

MINUTES OF A REGULAR MEETING OF THE BOARD OF ADJUSTMENT OF THE TOWN OF CLARKDALE HELD JANUARY 28TH, 2004 AT 6:00 P.M. IN THE MEN'S LOUNGE OF THE CLARK MEMORIAL CLUBHOUSE, 19 N. NINTH STREET, CLARKDALE, ARIZONA.

A regular meeting of the Board of Adjustment of the town of Clarkdale was held on January 28th, 2004, at 6:00 p.m. in the Men's Lounge.

Chairperson	Robert Noland	Present
Vice Chairperson	Jerry Wiley	Present
Board Members	Charles Bennett	Present
	Duane Norton	Present
	Frank Sa	Present

Staff:

Planning Director	Steven Brown
Administrative Assistant	Linda Noland

Others in Attendance: Beth Escobar, Georgia Sa and Rick Littell.

CALL TO ORDER: Chairperson Mr. Noland, called the meeting to order at 6:00 p.m. Roll was called, a quorum was present.

APPROVAL OF MINUTES: Chairperson Mr. Noland asked for a motion to approve the minutes of the regular meetings of November 26th, 2003, and December 24th, 2003. Vice Chairperson Jerry Wiley: made a motion to accept the minutes as submitted. Board Member Frank Sa: seconded the motion. The motion passed unanimously.

PUBLIC COMMENT: None

CHAIRPERSON'S REPORT: None

PLANNING DIRECTORS REPORT: Planning Director, Steven Brown stated he would give his report when it was time for Item #2.

NEW BUSINESS

PRESENTATION ON PROPOSED CLARDALE FIRE DISTRICT

Beth Escobar, Fire District Formation Coordinator handed out fliers on the Fire District Formation Facts and gave a short presentation. Beth stated the advantages of a Fire District are:

- A better level of service through improved staffing levels, training and safety procedures.
- Ability to provide career growth opportunities and retain trained employees.
- The district board is a public, elected body, required to hold public meetings and maintain records for public inspection and is directly responsible to the taxpayers.
- Allows revenue for the Town of Clarkdale to be allocated in other critical areas
- Has the ability to meet the service needs of the community as the area grows.

The impact on the community would be increased tax obligation for property owners, shifts control of the fire and emergency services from the Town to a locally elected board and shifts liability exposure from the Town to the Fire District.

Beth stated the proposal went before the Council Tuesday, January 13, 2004 and the Council approved the ordinance to form the Fire District. The proposal now goes before the County Board of Supervisors for their approval. If approved it could increase the tax levy by 1.634%.

Boar Member, Duane Norton, stated that he would like to see more information on the formation of the Fire District and how the costs are coming together. Mr. Norton: made a motion that the people responsible for putting the Fire District together, give the Board more information so that they can evaluate how the district is put together and how is prepared. Board Member Mr. Wiley: seconded the motion. The motion passed unanimously.

CONSIDERATION AND POSSIBLE ACTION ON APPEAL BY RICK LITTELL OF 390 RIVER DRIVE IN THE TOWN OF CLARKDALE OF AN INTERPRETATION BY THE ZONING ADMINISTRATOR REQUIRING COMPLIANCE WITH SECTION 17.M OFF STREET PARKING AND LOADING, WHICH REQUIRES A MINIMUM 20 FOOT DRIVEWAY WIDTH BE PROVIDED TO SERVE AS ACCESS TO REQUIRED OFF STREET PARKING.

Planning Director, Mr. Brown, read is staff report, which follows:

MEETING DATE: 11/17/03
REPORT BY: Steven L. Brown

PARCEL NUMBER: 400-02-005P

AGENDA ITEM: *Appeal by Rick Littell of 390 River Drive in the Town of Clarkdale, Arizona, of an interpretation by the Zoning Administrator requiring compliance with Town of Clarkdale zoning Code Section 17.M “Off Street parking and Loading”,*

which requires a minimum 20 foot driveway width be provided to serve as access to required off street parking.

STAFF REVIEW:

Background:

On April 30, 1987, the Town of Clarkdale issued a Building Permit to Mr. Littell, for the Setting of a mobile home at 390 River Road.

On July 3, 2002, Mr. Littell applied for and on September 11, 2002 was issued a permit for the remodel of the mobile home.

On December 30, 2002, the Building Inspector sent a letter to Mr. Littell, informing him Of the fact that the Town was aware that he had demolished the mobile home, and that scope of the remodel project had grown to the point to a complete new stick built home. The Inspector also informed Mr. Littell that the Town now considered this a new stick built home, and the fee would need to be adjusted.

On April 1, 2003, the town issued a building permit for the new residence. It was at this time that the question of the issue of access to the new residence came to the attention of the Planning Department. Mr. Littell was informed that before we could issue a Certificate of Occupancy for the residence, Mr. Littell would have to demonstrate that he had provided the necessary access for off-street parking, and that this access met the minimum fire fighting apparatus access requirements as set forth in the 1997 Uniform Fire Code. The Code requires a minimum of 25-foot easement and a 20 foot cartway that is capable of supporting up to 50,000 pounds of GVW. Additionally at the end of driveways in excess of 150 feet, a turn-around with a minimum radius of 38 feet is required.

The property is currently accessed by a narrow lane (under 12 feet) that is over 150 feet in length and is not provided with an adequate turn-around at its terminus on the property. The access therefore does not meet at least three Code requirements. Planning Director, Steven Brown made a correction to this statement stating he had been to the site with the Fire Chief on Monday the 26th, drove down to the lane and while the Fire Chief agreed with everything up to this point and when they got to the property and if they could get in there, the turn around would be adequate. The Fire Chief felt the difficulty would be getting the vehicle down the narrow lane. Mr. Brown stated there is a structure on the lane to the left, which leans into the lane and it was felt the buffers would get stuck at that point and wouldn't be able to proceed.

Along with his 1987 permit application, Mr. Littell included a copy of the deed for his property. That deed describes, among other things an easement 20 feet wide. It is not clear whether that easement describes the lane that currently provides access to the property.

Mr. Littell has also indicated that he has had discussions with his neighbors in an attempt to gain an easement from them along the lane that currently provides access, but that these talks had not born fruit.

Mr. Littell has indicated that his neighbor has agreed to allow him to use his property as access, but without a formal easement, the Code requirements are not met.

Mr. Littell has sought relief from the Zoning Administrator's decision to require the 20 foot access for off-street parking, but even if granted this will not relieve his need to meet the minimum fire access required.

Mr. Brown also stated that he had spoken to APS and they sent information that details easement for a transformer pad on the property which is recorded.

Mr. Little also provided a letter from one of his neighbors indicating their willingness to provide the fire department access to a common fence line in order to fight the fire. The Fire Chief, indicated they need a permanent easement to provide access so we know it can't be extinguished by the whims of the property owner. If that property owner would grant a permanent easement that would suffice and the Chief also stated that if they were fight a fire there today, they would go there and fight the fire with or without the property owners consent.

RECOMMENDATIONS:

The Board could determine that the applicant is required to meet the requirements of Section 17.M of the Town of Clarkdale Zoning Code, or;

If the Board decides to overrule the Zoning Administrator in this case, they should make the following finding in doing so.

“The Zoning Administrator erred in his interpretation of Section 17.M of the Zoning Code of the Town of Clarkdale, and this applicant is not required to provide a minimum 20 foot access for off-street parking. Furthermore, the Board makes this finding with full knowledge of the requirements of the Uniform Fire Code with regard to fire fighting apparatus access minimum requirements, and the fact that this applicant does not meet that standard.”

Rick Littell, 390 River Drive, Clarkdale, Arizona. Mr. Littell stated this all began as an addition to his mobile home, which had been there since 1987. Mr. Little stated the process had gone through zoning and was approved. Nothing was said about the easement. He then put a roof over the mobile and decided not to have a 1962 mobile in the middle of the structure. He talked with Brian Pearson who was the inspector at the time. He agreed with Mr. Littell and said that he would adjust the permit fee and gave Mr. Littell a letter stating the adjustments to the fee. Mr. Little went on with the project based on the new fees. Mr. Little stated that Brian left the Planning Department and that he,

Mr. Littell needed another permit. At that time he was told that he needed more access to the property. He has tried diligently to do that. He talked with his neighbors owning the property next to him. Four brothers own it. Three of which agree to the easement and one is against granting the easement. This property is on the left hand side of Mr. Littell's property. There is a shed on the proposed easement and part of that shed would have to be torn down and the transformer would have to be moved. Mr. Little stated that he was told by the previous Planning Director, Lyle Richardson, that the Fire Chief said if they could get up to the property, the hoses would be sufficient. (This was a previous Fire Chief).

Mr. Littell stated he moved forward, removed the mobile, and got a bank loan. He felt he was committed at that time. He moved forward based on what the town official, Brian Pearson told him, stating he needed a permit adjustment.

Mr. Littell shared with the Board his cancellation notice and non-renewal on his construction insurance. His National Bank construction loan is due and he needs to get a permanent loan and barely has enough time to do that before the construction loan is due.

Mr. Littell stated that he has a 10 foot easement, but it is unclear whether this is a recorded easement or not.

Mr. Sa stated he had visited the property and noticed new survey stakes showing the property corners and the lots are identified on both sides, stating there is no property corner indicating an easement. The property corner is marked where the water meters and the gas meters. Mr. Sa asked when the survey was done. Mr. Littell stated that Dale Hicks, another property owner had the survey done. Mr. Sa stated the stakes he saw indicated Mr. Hicks property and the other property, which Mr. Littell is in back of. There is no showing of an easement. Mr. Sa stated that Mr. Brown talked with APS about their easement. APS has an easement for the pad, but no easement to get to the pad, Mr. Sa stated there is a conflict on property lines.

Mr. Brown stated the town has liability to look out for and that the applicant is not without recourse. Stating if the Board finds they can't reverse Mr. Brown's decision, there is also recourse to Superior Court. If the Superior Court finds the town erred in some way then the liability no longer falls on the town. Mr. Brown stated he would not deny that there have been some errors made by the staff in the past in proceeding with this construction. To compound these errors, Mr. Brown could not justify that and this is why he brought the issue before the Board.

Mr. Norton asked if the building which needs to be moved, is being used for anything. Mr. Littell stated that 10 feet of the building is being used for storage and somebody is living in the rest of the building.

Mr. Noland stated his point on the letter submitted from the property owner was, that at any time, without a recorded easement the property owner would have the right to

construct a building in that area, they could sell the property to a new owner, and it is not a recorded easement and the new owner could say “no” and use the property for his own use. Mr. Noland stated that if Mr. Littell could get a legal, recorded easement through their property stating the easement could not be built on or blocked in anyway, Mr. Noland felt the Board would look differently at the situation.

Mr. Brown stated that he had spoken with the Town Attorney about this case. The Town Attorney stated that Mr. Littell would be in his rights to get an attorney and seek a prescriptive easement against one of those neighbors and compel them to provide an easement to him. According to the Town Attorney Mr. Littell has a “Land Locked” parcel and there is a legal avenue to compel someone to give him a prescriptive easement to access his property. The costs will fall on Mr. Littell.

Mr. Sa: made a motion to accept Mr. Brown’s interpretation and to uphold the Town’s Code, requiring a minimum 20 foot access for off-street parking in accordance with Section 17.M of the Town of Clarkdale Zoning Code. Mr. Wiley: seconded the motion. The motion passed unanimously.

ADJOURMENT

With no further business to discuss the meeting was adjourned at 7:10 p.m.

Approved By:

Submitted By:

Robert Noland
Chairperson

Linda Noland
Administrative Assistant