

**MINUTES OF THE SPECIAL MEETING OF THE TOWN
OF TOWN OF PINETOP-LAKESIDE, ARIZONA, BOARD OF
ADJUSTMENT HELD ON THURSDAY, MAY 19, 2022, IN THE TOWN
COUNCIL CHAMBERS LOCATED AT 325 W. WHITE MOUNTAIN
BOULEVARD, LAKESIDE, AZ 85929**

➤ **Call to Order**

Mayor Irwin called the meeting to order at 6:15 p.m.

➤ **Roll Call**

The following Council Members were present:

Name	Position
Stephanie Irwin	Chairwoman
Jerry Smith	Board Member
Lynn Krigbaum	Board Member
Jim Snitzer	Board Member
Paul Watson	Board Member
Sterling Beus	Board Member
Taber Heisler	Board Member

Also Present:

Name	Position
Keith Johnson	Town Manager
Kevin Rodolph	Assistant Town Manager/Finance Director
Kristi Salskov	Town Clerk
Dan Barnes	Police Chief
Daniel Wilkey	Police Commander
Tony Alba	Community Services Manager
Matthew Patterson	Public Works Director
Malaina Spillman	Public Works Assistant to the Director
Jeremiah Loyd	Community Development Director
Betsy Peck	Library Manger
Mackenzie Valichnac	Deputy Clerk
Stacy MacArthur	Accountant

B. Call to the Public

Chairwoman Irwin called for public comments. No comments were offered.

C. Business Before the Council

C.1 Public Hearing and Consideration of Variance V-135 applicant T J Henshaw is requesting a Variance from Chapter 17.44.040 (C) Rear Yard Setback. The property is located at 2015 Sierra Pine Loop, AZ. White Mountain Club Village Lot 59, Navajo County, AZ, APN 311-64-059. The Zoning is MH-4

Community Development Director Loyd stated that TJ Henshaw submitted a building permit for his property. However, this project does not meet the setback requirements. Mr. Henshaw's home is already at the setbacks for MH-4 and he would like to construct a room addition that would extend 14' into the setback. Director Loyd explained the definition of a variance and what is required for a variance.

Chairwoman Irwin invited T J Henshaw to address the Board.

T J Henshaw offered the following comments, *“Thank you, I’ll do my best. Members of the Board of Adjustments, thank you for hearing me tonight. I appreciate this opportunity. I’m going to try to be as brief as possible and address those issues that are necessary. First of all, I am glad that we have such a law. Number one, I think that your zoning requirements and setbacks are reasonable. They are great for a town like this and that’s one of the reasons I am here, so I am not looking to change anything. But the particular property I bought, I bought because everything was sold out from under me. I’m sorry but this market is on fire, and I had to spend my summers here. So, I’ll be here five months, five and a half months every year and in a couple years, 12 months. Either way, the property that I bought, the development has 93 lots, and one lot has a drainage easement for all the rest of them, it’s mine. It’s a high road area that drops straight down onto the wetlands behind me. Pine Lake and the two retaining ponds beside it are recognized wetlands and cannot be developed. But its low and its wet and its boggy and I really can’t use my backyard at all. My side yard is restricted by the drainage easement also. I can’t build across it. So anyway, I didn’t do this. The developer did in the 1970’s. It is my understanding that, I’ve been told, I don’t know this, that he planned it to be an access to the lake area at some point in time but sold it, moved on and forgot it. Either way, the home that was placed, the manufactured home that was placed on*

it, was pushed way back toward the back of the lot where it starts to level out a little bit because it's so steep in the front. I can't build on the front. The front plate of the house is at dirt level and in the back its seven-foot high. So that tells you the slope of the lot. So, what I'm trying to do is, I just want to utilize it. I want to build an Arizona room on that is all glass so I can enjoy that beautiful lake out there and Pinetop itself. That's why I'm here. The lot, I tried to use it when I first got here. It's covered in old carpeting and stuff, so it wouldn't sink down. I got it all cleaned up. But I sunk down just trying to put up my stakes. That's just how wet it is and it's still pretty wet. Either way, I'm not trying to gain anything. I'm going to live in it until my daughter inherits it. I paid too much money and I'm going to put too much money into it. Much more than its worth. But to me, I don't want to die and leave it to my daughter, I want to use it now. I want to enjoy Pinetop. The particular setback for rear yards, I understand, and I agree with the spirit of the law. We want to keep people from being on top of each other, especially in their backyards. I have no backyard neighbors and will never have any backyard neighbors. It's, I don't know, probably 1000 feet or further across that field. So, I'm not going to encroach on anyone's enjoyments. Some of the other homes nearby are actually further back than mine. I walked the property and there are many, many homes there that are much less than the 20 foot. Many of them as low as seven or eight. In 1970 when the development was put in place, the town did not exist yet and these ordinances were not in place. We'd like to go back and fix it to what we have now, but we can't. In 1970, when the county accepted the plat and the deed restrictions that went with them, the setback requirements for rear lots was seven feet. Many of the homes in there are right at that seven-foot, eight-foot rear lot and they are right next to each other. So, I'm not asking for something that is out of the ordinary. All that I am trying to do is take a bad lot and make a good lot, by building a solid foundation. I'll build it up seven foot high of cinder block plates to build my Arizona room and deck. That's it. It won't affect anyone else. It won't create any special privileges or anything. But it would give me a great opportunity to utilize the property and enjoy the outdoors as I think it should be. I won't labor the point. It's your decision. I hope you will grant in my favor and if you have any questions, I will be happy to answer them."

Chairwoman Irwin thanked Mr. Henshaw and asked if the Board had any questions.

Member Beus stated that he went to the property and agreed that it wouldn't affect anyone behind him. However, this could set precedent. Beus asked if Mr. Henshaw was aware of the zoning regulations when he purchased the lot.

Mr. Henshaw responded, *“No, and its my own fault that I didn’t research it. I had offers on half a dozen houses and they got yanked out before I could drive up here. I decided to rent for a year. I had three rentals in place to meet the rental agent at 9:30 in the morning. She called me at 9 and said, ‘I’m sorry its \$300 for the next two years.’ I’m desperate. I worked with realtors. I sold my house in Colorado, where I spent my summers, because my mom couldn’t handle the elevation. So, Pinetop is where we decided to go. It’s hell in the valley, its paradise in the mountains. I didn’t do my research. I found it on Craigslist, it was For Sale by Owner. When I saw it, I bought it on the spot for the asking price. Which was about \$100,000 more than it was worth, to tell you the truth. There’s just nothing available up here. I checked with builders, by the way. I had six builders lined up, all of them, all of them, said ‘I can’t talk to you for two years, I’m that busy.’ I’m going to be my own general contractor if I can build this because I have found some subs that can do the parts that need to be done.”*

Member Beus asked if Mr. Henshaw could put the addition on the side, even though that is not the preferred location.

Mr. Henshaw replied, *“Well, dilemma that I have, that was my first choice, by the way because it is going to cost a lot more to go backwards and build it up than to go off of the side. A lot more. Manufactured homes have a seven-foot plate and 2/12 pitch roof. They put a little 10-foot room addition on it a few years ago as like an entry. The front of the house faces west the back faces east. There are no windows on the back of the house or anything like that. So, everything is really out of the front. They put that little room on there and you have to stoop down to go through the door. I could not put an addition and get into it or onto it without going outside. There is no way that I could go from the house to outside onto an addition. Except if I put it on the back, then I could take the laundry room move it on to the porch and make a doorway. That was my game plan. But that west side, I can put a deck there. I cannot put anything under roof, it’s just too low. I’ve asked a roofer if he could possibly do it. You know, a 2/12 pitch you go out 12 feet, you go from seven foot to six, and with the headers and everything you can’t put a door in. So, it would have to be an open deck on the west. Which is my proposal, by the way, is to put an open deck on the west that would connect to the Arizona room.”*

Chairwoman Irwin asked if there were any questions.

Member Watson stated that he wouldn’t think the addition would have any negative impact on the neighbors but on the legal side this seems like a self-imposed hardship. Watson stated that he is leaning towards following the rules and regulations that

have been set. Watson asked if Mr. Henshaw has a backup plan in case the variance is not granted.

T J Henshaw responded, *“Open deck. That is plan B. On the west side. That is the only option I have. Believe me, I know I’m up against a stonewall here. Not a stonewall, I take that back. You are here because the law created you for the very purpose of being able to make decisions that don’t change the law. There are exceptions and I don’t think it sets a precedent when granting an exception with sound logic and reason behind it and no negative effects. I’m not trying to dispute that it would set precedent. I just don’t think that it would, because the Board of Adjustment was created by the Legislative for that very purpose. If you never utilize your authority, then why have it? As far as who created it, an owner did not. The original developer that designed those lots and in our deed restrictions it says they have to be placed where they are stated so that was placed according to the original game plan. Again 1970, things were a lot different.”*

Chairwoman Irwin asked Mr. Henshaw to clarify what the rear setbacks were for the county in 1970.

Mr. Henshaw responded, *“No, I don’t know what the county is. One of the things, I tried to research it. You can’t go back and find out what the ordinance was back then. I know what the county ordinance is now, it’s the same as yours. But back then, the county only had 47,000 people in 1970. So, and it was more like a weekend getaway place but now it has developed into real homes for real people. And things have changed a lot in the past twenty or thirty years. But back then I think that Holbrook was happy to have anyone who wanted to build anything up here. And so, they granted a lot of developers the right to do what they felt was appropriate and deed restrictions went with the plan, they were filed with the county, they were approved by the county judge I guess it was back then, whoever approved it on April 1st of 1970.”*

Chairwoman Irwin added that one of the main reasons the Town was incorporated was to have more control over zoning.

Mr. Henshaw stated *“I agree. I’m on board. Believe me, I am. I was the president of a homeowner’s association for 25 years and I was known to be the enforcer. Also, there are exceptions, so you have to take the whole situation into consideration. I have taken up too much of your time and again I would ask you if you would grant it. It will be a good addition to the neighborhood and I will be a good addition to the city.”*

Chairwoman Irwin asked if there were any other questions.

Member Snitzer explained that he knows from his experience in Planning and Zoning that decisions like these do set precedent. Snitzer stated that he would like to help Mr. Henshaw, but they have to consider how this may impact future decisions.

T J Henshaw responded, *“Trust me, I do understand. Like I said, I was a homeowner president for 25 years and I know that if you fail to enforce certain restrictions then you lose the right to enforce them. I understand.”*

Member Snitzer offered suggestions of what to do with the property instead of the proposed project.

T J Henshaw replied *“That was the easiest way, was to rearrange the house. Take a bedroom, the back is just a solid wall. There are no windows in the back, except over the bath tub. I looked at everything. I had designers come out. The only option is an open deck and that would, as much as I hate, it would require taking out a pine tree that is 26-28 inches in diameter. Which, you know, that breaks my heart. I don’t want to do that. But that is where the deck would have to go. So, you know, I am kind of at a loss. I just want to be able to use it and enjoy up here and enjoy the outside. I’d like to be able to walk out of my house onto the deck and not go out the front door and go all around the steps to get on it. Especially if you are barbequing. You have to go back and forth to the kitchen to do that. There’s just no ingress or egress besides other than the front door and no way to make one. Because of the seven foot plate. Thank you again.”*

Chairwoman Irwin asked if there were any members of the public that would like to speak on the agenda item.

Larry McCormick said *“I was going to ask, I’m not familiar with the location that we are discussing, but Sterling said he went there. Is the property behind it vacant, privately owned, and wouldn’t effect a possible sale of the property?”*

Member Beus responded that it is wetlands and he does not know who owns it.

TJ Henshaw added, *“Allied Capital in Scottsdale.”*

Larry McCormick continued, *“I just wanted to know if they wanted to sell it, if your six-foot setback might effect the sale of the property. The other question I was going to ask was answered by Jim, was, if this would set a precedent in approving a six-foot setback. So that’s all I have. Thanks.”*

Member Watson asked if Mr. Henshaw had that ability to buy a piece of the land behind him and combine the properties.

Director Loyd confirmed that he would be able to combine the properties which would adjust the lot line.

Member Watson stated that this would then help with the setback issue.

Member Heisler asked if Jeremiah could clarify if every other property has a seven-foot setback, then would they be depriving Mr. Henshaw of having the same opportunity as the others in his area.

Director Loyd stated there may be something in the code that addresses if the other property owners have a different setback then they can align with them, but Loyd thought this only refers to fences. Loyd confirmed that any structure set after the town was incorporated would have to follow the setbacks required by the town.

Member Snitzer added that the homes placed before the town was incorporated aren’t in violation of the setbacks because they are grandfathered in. However, new construction must follow the existing setbacks.

Member Heisler stated that he was wanting to confirm the wording because maybe in this case Mr. Henshaw is being treated differently than other property owners around him.

Member Snitzer said that Mr. Henshaw is being treated differently, but that is because we are looking at new construction verses what is grandfathered in.

Director Loyd confirmed that the older properties are legal nonconforming.

Chairwoman Irwin agreed with Snitzer that this will set a precedent, based off of her experience in Planning and Zoning. Irwin reminded that the previous variance request was denied, and the applicant ended up being happier with the new plan they created. Irwin is hopeful that Henshaw will be able to come up with a solution that he likes even more.

Member Smith asked where the measurement of the structure started.

T J Henshaw answered, *“It’s from the nearest corner of the building to the nearest direct, rear lot line. So its closest to closest.”*

Chairwoman Irwin asked if there were any more questions.

Board Member Heisler made a motion to deny Variance V-135 Board member Smith seconded the motion and by the show of hands the following vote was recorded.

	AYES	NAYS	ABSTAIN
Chairwoman Irwin	X		
Board Member Smith	X		
Board Member Krigbaum	X		
Board Member Snitzer	X		
Board Member Watson	X		
Board Member Beus	X		
Board Member Heisler	X		

Mayor Irwin declared the motion to deny passed with a 7-0 vote.

T J Henshaw said, *“Thank you for your consideration, I greatly appreciate it. One quick question and maybe it for Jeremiah. An open deck, can this extend closer to the lot line?”*

Director Loyd confirmed that the open deck still needs to meet the setbacks, however the Code allows the Community Development Director to grant two feet if he want to look into that.

E. Adjournment

There being no further business at this time, the regular meeting was adjourned at approximately 6:45 p.m.

Stephanie Irwin
Chairwoman

ATTEST:

Mackenzie Valichnac
Deputy Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special meeting of the Board of Adjustment of the Town of Pinetop-Lakeside, Arizona, held on the 19th day of May 2022. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 19th day of May 2022.

Mackenzie Valichnac
Deputy Town Clerk