

RESULTS OF PUBLIC MEETING BOARD OF ADJUSTMENT

Pursuant to A.R.S. Section 38-431.02, notice was 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, October 6, 2022 at 12:00 p.m.**

Per the most recent guidelines from the federal government, the Board of Adjustment was held virtually, via a video conferencing platform.

The results of the meeting were as follows:

RESULTS

Approved A. Approval of Minutes – September 1, 2022

(Ammon/Hill - Vote of 5-0) (Beuerlein, Cole absent).

Approved B. Approval of Agenda – October 6, 2022

(Ammon/Eigo - Vote of 5-0) (Beuerlein, Cole absent).

None C. Requests for Continuance and/or Withdrawal

D. Items for Consideration

Approved 1-
year review
with
modified
and
additional
stipulations

- | | |
|----------------------|---|
| 1. Application #: | ZA-462-15-6 (1-Year Review)
(Continued from September 1, 2022) |
| Existing Zoning: | C-2 |
| Location: | 3934 and 3948 East Indian School Road |
| Quarter Section: | 17-36(H10) |
| Proposal: | 1) Use Permit to allow outdoor recreation uses. Use permit required.
2) Use Permit to allow outdoor dining accessory to a restaurant. Use Permit required.
3) Use Permit to allow outdoor alcoholic beverage consumption accessory to a restaurant. Use Permit required.
4) Use Permit to allow outdoor music and entertainment accessory to a restaurant. Use Permit required.
5) Use Permit to allow the display of merchandise outdoors. Use Permit required. |

Ordinance Sections: 623.D.156.c, 623.D.156.c, 623.D.156.c,
623.D.156.c, 623.C.2
Applicant: 40th Street Developers LLC
Representative: Taylor Earl, Earl & Curley P.C.
Owner: 40th Street Developers LLC
Appellant: Wally Graham, Arcadia Osborn HOA

Approved 1-year review with the following modified and additional stipulations:

Stipulations:

- 1) ***Two years to apply and pay for the first building permit.***
- 2) ~~***Outdoor recreation use limited to recorded music or live acoustic performances with no more than two (2) performers.***~~
- 2)3) ***Outdoor display of merchandise limited to the sidewalk area on the north side of the building.***
- 3)4) ~~***One year review after issuance of Certificate of Occupancy. A 7 month review to the May 2023 Board of Adjustment hearing.***~~
- 4) ***Outside speakers are to be positioned so as to face the building and be directed away from neighborhoods.***
- 5) ***Outside speaker volume shall be kept to a reasonable level, recognizing ambient conditions, enabling residents in the adjacent neighborhood to enjoy use of their yards, free of noise above ambient condition, simultaneously with any outdoor activity at the subject site.***
- 6) ***Particular attention shall be paid to keeping bass sound level low from outside speakers. DJ's at the subject site will be given a copy of these stipulations prior to operating their sound equipment on the subject site.***
- 7) ***Applicant and restaurant staff shall monitor sound levels in the neighborhood and promptly respond to any calls or complaints by reducing sound levels. In this regard, Applicant shall ensure that the Arcadia Osborn Neighborhood Association shall have the name and phone number of a responsible party to call in the event excessive sound levels emanating from the subject site are experienced by residents of the adjacent neighborhood.***
- 8) ***In no event shall any amplified music be played on the subject site outdoor patio (on the northwest corner of the subject building) after 10 pm on any day of the week, such that the music can be heard beyond the subject site boundaries.***

- 9) ***An acoustical study and plan shall be prepared by a qualified sound engineer; if such study so indicates, on the roof of the building over the subject patio which opens to the north and west, a sound masking system such as white noise machines shall be installed at appropriate locations to mitigate emanation of sound to the neighborhood.***

(Eigo/Hill - Vote of 5-0) (Beuerlein, Cole absent).

**Overtured
ZAH0**

2. Application #: **ZA-257-22-8**
Existing Zoning: R1-10
Location: 3728 East Palm Lane
Quarter Section: 13-36(G10)
Proposal: Variance to allow an over height fence (6 feet) in the required front yard setback (west). Maximum 40 inches permitted.

Ordinance Sections: 703.A.2.a
Applicant: Morgan Hawes and Peter Mettler
Representative: Morgan Hawes and Peter Mettler
Owner: Morgan Hawes and Peter Mettler
Appellant: Jeff Muckerman

Overtured the Zoning Adjustment Hearing Officer's decision and denied the variance.

(Eigo/Ammon - Vote of 5-0) (Beuerlein, Cole absent).

E. Other Business

- Updated** 3. Update on next Board of Adjustment agenda.
Updated 4. Update on pending appeals of the Board of Adjustment.
No Action 5. Q & A: Procedure and Process - Board of Adjustment case law.
No Action 6. 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.

Adjourned F. Adjournment

For further information, please call Julie Garcia in the Planning and Development Department at 602-495-7029 or contact us via electronic mail at pdd.boardofadjust@phoenix.gov. This electronic mail address will not accommodate zoning enforcement/violation complaints.

This publication can be made available in alternate format upon request. To request a reasonable accommodation, please contact Angie Holdsworth at 602-495-5622, TTY: Use 7-1-1.

October 6, 2022