



## Minutes of the Development Review Commission REGULAR MEETING March 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 Michelle Schwartz  
Commissioner Linda Spears  
Commissioner Joe Forte

**City Staff Present:**

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

**Absent:**

Alt Commissioner Rhiannon Corbett  
Alt Commissioner Charles Redman  
Alt Commissioner Robert Miller

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

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**Consideration of Meeting Minutes:**

- 1) Development Review Commission – Study Session 2/14/23
- 2) Development Review Commission – Regular Meeting 2/14/23

**Motion:** Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for February 14, 2023 and seconded by Vice Chair Johnson.

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

**Nays:** None

**Abstain:** Commissioners Schwartz and Forte

**Absent:** None

**Vote:** Motion passes 5-0

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The following item was previously removed from this agenda:

- ~~6) Request a Use Permit to allow entertainment (live singing, dancing, karaoke, and music) for **BONFIRE CRAFT KITCHEN AND TAP HOUSE**, located at 1617 West Warner Road. The applicant is Bonfire Craft Kitchen Tempe LLC. (PL230053) **POSTPONED TO A LATER DATE**~~

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

- 4) Request a Use Permit Standard to allow a 20% reduction in the street side setback from 10 feet to 8 feet for **UNDERWOOD RESIDENCE**, located at 2402 East Alameda Drive. The applicant is Austin Underwood. (PL220289)

- 5) Request a Use Permit to allow a massage establishment for **THE RIVER MESSAGE**, located at 1845 East Broadway Road, Suite No. 125-126. The applicant is The River Massage Inc. (PL230043)

**Motion:** Motion made by Vice Chair Johnson to approve Consent Agenda and seconded by Commissioner Lloyd.

**Ayes:** Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Schwartz, Lloyd, Spears, and Forte.

**Nays:** None

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 7-0

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

- 3) Request a Use Permit Standard to allow a 20% reduction in the rear yard setback from 35 feet to 28 feet for **SCHEMBER RESIDENCE**, located at 1068 East El Freda Road. The applicant is Designitechs LLC. (PL220260)

**PRESENTATION BY APPLICANT:**

Kendall Baxley, Designitechs, stated they are proposing an attached RV garage that also has a two-car tandem garage next to it. He noted there are several examples of these type of garages being built in the community.

Chair DiDomenico asked for some clarification on what the square footage of the addition will be and if this was a brand-new construction versus modification of an existing building. Mr. Baxley advised that it is new construction that will be attached to the primary residence. He stated that the footprint of the new attached garage is 1,434 square feet. There is no air conditioning in the new addition. Chair DiDomenico asked what the ceiling/clear height would be. Mr. Baxley stated the height of the entire structure will be just over 16 feet. There is no living space in the garage.

Commissioner Schwartz referred to the exhibit where it stated a four-car tandem garage with 10-foot ceilings, yet they have a 12-foot overhead door. She asked for further clarification on the total square footage of the addition. Mr. Baxley reiterated the footprint on the entire addition will be 1,434 square feet. He stated the 10-foot reference was probably a typo given they are at 16 feet and 1 inch.

**PRESENTATION BY STAFF:**

Lily Drosos, Planner I, gave a brief overview of the request. She stated the existing livable area is 3,287 square feet. The 6,079 square feet includes the unenclosed and enclosed structures. The proposed structure is 1,434 square feet. Chair DiDomenico noted that in the pictures it shows an equestrian trail at the northern wall of the property. He asked how the City calculates the required setback, if it is from the center of the property, and if we treat the equestrian area like an alley. Ms. Drosos stated that half of the equestrian easement, which is 20 feet wide, is on the applicant's property so their rear property line is 10 feet into the equestrian easement.

**PUBLIC COMMENT:** NONE

**COMMENTS AND DISCUSSION FROM THE COMMISSION:** NONE

**Motion:** Motion made by Commissioner Cassano to approve PL220260 and seconded by Commissioner Spears.

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

**Nays:** Commissioner Schwartz

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 6-1

- 7) Review for compliance with the conditions of approval for a Use Permit to allow vehicle rentals within the General Industrial District for **UCARS**, located at 640 South Smith Road. The applicant is Guidant Law PLC. **(PL220314)**

**PRESENTATION BY APPLICANT:**

Eric Faas, Guidant Law, gave a recap of events and stated he received a call from UCARS on October 12, 2022, the day the violation was issued, asking for assistance. By November 5<sup>th</sup> they had a full Use Permit application submitted and were before the DRC on December 13<sup>th</sup>. He stated that on their worst day up until the hearing there were 106 cars in the neighborhood. He stated that since the hearing they have rented a couple of sites to store a lot of the vehicles and now the number has dropped down to the 20's. They met with Code Compliance on the January 31, 2023 and had to pay a fine since they were not in compliance. At that time, they explained to them that they had a Letter of Intent out on a new property and gave them a copy. He stated that by March 3<sup>rd</sup> they had a lease signed for the new site that has a commencement date of April 1<sup>st</sup>. There is an existing tenant at the site and they are waiting on them to vacate so they can move in. They did clear most of the lot so UCARS started moving their vehicles over to the new property. He stated all the cars should be out of the Smith neighborhood by the end of next week. He noted that they take possession of the new property in April, however it will take them 30 days to fix up the property with the items and equipment they need to run their business. He advised that in April the neighbors will still see employee cars there because they will still be working out of the location and they are still having a hard time containing everything on the property. He stated they had to hire additional personnel to handle the location change. They went from about 10-12 employees to 20 so there are more employee cars. They will go down as some of the employees get laid off as the business changes.

Chair DiDomenico asked where the new location would be. Mr. Faas claimed that due to the vandalism and issues they have had to deal with he did not want to disclose it. Chair DiDomenico asked if it was in walking distance from this location and Mr. Faas advised it was in another city. Chair DiDomenico asked what the plans were for the existing site and if it would be closed. Mr. Faas stated that the lease on that property runs through 2024 or 2025 and it will just be a repair shop. Chair DiDomenico asked if it would no longer be a drop-off location and was advised that was correct. Mr. Faas stated the intent is to have the parking spaces cleared at night in case someone does drop off a vehicle. He stated that the intent is that as of May 1<sup>st</sup> all the employee vehicles and repair vehicles will remain completely on the site. Chair DiDomenico asked how many employees they expect to have on that date and was advised it would be 8-10.

**PRESENTATION BY STAFF:**

Lily Drosos, Planner I, stated that when the Use Permit was initially approved on December 13, 2022, there was a Conditional of Approval added requiring that they come back before the Commission this evening for a review of their compliance with the conditions of the Use Permit. Since the date the Use Permit was initially approved, staff has received regular updates and photos from the adjacent business owners expressing concerns about UCARS violating Conditions of Approval #4 & #5. The police department has reported 25 calls from complainants. Code Compliance has conducted 10 inspections of the site and received one complaint from the public. Since UCARS is in violation of Conditions of Approval #4 & #5 their violation remains open and they were issued a citation on January 31, 2023. Site visits were conducted after the citation was issued and there were still repeated violations. The Engineering & Transportation Department distributed a hybrid door-to-door and online petition to properties and businesses on Smith Road from 3<sup>rd</sup> Street to University Drive and on 5<sup>th</sup> Street, from Perry Lane to Rockford Drive, to propose the installation of permanent signage prohibiting overnight parking 7:00 p.m. to 5:00 a.m., Monday through Friday. 21 out of the 34 properties (77.4%) were in support of the proposal. The Engineering & Transportation Department will be moving forward with the installation of the permanent signage within the next few weeks. The current design of the Smith Road streetscape project includes future installation of signage that would prohibit parking along Smith Road at all times.

Chair DiDomenico asked if the streetscape project would prohibit parking on both the east and west side Smith Road or just one side. Tyler Carr, Civil Engineer with Engineering & Transportation, advised that bike lanes will be installed on both sides of the road which will require the installation of no parking signs on both sides.

Vice Chair Johnson referenced the petition and asked what percentage is required to pass the signage. Mr. Carr stated that it was 75%.

**PUBLIC COMMENT:**

Terry Naddy, Tempe Crane, stated that prior to the City becoming involved neighboring business owners went to UCARS to request they limit the number of vehicles on the road due to safety and nuisance factors. From January 3<sup>rd</sup> to February 8<sup>th</sup> she paid an employee to walk the street after lunch and take pictures of all the cars on the road. There was an average of 44.6 cars per day on the road. Starting March 1<sup>st</sup> she began counting cars on one side of the road and there were as high as 21 cars. The equipment her business uses is large and she is concerned about accidents occurring due to all of the UCARS on the street coming and going.

Chair DiDomenico referenced the applicant representative's comments about their upcoming relocation and asked Ms. Naddy what she is requesting that the Commission do. Ms. Naddy stated she would advocate that they be required to badge their vehicles so they know which are there as rentals and which belong to employees. This would help officers to expeditiously remove the violators.

**COMMENTS AND DISCUSSION FROM THE COMMISSION:**

Commissioner Cassano asked what the Commission's course of action is with this item. Chair DiDomenico stated that the Commission will have a discussion on how they feel about what they have heard tonight and they can make a recommendation to staff. The Commission has no ability to revoke a Use Permit as they are not the enforcement body.

Commissioner Lloyd stated the applicant seems to be taking the appropriate steps with signing a Letter of Intent on a new location. She asked if it was reasonable to add another 90 days for them to relocate and then revisit it.

Vice Chair Johnson stated it is pretty clear that the Conditions of Approval have not been followed as they were written so he does not think making any changes to them would make any difference. Promises were made before that were not upheld, and now more promises have been made. He is okay with maybe giving them another 30 days, but he thinks there needs to be some real action that takes place from the business owner because it is obviously impacting the surrounding businesses.

Commissioner Spears agreed with Commissioner Lloyd. She thinks 60-90 days would be good to see the applicant back again.

Chair DiDomenico stated that he does not think they need to come back because it appears there will no longer be a need for the Use Permit since they are no longer going to perform the rental car business activity starting May 1<sup>st</sup>. It will simply be the repair aspect that does not require a Use Permit. He would recommend starting the revocation process. He asked how long it would take to revoke a Use Permit. Ryan Levesque, Deputy Director – Community Development, stated that the review process requires the City to send a 30-day notice to the applicant where they would hold a consultation hearing to address the issues at hand and seek compliance. If compliance is not met they would proceed to a revocation hearing that could take up to 60-90 days. This hearing would take place before the Development Review Commission.

Mr. Faas stated that they will still need to have the Use Permit at the current location. If someone were to drop off a vehicle for service and took one that had recently been serviced, the different VIN would require a new lease.

Commissioner Cassano asked why the vehicles cannot just be towed if they are in violation. Ms. Drosos advised that it will be a few weeks before the no parking signage goes in.

Commissioner Lloyd referenced the 30-day notice and compliance process and asked if the Conditions of Approval would continue to apply and if the Use Permit would be eligible for revocation if they violated them again. Mr. Levesque stated that is correct. If they obtain compliance from the applicant it would not come before the Commission again. If there is a need for a future revocation hearing, staff will make that recommendation.

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**Motion:** Motion made by Vice Chair Johnson to move that staff be directed by the Commission to have a review hearing with the applicant for compliance. Seconded by Commissioner Cassano.

**Ayes:** Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Schwartz, Lloyd, Spears, and Forte.

**Nays:** None

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 7-0

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- 8) Request a Planned Area Development Overlay to modify development standards for height, a Use Permit to allow tandem parking, and a Development Plan Review for a new 25-story mixed-use development consisting of 453 dwelling units and commercial uses on .67 acres for **16 EAST UNIVERSITY**, located at 16 East University Drive. The applicant is Sender Associates, Chartered. **(PL220343)**

**PRESENTATION BY APPLICANT:**

Darin Sender, Sender Associates, Chtd., gave an overview of the requests.

Mark Oberholzer, KTGy, gave an extensive presentation on the project design. He noted that the use of materials and the EIFS of the building has been an ongoing discussion. He stated that the base, above the street level retail, was originally EIFS but is now metal. They are in a challenging cost environment, so they have reduced the exterior amount of EIFS from 68% to 43%.

Chair DiDomenico asked that if money was no object, what would they use instead of EIFS or to minimize its use further. Mr. Oberholzer stated that if money were no object he would be using limestone.

Ms. Sender discussed the bioswale that will be in front of the building on University Drive and the solar aspect and EV stations.

Ms. Sender referenced a few Conditions of Approval that they would like removed/modified:

- Staff requested they put patios on the east side of the building. Ms. Sender stated they have a few patios on the western elevation that face west. They did not put any on the east elevation because there is not a lot of opportunity for them based on the floor plan and privacy issues.
- There is a stipulation to paint the garage white, however with the new LED lamps they did not see the need for that.
- There is a requirement for STC55 internal walls. Ms. Sender stated they did not receive this requirement until a few weeks ago and that they are far along in the design at this point. The building code is STC50 and they are concerned that their ADA clearances are going to be interrupted due to added additional inches of STC requested. She stated they are meeting the exterior STC so the sound from the outside will not be coming into the building.

**PRESENTATION BY STAFF:**

Karen Stovall, Senior Planner, stated that the applicant held a neighborhood meeting on January 9, 2023. Attendees asked why there was no underground parking, asked about the solid waste plan to ensure waste would not be stored in the alley, voiced concerns about the noise they experienced from Shady Park, and had questions about who the commercial tenants might be in those spaces. Staff did not receive any direct public input.

Ms. Stovall went over the unique Conditions of Approval including the reduction of EIFS on the building elevations, preferably replacing the grey EIFS with metal panels or another decorative material, and the addition of patios to two of the units on each floor of the east elevations. There was also a condition that the street trees be planted in the ground. The applicant did provide a utility plan that did show the eight-foot separation between water lines and tree trunks with a root barrier.

Chair DiDomenico referenced Condition of Approval #19 regarding patios and asked staff how they feel about the notion that there is not a lot to east on the from the east elevation. Ms. Stovall noted the applicant had concerns about privacy. She showed the Commission the two locations that were identified where these patios could be placed. They do not feel this would interfere with privacy for units adjacent to the patios. Though there will be a limited opportunity for views, the patios will provide fresh air and open space for the residents.

Commissioner Lloyd asked how the ingress/egress of University Drive would look since this could be a stacking and directional problem at 5:00 p.m. Ms. Stovall stated she will defer that to the applicant. She did note that the TIS was approved by Traffic Engineering.

Vice Chair Johnson asked Ms. Stovall if she had any comment about the internal wall STC condition of approval that the applicant brought up. Ms. Stovall stated that is a standard condition of approval that the City applies to residential developments downtown. That condition was applied to the Mirabella structure directly across the street. Staff feels this condition is important because the City would prefer to avoid noise complaints. This has already been an issue with Shady Park, but there will also be other live music venues in the downtown area.

Commissioner Schwartz asked if there was any discussion about lowering the parking requirements instead of adding tandem spaces. Ms. Stovall stated that the applicant did not propose to reduce the required parking from the start.

**PUBLIC COMMENT:**

NONE

**APPLICANT RESPONSE:**

Ms. Sender stated that they might be able to look at Juliet balconies on the east side with doors that open up to allow air in. In terms of the standard parking, they are at the CC (City Center) district standards which are the lowest that the City has so they did not go below that. They are only over by about 30 spaces total. Regarding the STC, they understand the noise that comes from downtown, this is why they are meeting the exterior STC per the building code.

In response to Commissioner Lloyd's previous question about the ingress/egress to the site, Ms. Sender stated that they did speak with CivTech about that, and their analysis indicated that they meet the recommended queue storage on that site. There is also a middle lane on University Drive for queue to turn into. The LOS on this intersection of the alley with University Drive is currently a B and will remain so after construction.

Chair DiDomenico asked if they could achieve the STC55 through other means or different materials other than additional ¼ inch thickness on every interior wall. Mr. Oberholzer stated that to get to a higher STC you either have higher mass or more space. Neither are an option in this situation.

**COMMENTS AND DISCUSSION FROM THE COMMISSION:**

Commissioner Spears stated she does not like this project as she believes it is too big for this footprint and too tall, especially with the proximity to Mill Avenue.

Chair DiDomenico noted they are considering the PAD, ZUP, and DPR tonight. He has no issues with the PAD and ZUP, but he is struggling with the material proposed in the DPR. He feels there is too much EIFS. This is the entry point to Mill Avenue and the downtown district.

Commissioner Cassano agreed with Commissioner Spears and feels the site looks too small to support this project. He hears from residents of the City that we are putting too many high buildings in Tempe and it overpowers what we see downtown. He is not enamored by the building at all and thinks it would overpower the whole corner.

Commissioner Lloyd stated that we have a shortage of units in Tempe and if we have to go dense in certain places she prefers to see it here closer to Mill Avenue than other areas where traffic would be less supported. Overall, she would support the project subject to the Conditions of Approval set forth by staff.

Vice Chair Johnson stated he is leaning toward Commissioner Lloyds opinion of the project. There are other similar buildings around this site. Some of them have higher quality materials on the exterior going up the entire height of the building. The Westin has EIFS going the full height of the building that he was not in support of. If we are going to vote on this, he would like to keep staff's Conditions of Approval.

Chair DiDomenico stated his preference would be to break the items up and vote separately on the DPR. A vote was then held first on the PAD and ZUP.

Commissioner Schwartz asked for confirmation of which Conditions of Approval the applicant is willing to accept and which ones they are not as they are about to vote on the DPR. Ms. Sender stated they are not in agreement with the condition related to the STC. The painting of the garage is not as critical, so they are fine with it. They are fine with the stipulation regarding the EIFS as they will work with staff on this. Regarding the patio condition, they can continue to work with staff on that and discuss the option of Juliet balconies.

Commissioner Schwartz asked when the applicant thinks all these changes will come in. Ms. Sender stated they want to meet in person with staff about the EIFS and then look internally to see if there are other places on the building where they can make modifications. Getting pricing information for any decision they make will also take some time.

Mr. Levesque stated that this condition was intended to invoke the conversation they are having tonight. Staff was hoping there was an opportunity to introduce new building materials.

Chair DiDomenico asked the applicant to point out the grey areas on the rendering to show which areas staff is requesting the EIFS be reduced. He asked what alternate materials could be used in those areas. Mr. Oberholzer stated that the obvious would be to turn the light grey into metal panel. They want to bring some other things to the table, but they do not know right now. They may bring someone to model the building as they talk about options.

Mr. Oberholzer proposed they could do metal on the grey second block of the building facing University Drive. It would be difficult to commit to doing the same on the portion of the building to the north.

Commissioner Schwartz asked if it would make sense to continue this DPR to another meeting so that the applicant and staff can work things out. Ms. Sender stated they are scheduled to go before the City Council on April 20<sup>th</sup>. Mr. Levesque asked the applicant if the April 11<sup>th</sup> DRC meeting would be okay with them if there is a continuance. After clarification that they would still be able to go forward to the City Council on April 11<sup>th</sup>, the applicant agreed to a continuance.

**Motion:** Motion made by Vice Chair Johnson to approve the PAD and ZUP for PL220343 and seconded by Commissioner Lloyd.

**Ayes:** Chair DiDomenico, Vice Chair Johnson, Commissioners Schwartz, Lloyd, and Forte

**Nays:** Commissioners Cassano and Spears

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 5-2

**Motion:** Motion made by Commissioner Spears to continue the DPR for PL220343 until the April 11, 2023, DRC meeting and seconded by Commissioner Cassano.

**Ayes:** Chair DiDomenico, Vice Chair Johnson, Commissioners Cassano, Schwartz, Lloyd, Spears, and Forte.

**Nays:** None

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 7-0

**Staff Announcements:**

Mr. Levesque advised the Commission on the items on the April 11, 2023 DRC agenda.

**There being no further business the meeting adjourned at 8:15 p.m.**

Prepared by: Joanna Barry, Administrative Assistant II

Reviewed by: Mailen Pankiewicz, Principal Planner