

Minutes of the Development Review Commission REGULAR MEETING February 28, 2023

Minutes of the **Regular Meeting** of the Development Review Commission, of the City of Tempe, was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Chair Michael DiDomenico
Vice Chair Andrew Johnson
Commissioner Don Cassano
Commissioner Barbara Lloyd
Commissioner Linda Spears
Commissioner Joe Forte
Alt Commissioner Robert Miller

City Staff Present:

Ryan Levesque, Deputy Director, Community Development
Steve Abrahamson, Principal Planner
Diana Kaminski, Senior Planner
Lee Jimenez, Senior Planner
Karen Stovall, Senior Planner
Lily Drosos, Planner I
Joanna Barry, Administrative Assistant II

Absent:

Commissioner Michelle Schwartz
Alt Commissioner Rhiannon Corbett
Alt Commissioner Charles Redman

Hearing convened at 6:00 p.m. and was called to order by Chair DiDomenico

Consideration of Meeting Minutes:

- 1) Development Review Commission – Study Session 1/24/23
- 2) Development Review Commission – Regular Meeting 1/24/23

Motion: Motion made by Commissioner Cassano to approve Study Session Meeting minutes with a minor correction and Regular Meeting minutes for January 24, 2023 and seconded by Vice Chair Johnson.

Ayes: Vice Chair Johnson, Commissioners Cassano, Lloyd, Spears, Forte, and Miller

Nays: None

Abstain: Chair DiDomenico

Absent: Commissioner Schwartz

Vote: Motion passes 6-0

The following items were considered for **Consent Agenda**:

- 4) Request a Use Permit to allow a second story addition and a Use Permit to allow one required parking space within the front yard setback for **FENLASON RESIDENCE**, located at 5421 South Mill Avenue. The applicant is Clay Fenlason. **(PL220351)**
- 6) Request a Use Permit to allow up to ten (10) chickens for **GANS RESIDENCE**, located at 1924 East Wesleyan Drive. The applicant is Rickey Lynn Gans. **(PL230033)**

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- 7) Request an Amended Planned Area Development Overlay to modify the previously approved site plan and a Development Plan Review for two new drive-through restaurants totaling 6,022 square feet for **KRISPY KREME/EL POLLO LOCO**, located at 1530 West Baseline Road. The applicant is Looker & Capello Architects, Inc. (PL220032)

Motion: Motion made by Commissioner Miller to approve Consent Agenda and seconded by Commissioner Spears.

Ayes: Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Lloyd, Spears, Forte, and Miller

Nays: None

Abstain: None

Absent: Commissioner Schwartz

Vote: Motion passes 7-0

The following items were considered for **Public Hearing:**

- 3) Request a Use Permit to allow a new co-locatable eighty feet (80'-0") high wireless telecommunication facility (monoelm) for **CROWN CASTLE 829442 DESERT PALM CHURCH**, located at 1230 East Guadalupe Road. The applicant is Campbell A&Z, LLC. (PL220292)

PRESENTATION BY APPLICANT:

Michael Campbell, consultant for Crown Castle, gave an overview of the request. The proposed monoelm is a replacement/relocation site for the one currently located at Marcos de Niza High School. The underlying lease there is expiring, and it was a business decision not to renew. The 80-foot height of the monoelm is designed to match the height of the existing structure that is currently at the high school. He stated that the proposed location meets the City's requirements for wireless sites, especially setbacks. Mr. Campbell stated that the nearest residential area is to the north and they currently sit 166 feet south of that property line. He stated the site is also set back 405 feet from the east property line adjacent to the La Tierra condominium property. The proposed site, as reviewed and directed by staff, will include the planting of nineteen 1-1/2 inch caliper Chinese elms along the north property line in a staggered fashion to build some additional screening, and fourteen along the Guadalupe Road street front.

Mr. Campbell stated that it is difficult to relocate from an existing site because there is an established, mature network. The target is to relocate within 1,500 feet of the existing site. The proposed site is 1,300 feet east of the existing site and will allow for two additional carriers.

He advised he had read the public comment cards that have come in and that the recurring concern seems to be about the height and why it needs to be taller than it is at the current site. He stated they are matching the 80-foot height at the current site and that it is the same distance from Guadalupe Road. He stated that the concerns about property value impact are subjective, and that today's smart homes are only as good as the local signal is. He noted it is also good for first responders and that if the proposed tower does not go up the existing one will go away, which will create a significant hole in coverage.

Chair DiDomenico noted that Mr. Campbell stated it was a business decision to move from the existing site and asked if that was made by the high school district or by the cell operator. Mr. Campbell stated he was not privy to that but is aware there were negotiations to extend but that they fell apart. Chair DiDomenico asked when the current lease ends and Mr. Campbell stated he does not know the exact date but that it is this year.

David Dodson, Crown Castle, gave an overview of the coverage and capacity for the cell tower. He stated that the anchor tenant will be T-Mobile at 75 feet, with AT&T at 65 feet. Mr. Dodson stated that the current lease is expiring, and the school decided not to continue it. Without a replacement site the coverage and capacity will be significantly reduced in the area of service for the existing site. To duplicate existing service a replacement is needed that is close to the existing site location.

PRESENTATION BY STAFF:

Lee Jimenez, Senior Planner, went over the request and showed photo simulations of what the monoelm would look like on the site from different angles. He stated that no neighborhood meeting was required for this request. Staff has received several phone calls and emails in opposition of the request. There are about a dozen comments in opposition with concerns generally about the height and the proximity to the residential uses. Other reasons surround the leasing terms between Crown Castle and the school district, as well as Crown Castle and the church site. Mr. Jimenez went over the unique Condition of Approval that requires buffer trees along the alleyway to the north and requiring street trees along Guadalupe Road to the south. He stated that at maturity the Chinese elms should reach about 50-60 feet in height. In ten years, the trees should be about 19 feet in height.

Commissioner Miller asked how long it would take for the elm trees to grow to 50 feet. Mr. Jimenez did not know when that would be. He reiterated that in 10 years they would grow to 19 feet and can reach up to 60 feet in height when fully mature. An audience member stated they grow 3-6 feet per year.

Chair DiDomenico asked what type of trees staff is requesting the applicant put in. Mr. Jimenez advised that the arterial trees are required to be 1-1/2 inch caliper and 36 inch box. To the north they are just required to be 1-1/2 inch caliper trees with no minimum required box.

Vice Chair Johnson referenced the proposed views that were shown and asked if they included the landscaping. Mr. Jimenez advised that the site plan shows where the trees will be conceptually located. If this item is approved and then goes through the building permit process the landscape will be reviewed and checked for conflicts with underground utilities or any other conflicts. Vice Chair Johnson stated that his question related to the photographs the showed the monoelm in place and asked if it showed any of the proposed trees and was advised they did not.

Vice Chair Johnson asked if the pole that is at Marcos de Niza will have to be removed since the lease will be up. Mr. Jimenez stated that in our zoning & development code there is a standard requirement that if a site is not used it must be decommissioned in 30 days.

Commissioner Miller referenced the photo simulation and asked if there was any landscaping along the north alley. Mr. Jimenez advised there was not.

Commissioner Lloyd asked if there were other carriers that will remain on the existing tower that would stop it from coming down upon the expiration of the lease. Mr. Jimenez deferred that question to the applicant but stated that he believes the T-Mobile facility is on a light pole and that there are other carriers at the site, but they are not on the same poles.

Commissioner Cassano noted the attachment regarding limitations placed by the FCC that put a lot of restrictions on communities about cell towers. He asked if we must work within those constraints and was advised that we did.

PUBLIC COMMENT:

Steve Abrahamson, Principal Planner, read into the record the following public comments that were submitted online (*comments summarized, originals on file*):

Cesare Suardi, Tempe resident – Opposed

- Strongly opposed to Crown Castle building a new 80' communication tower because Crown Castle does not want to pay a rent increase on the existing tower on the Marcos de Niza High School property.
- Will damage to property values, ruin the landscape, and potentially cause health concerns of a condo complex with 120 units.

Ryan Dehmer, Tempe resident – Opposed

- Will devalue properties
- Concerned about possible adverse health effects

Michale Ryan, Tempe resident – Opposed

- It will reduce home values by 7%
- Concerned about possible adverse health effect

John Mershon, Tempe resident – Opposed

- Tower will be an eyesore
- Will reduce views of South Mountain
- Concerned about possible adverse health effects
- Will reduce property values
- Believes applicant is only focused on profits
- Should remain at Marcos de Niza, where it is better suited, and funds should go to the school and students.

Following members of the public spoke either online via Webex or in person:

Katherine Del Rosario, Tempe resident – Opposed

- Structure is redundant if there is already one located at Marcos de Niza
- The applicant has enough funding and resources to keep tower at Marcos de Niza or add another one on that site
- Funds from cell tower will better serve the public school

Mark Bach, Tempe resident – Opposed

- No need for an 80-foot tower in the area, it is not compatible
- Properties in the area are zoned for residential use, not commercial or industrial
- Provided a list signed by 20 neighbors on Libra Drive who are in opposition of this request
- Tower will deteriorate the neighborhood and is not compatible with surrounding uses
- Will reduce property values
- Regarding the application: there is nothing showing that this is the least intrusive option or that it extends/improves coverage, does not preserve the aesthetics of the area, and the number of towers are not being reduced, they are being increased.
- In November 2022 the TUSD approved an agreement with Crown Castle to have an antenna easement approved for another five years

Rachel Johnson, Tempe resident – Opposed

- She is a resident of La Tierra and stated that the proposed tower is basically a stones throw away from her property. She contacted Marcos de Niza, their attorneys, and the person who was part of the negotiations. Ms. Johnson stated that she created an online petition and received 38 responses from neighbors who do not want the cell tower. She explained to them that the public school wanted higher funds for the existing tower. There are also health concerns related to the proposed tower.
- Commissioner Cassano asked if Ms. Johnson had spoken to anyone at the church. She stated that she had contacted them four times. She emailed and spoke to the secretary who advised that she would forward it to the church committee that does the voting, however they never responded to her. She stated the La Tierra HOA even reached out to them, but they did not respond.

Julie Rice, Tempe resident – Opposed

- Will be an eyesore
- Property next to her one is a vacation rental, and people will not come if the tower is there

Thomas Catlaw, Tempe resident – Opposed

- In looking on the Tempe website, he saw that in 2018 the City adopted standard terms and conditions for the placement of cell towers. The document clearly states that the tower should blend into the existing streetscape with minimal visible impact. An 80-foot tower does not comply with this. He stated he is disappointed in the City for moving forward with this request.

Gigi Seeger, Tempe resident – Opposed

- Ms. Seeger asked for the simulated pictures to be pulled back up. She pointed out the property in the photo simulation #1 and advised it was her property. They do not want the tower.

APPLICANT RESPONSE:

Mr. Campbell stated it is a co-locatable structure. T-Mobile will be moving over to it initially, then AT&T will move over once their lease is up.

Chair DiDomenico asked if they were currently on the same pole and if it would be decommissioned once they move over. Mr. Campbell advised that was correct.

Mr. Campbell stated that per the agreement, when the old tower is decommissioned, it will be replaced with a light pole. Regarding the public comment that there were 99 antennas in the area, he advised that most of those are small cells that go on streetlights or power poles. Regarding height compatibility, he noted there is a six-story building at 4500 South Lakeshore Drive. He reiterated that the proposed site is 405 feet west of the La Tierra property line. He stated that the type and size of the trees were requested by staff.

Commissioner Forte asked how much the previous lease was at Marcos de Niza and how much of an increase there was. Mr. Campbell stated he is not involved in that part of it.

Commissioner Lloyd asked if there was any opportunity to continue negotiations with the school district on keeping that site. Mr. Campbell stated he is not involved in that. He understands it runs out towards the end of the year and that there has been a breakoff in negotiations.

Commissioner Miller asked if the six-story building on Lakeshore Drive is visible from the church site. Mr. Campbell said not that he is aware of.

STAFF RESPONSE:

Chair DiDomenico referenced the public comment regarding design guidelines. Mr. Jimenez stated we do not have design guidelines other than the standards for location, whether a Use Permit is required for a new facility, and whether it is on a pole or is building mounted. He stated that the referenced document may have been about wireless facilities in the right-of-way. Planning does not have purview over that, Transportation & Engineering does.

Commissioner Miller referenced Condition of Approval #7 regarding an increase in landscaping. He asked if these conditions are imposed upon the applicant and was advised that they were. Since the applicant stated that the church will be responsible for maintaining the trees, Commissioner Miller asked if we had the ability to condition that the church maintain them. Mr. Jimenez advised it would be the obligation of the church to comply with the Conditions of Approval since they authorized the applicant to lease on the site. Commissioner Miller asked if that was stated anywhere in the document. Mr. Jimenez advised that it is a code requirement that they have to either abide by the approved landscape plan or code requirements. Commissioner Miller asked if that applied to the applicant, the church, or both. Mr. Jimenez advised that it is the property owner who is ultimately responsible.

Chair DiDomenico stated that he would like to make the request on the record that staff look at the approved standards for the church site, regardless of whether the cell tower is approved or not, and that Code Compliance enforce them on this site.

Chair DiDomenico asked how far the notification went out on this site. Mr. Jimenez advised that it was 600 feet from the property line of the site and 1,320 for HOAs/NAs.

Chair DiDomenico referenced a comment made by a member of the public stating they were disappointed that staff would consider this request or let it go forward. He stated that property owners can apply for a request for anything, pay a fee, have it reviewed by staff, then possibly come before the DRC. Neighbors may not like some of the requests, but it is staff's job to bring forward the best version of it that conforms to what the City standards are. Staff cannot just turn down a request because they do not like it.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Lloyd felt staff put forward a good effort on a challenging design in terms of trying to incorporate the additional Chinese elm plantings along the property lines. She does not agree with the description that it is a stealth facility designed to blend in with the surrounding area. In terms of what she has seen and heard tonight; she feels there is a good argument that it is not compatible with the existing surrounding structures. For that reason, she cannot support the request.

Vice Chair Johnson stated he read the section in the City code that describes that there should be documentation of the steps that will be taken to minimize the visual impact of the proposed facility. He stated that in comparison with the existing location, it is set back quite a bit further from any residential properties. The other facility seems to be in conjunction with a lot of very tall lighting that is associated with the stadium lighting and blends into the background a lot better than the proposed site. He stated that something that could have been helpful to present to the Commission was a better understanding of why the negotiations at the existing site did not work. He noted that since that information was not provided this evening it is difficult for him to find that documentation that if it were to stay in place it would have been a much less visual impact to the surrounding community. He has not heard enough to see that this has been covered tonight.

Commissioner Miller stated that when he first read this request, he was inclined to support it primarily because of the additional landscaping that was going to be added to the church site. However, after looking at it further he does not feel it is compatible with the surrounding area and will detract further from it. They have not gotten any good answers on why the applicant or the company behind this could not figure out something with the high school district, which he feels is a more appropriate site. He will be voting against the request.

Commissioner Spears stated that it is the Commission's requirement to look at the five criteria for Use Permits. Whether or not the applicant acted in good faith meeting with the school district is not part of their decision when it comes to this case. Regarding the criteria "compatibility with existing surroundings", she stated this request will replace an existing pole that is a few hundred feet away. She feels for the neighbors, but everyone likes their internet and wants it to work faster, and unfortunately that requires towers. She does not like the design and would rather see it plain, since you know it is a cell tower. She will be supporting the request.

Commissioner Miller stated that looking at the five criteria for approval, he does not believe this request meets either criteria #3 or criteria #4. He stated staff's comment did not address criteria #3 regarding deterioration of the neighborhood. As for criteria #4 he stated that an 80-foot fake tree is not really compatible with the rest of the surrounding area.

Motion: Motion made by Commissioner Spears to approve PL220292 and seconded by Commissioner Cassano.

Ayes: Commissioner Spears

Nays: Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Lloyd, Forte, and Miller

Abstain: None

Absent: Commissioner Schwartz

Vote: Motion fails 1-6

Motion: Motion made by Vice Chair Johnson to deny PL220292 and seconded by Commissioner Miller.
Ayes: Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Lloyd, Forte, and Miller
Nays: Commissioner Spears
Abstain: None
Absent: Commissioner Schwartz
Vote: Motion passes 6-1

- 5) Request a Use Permit to allow a private middle school for **LEAD AZ SCHOOLS**, located at 1602 South Priest Drive. The applicant is FM Solutions. **(PL230018)**

PRESENTATION BY APPLICANT:

Jason Kashiwagi, applicant, gave an overview of the request. He stated this will be a small middle school that will focus on students that need more attention and a different type of learning environment. He noted that one of the biggest issues might be the traffic flow since this site was not set up for this. However, he noted there would only be 35 students. The drop-off location will bypass any actual business traffic and they also have a plan to stagger them so there will not be 35 vehicles coming in at once. Regarding noise, he stated that most of their walls do not border another facility so if they get too loud no one will hear it. He did note there is a neighbor to the south of them that may have a concern about noise. They are willing to put in additional noise buffering if that is an issue.

PRESENTATION BY STAFF:

Diana Kaminski, Senior Planner, stated that a school use is similar to an office use in terms of the amount of parking that is required. There will be 17 spaces allocated for the school suite. She noted the lunchroom is on the south side, which is something they may want to relocate to the north side. A neighborhood meeting was not required for this request. Staff received one email of concern from the tenant to the south. Ms. Kaminski went over the non-standard Conditions of Approval for this request.

PUBLIC COMMENT:

Byron Torgensen, the owner of property to the south of the proposed school, stated he brought his building about nine years ago. He stated they are a mechanical engineering firm with several employees onsite and regularly hold meetings with staff, architects, etc. in their office so he is concerned about the noise. He stated this is an industrial complex where there are semitruck deliveries occurring daily. He stated the yellow drop-off site the applicant showed is actually the loading bay site for those trucks. He stated there are 25 available parking stalls for their building, 12 of which are his and 13 for the other tenant. He noted that some of the stalls the applicant showed for their drop-off are actually his. He stated they have a transient issue which has made it necessary to install security on his building to limit who can come in and out. He is concerned about school children having to deal with that situation. His staff works 8:00 a.m. – 5:00 p.m. so they will be arriving and leaving at the same time students are getting dropped off and picked up.

Chair DiDomenico asked if this was a condominium type of building where Mr. Torgensen owns his half and was advised that it was. He asked if the CC&Rs for the building have any prohibition of certain types of uses such as medical. Mr. Torgensen stated he had reached out to the administrator of their association to ask that, and they were of the understanding today that the CC&Rs would not allow this type of facility inside their association.

Commissioner Lloyd asked Mr. Torgensen if he knew if the demising wall went all the way up to the deck and was advised that it did. She asked what time the semitrucks usually come and was informed it could be any time of the day.

APPLICANT RESPONSE:

Mr. Kashiwagi stated the parking spaces that they have blocked off are only theirs. Mr. Torgensen's building has two spaces in that area, but those are not the ones that are blocked off. He stated that there will only be one car at a time that comes in and they will only be dropping off kids and that staff will be out there to monitor it. They will have about 7-10 staff on site at any given time. Chair DiDomenico asked where they would park. Mr. Kashiwagi stated

that they will be using the parking spaces, since parents will be dropping off and not parking. He advised that they reached out to the building administrator and were told they would have 19 parking spaces available for them. He stated that parents would be dropping their kids off in front of the building.

Chair DiDomenico asked if they were going to be tenants in the building or if they were buying it. Mr. Kashiwagi stated that they were buying the building. Chair DiDomenico asked if there was a broker helping them with the purchase and was advised that there was. Mr. Kashiwagi stated that as far as he knows they have received all the permissions from the property management. Chair DiDomenico recommended he be sure that the broker has thoroughly reviewed the CC&Rs for the building. He stated it is very common for condo units like this to have restrictions on medical, dental, and school uses.

Chair DiDomenico asked if they are willing to do what is necessary with the design of the interior, such as soundproofing. Mr. Kashiwagi stated that they were, since the last thing they want is their neighbor not liking them.

Commissioner Lloyd asked staff there was anything that the Commission could stipulate the applicant do to ensure that sound is mitigated on the south wall. Ms. Kaminski stated that we do not typically deal with interior spaces. We have required soundproofing on live entertainment Use Permits. She stated that if it were permitted it could be inclusive of relocation of the lunchroom and game room to the north side and the private study rooms to the south side, as well as additional sound transmission rating material on the south wall. Ryan Levesque, Deputy Director, stated these are ways to address the concern that the Commission could consider. Commissioner Lloyd stated she would like to see that as a Condition of Approval for this request.

Mr. Curtis Slife, FM Solutions, stated that for noise they usually request an additional 5/8 acoustical board, which takes it from a 45 STC to a 55 STC.

Chair DiDomenico asked if it would be possible to flip the video and lunchrooms to the north side of the building. Mr. Slife recommended against moving the lunchroom because that would be potentially moving plumbing. The game room is an easy switch.

Mr. Kashiwagi clarified that the lunchroom is not where they would be eating their food, but rather where the refrigerator is located. It is a small space so no one could eat there.

Ms. Kaminski presented the following additional stipulation for the Commission to review and possible add:

The applicant shall relocate the video game room to the north side of the school suite and add 5/8" acoustical board along the south interior wall to increase the sound transmission class (STC) rating to 55 decibels.

Both the Commission and the applicant agreed with the added stipulation.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

NONE

Motion: Motion made by Commissioner Spears to approve PL230018 with added stipulation and seconded by Commissioner Cassano.

Ayes: Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Lloyd, Spears, Forte, and Miller

Nays: None

Abstain: None

Absent: Commissioner Schwartz

Vote: Motion passes 7-0

Staff Announcements:

Mr. Levesque advised the Commission of the items on the March 14, 2023 DRC agenda.

There being no further business the meeting adjourned at 7:54 p.m.

Prepared by: Joanna Barry, Administrative Assistant II

Reviewed by: Ryan Levesque, Deputy Director