

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 26, 2009**

Members Present:

Michael Gallagher
Paul Klein
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton, Jr.
George Alejos
Mary Rogers
Andrew Ozuna
Gene Camargo

Staff:

Roderick Sanchez, Director
Fernando De León, Assistant Director
Chris Looney, Planning Manager
Rudy Niño, Senior Planner
Jacob Floyd, Planner
Michael Farber, Planner
Paul Wendland, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-09-059

Applicant – City of San Antonio
Lot 1, Block 32, NCB 9754
3625 West Avenue
Zoned: “C-3” General Commercial District

The applicant is requesting in accordance with Section 406 of the Unified Development Code (Chapter 35), The Director of the Planning and Development Services Department is recommending that the Board of Adjustment take action to terminate the Certificate of Occupancy of Club Babylon.

Rudy Niño, Senior Planner, presented background and staff’s recommendation to revoke the Certificate of Occupancy.

Jim Degeer, representative, stated he is here on behalf Club Babylon to address the issues raised by the City of San Antonio in their request to revoke the Certificate of Occupancy it already has. He also stated the law has been to some degree perhaps misinterpreted. He read ordinances from the City of San Antonio relating to Sexually Oriented Businesses. He stated Club Babylon operates with bikinis or latex covering the areola of the breast. There are two instances that were reported in which violations were alleged to occurred, one in August of 2008 and March 2009.

Two incidents, one per year does not constitute a significant portion of the establishments business. In one of the two instances the police went out of their way to say that the dancers in question in the incident on August 2008 made an effort to cover-up. The other instance was alleged that an under age dancer was present and did not have the proper coverage on and the case is pending with the Bexar County courts is pending. The girl in question may or may not have been underage but that is not the issue before you. The issue before you is whether a significant portion of the business of Club Babylon is adult oriented entertainment involving as a sexually oriented business, not live entertainment, not with dancers. Does it fit within the definition that you are given by City Council as adopted its code? All we have here are allegations of two instances, one of which we can hardly take in good faith and the instance that we can take in good faith that the young lady did not have it on. I'm assuming at face value you still not have the definition complied with and I don't think that it is within your prevue to revoke the Certificate of Occupancy because they are not a sexually oriented business as defined by the code. No citations were issued on August 2008 for dancers without the proper coverings. The coverings come off with the sweat, from hugging somebody else, and from the dancers taking off their shirts. Vice will do visits quarterly and if a complaint is made within their jurisdiction and they are accustom to return within a week or two to make sure what they see the first time still exist or has been corrected. They will also make periodic inspections, that may be four or fewer times a year, for the purpose of inspecting. The live entertainment is the dancers dancing to the music of the disc jockey. Calls for service could be for Club Babylon or other tenants in the area because calls for service are kept by SAPD by GPS locations and the calls could also be for random people walking through the parking lot or nearby areas. You cannot necessarily base the 144 calls to Club Babylon when you do not have the calls for service before you or the underlying reports that indicate that the officer was called to Club Babylon and what the officer found when he/she got there.

Andy Rodriguez, SAPD detective, stated there were 88 calls for service not specifically pertaining to Club Babylon and about 80 percent belong to the club. They also stated there were a minimum of four visits to the club that resulted in violations.

The following citizens appeared to speak:

Zygmund Pruski, citizen, spoke in favor..

Mark Rios, citizen, spoke in favor.

Pastor Richard Kidd, citizen, spoke in favor.

Adam Greenup, council aide for Councilwoman Mary Alice Cisneros, spoke in favor.

Charles Dove, citizen, spoke in favor.

Cheryl Bracek, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-059 cont. closed.

MOTION

A motion was made by **Mr. Klein**. In Case No. **A-09-059** I move that the Board of Adjustment terminate the certificate of occupancy of **Club Babylon located at 3625 West Avenue**, the property is also described as **Lot 1, Block 32, NCB 9754**, the Certificate of Occupancy is **No. 1378431** and is dated **06/28/2007**, the description of business on the Certificate of Occupancy is **night club with live entertainment, alcohol will be served but not sold**. This motion is based upon evidence provided to the board that **Club Babylon** did operate outside the scope of their Certificate of Occupancy specifically **3/17/09** and **08/05/08** in a manner which was in a business located in a **"C-3" General Commercial District**. The motion seconded by **Mr. Hardemon**.

AYES: Klein, Hardemon, Ozuna, Alejos, Rogers, Britton, Victor, Camargo, Dutmer, Gallagher

NAY: None

THE REVOCATION OF THE CERTIFICATE OF OCCUPANCY WAS GRANTED.



There being no further discussion, meeting adjourned at 3:16 p.m.

APPROVED BY: Michael R. Gallagher OR Paul Klein
Michael Gallagher, Chairman Vice-Chair

DATE: 6-1-09

ATTESTED BY: R. Lopez, PE. DATE: 6/2/09
Executive Secretary