



BOARD OF ADJUSTMENT AGENDA

**BOARD OF ADJUSTMENT
PUBLIC HEARING
THURSDAY, December 22, 2011
9:00 AM**

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

The following agenda will be considered by the BOARD OF ADJUSTMENT at its PUBLIC HEARING to be held at 9:00 AM on December 22, 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 / PUBLIC HEARING ITEMS

- 1. Approve the minutes** of the August 18, 2011 public hearing.
- 2. CUP11-007, 214 White Spar Road.** APN: 109-14-064 and totaling ±0.07 acre. LDC Sections 2.3 and 9.3 and Table 2.3. Zoning is Business Regional (BR). Request is for a Conditional Use Permit for a tattoo parlor. Owner is Russell Palmer, 1045 Scott Drive, Prescott, AZ 86301. Community Planner is Mike Bacon.

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

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 December 16, 2011 at 4:00 PM in accordance with the statement filed with the City Clerk's Office.


Suzanne Derryberry, Administrative Specialist
Community Development Department

**BOARD OF ADJUSTMENT
PUBLIC HEARING
AUGUST 18, 2011
PRESCOTT, ARIZONA**

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on AUGUST 18, 2011 in COUNCIL CHAMBERS, CITY HALL, located at 201 S. Cortez Street, Prescott, Arizona. Notice of this public hearing was given pursuant to *Arizona Revised Statutes*, Section 38-431.02.

I. CALL TO ORDER

Chairman Klein called the meeting to order at 9:00 a.m.

II. ATTENDANCE

MEMBERS PRESENT

Michael Klein, Chairman
Duane Famas, Vice Chairman
Johnnie Forquer
Tom Kayn
Greg Lazzell
Dick Rosa

MEMBERS ABSENT

George Wiant

STAFF PRESENT

George Worley, Planning Manager
Matt Podracky, Sr. Assistant City Attorney
Dick Mastin, Development Services Manager
Ruth Hennings, Community Planner
Mike Bacon, Community Planner
Brian Taylor, Code Enforcement Officer
Kathy Dudek, Administrative Assistant &
Recording Secretary to the Board

III. REGULAR AGENDA

1. Approve the minutes of the July 21, 2011 public hearing.

Mr. Rosa, **MOTION: to approve the minutes** of the July 21, 2011 public hearing.
Mr. Lazzell, 2nd. **Vote: 5-0-1** (abstention due to absence: Klein).

2. V11-001, 917 E. Gurley Street. APN: 110-02-072B and totaling ± 0.25 acre. Zoning is Business General (BG). LDC Section 9.3 and Table 2.3. Request variance to allow encroachment into the rear setback to construct an exterior vestibule for an existing stairway. Owner/applicant is Gurley Street Partners, LLC/ William R. Dougherty. Community Planner is Ruth Hennings (928) 777-1319.

Ms. Hennings reviewed the staff report and indicated:

- the request is for a rear setback encroachment for the purposes of a vestibule;
- proposed uses for the building include offices and personal-service businesses;
- the zoning is Business General (BG);
- new owners have been making interior and exterior modifications to the building;

- the request was made after the new owners had safety concerns, i.e., the entrance from the lower parking area which is presently boarded and unusable;
- the applicants are requesting to build a vestibule around the existing stairwell;
- a variance is required because the vestibule encroaches 5' into the setback where 10' is required by code;
- staff feels that the variance criteria has been met and that the request addresses and/or mitigates a significant safety concern;
- staff is recommending approval; and,
- the applicants are present to answer questions.

Queries and comments from the Board included:

- existing parking [Ms. Henning: the vestibule is not in a parking space, so a space will not be lost nor will the turning radius become problematic]; and,
- have any neighboring properties voiced a concern [Ms. Hennings: the property was posted and notices were published and mailed with no concerns received].

Mr. William Dougherty, 15433 N. Tatum Blvd. #105, representing Gurley Street Partners, added that the survey denotes only 4' into the setback. This [vestibule] will be a wonderful improvement for the occupants. In the present condition, railings are inadequate and the property cannot be properly modified in its present condition.

Queries and comments from the board members answered by Mr. Dougherty included:

- present and proposed lighting conditions;
- the interior stairway will be fully lighted and meet code;
- the entrance door;
- after hour accessibility by "mag-lock" and will be open during business hours; and,
- tenants will have a magnetic card key for entrance 24 hours per day.

No members from the public came forward to speak.

Mr. Rosa, **MOTION: to approve V11-001**, 917 E. Gurley Street. Mr. Famas, 2nd. **Vote: 6-0.**

- 3. Appeal 11-001, 215 N. Pleasant Street.** APN: 114-05-046, and totaling .016 acre. Zoning is Single-family 9 (SF-9). Appeal of Administrative Decision relating to LDC Sections 6.4.2, 6.4.3 and 6.4.4.E. Appeal of staff denial of an after-the-fact permit for the installation of a fence. Applicant/owner is Gina Engelman. Planning Manager is George Worley. (928) 777-1287.

Chairman Klein noted the presence of City Attorney Matt Podracky. The appeal began by swearing everyone in [refer to wording attached as Exhibit A]. Six persons stood and were duly sworn, including: George Worley (staff), Mike Bacon (staff), Brian Taylor (staff), Gina Englemen (applicant), Connie Cantelme (friend/neighbor of applicant) and an unidentified male [*nb: the unidentified male did not speak at any time during the appeal*].

Mr. Worley noted that appeals before the Board are infrequent. A packet of all information available to staff when the packet was prepared has been given to each BOA member. Timeframes, chronology, etc., are located in the packet. This is an

appeal OF STAFF DECISION not to issue a permit based on certain criteria. The appeal is to determine if staff made an appropriate decision; and, it is not a variance. The applicant has been informed of this and will be given the opportunity to apply for a variance in the future should she choose to do so. There is no additional information beyond what is in the packet. Staff members present are: Mike Bacon, who is a Community Planner, and Brian Taylor, a Code Enforcement Officer. Those staff members are available for any questions you may have. Staff would suggest that the floor be turned over to the applicant, Ms. Englemen, to present information to you.

Ms. Gina Englemen, 215 N. Pleasant Street, applicant, noted she actually moved into the property on June 17, the day before the fence was erected. She was out of town attending to her dying sister. "The fence was put up by a friend of mine just as a . . . not a gift because I was paying for that. I didn't realize he was doing it. When we were notified we needed a permit, which I didn't know, my friend happened to be by my house collecting my mail or whatever and she received the violation. She called me, we talked about it on the phone, we read it over, and saw the misprint where it said that the exterior of the fence should face the outside or the property being fenced. So we interpreted it as the fence was being put up in the appropriate way so we moved forward with the completion of the fence. Also, I have a dog and I couldn't leave my backyard exposed. I did at one point, early on, talk with my neighbor Mary, whose last name I don't know. I said I am going to be putting up a fence sometime. She said, 'oh, that's great, let me know, I'll keep the dog in.' I came home on the 17th and that was a Friday. On Monday morning we went/came downtown and that's when I talked with Mike Bacon about the misprint. That's when he explained to me it doesn't matter what it says here because the code says this. Well, that's where I am stuck at. I moved forward on the notion of the misprint. It wasn't done maliciously putting up a fence facing what can be perceived the wrong way. I just want to express that I think the fence should be left the way it is because of the misprint. It wasn't my fault".

Chairman Klein asked if the Board has any questions the members have of the applicant.

Mr. Kayn asked to explain the misprint as he didn't see that in here [the packet]. Ms. Englemen added that "we were handed the "Fences and Walls" handout .I have it here, would you like me to give it to you?"

Mr. Kayn "no that's ok." Chairman Klein stated it was included in the Board's packet. Mr. Worley noted it was shown on the screen, also.

Chairman Klein asked for any other questions.

Mr. Lazzell asked about the chronological events "at what point did staff say it was being installed incorrectly? Was the fence already completed or was it in it mid. . ."

Ms. Englemen, "It was, I wasn't there, so I'm not sure. It wasn't completed. I think there was just a very tiny part of it that was not from the pictures. But again . . ."

Mr. Lazzell, "your friend that was installing it, paid or unpaid. Was he a licensed contractor?"

Ms. Englemen, "no."

Chairman Klein noted he had a few questions:

Chairman Klein, "you mentioned the fence. You were not there when they began to work on the fence."

Ms. Englemen, "correct."

Chairman Klein, "But you later received the notice that was issued after the fence, or some portion of the fence was complete at the time you received the notice."

Ms. Englemen, "correct."

Chairman Klein, "I think that what we need to focus on here is the appeal is for whether the permit should, or should not, have been issued, not whether the fence should be facing one direction or the other. So I want to keep us focused on that. The fact of the matter was, the fence construction began prior to your coming to the City to discuss any form of a permit."

Ms. Englemen, "correct."

Chairman Klein, "who actually built the fence? What's their name?"

Ms. Englemen, "a friend of mine. . . . a landscaper."

Chairman Klein, "Could you give us a name, please?"

Ms. Englemen, "Phil."

Chairman Klein, "last name?"

Ms. Englemen, "Oates."

Chairman Klein, "So Phil Oates began construction of the fence, and I'm not picking on Phil Oates, but he began the fence prior to any kind of application of a permit."

Ms. Englemen, "Yes. We didn't realize that one needed to be obtained."

Chairman Klein, "And then, once you were notified, did construction stop on the fence? Or did construction continue on the fence?"

Ms. Englemen, "Once I was notified, I think it was maybe 5' that wasn't finished. And, so once I was notified and we read the papers over, we continued with it and just finished it."

Chairman Klein, "So the fence, prior to realizing there was a 'typo' on the paperwork that the code inspector gave you, the fence was 95% complete."

Ms. Englemen, "correct."

Chairman Klein thanked Ms. Englemen and asked if there were any other questions of the applicant or anyone associated with the issue.

Mr. Kayn remarked about the 90%+ completion of the fence before the 'typo' came into play, [Mr. Klein: that's correct] so they were proceeding with the, what turned out to be the improper facing of the fence prior to . . ."

Chairman Klein, "To focus again, the facing of the fence is irrelevant here. What we're looking at is whether the fence was constructed prior . . . or, let me rephrase, we're looking at whether the appeal of whether staff made the right decision in denying the permit. . . . So the permit was denied."

Ms. Englemen, "I'm sorry. I'm confused. I didn't realize that's what we were discussing. I thought we were debating which way the fence needed to face."

Chairman Klein, "no."

Ms. Englemen, "When I came on Monday morning, and talked with Mike Bacon, I filled out the paper for the permit, and I thought that permit was approved. What I thought was not approved was fixing the fence."

Chairman Klein, "no. And let me clarify this. And, I'm going to ask staff . . . Mike Bacon, would you stand. And, just to be clear about a couple things. Number one, I think there is some confusion here. The thing that's being appealed is that the permit was never approved. Is that correct, Mr. Bacon?"

Mr. Bacon, "correct."

Chairman Klein, "so the permit was never approved. What you appealed was the fact that the permit should have been approved, but was denied. So that's what you're appealing."

Chairman Klein, "The fact that the fence is facing the wrong direction is a totally different subject and is not coming under this meeting today."

Ms. Englemen, "OK, well then I'm totally confused because I thought, like I said, the permit when I filled it out on Monday morning, it was approved."

Chairman Klein, "No. In the paperwork I believe I saw that the permit, actually you were notified that, the permit was not approved. Let's clarify that, Mr. Bacon. . ."

Mr. Bacon, "That's correct. When she came in and spoke to me, I took the permit in and said we would look at it. After discussing it with staff to make sure that we were consistent with the decision that was made, it was for denial. I called the applicant and informed her of the denial. I always give options. I believe it is important to give everybody an option about what they could do about a particular situation. At that time, I mentioned a variance. She asked [remarked] that \$800 to \$900 is a lot of money. She asked if there was an optional opportunity to appeal. I said yes and she asked what that was. I mentioned it was \$65 or something like that, and that is the route she elected to take."

Ms. Englemen, "Correct. I do remember that conversation. What I thought he was referring to was that was denied was our idea of covering up the posts that faced Mary's yard that's what was being denied. When he gave me my options, he was talking about flipping the fence this way and that way, and so I thought he was talking about the fence, not the permit. I didn't realize that."

Chairman Klein, "I believe if you want to come before the Board regarding the fence facing the direction that it does, you would need to request a variance to the LDC. Am I correct with that?"

Mr. Bacon, "yes, correct."

Chairman Klein, "At this point, what we are doing is, and I apologize if there is confusion, but we are purely looking at the fact that the appeal as to whether the permit should have been approved or not. . . and which was not approved."

Ms. Englemen, "OK."

Mr. Bacon, "yes."

Mr. Rosa asked about why the permit was denied?

Mr. Bacon, "It was because she wished to have the fence with the wrong side facing inward [*i.e.*, the finished facing inside her property] and she did not wish to do the other options. For instance, changing the fence, putting another exterior row of boards on the outside to present a finished appearance to the outside, or removing some and presenting a batt-on-batt [board on board] so the fence appears the same on both sides. So we give options to the applicant rather than just saying 'no'. In this particular case, she did not want to change the fence; and, her options were a variance, or an appeal which she asked about".

Mr. Famas noted that the fence is what is involved but not what we are here to look at. "We're looking at Mr. Bacon's decision to not approve the permit. His decision is based on the code, and the code says which way the fence has to go. Whatever we decide, we are not deciding whether the fence goes one way or the other. We're deciding what Mr. Bacon has based his decision on. No matter what his decision was, the direction of the fence is facing is another issue for another day."

Chairman Klein concurred with Mr. Famas and then asked the applicant whether [the applicant] had any person who [she] would like to call before the committee [board] that would have any input.

Ms. Englemen [*response is unclear on both DVR and tape recording*].

Chairman Klein added if so, the person(s) should come to the podium and state their name and address.

Ms. Connie Cantelme, 140 N. Pleasant Street. She noted Gina [the applicant] had been friends for 20 years and she helped her out because she was with her sister who was dying of cancer for seven or eight months. A lot of this stuff was happening

while she was gone. "The fence was, in fact, erected at 95% finished before we received a copy of the code, which was a misprint. So we were not aware of that until we came down on Monday. And then, Mike Bacon, at that point, informed us that that was a misprint. Well, we went off of what that was on there. But . . . if we are . . . I'd like to . . . is there any way I can pass this information around? Is it allowable? This is just some things outlining some of the facts about the fence".

[Ms. Cantelme approached the dais and handed out a letter attached as Exhibit B to the board members; and, the secretary accepted a copy for the record at 9:28 a.m. on Thursday, August 18, 2001].

Chairman Klein noted that the document [Exhibit B attached] will become part of the record.

Ms. Cantelme continued, "may I speak to the position of the fence at all?"

Chairman Klein, "I guess at this point the position of the fence is the basis for the denial of the permit. You can address the facing of the fence, although we're not in a position at this point, if we were to rule one way or another, to give you permission to leave the fence in the direction that it is. But go ahead and address your issues."

Ms. Cantelme, "I wanted to bring up a very important point that Gina did not expect or ask Mary, nor the other neighbor, to contribute money to this fence because we knew that Mary was on a fixed income. She's elderly which was part of the reason. Mary also has two dogs, Gina has one dog, and again, trying to get the house ready for Gina to come back is what we did. When we spoke to Mike Bacon as to the code itself, Mike made the comment that the code was written for the benefit of the public. In this particular position where this fence is, the public cannot view this fence. And, had Mary decided to buy this fence, this fence would be put up exactly the way it is now. Had Darrell on the south side of the house decided to pay for this fence, the fence would be erected in the exact way it is now. So if Gina decided to not pay for this, and each of those people had paid for it, the fence would be exactly the way it is now. The back part that could potentially be viewed by the public is a barn. There is no fence that goes along the whole back of Gina's property. So even the part that could have been viewed for the benefit of the public, there is no fence there. We're talking about 60' on one side and 60' on the other side that are in their backyard proper. So nobody has the benefit of seeing this in the general public other than the people that live in the houses or have been invited into the backyard. So, again, had Mary paid for that fence that's on Mary's side, she would have been obligated to put that fence up in that exact way. Had Darrell on the south side paid for that fence, that fence would be erected the exact way that it is right now. So, for the benefit of the public, it's not an issue at this point."

Chairman Klein asked if there were any other questions. He stated, "I have one further question. The fact that this fence was started prior to receiving a permit . . . if you would have gone through the permitting process, we wouldn't be here right now. This would have been an issue that was addressed early on and we would have avoided this. The fact that if there was a 'typo' in the paperwork was given to you, I think, is a little irrelevant since the permit was not applied for and the fence was already 95% complete before the 'typo' became an issue. So, do you have any response to that. I guess it wasn't in the form of a great question, but. . ."

Ms. Cantelme, "You know what, to be honest with you that was complete ignorance. Gina was gone. I don't live there, so I'm not there all the time. Phil lives in Cottonwood. It just wasn't something that . . . we were in a hurry trying to help her move in. It was something that just wasn't looked into. It was overlooked by everybody. . . it was just the way the circumstances worked."

Chairman Klein, "Thank you very much. Are there any other questions of either the applicant or staff? Is there anyone else that they have to contribute to this issue? I guess not . . . Mr. Podracky, is this done in a form of a motion?" [Mr. Podracky signals 'yes' from his seat in the audience].

Chairman Klein calls for a motion.

Mr. Kayn makes a motion and then withdraws the motion from the floor.

A new motion was offered by Mr. Kayn:

Mr. Kayn, **MOTION: to deny Appeal 11-001**, 215 N. Pleasant Street. Ms. Forquer, 2nd.

Mr. Famas questioned whether we [the Board] deny the appeal or affirm the decision? [Mr. Worley: the action you take will, in effect, be either or both of those things. If you affirm the decision made by staff, you are denying the requested appeal by Ms. Englemen].

Mr. Lazzell questioned if the vote denied and/or affirmed the decision of the staff, whether the applicant had another recourse in coming before us again to get a variance? [Mr. Worley noted that the action today doesn't deny Ms. Englemen either of several ways to mitigate the circumstance: she can apply for a variance, she can appeal your denial of the appeal through Superior Court which becomes a court matter, or she can fix the fence so that it meets the code requirements as published in the code. There are several different options still available to her. So, no, your action does not cut her off from any of those other actions].

Mr. Kayn asked Mr. Worley about the variance route that would be an application to basically keep the fence the way 'as is' . . . on the outside. [Mr. Worley: Right, and you would hear all of the evidence that would support her case that it should be faced that way. And then, staff would present evidence based on the code of other criteria established in the code].

Mr. Famas asked if the Preservation Commission was involved. [Mr. Worley noted that he talked with the Historic Preservation Specialist, and while the property is listed in the National Register, is not in a local historic preservation district where they have authority. The front of the property is not affected. So, yes, this board is it.]

Chairman Klein called the question.

Vote: 5-1 (dissent: Rosa). Appeal is denied.

Chairman Klein asked Ms. Englemen if she understood she can come back for a variance for the fence. [Ms. Englemen: *[indecipherable background noise]*. . . it's \$900. . .]

Chairman Klein again thanked Ms. Englemen.

Comments from Board members after the vote included (*in encapsulated form*):

Mr. Lazzell noted that Ms. Englemen has some valid concerns. He reiterated that we [the Board] were here to support, or not support, the staff's decision.

Mr. Famas added that the decision was based on code.

Ms. Englemen stated she understands that and respects that. She also was hoping the Board would see her point of view as a new person coming into Prescott bringing taxes, buying a house here. She added that she is disillusioned as it [the fence] wasn't done maliciously. She stated she felt she was treated like a criminal.

Mr. Kayn inserted that Ms. Cantelme made a very good argument if we weren't dealing with an established code. "I made the motion to deny it because that's what we have to do under these circumstances. The quality of the workmanship is very good. The fact that the installer is a landscape person may have done this before, didn't recognize or realize that this is a very well-known requirement in the contracting area that exists in putting up fences. . . You haven't done anything wrong with the construction of the fence. This Board has a written code established for certain purposes . . . [Ms. Englemen: I understand.] and if someone can't make an argument that either code is being interpreted wrong or what have you, Mr. Bacon did everything proper. You do have options, which is good. [Ms. Englemen: I understand]. I hope you understand that if I didn't make the motion, someone else would".

Ms. Englemen thanked Mr. Kayn.

Mr. Famas noted that Mr. Bacon was actually the person in the 'hot seat'. It is not a reflection on you [Ms. Englemen]. It was brought to our attention that he may have made the wrong decision and we review it per the code. He had no other decision he could make, he was following the code. That is what we were really looking at. With a different application, we would consider it differently as far as variance criteria.

IV. REVIEW ITEMS

None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

Mr. Kayn noted that the 10th anniversary of September 11, 2001 is coming and Prescott will have memorial activities on the Courthouse Plaza on September 11, 2011.

VI. ADJOURNMENT

Chairman Klein adjourned the meeting at 9:39 a.m.

Michael Klein, Chairman

Kathy Dudek

Kathy Dudek, Administrative Assistant
Community Development Department

ATTACHMENTS: EXHIBIT A and EXHIBIT B

DRAFT

CUP11-007 **CONDITIONAL USE PERMIT**

Tattoo Parlor

COMMUNITY DEVELOPMENT - PLANNING & ZONING DIVISION
BOARD OF ADJUSTMENT
Special Meeting
STAFF REPORT
Meeting Date: 12/22/11

TO: Board of Adjustment Members
FROM: Tom Guice, Community Development Director *TG*
George Worley, Planning Manager *GW*
Mike Bacon, Community Planner *MB*
DATE: 12/12/11

Location: 214 White Spar Road **Zoning:** BR **Assessor Parcel No.** 109-14-064
Applicant: D.J. Gosler, 7305 N. Stable Lane, Prescott, AZ 86301
Owner: Russell Palmer, 1045 Scott Drive, Prescott, AZ 86301

REQUEST/ Project Description: The applicant is requesting a Conditional Use Permit for a tattoo parlor ("Catatonic Studios" is the business name) within an existing 593 sq. ft. office building. The building was constructed in 2007 for an office use with 2 parking spaces. The actual space utilized for tattoo work and waiting area will be about 200 sq. ft in size, with the remaining area used for either storage or the applicant's private art studio area work space. Required parking is based on the actual space used. The required parking for the tattoo use is 2 parking spaces.

Neighborhood Comments. Staff has received one written objection comments from area property owners.

STAFF ANALYSIS

Compliance with *Land Development Code (LDC)* and *ARS 9-462.06*: Yes

LDC Sections 2.3 and 9.3 and Table 2.3.

Past Board of Adjustment Actions: None

Area Tattoo CUP's: None.

Land Development Code Requirements

A Pre-Application Conference was held and the applicant has submitted this site plan in accordance with the PAC comments.

Zoning & Uses: The site is located within a Business Regional Zoning District (BR) district which allows this use by CUP only.

| <u>Direction</u> | <u>Land Use</u> | <u>Zoning</u> |
|------------------|-----------------|---------------|
| North: | Art/Metalwork | BR |
| South | Offices | BG |
| East | Gas Station | BR |
| West | Rental Home | BR |

Photo 1: View from South



Photo 2: View from East.



Conditional Uses. (Section 9.3.1 Land Development Code). Conditional uses are uses that are generally compatible or can be made compatible with other uses in the underlying zoning district. Such uses may be permitted on a conditional basis under which additional requirements must be met, including determination of adequate land area and site plan approval by the planning agency.

Conditional Use Review Criteria (Section 9.3.5 Land Development Code)

The Board of Adjustment may approve an application for a conditional use where it reasonably determines that there will be no significant negative impact upon residents or other owners of surrounding property or upon the public. The Board of Adjustment shall consider the following criteria in its review and approval shall be contingent upon compliance with the site plan and any conditions of approval.

(Note: Staff comments are *italicized*).

A. Effect on Environment

The location, size, design, and operation characteristics of the proposed use shall not be detrimental to the health, welfare, and safety of the surrounding neighborhood or its occupants, nor be substantially or permanently injurious to neighboring property. *Similar to other Board approved Conditional Use Permits for tattoo parlors, the Board must determine there are no "significant" impacts upon adjoining residents. This is not to state there are "no" impacts. Less than significant impacts may be mitigated by the application of Conditions of Approval should the Board so find.*

B. Compatible with Surrounding Area

The proposed site plan, circulation plan, and schematic architectural designs shall be harmonious with the character of the surrounding area with relationship to landscaping, scale, lot coverage, and the like. *There will none of the above impacts based upon the applicant's project description. This project is compatible with the highway commercial uses already established along White Spar Road / Hwy 89. The applicant is proposing to be open by appointment only from the hours of 9 AM to 7 PM Tuesday through Saturday. A MF-H zoning district is located about 200-ft to the northwest and a SF-9 zoning district about 160 feet to the south. Unlike liquor licenses which have a minimum separation distance requirement from churches and public schools, there is no minimum distance separation requirement for tattoo parlors.*

Commercial zoning districts are primarily located along arterial streets. The depths of many of these districts are one lot. Distance becomes a determining factor as to whether the surrounding neighborhood is "primarily residential". In the past the Board of Adjustment has decided that a one depth lot (e.g. CUP11-005) is considered compatibility with adjoining residentially zoned properties. Board of Adjustment approvals in the recent past that have also addressed neighborhood compatibility questions raised by residents:

| | | | |
|-------------------|------------------|-------------------------------|---|
| <i>2011, Jan</i> | <i>CUP10-007</i> | <i>623 Miller Valley Road</i> | <i>No Conditions of Approval (COA).</i> |
| <i>2010, Dec.</i> | <i>CUP10-006</i> | <i>506 W. Gurley</i> | <i>No COA</i> |
| <i>2010, Nov.</i> | <i>CUP10-005</i> | <i>523 E. Gurley.</i> | <i>No COA</i> |
| <i>2009, Nov.</i> | <i>CUP09-005</i> | <i>600 Miller Valley Road</i> | <i>No COA</i> |
| <i>2008, May</i> | <i>CUP08-002</i> | <i>635 Walnut</i> | <i>No COA</i> |

In response to the letter of objection, the applicant indicates (see attached) that:

- 1) Under State Law, parental consent is needed for those under age of 18 with a minimum age of 16.*
- 2). Photo ID of all clients is required by the applicant (whether they are of age or not)*
- 3). No gang or racist/hate tattoos will be done.*
- 4). No tattoo services are given to those under the influence of drugs (including alcohol).*

In response to the letter of objection citing out-of-state decision, the Board of Adjustment must use the law and standards regarding Conditional Use Permits (CUPs) contained in the Arizona Revised Statutes (Title 9), Arizona precedential case law regarding CUPs, and the City of Prescott Land Development Code in considering CUP applications. Law and cases from other states has no precedential value in Arizona or for this Board.

C. External Impacts Minimized

The proposed use shall not have negative impacts on existing uses in the area and in the City through the creation of noise, glare, fumes, dust, smoke, vibration, fire hazard, or other injurious or noxious impact. The applicant shall provide adequate mitigation responses to these impacts. *The proposal is compatible and there will be none of the above impacts.*

D. Infrastructure Impacts Minimized

The proposed use shall not have negative impacts on existing uses in the area and in the City through impacts on public infrastructure such as roads, parking facilities and water and sewer systems, and on public services such as police and fire protection and solid waste collection, and the ability of existing infrastructure and services to provide services adequately. *The proposal will generate less traffic than other business uses which would be allowed by right in this zoning district.*

E. Consistent with General Plan and Code

The proposed use will be consistent with the purposes of this Code, the General Plan, Area Plans, and any other statutes, ordinances or policies that may be applicable, and will support rather than interfere with the uses permitted outright in the zone in which it is located. If the use is permitted outright in another zone, there must be substantial reason for locating the use in an area where it is only conditionally allowed. *The General Plan designation for this property is Commercial. The Business Regional zoning district permits this use by Conditional Use Permit so that surrounding residents may voice their opinions on the type, intensity, and other impacts the proposed project may have on their individual properties. The Board of Adjustment may establish additional reasonable conditions of approval to mitigate project impacts.*

F. Parcel Size

The proposed use may be required to have additional land area, in excess of the minimum lot area otherwise required by the underlying zoning district, as necessary to ensure adequate mitigation of impacts on surrounding land uses and the zoning district. *No additional land area is required by the Land Development Code.*

G. Site Plan

The proposed use shall comply with the procedures and requirements of [Sec. 9.8](#), Site Plan Review. *This is done at the time of Building Permit application.*

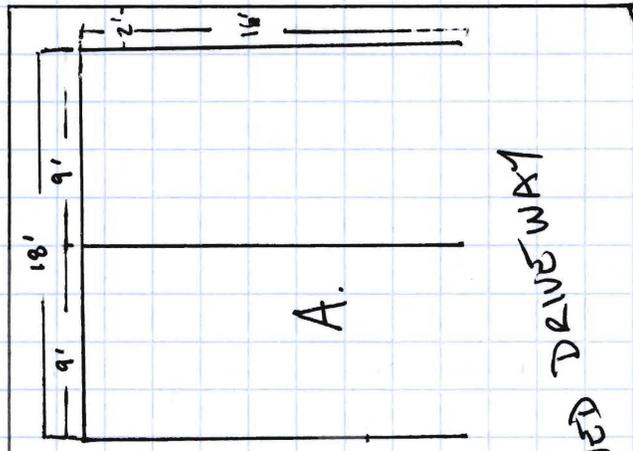
STAFF RECOMMENDATION: Staff recommends approval.

SUGGESTED MOTION:

Move to Approve CUP11-007



ALLEY



PAVED DRIVEWAY

EXISTING BUDG.
 214 WHITE SPAR
 593 sq.ft.

MARK WAY -3'

25'

LANDSCAPE

RD.

SPAR WHITE

SCALE
1" = 10'

214 WHITE SPAR ROAD

Catatonic Studios

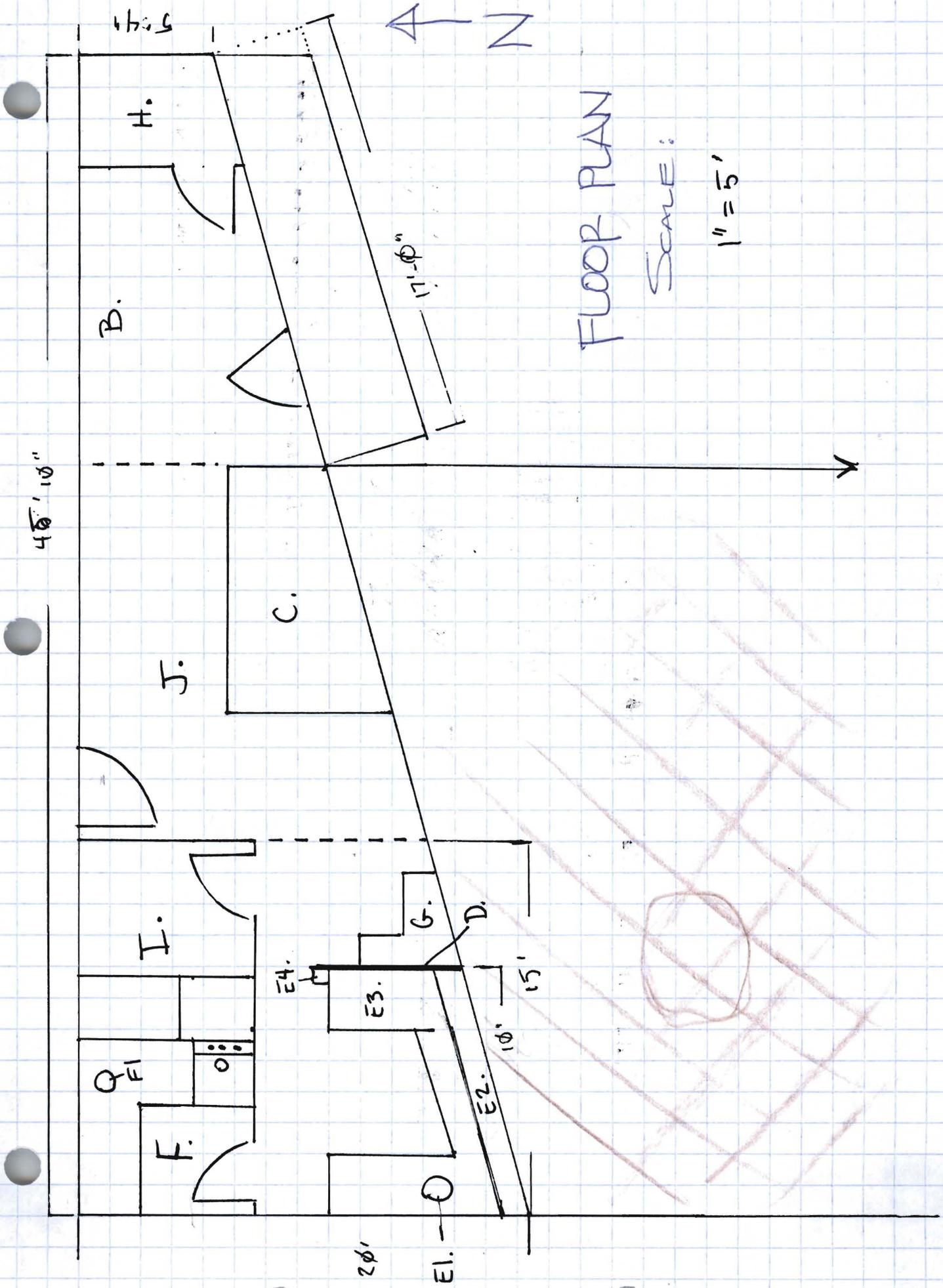
The site of my prospective Studio is a 593sq.ft. single unit building, with two parking spaces, located at 214 White Spar Rd. , Prescott, Az. 86301.

Catatonic Studios will be an Art Studio facilitating my Oil Painting and Tattoo Art. I only have plans of adding a partition/dividing wall, with no additions or adjustments to any existing electrical or plumbing.

Legend:

- A- Two Parking Spaces
- B- Seating Area
- C- 10'x10' Tattoo Area (public area)
- D- Partition Wall (public area) > ± 200 sq.ft. total.
- E- Clean Room
 - E1- Autoclave
 - E2- Shelves
 - E3- Table/Counter
 - E4- Hand Sanitizer
- F- Wash Room
 - F1- Ultrasonic
- G- Computer Desk
- H- Storage Closet
- I- Restroom
- J- Painting Area - private workspace for oil painting

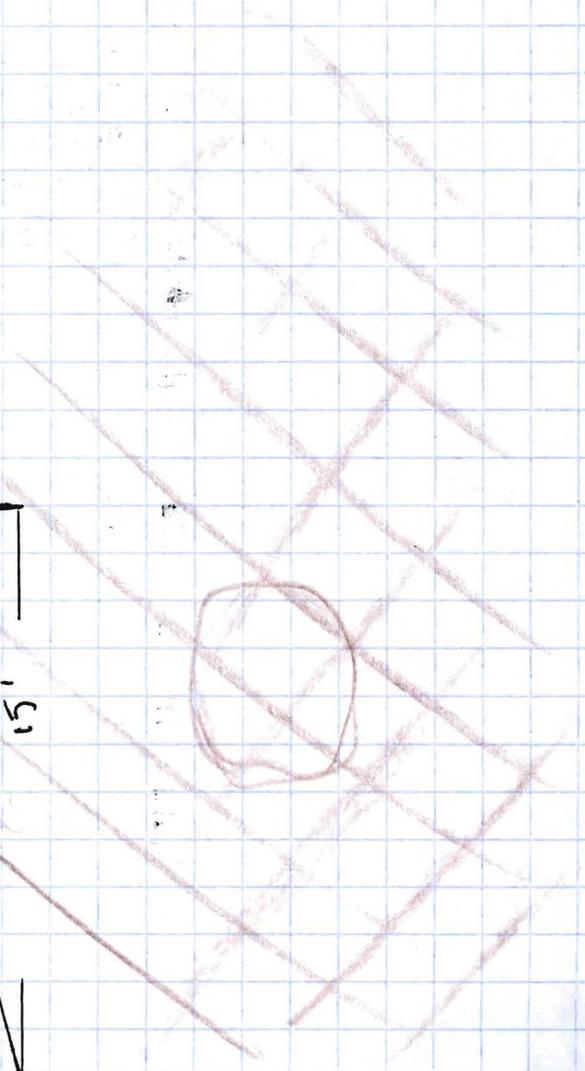
There will be 200sq.ft. of Public Area and the remaining 393sq.ft. will be Private or Non-Public Access Area.



FLOOR PLAN

SCALE:

1" = 5'



Granprop, L.L.C.
3941 E. Chandler Blvd., Suite 106-119
Phoenix, Arizona 85048

December 14, 2011

VIA EMAIL:

AND U.S.MAIL: mike.bacon@prescott-az.gov

Mr. Michael Bacon
Community Planner
Planning & Zoning Division
201 S. Cortez Street
Prescott, AZ 86303

Re: Objection to CUP11-007; 214 White Spar Road; APN109-14-064

Dear Mr. Bacon:

This will respond to the City of Prescott's invitation for comment regarding the above referenced Conditional Use Permit ("CUP") submitted by D. J. Goslar of Catatonic Studios for the property located at 214 White Spar Road Prescott, AZ 86303.

Granprop, L.L.C., is the owner of the adjacent residential rental property located at 627 S. Granite Street, Prescott, AZ 86303, which is currently occupied by a family of six, including four minor children.

For the following reasons discussed below, Granprop, L.L.C. **objects** to the CUP request:

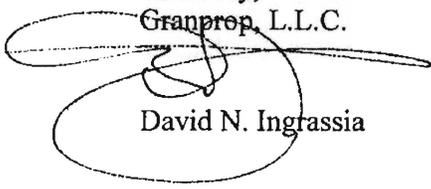
1. **Compatible with Surrounding Area:** The CUP does not address the following: (a) "Adverse impacts on public health, negative impacts upon retail business climate, and negative impacts on residential and commercial property values. (See, Wilmington, Massachusetts Zoning Bylaw, April 24, 2004); (b) "Decreased property values, attraction of transients, parking and traffic problems, increased crime, less business for surrounding non-adult business, and deterioration of neighborhoods." (See Eden, New York, Proposed Local Law No. 1-2005); (c) Tattoo and body piercing establishments as a magnet for organized crime and gang activities, and found that these establishments had excessive calls for (police) services." (See City of Santa Clara, California, Chapter 18.70 "Use Regulations Applicable to Specified Regulated Businesses); (d) The City of Prescott may rely upon studies completed by other communities in order to document what secondary effects can be expected. Certain "business activities, by their nature, have serious objectionable operation characteristics which can lead to significant impact on the surrounding community...which increase the crime rate and undermine the economy, moral and social character of the community." (See Town of Southeast, New York. Adult Use Zoning Planning Report, August 18, 2005); (e) "Tattoo and body piercing parlors can also have objectionable impacts on a community. This use has been found to contribute to the blighting of surrounding residential and commercial areas, which can undermine a community's economic, physical and social welfare. Moreover, tattooing and body peircing can have serious health risks." (Comprehensive Plan of the Village of Wappingers Falls, New York. §4 at pages 17-18).

2. **Effect on Environment:** The surrounding area is primarily residential, including families with minor children. The CUP does not address how it will prevent loitering around the business, whether it will restrict conducting business operations during normal business days and hours (i.e. 9:00 a.m. to 5:00 p.m. Monday to Friday), whether it will refuse to serve anyone under the age of 18, whether it check the identification of anyone appearing under the age of 25, whether it cooperate with the Prescott Police Department to indentify known gang tattoos, whether it refuse to apply gang or racist tattoos, and whether it withhold services from anyone who appears under the influence of drugs or alcohol.
3. **Infrastructure Impacts Minimized:** The CUP does not address whether the existing parking on the site is adequate for the proposed business.
4. **Consistent with General Plan and Code:** The CUP does not address whether the proposed business is consistent with the General Plan and Code.

Granprop, L.L.C. also observes that the applicant has ample alternative locations within the City of Prescott to conduct this type of business.

If you have any questions, please let me know.

Sincerely,
Granprop, L.L.C.



David N. Ingrassia

Cc: See attached list

CATATONIC STUDIO'S
D.J. GOSLAR
DECEMBER 15, 2011

RECEIVED

DEC 14 2011

CITY OF PRESCOTT
COMMUNITY DEVELOPMENT

MR. MIKE BACON
COMMUNITY PLANNER
PLANNING & ZONING DIVISION
201 S. CORTEZ ST.
PRESCOTT, AZ, 86303

RE: REPLY TO OBJECTION TO
CUP11-007; FROM GRANPROP, L.L.C.

DEAR, MR. BACON:

THIS WILL ANSWER THE COMMENTS
MADE, IN OBJECTION, BY GRANPROP, LLC.
REGARDING THE CUP FOR CATATONIC
STUDIO'S.

THE FOLLOWING WILL PROVIDE
THE ANSWERS TO CONCERNS RAISED
BY GRANPROP, L.L.C.:

1. COMPATIBLE WITH SURROUNDING AREA:
AS TO (A) - (E); THERE IS
NO HISTORY OF LOCAL ADVERSE IMPACT.

2. EFFECT ON ENVIRONMENT:

CATATONIC STUDIO'S WILL BE A PRIVATE STUDIO, CATERING TO APPOINTMENT BASED CLIENTELE, WITH THE HOURS OF OPERATION BEING CONDUCIVE TO RESIDENTIAL & FAMILIES, 9 AM TO 7 PM TUES - SATURDAY. REDUCING & MINIMIZING FOOT TRAFFIC. CATATONIC STUDIO'S WILL ABIDE BY ALL STATE LAWS REGARDING TATTOOS.

SEC. 2. TITLE 13, CHAPTER 37, OF ARIZONA REVISED STATUTES, WAS AMENDED BY ADDING A NEW SECTION 13-3721, WHICH READS:

"B. IT IS UNLAWFUL TO TATTOO, INTENTIONALLY BRAND, SCARIFY OR PIERCE THE BODY OF A PERSON WHO IS 14, 15, 16, OR 17 YEARS OF AGE WITHOUT THE PHYSICAL PRESENCE OF THAT PERSON'S PARENT OR LEGAL GUARDIAN."

CATATONIC WILL NOT TATTOO ANYONE UNDER THE AGE OF 16. IN ADDITION CATATONIC WILL PHOTO COPY EVERYONE OF ITS CLIENTS ID CARDS,

REGARDLESS OF AGE. CATATONIC
WILL NOT TATTOO ANY GANG
OR RACIST TATTOOS, AND WILL
REFUSE SERVICE TO ANYONE
APPEARING UNDER THE INFLUENCE
OF DRUGS OR ALCOHOL.

3. INFRASTRUCTURE IMPACTS MINIMIZED:

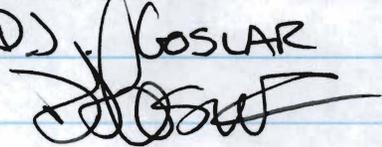
THE CUP DOES ADDRESS
ON SITE PARKING, AND THERE IS
ADEQUATE PARKING FOR ARTIST
AND CLIENT, OF PROPOSED BUSINESS.

4. CONSISTENT WITH GENERAL PLAN & CODE:

THE PURPOSE OF THE CUP
IS ADDRESSING CONSISTENCY.

CATATONIC STUDIO'S HAS EVERY
RIGHT TO CONDUCT "THIS TYPE OF
BUSINESS" AT THIS LOCATION AND
IS AND WILL BE IN ACCORDANCE
WITH BOTH CITY OF PRESCOTT AND
STATE OF ARIZONA LAWS.

HOPE THIS ANSWERS ALL CONCERNS:

RESPECTFULLY,
CATATONIC STUDIO'S
DJ COSLAR


ATTACHED IS ARIZONA STATE LAW
13-3721.


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Arizona Tattoo Laws

Published on Jan. 19, 2009, 2:15 PM Last Update: 2 years ago by MissKittens



Like 52

State Of Arizona

13-3721. Tattoos, brands, scarifications and piercings; minors; anesthesia; exception; defense; violation; classification; definitions

A. It is unlawful for a person:

1. To intentionally brand, scarify, implant, mutilate, tattoo or pierce the body of a person who is under eighteen years of age without the physical presence of the parent or legal guardian of the person requesting the brand, scar, tattoo, implant, mutilation or piercing.
2. Who tattoos or pierces the body of another person to use a needle or any substance that will leave color under the skin more than once or to use a needle that is not sterilized with equipment used by state licensed medical facilities pursuant to title 36, chapter 4.
3. To engage in the business of **tattooing**, branding, scarifying, implanting, mutilating or body piercing out of a home or an impermanent structure, including a tent, trailer, trunk or other impermanent structure.
4. Who is not licensed pursuant to title 32 to administer anesthesia during the course of any procedure involving the branding, scarifying, **tattooing**, implanting, mutilating or piercing of the body of another person.

B. Subsection A, paragraph 1 does not apply to the ear piercing of a person who has written or verbal permission from a parent or legal guardian or to procedures that are prescribed by a health care provider who is licensed pursuant to title 32.

C. It is a defense to a prosecution for a violation of subsection A, paragraph 1 that the person requested age identification and relied in good faith on the accuracy of the information contained in the identification.

D. A person who violates this section is guilty of a class 6 felony.

E. For the purposes of this section:

DEC 14 2011
CITY OF PRESCOTT
COMMUNITY DEVELOPMENT



1. "Implant", "mutilate", "brand", "scarify" or "pierce" means to mark the skin or other body part with any indelible design, letter, scroll, figure, symbol or other mark that is placed by the aid of instruments on or under the skin or body part and that cannot be removed without a surgical procedure or any design, letter, scroll, figure, symbol or other mark done by scarring on or under the skin or other body part. Implant does not include cosmetic implants.

2. "Tattoo" means to mark the skin with any indelible design, letter, scroll, figure, symbol or any other mark that is placed by the aid of needles or other instruments upon or under the skin with any substance that will leave color under the skin and that cannot be removed, repaired or reconstructed without a surgical procedure or any design, letter, scroll, figure, symbol or other mark done by scarring upon or under the skin.

HB2124 - 431R - H Ver

Reference Title: AHCCCS; vehicle

AN ACT

REPEALING SECTION 13-3721, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 37, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-3721; RELATING TO TATTOOS, BRANDS, SCARIFICATIONS AND PIERCINGS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Section 13-3721, Arizona Revised Statutes, is repealed.

Sec. 2. Title 13, chapter 37, Arizona Revised Statutes, is amended by adding a new section 13-3721, to read:

13-3721. Tattoos, brands, scarifications and piercings; minors; violation; classification; anesthesia; defense; definition

A. IT IS UNLAWFUL TO INTENTIONALLY BRAND, SCARIFY, TATTOO OR PIERCE THE BODY OF A PERSON WHO IS UNDER FOURTEEN YEARS OF AGE. THIS SECTION DOES NOT APPLY TO EAR PIERCING OR PROCEDURES PRESCRIBED BY A HEALTH CARE PROVIDER LICENSED PURSUANT TO TITLE 32.

B. IT IS UNLAWFUL TO TATTOO, INTENTIONALLY BRAND, SCARIFY OR PIERCE THE BODY OF A PERSON WHO IS FOURTEEN, FIFTEEN, SIXTEEN OR SEVENTEEN YEARS OF AGE WITHOUT THE PHYSICAL PRESENCE OF THAT PERSON'S PARENT OR LEGAL GUARDIAN.

C. IT IS UNLAWFUL FOR A PERSON WHO TATTOOS OR PIERCES THE BODY OF ANOTHER PERSON TO USE A NEEDLE OR INK MORE THAN ONCE OR TO USE A NEEDLE THAT IS NOT PRESTERILIZED OR AUTOCLAVED.

D. IT IS UNLAWFUL FOR A PERSON WHO IS NOT A HEALTH CARE PROVIDER LICENSED PURSUANT TO TITLE 32 TO ADMINISTER ANESTHESIA DURING THE COURSE OF ANY PROCEDURE INVOLVING THE BRANDING, SCARIFYING, TATTOOING OR PIERCING OF THE BODY OF ANOTHER PERSON.

E. IT IS A DEFENSE TO A PROSECUTION FOR A VIOLATION OF SUBSECTION A OR B THAT THE PERSON REQUESTED AGE IDENTIFICATION AND RELIED IN GOOD FAITH ON THE ACCURACY OF THE INFORMATION CONTAINED IN THE IDENTIFICATION.

F. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR.

G. FOR THE PURPOSES OF THIS SECTION, "TATTOO" MEANS ANY INDELIBLE DESIGN, LETTER, SCROLL, FIGURE, SYMBOL OR OTHER MARK THAT IS PLACED ON OR UNDER THE SKIN WITH INK OR COLORS BY THE AID OF NEEDLES OR OTHER INSTRUMENTS AND THAT CANNOT BE REMOVED WITHOUT A SURGICAL PROCEDURE OR ANY DESIGN, LETTER, SCROLL, FIGURE OR SYMBOL OR OTHER MARK DONE BY SCARRING ON OR UNDER THE SKIN.

HB2345 - 432R - I Ver

Reference Title: tattoo parlors; minors

AN ACT

AMENDING SECTION 13-3721, ARIZONA REVISED STATUTES; RELATING TO TATTOO PARLORS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3721, Arizona Revised Statutes, is amended to read:

13-3721. Tattoos, brands, scarifications and piercings; minors; anesthesia; defense; violation; classification; definition

A. It is unlawful to **INTENTIONALLY BRAND, SCARIFY, tattoo OR PIERCE THE BODY OF** a person who is under eighteen years of age without the physical presence of *that person's* **THE** parent or legal guardian **OF THE PERSON REQUESTING THE BRAND, SCAR, TATTOO OR PIERCING .**

B. IT IS UNLAWFUL FOR A PERSON WHO TATTOOS OR PIERCES THE BODY OF ANOTHER PERSON TO USE A NEEDLE OR ANY INK MORE THAN ONCE OR TO USE A NEEDLE THAT IS NOT PRESTERILIZED OR AUTOCLAVED.

C. IT IS UNLAWFUL FOR A PERSON TO ENGAGE IN THE BUSINESS OF TATTOOING OR BODY PIERCING OUT OF AN IMPERMANENT STRUCTURE, INCLUDING A TENT, TRAILER, TRUNK OR OTHER IMPERMANENT STRUCTURE.

D. IT IS UNLAWFUL FOR A PERSON WHO IS NOT LICENSED PURSUANT TO TITLE 32 TO ADMINISTER ANESTHESIA DURING THE COURSE OF ANY PROCEDURE INVOLVING THE BRANDING, SCARIFYING, TATTOOING OR PIERCING OF THE BODY OF ANOTHER PERSON.

E. IT IS A DEFENSE TO A PROSECUTION FOR A VIOLATION OF SUBSECTION A THAT THE PERSON REQUESTED AGE IDENTIFICATION AND RELIED IN GOOD FAITH ON THE ACCURACY OF THE INFORMATION CONTAINED IN THE IDENTIFICATION.

B. F. A person who violates this section is guilty of a class 6 felony.

C. G. For the purposes of this section, "tattoo" means any indelible design, letter, scroll, figure, symbol or any other mark placed by the aid of needles or other instruments upon or under the skin with ink or colors **AND** that cannot be removed without a surgical procedure or any design, letter, scroll, figure, *or* symbol **OR OTHER MARK** done by scarring upon or under the skin.

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