to public safety entities for placement of repeaters on the tower to enhance communications. The applicant, at their expense will prewire the proposed cell tower for ease of future installation of these repeaters. Design and installations shall be coordinated with a vendor designated by the Clarkdale Police Department
6. The applicant will participate in facilitating broadband infrastructure development in the Verde Valley as opportunity arises.
7. The applicant shall improve the Town right-of-way along the western boundary of the subject property including engineering, design, and installation of a finished road.

On May 12, 2015 the Clarkdale Town Council considered this application in public hearing. Notices were sent out to the 108 surrounding property owners within 1000 feet of the subject property. Twenty seven members of the public spoke with 3 people for the approval and 24 against.

The Town Council unanimously approved the CUP with the stipulations presented. The Town of Clarkdale Police Department and the Clarkdale Fire District have been granted space for a repeater antenna on the approved tower by Capital Telecom as stipulated by Town Council. The proposed antenna would be installed at the top of the monopole so as to not interfere with the equipment Capital Telecom is installing. Because the overall height of the tower including the antenna exceeds the maximum height allowed per section 3-11.c.b of the Town of Clarkdale Zoning Code, the application for a variance is before the Board of Adjustment for consideration.



Staff Comments:

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:

- SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property which is 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: This location is the only currently proposed cell tower site located within the Town of Clarkdale town boundaries, and additional public safety cellular support would be provided with the installation of this antenna.

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: This property would not be rendered unusable should this application be denied.

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: The addition of this antenna will improve the communications capability for public safety organizations supporting Clarkdale.

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: As stated in the applicant's letter of intent, the antenna proposed by Town of Clarkdale would enhance the safety of the public. There is no additional financial return Capital Telecom with the installation of this antenna.

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: There are no self-imposed special circumstances in regard to this property or applicant.

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: No use variance is being requested.

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.”

Summary:

Per section 17-2-3 of the Town of Clarkdale Town Code, notification of this hearing was published once in the Verde Independent on July 8, 2015 In addition notice was posted on the subject property and letters were mailed to those property owners within 300 feet of the subject property notifying them of the requested variance.

c. Applicant Presentation:

Clarkdale Police Chief Taylor explained the need for both better and expanded coverage for not only his department, but to communicate with surrounding municipalities.

d. Invite Public to speak:

No public was present. Building Official Grasso stated that one citizen who was notified by mail called to ask if the Cottonwood Airport had been notified of the variance request and if so, were they opposed or for the variance to add the antenna.

e. CLOSE Public Hearing: The Vice Chairperson Morris closed the Public Hearing.

f. Discussion:

Vice Chairperson Morris asked why the original CUP and Council approval hadn't included the public safety antenna on top of the tower. Mr. Weisenburger explained that although the antenna was part of the process all along, the placement at the top and the height of the proposed antenna was not known. Board Member Midkiff commented that the CUP had a stipulation that if the approved height was modified more than 10%, that the change would have to be brought back to the Planning Commission. The Board agreed that the 5' change in height was less than the 10% of the approved tower height of 65'. Vice Chairperson Morris asked if the question posed from the citizen about the airport had been answered. Both Chief Taylor and Mr. Weisenburger stated that Mr. Morgan Scott from the Cottonwood Airport had no issue with the placement of the antenna at the proposed location.

BOARD OF ADJUSTMENT
JULY 22, 2015

ACTION: Board Member deBlanc motioned to approve the addition of a 60” tall antenna to the approved 65’ cell tower located at 1450 SR 89A as requested, based on Special Circumstances.

Board Member Midkiff seconded the motion. The motion passed unanimously. Vice Chairperson Morris called the matter to vote with the motion passing unanimously.

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

AGENDA ITEM: ADJOURNMENT: Board Member deBlanc motioned to adjourn the meeting. Board Member Midkiff seconded the motion. The motion passed unanimously. The meeting adjourned at 7:10 p.m.

APPROVED BY:



SUBMITTED BY:



Paul Grasso
Building Official

