



**BOARD OF ADJUSTMENT
REGULAR MEETING NOTICE & AGENDA
(continued from January 12, 2016)**

**CITY COUNCIL CHAMBERS
11465 W. Civic Center Drive
Avondale, AZ 85323**

**Tuesday, January 26, 2016
6:00 P.M.**

NOTICE TO THE PUBLIC:

- I. CALL TO ORDER:**
- II. ROLL CALL:**
- III. OPENING STATEMENT:**
- IV. APPROVAL OF MINUTES:**
 - January 12, 2016 Regular Meeting
- V. BUSINESS FROM THE FLOOR:**
- VI. WITHDRAWALS AND CONTINUANCES:**
- VII. PUBLIC HEARINGS ITEMS:**

PL-15-0246 – Avondale AutoMall Zoning Interpretation Appeal

Public hearing before the Board of Adjustment to review and solicit public input on application PL-15-0246, a request from Paul Gilbert, Beus Gilbert, PLLC to appeal the Zoning Administrator's interpretation that used car sales are not permitted unless ancillary to a new car sales use. Staff recommends that the Board **AFFIRM** the decision of the Zoning Administrator.

Staff Contact: Robert Gubser, AICP, Planning Manager

VIII. OTHER BUSINESS:

IX. PLANNING STAFF REPORT:

X. BOARD COMMENTS AND SUGGESTIONS:

XI. ADJOURNMENT:

The Board of Adjustments may move and vote to go into executive session for purposes of obtaining legal advice from the Board's independent attorney on the above agenda item pursuant to A.R.S. 38-431.03(A)(3).

FOR SPECIAL ACCOMMODATIONS

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta.



Staff Signature

Approved on 1.20.16

CITY COUNCIL CHAMBERS
11465 W CIVIC CENTER DRIVE
AVONDALE, AZ 85323

Tuesday, January 12, 2016
6:00 P.M.

I. CALL TO ORDER

The meeting was called to order at approximately 6:00 pm by Chair Sours.

II. ROLL CALL

The following members and representatives were present:

BOARD MEMBERS PRESENT

David Sours, Chair
Melissa Valenzuela, Vice Chair
Thomas Forwith, Board Member
Mandy Neat, Board Member
Sean Scibienski, Board Member

CITY STAFF PRESENT

Robert Gubser, Planning Manager
Nicolle Harris, Legal Counsel
Linda Herring, Development Services Representative
Stephanie Long, Administrative Assistant

III. APPROVAL OF MINUTES:

Chair Sours called for a motion to approve December 15, 2015 Regular Meeting minutes. Board Member Scibienski made a motion to approve the minutes. Board Member Forwith seconded the motion. The motion passed unanimously.

IV. BUSINESS FROM THE FLOOR:

There were no scheduled public appearances.

V. WITHDRAWALS AND CONTINUANCES:

VI. PUBLIC HEARING ITEMS:

1. PL-15-0246 – Avondale AutoMall Zoning Interpretation Appeal

Public hearing before the Board of Adjustment to review and solicit public input on application PL-15-0246, a request from Paul Gilbert, Beus Gilbert, PLLC to appeal the Zoning Administrator’s interpretation that used car sales are not permitted unless ancillary to a new car sales use. Staff recommends that the Board **AFFIRM** the decision of the Zoning Administrator. Staff Contact: Robert Gubser, AICP, Planning Manager

Robert Gubser, Planning Manager, stated that staff is requesting a continuance of application PL-15-0246, to January 26, 2016 to allow the Board sufficient time to review the documents provided. As an alternative, January 27th is an option for a continuance as well.

Board Member Scibienski queried as to the length of the previous Board minutes as Planning Commission and Council minutes have contained greater detail. Mr. Gubser stated those are the only minutes available regarding these cases.

Board Member Scibienski, moved to continue application PL-15-0246, a request from Robert Gubser, Planning Manager, to appeal the Zoning Administrator’s interpretation that used car sales are not permitted unless ancillary to a new car sales use to January 26, 2016. Board Member Neat seconded the motion.

ROLL CALL VOTE

David Sours, Chair	AYE
Melissa Valenzuela, Vice Chair	AYE
Thomas Forwith, Board Member	AYE
Mandy Neat, Board Member	AYE
Sean Scibienski, Board Member	AYE

Approved 5-0

VII. OTHER BUSINESS:

Mr. Gubser provided training for the Board on the open meeting law and procedures.

Chair Sours asked if Staff is able to grant small variances such as a 6’ fence being 6’3” when the last course of brick is installed. Mr. Gubser responded that we have the Administrative Relief process that allows up to 10% relief of any development standard.

VIII. PLANNING STAFF REPORT:

IX. BOARD COMMENTS AND SUGGESTIONS:

X. ADJOURNMENT:

Chair Sours called for a motion to adjourn. Board Member Scibienski moved to adjourn. Board Member Valenzuela seconded the motion. The motion passed unanimously.

With no further business, the meeting concluded at approximately 6:21 p.m.

FOR SPECIAL ACCOMMODATIONS

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Staff Signature

Date

Board of Adjustment Date: January 26, 2016 [continued from January 12, 2016]
Prepared by: Robert Gubser, AICP, Planning Manager
Reviewed by: Tracy Stevens, Development and Engineering Services Director
Recommendation: **AFFIRM** the decision of the Zoning Administrator

REQUEST

The purpose of the request from Paul Gilbert, Beus Gilbert, PLLC, is to appeal application PL-15-0210, the City of Avondale Zoning Administrator's interpretation that used car sales are not permitted in the Avondale Auto Mall unless ancillary to a new car sales use (Exhibit 3).

BACKGROUND

History of the Avondale Auto Mall

In December 1999, City Council approved the Avondale Auto Mall Planned Area Development (PAD) Ordinance #723-99, under application Z99-402-A. The PAD encompassed approximately 150 acres between 99th and 107th Avenues, south of the I-10 Freeway. The PAD approved the site for automobile dealerships and related uses on the eastern 100 acres and a retail power center on the western 50 acres. Between the approval in 1999 and 2003, there were six automobile dealerships that located within the Auto Mall.

In April 2003, City Council approved a PAD amendment Ordinance #927-03, under application A03-402-AM1, allowing motor vehicle dealerships and related uses on the western 50 acres, in addition to the originally planned C-2 uses. The PAD amendment eliminated the potential of a retail power center on the 50 acres. There were stipulations included with the amendment that ensured continuity and protection of the existing character throughout the entire Auto Mall.

Accompanying the rezoning actions, the City and Developer entered into several development agreements to further specify project details. The original development agreement was ratified in 1999, (with a subsequent corrective agreement in 2000), followed by a first and a second amendment in 2002/2003 that addressed the expansion of the Auto Mall. In addition to the development agreements, the City and the individual dealerships entered into individual economic development agreements.

Pre-Application Meeting

In August 2014, a pre-application (PL-14-0134) was requested by Barry Barcus, on behalf of Auto Match USA, for a site at 10501 W. Papago Freeway within the Auto Mall (Exhibit 2.A). A review of the request identified the potential to allow for pre-owned vehicle sales at the specified location. Staff's stated position, based on the approved PAD zoning, was that the Avondale Auto Mall allows for a dealership to sell new and used cars so long as the selling of new cars is the primary use and that the new cars are associated with only one point manufacturer. Based on staff's position, the applicant did not move forward with the requested use.

Interpretation

On September 1, 2015, City staff received an application from Paul Gilbert, Beus Gilbert, PLLC, requesting a formal zoning interpretation in regard to a prospective business seeking to occupy a site located at 10501 W. Papago Freeway within the Auto Mall (Exhibit 2). The request for interpretation was brought about by the position of City staff at the August 2014 pre-application meeting.

On October 14, 2015, the City's Zoning Administrator issued a formal interpretation, based on evaluation of the language contained in the original PAD, subsequent amendments to the PAD, numerous economic development agreements, and the supporting staff reports, that the City Council did not intend for a stand-alone used car dealership to be a permitted use within the Auto Mall. The intent to have only new car dealerships in the Auto Mall was made clear from the beginning and has been consistently followed through a series of related agreements and supporting documents.

The applicant submitted a formal appeal of the Zoning Administrator's Interpretation on October 28, 2015 and was subsequently scheduled to be heard at the Board of Adjustment hearing on December 15, 2015. At that meeting, the Board approved a continuance to the January 12, 2016 hearing to allow both Board and Staff additional time to arrange legal representation. At the January 16, 2016, the Board approved a recommendation for continuance to a regular meeting to be held on January 26, 2016.

ANALYSIS

The role of the Zoning Administrator is to interpret the Zoning Ordinance, including, but not limited to, clarification of intention, determination and clarification of unspecified land uses, determination of zoning district boundaries and similar matters.

A request for Zoning Interpretation may be filed with the Planning Division and the Zoning Administrator shall be responsible for interpretations of the Zoning Ordinance. A Zoning Interpretation may be considered if there is a question of clarity of any development standard or other provision of the Zoning Ordinance, or a review is required within the land use matrix of a specified zoning district. The information contained in the Evaluation section below is an excerpt from the Zoning Administrator's interpretation dated October 14, 2015 (Exhibit 2).

Evaluation

In evaluating the request, I have reviewed the original 1999 PAD rezoning application, the 2003 PAD rezoning amendment, and the associated development agreements (DA).

The purpose of the 1999 PAD rezoning, approved by City Council on December 20, 1999, was to allow for the development of an Auto Mall and a retail shopping center. The purpose of the 2003 amendment to the PAD was to eliminate the remaining acreage planned for a retail power center and replace it with dealerships and related uses. The following are references contained in the original PAD and subsequent amendment that address the specifics of dealerships:

- 1. 1999 PAD, page 2: The purpose of the zoning was to "accommodate the development of several full service automobile dealerships." When read with the remaining language in the paragraph, it is clear that the mention of used car sales is intended to allow for used car sales at the full service dealerships, not to allow for a stand-alone used car lot.*
- 2. 1999 PAD, page 3: The proposed uses in the conditional use permit list refers to "Outdoor Automobile Sales; New and Used" indicating that the two types of sales are to be from a dealership offering both new and used vehicles. Had it been intended otherwise, the text simply could have used the term "or" instead.*
- 3. 1999 PAD, page 5: Phase One construction was to include eight full service dealerships. The auto mall was clearly planned as a new car sales area, so the use of "eight (8) full service automobile dealerships" is a plain reference to new-car dealerships.*
- 4. 1999 PAD, page 7: Among many other descriptive terms describing services provided at a new car dealership, the rear yard provisions specifically refer to the "service section" of the dealership. On-site manufacturer service facilities are hallmarks of new car dealerships.*
- 5. 1999 PAD, page 8: There are multiple occurrences where the text describing the signs allowed for each dealership specifically refers to "its corresponding manufacturer's logo." These are clearly references to new car dealerships.*
- 6. 2003 PAD, page 1: The last sentence of the first paragraph is clear as to the intent "to obtain the proper zoning to allow for additional new vehicle dealers." As you can see, the language that follows is nearly identical to the 1999 PAD, further supporting the original intent of the 1999 PAD (new car dealerships).*

Coupled with the rezoning actions, there were several development agreements that the City entered into with the developer of the Auto Mall. The original DA was in 1999, (with a subsequent corrective DA in 2000), followed by a first and a second amendment in 2002/2003 that addressed the expansion of the Auto Mall. The following are references from those documents:

- 1. 1999 Development Agreement, page 1: Recital B(i) clearly sets forth the developer's*

- intent to "construct an auto mall complex consisting of new car dealerships."*
2. *1999 DA, page 1: Recital C(i) states that there will be significant benefits to the City, its residents and the general public and enhance the economic ability of the City by significantly increasing transaction privilege tax revenues by encouraging new car automotive dealerships.*
 3. *1999 DA, page 2: Recital E establishes developer's obligation to use best efforts to attract additional dealerships to the auto mall, and it uses two new car dealerships as examples of its commitment to that obligation.*
 4. *First Amend. to DA, page 1: Recital B is again clearly stating new car automobile dealerships.*
 5. *Second Amend. to DA, pages 1 & 2: Recital B and the new language added as subsection 2.2 are both clearly stating new car dealerships.*

The report transmitted to the City Council on November 4, 2002 regarding the Second Amendment, clearly states that the purpose of the amended DA will allow for expansion of sites suited to new car dealerships. In addition, AZVT was required to promptly complete and submit for approval a PAD amendment that allows for the development of new car dealerships.

The word "and" as used by the City Council in the 1999 PAD and the subsequent approvals is far more significant than you have concluded. When trying to understand the City Council's intent, we are required (i) to presume the Council meant to use those precise words for a reason and (ii) to give words their common meanings. Using common definition of "and" (utilizing the Merriam-Webster dictionary), it means a logical operator that requires both of two inputs to be present or two conditions to be met for an output to be made or a statement to be executed. The common definition supports the conclusion that that both new and used automobile sales would need to be present to meet the criteria provided outlined in the use listing of the PAD. This is how this use has been applied consistently since the original zoning approval.

The C-2 district at the time of the 1999 rezone allowed, "Auto, recreational vehicle, motorcycle, travel trailer and boat sales and rental." However, with the execution of a PAD as a zoning instrument, the uses may be tailored meeting the needs and goals set-forth by all parties. The allowed uses were modified with the rezoning to PAD and the "Outdoor Automobile Sales; New and Used" was placed as an allowed use subject to receiving a Conditional Use Permit. As stated in the overview of the PAD text above, had it been intended otherwise, the text simply could have used the term "or" instead. Additionally, it could have been completely removed from the Conditional Use Permit listing, as it was an allowed use in the C-2 section of the 1999 Zoning Ordinance. In this instance, it was not removed and we are required to presume the Council meant to adopt the standards in the PAD as controlling for automotive uses at the Auto Mall.

The 2002/2003 PAD Amendment narrative indicates the applicant wishes to “obtain the proper zoning to allow for additional new vehicle dealers.” The narrative in PAD’s are used to convey the intended character of the development and as such, is used to provide information necessary for the City Council to either support or deny a request. The amendment was approved by Council using the included narrative and the ordinance includes a stipulation that the development shall be in substantial conformance with the PAD Zoning Amendment dated March 5, 2003.

Consistent with the new-car-only intent of the PAD and its amendments, the City Council approved a number of economic development agreements relating to new car dealerships at the Auto Mall. In each of those agreements, the intent is clear that operation of a new automobile franchise is an essential component of the transaction. Copies of each agreement are attached for your review.

Determination

It is my determination as the City’s Zoning Administrator that, based on evaluation of the language contained in the original PAD, subsequent amendments to the PAD, numerous economic development agreements, and the supporting staff reports, that the City Council did not intend for a stand-alone used car dealership to be a permitted use within the Auto Mall. The intent to have only new car dealerships in the Auto Mall was made clear from the beginning and has been consistently followed through a series of related agreements and supporting documents.

Appeal

An Appeal of a Decision by the Zoning Administrator shall be submitted by the applicant through the Zoning Administrator to the Board of Adjustment within fifteen (15) days from the date of the decision. In an appeal to the Board of Adjustment regarding an administrative decision or interpretation, the Board’s scope of review shall be limited to determining whether the decision of interpretation by the Zoning Administrator was in accordance with the intent and requirements of the Zoning Ordinance. The Board’s responsibility is to affirm or reverse the decision of the Zoning Administrator. It is staff’s position that the findings provided in the Zoning Administrator’s Interpretation are in accordance with the intent and requirements of the Zoning Ordinance and we are recommending that the Board of Adjustment affirm the decision of the Zoning Administrator.

PUBLIC NOTIFICATION

A public hearing notice identifying the date, time, and location of the hearing for this item was published in the West Valley View on November 27, 2015. The property was posted with a public hearing notice sign containing meeting information on November 30, 2015. Lastly, letters containing meeting information were sent to property owners within 500 feet of the subject property on November 25, 2015. To date, one phone call and a letter from the same individual in support of the appeal has been received (Exhibit 4).

STAFF RECOMMENDATION

Staff recommends that the Board **AFFIRM** the decision of the Zoning Administrator.

PROPOSED MOTION

I move that the Board of Adjustment **AFFIRM** the decision of the Zoning Administrator's interpretation that used car sales are not permitted unless ancillary to a new car sales use.

Attachments:

- Exhibit 1 – Zoning Interpretation Request, Beus Gilbert, PLLC, dated September 1, 2015
- Exhibit 2 – Zoning Administrator's Interpretation, dated October 14, 2015
 - A. Pre-Application Meeting comments – dated August 5, 2014
 - B. 1999 PAD, including all applicable staff reports
 - C. 2003 PAD amendment, including all applicable staff reports
 - D. 1999 Development Agreement
 - E. 1999 Corrective Development Agreement
 - F. 2002 First Amendment to Development Agreement
 - G. 2003 Second Amendment to Development Agreement
 - H. Copies of Economic Development Agreements with various dealerships
- Exhibit 3 – Request for appeal of Zoning Interpretation, dated October 25, 2015
- Exhibit 4 – Letter supporting the appeal request

Exhibits 1-4

Exhibits were included with the
January 12, 2016 Staff Report

Gust Rosenfeld P.L.C.

Hearing Memorandum included
with the January 12, 2016
agenda packet.

Beus Gilbert P.L.L.C.

Claimant's Hearing
Memorandum included with
the January 12, 2016 agenda
packet.