

MINUTES BOARD OF ADJUSTMENT MARCH 28, 2018

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 5:30 PM

Present:

David Lyon
Whitni Baker
James Frazey
David Naugle
Richard Watson
John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner
Diane McGuire, Administrative Assistant II
Lee Jimenez, Senior Planner

Absent:

Kevin Cullens
John Puzauskas
Albert Dare (Alternate)

There were 3 interested citizens present at the study session.

- Vice Chair Frazey requested that the draft 2/28 BOA Minutes be corrected as follows:
 - Page 13, Last Paragraph: Comments were not made by Vice Chair Frazey. A review of the video recording indicated those comments were made by Board Member Puzauskas.
 - Page 14, Paragraph 1: Comments were not made by Vice Chair Frazey. A review of the video recording indicated those comments were made by Board Member Naugle.

It was agreed to update the draft 2/28 BOA Minutes accordingly.

- Discussion amongst the Board members covered the following topics:
 - How the City code defines tobacco retail establishments, and whether that definition is inclusive of paraphernalia.
 - How often is the City code updated?
 - What is the difference between medical marijuana and tobacco retail use?
 - It was noted that the City defines an electronic cigarette retailer as a tobacco retailer.
- Chair Lyon noted that it is not up to the Board to determine the difference between tobacco vs vapor, but to adhere to the established City code as currently issued and the stipulations as contained within that code.
- Steve Abrahamson explained that every business is required to get a tax privilege license. That process involves notification of the request to both Steve Abrahamson and Ryan Levesque, who then check to see if a use permit is required.

- Richard Watson questioned Steve Abrahamson as to whether the appellant had obtained a tax privilege license.
- Whitney Baker asked about the time line for this business. Lee Jimenez reviewed the history of the case, noting that he himself was not here at the time of the original request. Records indicate that in 2015 the appellant was told that they did not need a use permit for their business, then 5 months after opening they were cited.
- Mr. Jimenez explained that the original request for a use permit for a tobacco retailer was dated November 4, 2015; the first meeting was cancelled, then the next meeting was pulled from the agenda because the former Director visited the site and deemed there was no tobacco being sold.
- Lee Jimenez explained that separation requirements from schools are measured from the building location lot line to the distance from the lot line of the school.
- Steve Abrahamson noted that to be considered a tobacco retailer, tobacco products must account for 50% or more of the business.
- Steve Abrahamson stated it was important to listen to all the evidence, and for the Board to make their decision based on that evidence.
- Jack Confer asked if Blue Dragon Vapor had a use permit. Lee Jimenez responded that without an approved variance, the use permit cannot be processed. Lee Jimenez explained that the use permit application is still active, and read the 5 criteria stipulations for a use permit:
 1. Will not increase vehicular/pedestrian traffic.
 2. Will not create nuisances (noise, gas, dust, etc.)
 3. Will not contribute to the deterioration of the neighborhood.
 4. Will be compatible with existing structures and uses.
 5. Will have adequate control of disruptive behavior.
- Whitney Baker asked how did the City discover that this business was non-compliant?
- Lee Jimenez responded that a complaint was made to the Code Compliance Department.
- Steve Abrahamson referred to Smoke Free Arizona (AZ Revised statutes) and explained that the City of Tempe had created a 'smoke free' ordinance. The City had determined that 'vaping' is considered 'smoking'.
- Lee Jimenez distributed an updated page from the February 6th HO Minutes, which had erroneously indicated that Mr. Clair Lane had spoken in opposition. Mr. Lane had spoken in support and the February 6th HO Minutes have been revised to indicate that, as well as including his verbatim comments.

REGULAR SESSION 6:12 PM

Present:

David Lyon
Whitni Baker
James Frazey
David Naugle
Richard Watson
John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner
Diane McGuire, Administrative Assistant II
Lee Jimenez, Senior Planner

Absent:

Kevin Cullens
John Puzauskas
Albert Dare (Alternate)

There were 6 interested citizens present at the regular session.

Hearing convened at 6:12 p.m. and was called to order by Chair David Lyon.

It was noted by Steve Abrahamson that he had contacted Kevin Cullens by phone and that Mr. Cullens had informed him that he had 'forgotten' there was a public hearing tonight and would not be in attendance.

Vice Chair David Lyon introduced City staff (Steve Abrahamson, Lee Jimenez & Diane McGuire).

Board members present at tonight's public hearing introduced themselves.

Approval of Board of Adjustment Minutes for February 28, 2018

On a motion by Board Member Baker, seconded by Vice Chair Frazey, the Board by a vote of 5-0 approved the Board of Adjustment Minutes for February 28, 2018 as corrected in tonight's study session.

Board Member Confer refrained from this vote, as he was not present at the regular session of the February 28, 2018 Board of Adjustment public hearing.

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

Request an appeal of the February 6, 2018 Hearing Officer's decision to deny a variance to reduce the use separation requirement from a tobacco retailer to an elementary or secondary school for **BLUE DRAGON VAPOR (PL170384)** located at 6473 South Rural Road. The appellants are Tracey Moor and David Barno.

Chair Lyon noted that the appellants had the option to continue this case to a future Board of Adjustment hearing as there was not a full Board seated at tonight public hearing. He asked that the appellant approach the podium.

David Barno, introduced himself, stating that although his current residence is in Mesa, the business is located in Tempe.

Chair Lyon asked Mr. Barno, 'are you okay with continuing the case until Board of Adjustment public hearing scheduled for May 23rd, is that correct?'

Mr. Barno confirmed that he was in agreement with that continuance.

MOTION:

Board Member Confer made a motion that this case be continued to the May 23rd Board of Adjustment. Board Member Baker seconded the motion.

VOTE: 6-0 (Approved)

Vice Chair Frazey made a motion to adjourn tonight's hearing; Board Member Baker seconded the motion. Motion was approved by a vote of 6 – 0.

There being no further business the hearing adjourned at 6:30 p.m.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Principal Planner

SA:dm