



# BOARD OF ADJUSTMENT AGENDA

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**BOARD OF ADJUSTMENT  
PUBLIC HEARING  
THURSDAY, JULY 21, 2011  
9:00 AM**

**COUNCIL CHAMBERS  
201 S. CORTEZ STREET  
PRESCOTT, ARIZONA  
(928) 777-1207**

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The following agenda will be considered by the BOARD OF ADJUSTMENT at its PUBLIC HEARING to be held at 9:00 AM on JULY 21, 2011, in COUNCIL CHAMBERS, CITY HALL, 201 S. CORTEZ STREET, PRESCOTT, ARIZONA. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

**I. CALL TO ORDER**

**II. ATTENDANCE**

**Members**

Mike Klein, Chairman  
Duane Famas, Vice Chairman  
Johnnie Forquer  
Tom Kayn

Greg Lazzell  
Dick Rosa  
George Wiant

**III. REGULAR AGENDA**

1. **Approve the minutes** of the April 21, 2011 public hearing.
2. **CUP11-006, 1455 Willow Creek Road.** APN: 116-17-270B and totaling ± 6.37 acres. Zoning is Single-Family 9 Residential (SF-9). LDC Section 9.3 and Table 2.3. Request conditional use permit to amend CUP09-008 (granted to operate a private school in place of a church) to allow for the operation of the school with simultaneous, limited operation of the church. Owner is First Assembly of God of Prescott. Applicant is Mountain Oak Charter School. Community Planner is Ryan Smith (928) 777-1209.

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. WITH 48 HOURS ADVANCE NOTICE, SPECIAL ASSISTANCE CAN BE PROVIDED FOR SIGHT AND/OR HEARING IMPAIRED PERSONS AT PUBLIC MEETINGS. PLEASE CALL 777-1272 OR 777-1100 (TDD) TO REQUEST AN ACCOMMODATION TO PARTICIPATE IN THIS MEETING.

**IV. REVIEW ITEMS**

*None.*

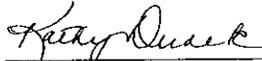
**V. SUMMARY OF CURRENT OR RECENT EVENTS**

**VI. ADJOURNMENT**

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**CERTIFICATION OF POSTING OF NOTICE**

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall and on the City's website on July 15, 2011 at 4:00 PM in accordance with the statement filed with the City Clerk's Office.



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Kathy Dudek, Administrative Assistant  
Community Development Department

BOARD OF ADJUSTMENT  
PUBLIC HEARING  
APRIL 21, 2011  
PRESCOTT, ARIZONA

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on APRIL 21, 2011 in COUNCIL CHAMBERS, CITY HALL, located at 201 S. Cortez Street, Prescott, Arizona.

I. CALL TO ORDER

Chairman Klein called the public hearing to order at 9:00 a.m. The Pledge of Allegiance was recited.

II. ATTENDANCE

*MEMBERS PRESENT*

Mike Klein, Chairman  
Duane Famas, Vice Chairman  
Johnnie Forquer  
Tom Kayn  
Greg Lazzell  
Dick Rosa  
George Wiant

*STAFF PRESENT*

Tom Guice, Community Development Director  
George Worley, Planning Manager  
Matt Podracky, Senior Assistant City Attorney  
Dick Mastin, Development Services Manager  
Ruth Hennings, Community Planner  
Ryan Smith, Community Planner  
Kathy Dudek, Administrative Assistant &  
Recording Secretary to the Board

*COUNCIL PRESENT*

Marlin Kuykendall, Mayor  
Jim Lamerson, Councilman

III. REGULAR AGENDA

1. Approve the minutes of the March 17, 2011 public hearing.

Mr. Kayn, **MOTION: to approve the minutes** of the March 17, 2011 public hearing. Mr. Lazzell, 2<sup>nd</sup>. **Vote: 7-0.**

2. **CUP11-004, 202 S. Montezuma Street.** APN: 109-02-046A totaling ± 0.25 acre. Zoning is Downtown Business (DTB). LDC Sections 2.3 and 9.3. Request to amend Conditional Use Permit CUP09-006 to allow all food items to be sold from cart, to approve a shade structure, and increase hours of operation until 2:00 a.m. Owner is Montezuma Goodwin, LLC. Applicant/agent is Diane Rosito. Community Planner is Ryan Smith (928) 777-1209.

Mr. Smith reviewed the staff report and noted:

- the applicant is requesting an amendment to CUP09-006 from “hot dog cart” to “mobile food vendor” because the original approval was for the applicant’s request of a hotdog cart only;
- a 10’ x 10’ canopy/shade structure is being requested for use in lieu of the umbrella;

- the Fire Department is requiring a "fire-rated" shade structure;
- if the shade structure is not fire rated, then the applicant could place the heat source under an umbrella per Health Department requirements;
- the applicant is also requesting that hours of operation be extended to 2:00 a.m.;
- the original CUP09-006 application called out the placement of the food cart to be located at the corner of Goodwin and Montezuma Streets;
- even though public hearing notices were mailed and also handed out to surrounding businesses, no adverse comments were received; and,
- staff has suggested six possible conditions including:
  1. The applicant must obtain a building permit for the canopy prior to installation.
  2. If the canopy is not fire rated, then the food cart must be placed outside the canopy with a single cart umbrella as required by the County Health Department. Tables and chairs may then be placed under the canopy. At no time may the service area extend beyond the canopy.
  3. The canopy may be lighted from within using low-output lighting in conformance with both the *Land Development Code* and Building Code.
  4. Except for Condition #2, as noted above, the CUP shall be in strict conformance to the applicant's site plan received 03-15-2011.
  5. At no time shall this CUP be construed to allow sales of non-food retail items.
  6. Violations of any City Codes shall be deemed a violation of the conditions of this CUP which will result in a review by the BOA to determine the continued approval of the CUP.

Comments and queries from the Board members included:

- how will the canopy be affixed to the property [Mr. Smith: bolted to meet wind load];
- parking requirements [Mr. Smith: there are three to four extra];
- will adequate site distance exist if canopy is installed [Mr. Smith: yes, it is not within the site triangle]; and,
- can customers drive up to purchase food [Mr. Smith: no curbs sales, including drive-ups, are permitted under code].

Ms. Diane Rosito, Eco3 Oil, 202 S. Montezuma, applicant, indicated she is narrowing the scope to keep it compact. The canopy is wind rated.

Board members commented on and questioned Ms. Rosito. She indicated:

- the mobile food cart will not be placed under the canopy;
- the canopy will be used for customers;
- the 6' umbrella will not be placed under the shade structure;
- the shade structure is not flame-retardant;
- the umbrella will protect the vendor, the shade structure the customers; and,

Mr. Kayn, **MOTION: to approve Conditional Use Permit CUP11-004, amending CUP09-006**, subject to the following six conditions:

1. The applicant must obtain a building permit for the canopy prior to installation.

2. If the canopy is not fire rated, then the food cart must be placed outside the canopy with a single cart umbrella as required by the County Health Department. Tables and chairs may then be placed under the canopy. At no time may the service area extend beyond the canopy.
3. The canopy may be lighted from within using low-output lighting in conformance with both the *Land Development Code* and Building Code.
4. Except for Condition #2, as noted above, the CUP shall be in strict conformance to the applicant's site plan received 03-15-2011.
5. At no time shall this CUP be construed to allow sales of non-food retail items.
6. Violations of any City Codes shall be deemed a violation of the conditions of this CUP which will result in a review by the BOA to determine the continued approval of the CUP.

Mr. Rosa, 2<sup>nd</sup>. **Vote: 7-0.**

**CUP11-005, 909 E. Gurley Street.** APN: 110-02-073 and totaling ± 0.34 acre. Zoning is Business General (BG). *LDC* Sections 2.3 and 9.3. Request a conditional use permit for a new car wash facility. Owner is Eiland Investments. Applicant/agent is Derek Gates. Community Planner, Ruth Hennings (928) 777-1319.

Ms. Hennings reviewed the staff report and indicated:

- the applicant has reapplied after making significant changes since last month when the Board denied the application;
- the property is zoned Business General (BG);
- car wash facilities require CUPs under the *Land Development Code (LDC)*;
- the property is currently used for a gas station and convenience store;
- the applicant proposes removing the current buildings and remediating the soil;
- in a noise study conducted by the applicant, a reduction of approximately 20 decibels for the automatic wash bay will occur when the doors are closed;
- staff will not allow a Recreational Vehicle (RV) bay;
- the vacuum stations will be placed at the southeast (sic) [*recte*: southwest] corner of the parking lot;
- the central vacuum will be closed on all three sides; and,
- the applicant is here to answer questions.

Board members queried and commented to staff:

- the noise level of the vacuums at the hillside;
- will a problem exist because the vacuums are grouped;
- the problem at the Sheldon Street car wash is the blow dryers, not the vacuums;
- the amount of traffic through the alley [Mr. Mastin: the city's traffic engineer looked at the alley. The site plan for the car wash is adequate];
- the distance between the automatic bay and first residence [Ms. Hennings: there is a 12' driveway and a 10' buffer, and the residence is set back further];
- the hours of operation [Ms. Hennings: everything will be shut down at 10

- p.m.;
- curb cuts [Ms. Hennings: no additional cuts are going to be made]; and,
- alley improvements [Ms. Hennings: the alley will be improved ].

Mr. Derek Gates, applicant/agent, 850 Hattie Green, Flagstaff, responded to questions by the Board;

- the automatic bay will be set back another 5' but we have decided to go back an additional 5' to give more turning radius;
- the automatic bay will have bi-fold bay doors with plexiglass windows;
- the closed-bay operation will move, the car in the bay will stay in place;
- the car wash takes approximately four minutes, with the closed bay adding approximately 45 seconds more; and,
- an emissions issue will occur if a driver leaves the car running in the enclosed bay, but there probably isn't a [carbon monoxide] problem for that length of time.

Mr. Rosa, **MOTION: to approve CUP11-005**, subject to the following six conditions:

1. Site development must be in substantial compliance with the site plan dated April 14, 2011 with the exception that no Recreational Vehicle (RV) car wash bay will be permitted. All wand bays are to be a maximum of 30' in length.
2. Hours for the overall operation of the business shall be from 6:00 a.m. to 10:00 p.m.
3. Sound abatement systems must be installed as proposed by the applicant.
4. Automatic wash bay will have doors closed during the dryer cycle.
5. Periphery vacuum station must be enclosed by walls on three sides and overhead to mitigate noise impacts.
7. Enhanced landscaping is required at the rear of the property, compatible with the standards listed in *Land Development Code* Section 6.13.4.C.2, with 80% screening.

Mr. Wiant, 2<sup>nd</sup>. **Vote: 7-0.**

#### IV. SUMMARY OF CURRENT OR RECENT EVENTS

Mr. Kayn congratulated Mike Klein being appointed chairman and Duane Famas vice-chairman by City Council. Mr. Kayn also welcomed Greg Lazzell to the Board after being selected and appointed by City Council.

#### V. ADJOURNMENT

Chairman Klein adjourned the public hearing at 11:09 a.m.

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Michael Klein, Chairman



Kathy Dudek, Administrative Assistant

Community Development Department



granted only when the Board of Adjustment finds the proposal meets the certain general criteria as described in Section 9.3.5 of the LDC:

- A. Effect on the environment:** The area is zoned SF9 which allows for schools and churches subject to any conditions in the CUP. The impact of the simultaneous operation of church and school is not firmly established since Sunday hours of operation have not been provided by the applicant. However, the use should not create a nuisance, any greater than past church activities, that may arise from noise, smoke, odor, dust vibration or illumination. Area residents have expressed concerns regarding noise due to church activities in the past.
- B. Compatible with surrounding area:** The property is on Northside Drive where there is moderate residential and through traffic. The church intends to retain ownership of the vacant 2.5 acre property to the west, which is zoned SF9 and has a General Plan designation of commercial. The remaining three sides of the school property are single family homes.
- C. External impacts minimized:** The main entrance is proposed to be from Willow Creek Road. Other than limited left turn movements onto Willow Creek Road, no issues have been identified by Public Works/Engineering Services.
- D. Infrastructure impacts minimized:** Additional infrastructure is not required.
- E. Consistent with General Plan and Code:** The request is consistent with the General Plan.
- F. Parcel size:** The subject property is adequately sized for this use.
- G. Site Plan:** The site plan for the school has been previously approved. No additional improvements for the church are proposed.

#### **NEIGHBORHOOD COMMENTS:**

An area meeting was held on July 14, 2011. Five neighbors attended. Topics for discussion were general in nature and included brush remediation, drainage and alley access issues. All comments were directed to the school. The general consensus of the meeting was that the church use of the property is not an issue. A single letter has been received indicating brush, accumulated by the church during its ownership of the lot, is a fire hazard at this location. Code Enforcement has had an open file regarding the violation and the school has indicated they will do a general cleanup of the site. One phone comment has been received in favor of the request.

#### **STAFF FINDINGS AND RECOMMENDATIONS:**

The Land Development Code allows for this use under the CUP process. One comment specifically regarding the Conditional Use Permit has been received, and is in favor of the request. Therefore, staff is recommending approval of CUP11-006 with a suggested condition.

#### **SUGGESTED MOTION OF APPROVAL WITH CONDITIONS:**

Move To Approve Conditional Use Permit Amendment CUP11-006 with a condition:

1. The church may operate simultaneously with the school. Church services are limited to Sunday only. Church activities other than service within the sanctuary building are prohibited.

#### **Attachments:**

Site Plan  
Applicant Narrative  
Letter



This amendment to CUP 09-008 is being pursued by Mountain Oak Charter School (Mountain Oak) in order to document an agreement between Mountain Oak and First Assembly of God of Prescott (First Assembly). These two parties have worked very closely to structure a mutually beneficial property sale and relationship moving forward. Mountain Oak desires to allow First Assembly to continue using the existing location for Sunday church services.

This arrangement is the result of two parties working together to reach a mutually beneficial solution to each party's needs while considering the laws that govern the location. First Assembly will continue to own the 2.3 acres bordering Willow Creek Road and rather than build on the property during a rough economic time both parties feel it is very acceptable to work together if allowed by the Board of Adjustments.

The neighborhood embraced the concept of Mountain Oak locating on this site and it is the desire of both parties to allow the church to continue its 29 year history of Sunday services until the time comes for First Assembly to move on to a new location.

CONCERNING CONDITIONAL USE  
PERMIT CUP11-006 1455 WILLOW  
CREEK ROAD.

A REQUEST IN WRITING TO THE  
CHURCH TO REMOVE FIRE HAZARD  
MATERIAL ON THE EAST PORTION OF  
THEIR PROPERTY. THIS HAS BEEN  
IGNORED. SOME ACTION NEEDS TO BE  
TAKEN TO REMOVE THIS MATERIAL.

SIM AND VIOLET SIFFORD  
1406 NORTHSIDE DRIVE

**RECEIVED**

JUL 11 2011

CITY OF PRESCOTT  
COMMUNITY DEVELOPMENT