

Staff Summary Report



Hearing Officer Hearing Date: August 19, 2008

Agenda Item Number: 2

SUBJECT: This is a public hearing for a request by **SHALL WE DANCE PHOENIX (PL080227)** located at 3163 South McClintock Drive for one (1) use permit.

DOCUMENT NAME: 20080819dssl01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by **BASHAS VALLEY PLAZA CENTER - SHALL WE DANCE PHOENIX (PL080227)** (Mona Brandt Arvidson, applicant; Weingarten Nostat Inc., property owner) located at 3163 South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District for:

- a. Reconsideration of the July 15, 2008 Hearing Officer's approval due to invalid property owner authorization.
- b. If reconsideration is approved, then rehear:

ZUP08105 Use permit for an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

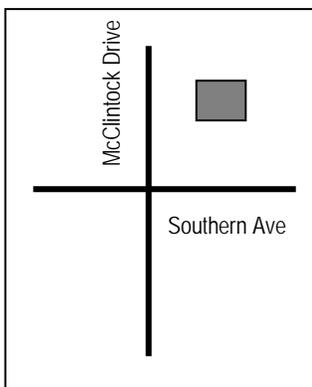
REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval of Reconsideration and Denial of Use Permit.

ADDITIONAL INFO: This case is before the Hearing Officer for reconsideration of the use permit for Shall We Dance, located at 3163 South McClintock Drive in the PCC-1, Planned Commercial Shopping Center. The business was granted a use permit on July 15, 2008 for an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio. After approval, it was determined that the application was invalid due to lack of valid property owner authorization for the use permit. Staff is recommending that the case be reconsidered by the Hearing Officer and that the use permit be reheard. Staff is recommending denial on the use permit due to lack of property owner authorization.



- PAGES:**
1. List of Attachments
 2. Comments
 3. Reason for Denial
 - 3-4. Conditions of Approval
 4. History & Facts; Description; Zoning & Development Code Reference

- ATTACHMENTS:**
1. Location Map(s)
 2. Aerial Photo(s)
 3. Letter of Intent
 4. Site plan
 5. Floor Plan
 - 6-7. Request for Calls for Service and Report
 8. Copy of Correction Notice
 9. Copy of Tenant Improvement Permit
 10. Staff Photograph(s)
 - 11-15. Copy of application and applicant's lease
 - 16-19. July 15, 2008 Hearing Officer Minutes
 - 20-21. Letter of opposition from property owner (Weingarten Realty)
 22. Letter of notification to applicant regarding reconsideration hearing

COMMENTS:

The Shall We Dance Center is an existing dance school teaching a variety of styles from beginner to advanced. They are requesting a use permit for an entertainment facility offering DJ's, dancing and reception space for private dances. The business occupies 7,250 s.f. of building area; the hours of operation are from 9 AM to 1 AM Daily. According to the applicant's letter, during the day the activities are primarily private lessons with a ratio of 1-2 students per teacher with 8-10 teachers on site. Group classes occur in the evenings between 7 pm to 9 pm where the frequency of students is up to 75 people present on the site, coming and going, within a two hour period. In the evenings, after 8 pm, the business features open dances or is rented for private dances or large group lessons. The applicant did not specify how many nights a week the open dances or private functions may occur. The applicant submitted an excerpt of the lease authorizing ballroom dance studio for private lessons, group classes, public ballroom dances and private functions.

Public Input

Staff received a call from the property owner representative stating that they never authorized the use permit and subsequently sent a letter stating their objection to the use permit.

Use Permit

The Zoning and Development Code requires a use permit for entertainment uses within the PCC-1, Planned Commercial Center District. This use permit request meets all applicable tests in the following manner:

Conclusion

Staff recommends approval of the reconsideration and denial of the use permit due to lack of property owner authorization.

REASON(S) FOR DENIAL:

1. Landlord authorization invalid.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

AS ASSIGNED AT THE JULY 15, 2008 HEARING OFFICER HEARING:

1. The use permit is valid for the Shall We Dance and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit. Should the Dance Studio business expand their use to offer liquor sales and consumption; the business would be considered a nightclub or bar which would require a use permit, occupancy clearance and recalculation of the parking requirements.
3. Music generated from the use shall conform to the City of Tempe code requirements for noise control.
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.
5. The applicant shall work with the Tempe Police Department – Crime Prevention Department (480-858-6027) to implement a Security Plan for the business. The security plan to address the control loitering in the parking areas and within the shopping center.

6. There is no outdoor component to the use permit request. All entertainment activity on-site shall be maintained indoors.
7. The applicant is responsible for the clean up of trash and debris created in parking areas following an open dance or private function activity.
8. Live bands prohibited.
9. Hours of operation not-to-exceed 1:00 AM (7 days/week).
10. Use permit to be reviewed in six (6) months time (December 15, 2008) by the Hearing Officer.

**HISTORY &
FACTS:**

- July 15, 2008 Use permit application processed for approval by Hearing Officer.
- April 16, 2008. A tenant improvement permit was issued to Shall We Dance Phoenix for an adult dance classroom with a maximum occupancy of 278 people.
- May 31, 2008. The Tempe Police Department received a call for service regarding the discharge of firearms at the address of 3163 South McClintock Drive.
- May 7, 2008. The Tempe Police Department received a call for service regarding an assault at the property address of 3163 South McClintock Drive.

DESCRIPTION:

Owner – Weingarten Nostat Inc.
Applicant – Mona Brandt Arvidson
Existing Zoning – PCC-1, Planned Commercial Center Neighborhood District

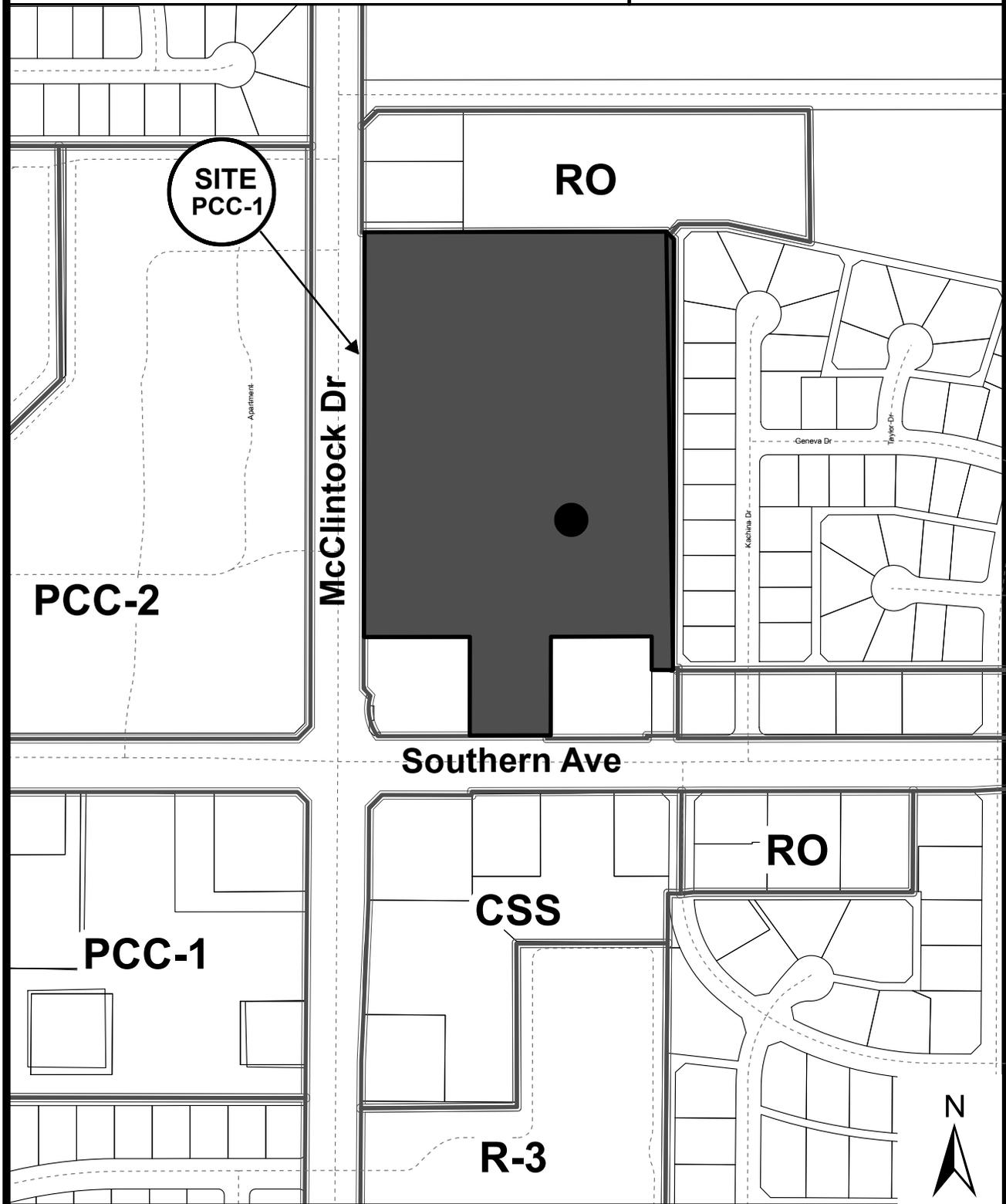
**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

Part 3, Chapter 2, Section 3-202: Permitted Uses in Commercial and Mixed Use Districts.

Part 6, Chapter 3, Section 6-308: Use Permit

SHALL WE DANCE PHOENIX

PL080227



Location Map



SHALL WE DANCE PHOENIX (PL080227)

Letter of Explanation

The business is Shall We Dance Phoenix, a dance school, whose primary business is adult dance instruction. Instruction in all forms of dance may occur between the hours of 9AM and 1AM daily. The types of activities may include private lessons, group classes, and practice dances and other dance functions.

Private lessons occur during the day and evening, and include one or two students for each instructor. Normally there are no more than 8-10 teachers teaching private lessons during any one hour. Group classes occur mainly in the evenings, with the peak hours between 7 and 9 PM. During these times, there may be up to 75 people coming and going in the 2 hour period. Dances occur in the evenings, usually after 8 or 9PM. Customers come and go at varied times during that time, and do not cause significant vehicular or pedestrian traffic in adjacent areas, since they do not arrive or leave all at the same time.

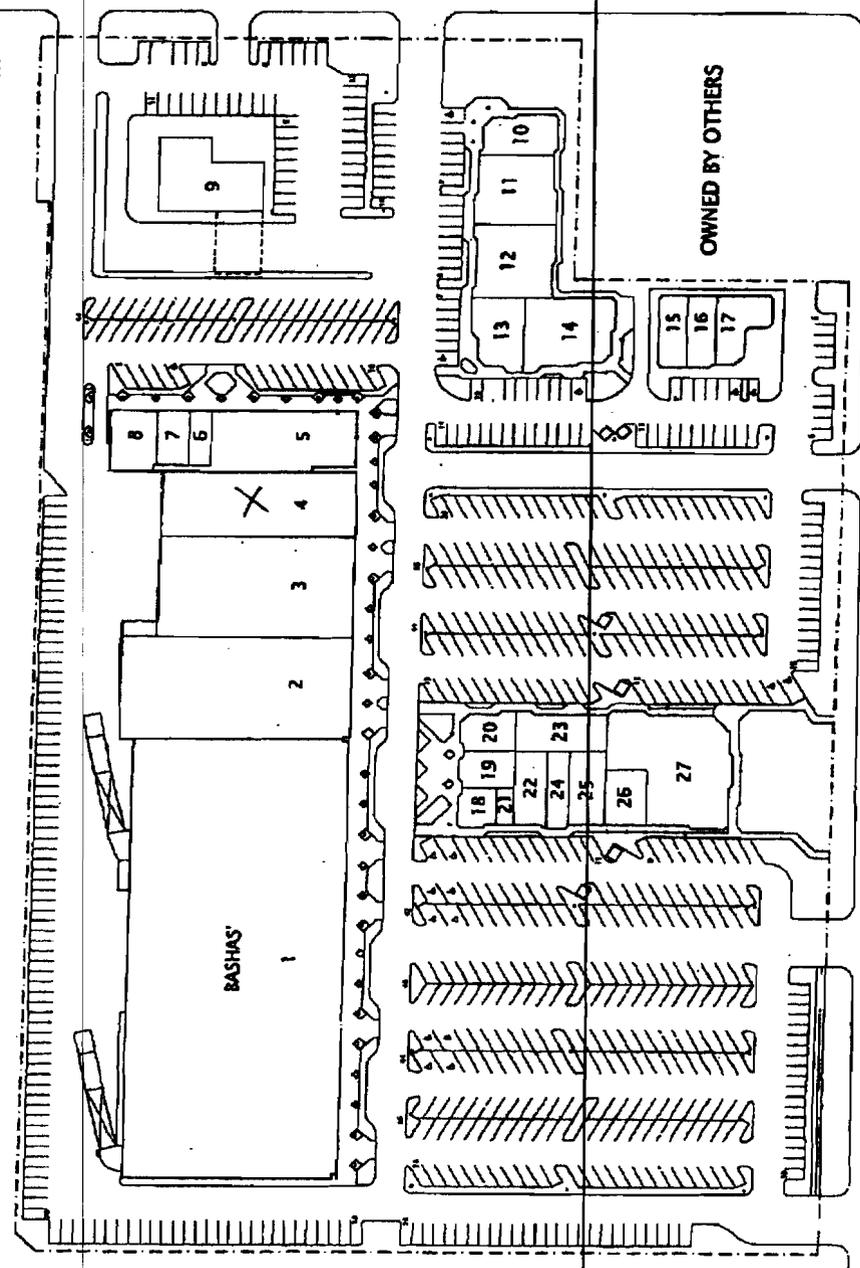
This business has been operating in this fashion, and these activities have not caused significant vehicular or pedestrian traffic in adjacent areas, and have not caused any nuisance to the general public or surrounding area.

The business is applying for a Use Permit for the larger lessons, group classes, practice dances and other functions, which are classified as Entertainment/Amusement by the City of Tempe. This will not change the hours of operation, the number of teachers or customers, or the amount of traffic (vehicular or pedestrian). This will not add any additional nuisance or disruptive behavior. All local, state and federal laws will be complied with. Shall We Dance Phoenix will work with the Tempe Police Department to provide a Security/Safety Plan as required by the Tempe Police Department and this process.

BASHAS' VALLEY PLAZA CENTER

McClintock Drive @ Southern Avenue

Tempe, Arizona



SITE SUMMARY

Building Area: 145,104 Sq. Ft.

1	Bashas'	60,145 SF
2		14,960 SF
3		12,220 SF
4	SHALL WE DANCE	7,480 SF
5	Nello's Pizza	5,199 SF
6	Christian Science Reading Room	765 SF
7	PMT	1,125 SF
8	One Hour Cleaners	1,790 SF
9	Sprint PCS	4,230 SF
10	Taco Del Mar	1,800 SF
11	Otharwides Shoes	3,474 SF
12	Doc Watsons Center For Well Being	2,647 SF
13	Champs	2,543 SF
14		3,534 SF
15	Great Clips	1,250 SF
16	Cafe Wasabi	1,200 SF
17	Starbucks	1,744 SF
18	Subway	900 SF
19		1,235 SF
20	Gold Bar Espresso	1,282 SF
21		422 SF
22		1,440 SF
23	Commercial Credits	2,156 SF
24		1,008 SF
25	Water Nice	1,533 SF
26	Extreme Pts	1,381 SF
27	Modbuster Video	7,023 SF



www.weingarten.com

WEINGARTEN REALTY INVESTORS
 2600 CITIZENS PLAZA, SUITE 100, IRVINGTON, TEXAS 77038
 P.O. BOX 800333, HOUSTON, TEXAS 77281-0333
 (713) 886-8800 TOLL FREE (800) 886-1815 FAX (713) 886-8006

Land Area: 589,266 sf / 13.06 Acres
 Building Area: 145,104 sf
 Parking: 690 Spaces @ 4.75 /1000sf.

Scale: 1"=40'
 Rev.: 01.22.2006

0153

Lesser, Sherri

From: Wong, Theresa
Sent: Monday, July 07, 2008 2:02 PM
To: Lesser, Sherri
Subject: RE: Calls for Service
Attachments: 3163SMcClintockDr.xls

Sherri,

I checked our record management system for January 1 through July 6, 2008, and found 3 officer calls for that address. There were also 2 crimes during that time range -- discharge of a weapon to the west of the parking lot of 3163 S. McClintock Dr. and a misdemeanor assault.

I hope the information is helpful. Let me know if you have any questions or would like additional information.

Have a great day!

Theresa Wong
Strategic and Administrative Crime Analyst
City of Tempe Police Department
480-350-8303
www.tempe.gov/cau

From: Lesser, Sherri
Sent: Monday, July 07, 2008 12:09 PM
To: Wong, Theresa
Subject: FW: Calls for Service

Theresa-

I see that is Mona is out of the office until 7/21.... is it possible that you could look up the calls for service for me.

Sherri X8486

From: Lesser, Sherri
Sent: Monday, July 07, 2008 12:06 PM
To: Qureshi, Mona
Subject: Calls for Service

Mona-

I have the following case going to the Hearing Officer of 7/15:

1. Hold a public hearing for a request by **BASHAS VALLEY PLAZA CENTER - SHALL WE DANCE PHOENIX (PL080227)** (Mona Brandt Arvidson, applicant; Weingarten Nostat Inc., property owner) located at **3163 South McClintock Drive** in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08105 Use permit for an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio.

I know they had an incident in either May or June, could you send me a calls for service report for the past three months.

Sherri

07/09/2008

ATTACHMENT 6

**Citizen and Officer Calls
3163 S. McClintock Dr.
January 1 - July 6, 2008**

Date	Time	Call Type	Disposition
06/07/2008	23:15	SUBJSTOP	OTHER
06/07/2008	23:38	SELFINIT	REPORT
06/07/2008	23:38	SELFINIT	REPORT

**UCR Part I and II Crime
3163 S. McClintock Dr.
January 1 - July 6, 2008**

Date	Time	Offense Description	Disposition
05/31/2008	23:57	DSCHRGWEAP	OTHER DISPOSITION
06/07/2008	23:38	ASSAULT/MISDEMEANOR	EXCEPTIONALCLEARANCE-ADUL

A

City of Tempe *Mylan - Recp*



Development Services Department - Commercial Code Compliance

Correction Notice

Business SHALL WE DANCE

Address 3163 S. McCLINTOCK DR.

This site has been inspected and violation(s) have been identified.
Please correct as noted below

NOTE: YOUR BUSINESS IS IN VIOLATION
OF THE CITY OF TEMPE ZONING
AND DEVELOPMENT CODE SECTION
3-202(A). A USE PERMIT SHALL BE
REQUIRED IN ORDER TO USE THE
BUSINESS AS A BANQUET FACILITY.
PLEASE CONTACT THE PLANNING DEPT
AT 480-350-8921 TO OBTAIN A USE PERMIT
TO AVOID FURTHER ENFORCEMENT ACTIONS.

THANK YOU

By MARVIN WHITE Phone # 480-350-8966

Date 6-5-08

Development Services Department

City of Tempe
 P.O. Box 5002
 31 East Fifth St.
 Tempe, AZ 85280



**Building Safety
 BUILDING PERMIT**

Permit No.: **BP080590**
 Tracking No.: **DS080400**
 Applied Date: **04/10/2008**
 Work Class: **TI**
 Valuation: **\$24,800.00**

Description of Work: **TI**
 Project Address: **3163 S MCCLINTOCK DR**
 Structure:
 Parcel Number: **13334006R** Zoning: **PCC-1**
 Applicant: **SHALL WE DANCE PHOENIX**
 Phone: **281-830-9929**

Validated by: **CT**

Occupancy Group(s):	B*	B*	B		
Ares(s):	896	4,448	448		
Occupant Load:	49	244	5	0	Total: 298

Construction Type/AFES: **III-A /Y** Use(s): **ADULT DANCE CLASSROOM**
 Existing Bldg Area: Existing Use: **GYM/NURSERY**

Building Addition Area:		Building Permit Fee:	\$461.88
TI (Suite) Area:	7,250	Supplemental PC Fee:	\$0.00
Total Building Area:		Plan Review on Standard Plans:	\$0.00
Stories/Height:	0 / .ft	Additional Plan Review:	\$0.00
% Lot Coverage:		Planning Plancheck Fee:	\$0.00
No. Dwelling Units:		Residential Development Tax:	\$0.00
No. Guest Rooms:		Investigation Fee:	\$0.00
Parking-Total Required:		Total Fees:	\$461.88
Parking-Total Provided:		Fees Paid:	\$0.00
Affidavits/Type:	N	Balance:	\$461.88

Special Inspec req'd/type: **N**
N
N

Legal Description:

Deferred Submittal: **N**
N
N
N
N

Miscellaneous: **B* - OCC LOAD FACTOR OF 20 USED FOR ADULT DANCE CLASSROOM**

Planning/Engineering: **N/N**

I have read and agree to the General Conditions and Notices as they appear on the front and back of this permit.

Certification by Permittee

I hereby certify that I agree to comply with all applicable laws and ordinances regulating building construction. I understand that the issuance of a permit based upon plans, specifications and other data does not give authority to violate or cancel any provisions of any state or local laws and does not prevent the City of Tempe from requiring the correction of errors or from preventing building operations being carried on when in violation of said laws. I further certify that all contract work authorized by this permit will be done only by contractors holding valid privilege tax licenses issued by the State of Arizona.

B44034-1-04/17/08-Check

461.88

VOID WITHOUT VALIDATION

Permittee: (please print)

Maria...

Phone:

(480) 112

Signature:

[Signature]

Date:

CUSTOMER



**BASHAS VALLEY PLAZA CENTER –
SHALL WE DANCE PHOENIX**

3163 SOUTH MCCLINTOCK DRIVE

PL080227

FRONT OF BUSINESS

FAX Back to 480-941-2930

DEVELOPMENT SERVICES – PLANNING
Planning Application Form / Checklist



REQUIRED*	PROPERTY OWNER INFORMATION			
BUSINESS NAME:				
CONTACT NAME:				
ADDRESS:				
CITY:	STATE:	ZIP:		
PHONE:				
FAX:				
EMAIL:				

If Property Owner identified above is not representing this case or is not the applicant identified on the Project Submittal Form, the Property Owner(s) is **required** to sign the authorization statement below or submit a written statement authorizing the applicant to file the request(s).

PROPERTY OWNER AUTHORIZATION

SEE ATTACHED

I hereby authorize _____ (applicant business name/contact name)
to process this application with the City of Tempe

Property Owner's Signature

Required if Property Owner is different than Business Owner	BUSINESS OWNER INFORMATION			
BUSINESS NAME:	Shall We Dance Phoenix			
CONTACT NAME:	Mona Brandt Arvidson			
ADDRESS:	3163 S. McCintock			
CITY:	STATE:	ZIP:		
PHONE:	281 830 9929			
FAX:	480-941-3930			
EMAIL:	mona@shallwedancephoenix.com			

Required if Business Owner is different than Applicant	APPLICANT INFORMATION			
BUSINESS NAME:				
CONTACT NAME:				
ADDRESS:	1900 W Chandler Blvd. Ste. 15-373			
CITY:	STATE:	ZIP:		
PHONE:	Chandler AZ 85224			
FAX:				
EMAIL:				

REQUIRED SIGNATURE	
I, <u>Mona Brandt Arvidson</u> , agree that all items required for formal submittal as noted on page 1 have been submitted and is complete. If the submittal is incomplete in any respect, I understand there will be a delay in processing.	<u>Mona Brandt Arvidson</u> 6/6/08 Applicant Signature Date
OFFICE USE ONLY	<input type="checkbox"/> New PL-PROJ <input type="checkbox"/> Existing PL

BUSINESS DESCRIPTION & EXPERIENCE

Weingarten Realty Management Company
4440 N. 36th St. Suite 200, Phoenix, AZ 85018

To: Ryan Smith, Leasing Executive Phone #602-217-8858 Fax #602-263-8852

Business Name: Ballroom Dance Studio
DBA Name: To be decided

Which shopping center are you interested in? Basha's Center, NE corner Southern and McClintock
How many sq ft do you need? 7880

Please provide a detailed description of the type of business you are interested in opening? Ballroom Dance studio for private lessons, group classes, public ballroom dances and private functions.

Why do you think this type of business would be successful here? Nice clean center will attract upscale clientele who are our target market. Moving of a business from similar studio at Elliott and Rural. Good location, good drive by traffic.

Please provide a brief description of your related experience & capabilities operating this type of business? Mona Brandt Arvidson, the owner has been in the dance business for over 10 years, teaching as an independent instructor, running an annual 4-day dance competition, and competing professionally as a dancer. She has an MBA from the University of Houston. Her consultant, Lonnie Mitchell has opened, owned and operated 4 dance studios in the Phoenix area as well as dance studios in the San Francisco Bay area. He has worked for Fred Astaire and has over 30 years experience in the dance business as an instructor, coach, and professional competitor.

Name of existing business location: Paragon Dance Center How many years owned 8 Years by Lonnie Mitchell

Address: SE Corner of Elliott and Rural in Tempe

Type of business: Ballroom Dance Studio
Who is the ultimate decision maker for the business and the lease? Mona Brandt Arvidson
How much money will you need to start the business? Approximately \$90,000

How will this new business be financed? Personally by Mona Brandt Arvidson (cash, stock and retirement accounts, \$85,000, Equity in Houston house \$55,000, available credit from credit cards and line of credit \$54,000)
How much do you estimate you will initially spend to build-out the Premises? \$60,000-\$70,000

How much do you estimate you will initially spend on inventory? No inventory, just furniture, stereo system, around \$20,000 to \$25,000

What level of Annual Gross Sales/Receipts do you feel you need:

To stay in business: \$175,000/Yr
To be satisfied in business: \$250,000
To be extremely pleased with business: \$500,000

SOURCES OF INCOME

Current Salary: \$ \$55,000 per year

Real Estate Income: \$ _____ per year
How much of this income will continue after the new business? All as this is income as a dance instructor. I will continue to work as a dance instructor, and income will actually increase once I have the studio open.

Other Income: \$ _____ per year

From: Mona Arvidson (monaarvidson@yahoo.com)
To: Kellie Forbes
Date: Friday, January 18, 2008 2:20:10 PM
Subject: Re: 0153-Financial paperwork

Kellie Forbes <KForbes@Weingarten.com> wrote:

Good morning, Monal

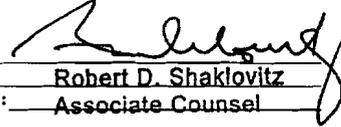
Per Ryan Smith, I have attached some paperwork that you will need to fill out. Please email or fax back to my attention when completed. If you have any questions, feel free to contact me at the number referenced below. Thank you.

Kellie L. Forbes
Administrative Assistant
602.217.8851 O | 602.263.8852 F
WEINGARTEN REALTY
People-to-People. Coast-to-Coast.

Looking for last minute shopping deals? Find them fast with Yahoo! Search.

EXECUTED in multiple counterparts, each of which shall have the force and effect of original, on the day and year first written above.

WEINGARTEN MOSTAT, INC.,
a Texas corporation

By: 
Name: Robert D. Shaklovitz
Title: Associate Counsel

"LANDLORD"

THIS INSTRUMENT (INCLUDING ALL RIDERS, EXHIBITS AND GUARANTY, IF ANY),
CONSTITUTES THE ENTIRE AGREEMENT BETWEEN LANDLORD AND TENANT; NO PRIOR WRITTEN
OR PRIOR OR CONTEMPORANEOUS ORAL PROMISES OR REPRESENTATIONS SHALL BE BINDING.


MONA ARVIDSON

"TENANT"

Execution Page to Shopping Center Lease

4. Hold a public hearing for a request by **ENCORE STAFFING SERVICES (PL080221)** (Nancy Miller, applicant; Weingarten Nostat Inc., property owner) located at 1804 East Southern Avenue, Suite No. 4, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08104 Use permit to allow an employment agency.

Ms. Nancy Miller was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. This is located in the Bashas Plaza at Southern and McClintock.

DECISION:

Mr. Williams approved PL080221/ZUP08104 subject to the following conditions:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment. Any expansion or intensification of the use will require review of the use permit.
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.
5. The rear door shall require lighting that meets five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be reviewed during Building Safety Plan Review.
6. The rear door shall require a lexan vision panel to assist with natural surveillance at the rear of the building. Details to be reviewed during Building Safety Plan Review.

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5. Hold a public hearing for a request by **BASHAS VALLEY PLAZA CENTER - SHALL WE DANCE PHOENIX (PL080227)** (Mona Brandt Arvidson, applicant; Weingarten Nostat Inc., property owner) located at 3163 South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08105 Use permit for an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio.

Ms. Mona Brandt Arvidson was present to represent this case.

 **FILE COPY**

Sherri Lesser, staff planner, gave an overview of this case, and stated that a phone call had been received from an interested citizen who asked that a condition be imposed that no live music be allowed since the staff report had been issued.

Ms. Arvidson noted that although she has not had requests for live music or bands and did not foresee a lot of that, she would like to not have a condition prohibiting live music. If, in the future, there was live music which posed a problem, the issue could be re-visited. She did not feel, given the location of the residences in the area and the way that the studio is situated, that live music would be a problem as the volume could always be controlled.

Mr. Williams asked if the applicant had a back door to the studio. Ms. Arvidson confirmed that one existed and that it would remain closed; this is an emergency exit she stated.

Mr. Williams asked if this building is leased out to other organizations. Ms. Arvidson responded that on Fridays, Saturdays and Sundays people come in and have dances – normally with DJ's. So far there have been no requests for live music. She stated that she had spoken with similar studios in the area and had been advised that they have maybe one or two requests for live music a year. She feels that live music is not that popular, that most people use DJ music. She would like to leave the issue of live music open just in case; a condition limiting excessive noise in the back where the houses are could be added in its place.

Mr. Williams noted to staff that he did not see any conditions relating to hours of operation – usually in cases involving events of live entertainment there is some type of condition restricting the hours allowed. Ms. Lesser explained that she did not limit the hours of operation as in the applicant's letter of explanation the hours would vary. It is one of those things that are difficult to police, Ms. Lesser stated. A condition could be added based on the applicant's letter of explanation.

Mr. Williams asked Ms. Arvidson what the hours of operation would be. She responded that it varied; the latest would be 1 or 2 AM on Friday or Saturday nights. During the week, people are normally out of there by 11 PM or 12 Midnight. It varies because there are teachers giving private lessons at various hours so there might be a few people in the studio late at night.

Mr. Frank Maguire, City of Tempe resident, stated that he has lived in his neighborhood for almost 30 years. He stated that on Friday and Saturday nights, there are hundreds of people at this location and it is party central. It is not a dance studio giving dance lessons. This is a friendly neighborhood center that has been there for a long time. Recently there were 30 or 40 people outside in the parking lot, the place was packed – this is more of a special event. He stated he had started the Mill Avenue Festival of Arts and also the New Year's Eve Block Party so he is familiar with these type of events and this strikes him as more along those lines, than it does as a dance studio. He saw 6 or 7 security guards there one night, the place is trashed afterwards – there are hundreds of liquor bottles, soda bottles, water bottles all over the parking lot. He does not know what the capacity of this place is, but feels that it goes over the maximum allowed. He does not feel this is the right use for this neighborhood and that each event should obtain a special use permit. Although he does not live close enough that the sound would bother him, he has used that center for a number of years and to grant an open permit like this if nothing else a condition should be added that it be re-visited in 30 to 60 days. After a recent shooting at this location, he could not believe how many cars in the parking lot had California license plates.

Mr. Dennis Miller, City of Tempe resident, stated that he and his wife own a restaurant within 300 ft. of this dance studio. They were concerned that they did not receive information on this case. Recently they arrived to find crime tape restricting the parking lot area. The retired man who opens up and makes coffee was escorted to the restaurant by the police and told to lock himself inside the restaurant and not open until given the go ahead by the Police Department. They have not been impacted favorably by this organization. There are 100+ cars taking up spaces allotted to the restaurant and occupying them all evening – he does not know if there is sufficient parking for this business. Mr. Miller addressed concern over Condition of Approval No. 2. He stated that he has 5 employees and a son that just got married. The reception was held in a big hall, a bartender was hired by the family who came in with a liquor license and came in and set up the bar supplying all the liquor. The reception hall had nothing to do with the bar but alcohol was served. He wants to know if this dance studio is leased out to a private party, if this liquor/bartending situation is a possibility. Even though the applicant(s) are supposed to clean up the premises, when he arrived at 5:30 Am this past Sunday morning, he had to pick up beer bottles and alcohol bottles that were in parking lot from the night before. He is concerned that this same type of situation that also went on the night of the shooting will continue. A bullet from that shooting was taken out of a palm tree located 6 ½ ft. from one of their dining tables where people sit and have their coffee, and where they were sitting just a half an hour prior to the shooting.

Mr. Miller stated that loitering has been a continuing problem. He and his wife have lived nearby for over 22 years. If his staff contacts him with a question or concern, he can be at the restaurant within four minutes. On several nights, his staff has been afraid to walk outside and take the trash to the dumpster because of people loitering outside the building. His staff has been instructed not to tell the people to leave, but to contact the Police Department to do that so that his staff, many of whom are working students, are not put in jeopardy. He is very concerned over how cleanup after major events is going to be enforced. After the shooting event, he watched people returning to over 100 cars that were left in the parking area and many appeared to be gang related. The dance studio is leasing out the premises which is greatly impacting in a negative manner the surrounding businesses, citizens and residents.

Mr. Williams asked if, in Mr. Miller's opinion, are the people who are hanging out in the parking lot there because of the dance studio? Mr. Miller responded that he felt that is definitely the case, and that it occurs mainly on the weekends.

Mr. Williams noted to staff that he is not clear on the weekend activities – are these leased activities going to occur every weekend? Ms. Arvidson stated that there is an event almost every Saturday and Sunday. She stated for the record that there was no event this past Saturday, so any debris in the parking lot this past Sunday morning was not from an event hosted by their studio.

Ms. Lesser confirmed, in response to a question from Mr. Williams, that leased events can bring in their own liquor and not violate the liquor laws as it is a private function. Liquor would be addressed as part of the required security plan; that they would need to comply with the State liquor laws.

Ms. Lesser confirmed that a mailing had gone to all within 300 ft. of the property as well as the tenants of the plaza so she did not know why Mr. Miller did not receive a notice.

Mr. Williams noted, with Ms. Lesser's confirmation, that the loitering problem would be addressed with the security plan and the City of Tempe Police Department as well as Condition of Approval No. 6.

Mr. Williams stated that it appeared that this studio is operating as a nightclub where every weekend large gatherings of people have typical issues of nightclub events. He asked the applicant how this request differed from a nightclub operation. Ms. Arvidson stated that the Saturday and Sunday dances are public dances where there is no alcohol and there is an admission charge – there may be food or refreshments but no alcohol. This gives people who take dance lessons a place to go – dancing is a social sport – where they can practice dancing in a controlled environment. She confirmed, in response to a question from Mr. Williams, that for the regular public dances that are held every weekend, there is not any alcohol.

Mr. Williams asked how often private parties are held? Ms. Arvidson stated that they are held on Saturday nights and not every Saturday night. She stated that they have only been open three (3) months. The police incident (shooting) was on May 31st, she noted.

DECISION:

Mr. Williams approved PL080227/ZUP08105 subject to the following conditions:

1. The use permit is valid for the Shall We Dance and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit. Should the Dance Studio business expand their use to offer liquor sales and consumption; the business would be considered a nightclub or bar which would require a use permit, occupancy clearance and recalculation of the parking requirements.
3. Music generated from the use shall conform to the City of Tempe code requirements for noise control.
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.

5. The applicant shall work with the Tempe Police Department – Crime Prevention Department (480-858-6027) to implement a Security Plan for the business. The security plan to address the control or loitering in the parking areas and within the shopping center.
6. There is not outdoor component to the use permit request. All entertainment activity on-site shall be maintained indoors.
7. The applicant is responsible for the clean up of trash and debris created in parking areas following an open dance or private function activity.
8. **Live bands prohibited. ADDED BY HEARING OFFICER**
9. **Hours of operation not-to-exceed 1:00 AM (7 days/week). ADDED BY HEARING OFFICER**
10. **Use permit to be reviewed in six (6) months time (December 15, 2008) by the Hearing Officer. ADDED BY HEARING OFFICER**

The next Hearing Officer public hearing will be held on **Tuesday, August 5, 2008.**

There being no further business the public hearing adjourned at 2:35 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning and Zoning Coordinator
for David Williams, Hearing Officer

SA:dm

WEINGARTEN REALTY

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www.weingarten.com

ALSO

July 28, 2008

City of Tempe
Development Services Dep't
31 E. 5th Street, Garden Level
Tempe, AZ 85281
Attn: Sherri Lesser

via facsimile to 480-350-8872 and
email to Sherri_Lesser@tempe.gov

RE: Shall We Dance Phoenix
3163 McClintock
Tempe, Arizona 85282
PL080227 / ZUP08105

Dear Ms. Lesser:

Weingarten Nostat, Inc. ("Landlord"), the landlord for Mona Arvidson dba Shall We Dance Phoenix ("Dance Studio") and the property owner of the premises at 3163 McClintock, Tempe, Arizona (the "Premises"), is in receipt of the City of Tempe's letter dated July 24, 2008, granting a conditional use permit to the Dance Studio for "an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio."

Landlord objects to the granting of the use permit as it is wholly inconsistent with the terms of the lease with Ms. Arvidson. Please be aware that the Lease Contract between the Landlord and Ms. Arvidson narrowly defines the "Permitted Use" of the premises as "For the operation of a dance studio giving instruction in ballroom dancing."

The Landlord has not consented to allowing the Dance Studio to operate as "an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio."

Please let us know if anyone has alleged that Landlord has consented to such a use.

People-to-People. Coast-to-Coast.

Weingarten Realty is the trade name of Weingarten Realty Investors (the "trust") which is an unincorporated trust organized under the Texas Real Estate Investment Trust Act. Neither the shareholders of the trust, nor its trust managers, officers, employees or other agents are personally, corporately or individually liable for any debt, act, omission or obligation of the trust, and all persons having claims of any kind against the trust must look solely to the property of the trust for the enforcement of their rights.

City of Tempe
July 28, 2008
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Weingarten Nostat, Inc. requests that all notices, including any hearing notices, regarding the Dance Studio be provided to the undersigned at:

Weingarten Nostat, Inc.
c/o Jenny Hyun, Esq
2600 Citadel Plaza Drive
Houston, Texas 77008

Thank you for your assistance and please do not hesitate to contact the undersigned if you have any questions.

WEINGARTEN NOSTAT, INC.

By: _____

Jenny Hyun
Associate Counsel

JH/ks

cc: CF: P0153/L#ARVIM001

Development Services
Department

(480) 350-8331 (Phone)

July 29, 2008

Ms. Mona Brandt Arvidson
Shall We Dance Phoenix
1900 West Chandler Boulevard Suite No. 15-280
Chandler, Arizona 85224

FILE COPY

**RE: SHALL WE DANCE PHOENIX
PL080227 / ZUP08105
RECONSIDERATION OF USE PERMIT APPROVAL**

Dear Ms. Arvidson:

You are hereby advised that the July 15, 2008 Hearing Officer approval of the request by **BASHAS VALLEY PLAZA CENTER - SHALL WE DANCE PHOENIX (PL080227)** (Mona Brandt Arvidson, applicant; Weingarten Nostat Inc., property owner) located at 3163 South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District for a use permit (**ZUP08105**) allowing an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio is hereby scheduled for reconsideration **due to the lack of valid property owner authorization for the activities described.**

This request will be reconsidered by the Hearing Officer at **1:30 p.m. on TUESDAY, AUGUST 19, 2008** at the Council Chambers, 31 East Fifth Street. Please plan to attend.

Sincerely,



Sherri Lesser
Senior Planner

SL/dm

cc: Mr. Ryan Smith/Weingarten Realty
Ms. Brenda Steele/Weingarten Realty
Mr. Bill Strother/Weingarten Realty
Jenny Lyun, Associate Counsel/Weingarten Nostat Inc. (Fax No. 1-713-866-6049)
Mr. David Williams/Hearing Officer
File