

August 10, 2007

①

Dear Councilwoman Tarkanian:

This letter is being written on behalf of Shelley Jackson, who resides at 1247 Douglas Drive, Las Vegas, NV. I am writing to support Ms. Jackson's request under ROC-21911 to remove the condition previously placed on her property. Additionally, I would like to request that the City Council approve ROC-21911 without adding any new or additional conditions with respect to Ms. Jackson's property.

I have been a home owner across the street from Ms. Jackson, for the past 10 years, and have found her to be a fair and honest individual, who is of a quiet nature.

Inasmuch as I live across the street from her, I am forced to see her property every day, whenever I exit my home or go outside. Her property is always well kept and tended to, and is a pleasant reflection of my neighborhood.

There has never been a harsh word between us, and I feel completely comfortable with the fact that she is my neighbor.

Sincerely,  
Darryl S. Miller  
Darryl S. Miller  
1242 Douglas Drive  
Las Vegas, NV 89102

DSM:rm

② I AGREE TOO  
JERRI S. ORNELAS  
JERRI S. ORNELAS (Ornelas 1225 Douglas Dr)

1724 DOUGLAS PL.

③ OK support Shelley Jackson, Bill Fruse  
1218 BARBARA DR. N. ROW

④ OK support  
Wm Bennett (Bennett)  
1322 Cashman

Submitted at City Council  
Date 9/5/07 Item 128

August 10, 2007

Dear Councilwoman Tarkanian:

This letter is being written on behalf of Shelley Jackson, who resides at 1247 Douglas Drive, Las Vegas, NV. I am writing to support Ms. Jackson's request under ROC-21911 to remove the condition previously placed on her property. Additionally, I would like to request that the City Council approve ROC-21911 without adding any new or additional conditions with respect to Ms. Jackson's property.

I have been a home owner across the street from Ms. Jackson, for the past 10 years, and have found her to be a fair and honest individual, who is of a quiet nature.

Inasmuch as I live across the street from her, I am forced to see her property every day, whenever I exit my home or go outside. Her property is always well kept and tended to, and is a pleasant reflection of my neighborhood.

There has never been a harsh word between us, and I feel completely comfortable with the fact that she is my neighbor.

Sincerely,  
Darryl S. Miller  
Darryl S. Miller  
1242 Douglas Drive  
Las Vegas, NV 89102

⑤ I also support the above  
Margaret Burnar M. Burnar (Burnar)  
1230 Barnard Dr.

DSM:rm

⑥ I also support in the above  
letter  
William J. Butcher

William Butcher  
1243 Barnard Dr  
Las Vegas NV 89102

Sharon L Bishop  
1213 Douglas Drive  
Las Vegas, NV 89102

7

August 21, 2007

Las Vegas Councilwoman Lois Tarkanian

I am writing to inform you of my support of Shelley Jackson, who resides at 1247 Douglas Drive, Las Vegas, NV 89102.

Ms. Jackson's request under ROC-21911 to remove the condition previously placed on her property is reasonable.

I ask that the City Council approve ROC-21911 without placing new or additional conditions with respect to Ms. Jackson's property.

Respectfully,

*Sharon L Bishop*

Sharon L Bishop

cc: Ms. Jackson  
File

8  
Denise  
Ballew

*Vernis Bell 1238 BARBARA DR.  
in support Shelley Jackson  
on the back room Sweet house*

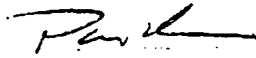
(9)

8-22-07

Dear Councilwoman Tarkanian

I am writing this letter on behalf of Shelly Jackson's request under ROC - 21911 to remove the condition previously placed on her property.

I would like to request that the city council approve Roc - 21911 without adding any new or additional conditions with respect to Ms. Jackson's property.

Sincerely  
Pam Klein   
1312 DARMAR Dr  
LAS VEGAS NV 89102

MS JACKSON' resides at 1247 Douglas

10

August 24, 2007

Dear Councilwoman Tarkanian,

I am writing in support of Ms. Shelly Jackson's request under ROC-21911 to remove the condition previously placed on her property at 1247 Douglas Drive, Las Vegas, NV 89102.

I currently own several properties in the neighborhood and am not opposed to the removal of this condition.

Sincerely



Evette Aviles  
1213 Barnard  
Las Vegas, NV 89102



August 24, 2007

Dear Councilwoman Tarkanian,

I am writing in support of Ms. Shelly Jackson's request under ROC-21911 to remove the condition previously placed on her property at 1247 Douglas Drive, Las Vegas, NV 89102.

I currently own several properties in the neighborhood and am not opposed to the removal of this condition.

Sincerely

Handwritten signature of Evette Aviles.

Evette Aviles  
1319 Barnard  
Las Vegas, NV 89102

12

August 24, 2007

Dear Councilwoman Tarkanian,

I am writing in support of Ms. Shelly Jackson's request under ROC-21911 to remove the condition previously placed on her property at 1247 Douglas Drive, Las Vegas, NV 89102.

I currently own several properties in the neighborhood and am not opposed to the removal of this condition.

Sincerely



Evette Aviles  
1330 Cashman Drive  
Las Vegas, NV 89102

(14)

08-25-07

Dear Councilwoman Tarkenton,

I am writing to support Shelly Jackson's request under NOC-21911 to remove the condition previously placed on her property.

In addition, I request that the city council approve NOC-21911 without adding any new or additional conditions with respect to Ms. Jackson's property at 1247 Douglas Drive.

I have lived directly across from Ms. Jackson for four years and she has always been a considerate and quiet neighbor with a great looking yard.

Sincerely,  
Dorothy M. Fleming  
1248 DOUGLAS DRIVE.

ROC-21911

To City Council Lois Tarkenton

To whom it may concern:

My name is Andrea J. Jakes

I reside at 1343 Darmak Dr. 89102

I support Shelly Jackson to have the city council remove any and all variances regarding the casita on the property 1247 Douglas 89102 --- At first I was opposed to the idea because I was led to believe she wanted to run some type of business which would not fit into the framework of a quiet neighborhood... but if in fact she purchased the home with the casita in place, then it seems to me that it is her property and her right to let her family or friends reside there with or without payment - It is nobody's business ....

I do not understand why this only affects her home and no one else - please before you make any judgement, you better make sure that what is fair for one is fair for all.

I was born in Las Vegas & raised in Westlake & now years later I find myself back in Darmak It seems to me Ms. Jackson's casita is the least of our

(over)

problems..... and besides the residences of this neighborhood need to be more informed - I need to be more informed .... I don't really understand this fuss - especially when I downloaded information that the city council approved habitable accessory structures in 2006 ....

Thank-you

Sincerely

Andrea J. Takas

ANDREA TAKAS  
1343 Darmak Dr.  
LU No. 89102

# JONES VARGAS

HERBERT M. JONES  
MELVIN D. CLOSE, JR.  
JOSEPH W. BROWN  
ALBERT F. PAGNI  
JOHN P. SANDE, III  
WILLIAM J. RAGGIO  
GARY R. GOODHEART  
MICHAEL E. BUCKLEY  
RICHARD F. JOST  
JANET L. CHUBB  
DOUGLAS M. COHEN  
KIRK B. LENHARD  
KEVIN R. STOLWORTHY  
JAMES L. WADHAMS  
JODI R. GOODHEART  
PAUL A. LEMCKE

PHILIP M. BALLIF  
MICHAEL G. ALONSO  
ANN MORGAN  
R. DOUGLAS KURDZIEL  
KRIS T. BALLARD  
WILLIAM C. DAVIS, JR.  
KARL L. NIELSON  
PATRICK A. ROSE  
PATRICK J. SHEEHAN  
CLARK V. VELLIS  
JOHN P. DESMOND  
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CONSTANCE L. AKRIDGE  
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ADAM K. BULT  
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ERIN E. DART  
TRACY A. DIFILIPPO  
KATHLEEN L. FELLOWS  
RYAN W. HERRICK  
BRIAN R. IRVINE  
KIRK D. KAPLAN  
MICHAEL A. KELLER  
BENJAMIN W. KENNEDY  
WAYNE O. KLOMP  
CURT R. LEDFORD  
DARREN J. LEMIEUX

LINDA P. MCKENZIE  
MATTHEW T. MILONE  
CHRISTOPHER C. MONEY  
RICHARD A. RAWSON  
MOLLY MALONE REZAC  
JOHN P. SANDE, IV  
BRETT J. SCOLARI  
BRADLEY SCOTT SCHRAGER  
STEVEN G. SHEVORSKI  
TIFFANY J. SWANIS  
STACIE A. TRUESDELL  
JESSE A. WADHAMS  
CHRISTINA H. WANG  
GORDON H. WARREN  
ANDREW WONG

CLIFFORD A. JONES (1912 - 2001)  
GEORGE L. VARGAS (1909 - 1985)  
JOHN C. BARTLETT (1910 - 1982)  
LOUIS MEAD DIXON (1919 - 1993)  
GARY T. FOREMASTER (1953 - 1998)

Writer's Direct Line  
(702) 862-3306  
E-Mail Address  
kfellows@jonesvargas.com

\*RICHARD G. BARRIER  
ROBERT E. BRUCE  
AMANDA J. COWLEY  
ALAN B. RABKIN  
OF COUNSEL

BRIAN J. MATTER  
EXECUTIVE DIRECTOR

September 5, 2007

City of Las Vegas  
City Council  
City Hall  
400 Stewart Avenue  
Las Vegas, NV 89101

**Hand Delivered**

**Re: Application ROC-21911**

Dear City Council:

Please be advised this firm represents Shelley Jackson (the "**Applicant**") with respect to the enclosed application for a Review of Condition for Condition #4 of V-139-89(1) (the "**Condition**"). The Applicant requests that the Condition #4, which provides, "[t]he Approval of this variance is limited only to only these applicants. If the property is sold or rented, the guest house shall be converted back to a storage room or garage," be removed from the approval of V-139-89(1).

This application relates to the use of an already existing guest house ("**Accessory Structure**") on approximately .19 acres located at 1247 Douglas Drive (APN 162-05-210-021) (the "**Property**"). The Property is zoned R-1 and is designated Low – up to 5.49 under the General Plan.

NRS 278.0233(1)(a) provides the City Council may not impose any requirement, limitation or condition on a variance or use permit which (1) is arbitrary or capricious; or (2) Is unlawful or exceeds lawful authority. NRS 278.0233(1)(e) further requires, "[w]here the applicant agrees in writing or orally on the record during a hearing to the requirements, limitations or conditions imposed by the action, decision or order, unless the applicant expressly states in writing or orally on the record during the hearing that a requirement, limitation or condition is agreed to under protest and specifies which paragraph of subsection 1 provides cause for the protest." This letter shall serve as Applicants legally required objection to all proposed staff conditions on ROC-21911.

///

///

Submitted at City Council

RENO OFFICE  
100 WEST LIBERTY STREET, TWELFTH FLOOR, RENO, NEVADA 89504 TEL (775) 786-5000 FAX (775) 786-1177  
\*LICENSED IN ILLINOIS ONLY

Date 9/5/07 Item 122

**1. Ms. Jackson Did Not Construct The Accessory Structure And Had No Knowledge Of Any Prior Permitting Issues**

The previous owner of the Property built the Accessory Structure in the 1980's. The previous owners of the Property requested a variance for the Accessory Structure. The City Council approved in V-139-89(1), with the condition, "[t]he Approval of this variance is limited only to only these applicants. If the property is sold or rented, the guest house shall be converted back to a storage room or garage." *Condition #4 of V-139-89.*

The Applicant purchased the Property in December, 1992, with the Accessory Structure existing in its current state. The Applicant purchased the Property through the previous owner's estate after he passed away, and the Applicant had no knowledge of the Condition when she purchased the Property. The Applicant has made no modifications to the Accessory Structure since she purchased the Property.

**2. Ms. Jackson Has Owned The Property For Over 15 Years Without Incident**

After owning the Property for nearly 15 years, the Applicant received notice that the Accessory Structure was subject to Condition #4 of V-139-89. This was the first time the Applicant was made aware of Condition #4.

Removal of the Condition is appropriate under these circumstances because the Applicant will suffer extreme hardship if it is not removed. The City has been on notice since 1997 that the Accessory Structure has existed on the Property, as evidenced by the City's request that the Applicant pay sewer service fees for a second residential unit on the Property. *See Exhibit "A," letter from the City of Las Vegas dated April 11, 1997.* The Accessory Structure has not posed any danger to the primary structure on the Property or the surrounding area since the Applicant acquired the Property. Given the hardship the Applicant will endure if these requests are not granted and the lack of prior problems with the Accessory Structure, the Applicant respectfully requests removal of the Condition.

**3. Condition #4 Of V-139-89(1) Is Unlawful And Exceed Lawful Authority**

It is well settled that a requirement, limitation or condition on the use of land cannot be based upon who owns the land. "Conditions must relate reasonably to the proper objectives of zoning, and must relate to the land rather than to the person by whom the use is to be established and maintained." Patricia E. Salkin, *Anderson's Am. Law of Zoning* § 20:70 (May 2007). A New York court invalidated a similar condition. The condition in question automatically terminated a variance if someone other than the original applicant used the property. The court held that this was "precisely the type of personal condition" they have proscribed. *St. Onge v. Donovan*, 522 N.E.2d 1019, 1023 (N.Y. 1988). These conditions are improper because they "focu[s] on the persons occupying the property rather than the use of the land or the possible effects of that use on the surrounding area. As this bears no relation to the proper purposes of zoning, therefore, it was ruled invalid." *Id.* "Zoning . . . in the very nature of things has reference to land rather than to owner," *Vernon Park Realty v. City of Mount Vernon*, 121 N.E.2d 517 (N.Y. 1954), and it is a "fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it." *FGL & L Prop. Corp. v. City of Rye*, 485 N.E.2d 986, 990 (N.Y. 1985), quoting *Matter of Dexter v. Town Bd.* 324 N.E.2d 870 (N.Y. 1975).

California courts have also adopted this approach. One court held that "a conditional use permit may *not* lawfully (and perhaps *not* constitutionally—see *Vlahos v. Little Boar's Head Dist.*, *supra*, 146 A.2d 257, 260 (N.H. 1958) be conditioned upon the permittee having no right to transfer it with the land. Such a condition, if imposed, is beyond the *power* of the zoning authority, and *void*." *Anza Parking Corp. v. City of Burlingame*, 195 Cal. App. 3d 855, 860, 241 Cal. Rptr. 175, 178 (Cal. Ct. App. 1988). Moreover, a "variance for the use of property in a particular manner is not personal to the owner at the time of the grant, but it available to any subsequent owner, until it expires according to its terms or is effectively revoked, and this is true, even though the original owner did not act on it." *Cohn v. County Bd. of Supervisors of County of Los Angeles*, 286 P.2d 836, 839 (Cal. Ct. App. 1955) *quoting* 62 C.J.S. Municipal Corporations, § 227(13) p. 547.

Conditions must run with the land. The D.C. Circuit confronted a condition very similar to Condition #4, and they held that "because no valid public policy is served by confining a variance to an individual entity, any personal condition imposed [by the District] to restrict a use variance is unlawful *per se*." *National Black Child Dev. Inst., Inc. v. Dist. of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 691 (D.C. Cir. 1984). Therefore the Council should approve ROC-21911 finding Condition #4 unlawful *per se*.

It is imperative for the personal identity of the applicant to be irrelevant to the variance procedure. "all too often the administrative or legislative determination seems to turn on the applicant or intended user, rather than upon neutral planning and zoning principles." *St. Onge v. Donovan*, 522 N.E.2d at 1022, *quoting Matter of Dexter v. Town Bd.*, 324 N.E.2d 870. By allowing the original applicant the variance, but conditioning its legality on their ownership, the city effectively made their determination for personal reasons. They cannot do that. They must base their decision solely on the way the variance harmonizes or discords with the surrounding area. Therefore, what is acceptable for one, should be acceptable for another – as long as they continue to operate in a lawful manner.

"It does not come within the proper functions [of the zoning board] to grant the variation or exception in question solely on the basis of the [condition] because it amounts really to a mere license or privilege to an individual and does not relate in its proper sense to the use of the property and the zoning thereof." *Anza Parking Corp.* 195 Cal. App.3d at 859, 241 Cal. Rptr. at 177, *quoting Olverson v. Zoning Bd. of Review*, 44 A.2d 720, 722 (R.I. 1945). Therefore, the court found the conditions "under all the circumstances and by reason of its nature, *beyond the power* of the board to impose in connection with the granting of the variation or exception." *Id.*

#### **4. Condition #4 Of V-139-89(1) Is Arbitrary And Capricious**

A condition relating to the rental of property is considered to be personal in nature. The Las Vegas Municipal Code Chapter 19.04.020 (*attached hereto as Exhibit "B"*) allows as an accessory use to a residence "(1) The renting of rooms, providing of board, or both, for not more than three *unrelated* persons, where no care is provided." This artificially and arbitrarily devalues the Applicant's property with respect to her non-restricted neighbors.

The right to transfer one's property is one of the sticks in a property owner's bundle of rights. Based on that principal, the Supreme Court of Connecticut invalidated a no-rental condition as an illegal restriction on alienation. *Gangemi v. Zoning Bd. Of Appeals of Town of Fairfield*, 763 A.2d 1011 (Conn. 2001). It "is undisputable that 'it is the policy of the law not to uphold restrictions upon the free and unrestricted alienation of property unless they serve a legal and useful purpose.'" *Id.* 763 A.2d at 1015; *quoting Peiter v. Degernring*, 71 A.2d 87 (Conn. 1949). Limiting one's ability to rent their property would be a "significant restriction on their right of ownership." *Id.* 763 A.2d at 1016.

**5. The Proposed Conditions On ROC-21911 If Approved Are Arbitrary, Capricious and Unlawful**

Staff has recommended approval of ROC-21911 subject to

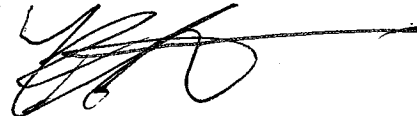
1. Condition Number 4 from Variance (V-0139-89) which stated: "The approval of this variance is limited only to these applicants. If the property is sold or rented, the guest house shall be converted back to a storage room or garage" shall be removed.
2. The existing accessory structure shall be owner occupied and shall not be permitted for use as a rental unit.

These conditions simply replicate Condition #4, and for the aforementioned legal reasons are arbitrary, capricious, and unlawful. Applicant therefore requests that the approval of ROC-21911 not be subject to these conditions.

Based on the foregoing, Applicant requests that the Council approve ROC-21911 to remove Condition #4 of V-139-89(1) and approve this request without placing further conditions on the Property.

Very truly yours,

JONES VARGAS



Kathleen L. Fellows, Esq.

Enclosures

Exhibit A

229-6955

6947

6925

# CITY of LAS VEGAS

MAYOR  
JAN LAVERTY JONES

COUNCILMEN  
ARNIE ADAMSEN  
MATTHEW Q. CALLISTER  
MICHAEL J. McDONALD  
GARY REESE

CITY MANAGER  
LARRY K. BARTON



April 11, 1997

Shelley Kay Jackson  
1247 Douglas Drive  
Las Vegas, NV 89102

RE: SEWER ACCOUNT 05-000499

Dear Ms. Jackson:

It came to our attention that your property at 1247 Douglas Drive has been billed incorrectly for City sewer service. For years your sewer service bill has been for one single family residence. Research of the Clark County Assessor's computer record shows there are two residential units on the property. The City's land use map for your area also shows two structures.

The second residential unit need not be equal to the first. It could be a smaller unit used as what is often referred to as "Mother-in-Law's house," "guest house," or "maid's quarters." All residences pay the same annual sewer service fee: \$140.81 (\$154.89 with a pool).

To correct your sewer service bill, we have changed the number of units to two, making your annual sewer service bill \$281.62.

If the Clark County Assessor's record is incorrect, please advise the Assessor and, in turn, let us know so that we may inspect the property and update our records.

Sincerely,

A handwritten signature in cursive script that reads "Val D. Sharp". The signature is written in dark ink and is positioned above the typed name.

Val D. Sharp  
License Officer I  
Sewer Services  
Finance & Business Services

VDS:mm



400 E. STEWART AVENUE • LAS VEGAS, NEVADA 89101-2986  
(702) 229-6011 (VOICE) • (702) 386-9108 (TDD)

September 5, 2007  
Page 6

Exhibit B

## 19.04.020 Accessory uses and structures.

(A) General. An accessory use or structure which is customarily incidental to the principal use or structure, and is located on the same lot or tract of land shall be permitted as an accessory use without being separately listed as a permitted use.

(B) Particular Accessory Uses. In any residential zoning district, each of the following uses shall be considered an accessory use to the extent described, without being separately listed in the Land Use Tables, provided in each case that the use is incidental to the property's use as a dwelling and does not alter the character of its use as a dwelling of the character permitted in the respective district:

(1) The renting of rooms, providing of board, or both, for not more than three *unrelated* persons, where no care is provided;

(2) Garage or yard sales, provided that:

(a) No property may be offered for sale which has not been owned and used by the occupant of the premises;

(b) No more than two garage or yard sales shall be conducted on the premises in any calendar year;

(c) No garage or yard sale shall be conducted for longer than three days duration;

(d) Garage or yard sales may be conducted during the daylight hours only; and

(e) All signage shall conform to the provisions of LVMC 19.14.040(E).

(3) On a single-family residential lot, the parking of a motor vehicle that bears a sign advertising the vehicle for sale, provided that:

(a) The vehicle is:

(i) Owned by or registered to an owner or occupant of the property;

(ii) Parked on an improved parking surface; and

(iii) Not being sold in connection with an automobile sales business;

(b) The vehicle identification number is clearly visible from outside the vehicle, if the vehicle was manufactured to include a visible vehicle identification number;

(c) No more than one vehicle is parked on the lot for purposes of display and sale at any one time; and

(d) No more than two vehicles are parked on the lot for purposes of display and sale within a twelve month period.

(C) Unless otherwise permitted by this Title, any type of use listed in Subsection (B) that exceeds the limitations set forth for that use in Subsection (B) does not qualify as an accessory use and shall be deemed to be in violation of this Title.

(Ord. 5801 § 1, 2005; Ord. 5786 § 1, 2005; Ord. 5345 §§ 1-4, 2001)