

**BOARD OF ADJUSTMENT AND APPEALS HEARING  
SPECIAL COUNCIL MEETING  
THURSDAY, SEPTEMBER 28, 2017  
3:00 P.M.  
SCHIEFFELIN HALL**

- I. CALL TO ORDER** Mayor Escapule called the Board of Adjustments and Appeal Hearing to order on Thursday, September 28, 2017.
- II. PLEDGE OF ALLEGIANCE** Mayor Escapule led the Common Council and the general public in a recitation of the Pledge of Allegiance.
- III. ROLL CALL**
- |                              |         |
|------------------------------|---------|
| Councilmember Anna Salcido   | Present |
| Councilmember Bill Barlow    | Absent  |
| Councilmember Brian Davis    | Present |
| Councilmember James Newbauer | Present |
| Mayor Escapule               | Present |

Also in attendance: Brenda Ikirt, Interim City Clerk  
Michael McMillan, Building Inspector  
Dave Bruster, Fire Chief

**IV. BOARD OF ADJUSTMENT AND APPEALS HEARING**

- A. DISCUSSION AND PUBLIC COMMENTS:** The purpose of this public hearing is to allow the Board of Adjustments and Appeals to gather public input on the request for a variance from Jean Davis for her property located at 115 N. Fourth Street, Parcel No. 109-11-022. Variance would allow property to be used for a full service restaurant and bakery business.

**MOTION** by Councilmember Newbauer, **SECOND** by Councilmember Salcido to move into the Board of Adjustment and Appeals Hearing. The purpose of this public hearing is to allow the Board of Adjustments and Appeals to gather public input on the request for a variance from Jean Davis for her property located at 115 N. Fourth Street, Parcel No. 109-11-022. Variance would allow property to be used for a full service restaurant and bakery business.

**VOTE:** 3/0

**MOTION:** 3/0

Mayor Escapule: "Okay, now were in the Board of Adjustments Hearing. Item A on this is Discussion and Public Comments. The purpose of this public hearing is to allow the Board of Adjustments and Appeals to gather public input on the request for a variance from Jean Davis for her property located at 115 N. Fourth Street, Parcel No. 109-11-022. Variance would allow property to be used for a full service restaurant and bakery business.

Mayor Escapule; "I am going to open this by allowing the public comments first!"

Carolyn Grady, "Good afternoon. I am Carolyn Grady, I am the owner of the property on the corner of 4<sup>th</sup> and Safford. I have a few comments about the request for a variance on the property located at 115 N. 4<sup>th</sup> Street. When I was first approached for the request; a request for a bakery, now I see the request is for a full service restaurant and bakery. A full service restaurant as it was explained to me is a sit down eatery where food is served directly to the customers table. These establishments may sell alcoholic beverages provide take out, delivery or present live entertainment. There appears to be much confusion as to what this variance includes now and in the future. I would appreciate a clarification on if there is the liquor license what class will it be? A six or a seven? Will it be a class twelve tied strictly to food operation? A class six or seven, the permissible hours are from six in the morning till two in the morning. Is this the business plan strictly for (inaudible)? Will there be entertainment? There are many questions on City Codes such as; commercial trash collection, garbage, refuse, refuse containers, grease traps? Note; Fourth Street is not a major thoroughfare. Although trash trucks do currently run down the street, they usually usage could possible double upon the collection depending upon the collection times. Trash trucks weigh approximately twenty six thousand to thirty three thousand pounds. Food distributors use semi-trucks or trailers weighing twenty six thousand pounds to eighty thousand pounds, depending on the load. A refrigerator box truck weight is fourteen thousand to twenty six thousand pounds and have mobility but are still heavy. Is our street engineered to support that weight or wide enough for trucks to turn around? Who will be responsible for the maintenance of the road? I'm sure it will be the City however, I am sure it will extend to us taxpayers eventually. On First Street between Fremont and Bruce the City posted signs for no trucks because trucks were using the road after making deliveries to Circle K and kept tearing out our overhead electrical lines. We will probably have that same problem with the lines that run across Fourth Street. A commercial hood system creates exterior noise as well as smoke. Will the system have a parapet to reduce the noise pollution? What is the current size of the water feed in the area? Will there be a drop in water pressure below 65 psi with the required capacity. Will there be large fluctuations in water pressure. Fire hazard; good fire suppression system, fire retardant ratings for buildings elements, structural frames, three hours fire rating fire retardant material. This existing building is old and residentially built and there is no guarantee that the construction is under any current standard. Five eighth inch sheetrock is two hour fire rated and this is with fire (inaudible). Concrete masonry (inaudible) solid are a two hour fire rating. There is a concern that at least the cooking area should be upgraded for fire containment. Commercial or industrial hoods with a filtration system. Along

the backside of the property is a wash. That would (inaudible). With the use of efficient commercial equipment is the electrical system going to be up to code? I'm sure that Mac will see to it that is. Will the current APS local grid handle the increase? I understand that these problems can be helped but there are still concerns. Can they be written into the variance or is it just a matter of trust and as you can tell I am opposed to a full service restaurant on that location! Thank you!"

Mr. Jon Donahue; "I live at 20 N. 4<sup>th</sup> Street; "I'm opposed to this variance. When Jean first talked to me about it she said I would like to have a bakery and I think that is great! However; this is more full service restaurant (inaudible). I am concerned about noise and the (inaudible). I would like to ask the zoning board to approve a bakery only without electronic amplification of any music or other noise in the (inaudible). Thank you!"

Ms. Ellen Hall; 101 N. 3<sup>rd</sup> Street, corner of 3<sup>rd</sup> and Safford; "I used to work at the Lamplight Room when it was a restaurant. So that property has already been a restaurant. So I would imagine that; that property would easily would handle the water and the electrical grid. From my recollection and actually you guys would have a better recollection of the noise level. Ted is right next door you guys are across the street, I do not remember it being a loud noise at all. I don't remember it being a problem and it was not like; from my house I can hear Four Deuces when they have music going. I can hear them loud and clear. So sometimes I can hear the Crystal Palace but I cannot hear, you know I didn't hear anything before from 4<sup>th</sup> and Safford. You know back in the day when the restaurant was there was there any noise? Could you hear anything? There wasn't a huge infrastructure problem with cars coming and going and mostly people walked down to the restaurant. I don't see where there is an issue. I am definitely for anything that brings business to this town anything that brings in new energy to the town I am all for it. Thank you."

Mr. Mike Winterton; "Live on 4<sup>th</sup> and Bruce; "The way they originally brought it to us was that it was a bakery. There was never any mention of a full eatery nor was there live entertainment. I am a soldier. I wake up early. I am usually gone by five o'clock (inaudible) so I go to bed early. I can hear Crystal Palace. Not a big deal usually it is on weekends but when it is one house down across the street that is a lot closer to home. I am a soldier. I suffer with sleep disorders so having the noise; I bought here because it was quite. (Inaudible) where it was quite and I checked everything out before I moved out here. I could live anywhere I wanted in the whole area but it was quite here in Tombstone. If this goes in my house is for sale and I will move somewhere else. That is my feeling on it! It was sold as a bakery. Bakeries get up early and they usually (inaudible) during regular business hours, that's fine; because my day starts about four and ends about six. That is fine with me but full service eatery that's live entertainment at night that's (inaudible). Thank you!"

Ms. Mary Musich; "I don't live in the neighborhood but I know most of the people here and those concerned with this business. I too am for it; for the fact that any business in town is nothing but good for our City, good for our community. I think that there could be adjustments made and we can please

everybody. By the way; today is good neighbor alliance day and I hope that everybody thinks of everybody and we concern ourselves with everybody and we all get along and it all passes nicely.”

Mr. Ted Villarin; “I had a restaurant across the street. We sold alcohol. We didn’t have any fist fights, we didn’t have any complaints from neighbors and the people complained when I went out of business. So I am for it!”

Ms. Barbara Ankrom; “I have lived here since 1967. I remember your restaurant. I grew up to be a teacher and now I have kids at school that have nothing to do after school. I think it is important that we work as a community; to involve everyone. Not to dissatisfy anyone but to involve everyone. Give everyone an opportunity! These young people are taking a chance. They want business. I want them to succeed. I don’t think that anyone doubts that they won’t succeed. I think things can be worked out to the betterment of everyone. Thank you!

Mayor Escapule; “Alright Ms. Davis we are going to allow you to rebut the negatives and talk about the positives and present your case to the Board.”

Ms. Jean Davis; “Thank you. I’m Jean Davis. I’m the owner of the property at 115 N. 4<sup>th</sup> Street. Every day Tombstonian’s work hard to develop solutions to improve services for tourist and residents. Tombstone’s proven track record has helped fuel the hospitality industry to poise Tombstone for continued success. We want to maintain that success. Part of Tombstone’s proven track record and we have heard a lot of this today includes two full service restaurants on 4<sup>th</sup> Street and a winery that were in operation in this same zoning district. These same businesses were embraced by the community and were not detrimental at least there is nothing recorded that shows that they were detrimental to persons residing or working in the vicinity. To adjacent properties, to the neighborhood or to the public welfare. These businesses were much larger than the proposed little neighborhood eatery. This bakery exists where the misinformation came I don’t know but this isn’t about a bakery this is about people who have runned a successful bakery for five years and now they want to expand into a bricks and mortar and include food with their baked goods. That’s always been the goal and continues to be the goal. The reality however; is the zoning on N. 4<sup>th</sup> Street, has not changed and it’s still a commercial zone. There are moving vans that go down the road there are semi-trucks that come and stay at the lodging on the street. There are garbage trucks, there are linen trucks. The same roads that service the other restaurants in town are the same, built the same way as 4<sup>th</sup> Street. So if there is an issue with the road on 4<sup>th</sup> Street there is an issue with all the roads in Tombstone. So the truck traffic is existing. Restaurants have been serviced by trucks on that road for years. Due to this commercial zoning it is also important to note that this property is deprived of the privileges enjoyed by other properties in the same zoning district on N. 4<sup>th</sup> Street. I don’t know if many of you have looked at the zoning map but the majority of the properties are zoned B-1 currently in that zoning district. We did not create these special circumstances; they exist based on the zoning district. Just to be clear N. 4<sup>th</sup> Street is unique. It is not like 3<sup>rd</sup> Street, 5<sup>th</sup> Street, 6<sup>th</sup> Street. That zoning is totally different. That does fall to residential to North of Safford. 4<sup>th</sup> Street

does not. Mario's bakery has been in business for several years. It's a couple that work harder than anybody I know in this town. They would like a brick's and mortar. As the owner of the building we will probably not even break even once we bring that building up to code in our lifetime but we want to give them the chance. They have a good product they are good for Tombstone. They building that we are talking about; the restaurant would be in the front. It will have a full structural review, it will also be brought up to code. A lot of the other B-1 buildings in that zone are not up to code so no matter which one you put a business in it would need increased electrical, commercial garbage service and the list goes on. Interestingly enough that building was a commercial building. It was a Fort Huachuca barrack in its day. So if you get a chance go by and look at it. It serviced a lot of soldiers in its day and of course it has to be brought up to code. Building standards were much different in nineteen hundred than they are today. Environmental impact report assessment for this location has been completed with the findings showing no significant adverse conditions. Not surprisingly since restaurants have been in business on that block. As a result I am enthusiast supporter of expanding Mario's bakery at this North 4<sup>th</sup> Street location into an eatery. A local neighborhood eatery here will service the lodging businesses as well as the local residents. I encourage you to take the time to patronize Mario's bakery and if approved the 4<sup>th</sup> Street café and share in our vision in making Tombstone a better place. Thank you!

Mayor Escapule; "At this time I would like the Board if they have any questions to Ms. Davis this is the time that you can do that."

There being no questions. Mayor Escapule states for the record that Councilmember Davis has recused himself from any participation in this at all.

Mayor Escapule; "I have a question; when you say an eatery; is it going to be a hamburger joint or is it going to be a steak place or what are you talking about? What kind of food are you going to be serving?"

Ms. Davis; "The theme is these are people that are Italian. It's an Italian Restaurant. It's their roots. Their family has owned an Italian Restaurants in Long Island and it will be Italian. It is similar to their baked products; it very Italian (inaudible)."

Mayor Escapule: "I keep hearing all the rumors about alcohol and late night parties and whatever; Is it the intention of you or your tenants to serve alcohol in the near future or to have alcohol and if so what are your plans. Is it going to be a restaurant like a number 6 all-purpose license or what?"

Ms. Davis; "There are no immediate plans for alcohol however; we've put in a full service restaurant because the lessons learned from businesses such as Puny John's, they started out not thinking they wanted alcohol and then the customers wanted a beer with their sandwich so; the goal is that someone eventually probably be years down the road could have a glass of wine or a glass of beer with their Italian food. Which is a natural pairing. There is no late night...I don't know where the late night entertainment came from. It is a

small place and if you put a band in there; there would be no room for dinners. It's not a big. It's a little coffee shop type set up."

Mayor Escapule; "That was my next question. How many people do you expect to seat after it is completed? Based on the square footage of the Fire Code 35!"

Mayor Escapule; "That's total? All tables and you're not going to have a bar right? Just tables and chairs?"

Ms. Davis; "Yes, the Lamplighter had a bar in the front. We do not plan that we would like to add on to the small area to the front to increase the number of tables but there are no plans for a bar. We would have a baked goods counter and tables."

Mayor Escapule: "I noticed that there is an addition to the front of the building in one of your drawings here. Does that actually move out into the ...how close to the right of way does that get when you extend your building out there."

Ms. Davis: "It's in the packet. We do not violate the front set back to expand out..."

Mayor Escapule; "I guess I was going to ask Mac what the setbacks where on that particular piece of (inaudible) but I guess it depends on what the zoning is; correct, Mac?"

Building Inspector McMillan; "Right." As the house sets now it is already within that setback area that is required for that zoning district. Which is not uncommon for the older homes here. You know when they came in and rezoned a lot of the already established buildings were automatically within those setbacks so they are considered legal non-conforming at the time the zoning regulations were put in place. Part of this variance is you would be approving a building to move further into that required setback. There are really no concerns relative to the fire safety portion of it because our setback is actually going to the right away and obviously you can't build on the right away. So it wouldn't pose a problem as it would if it was side set back or a rear setback."

Mayor Escapule; "I have a question for the Fire Chief in regards to this. I know we have had Don Teodoro's was down there and we had the Lamplight Room and we have had a number of other retail businesses down there over the years. My question to you; do we have adequate down to that part of 4<sup>th</sup> Street today?"

Fire Chief Bruster; "Yes! We have adequate water!" With the improvements we did with the hydrants and the water system and if we can get that six inch main through Safford there would never be another problem."

Mayor Escapule; "Okay. Also let me see I have one more thing that I wanted to ask you about."

Inspector McMillan; "Parking!"

Mayor Escapule; "Parking. You know, Mac could you get into to a little bit of depth for Board as far as City Code and the Building Code as far as parking. So that we can clarify if there is ample parking or not."

Inspector McMillan; "So there ...typically in the Code, where all the City Codes you would have certain uses and buildings would require off street parking. Tombstone is unique and it is very limited in the number of businesses that are required to provide off street parking and they are limited to hotels, bed and breakfasts, single family dwellings, things of that nature. The Code basically states that for any other commercial use parking space sufficient in an area to accommodate the patrons of such use." Tombstone is unique in the way we have Allen Street, Fremont Street, parking is always at a value it is always needed. They will have to provide one ADA parking spot that will be located on the site and then the code allows additional parking on the street. I would hope that because of the building across the street that you might let them use some of that parking area. We did specifically put in a parking lot for the bed and breakfast across the street and my intent was to work with her to give us a written agreement from one party to another that parking would be available as needed. Parking is at a premium as usual with any business in this town."

Mayor Escapule: "Since you're the co-owner of or one of the owner of both (inaudible) would you be amenable to making that agreement that; that would be part of the parking for this establishment?"

Ms. Davis; "Yes, the plan in the chart in the variance paperwork are anticipating and we would have twelve spaces plus the one ADA space for that parking lot. Which would actually be compared to all the eateries in town, there is only one eatery with more parking spaces and that is the Depot, all the rest have many fewer spaces than that."

Mayor Escapule; "Yeah, I am very well aware of that!" "I think that is all I have. Jim what do you think?"

Councilmember Newbauer; "Well looking over some of the ....my main concern was fire safety. Make sure there is water in case there is a fire, garbage collection. Basically, what was talked about; delivery trucks in and out and what I have seen here we have more people who are pro than opposed to it and so I believe what the constituents say. If people are pro to it then I say good luck."

Mayor Escapule; "Okay, do we have any further discussion?"

Building Inspector McMillan; "I would like to point out that we did send out the notices to all property owners within three hundred feet and we did have greater support than opposition returned back to the City Hall."

Mayor Escapule; "I have reviewed all the support and the opposes and I think the majority of the opposes had the same concerns that I just addressed to

Ms. Davis and to the Fire Chief and to you Mac, the Building Inspector and I would hope that; that one would satisfy some of the folks that are opposed. I will say that I believe Tombstone needs every business that we can get. We need to support anybody that is willing to put capital in to building a business. I went by and looked at the building today and I am thinking oh my gosh! Jean what did he do to you! I said that is an old military barrack that was moved here from Fort Huachuca probably in the fifties but I do know that it is going to take a lot of work and I know that providing this passes that you will work close hand in hand with Mac because Mac will make sure that happens. I still have one thing that I would like to get clear is this loud noise at night because the military man back here; I understand his position and I feel for him and by the way I can hear; you all know where I live; clear up to the end of town. I can hear the Deuces and I can hear the Crystal Palace and I can hear all of these bands going at night. I don't see this as going to be; at this point a honky tonk saloon sitting down here with people rolling out in the street. I think an Italian Restaurant with a good bakery I think is probably an asset to the town, personally! I know that somebody is going to be throwing rocks at me when I leave here but that's my opinion at this point in time. If there is no more discussion. Anna do you have any discussion?"

Councilmember Salcido; "No, Numerous people called me and have been in touch with me (inaudible).

Mayor Escapule; "Okay!"

## **V. MOTION TO ADJOURN**

Mayor Escapule entertains a motion to adjourn the Board of Adjustment and Appeals Hearing.

**MOTION** by Councilmember Newbauer, **SECOND** by Councilmember Salcido to adjourn the Board of Adjustment and Appeals Hearing.

**VOTE:** 4/0

**MOTION:** 4/0

## **VI. SPECIAL COUNCIL MEETING**

### **VII. NEW BUSINESS**

- A. DISCUSSION AND/OR ACTION:** Approval of request from Jean Davis for a variance for her property located at 115 N. Fourth Street, Parcel No. 109-11-022, variance to allow property to be used for a full service restaurant and bakery business.

**MOTION** by Councilmember Newbauer, **SECOND** by Councilmember Salcido to approve request from Jean Davis for a variance for her property located at 115 N.



Fourth Street, Parcel No. 109-11-022, variance to allow property to be used for a full service restaurant and bakery business.

**DISCUSSION:** None

**Roll Call Vote:**

Councilmember Salcido	No
Councilmember Barlow	Absent
Councilmember Davis	Abstains
Councilmember Newbauer	Yes
Mayor Escapule	Yes

**Yes Votes 2, No Votes 1, Absent 1, Recused 1, No Votes 0**

**VOTE:** 2/1/1/0

**MOTION:** Carried

Interim City Clerk Ikirt; "Ms. Salcido said no."

Mayor Escapule; "I know! Two and one! Two yeses, one no! Motion carried! Hold on Mac I am still in control here buddy! Again I apologies to the folks that are against this but I hope that you can work with your neighbors and see if you can't make it work and I am sure if it turns out like you think it is going to be noisy and loud that's what we have the Marshal here for. We have ordinances for it and I just can't see ...I remember when Ted Villarin had Don Teodoro's going and he had a little Mexican music playing inside. It was quite, nobody bothered anybody; they parked in the parking lot, they parked in on the side. Most of the people walked down. I don't think it is a negative thing. If we don't give them a chance we will never know, will we." Thank you.

**B. DISCUSSION AND/OR ACTION:** Approval of Policy No. 2017.01; Take Home Vehicles Policy and Procedures.

**MOTION** by Councilmember Davis, **SECOND** by Councilmember Salcido to approve Policy No. 2017.01; Take Home Vehicles Policy and Procedures.

**DISCUSSION:** Mayor Escapule; "There is a little misconception on this. This is a take home policy that is basically required by South West Risk which is the insurance company that insures the City of Tombstone. Considering the fact that we do have some vehicles being taken home by city employees for example, the Marshal's Office and two or three of the Public Works employees that are on call twenty four seven. This is a policy that set out guidelines for those particular individuals; employees of the City that are taking the vehicles home so if there is an incident or an accident we have covered ourselves where Southwest Risk will cover us. If we don't pass this then South West Risk probably wouldn't cover us if there was an accident or an incident that injured someone and it wasn't a City Employee. That is my discussion do you have any discussion Anna?"

Councilmember Salcido; "No, but there's some of the workers have their children in their cars with no seat belts and no nothing so this should be passed!"

Mayor Escapule; "I think that policy is covered in this. As a matter of fact I am sure it is." This shouldn't be construed as allowing just every City employee to start taking the cars home. It doesn't no! It is only the ones that are allowed to take the vehicle home."

Interim City Clerk Ikirt; "For the record Mayor, can we state on there that City Hall has never taken a vehicle home!"

Mayor Escapule; "I would say that! Make it a matter of record!"

Interim City Clerk Ikirt; "and we never will! We have our own vehicles!"

Mayor Escapule; "The rumor in town is that this is so the City Hall workers could take cars home. The City employees working at City Hall have never one time taken a vehicle home! Also, if the City employees have to go out of town they don't drive a City Car; one because they don't have one that is good enough to get out of town. They are afraid they will get to Benson and break down so they take their own vehicle. These are just rumors that are being spread around town. No facts to them! None what so ever! The City Employees that work that work in the City Hall have no desire to take a City vehicle home because it does put a constraint on them. If you are working at City Hall and going home and want to stop at Wal-mart you can't do that! If you want to stop at the grocery store if you want to go to the bank you can't do that! So that's the reason for the policy. Also I felt that it was important that we clear up some of these rumors that fly around town. That's mostly negative. Any further discussion.

**Roll Call Vote:**

Councilmember Salcido	Yes
Councilmember Barlow	Absent
Councilmember Davis	Yes
Councilmember Newbauer	Yes
Mayor Escapule	Yes

**Yes Votes 4, Absent 1, No Votes 0**

**VOTE:** 4/1/0

**MOTION:** Carried

- C. DISCUSSION AND/OR ACTION:** Approval of request from the Tombstone Lion's Club for a special use permit for the use of Schieffelin Hall on Saturday, May 26<sup>th</sup>, Sunday, May 27<sup>th</sup>, and Monday, May 28<sup>th</sup>, 2017 from 8:00 a.m. to 10:00 p.m. for the annual Wyatt Earp Days Event.

**MOTION** by Councilmember Davis, **SECOND** by Councilmember Newbauer to approve request from the Tombstone Lion's Club for a special use permit for the use of Schieffelin Hall on Saturday, May 26<sup>th</sup>, Sunday, May 27<sup>th</sup>, and Monday, May 28<sup>th</sup>, 2017 from 8:00 a.m. to 10:00 p.m. for the annual Wyatt Earp Days Event.

**DISCUSSION:** None

**VOTE:** 4/0

**MOTION:** Carried

**\*\*Mayor Escapule noted a typo of the year. 2017 should be 2018.**

- D. DISCUSSION AND/OR ACTION:** Approval of request from the Tombstone Lion's Club for a special use permit for the use of Schieffelin Hall on Saturday, August 11<sup>th</sup>, and Sunday, August 12<sup>th</sup>, 2017 from 10:00 a.m. and 10:00 p.m. for the 2<sup>nd</sup> Annual Doc Holliday Event.

**MOTION** by Councilmember Davis, **SECOND** by Councilmember Salcido to approve request from the Tombstone Lion's Club for a special use permit for the use of Schieffelin Hall on Saturday, August 11<sup>th</sup>, and Sunday, August 12<sup>th</sup>, 2017 from 10:00 a.m. and 10:00 p.m. for the 2<sup>nd</sup> Annual Doc Holliday Event.

**\*\*Mayor Escapule noted a typo of the year. 2017 should be 2018**

**DISCUSSION:** None

**VOTE:** 4/0

**MOTION:** Carried

## **VIII. ADJOURNMENT**

Mayor Escapule entertains a motion for adjournment.

**MOTION** by Councilmember Newbauer, **SECOND** by Councilmember Salcido to adjourn the Special Council Meeting for Thursday, September 28, 2017.

**VOTE:** 4/0

**MOTION:** Carried

The Special Council Meeting for Thursday, September 28, 2017 thereby adjourned at 3:37 p.m.

---

Dustin Escapule, Mayor

---

Brenda Ikirt, Interim City Clerk