

**CITY OF TEMPE  
BOARD OF ADJUSTMENT**

Meeting Date: 5/23/2018  
Agenda Item: 2

**Q.J.**

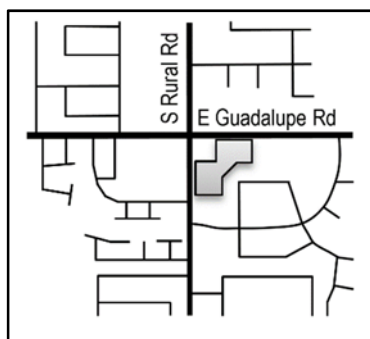
**ACTION:** Request an appeal of the February 6, 2018 Hearing Officer’s decision to deny a variance to reduce the use separation requirement from a tobacco retailer to an elementary or secondary school for BLUE DRAGON VAPOR located at 6473 South Rural Road. The appellants are Tracey Moore & David Barno.

**FISCAL IMPACT:** There is no fiscal impact on City funds.

**RECOMMENDATION:** None

**BACKGROUND INFORMATION:** BLUE DRAGON VAPOR (PL180384) operates in a shopping plaza located on the southeast corner of East Guadalupe Road and South Rural Road within the PCC-1, Planned Commercial Center Neighborhood District. On February 6, 2018, the Hearing Officer heard and denied a Variance to reduce the use separation requirement from a tobacco retailer to an elementary or secondary school. No action was taken on the use permit request to allow a tobacco retailer (vape shop) since the variance was denied. On February 13, 2018, an appeal to the Hearing Officer’s decision was submitted by appellants, Tracey Moore and David Barno. On March 28, 2018, the Board of Adjustment voted 6-0 to continue the item at the applicant’s request. \*NOTE: THIS ITEM IS A QUASI-JUDICIAL MATTER. PRE-MEETING CONTACT WITH THE COMMISSION ON QUASI-JUDICIAL MATTERS IS PROHIBITED. ANY MATERIALS OR CONVERSATION CONCERNING THE ITEM SHALL ONLY BE PRESENTED TO THE COMMISSION AT THE SCHEDULED PUBLIC HEARING. The request includes the following:

VARA180001 Appeal decision to deny a Variance (PL170384) to reduce the use separation requirement for a tobacco retailer from one thousand three hundred twenty (1,320) feet to two hundred ten (210) feet.



Property Owner	John and Barbara Bebling
Applicant of Entitlement	Tracey Moore & David Barno
Appellant	Tracey Moore & David Barno
Zoning District	PCC-1
Site Area	24,547 s.f.
Building Area	4,906 s.f.
Vehicle Parking	No change in demand
Hours of Operation	9am-11pm, M-Th; 9-12am, F & Sa; 10am-8pm Su

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Steve Abrahamson, Principal Planner

## COMMENTS

Chapter 22, Article II, Section 22-41(i) of the City Code defines *electronic smoking device* or *electronic cigarette* as any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

Part 7, Section 7-121 of the Zoning & Development Code (ZDC) defines a *tobacco retailer* as any person or business who primarily sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to tobacco shops, cigar and pipe retailer, cigarette or electronic cigarette retailer, and smoke establishments. Additionally, Section 7-120 defines a *smoking establishment* as any business or location that is dedicated, in whole or in part to the use of tobacco or other substances emitting smoke, including but not limited to establishments also referred as cigar bars or lounges, hookah bars or lounges, and tobacco clubs or bars.

## POLICE INPUT

No security plan required.

## PUBLIC INPUT

Late coming written public input received prior to and at the February 6, 2018 Hearing Officer is provided in the attachments section of this report. To date, no additional input has been received by staff.

## VARIANCE

The proposed use requires a variance to allow a tobacco retailer to be located on a lot within one thousand three hundred twenty (1,320) feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education per Section 3-423, Use Separation Requirements, of the ZDC. BLUE DRAGON VAPOR (PL170384) is located approximately two hundred ten (210) feet from Gethsemane Lutheran School and one thousand four (1,004) feet from Marcos De Niza High School.

Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings*; the applicants indicate that their special circumstance or condition is that vape products are not considered tobacco products and should be categorized as general retail items. This special circumstance has no kin to the property's size, shape, topography, location, or surroundings as it relates to the use separation requirement for a tobacco retailer (vape shop).
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district*; on June 28, 2007, City Council adopted Ordinance No. 2007.36, a code text amendment establishing use separation requirements for a tobacco retailer. Therefore, any new tobacco retailer that began operations after the effective date of the ordinance is subject to use separation requirements. As explained by the applicant, the establishment began operations on May 1, 2015. Other property of the same classification in the same zoning district must conform to the use separation requirements unless considered legal non-conforming.
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located*; no other tobacco retailer that began operations after the effective date of the Ordinance No. 2007.36 has been granted a variance to reduce the use separation requirements in this vicinity and zone; therefore, this adjustment shall be considered a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner*; there are no special circumstances applicable to the property as it relates to the use separation requirements for a tobacco retailer.

## CONCLUSION:

Approval of the appeal will overturn the February 6, 2018 Hearing Officer's decision to deny the Variance. Denial of the appeal will uphold the Hearing Officer's decision. If the appeal is approved, the applicant will be required to return to the Hearing Officer to render a decision on the use permit application to allow a tobacco retailer (vape shop).

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

## CONDITION(S) OF APPROVAL:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective. Since consumption of vape products will be permitted on the premises, the owner/management is responsible to adhere to the city Adopted International Mechanical Code.
3. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. This use shall not violate the City of Tempe Smoke Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
6. Any intensification or expansion of use shall require a new Use Permit.
7. Live entertainment requires a separate Use Permit.
8. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
9. Hours of operation to end no later than twelve o'clock midnight (12:00 a.m.) on a daily basis.

## CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

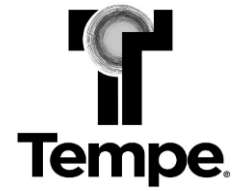
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.
- A use permit is required to permit a tobacco retailer (vape shop) in the PCC-1, Planned Commercial Center Neighborhood District.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

**HISTORY & FACTS:**

- September 9, 2015 Code Compliance Division issued a correction notice to BLUE DRAGON VAPOR (CM150973) located at 6473 South Rural Road for operating a business without a use permit.
- November 17, 2015 Request for a use permit to allow a tobacco retailer for BLUE DRAGON VAPOR (PL150391) located at 6473 South Rural Road is removed from agenda for not meeting use permit criteria as it is located within 1,320 feet of a school.
- December 18, 2017 Neighborhood meeting for variance request to reduce use separation requirements for BLUE DRAGON VAPOR (PL170384) at 6473 South Rural Road held at 5pm.
- February 6, 2018 Hearing Officer denied a variance reduce the use separation requirement for a tobacco retailer from one thousand three hundred twenty (1,320) feet to two hundred ten (210) feet for BLUE DRAGON VAPOR (PL170384), located at 6473 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District.
- February 13, 2018 Appeal petition to the Hearing Officer's decision on February 6, 2018 was submitted by BLUE DRAGON VAPOR (PL170384).
- March 28, 2018 Board of Adjustment voted 6-0 to continue the appeal for BLUE DRAGON VAPOR (PL170384) to the May 23, 2018 meeting at the applicant's request.

**ZONING AND DEVELOPMENT CODE REFERENCE:**

- Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts
- Section 3-423 Use Separation Requirements
- Section 6-308 Use Permit
- Section 6-309 Variance
- Section 7-120 "S" Definitions
- Section 7-121 "T" Definitions



**DEVELOPMENT PROJECT FILE**  
for  
**BLUE DRAGON VAPOR**  
**(PL170384)**

**ATTACHMENTS:**

- 1-4. Letter of Appeal with attachments, dated February 9, 2018
- 5-9. Minutes of the February 6, 2018 Hearing Officer
- 10-13. Staff report from the February 6, 2018 Hearing Officer (in original order and pagination)
- 14-28. Original Development Project File
- 29-32. Public Input received prior to and during February 6, 2018 Hearing Officer
- 33-36. Draft Minutes of the March 28, 2018 Board of Adjustment

Board of Adjustment  
City of Tempe  
P.O. Box 5002  
31 E 5<sup>th</sup> Street  
Tempe, Az 85280

February 9, 2018

**RE: BLUE DRAGON VAPOR  
6473 S. RURAL RD  
TEMPE, AZ 85283  
PL170384**

Dear Board of Adjusters,

I am, Tracey Moore, educated in the Nursing field, am writing our letter of Appeal to the hearing officers decision from February 6, 2018, for the denial of the Variance to reduce the separation requirement for a tobacco retailer, even though we are a Vape shop, not a Tobacco shop, from 1320 feet to 210 feet, from our property line. Our physical location is in fact more feet away than necessary if you walk it, but it is using the property line of a large sized commercial lot and we are on the far side of the lot away from both schools.

I am writing for an Appeal to change the decision for this Variance to grant us our VARIANCE as well as our USE PERMIT because we Deserve the right to have our business in the space we are located at 6473 S. Rural rd that we have been running for three years, safely and lawfully because we followed the steps told to us by the City of Tempe staff when we first started this process in 2015. All before we spent thousands of dollars, and our entire savings account to get all the necessary shelving, casing, cabinets, furniture, etcetera that this approximately 1850 sq ft commercial building space needed to make it fit for our business needs, and the needs of our customers. **We paid our fees, We PAY our city, State and Federal taxes every month, and we followed ALL procedures told to us before receiving and opening the doors to our new business May 1, 2015.** We Will fight for our right to stay in our location because we have built a 200 customer transactions per day business that the city of Tempe collects taxes from us every month!

We completely understand the concern of the parents, teachers and neighbors regarding tobacco and under age minors, which is why we DO NOT sell tobacco products and we DO NOT sell our Products to minors. We are not selling any products to minors and if they want to get Cigarettes, Alcohol, and Drugs they are going to find it, but we Do NOT supply any of these products listed above to anyone. **We are the biggest advocate AGAINST the tobacco industry, but yet we are still categorized under the tobacco category because when vaping first came around they didn't know what it was, and no one has yet changed it. The city NEEDS** to take us out of the category of Tobacco retailer and put us under the retail category of Electronics and batteries retailer, because that is what a majority of our products are that we sell. First you must be made known that we DO NOT sell tobacco in our shop, though there are 3 other locations in this same questioned area that do in fact sell ACTUAL Tobacco Products. Circle K, Liquor store, and Tobacco shop. We sell electronics and tools and materials **to help get people OFF of tobacco products.** We sell only to adults age 18 and over to help them get off of, or stay away from tobacco products and cigarettes. We help 200 people per day get off of or stay off of Tobacco products because we are in the location we are in. We have created a

positive atmosphere of educating people about our products and how this is saving people's lives every day. We have steps in place for checking identification for proof of 18+ as well as on our website. They must email a copy of their ID before product will ship, or the order is cancelled.

My father passed away at the early age of 51 from lung cancer and COPD, Cardio Obstructive Pulmonary Disease, caused from smoking cigarettes, which is a horrible way to watch your daddy die! I have my entire life searched and researched to find something that was effective and helps people get off of and stay off of cigarettes. If Vaping was around for my father and many other family members of my family that have passed, they would still be here with me today. I have never been a smoker nor do I Vape, but I believe in this process fully and completely. David is a success story of how Vaping has saved him from the thousands of chemicals from cigarettes as well as kept our three year old son away from exposure to cigarette smoke, so he can be safe and not be exposed to second hand smoke.

Today and EVERY DAY, WE fight for the chance to stay in this location that we have committed to and made efficient, and poured our lives and money into to make this a successful journey for ALL involved. With all the right tools that people can have to get away from the cigarettes and make YOUR community a better and healthier environment for all those in it.

This is the perfect place to show children and families and schools that we DON'T want them smoking and that we are against smoking and tobacco products and there is a proven process and product that will help you get off of cigarettes so you and your families can live a healthy and long happy life. This product does not cause second hand issues for those who see, smell, or become exposed to the exhaled vapor, and that is one thing a majority of people including the teachers and parents and city officials need to be aware of before speaking against this process.

Please grant us the Appeal to Mr. David Williams original decision, and Allow us to have the Variance and the Use Permit necessary that we have already paid for, for this location and help us help your community become more educated and show them we need more locations like this that bring forth positive change in this negative world we live in. This will also show the neighbors that have children and mothers and fathers and brothers and sisters and family members that they have lost, that they can have some hope to keep more of their loved ones for a longer time here on this earth.

The property located at 6473 S. Rural road is a great size and location for our retail business because we need it for the storage of back stock, but we also like having a lounge area for people to come and enjoy company of like-minded individuals, and relax in a comfortable and safe location. We do not have any issues or problems with loitering or hanging out of minors in or around our store. We have STRICT Policies, signage, rules and procedures to be sure we are NOT selling to minors, and that our customer base is 18 years and above.

The property owner has no additional benefit from our business or the variance except for the fact that we are renting the retail space from him and have been there for 3 years and have renewed our lease.

This will be a tremendous hardship on us as well as 14 other employees and families whom we have brought jobs to in your city. We will continue to fight for our right to have our business at this location that we were given a license for in 2015.

We are asking for relief from the rule that states we are not allowed to be within one quarter mile of a school, because we are an electronics and batteries and tools retailer that helps get adults off of tobacco products. we are trying to bring about positive change and it is obvious that the neighbors are not at all concerned about us being there, as we held a neighborhood meeting that not a single person attended besides myself and two City officials. There were only Three of the 300 letters that I wrote came to the hearing on Feb 6, 2018 to object, because they are uneducated as to the Science behind vaping. We are in fact **helping people in your community in a good and positive way.** Many people are finally getting educated about the benefits of our business and the vaping industry and its positive effects on the public, and individuals.

This Appeal is to Grant us Our Variance and USE Permit, to allow us to continue doing business at The property located at 6473 S. Rural road Tempe, Az 85283, and to Reduce the linear feet separation between Our retail Shop and a school since we DO NOT sell Tobacco Products!

Also, Caffeine is the number one most addictive drug, and causes proven harm in people. We will be submitting facts and proof of this as well as facts and proof that Vaping is NOT harming people, but in fact helping people!

Thank you for your time, understanding and consideration in this crucial matter!

Sincerely,

Tracey Moore  
David Barno  
Blue Dragon Vapor, LLC



# Summary Report

January 01, 2018 - January 31, 2018

One month

Total Net Sales

172,315.49

Transactions

6186 One month

200 customers per day

## Sales

## Sales by Tender Chart

Sales	172,427.04
Discount	0.00
Returns	111.55
Net Sales	172,315.49
Gratuity	0.00
Tax	14,295.66
<b>Total Tended</b>	<b>186,611.15</b>
Net Cogs	115,782.43
Gross Margin	32.808%

Cash	56,370.65
Credit	130,240.50
Amex	1,252.85
Discover	1,523.41
Mc	10,817.30
Visa	116,646.94
<b>Credit Total</b>	<b>130,240.50</b>

We pay City of Tempe  
taxes based off this  
We send taxes in amount  
of \$3107.31

## Drops/Payouts/Pay ins/Purchases

Drops	35,354.30
Payouts	638.59
Pay Ins	0.00
Purchases	0.00
<b>Mda Total</b>	<b>-35,992.89</b>

2. The Use Permits are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
  3. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
  4. If there are any complaints arising from the Use Permits that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permits will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permits, which may result in termination of the Use Permits.
  5. Any intensification or expansion of uses shall require new Use Permits.
  6. Entertainment use shall take place inside only. No live entertainment will be allowed outside.
  7. Entertainment to cease at one fifty-five in the morning (1:55 a.m.) daily.
  8. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before March 8, 2018.
  9. A development plan review is required for all exterior modifications.
  10. Return to the Hearing Officer for review of compliance with Conditions of Approval within six (6) months. The timing for the six-month review period to commence when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated within one (1) year from date of approval, the use permits will lapse.
- ADDED BY HEARING OFFICER

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5. Request approval of the following for BLUE DRAGON VAPOR (PL170384) located at 6473 South Rural Road:

1. Variance to reduce the use separation requirement for a tobacco retailer from 1,320 feet to 210 feet.
2. Use Permit to allow a tobacco retailer (vape shop).

Lee Jimenez, Senior Planner, gave the following overview of these requests:

- Blue Dragon Vapor operates in a shopping plaza located on the southeast corner of East Guadalupe road and south Rural Road within the PCC-1, Planned Commercial Center Neighborhood District.
- The applicants, Tracey Moore and David Barno, are seeking relief from the use separation requirements for tobacco retailers.
- Tobacco retailers shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school which provides elementary or secondary education.
- The vape shop is sited on a lot located approximately 210 feet from Gethsemane Lutheran School, and 1,004 feet from Marcos De Niza High School.
- Contingent upon approval of the variance request, the applicants are also requesting a use permit to allow a tobacco retailer (vape shop).

- A neighborhood meeting was held at the Bleu Dragon Vapor (PL170384) on Monday, December 18, 2017 at 5 PM. The applicant, Tracey Moore, and City staff attended the meeting. No one from the neighborhood attended.
- To date, staff has received 2 phone calls in opposition to the variance request, citing that the shop is not fitting in this area considering how close it is to schools and the volume of high school students who frequent the coffee establishment within the same shopping center.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff does not support the variance request and believes that the application does not meet any of the required criteria for a variance. Without the variance, staff cannot support the use permit request.
- Should an affirmative action be taken on the variance and use permit requests, the assigned Conditions of Approval provided in the staff report shall apply, but may be amended by the Hearing Officer.

The applicants, Tracey Moore & David Barno were present to represent this case. They acknowledged receipt of the Staff Summary Report.

Mr. Barno presented a location map indicating all lots 1,320 feet from the Blue Dragon Vapor location. He also stated that he understood the misgivings others had towards vape as he initially felt the same way. However, he said as he became more familiar with the process, he learned that vape was a healthy alternative to smoking and tobacco activities.

Ms. Moore stated that they had opened their shop to help people refrain from using tobacco and smoking cigarettes; to save lives. She explained that they had been doing business at their current location for the past 3 years and had begun their operation after receiving their license. Their intent was to comply with all the City's rules and regulations, and back in 2015, they had inquired as to what was required to open their business. At that time, Ms. Moore stated, they were informed that they need to submit an application, pay the fees and wait for the license. Once that license was received they opened their doors and began to sell vaping products.

Ms. Moore explained that she did not consider their business to be a tobacco retailer, but that there was currently no other category within the City to define their business operation. They are not a tobacco or smoke shop, she said.

Ms. Moore expressed her frustration when, after their initial opening at this location, when they had been in operation for 5 months, they received a City issued non-compliance letter stating that they needed to acquire a use permit. They paid the submittal fee of \$1,237 and were placed on a Hearing Officer agenda for a use permit request. The Community Development Director at that time, Dave Nakagawara, then informed them that they were not required to obtain a use permit and cancelled the public hearing for that request. Since no further notification was given, they assumed that they were in compliance until recently.

Mr. Williams questioned City staff as to the difference in City determination between tobacco and vape uses. Lee Jimenez responded that currently both activities fell under the Section 7-121 of the Zoning and Development Code which, in addition to the tobacco retailer use, also includes businesses that are dedicated to the use of tobacco or other substances emitting smoke.

Steve Abrahamson explained that over two years ago (November 17, 2015) the request for a use permit by Blue Dragon Vapor at this location was removed from the Hearing Officer agenda due to concerns that it did not meet the use permit criteria as it is located within 1320 feet of a school.

Mr. Abrahamson further explained that Mr. Nakagawara is no longer with the City and that, frankly, this original case got lost in time, once it had been withdrawn from that agenda. Recently the file was retrieved and staff determined that a use permit needed to be processed if Blue Dragon Vapor was to continue to be in business at this location. The separation requirements are still a concern, which is why we are here today, Mr. Abrahamson stated.

Mr. Williams noted that he was in receipt of email correspondence sent by Jai and Suzanne who are in opposition to this request. As they were unable to attend tonight's public hearing, they asked that their concerns be read into the record. Mr. Williams acknowledged receipt of this email from a neighbor who is opposed to the requests, stating that the email was a page long.

Mr. Williams asked if there were any members of the audience who wished to speak on this request.

Clair Lane, Tempe resident, spoke in opposition to this request. He spoke of his concerns including that students feel vaping is a social activity and have 'vaping contests'. He referred to the earlier use permit request (2015) and noted that although the request was withdrawn from the agenda due to the inability to meet the use permit criteria, the businesses continued to operate. He said that although Blue Dragon Vapor states that there is no evidence that vaping leads to smoking cigarettes, he feels that it is actually the other way around.

Brittany Hughes, Tempe resident, spoke in opposition to this request. She referred to the history of nicotine addiction and how the tobacco industry has dominated society for many years. E-cigarettes, which were originally marketed as a healthy alternative to the traditional cigarette and designed to help smokers quit, has had an overwhelming number of new, young users. In her opinion, vape shops serve one purpose – creating and maintaining nicotine addiction. Users are enticed by the atmosphere, prize-driven vape competitions and marketing tactics. As an elementary teacher, Ms. Hughes has a unique perspective and has seen children as young as 11 years old (5<sup>th</sup> grade) come to school with a vape pen & nicotine to encourage other children to participate. Conversations between students have been overheard that vaping is 'cool'. She also noted that proximity of other vape shops in the area and addressed the issue of over saturation. Her own brother has tragically become addicted to vaping due to an interest that developed when he was just 14 years old and he became an active participant at age 17. It has led to lung infections and other areas of medical concern. Ms. Hughes stated that vaping is no different than any other drug on the street, except that it is allowed to openly take place. She asked that this request be denied.

Sherri Toussaint, Tempe resident, spoke in opposition to this request. She indicated that she lives in the neighborhood and is also an educator. She does not see the need for the applicant to overcome the use separation restrictions. She noted that there is a lot of student traffic in this area. Tempe neighborhoods are known for their schools, and this reputation needs to be protected, she stated.

Terrie St. Michel, Tempe residence, spoke in opposition to this request. She noted that on a recent stop at this location, she became aware of the Blue Dragon Vape Shop. She was particularly aware of the increase of kids and more activity in this particular area. She stated that she noticed the odor of smoke in the vicinity of the shop, which smelled just like tobacco smoke. She stated that this area is very popular with kids from the nearby schools and asked that these requests be denied as the operation of a vape shop in this area is very determinantal to the neighborhood and their youthful members.

Cindy Kominska, Tempe resident, spoke in opposition to this request. She expressed health concerns for kids who are attracted to the novelty of the vape shop. She indicated that the Blue Dragon Vape Shop website encourages the use of vaping and their marketing efforts encourage the youthful segment of the population to participate. She stated that the wall of the school is literally parallel to that property and asked that these requests be denied.

Mr. Williams thanked the speakers for attending tonight's public hearing and sharing their concerns.

Mr. Williams acknowledged that there was a lot of testimony in opposition, and asked the applicants if they had any other additional comments they would like to offer in response.

David Barno and Tracey Moore returned to the podium.

David Barno stated that what their shop was offering (i.e. vaping) was actually saving lives by offering a healthy alternative to tobacco use.

Tracey Moore stated that the main thing here is that their goal is that they want to help people get off of tobacco addiction and leave more healthy lifestyles. She stated that she and Mr. Barno had been operating their business at this location in 'good faith' that they were in compliance, and had been paying all the required taxes during this time.

Mr. Williams noted that this is a tough case, which includes the different aspects of tobacco use versus vape use. He stated that if Blue Dragon Vapor was located outside the separation requirements, he would have no concerns, however he could not support this variance request, and the use permit request was based on meeting the separation requirements. He noted that although there was a smoke shop located across the street, the vape shop location does not meet the separation criteria for this use as identified by the City's Zoning and Development Code. He stated that based on the Staff Summary Report and supporting documentation, as well as staff's recommendation to deny these requests, he would deny the request for the variance. Mr. Williams stated that as the variance request for the separation reduction was denied, he would therefore not hear the request for the use permit.

Mr. Williams stated this variance request did not meet the requirements of the Zoning and Development Code Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* the applicants indicate that their special circumstance or condition is that vape products are not considered tobacco products and should be categorized as general retail items. This special circumstance has no kin to the property's size, shape, topography, location, or surroundings as it relates to the use separation requirement for a tobacco retailer (vape shop).
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;* on June 28, 2007, City Council adopted Ordinance No. 2007.36, a code text amendment establishing use separation requirements for a tobacco retailer. Therefore, any new tobacco retailer that began operations after the effective date of the ordinance is subject to use separation requirements. As explained by the applicant, the establishment began operations on May 1, 2015. Other property of the same classification in the same zoning district must conform to the use separation requirements unless considered legal non-conforming.
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;* no other tobacco retailer that began operations after the effective date of the Ordinance No. 2007.36 has been granted a variance to reduce the use separation requirements in this vicinity and zone; therefore, this adjustment shall be considered a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;* there are no special circumstances applicable to the property as it relates to the use separation requirements for a tobacco retailer.

**DECISION:**

Mr. Williams made the following decisions for the requests by Blue Dragon Vapor (PL170384) located at 6473 South Rural Road:

**DENIED** Variance to reduce the use separation requirement for a tobacco retailer from 1,320 feet to 210 feet.

**NO ACTION** Mr. Williams stated that as the variance request has been denied, the request for a use permit would not be heard.  
Use Permit to allow a tobacco retailer (vape shop).

-----

6. Request approval of a use permit for the WAKE RESIDENCE (PL170420) located at 1940 East Citation Lane as follows:

Use Permit to increase the maximum height of freestanding walls within the required front yard building setback from 4 feet to 4 feet 8 inches above the highest adjacent finished surface of the ground, paving or sidewalk within 20 feet.

The applicant is Samantha Wake.

Lee Jimenez, Senior Planner, gave the following overview of this request:

- The Hearing Officer continued this item from the January 16, 2018 public hearing as the applicant was not present.
- The Wake Residence is located on the northeast corner of South Los Feliz Drive and East Citation Lane within the R1-7, Single Family Residential District.
- The applicant, Samantha Wake, constructed block wall fencing 8 inches taller than the maximum 4-foot height allowed within the required front yard building setback.
- This use permit request is the result of a code violation, where the applicant was provided the option to either reduce the height to a maximum of 4 feet or apply for a use permit to exceed the maximum height.
- One email in opposition was received at the time the staff report was written.
- Since that time, one (1) email and one (1) letter in support, nine (9) e-mails and five (5) phone calls in opposition have been received by staff.
- The neighbors in support do not believe that the wall height is detrimental to the neighborhood or that it is an eye sore.
- The consensus of the neighbors in opposition cite concern that the wall is a hazard since it blocks the view of oncoming traffic at the intersection of Los Feliz. They believe that approval of this request will set an unwarranted precedence of a walled-off neighborhood, giving a nonfriendly appearance. Two (2) of the neighbors in opposition also spoke at the original hearing on January 16, 2018, during the public comment period for the Wake Residence.
- Staff supports this request and believes that the application meets the required criteria and will conform to the assigned Conditions of Approval.

Samantha Wake was present to represent this case. She acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Ms. Wake explained that this was a corner lot with a lot of traffic. Since they do not have much of a back yard, the wall enables them to utilize their front yard area for personal enjoyment. She cited reasons of safety and privacy that this wall provided to her residence.

Mr. Williams asked if there were any members of the audience who wished to address this case.

**CITY OF TEMPE  
HEARING OFFICER**

**Meeting Date: 2/6/2018  
Agenda Item: 5**

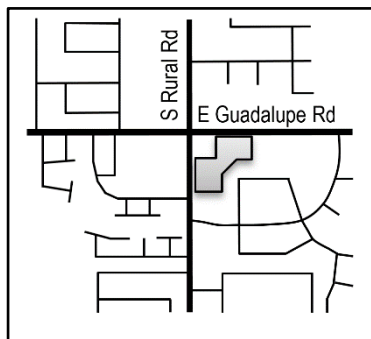
**ACTION:** Request approval of a variance to reduce the use separation requirement from a tobacco retailer to an elementary or secondary school, and a use permit to allow a tobacco retailer (vape shop) for BLUE DRAGON VAPOR (PL170384) located at 6473 South Rural Road. The applicants are Tracey Moore & David Barno.

**FISCAL IMPACT:** N/A

**RECOMMENDATION:** Staff – Deny

**BACKGROUND INFORMATION:** BLUE DRAGON VAPOR (PL170384) operates in a shopping plaza located on the southeast corner of East Guadalupe Road and South Rural Road within the PCC-1, Planned Commercial Center Neighborhood District. The applicants, Tracey Moore and David Barno, are seeking relief from the use separation requirements for tobacco retailers. Tobacco retailers shall not be located on a lot within one thousand three hundred twenty (1,320) feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school which provides elementary or secondary education. The vape shop is sited on a lot located approximately two hundred ten (210) feet from Gethsemane Lutheran School, and one thousand four (1,004) feet from Marcos De Niza High School. Contingent upon approval of the variance request, the applicants are also requesting a use permit to allow a tobacco retailer (vape shop). Anywhere from 6 to 13 employees are on-hand during business hours. The request includes the following:

1. Variance to reduce the use separation requirement for a tobacco retailer from one thousand three hundred twenty (1,320) feet to two hundred ten (210) feet.
2. Use permit to allow a tobacco retailer (vape shop).



Property Owner	John and Barbara Bebbling
Applicant	Tracey Moore & David Barno
Code Compliance Inspector	Marvin White
Zoning District	PCC-1
Site Area	24,547 s.f.
Building Area	4,906 s.f.
Vehicle Parking	No change in demand
Hours of Operation	9am-11pm, M-Th; 9-12am, F & Sa; 10am-8pm Su

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator

## COMMENTS

Per Section 7-121 of the Zoning & Development Code (ZDC), a tobacco retailer means any person or business who primary sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia, or who distributes samples of tobacco products or paraphernalia. These businesses include but are not limited to tobacco shops, cigar and pipe retailer, cigarette or electronic cigarette retailer, and smoke establishments. Furthermore, per Section 7-120 of the ZDC, a smoking establishment means any business or location that is dedicated, in whole or in part to the use of tobacco or other substances emitting smoke, including but not limited to establishments also referred as cigar bars or lounges, hookah bars or lounges, and tobacco clubs or bars.

## POLICE INPUT

No security plan required.

## PUBLIC INPUT

A neighborhood meeting was held at BLUE DRAGON VAPOR (PL170384) on Monday, December 18, 2017 at 5pm. The applicant, Tracey Moore, and staff attended the meeting. No one from the neighborhood attended. A meeting summary is provided in the attachments section.

To date, staff received one (1) phone call in opposition to the variance request, citing that the shop is too close to a school in his opinion. In addition, letters of support were provided by current customers.

## VARIANCE

The proposed use requires a variance to allow a tobacco retailer to be located on a lot within one thousand three hundred twenty (1,320) feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school, which provides elementary or secondary education per Section 3-423, Use Separation Requirements, of the ZDC. BLUE DRAGON VAPOR (PL170384) is located approximately two hundred ten (210) feet from Gethsemane Lutheran School and one thousand four (1,004) feet from Marcos De Niza High School.

Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* the applicants indicate that their special circumstance or condition is that vape products are not considered tobacco products and should be categorized as general retail items. This special circumstance has no kin to the property's size, shape, topography, location, or surroundings as it relates to the use separation requirement for a tobacco retailer (vape shop).
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;* on June 28, 2007, City Council adopted Ordinance No. 2007.36, a code text amendment establishing use separation requirements for a tobacco retailer. Therefore, any new tobacco retailer that began operations after the effective date of the ordinance is subject to use separation requirements. As explained by the applicant, the establishment began operations on May 1, 2015. Other property of the same classification in the same zoning district must conform to the use separation requirements unless considered legal non-conforming.
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;* no other tobacco retailer that began operations after the effective date of the Ordinance No. 2007.36 has been granted a variance to reduce the use separation requirements in this vicinity and zone; therefore, this adjustment shall be considered a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;* there are no special circumstances applicable to the property as it relates to the use separation requirements for a tobacco retailer.



## **USE PERMIT**

The proposed use requires a use permit to allow a tobacco retailer within the PCC-1, Planned Commercial Center Neighborhood District, per Section 3-202, Permitted Uses in Commercial and Mixed-Use Districts, of the ZDC. In addition to requiring a use permit, tobacco retailers are also subject to special standards or limitations per Section 3-423, Use Separation Requirements, of the ZDC. Contingent upon the decision of the variance request, BLUE DRAGON VAPOR (PL170384) is operating a vape shop which is categorized as a tobacco retail store.

Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic*; the vape shop is not expected to significantly increase vehicular or pedestrian traffic more than other retail and service uses permitted in this zoning district.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; the vape shop is conducted within the premises and is not expected to cause nuisances generated by emissions greater than ambient conditions.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; the vape shop is consistent with the General Plan 2040 land use designation and offers an alternative for people trying to quit tobacco smoking while contributing to the city's tax base.
4. *Compatibility with existing surrounding structures and uses*; other than signage, the vape shop does not require any exterior modifications to operate and the use is compatible with nearby retail and service uses.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; adequate control of disruptive behavior both inside and outside the premises is accomplished by having six to thirteen staff on-hand during business hours and providing overnight security outside of store hours.

## **REASONS FOR DENIAL:**

Based on the information provided by the applicant, the public input received and the above analysis, staff recommends denial of the requested Variance and Use Permit. This request does not meet the required criteria for a Variance which is required to for the Use Permit.

**SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.**

## **CONDITION(S) OF APPROVAL:**

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective. Since consumption of vape products will be permitted on the premises, the owner/management is responsible to adhere to the city Adopted International Mechanical Code.
3. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. This use shall not violate the City of Tempe Smoke Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.

6. Any intensification or expansion of use shall require a new Use Permit.
7. Live entertainment requires a separate Use Permit.
8. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
9. Hours of operation to end no later than twelve o'clock midnight (12:00 a.m.) on a daily basis.

**CODE/ORDINANCE REQUIREMENTS:**

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- The Use Permit is valid for BLUE DRAGON VAPOR and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

**HISTORY & FACTS:**

- |                   |   |
|-------------------|---|
| September 9, 2015 | Code Compliance Division issued a correction notice to BLUE DRAGON VAPOR (CM150973) located at 6473 South Rural Road for operating a business without a use permit.   |
| November 4, 2015  | Request for a use permit to allow a tobacco retailer for BLUE DRAGON VAPOR (PL150391) located at 6473 South Rural Road is continued to November 17, 2015 hearing due to cancellation of the November 4, 2015 hearing.             |
| November 17, 2015 | Request for a use permit to allow a tobacco retailer for BLUE DRAGON VAPOR (PL150391) located at 6473 South Rural Road is removed from agenda for not meeting use permit criteria as it is located within 1,320 feet of a school. |
| December 18, 2017 | Neighborhood meeting for variance request to reduce use separation requirements for BLUE DRAGON VAPOR (PL170384) at 6473 South Rural Road held at 5pm.  |

**ZONING AND DEVELOPMENT CODE REFERENCE:**

- Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts
- Section 3-423 Use Separation Requirements
- Section 6-308 Use Permit
- Section 6-309 Variance
- Section 7-120 "S" Definitions
- Section 7-121 "T" Definitions

# DEVELOPMENT PROJECT FILE

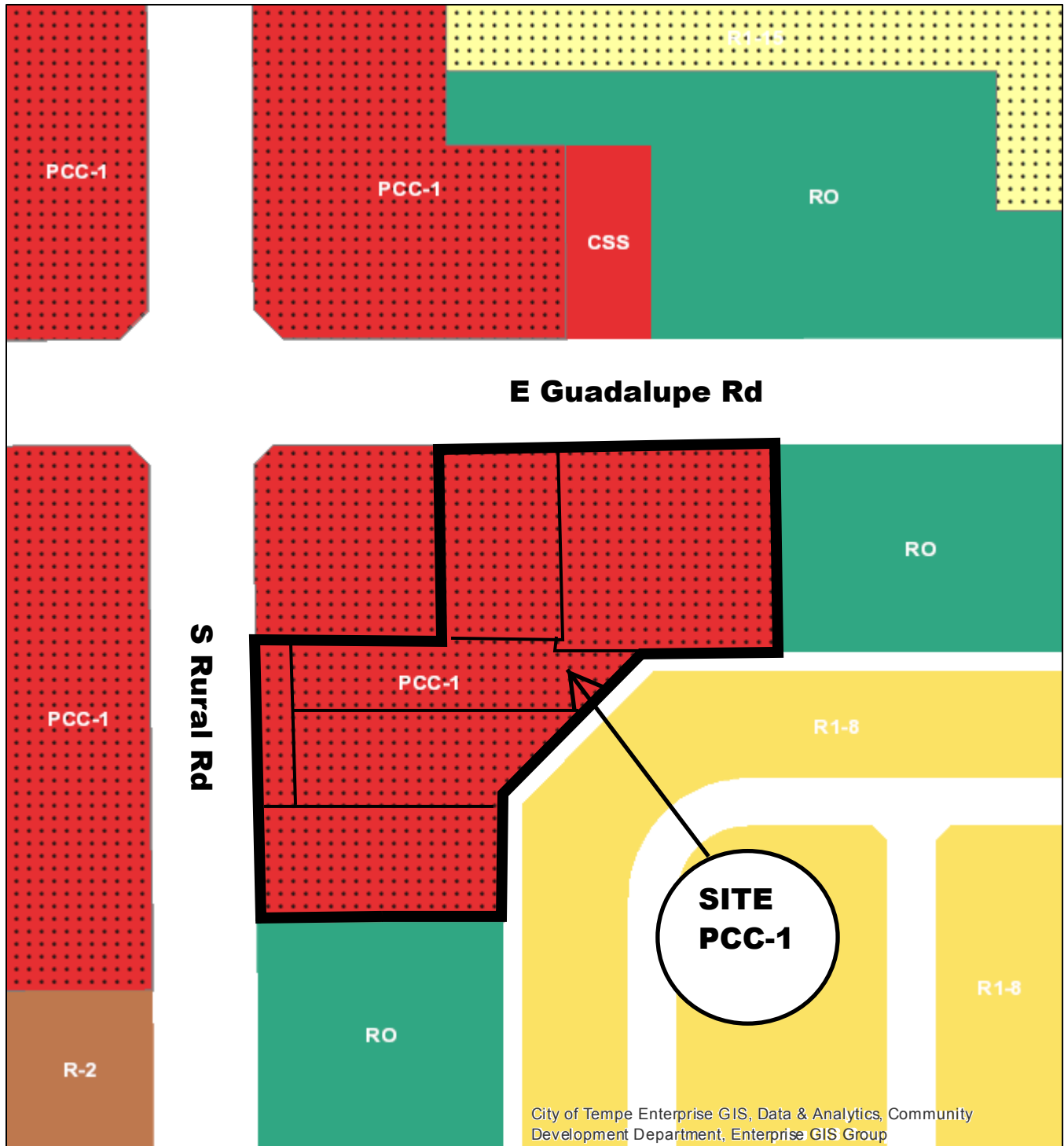
for  
BLUE DRAGON VAPOR  
(PL170384)

## ATTACHMENTS:

1. Location Map
2. Aerial
- 3-4. Variance Letter of Explanation
- 5-6. Use Permit Letter of Explanation
7. Site Plan
8. Floor Plan
- 9-10. Building Elevations (photos in lieu of line drawings)
- 11-12. Neighborhood Meeting Notice & Summary
- 13-14. Public Input

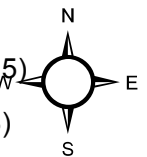
# Blue Dragon Vapor

PL 170384



- Commercial Shopping and Services (CSS)
- Planned Commercial Center Neighborhood (PCC-1)
- Residential/Office (RO)

- Single-Family Residential (R1-15)
- Single-Family Residential (R1-8)
- Multi-Family Residential (R-2)





Tempe

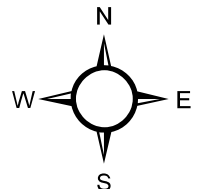
PL 170384

# Blue Dragon Vapor



City of Tempe Enterprise GIS, Data & Analytics, Enterprise GIS, Data and Analytics; Water and Utilities Division

## Aerial Map



**BLUE DRAGON VAPOR, LLC**  
**6473 S. RURAL RD TEMPE, AZ 85283**

To Whom it may concern,

My name is Tracey M. Moore, and my business partner David Barno and I opened a Vapor Shop in Tempe May 1, 2015. The reason we opened the shop is to help people quit smoking Cigarettes, to get away from Tobacco. We are helping people to live a happier, Healthier life.

I am writing this letter for the purpose of a variance to a law that is set forth in the city of Tempe guidelines. We are wanting to get a variance to REDUCE the Linear feet Separation to less than 210 feet between a Vapor/Tobacco Retailer and a secondary school. This allows us to stay in our current location, that we have been doing business in for the last three years. It is a lengthy, time consuming, and stressful process to apply and get this variance approved. Also moving is time consuming and very costly as well. The stress of this process is incredible, but I continue to try to comply with all the rules and regulations, and had I known about this when I applied for my License I would have done it even before opening doors. This is not even the first time I have had to deal with this stress, but I continue to try to make things right!

We are 210 feet from the Gethsemane Lutheran School property line, and 1004 feet from Marcos De Niza property line. We do not consider our business a Tobacco Retailer, even though there is currently no other Category for us to be in, because we help people get off and away from Tobacco. They could put us in the Retail category. We do Not deprive other properties or businesses in the area, because we are Not a tobacco or smoke shop. We are a vape shop and that is very different.

The property located at 6473 S. Rural road is a great size and location for our retail business because it is roomie and for not only all the storage of back stock, but we also like having a lounge area for people to come and enjoy company of like-minded individuals, and relax in a comfortable and safe location.

When I went to the city in 2015, and requested information on how to get my license and what all I needed to open our retail business of Blue Dragon Vapor, all I was told was to fill out the Application, pay the fees, and wait for the license. Once received we opened our doors and began selling ONLY products that help people get off cigarettes and smoking. We sell Vaping products and start people on a journey of vaping to get free from cigarettes.

We were sent a non-compliance letter that we had to go through the process of clearing up in September of 2015, regarding us needing a use permit, after our business had been open for five months, we paid the fee for a use permit of \$1,237.00, and the city manager, Dave Nokumura, cancelled our hearing, stating we didn't need one, but that he would grant one because we had already paid the fee. We never received any further paperwork and so thought everything was in compliance. We have been paying ALL our city, state, and federal taxes every month without fail since day one!

We have STRICT Policies, signage, rules and procedures to be sure we are NOT selling to minors, and that our customer base is 18 years and above.

The property owner has no additional benefit from our business or the variance except for the fact that we are renting the retail space from him and have been there for 3 years and was supposed to be renewing our lease, and now we are basically fighting for a chance to stay

in the location, as well as the stress of having to find another space in the event that we are required to move our location to a space that is not within the quarter mile of any school. In the event of us not being granted our variance to continue doing business at the 6473 S. Rural Rd location, we will need time to find, and build out a new space which is usually 3 – 5 months and so we are requesting to be able to keep our shop open during this time to not lose our livelihood and customer base.

We are asking for relief from the rule that states we are not allowed to be within one quarter mile of a school, we are only trying to bring about positive change and it is obvious that the neighbors are not at all concerned about us being there, as we held a neighborhood meeting that not a single person attended besides myself and two City officials. I believe we are helping people in a good and positive way and many people are finally getting educated about the benefits of our business and the vaping industry and its positive effects on the public, and individuals.

This Variance we are requesting is to allow us to continue doing business at The property located at 6473 S. Rural road Tempe, Az 85283, and to Reduce the linear feet separation between a Vapor/tobacco retailer and a secondary school. Our category should be a retail store, because that is what we are! We sell products to people at a reasonable price and we have created jobs and we pay our taxes without fail!

Thank you for your time and Consideration in this very sensitive and crucial matter!

Sincerely,

Tracey Moore

David Barno

Blue Dragon Vapor, LLC

**BLUE DRAGON VAPOR, LLC**  
**6473 S. RURAL RD TEMPE, AZ 85283**

To Whom it may concern,

My name is Tracey M. Moore, and my business partner David Barno and I opened a Vapor Shop in Tempe May 1, 2015. The reason we opened the shop is to help people Quit smoking Cigarettes, to get away from Tobacco. We want people to live a happier, Healthier longer life. My Ex-husband tried everything in his power, along with the help from physicians to quit smoking. Everything from cold turkey, gum, the patch, physician prescribed Chantix, which had some very negative side effects, the list goes on. Until he was introduced to Vaping, he could not quit. He started Vaping, when our son was born. We started doing a lot of research on vaping, and the products. We began watching and reading articles, studies, and information on vaping, and the products. The problem is too many people are uneducated about vaping. Vaping products DO NOT use flame, fire, or matches, it uses batteries. It does NOT produce smoke, it produces vapor. It does NOT have tobacco in it. The Mod/Machine/Battery, warms up a coil to warm the liquid so you are inhaling vapor, NOT smoke, and there is only 3 or 4 ingredients in the liquid. These products even though exhaled into the air have no harm to any bystanders. The vapor that is exhaled is like having a humid day with a sweet or fruity smell and taste. The nicotine, if added to the liquid, Does NOT go into the air. Once it is inhaled, it is absorbed in the person's body that inhales it. When exhaled there is nothing in the air that is left to harm a bystander.

The people quitting smoking start at a nicotine level similar to a cigarette, than start decreasing the nicotine level down over time, to where they can completely get off of even vaping. Cigarette smoke harms every organ of the body. When people quit smoking and start vaping, their bodies begin healing itself 20 minutes after the last cigarette. There have been many studies showing people in a room measuring their carbon monoxide levels, which is what reduces the blood's ability to carry oxygen through the body, toxicity levels, and oxygen levels. They had the subjects vaping between one minute to thirty minutes, there was no change in these levels when tested in their bodies after vaping. They also did the same study with the smokers. We already know there are thousands of additional chemicals, toxins, and tar and tobacco, and nicotine in a cigarette, and the smoke a cigarette leaves behind, along with the terrible smells, stains, and of course the disease and harm to every one's bodies, including the bystanders. These thousands of harmful chemicals in smoke emitted from a cigarette, from the tobacco, and the many other products in every cigarette showed all elevated levels, along with the buildup of toxins and tar from smoking a single cigarette.

We are doing good things with this business, with this company and changing many people's lives for the better. We help and educate people on the products so they can make a good decision, we help them buy products that will work, and we have great pricing to help people continue to stay on the journey to make them successful to their goals. We pay all our City of Tempe, Arizona state taxes monthly, quarterly and all necessary taxes regarding employees. So we are also creating jobs in the workplace to make our State a better place.



Vaping should not be grouped in the category in anyway with cigarettes or tobacco. Vaping has a positive impact on the world. There is other places you can get PURE Nicotine from, and even some of our own vegetables, such as eggplant, tomatoes, potatoes, and the bell peppers family have traces of nicotine in them. There are also studies of pure nicotine outside of the tobacco plant being used to help Alheimers patients with stimulating the brain nerves.

I am so happy and excited to be a part of this community, and I always wanted to make a difference in people's lives. Many of my family members have been victims of cigarettes and the smoking diseases that accompany them and I wish Vaping was around to have helped them still be with us today. They could have helped us in the fight of this battle to better other people's lives. To have this aiternative to the horrible effects of cigarettes has been a wonderful learning experience. We are hoping to educate more people and come together as a community to make it a safer place for the future.

There are many health care providers, Physicians, Respiratory Therapists, nurses, child care workers, business owners, receptionists, construction workers, in every industry recommending vaping to smokers to help them quit, along with them themselves using vapes to become healthier themselves. There are many diverse cultures, and groups of people, and the age range is 18 and older. We do NOT sell to minors.

Our vapor shops are open from 9am – 11pm Monday through Thursday. We are open 9am – midnight on Friday and Saturday, and open from 10am – 8pm on Sunday. These hours are what is the need of the community and work's with people's schedules. They don't want to run out of product, they don't want to fail. We also have overnight security for our shops.

There is anywhere from 6 to 13 employees at each store employed with us as a full staff. We are creating jobs in the community. We pay thousands of dollars in city and state taxes every month. The number of customers vary, but we average about 150- 250 transactions per day!

It will not affect the surrounding area, only benefitting the community. There are already many parking spots in the shopping complex, and everyone shares them. We are not changing any exterior structures or landscaping. No standards are being negatively affected. People are being educated and getting healthier. Our business does not emit any offensive gas, odor, dust, noise, vibration, heat or glare.

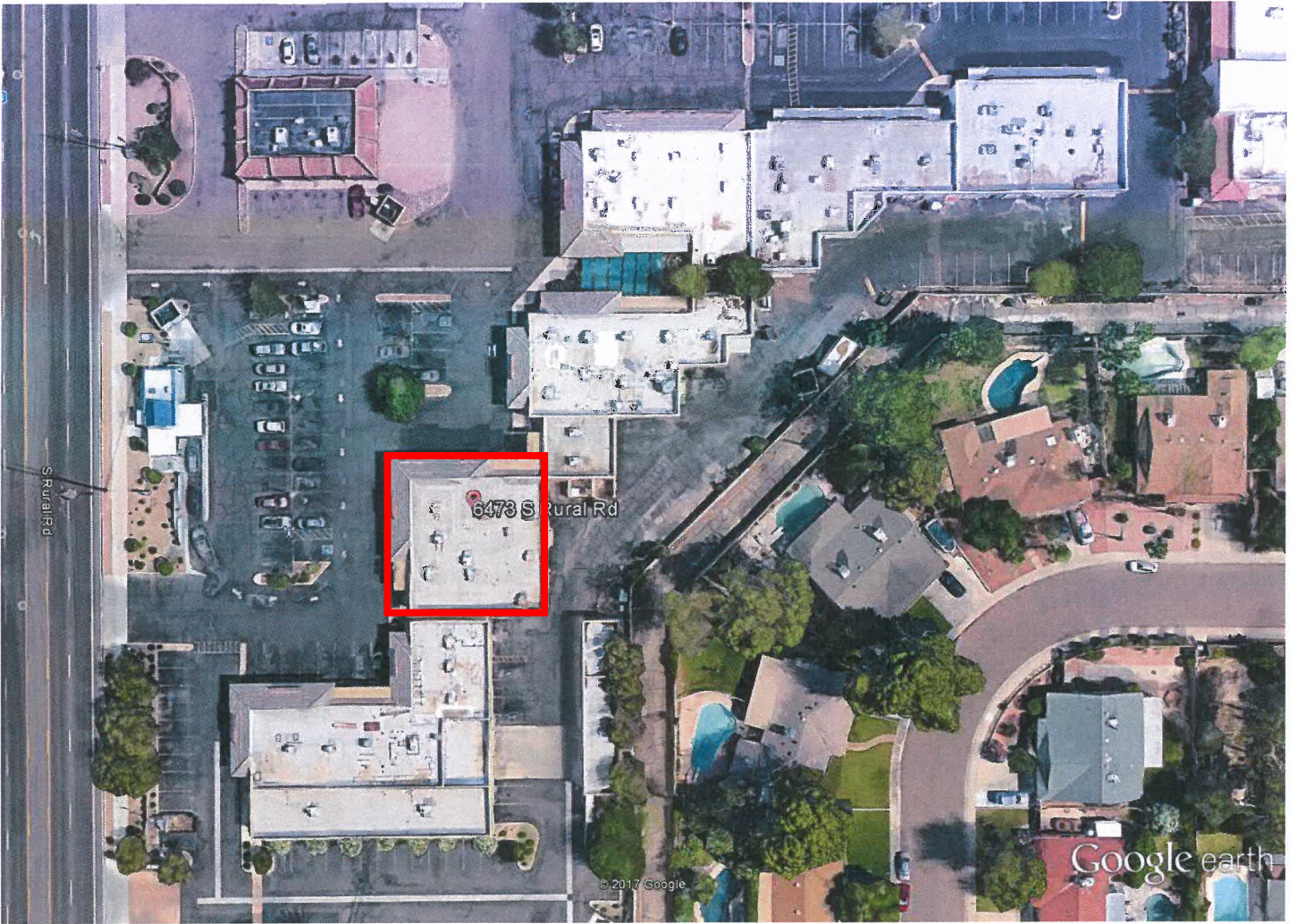
This company will not contribute to any deterioration of the neighborhood. It will not bring negativity, conflict, nuisance to the area or the general public. It is bringing in positive experiences, education, increased health, money for the city and state and an enhanced awareness to the community and bettering people's lives. It is also bringing people to a safe, positive, happy, healthy place to hang out with other people, family and friends! We have high standards for our company and our products, and fair prices. Our business is setting the standard of how this genre and market should be. Our customer service, great products, and fair prices are what keep customers coming back. You are welcome to read all our reviews on Facebook and Google. Check out our locations and website if you like.

Thank you for your time and for allowing our business to grow in your community!

Sincerely,

Tracey M. Moore and David A. Barno

Owners of Blue Dragon Vapor, LLC



Google earth

feet  
meters





# WEST ELEVATION

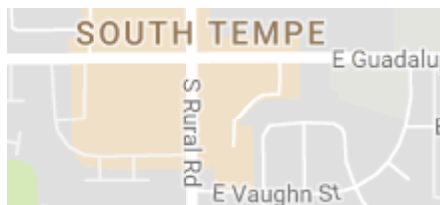
Google Maps Tempe, Arizona



Image capture: Jul 2017 © 2018 Google

Google, Inc.

Street View - Jul 2017



# NORTH ELEVATION

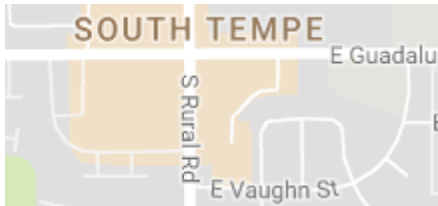
Google Maps Tempe, Arizona



Image capture: Jul 2017 © 2018 Google

Google, Inc.

Street View - Jul 2017



Attachment 10  
Attachment 24



**Blue Dragon Vapor, LLC**

6473 S. Rural Rd Tempe, Az 85283

480-284-4661

5905 W. Bell Rd Suite #4 Glendale, Az 85306

602-651-1840

[BlueDragonVaporShop@gmail.com](mailto:BlueDragonVaporShop@gmail.com)

[www.BlueDragonVaporShop.com](http://www.BlueDragonVaporShop.com)

Dear Neighbor,

This is Tracey Moore, and David Barno, Owners of Blue Dragon Vapor. Located at 6473 S Rural Rd Tempe, Az 85283. We will be holding a meeting for the neighborhood to request a Variance to reduce separation between a (Vape Shop) Tobacco Retailer and a school. We have been in business currently the last three years helping people quit smoking.

We would like to invite you to our place of business on December 18, 2017 at 5pm in the evening, so that you may hear the proposed plans, ask questions and address concerns.

We have submitted an application to the city of Tempe, and anticipate the public hearing before the hearing officer on February 6, 2018 at 5pm in the City Council Chambers of city Hall at 31 E 5<sup>th</sup> St Tempe, Az 85281

The meeting will be held at the store location

6473 S. Rural Rd Tempe, Az 85283

On December 18<sup>th</sup>, 2017

At 5:00PM

Thank you for your Time

Sincerely,

Tracey Moore and David Barno

## Jimenez, Lee

---

**From:** Tracey Moore <bluedragonvaporshop@gmail.com>  
**Sent:** Monday, December 18, 2017 5:49 PM  
**To:** Jimenez, Lee; Abrahamson, Steve; Weaver, Chad; jgbeebbling@azfinteriors.com; Tracey Moore  
**Subject:** Neighborhood Meeting

Hello Lee, and Steve,  
Thank you for attending the neighborhood meeting that was scheduled for this evening at 5:00pm on Monday December 18, 2017  
There was no one in attendance other than  
Tracey Moore  
Lee Jimenez  
Steve Abrahamson

See you at the hearing on February 6th.  
Please let me know what time  
Sincerely,  
Tracey Moore  
Blue Dragon Vapor  
480-518-0139

1/20/2018

To Whom it may Concern,

It is with great pleasure that I write this letter strongly encouraging the city of Tempe to keep Blue Dragon Vapor, in its current location.

Tracey Moore, an owner of Blue Dragon Vapor, has changed my life for the better. I was a cigarette smoker for nearly 16 years and was wanting to quit badly. I met Tracey and she explained what vaping is and how it works. I was under the impression that vaping was just as bad as smoking cigarettes. WRONG! Vaping liquid contains ingredients that we find in food. Nicotine is just that, nicotine. There are no harsh chemicals like you'd find in cigarettes. Without the help of Tracey and her employees at Blue Dragon Vapor, I would still be smoking. Putting myself at risk of a variety of health problems, including cancer.

I strongly encourage you to really research the benefits of vaping versus smoking and ask yourself if you'd personally prefer your children to smoke cigarettes, or vape? There are numerous facilities within a block of Blue Dragon Vapor, where you can buy cigarettes. I think that educating the community on the benefits of vaping versus smoking can decrease the amount of cigarette smoking, tremendously. If any business deserves to be closed down, it should be the places selling cigarettes. They are essentially selling people a death wish.

Sincerely,

Shayna Seeley



January 5<sup>th</sup> 2018

To the City of Tempe,

Blue Dragon Vapor in Tempe has been a very good business to my family and I. My family comes from heavy smokers and Blue Dragon has helped me a hand full of family members quit smoking and helped us make healthier choices to make a better life change. I understand that this business is too close to schools/church, please allow their variance and allow them to stay, they aren't doing any harm to the community.

They don't promote anything illegal nor do they promote underage usage. I have children of my own and family in high school locally. Blue Dragon does not do any harm to my community. They have been here for a few years and have done nothing but help this community. It's a blessing to have them, not a burden.

Thank you for your time,  
Lena Petines

## Jimenez, Lee

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**From:** Jai & Suzanne [REDACTED]  
**Sent:** Tuesday, February 06, 2018 4:17 PM  
**To:** Jimenez, Lee  
**Subject:** my statement

This is my input:

I live in one of the neighborhoods surrounding Blue Dragon Vapor, and I am a concerned parent.

My two sons attend Marcos de Niza High School, so they have an insiders' perspective on the issues being discussed tonight. Interestingly, my sons say they hardly know anyone who smokes regular cigarettes on campus. They know a lot of under-age students, however, who vape. Vaping is absolutely the "new smoking!" And although it is technically forbidden on the Marcos campus, vaping is common there.

Vaping is considered by the high school students to be less problematic for their health than regular cigarettes, and is billed as a cigarette substitute even though multiple scientific studies in the last few years, some of which were discussed at length just last week on National Public Radio, show a strong link between kids who vape and who later start smoking cigarettes, as vaping acts as an initial type of smoking that makes kids more susceptible to start cigarette smoking. The NPR program did not use the phrase "gateway drug" for vape products, but that exact phenomenon was implied throughout the newscast.

The street corner on which Blue Dragon is currently illegally located is a very popular corner with Marcos de Niza students, and is essentially right across the street from the school. The maps you have on file do not make this clear, but any drive-by or on-foot tour of the area would easily prove this store's extreme accessibility and proximity to the high school. This exact corner where Blue Dragon is located also has a Dutch Brothers coffee shop that attracts many, many students, as well as a Little Caesar's pizza, and a Circle K mini-mart. On the other corners of the Rural and Guadalupe cross-streets are also fast food restaurants like Burger King and Jack in the Box, a Tobacco World, and an Albertson's supermarket, all of which attract after-school crowds. In addition, two major city bus lines have stops at that corner, and a lot of high school kids ride these buses home, west to the town of Guadalupe, and north and south to other parts of Tempe. In other words, this street corner is a hub of student activity once school lets out each day.

I wanted to write to you specifically because my sons say they know kids who get vaping products from Blue Dragon Vapor. My sons walk home from school with other kids who are on their way to Blue Dragon, and my sons have classes with kids who are smoking items obtained from Blue Dragon. Blue Dragon is a household name at Marcos, even among kids, like my sons, who don't vape themselves.

I don't know for sure whether Blue Dragon is selling to kids directly, but my sons' friends relate this as a typical experience: a minor walks into Blue Dragon and tells an adult what he or she wants to buy. Then an adult in the room buys the desired items. Whether this adult is usually another Blue Dragon employee or an adult customer, I do not know, but regardless, once the adult buys the items, the adult then hands them over to the minor. The Blue Dragon employees see the whole transaction and don't bat an eye.

My sons have no reason or profit motive to lie about this testimony, nor do I in relaying it to you, but I do have a real concern because my sons think, and I share their evaluation, that not only does Blue Dragon supply Marcos de Niza High School students with vaping products, but the main reason Blue Dragon wants to even be in this location is to specifically cater to the high school crowd.

Thank you for considering my comments and concerns.

Public Hearing Officer  
City of Tempe  
31 East 5<sup>th</sup> Street, Tempe, AZ 85281  
Case Number: PL170384  
Case Name: Blue Dragon Vapor

My name is Brittany Hughes and I am writing today to oppose the variance for Blue Dragon Vapor. I will be sharing three of my perspectives with you in regards to vaping; as a teacher, as a native Tempean and, most importantly, as a sister.

Our world is ever-evolving and ever-changing. For years the tobacco industry has dominated the lives of our society; from children to the elderly. According to the CDC website,

“Tobacco use is the leading cause of preventable disease, disability, and death in the United States. Nearly 40 million US adults still smoke cigarettes, and about 4.7 million middle and high school students use at least one tobacco product, including e-cigarettes. Every day, more than 3,800 youth younger than 18 years smoke their first cigarette. Each year, nearly half a million Americans die prematurely of smoking or exposure to secondhand smoke. Another 16 million live with a serious illness caused by smoking. Each year, the United States spends nearly \$170 billion on medical care to treat smoking-related disease in adults.”

Though these statistics are staggering, they are statistics that don't surprise anyone; as tobacco has been around since the early days of colonization. E-cigarettes only recently joined the tobacco game and was originally marketed as being a healthy alternative to the traditional cigarette. The good intentions of the e-cigarette, designed to help smokers quit, has been invaded by the overwhelming amount of young, new users. Our children are starting up the infamous habit and are being easily enticed by the age-specific marketing tactics. How can a child or teenager resist the color assortment, smells, and exotic flavors? My grandmother, who was a smoker for 50 years, would prefer the traditional taste of a cigarette; so why are there gummy bear and birthday cake flavors?

Unlike shops that sell cigarettes, vape shops serve one purpose; creating and maintaining nicotine addiction. These shops invite young clients in with ambient lighting, a living room coziness, relatable staff, and the promise of a “hassle-free and healthy” alternative to smoking. They even promote participation in prize-driven vape competitions and encourage all staff to participate.

As I stated before, I am looking at this issue from three perspectives. The first is from a teacher's perspective; as I work in elementary education. Just last school year, one of our students was caught vaping in the boys' restroom during school hours. He brought in his vape pen and nicotine juice and was telling a group of other boys that it tastes great and was healthy for them. The boy with the vape pen was in 5<sup>th</sup> grade (11 years old) and the group he was trying to convince consisted of boys between 9 and 12 years old.

Vaping is a problem in schools and this specific location, on Rural road, is a danger to all levels of education. There is a reason we have city ordinances and zoning laws, there should

not be exceptions this close to multiple schools. These students are being subjected to the temptation of the vape shop every time they get a drink from Dutch Bros, every time they get lunch off-campus at Little Ceasers pizza, or even while their parents fill up their gas tanks in the morning at Circle K. At any given time during the day, the plaza on the southeast corner of Rural and Guadalupe is bustling with all age groups. They're walking, driving and riding bicycles; they're meeting up with their friends, co-workers and classmates.

As a teacher, we spend more hours out of the day with these students than their parents, I hear their conversations. When I hear 7, 10, and 13 year olds talking about vaping and how "cool" it is, I would be doing my students a disservice by not opposing any variance that would allow them easier access to drugs. The CDC website hits a disturbing nerve for us (teachers) and may be one of the very reasons there is a law pertaining to the location of a tobacco retailer, "Nicotine exposure can harm adolescent brain development, which continues into the early mid-20s. . .E-cigarettes are now the most commonly used tobacco product among youth."

The second perspective I will be presenting is that of a native Tempean. I have lived in this neighborhood all of my life. I grew up riding my bike to the Water and Ice on the northwest corner of Rural and Guadalupe. I attended Tempe elementary and middle schools, graduated from Marcos de Niza and ASU. My father is a Tempe firefighter, my mother works for the City of Tempe, and I, myself, work for ASU. I love this city and I grew up being passionate about the people in it.

I am disappointed that vaping has invaded the local economy and become such a prevalent part of our community. Vape shops are becoming as common as Starbucks. Why do we need so many? Why do we need to approve a variance for Blue Dragon when there is a vape shop across the street, on the southwest corner of Rural and Guadalupe? There's a vape shop a block away on Mill and Baseline and another on Rural and the 60. We're already surrounded by them. Why do we need just one more? And why do we need them so close to a school? I assume that vape shops are popping up where there is a demand; I would hope that our youth are not defining that demand.

My last perspective is, sadly, the most tragic of all; I am writing to oppose this variance as a sister. My little brother's interest in vaping began when he was just 14 years old, a freshman in a Tempe high school. His addiction began at 17 years old, in his junior year of high school. I know that most people believe that vaping is not a "drug" and will advocate for it's healthy nature. But I am affected by my brother's addiction every single day.

Just like a traditional cigarette-smoker, my brother has to leave the house every 10-15 minutes to "take a drag." No matter where he goes, he is always carrying his backpack full of vape paraphernalia. He is a "regular" at his doctor's office, constantly riddled with lung infections and cancer scares and paranoia. The days of boy-scout's honor, hiking adventures, rock-climbing, marathon running, belly-laughing and studying hard are over. Every day we are met with a 19 year-old who is full of hatred, anger, depression and all-out paranoia. He sleeps over 12 hours a day and is gone all hours of the night; never knowing where he is or what he is doing. At Christmas, instead of bragging about the community service he completed for his

merit badges, he's puffing his chest about how many vape product sales he made at the vape shop he works at and how many people he convinced to start up the habit. He is a constant promoter no matter where he goes, even to his younger family members.

As his sister, we have always had talks that were "not safe for mother's ears" about girls and drugs and parties. We used to have conversations about drugs and how they scared him. I thought that hearing the stories of my high-school friends' drug-related deaths had saved him from any temptations. I was wrong. Just last month, after beginning to work a vape shop down the street, he is talking about cocaine and weed as though they are over-the-counter medicines like Tylenol; how his friends have shared their "health benefits" and looked to me for some kind of recognition that they were right. It is disturbing to know that nearly all of my brother's co-workers are high-school aged youth who are completely unaware of their influences. Clearly the vape shops are not just profiting from the local schools, they are also hiring.

Why do we continue to allow it? Why is there even an argument to allow such a toxic business to reside where our children frequent? If we allow this variance now, what example are we setting? How many more are going to pop up now that we've let the law slip?

Vaping is no different than any other drug on the street, except that we openly allow it to take place. And like any other drug, nicotine is a highly addictive substance that opens a dangerous gateway to even more serious drug addictions. There is no denying that fact. And those that are working in these establishments, the teenagers and students, are uneducated about the long-term effects of the product they are selling. And, although it was designed with the intention to help cigarette smokers quit, it has enticed our youth to take up a habit they may have never started if they weren't so targeted by the marketing and if it wasn't so accessible. So let's not make it any more accessible than it already is.

I would like to formally request that the variance for Blue Dragon Vapor not be approved.

## DRAFT MINUTES BOARD OF ADJUSTMENT MARCH 28, 2018

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

### STUDY SESSION 5:30 PM

#### Present:

David Lyon

Whitni Baker

James Frazey

David Naugle

Richard Watson

John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner

Diane McGuire, Administrative Assistant II

Lee Jimenez, Senior Planner

#### Absent:

Kevin Cullens

John Puzauskas

Albert Dare (Alternate)

**There were 3 interested citizens present at the study session.**

- Vice Chair Frazey requested that the draft 2/28 BOA Minutes be corrected as follows:
  - Page 13, Last Paragraph: Comments were not made by Vice Chair Frazey. A review of the video recording indicated those comments were made by Board Member Puzauskas.
  - Page 14, Paragraph 1: Comments were not made by Vice Chair Frazey. A review of the video recording indicated those comments were made by Board Member Naugle.

It was agreed to update the draft 2/28 BOA Minutes accordingly.

- Discussion amongst the Board members covered the following topics:
  - How the City code defines tobacco retail establishments, and whether that definition is inclusive of paraphernalia.
  - How often is the City code updated?
  - What is the difference between medical marijuana and tobacco retail use?
  - It was noted that the City defines an electronic cigarette retailer as a tobacco retailer.
- Chair Lyon noted that it is not up to the Board to determine the difference between tobacco vs vapor, but to adhere to the established City code as currently issued and the stipulations as contained within that code.
- Steve Abrahamson explained that every business is required to get a tax privilege license. That process involves notification of the request to both Steve Abrahamson and Ryan Levesque, who then check to see if a use permit is required.

- Richard Watson questioned Steve Abrahamson as to whether the appellant had obtained a tax privilege license.
- Whitney Baker asked about the time line for this business. Lee Jimenez reviewed the history of the case, noting that he himself was not here at the time of the original request. Records indicate that in 2015 the appellant was told that they did not need a use permit for their business, then 5 months after opening they were cited.
- Mr. Jimenez explained that the original request for a use permit for a tobacco retailer was dated November 4, 2015; the first meeting was cancelled, then the next meeting was pulled from the agenda because the former Director visited the site and deemed there was no tobacco being sold.
- Lee Jimenez explained that separation requirements from schools are measured from the building location lot line to the distance from the lot line of the school.
- Steve Abrahamson noted that to be considered a tobacco retailer, tobacco products must account for 50% or more of the business.
- Steve Abrahamson stated it was important to listen to all the evidence, and for the Board to make their decision based on that evidence.
- Jack Confer asked if Blue Dragon Vapor had a use permit. Lee Jimenez responded that without an approved variance, the use permit cannot be processed. Lee Jimenez explained that the use permit application is still active, and read the 5 criteria stipulations for a use permit:
  1. Will not increase vehicular/pedestrian traffic.
  2. Will not create nuisances (noise, gas, dust, etc.)
  3. Will not contribute to the deterioration of the neighborhood.
  4. Will be compatible with existing structures and uses.
  5. Will have adequate control of disruptive behavior.
- Whitney Baker asked how did the City discover that this business was non-compliant?
- Lee Jimenez responded that a complaint was made to the Code Compliance Department.
- Steve Abrahamson referred to Smoke Free Arizona (AZ Revised statues) and explained that the City of Tempe had created a 'smoke free' ordinance. The City had determined that 'vaping' is considered 'smoking'.
- Lee Jimenez distributed an updated page from the February 6<sup>th</sup> HO Minutes, which had erroneously indicated that Mr. Clair Lane had spoken in opposition. Mr. Lane had spoken in support and the February 6<sup>th</sup> HO Minutes have been revised to indicate that, as well as including his verbatim comments.

## **REGULAR SESSION 6:12 PM**

### **Present:**

David Lyon  
Whitni Baker  
James Frazey  
David Naugle  
Richard Watson  
John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner  
Diane McGuire, Administrative Assistant II  
Lee Jimenez, Senior Planner

### **Absent:**

Kevin Cullens  
John Puzauskas  
Albert Dare (Alternate)

**There were 6 interested citizens present at the regular session.**

**Hearing convened at 6:12 p.m. and was called to order by Chair David Lyon.**

**It was noted by Steve Abrahamson that he had contacted Kevin Cullens by phone and that Mr. Cullens had informed him that he had 'forgotten' there was a public hearing tonight and would not be in attendance.**

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Vice Chair David Lyon introduced City staff (Steve Abrahamson, Lee Jimenez & Diane McGuire).

Board members present at tonight's public hearing introduced themselves.

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**Approval of Board of Adjustment Minutes for February 28, 2018**

On a motion by Board Member Baker, seconded by Vice Chair Frazey, the Board by a vote of 5-0 approved the Board of Adjustment Minutes for February 28, 2018 as corrected in tonight's study session.

Board Member Confer refrained from this vote, as he was not present at the regular session of the February 28, 2018 Board of Adjustment public hearing.

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**THE BOARD DISCUSSED THE FOLLOWING CASE(S):**

Request an appeal of the February 6, 2018 Hearing Officer's decision to deny a variance to reduce the use separation requirement from a tobacco retailer to an elementary or secondary school for **BLUE DRAGON VAPOR (PL170384)** located at 6473 South Rural Road. The appellants are Tracey Moor and David Barno.

Chair Lyon noted that the appellants had the option to continue this case to a future Board of Adjustment hearing as there was not a full Board seated at tonight public hearing. He asked that the appellant approach the podium.

David Barno, introduced himself, stating that although his current residence is in Mesa, the business is located in Tempe.

Chair Lyon asked Mr. Barno, 'are you okay with continuing the case until Board of Adjustment public hearing scheduled for May 23<sup>rd</sup>, is that correct?'

Mr. Barno confirmed that he was in agreement with that continuance.

**MOTION:**

Board Member Confer made a motion that this case be continued to the May 23<sup>rd</sup> Board of Adjustment. Board Member Baker seconded the motion.

**VOTE: 6-0 (Approved)**



Vice Chair Frazey made a motion to adjourn tonight's hearing; Board Member Baker seconded the motion. Motion was approved by a vote of 6 – 0.

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There being no further business the hearing adjourned at 6:30 p.m.  
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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



Steve Abrahamson, Principal Planner

SA:dm