NOTICE OF RESULTS
BOARD OF ADJUSTMENT

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** held 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.**

The results of the meeting were as follows:

(ZAHO = Zoning Adjustment Hearing Officer)

RESULTS

A. Election of Chair and Vice-Chair

Approved Nomination of Mr. Gaynor as Chairman was approved. **(Hunter/Ryan – Vote of 7-0)**

Approved Nomination of Ms. Ryan as Vice-Chair was approved. **(Koester/Jeffries – Vote of 7-0.)**

Approved **B. Approval of Minutes**

Approval of December 6, 2012 provisional minutes for ZA-233-12-4 and ZA-166-12-6 only.
(Gaynor/Koester – Vote of 5-0.) (Jeffries, Adams abstained)

C. Requests for Continuance and/or Withdrawal

No Action 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

Withdrawn 2. Application #: **ZA-210-12-8 (Case Withdrawn by Applicant)**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.
Representative:	David Cisiewski MD Partners, LLC
Owner:	VP 7th & Roosevelt, LLC
Appellant:	Sean Sweat / Thunderdome Neighborhood Association

(Gaynor/Ryan – Vote of 7-0.)

D. Items for Consideration

ZAHO denial stands

3.

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

Motion to overturn ZAHO's decision of denial failed. No further motions were made, which results in the ZAHO's decision of denial standing.
(Hunter/Ryan – Vote of 3-4.) (Adams, Larios, Koester, Jeffries)

Overturned ZAHO's decision and approved with stips

4.

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

Overturned ZAHO's decision of denied as filed, and approved the variance with the following stipulations:

1) **Lot coverage shall be limited to 28%.**
2) **180 days to apply and pay for building permits.**
3) **Home is limited to single story and no greater height than 20 feet as measured at the peak of the roof.**

(Hunter/Jeffries - Vote of 7-0.)

Overturned ZAHO with stips

5.

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

Overturned the ZAHO's decision of denial with the following stipulations:

1) **180 days to apply and pay for building permits.**
2) **Conformance to the exhibit signed by the Zoning Administrator date stamped January 10, 2013 and other ordinance requirements related to size, width and lighting.**
3) **Add a split faced block base that matches the building for the base of the ground sign as approved by the Planning and Development Department.**
4) **The ground sign design shall be revised to include a separate panel to accommodate a sign for another business by the Planning and Development**

Department so long as the existing property owner executes an agreement with the other business that wishes to advertise on the sign.

(Hunter/Jeffries – Vote of 7-0.)

#1 Overturned ZAHO and approved with stips

#2 Withdrawn

6.

Application #:	**ZA-374-12-5**
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 Saia Family LP
Appellant:	Leodra Bowdell / Phoenix Permit Service

Overturned the ZAHO's decision of denial and approved the use permit with the following stipulations, noting that the applicant withdrew the variance request:

1) **180 days to apply and pay for building permits/tenant improvements.**
2) **Signage and other obstructions shall be minimized in the front windows to provide a clear view into and out of them as approved by the Zoning Administrator.**
3) **The Precinct Commander or his designee shall approve the lighting, containment area and security personnel. The applicant shall maintain the lighting and landscaping per standards approved by the Precinct Commander to discourage unlawful activity.**
4) **The accessory use alcohol sales area shall be limited to 130 square feet and only allow for beer and wine beverage sales and no single serving sales of alcoholic beverages.**

(Jeffries/Ryan – Vote of 6-1.) (Hunter)

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).

Approved **Executive Session on Items #7, #8, and #9.**
(Koester/Hunter – Vote of 7-0.)

Upheld

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.
		Upheld the Zoning Administrator's determination of vested rights. ***(Jeffries/Ryan – Vote of 7-0.)***	
Not within Board's jurisdiction	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.
		Not within the Board's jurisdiction. ***(Larios/Ryan – Vote of 7-0.)***	

E. Other Business

Request denied	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
		No motion was made to reconsider. The Board's decision of December 6, 2012 stands.	
Tabled	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

Motion to reconsider.
(Hunter/Koester – No vote.)
Motion to table item until the next hearing.
(Koester/Hunter – Vote of 3-1.) (Ryan) (Larios, Jeffries, Adams not eligible)

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

No Action 12. Update on pending appeals of the Board of Adjustment.

No Action 13. Q & A: Procedure and Process - Board Adjustment Case law.

Approved 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.
Executive Session on Item #3, ZA-340-12-3.
(Jeffries/Ryan – Vote of 7-0.)

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.

January 10, 2012