



Minutes of the Development Review Commission REGULAR MEETING February 27, 2024

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 Andrew Johnson
Commissioner Barbara Lloyd
Commissioner Linda Spears
Commissioner Joe Forte
Commissioner Larry Tom
Alt Commissioner Rhiannon Corbett
Alt Commissioner Charles Redman

City Staff Present:

Jeff Tamulevich, Director, Community Development
Ryan Levesque, Deputy Director, Community Development
Michelle Dahlke, Principal Planner
Diana Kaminski, Senior Planner
Karen Stovall, Senior Planner
Lily Drosos, Planner II
Lucas Jensen, Planner I
Whitney Mayfield, Planner I
Joanna Barry, Administrative Assistant II

Absent:

Vice Chair Michelle Schwartz
Commissioner Don Cassano
Alt Commissioner Robert Miller

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

Consideration of Meeting Minutes:

- 1) Development Review Commission – Study Session 2/13/24
Development Review Commission – Regular Meeting 2/13/24

Motion: Motion made by Commissioner Redman to approve Study Session minutes and Regular Meeting minutes for February 13, 2024 and seconded by Commissioner Tom.

Ayes: Chair Johnson, Commissioners Lloyd, Spears, Forte, Tom, and Redman

Nays: None

Abstain: Commissioner Corbett

Absent: Vice Chair Schwartz and Commissioner Cassano

Vote: Motion passes 6-0

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

- 2) Request a Development Plan Review for two (2) new single-story industrial buildings totaling 170,902 square feet for **48th & ALAMEDA – WEST**, located at 2727 South 48th Street. The applicant is Gammage & Burnham, PLC. (PL230364)
- 3) Request a Development Plan Review consisting of a new 7,844 square-foot restaurant for **HAYDEN FERRY LAKESIDE RESTAURANT**, located at 52 East Rio Salado Parkway. The applicant is Gammage & Burnham, PLC. (PL230384)

- 4) Review for compliance with conditions of approval for a Use Permit to allow a building expansion to an existing drive-through restaurant for **DUTCH BROS COFFEE**, located at 1037 South Rural Road. The applicant is PHNX Design, LLC. (PL210292)
- 6) Request a Use Permit Standard to reduce the street side yard setback from 20 feet to 16 feet for **SMITH RESIDENCE**, located at 1329 East Los Arboles Drive. The applicant is Design Development. (PL230380)
- 8) Request a Use Permit to allow seasonal outdoor retailing for **CUBS SPRING TRAINING MERCHANDISE SALES**, located at 2525 East Rio Salado Parkway. The applicant is Onefro LLC. (PL240012)

Motion: Motion made by Commissioner Tom to approve the Consent Agenda and seconded by Commissioner Redman.

Ayes: Chair Johnson, Commissioners Lloyd, Spears, Forte, Tom, Corbett, and Redman

Nays: None

Abstain: None

Absent: Vice Chair Schwartz and Commissioner Cassano

Vote: Motion passes 7-0

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

- 5) Request Use Permit Standards to reduce the south side yard setback from 10 feet to 8 feet, reduce the west rear yard setback from 15 feet to 12 feet, reduce the required landscape area from 25% to 24%, and increase the maximum building height from 30 feet to 33 feet; including a Development Plan Review consisting of 7 (seven) residential units within three-story buildings for **THE QUARTERS SUITES**, located at 1272 South Price Road. The applicant is Michael Rust Architects, LLC. (PL230318)

PRESENTATION BY APPLICANT:

Ted Shollenberger, representing the applicant, gave a brief overview of the requests, including the design, site plan, and elevations. He proceeded to go over how the requests met the Use Permit criteria. Mr. Shollenberger stated that the owners are local so they should be able to address any disruptive behavior if it should come up with management.

Commissioner Tom asked Mr. Shollenberger to go over the materials that would be used and the design elements of the exterior of the building. Mr. Shollenberger stated that it will be stone material on the first level, then stucco up above. All of the metal elements are aluminum, and the color is pre-finished black.

Commissioner Tom asked if Mr. Shollenberger would be willing to alter/vary the roofline to add some architectural change so that the buildings are not all rectangular boxes. Mr. Shollenberger stated that one of the concerns is that they are already requesting a height variance. If they went any higher it may make that condition worse. Mr. Shollenberger advised they are already three feet higher than code.

PRESENTATION BY STAFF:

Diana Kaminski, Senior Planner, provided a brief overview of the Use Permit requests and the Development Plan Review (DPR). Ms. Kaminski stated that they had to work with ADOT on the proximity of where their drive could be located. There were also some challenges with fitting in the solid waste and fire turnarounds so they ended up breaking the building massing from what would have been one massive building into three smaller buildings. This enabled them to put in the hammerhead that was necessary for turnaround on the site. The applicant wanted a smaller building at the street front to provide some variation and massing of the buildings. Ms. Kaminski stated that in some of their preliminary meetings with the applicant staff discussed the idea of altering the roofline, however this design is very similar to the Howe Avenue Apartments to the north and is in character with the area. If the applicant did try to go higher with the roof it would require a Use Permit or PAD and they were trying to work within the development standards for their zoning.

Vice Chair Johnson asked if the areas in the rear of the site are intended for use by first floor residents or if they are open to all residents. Ms. Kaminski stated that area is an outdoor, private, secured space for the residents of the first floor. There is an open community space for all residents between buildings B and C. The upper floors facing north will have balconies. Vice Chair Johnson asked if there were balconies on the south side and was advised there were not.

PUBLIC COMMENT:

NONE

RESPONSE FROM APPLICANT:

NONE

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Tom stated he does not have an issue with the Use Permit requests but he has some concern over the architectural design of the buildings. He would have preferred more design elements on the buildings to break them up a little bit.

Commissioner Spears referenced Commissioner Tom's comment and noted that the Commission is not seeing the representation of the rest of the plan material which will break that up.

Commissioner Lloyd stated she likes the creativity of being able to design the site with such limitations because of the size and access of the location. She understands Commissioner Tom's concern that it could use some variations but thinks it is the right type of product for the site.

Motion: Motion made by Commissioner Lloyd to approve PL230318 and seconded by Commissioner Spears.

Ayes: Chair Johnson, Commissioners Lloyd, Spears, Forte, Tom, Corbett, and Redman

Nays: None

Abstain: None

Absent: Vice Chair Schwartz and Commissioner Cassano

Vote: Motion passes 7-0

- 8) Request a Use Permit to allow live entertainment for **CATALYST CRAFTED ALES**, located at 1845 East Broadway Road, Suites 106-110. The applicant is Catalyst Crafted Ales LLC. (**PL230403**)

PRESENTATION BY APPLICANT:

Eric Flottmann, Vice President of Operations, provided some background of the company and gave an overview of the request. He stated they are currently allowed to play pre-recorded music in their taproom and on the patio but are looking to expand their offering with live music, trivia, bingo, and other events. They do not intend to be a concert venue, sell tickets, book high-profile acts, disturb the neighbors or the surrounding community. Mr. Flottmann stated that they intend to keep the volume of these events to the same standards for their currently approved sound system.

Mr. Flottmann requested that Condition of Approval #8 (requiring the doors to remain closed during live entertainment) and Condition of Approval #9 (that prohibits exterior speakers to be used on the patio during live entertainment) both be removed. He stated that they believe these two stipulations would limit their ability to provide elevated experiences to their customers and that the existing volume restrictions should be ample to serve the needs of the neighborhood. Mr. Flottmann stated they have the full support of the landlord and management company that maintains the property. Mr. Flottmann noted that they have received harassing behavior from their immediate neighbor since they first opened their doors and referenced some of the issues.

PRESENTATION BY STAFF:

Lucas Jensen, Planner I, gave an overview of the floorplan and where the applicant proposed to set up the live entertainment. He gave a brief history of the site that included the initial DRC approval in 2022 for a Use Permit to

allow a bar (with alcohol production), and the December 2023 Code Compliance violation issued for live entertainment without a Use Permit.

A neighborhood meeting was not required for this request. Staff received emails from three individuals and a phone call from one individual who were all in opposition of the request and one email in support. Mr. Jensen stated that he reviewed this request with the Tempe Police Department who identified restrictions associated with activity on the outdoor patio space, which have been incorporated into the conditions of approval. An updated security plan is required and will be reviewed by the Tempe Police Department outside of this application process. Mr. Jensen stated that the police have been called to this business on several occasions to investigate noise and trespassing complaints between December 9, 2023 and February 7, 2024 and have not issued any violations to date.

Commissioner Spears stated that she had visited the establishment a couple of weeks prior and that there was music on the patio and asked what the difference was from having pre-recorded music play through the speakers to live music. Mr. Jensen stated that it is a minor distinction in that pre-recorded music is a little more predictable as opposed to hearing bingo, karaoke, or other live events being broadcast through the speakers that may not be as desirable to neighboring businesses or residential uses. Michelle Dahlke, Principal Planner, briefly went over the criteria for live entertainment in the City code and stated that pre-recorded music is not deemed to be live.

Commissioner Spears referenced Condition of Approval #9 regarding the doors being closed and stated that the way the layout is set up it would make sense for the doors to be open. She noted that the focus of the design of that shopping center is it being open to Broadway Road and McClintock and not the apartment complex to the rear.

Commissioner Lloyd asked if staff would be open to removing Conditions of Approval #8 and #9 subject to the applicant keeping at a certain volume level, and not have drum kits, etc., rather than not allowing the doors to be open or not being able to have speakers outside. Mr. Jensen stated that he would defer to Ryan Levesque, Deputy Director – Community Development, for any changes to the stipulations.

Chair Johnson referenced a previous case where a stipulation was added that the applicant come back for a review of compliance with the conditions of approval. He suggested a similar condition be added for this applicant to come back and ensure what they are complying with the Use Permit criteria.

Commissioner Tom asked if there was more exterior seating than interior seating and was advised that there was. He asked if the live music would be acoustical or amplified. The applicant later advised that it would be acoustic. Commissioner Tom stated that he does not disagree with what the other Commissioners have said but he thinks we need to have a measurable level to determine whether they are in compliance. Jeff Tamulevich, Community Development Director, advised that the City's noise code has been modified over the past two years and that all decibel levels have been removed from it. The City works off the code for unnecessary noise (Sec. 20-11). Mr. Tamulevich stated staff would be comfortable with the Commission placing a condition that requires the applicant to stay within the noise code in general. Chair Johnson asked if that condition was currently in the staff report. Commissioner Tom stated that on the report it just states that "music, sound, or live entertainment shall not violate the City of Tempe Noise Ordinance." He noted that it is not a condition, but a general statement which has to be followed. Commissioner Tom recommended removing Conditions of Approval #8 and #9 and have the applicant come back in 6-12 months for review. Mr. Tamulevich agreed with the recommendation.

Commissioner Spears asked if the follow-up review would have to come before the Commission. Mr. Tamulevich advised that it would be reviewed at the staff level. If there were any issues, then it would be brought before the Commission.

PUBLIC COMMENT:

John (no last name provided) stated that he is a patron of Memo's Café which is located next door to Catalyst Crafted Ales. He is also a patron of Catalyst Crafted Ales and their food vendor, Salt. He stated that when Catalyst Crafted Ales had their soft opening, he spoke to one of the owners and they left a note stating that it was really loud to the point that they could not talk to each other inside of Nemo's. John stated that the live entertainment outside rattled

the walls inside of the café. He also noted that when they have these events the parking lot fills up and they have to go to the northeast end or park at the Burger King. He does not mean ill will towards anyone but thinks the live music permit will cause a stress on Nemo's Café. John stated he has seen a lot of regular customers of Nemo's leaving and mentioned he has also started to go elsewhere.

Ramez Rabata, Tempe resident and owner of Nemo's Café, stated he has been in this location since August of 2008. He has not had any issues with the City or his neighbors. Mr. Rabata stated that when he applied for a Use Permit in the past for live entertainment it was approved but he was not allowed to put speakers outside. He stated that since Catalyst Crafted Ales started playing music outside, he lost about 40% of his customers because a lot of them complained about the noise. He advised that he has met the owners of Catalyst Crafted Ales and has tried many times to be friendly and talk to them about the loud music. He stated that sometimes they would listen and sometimes they have events and do not care. He provided a petition from his customers regarding the loud noise.

Kreg Bahm, Mesa resident and one of the owners of Catalyst Crafted Ales, stated that they have done their best to be great neighbors and updated the Commission on their community involvement. He stated that since they have been there, they have cleaned up the area around the business so that it is much safer.

Mino Henes, Tempe resident, stated that the only issue he has with the entertainment outside is that it echoes, and it is hard to have a conversation. If the live entertainment is allowed outside, it will hinder all of the businesses.

APPLICANT RESPONSE:

Mr. Flottmann clarified their intention to have their live music be acoustic and not amplified.

Commissioner Lloyd asked if the music that has been causing the issues thus far was acoustic or if it had been amplified. Mr. Flottmann stated that they have only had acoustic music thus far. He noted that their main issue is that when they play regular music it is allowed on the speakers, however when they switch to acoustic or live music it is not allowed.

Commissioner Lloyd asked if the wall where they plan to have their stage is shared with Nemo's Café. Mr. Flottmann stated that it is a shared wall, but it is not a stage, it is just where the performer would stand. Commissioner Lloyd asked if the wall went all the way to the ceiling deck or if there was anything else that be done to address the interior noise or vibration. Mr. Flottmann stated that the wall does go from stem to stern. He advised that they would be willing to move the performer area to another location in the taproom if that is a sticking point.

Commissioner Tom asked if the performers are acoustic and then amplified to the patio through the speakers. Mr. Flottmann stated that they are running through the speaker system but not amplified beyond the sound of a natural acoustic guitar.

Rex Williamson, also an owner of Catalyst Crafted Ales, stated that the wall between their location and Nemo's Café has solid acoustic panels with felt in between. He advised it is like what is used in recording studios to deaden sound. Mr. Williamson noted that on the day of their soft opening they ran a DJ outside that was very loud, but they have not done anything like that since then.

Chair Johnson asked if there were also acoustic treatments on the patio. Mr. Williamson stated there are structures that come off the building to a centralized dome that is 25 feet in diameter. That area is under cover but everything else is wide open. There is no treatment to the ceiling of the dome.

ADDITIONAL STAFF COMMENTS:

Mr. Jensen clarified that the neighboring business, Nemo's Café, does have an existing Use Permit for live entertainment that includes conditions of approval similar to #8 and #9 in the Catalyst Crafted Ales staff report. This was part of the justification for staff to use the same stipulations for this request.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Forte referenced the site plan and asked if the red circle that is shown was inside and only the amplification speaker was going outside. Other Commissioners advised that was correct.

Commissioner Lloyd asked if it was possible to add another condition to address the types of live music and amplification instead of Conditions of Approval #8 and #9. Commissioner Spears noted that the loud music is something that would be addressed by a noise complaint.

Chair Johnson stated it is a challenging issue when you have new neighbors coming in and the atmosphere changes from what it has been. He thinks Catalyst Crafter Ale's ownership is sincere in trying to be a good neighbor and that the owner of Nemo's Café is being sincere that there is an impact to their customers. He is in favor of making the changes that Commissioner Spears stated in her motion to remove Conditions of Approval #8 and #9, but to also add a stipulation that the applicant comes back for a review of compliance.

Motion: Motion made by Commissioner Spears to approve PL230403 with the removal of Conditions #8 and #9, and addition of stipulation for Compliance Review in six (6) months with staff. Seconded by Commissioner Redman.

Ayes: Chair Johnson, Commissioners Lloyd, Spears, Corbett, and Redman

Nays: Commissioners Forte and Tom

Abstain: None

Absent: Vice Chair Schwartz and Commissioner Cassano

Vote: Motion passes 5-2

Staff Announcements:

NONE

There being no further business the meeting adjourned at 7:04 p.m.

Prepared by: Joanna Barry, Administrative Assistant II

Reviewed by: Michelle Dahlke, Principal Planner