



City of Las Vegas

Agenda Item No.: 77.

**AGENDA SUMMARY PAGE PLANNING & DEVELOPMENT
CITY COUNCIL MEETING OF: APRIL 7, 2010**

**DEPARTMENT: PLANNING & DEVELOPMENT
DIRECTOR: M. MARGO WHEELER**

☐ Consent ☒ Discussion

SUBJECT:
VAR-3552 - ABEYANCE ITEM - VARIANCE - PUBLIC HEARING -
APPLICANT/OWNER: BODYFLY KNOX, LLC - Request for a Variance TO ALLOW 59
PARKING SPACES WHERE 69 ARE REQUIRED FOR A PROPOSED COMMERCIAL
RECREATION/AMUSEMENT (INDOOR) USE on 0.81 acres on the north side of Sahara
Avenue, approximately 440 feet east of Sixth Street (APNs 162-03-801-088 and 137), C-1
(Limited Commercial) Zone, Ward 3 (Reese). Staff recommends DENIAL. The Planning
Commission (5-2 vote) recommends APPROVAL.

PROTESTS RECEIVED BEFORE:

Planning Commission Mtg.

134

City Council Meeting

15

APPROVALS RECEIVED BEFORE:

Planning Commission Mtg.

121

City Council Meeting

111

RECOMMENDATION:

Staff recommends DENIAL. The Planning Commission (5-2 vote) recommends APPROVAL,
subject to conditions.

BACKUP DOCUMENTATION:

1. Location and Aerial Maps
2. Conditions and Staff Report
3. Supporting Documentation
4. Photos
5. Justification Letter
6. Protest/Support Postcards from the February 17, 2010 City Council Meeting
7. Submitted at Meeting - Binder with 31 Business Support Letters and 79 Neighborhood Support Petition Signatures by Attorney Bob Gronauer and Opposition Packet, Report from Superior Engineering Services, Inc., Letter from Greg McDermott and Report from Acoustics Group, Inc., by Attorney Daniel Stewart for Items 77 and 78
8. Backup referenced from the January 14, 2010 Planning Commission Meeting Item 6

Motion made by GARY REESE to Deny

Passed For: 4; Against: 3; Abstain: 0; Did Not Vote: 0; Excused: 0

RICKI Y. BARLOW, LOIS TARKANIAN, OSCAR B. GOODMAN, GARY REESE; (Against-STEVE WOLFSON, STEVEN D. ROSS, STAVROS S. ANTHONY); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:

GOODMAN declared the Public Hearing open for Items 77 and 78.

CITY COUNCIL MEETING OF: APRIL 7, 2010

COUNCILMAN REESE indicated that he received numerous letters, first opposing and then supporting the project. He received letters from COMMISSIONER CHRIS GIUNCHIGLIANI and ASSEMBLYMAN RICHARD SEGERBLOM opposing the project, and letters from MR. COYLE, Republic Silver State, both opposing and supporting the project. The applicant also provided him with letters from adjacent businesses. He has always tried to support the needs of the residents most affected. It teaches him how people change their minds; someone is either for something or against a project.

ATTORNEY BOB GRONAUER, 8345 West Sunset Road, appeared on behalf of the owner and applicant, GARY SPEAR, who has been in the indoor skydiving business for 25 years.

COUNCILMAN REESE verified with ATTORNEY GRONAUER that MR. SPEAR made the investment in the area prior to submitting the applications. MR. SPEAR is the former owner and operator of Flyaway located on Convention Center Drive and Las Vegas Boulevard. His intention is not to get the zoning and then flip the property. He added that the medical office building on the property is occupied by a dentist. ATTORNEY GRONAUER indicated that TODD McBRAYER, Breslin Builders, is the contractor for the project. MR. McBRAYER also conducted the sound study.

ATTORNEY GRONAUER explained the property is located zoning on Sahara Avenue, east of 6th Street. The property is cross hatched. The project will not encroach into any setback requirements for residential standards. The property is within a commercial corridor. An RPD-25 was also approved in the area. On a map, he showed the cluster of homes, approximately 100 feet from the proposed facility. In proximity are existing buildings and vacant parcels for commercial purposes. The area is for commercial or non-residential type uses. The use is allowed as a right by Code. The property is located within the redevelopment area, and the applicant is willing to make a private investment into the community.

He outlined the application and presented a design depicting the proposed six-level building. The first level is the entry and the second is the storage area for employee access. The third level is the welcoming area where skydiving classes will be held. The observation area and lockers are on the fourth level. The propeller is on level five and the motor on level six. He pointed out that Breslin Builders designed the facility to repurpose the building as an office building in the event the body flying business fails. The wind tunnel is completely enclosed in 12 inches of concrete, there are no vents for outside air, the covered motor is on top of the wind tunnel and the air recirculates.

Due to the size of the building, ATTORNEY GRONAUER explained that only 22 people could be present at one time; six employees and 16 people participating in the experience. The hour and a half includes instructions and the experience.

ATTORNEY GRONAUER noted that the parking requirement is 69 spaces but they are proposing 59. He explained that the existing medical office building provides 19 parking spaces, and the dental office is open Monday, Tuesday and Thursday all day, half day on Friday, and it is

CITY COUNCIL MEETING OF: APRIL 7, 2010

closed on Saturday and Sunday. There is no conflict with the time of parking because the peak of the dental office is during the daytime, and the body flying is late afternoon, early evening.

The proposed structure will be 9,970 square feet, of that amount, about 2,300 square feet is non-usable, which includes levels that have the propeller and machinery. The code requires the entire footage be taken into account for the parking requirements. If this would not be required, they would exceed the parking requirements. The majority of the people who use this facility are tourists. The medical office will be removed in two years, once the lease expires, adding additional parking spaces.

Regarding the sound, ATTORNEY GRONAUER noted that he visited the Flyaway facility and that there is a humming sound within 5 feet to 10 feet. Moving farther away from the building, the ambient noise in the area cannot be heard but for the traffic. The small amount of sound is coming from the open chamber from the Flyaway cylinder facility. However, the proposed facility will be fully enclosed. The Planning Commission approved the proposed facility subject to a third party conducting a noise study prior to obtaining a Certificate of Occupancy.

Regarding the vibration, he indicated that the Flyaway building it sits on does not vibrate. The City of Las Vegas would not allow a builder to construct a structure that will continue to vibrate, create public safety and structural integrity issues. People are fearful that this operation will be noisy, vibrate and ruin their lifestyles. However, he assured the Council that this would not happen.

ATTORNEY GRONAUER stated that many people present oppose the project, but the support signatures he obtained are legitimate and they could not be present. He read some of the support letters, which he submitted for the record. The supporters believe the project has entertainment and economic value. The surrounding businesses support it because the area needs to attract new businesses.

ATTORNEY GRONAUER concluded that the City of Las Vegas is looking at job creation in the redevelopment area. The developer is making a substantial investment in the area and will help create jobs. This will be a win-win situation. He commented on a business he had represented for a beer and wine license application, which created new jobs and spearheaded new businesses. Denial of the application would leave the property vacant and will not create construction jobs. He acknowledged the number of oppositions, but pointed out that it is not every day, especially during difficult economic times, a developer is willing to construct something that will create a positive impact.

COUNCILMAN WOLFSON verified with MARGO WHEELER, Director of Planning and Development, that the Planning Commission approved the application with a condition that prior to the issuance of the Certificate of Occupancy, the applicant submit a noise study after construction of the building, and, before occupancy must show the actual decibel levels both at distances of 100 and 500 feet. MS. WHEELER explained that the report would have to be submitted by a certified professional qualified to conduct such a study to be reviewed by staff. If

CITY COUNCIL MEETING OF: APRIL 7, 2010

staff could not review that appropriately, then staff would have to look at having a professional in the field review the report to ensure that it is accurate. She further explained that the decibel numbers are part of the noise element where certain decibel levels generally are allowed in neighborhoods.

COUNCILWOMAN TARKANIAN pointed out that 55 to 60 decibels would be considered conversational speech.

ATTORNEY DANIEL STEWART, 100 North City Park Way, appeared on behalf of a group of small business owners located near the proposed facility. He understands the Council has a difficult decision to vote on a project that could bring new jobs. But this area is not appropriate for this type of project. The business owners are not against growth nor do they oppose new development or competition, but they would welcome office and retail space or restaurants. The area is already struggling and the proposed project would negatively impact the existing businesses. Regarding the parking issue, ATTORNEY STEWART disagreed that businesses operate at different times. He has not seen a shared parking arrangement that the applicant must provide.

ATTORNEY STEWART indicated that a parking study has commissioned that found the parking to be inadequate. He referred to a Flyway Indoor Skydiving flyer advertising group events and competition, and he pointed out that the proposed facility will bring more participants and observers than anticipated.

He referred to a letter regarding the expansion of Sahara Avenue where the on-street parking will be removed along the north side of Sahara Avenue. Therefore, those businesses can no longer rely on on-street parking.

ATTORNEY STEWART pointed out that the proposed project does not meet the objectives of the Redevelopment Plan for the downtown area. He referred to the Beverly Green Neighborhood Plan established in 2003 requiring proposed amusement rides to be no higher than 50 feet from the natural grade of the ground. The proposed project is higher, and it does not harmonize with surrounding properties. In the event the business fails, he hopes the building would become a commercial use.

ATTORNEY STEWART indicated that his clients hired a consultant to conduct a sound study. Additionally, a citizen took it upon herself to email Breslin Builders claiming to be a business in Panama wanting to build an indoor skydiving facility and requested information about the sound level distance requirements. He alleged that the sound levels to the nearest neighbor are anticipated to be about 62 decibels, a significant impact on the immediate neighborhood. He asked that the City Council deny the applications.

ROBERT WOO, Principal Consultant for Acoustics Group, Inc., stated he reviewed the noise study conducted by the developer to determine its accuracy. He pointed out that the applicant conducted the sound study with the use of a Radio Shack sound level meter. The noise was

CITY COUNCIL MEETING OF: APRIL 7, 2010

measured for 30-second intervals three times per day and averaged those numbers to arrive at an average baseline noise for each measured location. He further noted that the methodology used is the applicant did not consider the frequency of the sound going through a 12-inch concrete wall or additional noise sources, such as the noise from the outside support equipment. The methodology used is not appropriate with respect to the City's noise ordinance.

MR. WOO explained that his study included the selection of five locations measured for 25 continuous hours. The hourly noise levels vary lower at night and higher during the day-time. Depending on when the wind tunnel would be operated, it could have a greater impact in the evening versus the peak hours, such as 5:00 p.m. or noon time. If the project is approved, MR. WOO asked that the Council consider a sound study to be conducted at a distance of 40 or 50 feet. The study will result that at those locations, it exceeds the ambient noise environment, and there will be an impact.

MS. WHEELER clarified that the Assessor's Office records indicate that the most recent sale of the property was in May of 2008. There is no shared parking agreement being proposed because this is a variance. The residential properties to the north and to the west are approximately 500 feet away. The overbuilding issue in the staff report refers to the project site and the construction of this facility and not that the area is overbuilt.

TODD FARLOW, Las Vegas citizen, stated that he visited the Flyaway facility and could not hear the ambient sounds. Regarding the parking issue, he opined that business owners want to use the parking for their own use.

EUGENE GORDINA and TERRY MURPHY, owners of the Tiger Lily Flower Shop, 700 East Sahara Avenue, located west of the proposed facility, expressed concern about the vibration noise and the large air conditioning units operating at high speed. The facility is expected to attract tourists and large group events that would impact the adjacent residential neighborhood. MR. HUNT read a letter from DORETTE WILLIAMS, the owner and Administrator of New Horizon Rest Home, expressing concerns that the proposed project would be a detriment to her care facility.

SCOTT SWANK, PAM HARTLEY, PAUL BENEDICT, TATIANA GORETSKAYA, SCOTT MARTIN, BENJAMIN MORRIS, MICHAEL HANRATTY, President of the South Ridge Neighborhood Association, TOM SCHLESINGER, STAN ZURAWSKI, LENARD FERRIS, JOHN McCORMICK and JOYCE PERLMAN, all appeared in opposition. Their comments included various concerns related to noise intrusion, the height of the building, energy consumption, parking encroachment into the neighboring businesses, and traffic increase. The speakers do not consider this development compatible with the community and fear it would harm the local retail. A resident suggested the applicant consider building the facility at 121 South Sunset Road, where a sports arena exists on a large parcel that would be an excellent location for this type of amusement. The speakers would prefer development of restaurants, professional buildings and additional retail. All agreed this use is not appropriate for this area.

CITY COUNCIL MEETING OF: APRIL 7, 2010

LINDA ZURAWSKI confessed she wrote the emails referred to by ATTORNEY STEWART to obtain information concerning the noise element. However, she did not write to Breslin Builders but to a company in Switzerland.

BETTY RUMFORD, Director and Neighborhood Coordinator for the Mesquite Club, stated that the affected residents and business owners meet in their clubhouse and they are diligently working to rebuild their neighborhood. She supports their endeavors and asked the Council deny the application.

ATTORNEY GRONAUER was disappointed with the residents' comments regarding the noise. From the beginning, they were told the applicant would work with them to mitigate their concerns. His client is trying to invest \$7.2 million in the City and has tried to cooperate, but did not receive the same cooperation. He refuted allegations that the noise would sound like a category five hurricane. Misinformation changed some of the residents' support to objections.

ATTORNEY GRONAUER clarified that the building was not designed for competitions, and they will accept a condition to that effect. He has worked hard with the neighborhood, and he believes the right decision is to allow this investment in the development area. The use is allowed as a right in a commercial-zoned district.

MAYOR PRO TEM REESE stated that the City Council has been very active in neighborhoods, especially in Wards 1, 3, and 5. Projects, such as the StripLinx corridor, speed bumps, implementation of neighborhood plans, are approved because of the residents' support. Now, he is being asked by the applicant to go against what he has worked so hard for so many years. It is difficult for him to make this decision. He appreciates those residents who take time to attend meetings and write letters.

COUNCILMAN WOLFSON discussed with MR. SPEAR his qualifications, to which MR. SPEAR replied that he has been involved in the ownership of two facilities, one in Tennessee and one in Las Vegas. He has participated as a consultant for a facility in Osaka, Japan. He has spent three months in Switzerland at the first body flying facility built in Europe. He has been a consultant for an Egyptian facility in Cairo and spent three months in Russia and two weeks in Turkey training its military.

COUNCILMAN WOLFSON questioned the reason why someone would purchase land with the hopes of building this facility when there is opposition. It would seem more prudent to bring that idea to the City Council first for feedback. MR. SPEAR responded that after an analysis of various locations he was considering purchasing, he found that the use is permitted at the subject location. He met with MAYOR PRO TEM REESE three years ago where he presented the project and indicated that it seemed like a good idea, contingent upon obtaining neighborhood support.

MR. SPEAR indicated that body flying is an expensive recreational activity that costs \$75 per participant. He considered this type of development in Las Vegas because of its major tourist

CITY COUNCIL MEETING OF: APRIL 7, 2010

market. Most clients range from 50 to 60 years of age. The facility would be open until 11:00 pm and one session from 8:00 a.m. to 11:00 a.m. The turbine could potentially run from 8:00 a.m. to 11:00 p.m.

COUNCILMAN WOLFSON suggested that applicants submit documentation prior to the meeting to give the Council time to read it before the meeting. He verified with ATTORNEY GRONAUER that 15 jobs would be created with six employees on site. The construction phase could create 50 to 75 jobs.

COUNCILMAN ROSS remarked that he worked for three years at the Flamingo facility. He echoed MAYOR PRO TEM REESE'S comments that the people most affected need to be heard. He opined the noise is not an issue, and there are fewer parking spaces at the Convention Center location than there would be at this facility. The experience is fun and locals and tourists will continue to patronize the facility. Sometimes people are afraid of things they do not understand. He is familiar with the neighborhood plan but businesses along Sahara Avenue are hurting. This area needs revitalization with something new and exciting, whether it will be this project or something else, something new that will bring people to patronize the existing businesses.

COUNCILMAN ANTHONY indicated he visited the facility on Convention Center Drive and stood at different distances, and he was unable to feel irritation or high level noise. When he visited the subject site, he found an empty piece of land. He noticed the homes are set further back from the proposed facility. He verified with MR. SPEAR that the facility will be significantly quieter. Much of the humming noise emanates from the frequency drive, which is an electronic piece of equipment that controls variable pitch on the electric motor. The control unit is set at the ground level and is enclosed in an electric case but open to the atmosphere. That equipment will be located on the rooftop totally enclosed within the concrete structure. The air conditioning equipment will be located at ground level and the cooling units on the rooftop.

COUNCILMAN ANTHONY opined that the main disagreement is the reduction of ten parking spaces, suggesting that it would create havoc. He asked if the project would be designed in a way that people would not have to park in front of other businesses. ATTORNEY GRONAUER explained that people would be making a right hand turn in a private street. Parking will be provided on the property. MAYOR PRO TEM REESE verified that there will be no off-premise parking. There would be no reason for someone to drive into the private street, only if no parking is available.

Regarding the party atmosphere, COUNCILMAN ANTHONY discussed with ATTORNEY GRONAUER that the proposed facility is not designed for competitions because it is too small. Again, they would accept a condition prohibiting competitions. MR. SPEAR added that no alcohol is permitted because of liability. As this is a sporting event, any impairment of physical ability would put at risk the participant as well as other people present in the chamber.

COUNCILWOMAN TARKANIAN verified with MR. SPEAR that he would not look at other locations, as he invested money at this location.

CITY COUNCIL MEETING OF: APRIL 7, 2010

MAYOR PRO TEM REESE stated that it is always best for the applicant to obtain neighborhood support before property is purchased. Through the Redevelopment Agency, the City of Las Vegas has tried to attract businesses in this area. He does not feel responsible for what happens across from Sahara Avenue, as that is under the Countys jurisdiction. This City Council has always supported new development that creates new jobs. He referred to a new Walgreens opening that created 30 new jobs for area residents.

He acknowledged a letter he received from GREG BROVIN, who supported the St. Louis project, which did not have the full support of the residents. MAYOR PRO TEM REESE feels he has done everything he could to make neighborhood associations successful. He recalled the contentious Spheros rollercoaster proposal that at the end created jobs for the community. It is hard to support both sides. With this particular project, he received stacks of letters opposing the project. He appreciated the residents input and the Attorneys presentation. He is not certain the applicant provided a hardship for the variance request. He does not know whether ten parking spaces will make or break a neighborhood, but the parking variance is part of the application. The proposed facility will not be harmonious with the surrounding neighborhood.

COUNCILMAN WOLFSON requested that if the applicant has a noise study be conducted during peak times. He agreed this is a tough decision, and he respects MAYOR PRO TEM REESES devotion and compassion to his constituents. He commented that when the Red Rock Casino was first proposed, there was a strong fight from the residents over the casinos height. Once that issue was resolved, the Red Rock Casino has become one of the most popular casinos in the Valley.

He acknowledged the areas blight and he would like to see it revitalized. He is concerned about the noise and vibration, but he is not convinced that the proposed facility will be an impact on the adjacent residential. More importantly, the applicant will have to comply with a noise study before he can obtain a Certificate of Occupancy. He is convinced that the project will generate more pedestrian traffic for the existing businesses.

COUNCILWOMAN TARKANIAN commended MAYOR PRO TEM REESES commitment to the residents, and the entire Council understands his value system of standing for what he believes in.

Regarding Item 78, MAYOR PRO TEM REESE moved for denial because the noise level is an issue that would impact the adjacent residents. The building is too high for the area and is not harmonious with the surrounding properties. He supports the body flying facility but not at this location.

MAYOR PRO TEM REESE declared the Public Hearing closed for Items 77 and 78.