



## **COMMUNITY DEVELOPMENT DEPARTMENT**

*Planning, Zoning and Building Safety*

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*Carlos De La Torre, P.E., Director*

**TO:** Board of Adjustment, District 2

**FROM:** Beverly Wilson, Interim Planning Manger  
For: Michael Turisk, Interim Planning Director

**SUBJECT:** Minutes of the Regular Meeting of August 3, 2011

**DATE:** August 15, 2011

### **Members Present:**

Gerald Eberwein, Chairman

Albert Young, Vice Chairman

Patrick Greene, Member

### **Staff Present:**

Carlos De La Torre, Community Development Director

Beverly Wilson, Interim Planning Manager

### **Others Present:**

Phyllis Bacon, Applicant

*These minutes for the BA2 meeting held on August 3, 2011 are complete only when accompanied by the memoranda for said meeting dated August 3, 2011.*

### **Call to Order / Roll Call:**

Chairman Gerald Eberwein called the meeting to order at 6:00 p.m. at the Board of Supervisor's Executive Meeting Room at the County Complex in Bisbee. Mr. Eberwein followed by welcoming the Board's newest member, Mr. Patrick Greene. He then explained the procedures of the meeting to those present, and noted that all three members of the Board were present, establishing that the Board had a Quorum and could proceed.

Chair made a motion to approve the minutes of the May, 2011 regular meeting as Mrs. Piper resigned at the close of that meeting and Mr. Young was not present. Mr. Young seconded the motion, and the vote was 3-0 to approve the minutes of the May, 2011 meeting.

## **NEW BUSINESS**

**Docket BA2-11-02 (Bacon):** Mr. Eberwein then asked for the staff presentation of the Docket. Beverly Wilson offered the staff report for Docket BA2-11-02, which is a request for a variance from the Cochise County Zoning Regulations, Article 2, which defines an Accessory Living Quarters as containing no more than 850 square feet. The Applicant applied for this variance on her parcel (#107-59-014), located at 7125 E Kendall Lane, Sierra Vista, AZ. The Applicant is applying for this variance to build a home for her disabled, widowed daughter who has four children still at home. The Fair Housing Act, 42 USC 4604, allows “reasonable accommodation” for disabled persons. Section 2103.02 of the Zoning Regulations allows the Board of Adjustment to grant a variance for “reasonable accommodation” to the extent that such accommodation is required pursuant to applicable state or federal law.

Ms. Wilson explained that in the Staff report, the Fair Housing Act, the Americans with Disabilities Act, and the legal meaning of “enjoyment” were explained.

She also reminded the Board that Article 21 of the Zoning Regulations states that the Board of Adjustment can adjust the County Zoning Regulations through a variance.

Ms. Wilson told the Board that the Applicant, Mrs. Bacon, is working with Habitat for Humanity to build this home for her daughter and family. The actual location of the ALQ will be determined at the permitting process.

If the Board grants the variance tonight, Mrs. Bacon still has to follow the procedures for an Accessory Living Quarters, which includes filling out an application, allowing the Staff to notify the nearby neighbors, and if no protests are filed, she may then proceed with the building permit.

Ms. Wilson then explained the Factors in Favor, and the Factor against allowing the Variance, which follow:

Factors in Favor:

1. There are peculiar conditions for which strict application of the Zoning Regulations would result in unnecessary hardship.
2. The variance would allow a disabled occupant full enjoyment of her home.

Factor Against:

1. A purpose of limiting the footprint of ALQs is to prevent crowding and prevent situations (under particular circumstances) that can change the zoning in a de facto manner.

Mr. Eberwein then opened the Public Hearing for the Applicant’s statement. Mrs. Bacon stated that they were trying to help her disabled daughter by moving her closer to their home. She also stated that she could also help her daughter with the children. While her daughter can usually handle the kids, there have been days when she is incapable of doing so.

Mrs. Bacon stated that her daughter lost her husband to cancer many years ago, and has been living on her widow’s benefits. But, recently those benefits have been changed and her income has become very limited, but she still has children at home to support. She is living with Mr. and Mrs.

Bacon at the present time. There is simply not room for all the people that are living in the home at this time. She thanked the Board for their help in this situation.

Mr. Eberwein then closed the Public Hearing. He then stated that the only question he had in this issue was if the set-backs would be an issue. Mr. Greene stated that was his only question too. They agreed that it didn't appear to be an issue. Mr. Eberwein also stated that after reading the ages of the children, he realized why an 800 square foot house was not going to work out.

Mr. Young then commented that the area looks sparsely populated, and that crowding didn't look like it would be an issue. Mr. Eberwein agreed.

Mr. Eberwein asked for the Planning Directors recommendation and summary.

Ms. Wilson stated that based on the factors in favor of approving the variance, staff recommends approval of the variance request.

Mr. Eberwein then called for a motion. Mr. Greene made a motion to grant this application for the Variance. Mr. Young seconded it. There was no discussion.

Mr. Eberwein asked for the findings in fact which were read again by Ms. Wilson.

There was no further discussion

The vote was 3-0 to approve the motion.

Mr. Eberwein then announced that the Variance was approved.

Mr. Eberwein then stated that the second order of business was the election of Officers which is usually conducted the first meeting of each year. Because Mrs. Piper resigned at the close of the last meeting, he made a motion to table this election. Mr. Eberwein then asked for nominations for Chairman for the remainder of this year. Mr. Eberwein nominated Mr. Young as chairman. The vote was unanimous. Mr. Eberwein then nominated Mr. Greene as Vice-Chairman. The vote was again unanimous.

### **Planning Director's Report:**

Ms. Wilson reported that there are no new pending BA2 Dockets, but Staff has been busy with four rezoning dockets and 2 special use dockets on the agenda for the upcoming August 10, 2011 Commission meeting. One rezoning was a large parcel of 550 acres. The dockets being presented to the Board of Supervisors include a Master Development Plan and a reversion of zoning at the August 9, 2011 meeting. The upcoming dockets will then be taken to the Board of Supervisors over the next several months.

Mr. Eberwein then suggested that Staff set up a calendar in Outlook with an attached agenda to provide a more efficient method of notification for the Board members. Ms. Wilson stated that Staff would do so for the next meeting.

Mr. Young made a motion to adjourn. Mr. Greene seconded, and the meeting was adjourned at 6:27 p.m.