

# MINUTES BOARD OF ADJUSTMENT JANUARY 23, 2019

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

<b>Present:</b>	<b>Staff:</b>
Chair David Lyon	Steve Abrahamson, Principal Planner
Vice Chair James Frazey	Karen Stovall, Senior Planner
Board Member Richard Watson	Brittainy Nelson, Administrative Assistant
Board Member Kevin Cullens	
Board Member David Naugle	
Board Member John 'Jack' Confer	
Board Member Joshua Tracy (Alternate)	

- **Introductions**

The Board Members introduced themselves and stated how long they have been serving on the board. Steve Abrahamson informed the board members that Alternate Board Member Dare will no longer be seating on the Board due to health issues. The Board was also informed that Board Member Baker will be back she is just out sick.

- **Meeting Minutes**

Char David Lyon asked if anyone had anything in the minutes that need to be edited. Vice Chair Frazey stated that on page 10 3<sup>rd</sup> paragraph under commission discussion there was a typo and it should read, that granting the variance reduction of the spacing would allow a special privilege. Steve Abrahamson informed the board that they would be making a motion on the minutes with corrections.

- **8611 South Priest Drive**

Chair Lyon asked staff if there was any new information since the Board received their packets. Ms. Stovall informed the board that they have been given a copy of an email that was from the City Clerk's office that staff received today. Karen Stovall also informed the board that the appellant has also provided additional information and they will be able to explain during their presentation. Ms. Stovall did inform the board that the appellant did ask if they could include the information in the packet, but staff does not accept information beyond the appeal period. There is a time to gather the information and submit it with the appeal petition but since it was far beyond that period it was not able to be included in the packet. Board Member Cullens asked about the superior court verdict in the document. Mr. Abrahamson informed him that would be something that needs to come up in the hearing tonight. Ms. Stovall stated that the litigation that happened in the Superior Court is not relevant to the appeal that will be heard in the meeting. Board Member Confer asked if this was a new applicant and new ownership that does not have anything to do with the prior decision of the board other then it is the same address. Ms. Stovall clarified that what the Board Members are taken into consideration is the appeal of the hearing officer denial of last year, it is an appeal of a denial of a variance. The previous case that was heard was for a use permit from a staff decision of one for denial. So, this is the same applicant however this is a different request.

- **Additional comments & Questions**

Chair Lyon informed the board that they need to keep in mind the criteria's in order to grant the variance which are; is there a special circumstance, that the board can not be denying them a privilege that others in the area do have, they can not be granting them a privilege that others in the area don't have, and the special circumstance or hardship can not be of there own creation.

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## **Regular Meeting 6:00 PM**

### **Present:**

Chair David Lyon
Vice Chair James Frazey
Board Member Richard Watson
Board Member Kevin Cullens
Board Member David Naugle
Board Member John 'Jack' Confer
Board Member Joshua Tracy (Alternate)

### **Staff:**

Steve Abrahamson, Principal Planner
Karen Stovall, Senior Planner
Brittany Nelson, Administrative Assistant

### **1) Voting of the Meeting Minutes**

**Motion** by Board Member Watson to approve the Meeting Minutes of November 28, 2018; second by Vice Chair Frazey. Motion passed on 5-0 vote.

**Ayes:** Chair Lyon, Vice Chair Frazey, Board Members Watson, Cullens, Confer

**Nays:** None

**Abstain:** Board Member Naugle and Tracy

**Absent:** Board Member Whitney Baker

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- 2) Request to appeal the Hearing Officer's decision to deny a variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and a child care facility for **8611 SOUTH PRIEST DRIVE**, located at 8611 South Priest Drive, Suite 102. The appellant is PARC Dispensary. **(PL180173)**

Presentation by Karen Stovall, Senior Planner

#### **(Show zoning map)**

- This is an appeal of the Hearing Officer's decision made on July 17, 2018 to deny a Variance to reduce the required separation requirements for a Medical Marijuana Dispensary from a residential use and from a child care facility for 8611 SOUTH PRIEST DRIVE.
- The site is zoned PCC-1.
- The applicant is proposing a dispensary within a commercial condominium complex located north of the northeast corner of Priest and Warner.

#### **(Show first separation map)**

- The first Variance request was to reduce the separation requirement between a dispensary and a residential use from 1,320 feet to 890 feet.
- This map shows the property located at 9010 S. Priest Drive, which contains a residential use.

#### **(Show second separation map)**

- The second request was to reduce the separation requirement between a dispensary and a child care facility from 1,500 feet to 1,430 feet.
- This map shows the property located at 1616 W. Ruby Drive, which contains a licensed child care facility.
- Your staff report packet includes the Hearing Officer staff report, hearing minutes, the letter of appeal, and public input received leading up to and following the July hearing.

Presentation from Appellant's representative: Mr. Court Rich

Mr. Rich informed the board that he has presented the board with additional documentation on the case and he is aware that they have not been able to read through it all, but it is for reference points during his presentation. He also informed the board that he did try to get them in ahead of time but was unsuccessful.

Mr. Rich continued by saying this is the case that variances were made for. The case is quite simple the owner of the property applied for and received approval from the City to operate a dispensary at the location. The approval letter said, "the Community Development Department, Planning Division has reviewed and determined that the site located at 8611 South Priest Drive Suite 102 is in compliance with the Zoning and Development Code Section 3-426B, Location Requirements for a medical marijuana dispensary without cultivation." Which meant that the site worked for that applicant and for the owner of this site. From then on there was significant investment made to build out the site. The Certificate of Occupancy was issued. Then the building had a new owner that stepped into the shoes of the previous owner. Under the City 's own Code it states, successors in interest have the same rights under approvals as previous owners.

Mr. Rich then identified what the problem is that he is having which is that, the City informed his client that there are new application rules to the property that is prohibiting operation of dispensary. The separation requirements then require a variance, if the City is going to apply the new rules to the building even though it was fine under the old rules. The city is denying the new owner the rights of the previous owner. Which the city is not allowed to do based on the Cities own code.

Mr. Rich Clarified that the applicant is the successor in interest to original owner, Pathfinder. Where Pathfinder is the owner on whose behalf Natural Herbal Remedies applied in the first place. That per the Tempe Code Section 6-201 Provides: Initiation of Application. An application may be initiated under this Code by the City Council or by the owner of the subject parcel. The property owner's written authorization shall be required for all applications. The City Council may initiate an application without the owner's authorization for a zoning map (re-zoning) amendment. It was clearly the owner of the property that came in asking the City if they can locate a Medical Marijuana. There are a series of Deeds that show the changing of hands on the property from one entity to another.

Mr. Rich also informed the Board that the City has never revoked approval. However, there is a City Code Section 6-902 sets out revocation process that was never followed. The City also admits that Natural Herbal could still open at the property if they wanted to. Mr. Rich also tells the board that according to the October 25, 2017 Board of Adjustment Minutes, A medical marijuana dispensary at this same location was approved on December 22, 2015 (Natural Herbal Remedies/PL150478) and that approval remains active at this time. In the minutes it also shows that there was some back and forward on the case between the board members and the staff showing that Natural Herbal Remedies would be allowed there under the established permit. The approval remains with the owner by the language of the City's Ordinance, successors and interest maintain the approval. Therefore the approval must be with Mr. Rich client at this point. There is no other place the approval could be at this point.

Mr. Rich then stated that the Board of adjustment is looking at the Four-part variance criteria is met. He informed the board that in the Hearing Officer Meeting there were people in the audience that said they would love it, and others that informed the Hearing officer that they do not want the business, but that cannot be taken into consideration.

Mr. Rich then went over the four-part variance approval: 1. Special Circumstances, which in this case is special as they come. This is shown because use permits, and approvals are transferable to successors in interest. City Code 6-903. Where Mr. Rich client is the person of interest to the person that hold the permit to operate the dispensary at this location that the approval was assigned. City is violating its own code creates the special circumstances. The site was already built out in this location before the law changed. The law eliminated nearly every single possible dispensary location site in the city of Tempe. Mr. Rich referred to case number 8 in the packet that he gave the Board Members. Case Number 8 is about how the court has ruled that it is not regarding his client but with the City

of Tempe and its treatment of Medical Marijuana dispensary. The court ruled that Special Circumstances are created by the fact that the City Code Changes make it almost impossible to locate a dispensary in the City of Tempe. Mr. Rich summarized that there is no other dispensary in this exact circumstance- unique among all property owners in Tempe. The Dispensary location was approved, acceptance letter issued, which complied with laws in place at time of application, building permits issued, site built out, new site owner is successor in interest to previous owner, Received C of O, Law changed, City refusing to honor transfer of permit despite Code, day care facility is not really a day care facility anyway, the separation increase of over 100% for residential are unprecedented and extreme. 2. The strict application of this code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. This is proven by the zoning district permits that are a dispensary in this location. City Issued permits for dispensary use on this property. Applying distance requirements that are inapplicable deprives owner of right. Predecessors in interest got permitted and built out site under rules in place at time. Arbitrarily applying the 2017 separation requirements denies owner the rights of all others that received the exact same approvals before the 2017 change. In conclusion the city approved site for dispensary under pre-2017 rules. Without this variance, owner will be deprived of rights and privileges of all others approved under pre-2017 rules. 3. There is no special grant of special privileges here. Nothing is special about granting this, Zoning clearance issued, building permits issued, C of O Issued, there is nothing special about operating after you have all these approvals. In conclusion there is nothing special about letting the approved project operate. 4. Situation is clearly not self-imposed. Variance is only needed because City is ignoring its code 6-903, variance is only needed because city is trying to apply new separation requirements to property that was approved under old requirements, there are no other options for dispensary locations. Mr. Rich then referred to case number 8 in the handout he gave earlier. In which he informed the board that the City told the applicant by buying the dispensary that you cannot operate you created the problem for yourself. The Court disagreed and said that the City of Tempe does not offer any other place that you can possibly do a dispensary that is not the owner creating the problem it is the City creating the problem. That is important to this prong of the test because the city has even admitted, per the hand out case number 9, when Tempe was in court to the owners' previous cases they said there are only two other sites that may possible work for medical marijuana dispensary in the entire City of Tempe. Which is not the client's fault if that is the case. In conclusion the city created the need for the variance, not the applicant.

Mr. Rich wanted to know if the board would formally accept his document into the record.

Chair Lyon asked for clarification on the process from Staff.

Mr. Abrahamson stated, in that the Staff did not have time to review the full document yes you can accept it because no one can review the entire document in the time that is presented.

Chair Lyon clarified that the Board can acknowledge that the document has been given to them.

Mr. Rich stated that he did try and submit it earlier but was told that he had to wait to the day of the meeting to provide it.

Chair Lyon stated that it is noted.

Chair Lyon asked the Board if they had any questions for Mr. Court Rich.

Chair Lyon acknowledged Board Member Naugle.

Board Member Naugle questioned, if Mr. Rich or his client participated in the process with the city of Tempe when the adopted or modified the ordinance.

Mr. Rich stated that he is unaware however he can ask. Mr. Rich confirmed with his colleges that they were not involved in the process.

Chair Lyon acknowledged Vice Chair Frazey.

Vice Chair Frazey asked for clarification on the PowerPoint slide where Mr. Rich refers to City Code 6-903, that it applies to when you buy a building there is a tenant in place the new owner of that building can have the tenant continues to operate. With this situation the understanding is that the medical marijuana application was accepted but not transferable.

Mr. Rich stated that he believes that is a good question and it gets to the heart of the issue. Mr. Rich referred to the City Code from earlier Code 6-201, where it talks about who is the applicant and the applicant is the owner of the facility. Under City code the applicant is the owner. The applicant applies, and, in this case, they made Natural Herbal their representative there was a use accept letter that was provided to Natural Herbal and to the owner as Natural Herbal was acting on their behalf. If the only person that can be an applicant is the owner under the City code and the approval was granted and the approval is transferable under city code with succors and interest. The problem that we have is that the city is taken the position and saying that approval only applies to Natural Herbal because they are the only name on the letter. There is nothing in the code or city law that Mr. Rich is aware of that shows that his client can not have the approval transferred. The solution to this problem is to have the city to acknowledge that his client has these rights or for the Board to issue a variance.

Vice Chair Frazey second question on the matter was rather or not the variance is for the distances from the child care and the residential.

Mr. Rich stated that is correct and to point that prior to the rule change when the use accept letter was issued this dispensary location met all the separation requirement.

Vice Chair Frazey asked staff those approvals are not transferable because it is a different tenant.

Ms. Stovall stated that in Section 6-601 of the City Code it states that the decision-making body may impose conditions on any approval such conditions can be designed to implement requirement of this code to protect the public from inverse impacts from the proposed use or development or to fulfill an identified need for public services. Yes, the code does permit transfer of approvals, but the code also permits conditions of approval and a condition was issued in that approval letter from 2015. That authorized a dispensary for Natural Herbal Remedies and its applicant only. In that same condition the last sentence is that any person or business other then those identified here in must file a new application to determine compliance with zoning regulations. So as far as the City is concerned this is a new applicant/ business that did file a use acceptance request and it was denied it is not Natural Herbal Remedy. So according to the condition it can not be transferred as the appellant has requested.

Mr. Rich stated that adding conditions is ok but not a condition that is against City Code.

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens asked staff that on the PowerPoint provided it refences that use permits are transferable to the succor of interest City Code 6-903 does staff concur with that statement.

Ms. Stovall stated that she concurs with it however, they can not ignore the remainder of the Zoning Ordinance and elsewhere in the Zoning Ordinance it is stated that the decision-making body can oppose conditions on any approval. This section of the code does not state that use permits, and approvals shall be transferable so with a condition it may or may not be and according to the 2015 approval it is not transferable.

Chair Lyon acknowledged Board Member Confer.

Board Member Confer asked that if the board was here to appeal a variance. The issue to transfer ownership was not part of the Hearing Officer decision is that correct.

Ms. Stovall stated that is correct.

Board Member Confer stated that the time to appeal the ownership and transfer ability would have been a year ago which is not part of Board review for the variance at this time.

Mr. Rich stated that the issue of special circumstances is and has been the issue in this case and rather or not the applicant has the rights to develop has been the issue every step of the way and Mr. Rich disagrees with the conclusion that Board Member Confer stated.

Chair Lyon acknowledged Board Member Watson.

Board Member Watson asked for clarification that throughout the slide there was statements made that are no other locations but as Mr. Rich stated when he was on the fourth test it was stated that were two other locations in the City of Tempe.

Mr. Rich stated that the City Indicated that there are two possible locations. But there is no other opportunity for which Mr. Rich client can locate to.

Presentation from Appellant's representative: David Dow

Chair Lyon asked for clarification on who Mr. Dow represents in this case.

Mr. Dow stated that he represented the landlord applicant. Sometimes the tenant is the one applying on behalf of the property.

Chair Lyon asked Staff if the Landlord was part of the applicant team.

Ms. Stovall stated that the application requires authorization from the owner to process the application as far as Staff is concerned there is a single applicant and that applicant must receive authorization to pursue a request from the property owner they may or may not be one in the same.

Mr. Dow stated that he would like to touch base on City Code 6-903. This dispensary base had been previously granted a use acceptance in December of 2015. In August of 2016 Image purchased the property and in November of 2016 the City issued a Certificate of Occupancy after Imaged purchased it. Imaged incurred substantial cost for tentative improvements relative features. Only in 2017 was the City of Tempe code amended to sufficiently increase the distance. Image at the Zoning Level looked for a variance from the zoning staff and it has appealed it to this Board of Adjustment. There is no evidence that the Zoning department was authorized to deviate from expressed terms of section 6-903. Which makes it approval transferable. The Zoning department has exceeded its authority. There is no evidence that any department provided or approved of such authority for the zoning department to include that phrase saying that there must be an additional application. There is no evidence that any City department conducted any due diligence on the original applicant. There was no reason to differentiate between Parc and Natural Herbal Remedies if anything one could say that Natural Herbal Remedies had more problems than the present applicant. But there is no issue that the City does not Vet this situation so there are no rational bases to distinguish between Natural Herbal Remedies and Parc. The City has stated that Natural Herbal Remedies can operate at this location. There is nothing there that should deny Image/Parc the opportunity to operate at this location. In fact, if it was suggested that if the client use the name Natural Herbal Remedies they could operate at that locate. There is no evidence that exist to why only Natural Herbal Remedies can operate at the location. There has been a lot of money invested into the property for improvements. The City was aware of the expenditures because there were on going applying for permits. The Zoning Laws for the State of Arizona were construed for the benefits of the land and are not personal to the person or entity. Trying to impose the situation will destroy a lot of development in Tempe. The overlay of the whole process is that the citizens voted on Prop203 which authorize Medical Marijuana. In Prop203 it was specific that the Cities can only impose reasonable restrictions upon Medical Marijuana dispensary for there locations and what they can/cannot do. Considering that the citizens voted for it the and the citizens of Tempe highly favored Prop203. Is it reasonable to deny Image and Parc the variance under the circumstances.

Chair Lyon acknowledged Vice Chair Frazey.

Vice Chair Frazey asked clarification when Image and Parc was present back in 2017 the companies where applying for a use permit where the Zoning Officer denied the Use permit. Board of Adjustment agreed with the denial, so the next step would have been to go to court, did that action take place.

Mr. Dow stated that he was not involved in that process but to his understanding there was some sort of court procedure however Mr. Dow was not the attorney on the case.

Vice Chair Frazey stated now Image and Parc applied for a variance.

Mr. Dow Stated that is correct and that is the difference.

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens wanted clarification on the letter of approval that gave the permit or the license that had a stipulation that it could not be transferred who made that decision.

Ms. Stovall stated that it was a decision of the Planning Division.

Board Member Cullens clarified that it did not go up to anybody else.

Ms. Stovall stated that those letters are not typically reviewed by other Departments.

Chair Lyon acknowledged Ms. Stovall.

Ms. Stovall clarified that what the Board saw in 2017 was not a use permit request and it had not gone to the hearing officer. Medical marijuana facility applications are reviewed by staff. City Staff denied the request for the dispensary and the Board heard an appeal of Staff denial. The applicant applied to the planning division that was a Staff level decision. That decision was to deny and the applicant at that time appealed that decision to the Board. There was not a use permit involved.

Chair Lyon asked for clarification on what the Board decision was at that time.

Ms. Stovall stated that is was to deny the appeal.

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens asked, the letter that was giving to the original owner has an approval with the stipulation that it could not be transferred to the any other business that are operating as medical marijuana dispensary in Tempe did they receive the same stipulation that the approval could not be transferable.

Ms. Stovall stated yes as far as she is aware Staff did put the stipulation in the letter rather it was a dispensary or cultivation center that is a standard practice.

Board Member Cullens questioned if the stipulation is only in the medical marijuana cases.

Ms. Stovall stated that is correct.

Chair Lyon asked are there not other varieties of stipulations. Where medical marijuana cases are not the only cases that end up with stipulations.

Ms. Stovall stated that is correct and to clarify that if a use where to require a use permit it would now go before the Development Review Commission there is a standard condition of approval that have to request a transfer to another user and that transfer would be done at a Staff level. An application would have to be filed by a different business for a use permit to transfer.



Board Member Cullens stated that City is allowing the transfer in certain cases but not allowing the transfer in medical marijuana cases.

Ms. Stovall stated, with review of the new business application yes.

Mr. Rich stated that this stipulation violates the City Code. And the other stipulations such as you must paint the building a certain color, or the windows must look a certain way, and there needs to be so many parking spaces those are not violation the City Code directly. However, the process was created to put this stipulation at hand in place did not think about the Code.

Chair Lyon acknowledged Board Member Tracy

Board Member Tracy asked for clarification where it was previously stated in the presentation that the applicant was one in the same as the owner so would the stipulation be for the property owner or only the tenant.

Ms. Stovall stated that City Staff did not state that the applicant is one in the same as the property owner. That was the appellants comment and that is not correct. As far as City Staff sees it you can have a property owner authorize someone to pursue an application, so they are not one in the same and according to that 2015 approval the use was authorized for Natural Herbal Remedies Dispensary not the property owner.

Board Member Tracy follow up question was did the applicant have the ability to appeal that stipulation that was issued.

Ms. Stovall stated that is correct.

**Public Comment:**

Chair Lyon acknowledged Mr. William Bishop

**William Bishop – Tempe Business Man**

Mr. Bishop stated that he feels as though the Hearing Officer had it correct the first time around. Mr. Bishop feels that the current applicant is just trying to take advantage of the previous application approval. In terms of the childcare facility Mr. Bishop stated that he does not see the distinguishing between a fitness center childcare and another childcare center. The Fitness center is a big child care center there are tons of kids there. There is no definition that states there are a certain kinds of child care centers that are somehow exempt from the separation requirements. The office complex holds Attorneys, CPA's, etc. so this business is not appropriate in this location. The reason that Natural Herbal Remedies left the property was because they were having trouble getting a CCNR at the time. Which the new clients come in is aware that is another obstacle they must overcome as well. And they built those improvements before any kind of legation. Mr. Bishop stated that he was under the understanding that there are time tables that have not been met as well. Mr. Bishop closed with the Hearing Officer had it right and that he would like for the Board to adhere to that decision.

Chair Lyon acknowledged Mr. Jeffrey Groff

**Jeffrey Groff – Tempe Business Man**

Mr. Groff stated that it is up to the Board to hear the evidence and that the applicant has the burden of providing the Board with evidence that will change the Boards mind that the Hearing Officer was wrong or right. Mr. Dow stated that there was evidence presented however it is not the City job. There was lack of enough evidence to meet the requirements.

Chair Lyon acknowledged Mr. Dan Schweiker.

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**Dan Schweiker – Tempe Business Man**

Mr. Schweiker stated that he is under the understanding that there are four test that must be meet and if the applicant does not meet the any of the test especially the first one. Mr. Schwieker is a property owner in the division and hope that the Board holds up the Hearing Officer decision.

**Public Comments Closed**

Chair Lyon invited the appellant Mr. Rich back up to respond to the public comment.

Mr. Rich stated that what the public comments stated was important because it was wrong. Mr. Rich stated that public comments took the Board through a scenario that the approval that was granted had somehow expired because certain bench marks where not reached. Mr. Rich referred to the packet that he gave the Board referencing tab number 3. With the approval letter dated for 2015. The Public Comments where correct in the fact that natural Herbal Remedies did have to comply within 60 days of the date of the approval letter. As the Board can see in tab number 7 on January 5, 2016 Natural Herbal Remedies did apply to the state in accordance with the letter and it did not expire. Mr. Rich also stated that he would like to emphasize for the Board that in the Code 6-201 it states that an application may be initiated under this Code by the City Council or by the owner of the subject parcel. So, the owner was the company called Pathfinder and if the Board looks at Tab 1 in the Packet it is the owner authorization letter from Pathfinder. Mr. Rich stated that the comment in regard to CCNR is beyond the scope of the Board. Mr. Rich Summarized by saying that in granting the variance the Board is not in any way unlocking a situation where all the rules have change and not there are 100 dispensaries are going to come in.

**Commission Discussion**

Chair Lyon acknowledged Board Member Cullens.

Board Member Cullens stated that he has a concern about the letter that was originally approved and the stipulation that it can not be transferable. According to him it sounds like the stipulation for nontransferable is being used solely for medical marijuana facilities. Where board member Tracy asked if the applicant had the right to appeal the letter, Board Member Cullens did state that he does not see where someone would appeal the approval letter. The applicant would not have thought that it was an issue. Board Member Cullens hopes that the stipulation to transfer an approval is not a standard practice with all medical marijuana cases.

Chair Lyon asked Ms. Stovall are stipulations only attached to medical marijuana use permits.

Ms. Stovall stated that she would like clarification on the question, Is the question rather or not an approval letter for other types of applications contain stipulations. Then they most defiantly do.

Board Member Cullens stated that is not his question of course any application can have stipulations. To clarify the question is, is this specific stipulation of not being transferable applied to any other businesses outside of medical marijuana.

Ms. Stovall stated to her knowledge no, but she would like to clarify that the code does allow conditions of approval and those conditions of approval may be unique to a specific application and application type.

Board Member Cullens stated that basically City has set this a standard for these types of applications.

Chair Lyon stated that his understanding is that by granting the use permit the city does not want to see that business to continue without checks against zoning code. So, every time the business changes hands there is going to be a new check to make sure that they are still in confirm. Which is what is happening when there were revising to the zoning code it put the people in a bad situation and as it changed hands and the use permit being non-transferable they must check again to make sure the business matches the current zoning. With that the Boards needs to turn to the criteria and from where Chair Lyon sees it they do not pass the criteria. The case is an unusual

case but the fact that they are being measured up against the Zoning Ordinance and found wanting is not a special condition. It is just that the history is unique. Chair Lyon is not aware of any variances that the Board has done in which they have shortened the distance. If they did sort the distances, then the Board would be creating a special circumstance. While it is a painful fact in the risk that the business took is of their own making.

Chair Lyon acknowledged Mr. Abrahamson.

Mr. Abrahamson stated that in the past there has been legal review of a permit that have allowed for a limit on the transferability of the permit through the City attorney office.

Chair Lyon called for a motion:

**Motion** by Board Member Naugle motioned to deny the appeal of a variance to PARC. Board member Watson Seconded the motion. Motion passes on a 6-1 vote.

**Board Discussion**

Chair Lyon clarified that voting in favor would in this case be denying the variance.

**Ayes:** Chair Lyon, Vice Chair Frazey, Board Members Watson, Tracy, Naugle, and Confer

**Nays:** Board Member Cullens

**Abstain:** None

**Absent:** Board Member Whitney Baker

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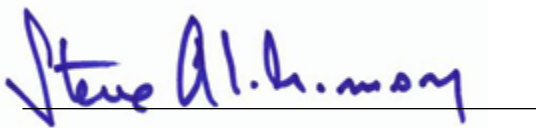
Staff Mr. Abrahamson did not have any announcements.

Hearing adjourned at 7:13 PM

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Prepared by: Brittainy Nelson, Administrative Assistant

Reviewed by:



Steve Abrahamson, Principal Planner

SA:bn