



# TOWN OF JEROME

POST OFFICE BOX 335, JEROME, ARIZONA 86331  
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## MEETING OF THE TOWN OF JEROME **BOARD OF ADJUSTMENT**

**DATE: Thursday, July 17, 2014 TIME: 6:30 P.M.**

**PLACE: JEROME CIVIC CENTER, 600 CLARK STREET**

### Minutes

#### **ITEM 1: CALL TO ORDER/ ROLL CALL**

Chair Carol Yacht called the meeting to order at 6:30 pm.

Board members present: Gary Shapiro, Carol Yacht, Suzy Mound, Chris Babbage,

Board members absent: Ron Richie

Staff present: Bill Sims, Town Attorney (via telephone) and Rebecca Borowski, Zoning Administrator

#### **ITEM 2: APPROVAL OF MINUTES: March 6, 2014 Meeting Minutes**

Gary Shapiro made a motion to approve the minutes of March 6, 2014. Second by Chris Babbage. Motion passed with three yes votes and one abstention from Suzy Mound who was not in attendance at the March 6 meeting.

#### **ITEM 3: PETITIONS FROM THE PUBLIC**

No petitions were received from the public.

**ITEM 4: APPEAL OF ZONING ADMINISTRATOR'S INTERPRETATION** – The Board will review an appeal of the Zoning Administrator's determination that a microbrewery at 728 East Avenue in Jerome (The Jerome Keep Bed and Breakfast) would not qualify as a home occupation. The Board may uphold or reverse the interpretation or request additional information, which may include a site visit, and schedule another hearing.

Chair Carol Yacht read a statement into the record: "I spoke with Bill Sims, the Town Attorney. If during the Hearing tonight, the Board of Adjustment considers whether or not to allow evidence regarding earlier decisions to be introduced, we will need to recess and reconvene at a later date regarding Item 4, appeal of the Zoning Administrator's interpretation, in order to receive legal advice which requires an executive session. Since an executive session was not on tonight's agenda we will need to recess and reconvene at a later date with an E-session agendaized."

Attorney Bill Sims addressed the Board. He stated that there is a valid appeal before the Board but an Executive Session was not included on the agenda. If during the hearing, evidence is received and legal advice is needed, an E-session is necessary but cannot occur because it was not on the agenda.

Chair Yacht requested that the appellants, Mr. and Mrs. Williams step forward and read their appeal letter into the record.

Mrs. Williams explained the background of the appeal. Council requested the Zoning Administrator provide formal interpretation of the proposed project relative to Zoning Ordinance provisions for home occupation. A plan was provided, by the Williams', to the Zoning Administrator who then issued a formal interpretation.

The Williams' appeal letter outlines the three main topics that the Zoning Administrator interpreted as the reason the microbrewery does not fit within the definition of a home occupation.

Mrs. Jaime Williams then read the appeal letter into the record (attached).

Mr. Sims explained to the Board that they may consider the evidence and decide to use action of prior Boards if they wish. The Board will need to decide if prior evidence will be used to help render a decision on this matter. If prior evidence wishes to be used, an Executive Session would need to be held.

Chris Babbage asked Mr. Sims if the Board can limit production amounts. Mr. Sims replied that if the Board decides the proposed microbrewery is a home occupation it may impose a ceiling. If the Board imposed a cap on production it would be enforceable.

Chair Yacht voiced concern with the ability to police liquor laws in a private residence.

Mr. Sims explained in the case of a winery, the Zoning Ordinance was modified to allow wineries with a Conditional Use Permit. The Board may believe a microbrewery is a home occupation, therefore a permitted use. Or it could recommend that the Planning and Zoning Commission require a Conditional Use Permit for the use, as there are currently no provisions in the Ordinance. The Zoning administrator confirmed there are currently no provisions in the ordinance for a microbrewery.

Chair Yacht referred to Section 507 of the Zoning Ordinance, citing that in the C1 Commercial Zone, serving food or beverages inside a building is allowed as a permitted use. All products incidental to a permitted use, which are manufactured on the premises may be sold on the premises. The Ordinance does not address manufacturing or sales on the premises in the residential zones.

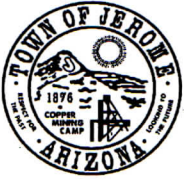
Board members then discussed the Liquor Board permissions for a Series 3 Microbrewery license. There was confusion about whether or not on-site sales are allowed under this licensure.

Gary Shapiro stated that he sees no comparison between a winery license in a residential zone and this one. He believes there is a vast difference between East Avenue and Dundee. East Avenue is a one-way street with limited parking and one way streets. The Williams' property has limited on-site parking. Dundee is a two-way street, homes are farther away and property is larger. The two neighborhoods are very different. Parking is less of an issue on Dundee. Comparing the proposed project to a vineyard is fallacious because the conditions are very different. Mrs. Williams responded that traffic would not be impacted and the number of guests would not change from the allowed two rooms. Personal vehicles will be used for delivery and there is an additional parking space on Douglas Road which could be used solely for the Williams family.

Chair Yacht reiterated that the Zoning Ordinance states home occupations shall not change the character of a neighborhood.

Tracy Weisel, who lives on East Avenue, commented that since the Williams' began their B&B, traffic in the neighborhood has not changed.

Discussion ensued regarding alcohol at Art Walk and a recent incident in Jerome's commercial district.



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Mike MacDonald, a Jerome resident who lives 4 houses down from the Williams, commented that Darryl and Jaime have been respectful of the neighborhood. He does not have a problem with production of 5,000 gallons.

He voiced concern with the business evolving into a larger operation and, if so, it may impact odors and parking, and change the conditions enough to impact the neighborhood. If limits were imposed he would be amenable to the microbrewery operating.

Mr. Williams explained that the federal government requires reporting of production amounts. He went on to say that while the residence is large, there is no room to expand the microbrewery. Most rooms are used for the family and two rooms are used for the Bed and Breakfast. His goal is to start with a small home operation, with a limit greater than 5000 gallons, then purchase a larger space in another location that would allow the microbrewery to expand.

Mike MacDonald commented that he believes the residence does have room to expand the operation. He does not want to see production in amounts of 10-15,000 gallons.

The Zoning Administrator asked the Board and Mr. Sims if it is appropriate to set limits and conditions on a home occupation or if it is more appropriate for that to be done by PZC and Council through a CUP? Mr. Sims responded that the sole matter is whether this is a home occupation or not. Board members may consider it a home occupation IF production is limited or capped at 5,000 gallons. It then would become a question of enforcement. He suggested it could be appended to the existing Conditional Use Permit for the Bed and Breakfast to say that it would require the microbrewery to submit reports to the Zoning Administrator.

Jane Moore, a Jerome resident, commented that a winery on Dundee was denied as home occupation for various reasons. She recollected that Council had to create a committee for the purpose of identifying the use. Chair Yacht reminded the Board that this issue was a previous decision.

Chair Yacht suggests the Board consider the definition of a home occupation. She stated that most home occupations create products from material that is acquired elsewhere. The spirit of a home occupation is to create products made at home and then sold on Main Street, for example. Gary Shapiro suggested the Board could decide to reverse the zoning administrator's decision and allow the Williams' to produce on-site, sell elsewhere through distribution of the product and not sell or provide the product to B&B guests. Or the Board could limit sales to 2 liters per customer, per night, with the option to sell more to take off-site.

Mrs. Williams explained that they would self-distribute to bars or restaurants. The license would allow retail sales on-site and off-site wholesale. Naming the business a Bed and Brew requires liquor licensing because offering complimentary product to paying guests constitutes a sale. There would be no retail sales to the general public, just to paying guests of the Bed and Breakfast.

Rebecca Kennedy, a Jerome resident, voiced appreciation of the Williams' project. However, she stated disdain with having to rent a retail space in the C1 zone instead of being allowed to sell products from her home. While she appreciates the concept of a Bed and Brew – she is of the opinion that it is more appropriate to do it in the I-1 Industrial zone because overall this project would change the face of neighborhoods in general.

Doug Freund, a Jerome resident, agreed that the proposed use in an undesirable location, saying it is not appropriate for a residential area. He voiced concern for setting precedent in residential areas for on-site retail sales and B&B's with liquor licenses.

Brandon Nargessi, a homeowner at 748 East Avenue, commented that parking has not been an issue. He asked the Board if the issue is concern with the family a bar, or with selling to guests at the B&B. Mr. Nargessi stated that other B&B's might sell homemade pies or homemade crafts and doesn't find issue with that practice.

Suzy Mound asked Mrs. Williams to clarify if they also want to produce hard cider. Mrs. Williams responded that they wish to produce only beer. Suzy Mound went on to say that the in-state microbrew series 3 license would allow them sell beer on premises for consumption on-site or off-site. She understands this has not been done before in a residential area. Ms. Mound stated that the license allows for production and sales on-site but thinks it refers to operation in commercial not residential areas. She has concern with opening the door to allow retail sales in residences. Once this is allowed, then more homes may turn into retail shops. She voiced her opinion that operating both a Bed and Breakfast and a microbrewery in one residence creates a situation where a home occupation is no longer incidental and subordinate to a single family dwelling. If allowed, it would set a precedent. She referred to the Zoning Ordinance definition of a Bed and Breakfast, stating that one can provide food at breakfast NOT lunch or dinner. Changing the operations and adding the brewery concept to it changes the nature of a Bed and Breakfast.

Mrs. Williams stated that she has received letters of support from neighbors on East Avenue and Holly Avenue. She also has a letter from their insurance provider confirming availability of a liability policy regarding their proposed operation. She states that they would be amenable to limiting sales to off-site but considers the microbrewery a unique addition and an enhancement for guests of the Bed and Breakfast.

Mr. Williams stated that he would need to clarify with the Liquor Department. Calling their operation a Bed and Brew and offering paying guests their product constitutes sales. The guests arrive and pay for accommodations. They would not arrive and pay strictly for beer.

The Zoning Administrator referred to the Zoning Ordinance, stating that services not customary to a residence are not allowed in a home occupation. A microbrewery requires county, state and federal inspections and reporting requirements which are not customary to a residence. Daycares and bed and breakfast are subject to similar inspections. Ms. Borowski explained that daycares and B&B's are conditional uses not permitted uses. Home occupations do not fall into the same category. By request of Chair Yacht, she clarified that she was referring to the letter supplied by the Williams' stating that the microbrewery would have food grade systems requiring inspection by state and federal agencies.

Ms. Borowski went on to clarify that there is a difference between a Conditional Use and a home occupation. They are two different classifications of use; a home occupation is permitted by right and a conditional use requires a permit with conditions and stipulations. B&B's and daycares are not permitted by right. They require a CUP. It is customary for conditional uses to have inspections not customary to a residence.

Chair Yacht called a 5 minute recess.

Upon return to session, the Zoning Administrator addressed the Board, to ask if limits on production were set, if restricting on-site sales was a condition, and if the Williams' submitted reports to the Zoning Administrator, would the Board then consider the microbrewery to be in conformance with a home occupation as provided in the zoning ordinance.



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Chris Babbage commented that he felt samples to guests should be permissible. He went on to say that he does not agree with retail sales on-site and that a limit on production should be imposed.

Suzy Mound commented that the Board should consider the recent issue at Art Walk.

Mr. Sims explained that the Art Walk issue does not apply here because that business did not have a license. The Williams' are trying to get a license and would therefore be legal.

Gary Shapiro stated that it would be awkward to have B&B and a microbrewery and not be able to offer the product to guests in limited amount.

Jane Moore, a Jerome resident, voiced concern that if the Board imposed limitations on production amounts and limits on on-site retail sales, the state liquor board would then not be able to honor the restrictions or limitations set. Chris Babbage responded that he doubts the liquor board would object to stricter limitations.

Mr. Sims reiterated that the sole issue is the definition of a home occupation. He reminded the Board of their duty to interpret the Zoning Administrator's conclusions, and perhaps to clarify them, and if so inclined, to state that they would consider this a home occupation if certain conditions were met. He explained that the state liquor board has no jurisdiction on Jerome's zoning ordinance.

Chair Yacht Carol reiterated her concern with permitted uses in the commercial zone versus the residential zone. The proposed use is stated as permitted in the commercial zone. She suggested that the Williams' consider starting the microbrewery in another location, a location where the uses is permitted by right, such as the commercial or industrial zone. Making a list of limitations and stipulations would be possible but not very realistic from an enforcement point of view. The police are already very busy.

Tracy Weisel, a Jerome resident, commented that he has no objection to the sales or offering of beer at the Bed and Breakfast. He voiced that the operation doesn't seem like it fits the character of a retail business.

Mrs. Williams said they would be willing to negotiate regarding concerns with retail sales. While the license allows sales, they would be willing to only offer guests a complementary product and would not sell more to them when they leave.

Rebecca Kennedy, a Jerome resident, voiced concern with the precedent setting nature of this item. If the Williams' agree to not sell product from their home, but another operation starts up and they insist they will not sell, there is no way to ensure compliance and no way to enforce it. She voiced the opinion that applicants often say one thing and do another.

Jane Moore asked Mr. Sims if the microbrewery is judged to be a home occupation, not a conditional use, would this be precedent setting so that anyone else running a B&B could do the same thing.

Mr. Sims responded to the question by saying the Board could decide that it is a home occupation if certain conditions were met. They could impose a reporting requirement, tracked by the ZA, and if the requirements are not met, it could be enforced. If limiting the amount of production and retail sales causes the Board to decide, for this applicant, that it is a home occupation, then it is only applicable to this applicant. Future

applicants could look at this decision and use it as an argument and future Boards could decide whether or not to consider that evidence.

Tracy Weisel, a Jerome resident, suggested that if the Town conduct investigations and enforce if necessary.

Gary Shapiro made a motion that to allow a limited annual production of 6,000 gallons, limit product offered to guests to 2 liters per day, per guest, prohibit additional sales to guests but allow distribution for off-site sales and require applicant to submit all state and federal reports to the zoning administrator.

Motion died for lack of a second.

Doug Freund, a resident of Jerome, commented that distributing alcohol to paying customers is still retail sale. He went on to explain that the Liquor Board requires a 1 mile radius for community input, and 10% of Jerome's population have signed a petition saying they do not want on-site retail sales of alcohol in the residential zone.

Kathleen Jarvis, a resident of Jerome, spoke about the Art Walk incident. She strongly suggested tabling the appeal pending the outcome of an upcoming presentation by the Liquor Board regarding liquor laws. The Chamber of Commerce will host a presentation about liquor laws on August 6 to clarify the laws and how Jerome police can enforce them.

Suzy Mound made a motion to reconvene in order to gather more information on enforcement and to provide for executive session. Second by Chris Babbage. Motion carried unanimously.

The Board will reconvene on Thursday, August 14, 2014 at 6:30.

**ITEM 5: ADJOURNMENT**

Chris Babbage made a motion to adjourn. Second by Gary Shapiro. Motion passed unanimously.

The meeting adjourned at 8:25 pm.

*Respectfully submitted by Rebecca Borowski on August 14, 2014.*

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Board of Adjustment Chair

Attest: \_\_\_\_\_ Date: \_\_\_\_\_  
Board of Adjustment Vice-Chair