

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ADJUSTMENTS  
OF THE TOWN OF CLARKDALE HELD WEDNESDAY, FEBRUARY 23, 2005,  
AT 6:00 P.M. IN THE MEN’S LOUNGE OF THE CLARK MEMORIAL  
CLUBHOUSE, 19 N. NINTH STREET, CLARKDALE, AZ**

A regular meeting of the Board of Adjustments of the Town of Clarkdale was held on February 23, 2005, at 6:00 p.m. in the Men’s Lounge.

**Board of Adjustments:**

Chairperson	Richard Dehnert	Present
Vice Chairperson	Lee Daniels	Present
Board Members	Anita Simgen	Present
	Duane Norton	Present
	Charles Bennett	Absent

**Staff:**

Community Development Director	Steven Brown
Planning Manager	Beth Escobar
Planner II	Normalinda Zuniga
Administrative Assistant	Charlene Stockseth

**Others in Attendance:** Lorraine and Vilas Warbalow, Charles Montgomery

**1. CALL TO ORDER/ROLL CALL**

**2. MINUTES:** The minutes of September 8, 2004, were approved as written.

**3. REPORTS:**

**Chairperson’s Report:** The Chairperson stated that the meeting with Council February 22, 2005, was very educational meeting. Planning Manager Escobar stated the meeting went very well. The Council expressed their appreciation for the Board of Adjustment’s hard work and dedication.

**Staff Report:** Planning Manager Escobar explained why Item 5, under New Business was on the agenda again. During the last meeting of September 8, 2004, election of chair and vice-chair was held, however, the election was not on the agenda. An item cannot be discussed without it being on the agenda. The ratification allows the board to elect at this meeting.

**4. PUBLIC COMMENT:** No public comment.

## NEW BUSINESS

5. **RATIFICATION OF CHAIR AND VICE –CHAIR ELECTION:** Board Member Daniels nominated Board Member Norton as Chair. Board Member Simgen seconded the motion. The nomination was unanimous. Board Member Norton nominated Board Member Simgen as Vice-Chair. Board Member Dehnert seconded the motion. The motion was unanimous.
  
6. **PUBLIC HEARING on a Variance Request by Charles Montgomery for the Highland Village Apartments located at 1200 Lanny Avenue, #13, in the Town of Clarkdale, otherwise identified as Yavapai County assessor’s parcel #406-26-015. The variance seeks relief from Section 11.E.3 of the Town of Clarkdale’s Zoning Code to allow an additional 14 apartment units on .98 acres. Section 11 of the Zoning Code provides the zoning for Multiple Family Residential (R3).**

The Chair opened the public hearing.

The Chair asked the applicant, Charles Montgomery, if he would like to give a presentation to the Board. Mr. Montgomery thanked the Board for the opportunity to present his request. Mr. Montgomery stated that he had just purchased this property four months ago. The parcel is zoned for apartments. Mr. Montgomery also owns the nearby mini storage buildings. When the existing apartments were built in 1984, 47 were developed on all but .98 acres of the parcel. The .98-acre is located between a mini-storage and the high-density apartments and the Lamplighter Village. That acreage does not have its own access. The applicant stated that you need to go through the apartment complex to get to the .98 acre in question. Mr. Montgomery does not feel this acreage is a good location to build a large home. Mr. Montgomery would like to build 14 (or less) more apartments on that acre. Mr. Montgomery feels this area is landlocked and his dilemma is how to best utilize this property. Mr. Montgomery was told when he purchased the property that he could build more apartments, but found that he was not able to because it is all one piece of property and because of the existing density.

**Staff Report:** Planning Manager Escobar stated the applicant has submitted a variance request seeking relief from Section 11.E.3 of the Town of Clarkdale’s Zoning Code. Section 11 of the Zoning Code provides that zoning for Multiple Family Residential (R3). Section 11.E.3 states:

*“E. Minimum Lot Size:  
3. 3,000 sq. ft. per unit for apartment structures, with a minimum of  
18,000 sq. ft.”*

The total square foot of the property in question is 146,253 square feet. There are currently forty-seven existing apartment units on this property. The number of allowable units for this property is forty-eight. (146,253 divided by the minimum

square foot requirement of 3,000). The existing forty-seven units are clustered on 103,475 square feet of the property.

The Building Inspector for the Town of Clarkdale issued a Certificate of Occupancy in 1986.

As the property currently exists there are .98 acres, or 42,778 square feet of undeveloped area without any structures. The as-built for this property indicates that this area is used as a detention pond for drainage. The applicant is seeking a variance so that he can place an additional 14 apartment units on this .98 acre.

### Recommendation

If the Board decides to grant this variance application, they must indicate on which of the following findings they are basing their decision. Staff interpretation of the applicability of these findings is noted in italics.

**1. SPECIAL CIRCUMSTANCES:** There are special circumstances attributable to the property that 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 it's shape, size, topography, location or surroundings and may not be related to the personal circumstances of the property owner or applicant.

*Staff does not believe that any special circumstances apply to this parcel and that the zoning regulations are being applied the same to this parcel as any other parcel zoned R3.*

**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 believes that the parcel is currently fully functional as is, and no undue hardship interpretation of the Zoning Code.*

**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 does not identify any detrimental impact to public health, safety and welfare if this variance was granted.*

**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 agrees with applicant's statement regarding this finding.*

**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 of applicant.

*The property existed in its current condition prior to purchase by the applicant.*

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

*Use Variances are illegal in the State of Arizona.*

Planning Manager Escobar also stated an email had been received from Mr. Darryl Macey, owner of the Lamplighter Village. Mr. Macey's property is Northwest of the property in question. Mr. Macey expressed his concerns with the variance request. The drawing Mr. Montgomery submitted shows two story buildings directly behind several lots on Rural 1. Such a building would present a very congested appearance to the homeowners in Lamplighter Village. As you know at Lamplighter Village we enjoy a much lower density with larger lots, specifically only 126 units on 20 acres. It would deny those above-mentioned homeowners the rural atmosphere they have enjoyed for over 30 years if a two-story building was placed so close to our lots. Mr. Macey stated he would appreciate the email being brought to the attention of the Board of Adjustments.

The Chair closed the public hearing.

Board Member Daniels questioned the detention pond that is on the property. The Community Development Director stated the Board could only address the variance request. If the variance were approved, the Site Plan Review and Design Review would address this issue.

Board Member Dehnert questioned the applicant's adequate financial return. The applicant stated on his application "Applicant does not need the variance

to realize adequate financial return. Highland Village is already a fully functioning, well-managed, and profitable apartment complex and storage facility.”

Chair Norton questioned whether this request was in conformance with the General Plan. The Community Development Director stated that it was. It has been in existence since 1986. The General Plan that we are currently operating under is dated 2002. It is considered pre-existing use. The general plan indicates commercial development in that area and multifamily is considered commercial use.

Chair Norton asked if, under special circumstances, the applicant’s statement was unique to the area or do we have other parcels that would be potential variance issues in the future. Planning Manager Escobar stated there are very few R-3 parcels that are built out. The area surrounding this parcel had a variety of zoning, the parcels that are to the North that front along Hwy 89A are zoned commercial, parcels along Lisa are zoned residential and then Lamplighter Village is R-4, which allows for manufactured homes in a mobile home park. Planning Manager Escobar stated she was unaware of any other R-3 sites that would request a variance. Chair Norton stated he wanted to make sure the Board is fair in reviewing the request.

The Chair reopened the public hearing. Vilas Warbalow, 740 Lisa Street, stated his son, Peter, owned the home and lives in Wisconsin. The son was concerned about what was going on. Mr. Warbalow felt with additional apartment buildings it would be over crowded with the amount of apartments the applicant wants to add.

The applicant, Mr. Montgomery, stated there are special circumstances applicable to this property that are not applicable to other properties in the same zoning. In fact, there are very few properties that are zoned R-3. This is a unique property and it has unique circumstances of having all the buildings put on one part and now there is this vacant acreage that is landlocked, surrounded by high-intensity uses and no way to develop the property unless the variance is granted. Mr. Montgomery stated he believes that there truly are special circumstances applicable to the property. There is a hardship in not granting the variance because it precludes any use of the property whatsoever except to stay as a large vacant lot. There is nothing wrong with vacant land, but this is in an area where it’s fully developed on all three sides around it. Mr. Montgomery also stated what he is proposing is that we simply finish developing this whole parcel by putting apartment buildings at the same density as on the lower portion of the property. Mr. Montgomery stated he wouldn’t even mind having a slightly lower density by having even one story buildings. Mr. Montgomery stated he understood and appreciate the concerns of the people in Lamplighter Village, but would point out that this property is six to eight feet lower than theirs so even a two story

building would not loom large. Mr. Montgomery stated he is also quite willing to move things around or putting a 30' setback to be a good neighbor. The applicant stated he thinks it does warrant variance findings.

The Chair closed the public hearing.

**7. CONSIDERATION AND POSSIBLE ACTION on a Variance Request by Charles Montgomery for the Highland Village Apartments located at 1200 Lanny Avenue, #13, in the Town of Clarkdale, otherwise identified as Yavapai County assessor's parcel #406-26-015. The variance seeks relief from Section 11.E.3 of the Town of Clarkdale's Zoning Code to allow an additional 14 apartment units on .98 acres. Section 11 of the Zoning code provides the zoning for Multiple Family Residential (R3).**

Discussion continued regarding any other alternative solutions.

Board Member Daniels motioned the variance be denied. Board Member Simgen seconded the motion. The motion was unanimous.

**8. ADJOURNMENT:**

APPROVED BY:

SUBMITTED BY:

\_\_\_\_\_  
Duane Norton  
Chairperson

\_\_\_\_\_  
Charlene Stockseth  
Administrative Assistant