



City of Apache Junction, Arizona

Meeting Minutes Board of Adjustment

Meeting Location:

City Council Chambers
at City Hall
300 E Superstition Blvd
Apache Junction, AZ

www.ajcity.net
Ph:(480) 982-8002

Monday, March 12, 2018

7:00 PM

City Council Chambers

1. Call to Order

Chair Schoenbeck called the meeting to order at 7:00 pm.

2. Pledge of Allegiance

Chair Schoenbeck led the Pledge of Allegiance.

3. Roll Call

Staff Present:

City Attorney Joel Stern
Development Services Director Larry Kirch
Development Services Senior Planner Rudy Esquivias

Present 6 - Vice Chair Gage
 Board Member Borey
 Chairperson Schoenbeck
 Board Member Buzzin
 Board Member Biggs
 Board Member Weller

Excused 1 - Board Member Jones

4. Consent Agenda

Board Member Gage motioned that the Board of Adjustment approve the meeting minutes from the December 11, 2017 Regular Meeting. Board Member Borey seconded the motion. The motion was approved with a 6-0 vote.

Yes: 6 - Vice Chair Gage, Board Member Borey, Chairperson Schoenbeck, Board Member Buzzin, Board Member Biggs and Board Member Weller

No: 0

Excused: 1 - Board Member Jones

[18-098](#) Consideration of approval of agenda.

[18-099](#) Consideration of approval of meeting minutes of December 11, 2017.

5. Motion for Executive Session in the Development Services Conference Room.

None.

6. Public Hearings

18-100

Presentation, discussion, public hearing and consideration of case BA-3-17, an appeal of the Zoning Administrator's decision by Bambi Johnson, represented by Adam Martinez and Thomas F. Galvin, Jr. of the Rose Law Group, appealing the Zoning Administrator's interpretation of Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-1: Introductory Provisions, Section 1-1-3 Applicability; and Article 1-2: Types of Uses, Section 1-2-4 Administrative Uses; and Article 1-5: Zoning Bulk and Use Regulations, Section 1-5-3 Non-residential Use Regulations, Table 5-3 Non-residential Use Regulations; and Article 1-6 Supplemental Regulations, Section 1-6-23 Temporary Uses and Structures; and Article 1-16 Administration: Section 1-16-12 Conditional Use Permits, Administrative Use Permits and Building Permits. Applicants disagree with and are appealing the Zoning Administrator's interpretation pertaining to permits required for "Temporary Uses" and/or "Private Outdoor Music Festivals/Events", including number of events allowed and conditional use permit. This item was continued from the December 11, 2017 meeting.

Chair Schoenbeck read the case title.

City Attorney Stern explained that Attorney Galvin, Jr. requested continuance and referred to the letter received requesting the continuance. City Attorney Stern explained this item relates to a current Planning and Zoning Commission item that relates to how many events triggers a conditional use permit. He added once those proceedings are done, hopefully by May 27th, this may resolve the issues related to this appeal.

Board Member Weller asked City Attorney Stern for confirmation when the item will be voted on by the Planning and Zoning Commission. City Attorney Stern said the anticipated date is March 27th. He added that the Planning and Zoning Commission may continue the item. Board Member Weller asked if the Board of Adjustment is required to do it under the old case. City Attorney Stern said that it is a different issue and won't have an impact on this. City Attorney Stern said the city supports the continuation.

Board Member Biggs asked City Attorney Stern if the continuation doesn't move forward how it would affect the Planning and Zoning Commission's decision. City Attorney Stern replied that he believes they are separate issues and doesn't think it would affect it. He added the expectation is another continuance and staff doesn't wish to present anything tonight because Mr. Galvin isn't present at the meeting.

Chair Schoenbeck opened the public hearing portion of the item.

Mehmood Mohiuddin, 2304 N. Cortez Road, Apache Junction addressed the board regarding his concern over storage at 2304 N. Cortez Road and how long the storage and house has been at the location. Chair Schoenbeck informed Mr. Mohiuddin that the public hearing is for this case only. Mr. Mohiuddin replied that they are trying to change the interpretation of the code relates to storage lots.

Colleen Shipman, 1615 W. Mockingbird Street, Apache Junction addressed said she was on the Planning and Zoning Commission when these codes were made and there was careful consideration to make business progress and make Apache Junction grow. She said she is concerned that there is backward movement.

Joe Roman, 2675 E. Superstition, Apache Junction, addressed the commission stating he parks his vehicle at the storage lot at 2304 N. Cortez. Chair Schoenbeck said his concern not related to the current case before the board.

Having no others wishing to address the board regarding this case, Chair Schoenbeck closed the public hearing portion of the item.

Chair Schoenbeck asked for remarks from the board.

Vice Chair Gage asked if either party were harmed by the continuance of the item. City Attorney Stern said the item isn't endless and added that the parties want to see the outcome of the CUP case before pursuing it. He added that this would probably end the item. City Attorney Stern asked Senior Planner Esquivias the date of the next meeting. Senior Planner Esquivias replied that there is a scheduling conflict with the first meetings in April and would therefore recommend April 23rd as the next meeting date. He added the next meeting in May would May 14th.

Board Member Biggs asked City Attorney Stern if the continuance wasn't done would it most likely not have an impact on the Planning and Zoning case. City Attorney Stern replied that they are working on a different item, a conditional use permit. He added there's been some confusion because it also involves events. Tonight's item deals with codes that require a CUP and how many event it takes. That's the difference between this item and the Planning and Zoning Commission item. City Attorney Stern said a continuance does not adversely affect either party.

Board Member Biggs said this is the second time they are asking for a continuance.

Board Member Weller asked how many times this can be continued. City Attorney Stern said as many times as the board likes. He added the motion can state that this will be the last continuance but there is no limit. Board Member Weller said there should be a five month limit. City Attorney Stern said this is only month two.

Board Member Biggs added that this isn't the first time the Hitching Post has come before a body of the council or planning/zoning, board of adjustment and doubts this will be the last time it occurs. If Planning and Zoning votes one way and they don't like it this process can happen all over again. Chair Schoenbeck agreed and added that this issue may be resolved and the board won't have a vote on the issue. The vote would set the future for Apache Junction as far as events are concerned. Board Member Biggs said he thinks this may hold up city council business. Chair Schoenbeck said he doesn't think it is holding up city council business.

Chair Schoenbeck asked for a motion for a continuance.

Vice Chair Gage said the information they have has been provided by the city and the board hasn't heard from the other side and therefore doesn't think it would be appropriate to vote on the item tonight.

Board Member Weller asked is there should be a time limit for the continuance because in a court a person is guaranteed a timely trial.

Board Member Biggs said he understands that information has been provided and the other side is not here, they were well aware of the meeting and even though they were the one's asking for a continuance, there is no guarantee. Board Member Biggs made a motion to not accept the continuance and hear the case as planned. Chair Schoenbeck called for a second. Motion failed due to a lack of a second.

Board Member Weller said the motion was an unfair request. He added the people that need to be here and are directly affected are not here. If the board sets a time limit, it's a different story. Chair Schoenbeck asked Board Member Weller if he'd like to make a motion to that effect. Board Member Weller made a motion that any matters brought up to the Board of Appeals be done in a timely manner and thinks six months from initial contact, which in this case is December, the

proceedings should be done by that point. City Attorney Stern said if Board Member Weller was talking about a policy decision to have a time limit, that's not on the agenda so therefore, as to this item, that's what the motion should discuss. He added the motion should be whether this gets continued to the 23rd of April.

Board Member Buzzin suggested the second Monday of May. City Attorney Stern said the second Monday of May, the 14th, is a council meeting. Senior Planner Esquivias said in the past when there has been a conflict in meeting nights, the meeting has been held in another venue. City Attorney Stern said he understands, but he would have a conflict. He then recommended Monday, May 7th as the meeting date.

Chair Schoenbeck asked Board Member Buzzin if he's like to make a motion. Board Member Biggs asked why not April 23rd. Board Member Buzzin said to give more time of at least a month and wait for the council to vote.

Board Member Buzzin made a motion to extend to May 7th. Board Member Weller seconded the motion. Motion passed with a 4-2 vote.

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| Yes: | 4 - | Vice Chair Gage, Chairperson Schoenbeck, Board Member Buzzin and Board Member Weller |
| No: | 2 - | Board Member Borey and Board Member Biggs |
| Excused: | 1 - | Board Member Jones |

18-101

Presentation, discussion, public hearing and consideration of case BA-4-17, appeal of the Zoning Administrator's decision by Joel Kaplan, appealing the decision of denial of nonconforming rights for four recreational vehicle ("RV") rental spaces, on a RS-20M (Medium Density Single-family Detached Residential)-zoned property at 529 N. Gold Drive. Mr. Kaplan contends that the property does have rights for the four RV spaces in addition to the duplex, triplex and mobile home currently on the property. This item was continued from the December 11, 2017 meeting.

Chair Schoenbeck read the case title.

City Attorney Stern explained that this request for continuance has nothing to do with the first case reviewed. He explained the attorney for Mr. Kaplan would like to meet with staff before moving forward with the case. He added that staff supports the continuance and that it may be resolved at the staff level. He said he is seeking a motion to continue this item to May 7th.

Chair Schoenbeck asked if it might be resolved by then and therefore the board won't have to deal with it. City Attorney Stern said perhaps but doesn't know but it hopefully will be.

Board Member Biggs asked City Attorney Stern if it isn't resolved can a condition be set with a deadline. City Attorney Stern said they could although they didn't do that on the last case.

Board Member Weller said he doesn't think this case should be continued. City Attorney Stern said that before the board discusses the item, the chair must call for a public hearing.

Chair Schoenbeck opened up the public hearing portion of the item.

Having no one wishing to address the board, Chair Schoenbeck closed the public hearing portion of the item.

Chair Schoenbeck asked Board Member Weller for his opinion. Board Member Weller stated that in the background notes from the city, Planning and Zoning item that PZ-9-84 in 1984 rezoning approval allowed him the opportunity to build more apartment units on the property. There isn't any, they moved in trailers, therefore the rest is mute.

Board Member Biggs said, from his interpretation, this has been going on for 34 years. He asked at what point they solve a problem.

Board Member Weller said the ruling in 1985 was that he could build more apartments. Moving a trailer on the property does not build a darn thing.

Vice Chair Gage said the reason why we are here is to resolve conflicts between the city and the public, and other reasons as well, but if the city and the public are willing to talk and get together, it could possibly solve the problem. He added that the best outcome is if the board didn't get involved. He asked is anyone was affected by the delay and said in the meeting in December a member of the public addressed the board and described his concerns about what was going on that property. He added he believes delaying this does affect that neighbor so he asks the city move as quickly as possible to get this fixed.

Board Member Biggs said he doesn't disagree city staff and the public should work together to resolve the issue. He added that hasn't happened because they're seeing the item again. He said not only are we seeing this now, they asked for a continuance back in December. He added that city staff has been working on this and asked city staff how long they've been working on this. City Attorney Stern said they've met with them and have had conversations so there has

been some progression to a certain degree. He added there is another meeting scheduled for March 28th. Board Member Biggs said he sees this as a, in his opinion, a grotesque waste of city staff time. He added there's other issues staff should be moving forward with and if this item is moved forward, it continues to push off future cases and stuff staff should be doing.

Chair Schoenbeck said that since they are already meeting May 7th, and there may be a resolution that is conducive or appreciated by both sides, he believes it should be continued so they have their opportunity to arrange that sort of compromise instead of the board making a decision tonight and therefore undercutting their ability to negotiate. He said he would like to see the negotiations continue and therefore provide a better resolution for both parties. Board Member Weller asked how the board is under cutting them if the board goes by their own words. He added words have meaning. Board Member Biggs added they've had all this time to negotiate and bargain. Board Member Weller said in 1984 they gave them the opportunity to build more apartments.

Chair Schoenbeck said this appeal isn't coming from the person who made that agreement, but the person who just bought the property. He added he wants the board to reexamine the issue. Board Member Weller said this is germane because it continues on.

Board Member Biggs asked at what point it becomes the buyer of the property's job to ensure the property is compliant. It's heard time and time again, at Planning and Zoning, at city council meetings. The added the current owner of the property bought the property knowing that the property was not in compliance according to the case file. Board Member Weller said that is due diligence. Board Member Biggs said yes, it is due diligence and at that point there is, from his understanding, the realtor was aware that the property was not compliant. He added that they've had plenty of time to work with city staff, the city attorney, the city manager's office, and planning and zoning to correct this issue. He said up until five days ago they were planning on moving forward with this case so something has happened in recent times to make them feel that they have a better opportunity to not present in front of the board and go back to city staff. He said he has a problem with that. He then asked at what point the board allows people to get away with a problem versus nipping it at the bud.

Board Member Weller said it should have been done in 85.

Chair Schoenbeck said it appears to have been done at one time. He said they are appealing the original decision that the spaces aren't allowed. He added they are bringing it back for a second time but only the first time to the Board of Adjustment.

City Attorney Stern said he believes the discussion with staff will include other options available rather than Board of Adjustment. He said he believes that is the intent of the attorney on March 28th. He added he believes the continuance was a few days before that but didn't get around to drafting the letter. Board Member Biggs asked what other options there are and if they can be discussed. City Attorney Stern said that they couldn't be discussed because it's not on the agenda.

Chair Schoenbeck called for a motion.

Board Member Biggs motioned not continue BA-4-17. Board Member Weller seconded the motion. The motion failed with a 2 to 4 vote.

Vice Chair Gage motioned to continue the item to the May 7th meeting. Chair Weller seconded the motion. Board Member Biggs asked for a friendly amendment to the motion. City Attorney Stern said he couldn't make an amendment because the second was made and he wasn't recognized by the chair. Board Member Weller rescinded his second of the motion. Board Member Biggs added that this continue no further than the upcoming Board of Adjustment

meeting on May 7th. Chair Schoenbeck asked Vice Chair Gage if the friendly amendment was ok with him. Vice Chair Gage did not accept the friendly amendment as it removes any flexibility by the two parties to make any negotiations and asked that they vote on the item as originally stated. Board Member Weller asked City Attorney Stern how long this will be going on as it started in 1984. City Attorney Stern said from the city's perspective May 7th would be a good date for a meeting. Board Member Weller said he was talking about the longevity of the case. City Attorney Stern said if it's been going on this long, so a few more weeks are ok. He added that the other side isn't here to discuss the timeframe issue tonight and that staff are going to try and resolve this issue through other alternatives. Board Member Biggs asked City Attorney Stern if he thought that by May 7th there will be a legitimate compromise so this case doesn't have to be brought to the board again. City Attorney Stern said he hoped so and if the motion is to do it, hopefully he will come to the board with a report or there will be a meeting. Board Member Biggs asked Vice Chair Gage to reconsider his friendly amendment to his motion. Vice Chair Gage said he will keep his motion as originally stated. City Attorney Stern asked Vice Chair Gage to repeat his motion. Vice Chair Gage moved that the board continue this item to the May 7th meeting. Board Member Weller seconded the motion. Motion passed with a 5 to 1 vote.

Yes: 5 - Vice Chair Gage, Board Member Borey, Chairperson Schoenbeck, Board Member Buzzin and Board Member Weller

No: 1 - Board Member Biggs

Excused: 1 - Board Member Jones

7. Selection of Meeting Dates, Times, Location and Purpose

Vice Chair Gage motioned to motioned to hold a meeting on May 7th, 2018 to discuss these two issues in continuation. Board Member Biggs seconded the motion. Motion passed with a 6-0 vote.

Yes: 6 - Vice Chair Gage, Board Member Borey, Chairperson Schoenbeck, Board Member Buzzin, Board Member Biggs and Board Member Weller

No: 0

Excused: 1 - Board Member Jones

8. Adjournment

Adjournment:

Meeting adjourned at 7:38 p.m.

Chair Frank Schoenbeck