

4. Application #: ZA-221-07-Y (Continued from November 1, 2007)  
Location: Citywide  
Proposal: **1)** Determination: Are “households” which include or sometimes include a person with “special needs” considered to be “households with special needs”? **2)** Determination: Is a person who is or may be unable or unwilling to control his/her consumption of alcohol a person with “special needs”? **3)** Determination: Is a person who is or may be addicted to illegal substances as defined in the American with Disabilities Act and/or the Fair Housing Act a person with “special needs”? **4)** Determination: Does a residential restriction on vehicle possession/ownership create a “special needs” population, and if it does is this not a “self-imposed hardship”? **5)** Determination: Does “special needs” include those without money? **6)** Determination: What is the clear definition of “housing which serves households with special needs”? **7)** Determination: What is the clear definition of “housing which serves households with special needs” in view of the fact that “housing” is not commonly a server or provider of services? Service providers for special needs persons are not typically described as “housing” and do not have any required connection with the provision of services, i.e. the services may be provided to prison inmates, apartment tenants, hospital in-patients, office out-patients or walk-ins. **8)** Determination: What is the rational connection between “households with special needs” and “less demand for parking”? In other words, how is this different from the connection between ‘households without children’ or ‘households with ten children’ on one hand and “less demand for parking” or “alternative sources of transportation” on the other? And, does this not open the statutory door for reduction/elimination of parking requirements for all “housing”?
- Ordinance Sections: 702.A.5.F 702.A.5.F 702.A.5.F 702.A.5.F  
702.A.5.F 705.A.5.F 705.A.5.F 705.A.5.F
- Applicant: Capitol Mall Association  
Representative: Bramley Paulin/Capitol Mall Association  
Owner: Phoenix Gospel Mission  
Appellant: Bramley Paulin/Capitol Mall Association

Mr. Tauber read the details of case ZA-221-07-Y.

Mr. Paul swore in the all individuals who wished to speak regarding this case.

Mr. Paul asked if the parties wished to hear ZA-221-07-y and ZA-126-07-7 separate or together as they were related. It was determined to hear them separate.

Mr. Bramley Paulin, Capitol Mall Association, 747 West Van Buren Street, stated he was present to oppose the determination of the Zoning Administrator. He said they asked the questions to get an answer based upon the Zoning Ordinance, as that was the authority of the Zoning Adjustment Hearing Officer. The Zoning Adjustment Hearing Officer brought in stuff including the Consolidated Plan and General Plan. Mr. Paulin stated that the Consolidated Plan provided an assessment of the housing and community development needs and contained a strategic plan to address those needs. The General Plan was the action plan for the future. It served as a guide for orderly development. Neither of them were regulatory. State legislation mandated that cities create a General Plan but only the Zoning Ordinance was a regulatory document for land use that the Zoning Adjustment and the Board of Adjustment shall uphold.

Mr. Paulin referred to the Zoning Ordinance Section 307 to describe the authority and duties of the Zoning Administrator and specifically what the Zoning Adjustment Hearing Officer may not do as stated in 307.A.10.a. i.e., make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the Zoning Ordinance. He asserted that the determination with its reliance upon the Consolidated Plan and the General Plan must be stricken.

Mr. John Saccoman, 121 North 11th Avenue stated that there was no rational connection for the special needs as defined by the determination and parking. There would be only if special needs had some relation to parking. For example, if the group were blind people who could not drive, then there would be a connection to parking. For that reason the Board should overturn the Zoning Adjustment Hearing Officer.

Ms. DeMichael said the Planning Department supported the recommendation of the Hearing Officer in this interpretation. She said special needs populations had been defined in various interpretations over the years and in the granting of various requests for reduction in parking required over decades. Many of the populations that were defined as special needs were those that were regulated by federal statute and HUD. The city used those same definitions in its General Plan and Consolidated Plan and that is why the references made by the Hearing Officer were appropriate because they were using the same federal definitions. She said the Planning Department supported every one of the determinations.

Mr. Gilbert, 4800 North Scottsdale Road, said he represented the Phoenix Rescue Mission and the Changing Life Center. He thought it was important to put into perspective that the opposition to this interpretation was designed to derogate or invalidate the Use Permit granted for the Changing Life Center. He said the Hearing Officer, Mr. Brookhart, covered all of the issues and he ruled against Mr. Paulin and his representation. He said Mr. Paulin maintained that the term "special needs population" must be defined in the Zoning Ordinance. Mr. Gilbert disagreed because he said there was a plentiful definition in the city's General Plan and Consolidated Plan. Mr. Gilbert's said in his experience the Zoning Ordinance was interpreted through the General Plan and Consolidated Plan every day of the week. He felt it was a most unique and preposterous position that the General Plan or Consolidated Plan did not have any bearing on the Zoning Ordinance as they were integrated together. One of the specific requirements of Growing Smarter II mandated that the city zone consistent with the General Plan.

Mr. Gilbert stated that they have had three meetings with the Capitol Mall Association and he felt they made progress on some terms but he believed Mr. Paulin was taking a position that was not consistent with the overall statutory scheme.

Mr. Gilbert stated this was all about the Changing Life Center so he described the program. He said the one year long transitional treatment center with therapy was not an overnight housing and feeding program. It prepared special needs individuals to return to life with counseling and job training. The need for this type of service was in both the General Plan and Consolidated Plan and it was defined there as well. He said the Consolidated Plan called for a continuum of care and he described how the Changing Life Center fit into that plan. He said Mr. Brookhart's determination cited sections and explained where special needs can be defined. He added that the American with Disabilities Act specifically defined special needs housing and that definition was congruent with their proposal.

Mr. Paul stated that the Board had Mr. Brookhart's rationale, and had heard the city's position.

Mr. Gilbert said they had no obligation or burden to establish a rational connection between households with special needs and less demand for parking. The parking requirement was meant to require the right amount of parking and the Zoning Ordinance said that parking was based upon actual experience or documented studies. Mr. Brookhart specifically referenced the studies where less parking was permitted under the circumstances such as those at the Changing Life Center. Mr. Gilbert said that further, all of the women attending the program must surrender their cars.

Mr. Paul asked Mr. Hamblin if each of the determinations should be addressed individually or all together.

Mr. Hamblin said it could be handled either way. The Board could vote for all of them together or individually.

Mr. Paul called for rebuttal.

Mr. Paulin displayed a graphic of Zoning Ordinance Section 702.a.5.f. and read the section: "Special Needs Populations. The Zoning Administrator or Board of Adjustment may grant a Use Permit in accordance with the standards and procedures of Section 307 to reduce the otherwise applicable parking requirements for housing which serves households with special needs, such as but not limited to the disabled and elderly, when it can be shown there is less demand for parking or alternative sources of transportation are available."

Mr. Paulin said that was the ordinance on special needs. He said that was all it talked about. He asserted that nowhere in this paragraph or in any place in the Zoning Ordinance was there a reference to households with special needs that included homeless or drug addicted persons. He said the Zoning Adjustment Hearing Officer relied upon documents outside the authority of the Zoning Administrator. He referred to the second item on the agenda which also talked about special needs and agreed that the seriously mentally ill was a disability. He said drug addiction, the illegal use of drugs, was not a disability under any federal or state law and that it was specifically excluded. The phrase (in Section 702.a.5.f) "such as but not limited to" was extremely broad and could be applied in a limitless manner. It applied to the elderly and disabled because it clearly said it but it was unclear when it applied to any other persons. He stated it was potentially inclusive or exclusive and because the ordinance's language could be construed in more than one manner, it was limitless. An ordinance must be clear, fair and have a sensible meaning. He noted that when an ordinance can only be interpreted by city staff, they can do so arbitrarily.

Mr. Paulin asked the Board to decide upon the requests based upon the Zoning Ordinance and said that was all that the Board could take into consideration and must enforce. He asked the Board to rule that the answers to determination 2, 3, 4 and 5 were "No". He further asked them to enforce the terms of the Zoning Ordinance by limiting the definition of households with special needs to the disabled and elderly only. He asked that all other questions be remanded back to Zoning Adjustment Hearing Officer for further review and determination based solely on the Zoning Ordinance.

Mr. Paulin stated that this case had citywide ramifications. In the case for Mr. Gilbert's client, the Changing Life Center, upholding the Zoning Ordinance by limiting the definition of households with special needs to disabled and elderly did not prevent the development of the Changing Life Center.

Mr. Saccoman said he wanted to respond to what issue was before the Board. He said people who were addicted to drugs and alcohol may have special needs but not for parking. He said that was why the ordinance was overly broad and the Zoning Adjustment Hearing Officer should be overturned.

Mr. Davis asked Mr. Gilbert how they would make someone surrender their car.

Mr. Gilbert said Mr. Jerry Sandvig was here to talk to this issue but basically if there was no car, there was no need for a place to park. The residents would not be allowed to go anywhere unless taken by staff.

Mr. Hamblin said the specific question of the Changing Life Center was better addressed in next case.

**Mr. Tauber MOTIONED in ZA-221-07-Y to uphold the ZAHO determinations.  
Mr. Davis SECONDED the motion.  
Motion CARRIED by a vote of 5-1 (Paul, except as noted below)**

**Roll Call:**

**Mr. Tauber - Aye**

**Mr. Davis - Aye**

**Mr. Gaynor - Aye**

**Mr. Paul – No on 2, 3, 4, 5; Aye on 1, 6, 7, 8**

**Thornham - Aye**

**Ford - Aye**

\* \* \* \*

**Continuances:**

10. Application #: ZA-221-07-Y  
Location: City wide  
Proposal: **1)** Determination: Are "households" which include or sometimes include a person with "special needs" considered to be "households with special needs"? **2)** Determination: Is a person who is or may be unable or unwilling to control his/her consumption of alcohol a person with "special needs"? **3)** Determination: Is a person who is or may be addicted to illegal substances as defined in the American with Disabilities Act and/or the Fair Housing Act a person with "special needs"? **4)** Determination: Does a residential restriction on vehicle possession/ownership create a "special needs" population, and if it does is this not a "self-imposed hardship"? **5)** Determination: Does "special needs" include those without money? **6)** Determination: What is the clear definition of "housing which serves households with special needs"? **7)** Determination: What is the clear definition of "housing which serves households with special needs" in view of the fact that "housing" is not commonly a server or provider of services? Service providers for special needs persons are not typically described as "housing" and do not have any required connection with the provision of services, i.e. the services may be provided to prison inmates, apartment tenants, hospital in-patients, office out-patients or walk-ins. **8)** Determination: What is the rational connection between "households with special needs" and "less demand for parking"? In other words, how is this different from the connection between 'households without children' or 'households with ten children' on one hand and "less demand for parking" or "alternative sources of transportation" on the other? And, does this not open the statutory door for reduction/elimination of parking requirements for all "housing"?
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705.A.5.F 705.A.5.F 705.A.5.F
- Applicant: Capitol Mall Association  
Representative: Bramley Paulin/Capitol Mall Association  
Owner: Phoenix Gospel Mission  
Appellant: Bramley Paulin/Capitol Mall Association

**AND:**

11. Application #: ZA-126-07-7 (Request for reconsideration granted from the September 6, 2007 BOA Hearing)
- Existing Zoning: R-5 RI CMOD/C-2 CMOD
- Location: 338 North 15th Avenue
- Proposal: Use permit to reduce the required parking spaces to 64 (206 parking spaces required) for households with special needs. Use permit required.
- Ordinance Sections: 702.A.5.f.
- Applicant: Paul Gilbert/Beus Gilbert PLLC
- Representative: Neal Pascoe/Beus Gilbert PLLC
- Owner: Jerry Sanduig/Phoenix Gospel Mission
- Appellant: Bramley Paulin/Capitol Mall Association

Paul swore in Mr. Gilbert and Mr. Paulin.

Mr. Gilbert, 4800 North Scottsdale Road, stated that he was the applicant and the representative of the Phoenix Gospel Mission in case ZA-126-07-7 as well as the party of interest in case ZA-221-07-Y. He said that he had spoken with Bramley Paulin and he was in concurrence with the request to have the two cases continued to January 10, 2008 due to schedule conflicts.

Mr. Paul asked if there was any opposition. Having received none, he called for a motion.

**Mr. Ford MOTIONED to continue ZA-126-07-7 and ZA-221-07-Y to the January 10, 2008 hearing.**

**Mr. Tauber SECONDED the motion.**

**Motion CARRIED by a vote of 5-0.**

**APPEALED TO THE BOARD OF ADJUSTMENT NOVEMBER 1, 2007**

**Application #:** ZA-221-07 – APPROVED  
**Location:** City wide  
**Proposal:** 1) Determination: Are "households" which include or sometimes include a person with "special needs" considered to be "households with special needs"? 2) Determination: Is a person who is or may be unable or unwilling to control his/her consumption of alcohol a person with "special needs"? 3) Determination: Is a person who is or may be addicted to illegal substances, as defined in the American with Disabilities Act and/or the Fair Housing Act, a person with "special needs"? 4) Determination: Does a residential restriction on vehicle possession/ownership create a "special needs" population, and if it does is this not a "self-imposed hardship"? 5) Determination: Does "special needs" include those without money? 6) Determination: What is the clear definition of "housing which serves households with special needs"? 7) Determination: What is the clear definition of "housing, which serves households with special needs," in view of the fact that "housing" is not commonly a server or provider of services? Service providers for special needs persons are not typically described as "housing" and do not have any required connection with the provision of services, i.e. the services may be provided to prison inmates, apartment tenants, hospital in-patients, office out-patients or walk-ins. 8) Determination: What is the rational connection between "households with special needs" and "less demand for parking"? In other words, how is this different from the connection between 'households without children' or 'households with 10 children' on one hand and "less demand for parking" or "alternative sources of transportation" on the other? And, does this not open the statutory door for reduction/elimination of parking requirements for all "housing"?

**Ordinance Sections:** 702.A.5.F. 702.A.5.F. 702.A.5.F. 702.A.5.F. 702.A.5.F. 705.A.5.F. 705.A.5.F. 705.A.5.F.

**Applicant:** Capitol Mall Association  
**Representative:** Bramley Paulin/Capitol Mall Association  
**Owner:** Phoenix Gospel Mission

**Zoning Adjustment Hearing Officer: Ted Brookhart, AICP  
Planner: Ed Keyser**

**DECISION:** This request for the following determinations for: 1) Determination: Are "households" which include or sometimes include a person with "special needs" considered to be "households with special needs"? 2) Determination: Is a person who is or may be unable or unwilling to control his/her consumption of alcohol a person with



"special needs"? **3)** Determination: Is a person who is or may be addicted to illegal substances, as defined in the American with Disabilities Act and/or the Fair Housing Act, a person with "special needs"? **4)** Determination: Does a residential restriction on vehicle possession/ownership create a "special needs" population, and if it does is this not a "self-imposed hardship"? **5)** Determination: Does "special needs" include those without money? **6)** Determination: What is the clear definition of "housing which serves households with special needs"? **7)** Determination: What is the clear definition of "housing, which serves households with special needs," in view of the fact that "housing" is not commonly a server or provider of services? Service providers for special needs persons are not typically described as "housing" and do not have any required connection with the provision of services, i.e. the services may be provided to prison inmates, apartment tenants, hospital in-patients, office out-patients or walk-ins. **8)** Determination: What is the rational connection between "households with special needs" and "less demand for parking"? In other words, how is this different from the connection between 'households without children' or 'households with 10 children' on one hand and "less demand for parking" or "alternative sources of transportation" on the other? And, does this not open the statutory door for reduction/elimination of parking requirements for all "housing"? were determined as shown by the Findings of Fact section below of the Zoning Adjustment Hearing Officer.

**FINDINGS OF FACT:** In considering the questions as posed by the applicant, it is important to understand that the purpose of the Zoning Ordinance establishes "standards and regulations to govern the use of land and structures in the City and for review of all proposed development of property in the City, and to provide a development review process that will be comprehensive, consistent and efficient in the implementation of the General Plan and *other adopted goals, policies and standards of the City.*" (emphasis added). As such, the Ordinance relies on a wide array of official actions and documents to define terms used in the regulations. In considering this request we have relied on the Zoning Ordinance, the General Plan, the Consolidated Plan 2005 – 2010, the 2005-06 Annual Action Plan, the 2006-2007 Annual Action Plan and the American Heritage dictionary. The Consolidated Plan and the Annual Action Plans are document which provide an assessment of the housing and community development needs of Phoenix and provides a strategic plan for addressing these needs. The requested determinations are addressed in the order presented at the hearing on April 24, 2007.

Request 1: Are "households" which include or sometimes include a person with "special needs" considered to be "households with special needs?"

Determination: Yes. The Consolidated Plan (Section 1.4) identifies persons with special needs as "special populations (non-homeless) in need of supportive housing including, but are not limited to: frail elderly persons, seriously mentally ill persons, developmentally disabled persons, persons infected with HIV virus, (and) chemically dependent persons." Any household "a domestic unit consisting of the members of a family who live together..." American Heritage Dictionary, which includes a member of the above described "special population" would be considered a household with special needs.

Request 2: Is a person who is or may be unable or unwilling to control his/her consumption of alcohol a person with "special needs"?

Determination: Yes. The Consolidated Plan in several areas, and specifically in Strategy D, identifies "persons with alcohol and drug abuse problems" as being persons with special needs. Not all special needs housing facilities are required to serve this population by any federal or state statutes like they would be required to provide housing for handicapped persons.

Request 3: Is a person who is or may be addicted to illegal substances, as defined in the Americans with Disabilities Act and/or the Fair Housing Act, a person with "special needs?"

Determination: As noted above, "chemically dependent persons" or "persons with alcohol or drug abuse problems" are classified in the Consolidated Plan as being persons with "special needs." This is a valid definition for the purpose of regulating land use within the scope of the Zoning Ordinance.

Request 4: Does a residential restriction on vehicle possession/ownership create a "special needs" population, and if it does is this not a "self-imposed hardship?"

Determination: A residential restriction on vehicle possession/ownership does not create a "special needs" population. The subject population derives its status from the condition of the individual person, e.g., frail elderly, seriously mentally ill, etc. The question of vehicle possession/ownership is irrelevant to whether the person is considered to have "special needs."

Request 5: Does "special needs" include those without money?"

Determination: Generally speaking, those without money are considered to be poor. The Consolidated Plan acknowledges that many people "without money" may have "special needs," but it does not consider the lack of money as being a "special need." Strategy D makes this clear on page 55 of the plan. "A large portion of the lower income population is made up of individuals and families with needs requiring specialized services and/or facilities. Included are physically and mentally disabled persons, frail elderly persons, persons affected by domestic violence, low income families with children, persons with alcohol and drug abuse problems and children." It is obvious that some circumstances such as disability, substance abuse, etc. may lead to becoming one of "those without money," but there must be at least one of the above-described conditions present to qualify as "special needs."

Request 6: What is the clear definition of "housing which serves households with special needs?"

Determination: The phrase is self-explanatory. The American Heritage Dictionary defines "housing" as a verb mean "to provide living quarter for." Thus, the above phrase simply means living quarters for a domestic unit consisting of members of a family which has persons with one or more of the "special needs" enumerated above.

Request 7: What is the clear definition of “housing which serves households with special needs” in view of the fact that “housing” is not commonly a server or provider of services? Service providers for special needs persons are not typically described as “housing” and do not have any required connection with the provision of services, i.e. the services may be provided to prison inmates, apartment tenants, hospital in-patients, office out-patients or walk-ins.

Determination: The applicant has chosen to answer his own question, albeit incorrectly. The Phoenix General Plan Housing Element in Goal 3 states, “the City should encourage development of housing units suitable to residents with special needs such as, but not limited to, the disabled, elderly, and homeless persons.” The General Plan further defines “special needs populations” as the same persons described in the Comprehensive Plan. It is clear in both plans that these persons “have a difficult time finding suitable housing” (General Plan) and that they need “some level of supportive housing and services that enable the person/household to live as independently as possible” (General Plan).

Clearly, the intent of the City Council as enumerated in these plans is to meet the housing needs of this population. The American Heritage Dictionary defines the verb serve as “to meet the needs or requirements of; satisfy.” In this context, it is clear the term “serve” and the phrase “meet the needs or requirements of” have the same meaning. Thus, “housing” is an object, much like food or medicine, which meets the needs of “households with special needs” and is correctly stated.

Request 8: What is the rational connection between “households with special needs” and “less demand for parking?” In other words, how is this different from the connection between “households without children” or “households with 10 children” on one hand and “less demand for parking” or “alternative sources of transportation” on the other? And, does this not open the statutory door for reduction/elimination of parking requirements for all “housing?”

Determination: This is really three questions in one paragraph. We will address each question in order.

The “rational connection” in this question is the fact that parking and traffic studies conducted in Phoenix and nationwide by competent engineers and social service agencies have consistently shown that many persons identified as having “special needs” do not, for a variety of reasons, own or have access to a vehicle. Many people, because of their individual circumstances, are not permitted to drive according to state statute or may not have applied for/passed the requisite test for obtaining a driver license. No vehicle, no need for parking spaces.

The second question is somewhat confusing as it mixes parking demands based on family size with alternative sources of transportation. It is reasonable to presume that if income, etc. are equal, family with more drivers would have more vehicles and a corresponding need for more parking spaces. Since the Zoning Ordinance cannot regulate family size, it addresses this apparent disparity by regulating where parking may be placed on a site and by the type of dwelling unit. For example, required parking for dwelling units cannot, in most circumstances, occupy the front ten feet of the

required front yard setback. Likewise different dwelling unit types have different parking requirements; multi-family units require 1.5 spaces for 1 and 2 bedroom units, but 2 spaces for units with 3 or more bedrooms, while single-family detached dwellings simply require 2 spaces per unit. Other types of living accommodations, such as group homes, dormitories or fraternity houses each have their own special parking requirements.

For those special population groups with known parking needs which are different from the norm, the ordinance provides for reductions through the use permit process. One significant factor, which has been shown to reduce the demand for parking spaces, is the presence of “alternative sources” that reduce the need for parking spaces. This process protects the public interest and promotes the general welfare of the community by allowing the Ordinance standards to be “tailored” to the specific parking needs of a specific population based on studies and data, which demonstrate a lessened demand. Since a substantial portion of any urban population may by reason of age, infirmity, income, etc. not be able to own or operate a personal vehicle. The use permit process is an appropriate means of allowing a reduction to occur which still satisfies the objectives of zoning regulations.

As for the third question, if the applicant is raising concerns regarding the altering of parking requirements for a broad population, i.e. “all housing,” this can only be accomplished through obtaining appropriate variances for specific sites, the legislative process and not by use permit. Furthermore, the use permit standards of the ordinance require that any approval will not cause “a significant increase in vehicular or pedestrian traffic in adjacent residential areas.”

**SUMMARY:** Mr. Harry Keiden, 1850 North Central Avenue, #1150 Phoenix, AZ 85004, representing the Capitol Mall Association stated his belief that Section 702.A.5.f., while identifying “special needs”, failed to define the term. He argued that battered women were not a special needs population.

Ms. Ruth Ann Marston, 57 West Vernon Avenue, Phoenix, AZ 85003 offered the definition of “special needs” used by the Phoenix Union School Board and another one used by the State of Arizona. She expressed her belief that the request before the hearing officer did not meet either of these definitions.

Many other members of the community expressed their beliefs that the population in question did not meet the definition of “special needs.” Mr. Ted Brookhart made his determinations on each of these cases as noted above.

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