



**BOARD OF ADJUSTMENT MEETING**  
**CITY OF BISBEE COUNCIL CHAMBERS**  
**915 S. TOVREAVILLE ROAD, BISBEE, AZ 85603**  
**THURSDAY, FEBRUARY 23, 2022, 5:30PM**

**MINUTES**

**CALLED TO ORDER: 5:30- Melissa Hartman**

**ROLL CALL- BOARD MEMBERS / STAFF**

	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
<b>Tyler Bradberry</b>	<b>X</b>		
<b>Cado Daily</b>	<b>X</b>		
<b>Melissa Hartman, Chair</b>	<b>X</b>		
<b>William (Bill) Higgins</b>	<b>X</b>		
<b>Fred Miller</b>	<b>X</b>		
<b>Tom Patterson</b>	<b>X</b>		
<b>Ken Budge, Council Liaison</b>	<b>X</b>		
<b>Nina Williams, Deputy City Clerk</b>	<b>X</b>		
<b>Joe Ward, Bldg. Inspector</b>	<b>X</b>		
<b>Logan Dodd, Operations Manager Public Works</b>	<b>X</b>		

**Agenda Item 1.**

**BOA 23-01:** Kerri Blankenship Owner/Representative of Screaming Banshee located at 200 Tombstone Canyon; Appeal of a Notice of Violation letter received for Violation of the City of Bisbee Zoning Code Article 8.1(A) Parking and Loading, Requirements due to their accessible parking being blocked.

- A. Opening of the Hearing  
**Ms. Hartman opened the Public Hearing.**
- B. Presentation by the Applicant  
**Ms. Blankenship spoke regarding her appeal**

**Ms. Blankenship stated that she was in no way against ADA handicap parking or would want to interfere with that. She was not aware that she was in any kind of violation, she had not received a warning. Since the pandemic started the parking spaces have been in front patio for 2 ½ years almost and no one had told her that she needed to stop doing that. She was surprised when she got the violation because it was a violation notice and not a warning. She was never made aware of the change. She said that the front patio has been huge in helping the Banshee stay open. If she needs to reopen the parking it was not a problem.**

- C. Presentation by City Staff

**Mr. Ward, Building Inspector said the Board of Adjustment has limited authority the zoning codes are created and changed by the city council on the advice of the Planning and Zoning Commission.**

**Mr. Patterson interrupted Mr. Ward before he could finish speaking; a point of order was called.**

**Ms. Harman stated that she was going to listen to what our City had to say, she asked that Mr. Ward continue.**

**Mr. Ward stated that he was the Code Enforcement Officer, and he doesn't make the rules he just enforce what was given.**

**Ms. Hartman stated that what Mr. Ward had to say was important.**

**Mr. Ward said it was pretty cut and dry when you look at what was in the zoning code for the parking. He stated that we let a lot of things go during COVID because that was special circumstances. It has been a while and the emergency seems to have subsided, we are going to get back on track.**

**Mayor Budge, Council Liaison spoke regarding 8.6.5 Parking Citations 8.7 Historic District Permanent Exemption:** Within the Bisbee Historic Preservation Overlay Zone, for all alterations, additions, extensions or enlargements of existing structures and associated improvements for commercial development and for residential development within an existing CM zoned structure, the parking requirements of Article 8.1 of this Zoning Code shall not be applicable. No additional parking spaces shall be required by this Article in connection with any such construction, enlargement or renovation or the subsequent use of that commercial space for the uses specifically designated in any such building permit. Off-street parking currently being maintained in connection with any existing building or use shall be maintained so long as that building exists or its use continues.

**Mayor Budge stated that in June of 2011 the parking requirements were rescinded that Ms. Blankenship was required to when she opened. He read from the above the off-street parking currently being maintained in connection with any existing building or use shall be maintained so long as the building exists or its use continues. This was the code that if parking was there when this exemption occurred for all of the commercial district you had to keep and maintain what it was. He needed the Board to consider that Ms. Blankenship went in under the original code and then we rescinded things, everything that existed when rescinded had to stay.**

**Mayor Budge let the Board know that he had been in contact with the City Attorney he is available by phone if he was needed. He said to remember that the COVID emergency in March of 2022 was rescinded by Governor Ducey and a resolution was done by the City. Mayor Budge gave the City Attorney's determination which was that nothing concerning COVID-19 can be used to address this handicap parking issue and that the Department of Justice based on complaints can bring up a federal court case against the business for blocking the required ADA access and include the City with potential fines of up to \$150,000.00.**

**Ms. Hartman asked for clarification regarding the code. Mayor Budge said understands that the Board can make adjustments, but that they cannot change our zoning code.**

- D. Comments by persons in favor  
**No one spoke in favor.**
- E. Comments by persons opposed  
**No one spoke in opposition.**
- F. Rebuttal by the Applicant

**Ms. Blankenship agreed with Mayor Budge regarding the parking spaces at the time of opening and she stated that she complied. She felt that if the Board was going to hold her to a violation, she felt that she should have had a letter or been approached about what was needed to be in compliance with the parking.**

G. Rebuttal by City Staff

**Mr. Ward said when a notice of violation goes out that was not when a person was subject to a fine or anything like that. It gives them thirty solid days in which to bring the premises into compliance with the zoning code. The thirty days was the warning period.**

**Logan Dodd, Operations Manager Public Works asked the Board if they had read his response. He stated that he had wrote that response prior to knowing the City Attorney's response. He said that looking at it from his point of view he saw a safety issue in general in that area.**

H. Closing of the Hearing

**Ms. Hartman closed the Public Hearing.**

I. Discussion of the Appeal Application among the Board members

**The Board Members discussed the request for appeal.**

**Ms. Daily made a point of clarification from what she was looking at was that the Board's job was to decide whether or not that she was now does not have that handicap space that she had before. She suggested the City and Ms. Blankenship work together to comply with the requirements and the zoning code and still be able to have safe parking.**

**Mr. Miller asked for clarification from Ms. Blankenship as to when the concrete pad was done.**

**Ms. Blankenship stated that at the beginning of COVID 2020.**

**Mr. Miller said as far as he was concerned this shouldn't have come before the Board of Adjustment. He asked why Ms. Blankenship hadn't gone to the City when she abolished the handicap parking. He felt that this was an error on Ms. Blankenship's part.**

**Mr. Patterson started to interrupt Mr. Miller speaking. Mr. Miller didn't let Mr. Patterson interrupt.**

**Ms. Blankenship stated that she did not understand Mr. Miller saying that she abolished a handicap parking spot. She said she had abolished the whole parking lot.**

**Ms. Hartman stated that it included the handicap parking.**

**Ms. Blankenship stated that was correct.**

**Mr. Miller stated what he was saying was about the process of which Ms. Blankenship chose to do what she did. He did not think it was a good process in terms of not going to the City.**

**There was cross talk between Ms. Blankenship and Mr. Miller, a point of order was called.**

**Mr. Miller stated that he liked Ms. Daily's suggestion to get with the City to work out a parking space. He thought she (Ms. Blankenship) should be assessed some kind of fine for doing this. He understood that it was pandemic related; a lot of indecision and non-availability for people. When you take away a handicap parking space common sense would be that you had to have access for handicapped people in some kind of way.**

**Mr. Patterson asked Ms. Blankenship if she was required to get a permit to redo the parking lot; to put in the pad.**

**Ms. Blankenship stated “No”.**

**Mr. Patterson asked Mr. Ward; Mr. Ward stated that there was no permit required.**

**Mr. Patterson commented that it was allowed to exist for 2 years and because of the situation. He understood that on the federal level the pandemic ends on May 11<sup>th</sup> of this year. He thought it would have been prudent for the City to send something to the businesses saying if you have made any alterations to change your business that might affect the code due to the pandemic that was now rescinded, and you need to come into compliance. Mr. Patterson said that it should have started with a warning not a violation. He suggested to continue this for a certain period of time while they have time to discuss it and come back to the Board. All the Board can do today was deal with the violation. He would like to see the Board table this for thirty days.**

**Mr. Higgins said of course we want handicap parking in front of our businesses. Before we even got to this point here the City and Ms. Blankenship should have sat down discussed this and worked something out. He thought that would have been the solution right then and then there would be no reason for us to be here. They should allow for some time for the City and Ms. Blankenship to sit down and talk about this.**

**Ms. Blankenship stated that she had a lot of ideas.**

**Mr. Higgins stated that she needed to talk with the Mr. Ward. He spoke about the recommendations that Mr. Dodd had given the Board. He asked if Ms. Blankenship had rejected Mr. Dodd’s recommendations.**

**Ms. Williams said Ms. Blankenship was not given Mr. Dodd’s recommendations. It was for the Board to look at and disseminate what they would want to do.**

**Mr. Higgins felt that there had not been any communication with the City and that was what we needed to do. He also felt that this was something that should be done very easily. He agreed with tabling this for a period of time. We are here to talk about the violation and there was no doubt that Ms. Blankenship had violated the rules. They should come up with something that they all can agree on and also be beneficial for Ms. Blankenship’s business.**

**Mr. Bradberry stated that he agreed with Mr. Higgins. He wanted clarification on the Notice of Violation and was that the warning.**

**Mr. Ward said there was no fines that he could collect until after the notice of violation; if there was no movement forward or correction of the abatement of the violation then he could possible cite them to court and the judge would decide what to do about it; that would be the local magistrate.**

**Mr. Bradberry asked when a notice of violation was given and they are given x amount of days to fix that violation and within that x amount of days they have the opportunity to go to the City and try to work it out and there was no fines or anything of that sort so, really a notice of violation was just a written warning to say that there was an issue.**

**Ms. Blankenship stated that she paid a \$125.00 fee to talk with the Board of Adjustment.**

**Ms. Williams and Mr. Bradberry stated that was for the appeal.**

**Ms. Blankenship stated that was all she could do after she was issued a notice of violation.**

**Ms. Hartman asked for clarification regarding the fee of \$125.00.**

**Mr. Ward stated there was a fee to go before the Board of Adjustment.**

**Ms. Blankenship said that nobody came to her personally ahead of time and said you need to open your patio or else she would have opened her patio.**

**Mr. Bradberry stated that was what he was trying to clarify because the notice of violation was saying that you have a violation, but you have x amount of days to fix that violation. Within that x amount of days that gives you the time to go the City and speak to them about the violation. He asked if there was another way to fix this violation.**

**Ms. Blankenship said she had to pay to have this meeting.**

**Ms. Hartman stated that the Board was not the first line; the first line should have been to go back to the inspector or somebody at the City. What was in that letter was choices you could have talked to the City, but you jumped and decided to come to the Board directly.**

**Mr. Patterson said they have the right to appeal to the Board of Adjustment and they can either affirm, reverse or modify it. His modification would be to wait another thirty days.**

**Ms. Hartman asked Mr. Bradberry if he was done speaking, Mr. Bradberry stated “Not Quite”.**

**Mr. Bradberry said after the notice of violation was given then they have x amount of days and after that amount of days was when the fine process would start. He asked if that was correct.**

**Mayor Budge stated that he was correct. They would get another letter.**

**Mr. Bradberry stated that the first notice was basically the warning and then thirty days to fix the violation or come up with a solution to no longer be non-compliant.**

**Mayor Budge interjected that he asked Mr. Ward if Ms. Blankenship receive her letter and Mr. Ward stated “Yes”, but she said that she would fix it on the 30<sup>th</sup> day. That told him that she wasn’t willing to come back and talk to us about finding a solution.**

**Ms. Hartman appreciated everyone’s input when she first got the letter from Ms. Blankenship she was very confused, we called upon Mr. Dodd. She was unclear on how many handicap spaces were required.**

**Ms. Blankenship stated she had only had one handicap space.**

**Ms. Hartman said within thirty days Ms. Blankenship probably had some ideas and she knew she had an idea of where you could reinstate that one. She agreed with everyone about the corner being dangerous and then Ms. Blankenship has one of the only crosswalks that was available in that area.**

**Ms. Hartman would like for Ms. Blankenship to make a proposal to Mr. Ward to reinstate in the best way possible her one handicap parking, she would like it done within 2 weeks and would like Mr. Ward to tell the Board if they will need to come back or not or if he was satisfied.**

**Mr. Miller suggested not only Ms. Blankenship make a proposal but that Mr. Ward and Mr. Dodd get together in the next thirty days and talk along with Ms. Blankenship to see what the solution to having a handicap spot.**

**Ms. Daily stated she agreed with Ms. Hartman and Mr. Miller had said. She reiterated working with the City to come up with a solution. In the future she would like to encourage the city to reach out to the person who gets a violation that says within this period of time we encourage you to come to us and see if we can work out a solution.**

**Mr. Bradberry stated that he agreed with that.**

J. Call for motion and vote by the Board

**MOTION: Mr. Miller moved that this issue be tabled, and that City staff come back to the Board of Adjustments via email with a solution to this.**

**Mayor Budge suggested that part of the motion include that the settlement was agreed upon and it does not need to come back to you.**

**MOTION: Mr. Miller moved to table this issue until thirty (30) days or before; that the Board hears that there was a settlement among the parties for the issue at hand.**

**SECOND: Mr. Patterson**

**ROLL CALL VOTE:**

**AYES: Bradberry, Daily, Hartman, Higgins, Miller, and Patterson.**

**NAYS: 0**

**MOTION PASSED: UNANIMOUSLY**

**ADJOURNMENT: 6:17PM**

**MOTION: Mr. Higgins moved to adjourn.**

**SECOND: Mr. Patterson**

**MOTION PASSED: UNANIMOUSLY**