



# 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

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Monday, October 7, 2019

7:00 PM

City Council Chambers

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### 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

**Present**                7 -     Vice Chair Gage  
   Boardmember Borey  
   Chairperson Schoenbeck  
   Boardmember Schoenbeck  
   Boardmember Buzzin  
   Boardmember Biggs  
   Boardmember Waldie

Staff present:

Joel Stern, City Attorney

Larry Kirch, Department Director

Rudy Esquivias, Planning Manager

Others present:

David Ward, Board Attorney

### 4. Consent Agenda

Chair Schoenbeck called for a motion.

The board and staff discussed that the applicant's representative's name should be updated on the agenda and a correction be made to the minutes on who actually read an item.

Chair Schoenbeck called for a motion to approve the minutes and the agenda.

Vice Chair Gage moved to approve the minutes and agenda. Board Member Buzzin seconded. Approved in a vote of 5 in favor and 1 opposed. (Yes: Gage, Schoenbeck, Buzzin, Waldie, Borey. No: Biggs.)

[19-475](#)                      Consideration of approval of agenda.

[19-476](#)                      Consideration of approval of meeting minutes of July 8, 2019.

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

Chair Schoenbeck called for a motion for an executive session.

Board Member Biggs moved and seconded by Board Member Waldie that the Board of Adjustment convene to an executive session in the development services conference room for the purpose of discussion and consultation with the Board of Adjustment attorney for purposes of legal advice regarding BA-1-18 in accordance with A.R.S. § 38-431.03 and as further outlined on this agenda. Approved in a vote of 6 in favor and none opposed. (Yes: Borey, Gage, Schoenbeck, Biggs, Waldie, Buzzin. No: none.)

**6. Public Hearings**

[19-474](#) Presentation, discussion, public hearing and consideration of case BA-1-18, an appeal of the Zoning Administrator's decision by Mehmood Mohiuddin (property owner), represented by Aaron Ludwig of Ludwig Law Offices Ltd., appealing notices of violation dated October 31, 2018 (Code Case #COD2018-00723) and November 7, 2018 (Code Case #COD2018-00751).

Chair Schoenbeck read the rules of the meeting and swore in those that will be testifying.

DeVon Veater and Steve Brower, both of Brentwood Law Group, PLLC, gave a presentation on BA-1-18.

The board and Mr. Brower discussed the violations and the economic development agreements; when and why the property owned by the applicant became one property; that the economic development agreement did not include the property that was purchased after the third amendment was signed; that the property purchased after the third economic development agreement should have been considered as offsite parking as outlined in the economic development agreements; and that there was nothing discussed about parking in the third amendment to the development agreement.

The board and Mehmood Mohiuddin discussed the parcels and which one was leased for offsite parking; that the economic development agreement didn't include this lot; that the bull riding wasn't started at the time the property was purchased; and that the property was purchased for parking.

The board and Mr. Brower discussed that the installation of the fence or gate isn't considered a structure for purposes of redevelopment or development under the zoning code; that the economic development agreement does not prohibit parking in the lot; and that the zoning on the parcels was a CB-3 and CB-2 which means commercial zoning that incorporates the uses of CB-2 and therefore CB-1 and includes parking; that when it went from three parcels to one parcel the zoning was B-2 which was the updated zoning designation; and that the property that the applicant owns is now parcel number 100-25-043C after the lot combination was done.

Director Kirch and Planning Manager Esquivias gave presentations on case BA-1-18.

The board and Director Kirch discussed the changes in CB-3 to B-2 when the city zoning code was updated in 2014; the different properties owned by the applicant during the second; the third amendments to the economic development agreement and the zoning of those properties; and the timeframe of the two CUPs the applicant submitted for parking and other events on the property.

Director Kirch continued his presentation on case BA-1-18.

The board and Director Kirch discussed that economic development agreements are agreements between the city and businesses or developers and are seldom done; that currently, to allow parking on the property in question there would be an approved CUP with other requirements such as screening and landscaping; that the economic development agreement doesn't change because of the addition of property around the business without an additional amendment; and that there was a list of permitted uses for the C-3 zoning at the time of the agreement and the property in question could not be used without a CUP or amendment to the development agreement.

Chair Schoenbeck opened the public hearing.

Mehmood Mohiuddin, 2304 N. Cortez Rd., Apache Junction, gave information on the lease with Zion International and the lease for the property.

Colleen Shipman, 1615 W. Mocking Bird St., Apache Junction, spoke in favor of the applicant's claim.

Michael Shawb, 2278 E. 6th Ave., Apache Junction, spoke in favor of the applicant's claim.

Tina Lovelady, 601 N. Merrill Rd., Mesa, spoke in favor of the applicant's claim.

Doug Bord, 704 E. Bel De Mar Dr., Tempe, spoke in favor of the applicant's claim.

Theresa Shaw, 39830 N. Vinzenza St., San Tan Valley, spoke in favor of the applicant's claim.

Joseph Covette, 10236 E. Carmel Ave., Mesa, spoke in favor of the applicant's claim.

George Abbott, 532 N. Thunderbird Dr., Apache Junction, spoke in favor of the applicant's claim.

Having no one else wishing to speak, Chair Schoenbeck closed the public hearing.

Chair Schoenbeck asked for rebuttal.

Mr. Brower gave a rebuttal to the city's presentation.

The board and Mr. Brower discussed city code in relation to the nonconforming code and the lease agreement received by the city. Attorney Wells asked copies be submitted to the city to be included in the record.

Planning Manager Esquivias addressed the leases received by the applicant.

The board and Planning Manager Esquivias discussed the lot combos and splits on the parcels owned by the applicant.

City Attorney Stern gave a rebuttal to the applicant's attorney's presentation.

Mr. Brower addressed the board regarding the city's rebuttal.

Chair Schoenbeck called for discussion.

The board discussed their opinions on case BA-1-18.

Chair Schoenbeck called for a motion.

Board Member Gage motioned and seconded by Board Member Borey that the Board of Adjustment and Appeals that pursuant to AJCC Vol II, Section 1-16-4 (C)(1), I move that case BA-1-18, an appeal to the Board of Adjustment and Appeals, by Mehmood Mohiuddin (property owner), represented by Aaron Ludwig of Ludwig Law Offices Ltd., appealing notices of violation dated October 31, 2018 (Code Case #COD2018-00723) and November 7, 2018 (Code Case #COD2018-00751), an appeal of the zoning administrator's decision that parking is allowed by the Third Amendment to the Economic Development Agreement Between the City of Apache Junction and Mehmood Mohiuddin, be denied, with the following findings of fact: The applicant has not presented evidence nor met the burden of proof to demonstrate that the zoning administrator erred in his interpretation of the zoning code.

The board discussed the findings of fact stated in the motion and how the motion needs to be made.

Motion failed in a vote of two in favor and four opposed. (Yes: Borey, Gage. No: Waldie, Buzzin, Schoenbeck, Biggs.)

Board Member Waldie motioned that pursuant of AJC Volume II, Section 1-16-4 (C)(1) that case BA-1-18 an appeal to the Board of Adjustment and Appeals, by Mehmood Mohiuddin, represented by Steven Brower of Brentwood Law Group, PLLC, appealing notices of violation dated October 31, 2018 (Code Case #COD2018-00723) and November 7, 2018 (Code Case #COD2018-00751), an appeal of the zoning administrators decision that parking is not prohibited by the Economic Development Agreement between the City of Apache Junction and Mehmood Mohiuddin and the amendments thereto are granted, over ruling or reversing the zoning administrators decision with the following findings of facts: The second amendment to the Economic Development Agreement does not prohibit parking on parcel 100-25-043C.

Board Member Biggs motioned to amend the recommended motion as stated by Board Member Waldie to include finding of fact number two, the second amendment to the Economic Development Agreement does not prohibit parking on parcel 043C as well as number three, the third amendment to the Economic Development Agreement incorporates the parking requirements and allowances of the second amendment to the Economic Development Agreement and number four that the third amendment to the Economic Development Agreement does not prohibit parking on parcel 043C, parking is permitted in the parking area south east of the rodeo arena. I will add number five off the recommendation and number five is because parking is not prohibited on parcel 043C, Mehmood Mohiuddin did not violate the Economic Development Agreement.

Board Member Waldie denied the amendment to his motion.

Chair Schoenbeck called for a second on the amendments to the motion. Board Member Buzzin seconded the amendments to the motion. The amendments to the motion passed in a vote of four in favor and two opposed. (Yes: Buzzin, Schoenbeck, Gage, Biggs. No: Borey, Waldie.)

The board discussed the motion and amendment to the motion.

Chair Schoenbeck called for a roll call vote. The amended motion passed in a vote of four in favor and two opposed. (Yes: Schoenbeck, Buzzin, Biggs, Waldie. No: Borey, Gage.)

**7. Old Business**

None.

**8. New Business**

None.

**9. Selection of Meeting Dates, Times, Location and Purpose**

Chair Schoenbeck announced that the next meeting is December 9, 2019.

**10. Adjournment**

Meeting adjourned at 12:02 am.

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Frank Schoenbeck  
Chairperson