



TOWN OF JEROME

POST OFFICE BOX 335, JEROME, ARIZONA 86331

(928) 634-7943 FAX (928) 634-0715

REGULAR MEETING OF THE TOWN OF JEROME

BOARD OF ADJUSTMENT

DATE: Thursday, July 2, 2015 TIME: 6:00 pm

PLACE: **JEROME CIVIC CENTER**

600 Clark St., JEROME, ARIZONA 86331

MINUTES

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Board of Adjustment and to the general public that the BOA will hold the above meeting in Council Chambers at Jerome Town Hall. Members of the BOA will attend either in person or by telephone, video or internet conferencing.

The BOA may recess the public meeting and convene in Executive Session for the purpose of discussion or consultation for legal advice with the Town Attorney, who may participate telephonically, regarding any item listed on this agenda pursuant to A.R.S. § 38-431.03 (A)(3).

ITEM 1: CALL TO ORDER/ROLL CALL

The meeting was called to order by Chair Carol Yacht at 6:00 p.m.

Roll call was taken by Albert Sengstock, Zoning Administrator. Members present were Chair Carol Yacht, Jane Moore, Vice Chair Gary Shapiro, Suzy Mound, and Chris Babbage.

Staff present were Albert Sengstock, Zoning Administrator, Jennifer Julian, Minute Taker and Joni Savage, Deputy Clerk.

ITEM 2: APPROVAL OF MINUTES FROM JUNE 4, 2015

Mr. Shapiro made a motion to approve the minutes of June 4, 2015. The motion was seconded by Jane Moore. The motion passed unanimously.

ITEM 3: PETITIONS FROM THE PUBLIC – There were no petitions from the public.

ITEM 4: VARIANCE TO PERMIT AN OFF-PREMISE SIGN

APPLICANT: KATHLEEN ROBERGE, KATE'S BOOKS
ADDRESS: 510 SCHOOL STREET

PARCEL: 401-06-089
ZONING: C-1

The applicant asks for a variance from Section 509 E.5 which prohibits off-premise signs, due to the obscure location of her retail book store and the lay of the land, which prevents visibility by the shopping public. She is requesting an off-premise sign to be located on her own property across the street from her business, at 401-06-039, 513 School Street.

Mr. Sengstock read his report on the application. He cited Section 305 A.6 which states the special circumstances applicable to the property under which a variance may be granted. It is his opinion that the location of the business meets the circumstances necessary for a variance and supports the request. He added that if the business owner sells or closes the business, the sign must be removed unless she grants a future business owner permission to place their sign on her property.

Ms. Kate Roberge presented a picture of what the sign would look like. It would be on her wall at the end of School Street. The proposed sign would allow people to know that there is something further down the street from where they usually turn around.

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Ms. Yacht asked if this would go to the Design and Review Board. Mr. Sengstock said yes, after being approved by the Board of Adjustment.

Mr. Babbage asked if Ms. Roberge had considered a sign on the other side of the building, on Main Street. Ms. Roberge said she has a poster in Annie's window, but there is no access from down there.

Ms. Moore said that she assumes most of the people are walking. When she was driving up School Street it seemed that Ms. Roberge's existing sign is quite visible from the street. But when people walking stop behind Bonnie's van, they don't see any further.

Mr. Shapiro said if the Board were to grant this variance, the approval goes with the land. He asked if Ms. Roberge would take the sign down at night, and she said yes. He read Section 305, Section 10 about the responsibilities of the Board of Adjustment which says that a variance granted shall be transferrable with the land only. He said if the variance is granted, it cannot be retracted. If the business was closed or sold, Ms. Roberge would be obligated to allow whoever had the business put their sign on her property. He wanted to make sure she understood that. It was pointed out that this was included in Mr. Sengstock's recommendation. Mr. Shapiro has no objection to the application.

Ms. Moore said that in a location like this one without tourist foot traffic, perhaps district signs which are allowed by the ordinance are a much better way to direct people. District signs are currently being discussed by the Planning and Zoning Commission and the Design Review Board. She asked if Ms. Roberge would agree to be part of a district sign.

Ms. Roberge asked where the district sign would be placed. Mr. Sengstock said that the locations and appearance of potential way-finding signs have yet to be determined.

Ms. Moore asked Ms. Roberge if the Board granted this variance and a district sign became available, would she be willing to remove the sign on her house? Ms. Roberge said she would, if the district sign proved effective and visible to drivers.

Ms. Moore asked if a variance were granted, could it be for a temporary sign that would be removed when a district sign is established. Mr. Sengstock suggested that would not be an appropriate condition to a variance. There is nothing that says she has to lease to someone else. She owns the property where the sign would be. Normally it would run with the land, but what the Board is considering is allowing something normally prohibited. He does not believe she has to grant permission for the sign to a new owner, but she could, and it would be allowed if the variance is granted. As a private property owner she isn't obligated to do that. The next property owner would have to come up with an alternative. This case is very unusual because she owns the property across from the business. This is the unusual circumstance why he felt the request was reasonable.

Mr. Babbage noted that there is a district sign next to the Muffin Shed and wondered if that could be used with an arrow. Mr. Sengstock said that those existing signs are not very effective in their locations. He is proposing new district signs that would be on public land in the pedestrian right-of-way.

Ms. Yacht had a question about Section 10 of the code which Mr. Shapiro had read. She thinks that even if the current owner agrees to the sign, it is not part of our ordinance. Mr. Sengstock said that it could be made a condition of the variance to have the right to grant the sign with the land.

Ms. Mound wanted to clarify. If Kate's Books were closed and the business became something else, would the sign that

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says "Kate's Books" have to be kept by the new business? Would the Design and Review Board be obligated to allow the new business to keep that sign? Mr. Sengstock said yes. The variance is granted based on the physical circumstances of the location, not to the person. The business would benefit from a sign that placed it on the same playing field as other businesses. It may be stipulated that the variance runs with the land. From that point forward, any owner of that business may have a sign as long as it meets the code and is approved by the Design and Review Board.

Ms. Moore asked if the sign could be raised higher, perhaps to six feet. She was referring to the existing sign on the rail. Ms. Mound believes it may be a foot off of the ground. Mr. Sengstock said that four feet is the maximum height for a free-standing sign.

Ms. Yacht said that the sign is pointing to a building that is someone else's property. If the building is sold, the business could change. Ms. Roberge said that if the building is sold, she probably won't be in business anymore. She would grant a future business owner the right to put a sign on her property. Mr. Shapiro said she would be obligated to allow it and Ms. Roberge agreed.

Ms. Denni Phinney, a Jerome resident and neighbor, suggested that the Board could craft the motion that states the sign does not transfer with Ms. Roberge's home but that she could grant permission to a future occupant. It would not be automatic, but Kate's free will.

Mr. Shapiro said his quandary is that the decision goes with the land. The Board would be obliging Ms. Roberge to dedicate a space for that sign for that building on her property no matter who owns it and what kind of business it is. He believes that the Board could not grant a variance that says it is her decision. Ms. Roberge said that she understands.

Ms. Hardie asked if the sign is attached to Ms. Roberge's property, wouldn't it be necessary to file it with the Clerk of the Court? For example, if one has a lien or easement it has to be legally recorded. The previous owners have always had that space as an apartment, so what happens if the use changes and it were turned back into an apartment.

Mr. Sengstock said that has nothing to do with this process. It is very simple to go to the Records Office and include on your deed the right to have a sign. However, variances normally have to do with setbacks, additions, garages and things of that sort on the same property for which you are granting the variance. In this case, it is a variance from the sign code, which is different, in his opinion, from granting a variance for a setback or a garage. The Board would be allowing a use which is normally prohibited. Subsequently, he does not believe that it is as rigorous to attach it to the land. If the Board were to grant the variance with the condition that if Ms. Roberge were to sell the property then it is up to her whether she wants the sign to continue on her property or not, then thirty days after the hearing, it is law if no one appeals it to Superior Court. The board may feel this is logical and appropriate for the circumstance, or they may not.

Ms. Moore said that doing so would be going against the Town ordinance. Would it be easier to consider a variance from the maximum sign height? It might be more visible if it were higher than 4 feet. She would like not to set a precedent about off-premises signs. Mr. Sengstock said that this is a unique variance for that one location based on the circumstances of that property.

Mr. Babbage asked about the Haunted Hamburger's sign on Main Street. Mr. Sengstock said that had been approved as a wall-mounted, free-standing district sign, because it has more than one business on it.

Ms. Mound asked if the Board were to approve the variance, does that mean that the Board will have to approve other people's signs around town? Mr. Sengstock said no, as a quasi-judicial board, they make a determination based on the merits of the facts of each variance. A precedent is not set.

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Ms. Yacht said she would like to wait for the new district signs to happen. She liked the suggestion of adding to the district sign which is already nearby.

Ms. Mound asked if the Board were allowed to approve the sign each year, rather than making it permanent. Mr. Sengstock said no as this is a variance, not a use permit.

Ms. Moore moved to approve the variance because of item 6 in Section 305, regarding special circumstances of the location and surroundings, but with the limitations that it not be transferred to the next business without the property owner's approval and that the business be willing to transfer this sign to a district sign if and when that occurs.

Ms. Yacht asked Ms. Moore to clarify her motion as to what happens when business changes or closes.

Ms. Moore said in the event the business changes owners, that the off-premise sign not be allowed without Ms. Roberge's approval, that it not automatically run with the land. Also, when and if a district sign occurs, that the business owner be willing to transfer to that sign rather than having the sign on the house.

Ms. Yacht asked why Ms. Roberge's approval is needed when the business changes if it is going to be replaced with a district sign?

Ms. Moore said if she still has the bookstore and the property, that she remove the off-premise sign that she wants to put on her residential property.

Mr. Sengstock read again from his report. Should the district sign become available in the future, that's when the sign must be removed. The district sign would replace her sign, but it will be a while before that happens. The condition could be that the sign must be removed if she sells or closes her business, unless she chooses to grant permission to a future business owner to place a sign on her property. At some time in the future should a district sign become available, that she should remove this sign and make use of the district sign?

Ms. Yacht suggested that the motion should state that the variance passes today, but when the district signs go up, her sign is removed. She does not want to include that Ms. Roberge approves a sign for another business.

Ms. Moore said that if the motion does not contain Ms. Roberge's approval for another business's sign on her property and there is no district sign, then the next person who comes in can expect to put a sign there. This she wants to avoid.

Ms. Yacht said could it be that the intention or spirit of the motion is that a district sign will replace the off-premise sign.

Mr. Sengstock suggested to begin the motion: in order to grant the applicant the same privilege as other commercial property owners relevant to visibility... then the rest of the motion.

Ms. Moore said she would rather see district signs directing people to businesses that may not be visible. Ms. Yacht agreed.

Ms. Yacht called for a brief break to craft a motion.

Following the break, Ms. Yacht made the following motion: "With the intent of replacing Kate's Books off-premise sign with a district sign when available, the Board of Adjustment grants the appellant variance. Further, if the district sign is

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not available before the business changes or is sold, Ms. Roberge may grant permission for another sign. The reason for the variance is that special circumstances of location and surroundings exist.

Ms. Moore asked that the motion include that it is a variance from Section 509 E.5 and that according to Section 305 A.6 the special circumstances applicable are location and surroundings.

Ms. Yacht repeated the motion: "With the intent of replacing Kate's Books off-premise sign with a district sign when available, the Board of Adjustment grants the appellant the variance. Further, if the district sign is not available before the business changes or is sold, Ms. Roberge may grant permission for another sign. The reason for the variance is Section 305 A.6 because special circumstances of location and surroundings exist." Mr. Shapiro seconded the motion. The motion passed unanimously.

ITEM 5: FUTURE AGENDA ITEMS

Ms. Yacht asked Mr. Sengstock for an update regarding the Goldwater Institute issue. Mr. Sengstock said that attorneys for both sides have been in negotiations during the discovery period before submitting the formal appeal to the Superior Court. The attorneys are also discussing possible negotiated settlements and possible mediation. He expects to have a court date within two weeks or so.

Ms. Yacht asked if it is possible to notify the community when the Superior Court date is set. Mr. Sengstock said that he will notify the Board when the date is set. He will discuss notifying the community with the Town attorney.

ITEM 6: ADJOURNMENT

Mr. Shapiro moved to adjourn the meeting. The motion was seconded by Mr. Babbage. The motion passed unanimously and the meeting was adjourned at 6:50pm.

Approval on next page.

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Respectfully submitted by Jennifer Julian on May 5, 2016.

Approved: Carol Yacht Date: 5-5-16
Board of Adjustment Chair

Attest: Sary Shapiro Date: May 5, 2016
Board of Adjustment Vice Chair