



TOWN OF JEROME

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SPECIAL MEETING OF THE TOWN OF JEROME BOARD OF ADJUSTMENT

DATE: Thursday, July 18, 2019 TIME: 6:00 pm
 PLACE: JEROME CIVIC CENTER
 600 Clark St., JEROME, ARIZONA 86331

MINUTES

ITEM 1: CALL TO ORDER/ROLL CALL

Chair Shapiro called the meeting to order at 6:00 p.m.

Joni Savage, Deputy Clerk called roll, present were: Chair Gary Shapiro, Vice Chair Carol Yacht, Chris Babbage, Nathalie Barlow and Suzy Mound.

Additional staff present was Candace Gallagher, Town Clerk/Manager.

6:01 (00:52) ITEM 2: APPROVAL OF MINUTES: Minutes of Regular Meeting March 7, 2019

Motion to Approve the Meeting Minutes of March 7, 2019

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT	X		X			
BABBAGE		X	X			
BARLOW			X			
MOUND			X			

6:02 (1:40) ITEM 3: APPEAL OF ZONING ADMINISTRATOR DECISION, VARIANCE GRANTED IN 2009 TO 324 QUEEN STREET FOR PARKING

If necessary, Commission may enter into executive session, pursuant to A.R.S. §38-431.03(A)(3) and/or (A)(4), for discussion with the attorney and consideration of legal advice.

APPLICANT: Windy Jones & Josh Lindner

MAILING ADDRESS: 2549 Haskell Springs Rd. Clarkdale, AZ 86324

PROJECT ADDRESS: 324 Queen St.

ZONE: C-1

OWNER OF RECORD: Cuban Queen Bordello LLC

APN: 401-06-127

Pursuant to Section 305, a review of Zoning Administrator decision is requested regarding her determination that the zoning variance granted in 2009 V2009-324Q is no longer valid.

6:02 (2:10) Bill Ring introduced himself and stated he had been retained to represent the Board of Adjustment as their legal counsel.

6:04 (5:14) Windy Jones, owner of 324 Queen Street addressed the Board.

6:08 (8:35) Bill Simms approached the dais and gave his presentation and explained due process.

6:16 (16:57) Windy Jones asked Mr. Sims questions and he answered them to the best of his ability. Ms. Jones had prepared a 2-year timeline and read from it. She asked if she could call witnesses.

6:28 (28:25) Mr. Sims does not believe it would be relevant to this item, however he suggested it could be applicable to agenda Item 4.

6:29 (29:28) Chair Shapiro concurred with Mr. Sims, however he wanted Ms. Jones to have every opportunity to present her case.

6:30 (30:04) Mr. Sims stated again that he did not feel it was relevant, however Ms. Jones could call her witnesses.

6:30 (30:16) Ms. Jones declined to call witnesses at that time stating she would take Mr. Sims professional opinion.

6:30 (30:23) Mr. Sims spoke again and explained that the parking would run with the land if the structure had been restored.

6:35 (35:28) Mr. Ring said this is an opportunity for the Board of Adjustment to ask questions of either party.

6:35 (35:55) Chair Shapiro asked Ms. Jones if she had met with the previous owner. He asked if in a title search was the variance for parking ever brought up. He suggested it was her due diligence to secure the document.

6:37 (37:06) Ms. Jones said Mr. Kyle Dabney provided them a copy of the certificate.

6:37 (37:40) Chair Shapiro spoke again about the previous owner. He explained this variance was granted with the assurance that the previous owner would restore the building. He then asked the other board members if they had questions.

Gary said previous owner should have had the certificate. He feels it comes back on their due diligence as the purchaser. The title company should have found this document. As it would have gone with the land. We granted that variance because it was a large interest of the restoration of the building. Unfortunately, the previous owner did nothing. He asked if the other board members had a question.

6:39 (39:08) Suzy Mound asked Ms. Jones if she were aware that in March 2016 the previous zoning administrator, Al Sengstock had informed the previous owner that she was granted a variance, with the condition she must finish the project and get a Certificate of Occupancy in order to sell the property with the parking credit.

6:40 (40:01) Ms. Jones said she saw that sometime after 6/21/19.

6:40 (40:29) Chair Shapiro responded stating, we granted that variance for a building that existed and now longer exists. He then asked for a motion.

6:41 (41:15) Mr. Chris Babbage agrees with the zoning administrator based on Section 305 dated May 10.

6:41 (41:35) Vice Chair Carol Yacht called a point-of-order.

6:41 (41:36) Mr. Ring feels Miss Windy Jones should be given an opportunity to give her summation then a motion would be appropriate.

6:42 (42:00) Ms. Jones presented evidence.

6:42 (43:20) Mr. Babbage read from Section 305 regarding variances. He summarized the variance had been granted based on restoration of the structure, which never occurred. Therefore, the variance no longer applies.

6:44 (44:09) Chair Shapiro asked for a motion.

6:44 (44:17) Mr. Ring suggested all members of the Board speak and he said he would like to give a summation.

6:44 (44:35) Natalie Barlow understands why it got the five spaces, however it is no longer applicable. The building is not being restored, it is being recreated and it is much bigger.

6:45 (45:45) Ms. Jones responded.

6:46 (46:30) Chair Shapiro reiterated the variance was granted for a building that no longer exists because of apparent negligence from the previous owner. He asked or a motion to agree with the Zoning Administrators decision that the variance is nullified.

Motion Based on Section 305.A.10 to Agree with the Zoning Administrators Decision That the Variance is Nullified

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT		X	X			
BABBAGE	X		X			
BARLOW			X			
MOUND			X			

6:48 (48:00) Mr. Ring summarized the motion based on the foregoing statements of the meeting.

6:49 (49:35) Chair Shapiro called for a fifteen-minute recess to reconvene at 7:05 p.m.

7:07 (Pt 2. 00:10) Chair Shapiro reconvened the meeting.

ITEM 4: PARKING VARIANCE REQUEST, 324 QUEEN STREET

If necessary, Commission may enter into executive session, pursuant to A.R.S. §38-431.03(A)(3) and/or (A)(4), for discussion with the attorney and consideration of legal advice.

APPLICANT: Windy Jones & Josh Lindner

MAILING ADDRESS: 2549 Haskell Springs Rd. Clarkdale, AZ 86324

PROJECT ADDRESS: 324 Queen St.

ZONE: C-1

OWNER OF RECORD: Cuban Queen Bordello LLC

APN: 401-06-127

Pursuant to Section 305, a new parking variance may be requested by the property owner.

7:08 (00:44) Chair Shapiro summarized Item 4, the application for a parking variance. He stated this is a new building. We have denied variances on new buildings in the past because all that needs to happen is to change the design of the building. He expounded on an example from history. He invited her to make further statements.

7:10 (03:50) Windy Jones responded to Chair Shapiro and explained the current design and gave supporting documentation.

7:13 (06:51) Mr. Sims spoke, parking has been a serious issue for the Town. She (Windy) will show you as to why they believe they have met the standard. Once the evidence has been presented he will respond to what the Town's decision is. He believes the decision is up to the Board of Adjustment.

7:15 (08:50) Ms. Jones spoke again. Regarding re-issuance or new parking variance she has not seen anything within the code. She referred to a letter from Glen Odegard of Nordic Builders dated July 8, 2019.

7:17 (11:10) Chair Shapiro said that her contractor is beside the point and really isn't this Boards concern.

7:17 (11:24) Ms. Jones began to explain she had watched a Flagstaff Board of Adjustment video.

7:17 (11:29) Vice Chair Yacht called a "Point-of-Order" and stated this is not Flagstaff. She continued and made a statement. You're asking for something that we haven't provided to others in the commercial zone.

7:18 (12:28) Ms. Jones spoke in her defense, saying they had special topographic issues.

7:18 (12:35) Chair Shapiro reminded her that the next-door neighbor (The Queen's Neighbor) positioned their building to provide parking for their building. Another issue with your site plan is you have 10 feet of yard and a retention wall would be required. You could move your building back to the property line and that would give you 10 feet on the front. That would give you at least two parking spaces. He is under the impression that ADA is not required since it is not actually a hotel.

7:19 (13:54) Ms. Jones replied ADA is required if we develop parking.

7:20 (14:12) Mr. Ring suggested the Board allow the applicant to develop her record.

7:20 (14:20) Ms. Jones read from her document.

7:22 (16:35) Mr. Ring asked if there were an illustration that would describe what you just read. It is confusing.

7:23 (17:01) Ms. Jones referred him to the SHPO documents and said you can see in the photo.

7:24 (17:44) Chair Shapiro spoke.

7:24 (17:56) Ms. Jones approached the dais and explained her photos to the Board.

7:25 (18:22) Chair Shapiro stated the building you propose is self-created, we can't grant a variance over something that is self-created.

7:25 (18:38) Ms. Jones explained the parking.

7:26 (19:05) Chair Shapiro spoke again.

7:26 (19:37) Ms. Jones read a recently written letter from Ms. Charlotte Page, the former Zoning Administrator. She read emails that she had received and recapped her timeline. (in packet)

7:40 (34:05) Mr. Ring asked the applicant a few questions, reiterating this is a new case for a variance. He referred to section 510 Section D. Schedule of Required Off-Street Parking Spaces of the Zoning Ordinance. He said a request for a variance must be tied to a site plan.

7:42 (36:52) Ms. Jones spoke again.

7:43 (37:25) Mr. Ring spoke.

7:44 (38:16) Ms. Jones had been advised it would be in the packet, but it is not.

7:44 (38:26) Vice Chair Yacht spoke about parking spaces and determined seven (7) spaces would be needed, not five (5).

7:45 (39:20) Ms. Jones had been advised by the Zoning Administrator that only one space would be required for the 500 square feet of retail and none for the studio.

7:46 (39:58) Vice Chair Yacht spoke again.

7:46 (40:05) Mr. Ring spoke again reminding her that if the Board grants her request for five (5) she will be required to eliminate some form of use from her site plan down to the five (5) spaces granted.

7:46 (40:35) Ms. Jones explained her plan. She asked if she could call witnesses.

7:47 (41:25) Chair Shapiro asked they keep their comments brief and to the point.

7:48 (41:55) Carol Anne Teague, realtor was called as a witness and answered questions. She explained her meeting with former Zoning Administrator Kyle Dabney.

7:51 (44:55) Chair Shapiro stated all of this was in their packet.

7:52 (45:20) Ms. Jones continued asking Ms. Teague questions.

7:53 (45:47) Ms. Teague stated this was a good project, she would like to know why there is resistance to this project.

7:54 (46:32) Mr. Sims asked if he could cross-exam. He asked Ms. Teague if she believed the Board of Adjustment had any jurisdiction regarding sales tax as they evaluate this.

7:54 (46:48) Ms. Teague responded she didn't believe anything other than they are citizens of Jerome.

7:54 (46:54) Mr. Sims explained further.

7:55 (47:24) Ms. Jones called Curtis Lindner, he is not present, and she provided a phone number.

7:56 (48:05) Mr. Ring offered his assistance. He stated to limit the admission of evidence to what is relevant. Testimony to what Mr. Dabney said in 2017, may be true, but he is not convinced that it is helpful to the Board of Adjustment for them to make their decision. He explained his reasoning further, although it may be

interesting to hear what Mr. Dabney thought about the case in 2017, it's just not relevant to the decision the Board needs to make this evening.

7:58 (49:55) Ms. Jones explained why she felt it was relevant. She referred to the revocation of parking being a hardship not caused by them.

7:59 (51:00) Mr. Ring explained the special circumstances that relate to the grant of the new variance, relate to the property and the condition of the property itself. It is not personal to the people who are involved. Points made about the slope and grade relate to the property. You've established a sense of hardship from the transactions and the representations made that gave you the confidence to decide to buy. Those circumstances don't apply to the findings that the Board of Adjustment needs to make in order to grant the variance because of the special circumstances that pertain to this parcel of land. If you don't establish a foundation of factual basis that supports the request for a variance then you're not leaving the board much room to decide in your favor. He suggests she focuses on the findings that pertain to this parcel.

8:01 (52:30) Ms. Jones said Mr. Simms had recommended she bring these dates up.

8:01 (52:43) Mr. Sims explained as the town attorney, numerous times there have been reference to Mr. Dabney saying according to the town attorney, in the timeline I am quoted as saying "can't be jerked away" I can tell you I have never used the verb "jerked." He explained further and referenced documentation in the packet.

8:03 (54:36) Ms. Jones said she would not call Mr. Curtis Lindner. She then called Ms. Charlotte Page who was present.

8:04 (55:01) Mr. Sims addressed Chair Shapiro. He suggested letting Ms. Page testify.

8:04 (55:34) Charlotte Page introduced herself as a resident of Jerome and the former Zoning Administrator. She gave her opinions on the property. She began to relay her opinions on another property in town.

8:09 (1:03:20) Vice Chair Yacht called a point-of-order, this has nothing to do with the current topic.

8:09 (1:03:21) Ms. Page said she agreed with Ms. Yacht.

8:10 (1:04:06) Mr. Sims spoke about the parking. Originally it was to be five (5) spaces because you were using the original size of the building, but now, the structure requires six (6) or maybe seven (7) spaces.

8:12 (1:05:02) Ms. Page suggested the project would emulate whatever parking was available to them if the parking variance were granted.

8:12 (1:05:24) Mr. Sims summarized by saying Ms. Page is saying perhaps we need a project closer to what was originally built.

8:13 (1:05:43) Ms. Page referred to an underutilized large parking lot in that area.

8:14 (1:05:05) Chair Shapiro asked who owned it. Ms. Page responded the town. Chair Shapiro speculated that she could apply to the town and secure it and table any motions at this time. For example, if you had secured spaces offsite the likelihood of granting a variance would have been high.

8:16 (1:07:44) Chris Babbage stated if she acquires parking within 300 feet, she doesn't need a variance.

8:16 (1:07:51) Chair Shapiro said she still would.

8:17 (1:08:10) Ms. Page read from the ordinance about parking requirements.

Chair Shapiro asked to take a break at 8:15 p.m. and reconvene at 8:25 p.m.

Pt 3 8:38 (00:48) Mr. Sims gave an opening statement. He referred to Ms. Anne Kelley's review that was included in the packet. He referred them to the 2009 analysis from Ms. Kelley, 2nd to the last page with the spreadsheet. "It should be noted that granting a variance for parking in this case (this is saying that if indeed they would be increasing the footprint) would be setting precedence for the future. In my experience most

parking issues are why a property or business wish to increase the usage for the current establishment. A variance would not be applicable in any of these circumstances." When you read Annie's argument, she is treating this as a non-conforming use, in which case they could say this isn't a new building, much like a non-conforming use. Honestly it isn't, it was vacant for six months. But back then, I think it would be reasonable to treat it as if it was a non-conforming use. Here's what she said, "To grant a variance does not appear to be any special privilege if it is the minimum number to restore the building." This is in her analysis, "You can do it if the restoration is to comply with the non-conforming situation." If you were to look at what Annie was suggesting, she would not have granted the variance then if it was over the original 1450 square feet. My recommendation is as follows: "We've had some very good discussion about, and the applicant has heard, could there be a phasing down of the improvement to get to the five (5), because frankly, if you authorize a variance it is irrelevant if they need seven (7). One option would be to table this and invite the applicant to come back with a scaled back project that fits more closely with the analysis of Annie. And come back and say this is much akin to a non-conforming use, having said that, legally it is not a non-conforming use. As the town attorney, if you wish to turn it down, I think legally you could. The goal is to find a solution and if they were to come back with a scaled back use, you could look at it then and you might decide to give them the variance. Go to Annie's memo, the very last part and it talks about parking. The 300 feet is no longer in your code, and so you could have off-street parking, but it needs to be in the same district. If the Cuban Queen had a smaller footprint and find a party to lease them five (5) space I don't think they would need the variance. "As the town attorney, I recommend denial or tabling it and scale it back (the structure) to fall within Annie's analysis. This would make it look more like restoring a non-conforming use.

8:45 (07:44) Chris Babbage said he thought the ordinance says you have to own it, you can't lease it.

8:46 (08:04) Mr. Sims said we can look at that and find the solution. You have two choices, proceed or table it and invite the applicant back and present a site-plan that is scaled back, which would justify five (5) spaces. In the meantime we could see if someone could dedicate the spaces, and we will find out if it can be leased. If you turn it down, there's a statute that will make them go to court in 30 days. If a decision is made he believes they will end up in court.

8:48 (09:55) Chair Shapiro said the question is can we continue instead of making a decision to deny. We could make a motion to continue and return with a plan closer to fulfilling the ordinance.

8:49 (10:33) Mr. Babbage would like to make a motion to grant a continuance to the applicant if she wants it.

8:50 (10:45) Chair Shapiro asked if any members had more questions. It was determined there were no questions. He said there is a motion on the table from Mr. Babbage. He thought securing land in the commercial zone, he believes it needs to be title.

8:52 (11:40) Mr. Sims stated it could be an easement, in your code available parking could be granted by easement.

8:53 (12:08) Vice Chair Yacht has a conflict with non-conforming use or conditional use. This has come up before and a non-conforming use cannot be replaced with another non-conforming use. This is residential/commercial, so we may need to see a conditional use permit.

8:53 (12:40) Mr. Sims said we only get that analysis if we get beyond the parking.

8:54 (13:05) Vice Chair Yacht continued speaking about conditional uses and their requirements.

8:54 (13:45) Chair Shapiro asked the applicant if they planned on living in the building.

8:54 (13:52) Ms. Jones responded, "No, we were not planning on living in the building."

8:55 (14:00) Vice Chair Yacht noted the plans all say residential/commercial.

8:55 (14:23) Suzy Mound asked if there would be a long-term rental or short-term rental.

8:55 (14:29) Ms. Jones said they were intending short-term rental. This is all based on our pre-design meeting. Something we were recommended to do. Our plans were based on a conference call with Kyle Dabney.

The board discussed the motion again and Vice Chair Yacht asked if they should set a time.

8:57 (16:00) Mr. Ring advised them they should suggest a date. The motion should reflect a date.

8:57 (16:45) Ms. Jones requested 90 days if that is a reasonable amount of time.

8:59 (17:24) Vice Chair Yacht suggested the 24th of October.

9:00 (18:25) Mr. Sims said your bylaws for this body say that the public can provide any information in person or in writing. Your manager has given me a number of submittals, during the conveyance you can read them.

Motion to Grant a Continuance to Allow the Applicant to Return Reducing the Building Size or Securing Land in the Commercial Zone for Parking (the available parking could be granted by easement) and to Reconvene on October 24, 2019 at 6:00 p.m.

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT		X	X			
BABBAGE	X		X			
BARLOW			X			
MOUND			X			

ITEM 5: ADJOURN

Motion to Adjourn at 9:02 p.m.

BOARD MEMBER	MOVED	SECONDED	AYE	NAY	ABSENT	ABSTAIN
SHAPIRO			X			
YACHT		X	X			
BABBAGE			X			
BARLOW			X			
MOUND	X		X			

Approval on next page.

REGULAR MEETING OF THE TOWN OF JEROME
BOARD OF ADJUSTMENT

DATE: Thursday, July 18, 2019 TIME: 6:00 pm

PLACE: JEROME CIVIC CENTER
600 Clark St., JEROME, ARIZONA 86331

MINUTES

Respectfully submitted by Joni Savage on November 7, 2019

Approved: *Sam Shapiro*
Board of Adjustment Chair

Date: 11-7-2019

Attest: *Carol Yacht*
Board of Adjustment Vice Chair

Date: 11-7-19

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