**NOTICE OF PUBLIC MEETING**
**BOARD OF ADJUSTMENT**
***3rd REVISION**

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **BOARD OF ADJUSTMENT** and to the general public, that the **BOARD OF ADJUSTMENT** will hold a meeting open to public on **Thursday, January 10, 2013, at 12:00 p.m. located in City Council Chambers, 200 West Jefferson Street, Phoenix, Arizona.**

*(One or more members may participate by telephone conference call.)*

The agenda of the meeting is as follows:

## A. Election of Chair and Vice-Chair

## B. Approval of Minutes

Approval of December 6, 2012 provisional minutes for ZA-233-12-4 and ZA-166-12-6 only

## C. Requests for Continuance and/or Withdrawal

1. Application #: **ZA-330-12-2 (Continued to February 7, 2013)**
   Existing Zoning: C-2, C-2 SP
   Location: 17002 North Cave Creek Road
   Proposal: Variance to reduce the required spacing for a plasma center from a residential zoning district to 0 feet. 900 feet required.
   Ordinance Sections: 647.A.2.u.
   Applicant: Mike Curley / Earl, Curley, & Lagarde, P.C.
   Representative: Mike Curley / Earl, Curley, & Lagarde, P.C.
   Owner: Cave Creek and Bell LLC
   Appellant: Scott Anderson / Parke Place Phoenix HOA

2. Application #: **ZA-210-12-8 (Case Withdrawn by Applicant)**
   Existing Zoning: C-2 ACOD
   Location: Southeast corner of 7th Street and Roosevelt Street
   Proposal: **1)** Use permit to allow packaged liquor sales within 300 feet of a residentially zoned property. Use permit required. **2)** Use permit to allow propane retail sales as an accessory use to a retail facility within 200 feet of a residentially zoned property. Use permit required.
   Ordinance Sections: 622.D.95.a. 623.D.146.a.
   Applicant: Circle K Stores, Inc.

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| Representative: | David Cisiewski MD Partners, LLC |
| Owner: | VP 7th & Roosevelt, LLC |
| Appellant: | Sean Sweat / Thunderdome Neighborhood Association |

## D. Items for Consideration

3. Application #: **ZA-340-12-3**

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| Existing Zoning: | RE-43 |
| Location: | 4101 East Shea Boulevard |
| Proposal: | Use permit to allow a concealed wireless communication facility on residentially zoned property that is used as public or quasi public space (church). Use permit required. |
| Ordinance Sections: | 715.B.1.a.(1) |
| Applicant: | Clear Blue Services |
| Representative: | Kent Flake / Clear Blue Services |
| Owner: | Church of the Valley, a Baptist Church of Phoenix |
| Appellant: | Kent Flake / Clear Blue Services |

4. Application #: **ZA-367-12-6**

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| Existing Zoning: | R1-14 ACSPD |
| Location: | 5433 East Calle Ventura |
| Proposal: | Variance to allow 32 percent lot coverage. Maximum allowed is 25 percent. |
| Ordinance Sections: | 607.B.5. |
| Applicant: | Neal Jain / Jain Living Trust Neal Jain and Sarah T |
| Representative: | Matthew A. Gorman |
| Owner: | Neal Jain / Jain Living Trust Neal Jain and Sarah T |
| Appellant: | Paul Barnes / Neighborhood Coalition of Greater Phoenix |

5. Application #: **ZA-286-12-5 (Sign)**

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| Existing Zoning: | C-2 |
| Location: | 7622 West Indian School Road |
| Proposal: | Variance to increase the number of ground signs allowed with 1040 feet of street frontage to four ground signs. Maximum of three primary ground signs allowed. |
| Ordinance Sections: | 705.D.2.a. |
| Applicant: | Dane Christensen / Christy Sign Company |
| Representative: | Dane Christensen / Christy Sign Company |
| Owner: | Kurt Ostler / NAPA Auto Parts |
| Appellant: | Dane Christensen / Christy Sign Company |

6. Application #: **ZA-374-12-5**

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| Existing Zoning: | PSC, C-2 |
| Location: | 9021 West Camelback Road |
| Proposal: | **1)** Use permit to permit liquor sales less than 300 feet from a residentially developed property. Use permit required. **2)** Variance to permit a drive through window for alcohol sales less than 300 feet from a residentially developed property. Minimum 300 feet required. |
| Ordinance Sections: | 622.D.97.a. 622.D.97.b. |
| Applicant: | Leodra Bowdell / Phoenix Permit Service |
| Representative: | Leodra Bowdell / Phoenix Permit Service |
| Owner: | Camelback 91 LLC<br>Saia Family LP |
| Appellant: | Leodra Bowdell / Phoenix Permit Service |

**Executive Session pursuant to A.R.S. Section 38-431.03.A.3 for the purpose of receiving legal advice regarding Items #7 (ZA-408-12Y), #8 (ZA-424-12-Y), #9 (ZA-233-12-4) and #10 (ZA-166-12-6).**

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| 7. | Application #: | **ZA-408-12-Y** |
| | Existing Zoning: | PSC |
| | Location: | City Wide |
| | Proposal: | Appellant asserts that: **1)** Subsequent to Bethany Core, L.L.C.'s predecessor obtaining the March 12, 2009 grant of a parking variance lowering the required parking spaces from 523 to 447 spaces for the entire Center (as then configured), Bethany increased the size of tenant space and changed tenant uses, removing in that process some 35+ parking spaces. The Center never obtained the 447 spaces required and, instead, had only 413 spaces. The expenditure of funds by Bethany after the variance was approved was accompanied by Bethany's making the Center hold fewer parked cars than required by the 2009 variance. In such circumstances, Zipps contends, "vesting" does not occur. Since the variance never vested, the 76 space reduction in parking therefore does not affect current parking calculations. Accordingly, the July 7, 2011 and July 25, 2011 letters by Mr. Stephenson "confirming" for the convenience of the landlord that a variance had "vested", were not correct. See June 29, 2011 request for those letters, plus the two (2) letters - attached as Exhibit B. The Board of Adjustment should rule that the 2009 variance did not vest and therefore cannot be |

relied upon at this time in parking table calculations by the landlord or the Department.

Ordinance Sections: 307.A.3. 307.A.3.

Appellant: Todd Goldman / Goldman Group IX, LLC dba Zipps Sports Grill

Representative: David C. Tierney / Sacks Tierney P.A.

8. Application #: **ZA-424-12-Y**

Existing Zoning: PSC

Location: City Wide

Proposal: Appellant asserts that**: 1)** The March 1, 2012, March 19, 2012, and May 2, 2012 approvals by the Department of site plans purported to approve a "parking table", as well as the plans. See Exhibit C for the three (3) approved plans. The numbers in the table, despite a January 17, 2012 decision[(1)] by ZHO William Allison requiring accuracy, were not "accurate" measurements of relevant tenant spaces upon which to base parking table calculations. At least five (5) gross errors were made in the tenant space numbers submitted and erroneously approved by the Department. The errors include, but are not limited to, a) inappropriate depictions of two (2) outdoor dining area spaces, b) omission of office space, c) designation of @ 10,000 sq. ft. active retail area as being "storage" space not to be counted as "parkable space", d) the allowing of an improper 5% discount-deduction which was taken in addition to using alleged net square footage numbers for tenant spaces, and e) the treatment of the 2009 parking variance as one that had vested. The Department's actions came after earlier multiple submissions of erroneous tenant space numbers and the errors constituted an impermissible misapplication of the Phoenix parking ordinance, which has resulted in harm to tenants in the Center as well as risk to the public. Accordingly, the approvals are not in accord with the ordinance or the January 17, 2012 ZHO decision and should be voided by the Board of Adjustment.

[(1)]The Allison January 17, 2012 decision was never appealed.

Ordinance Sections: 307.A.3, 307.A.3

Appellant: Todd Goldman / Goldman Group IX, LLC dba Zipps Sports Grill

Representative: David C. Tierney / Sacks Tierney P.A.

## E. Other Business

9. Application #: **ZA-233-12-4 – Request for Reconsideration Made by Opposition**
   Existing Zoning: C-2 TOD-1
   Location: 4700 North Central Avenue
   Proposal: Use permit to reduce parking in an Infill Incentive District by 13%. Use permit required.
   Ordinance Sections: 702.E.9.b.
   Appellant: Mark A. Davis / Davis Enterprises-4700 Central LLC
   Representative: Mark A. Davis / Davis Enterprises-4700 Central LLC
   Owner: Davis Enterprises-4700 Central, LLC
   Appellant: Mark A. Davis / Davis Enterprises-4700 Central LLC

10. Application #: **ZA-166-12-6 – Request for Reconsideration Made by Opposition**
    Existing Zoning: R1-10 NCSPD
    Location: 7901 North Central Avenue
    Proposal: Use permit to allow a concealed wireless communication facility in a public/quasi-public (Church) residentially zoned property. Use permit required.
    Ordinance Sections: 715.B.1.a.(1)
    Applicant: Joe Engbrocks / Bechtel
    Representative: Joe Engbrocks / Bechtel
    Owner: Joe Fritz / CrossRoads United Methodist Church
    Appellant: Mary Crozier / North Central Phoenix Homeowners Association

11. Update on February 7, 2012 Board of Adjustment agenda.

12. Update on pending appeals of the Board of Adjustment.

13. Q & A: Procedure and Process - Board Adjustment Case law.

14. The Board may vote to go into Executive Session pursuant to A.R.S Section 38-431.03.A.3 for the purpose of receiving legal advice regarding any of the above Items A-E.

For further information, please call Mary L. Brown, Secretary to the Board, in the Planning and Development Department at 602-495-7029, or contact us via electronic mail at zoning@phoenix.gov. This electronic mail address will not accommodate zoning enforcement/violation complaints.

For reasonable accommodations, call at Voice/ or the City TTY/602-534-5500 as early as possible to coordinate needed arrangements.

December 21, 2012