

Minutes of the Development Review Commission April 12, 2016

Minutes of the regular hearing of the Development Review Commission, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Paul Kent - Chair
Angela Thornton - Commissioner
Thomas Brown - Commissioner
David Lyon - Commissioner
Linda Spears - Commissioner
Andrew Johnson - Commissioner
Daniel Killoren - Alt. Commissioner
Gerald Langston - Alt. Commissioner – only for agenda item #7 (PL150419)

City Staff Present:

Ryan Levesque, Deputy Director, Planning
Steve Abrahamson, Principal Planner
Suparna Dasgupta, Principal Planner
Diana Kaminski, Senior Planner
Karen Stovall, Senior Planner
Lee Jimenez, Senior Planner
Sarah Adame, Admin Assistant II+

Absent:

Trevor Barger - Vice Chair
Margaret Tinsley - Alt. Commissioner

Guests Present: NONE

Hearing convened at 6:08 p.m. and was called to order by Chair Paul Kent.

Consideration of Meeting Minutes:

1) **Study Session 03/09/2016**

MOTION: Motion made by Commissioner Brown to approve **Study Session minutes for 03/09/2016** and second by Commissioner Thornton.

VOTE: Motion passes 4-0 with Chair Kent, Commissioner Spears, and Commissioner Killoren in abstention.

2) **Regular Meeting 03/09/2016**

MOTION: Motion made by Commissioner Brown to approve **Regular Meeting minutes for 03/09/2016** and seconded by Commissioner Thornton.

VOTE: Motion passes 4-0 with Chair Kent, Commissioner Spears, and Commissioner Killoren in abstention.

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

4) Request for a Preliminary Subdivision Plat for **TEMPE REAL ESTATE HOLDINGS (PL150056)**, located at 1900 East 5th Street. The applicant is Tempe Real Estate Holdings, LLC.

9) Request for a Planned Area Development, Development Plan Review and a Use Permit for a new hotel on a GID zoned lot, for **FAIRFIELD INN & SUITES (PL160059)**, located at 2222 South Priest Drive. The applicant is Les Partch of Functional Formation Architecture.

MOTION: Motion made by Commissioner Spears to recommend approval of **Tempe Real Estate Holdings (PL150056)** and **Fairfield Inn & Suites (PL160059)** and seconded by Commissioner Thornton.

VOTE: Motion passes 7-0.

Taken out of order Agenda #7:

MOTION: Motion made by Commissioner Spears to move up Agenda #7 **NEWMAN CENTER / THE MAXWELL ON COLLEGE (PL150419)** to the top of the agenda and seconded by Commissioner Thornton.

VOTE: Motion passes 7-0.

Chairman Kent recused himself and Commissioner Langston joined the commission for the Public Hearing for Agenda #7 **NEWMAN CENTER / THE MAXWELL ON COLLEGE (PL150419)**

Appointment of a new Chairperson to conduct public hearing for Agenda Item #7:

MOTION: Motion made by Commissioner Killoren to appoint Commissioner Thornton as the chair for the public hearing for Agenda #7 **NEWMAN CENTER / THE MAXWELL ON COLLEGE (PL150419)** and seconded by Commissioner Johnson.

VOTE: Motion passes 7-0.

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

- 7) Request for a Planned Area Development Overlay and a Development Plan Review for a new four-story and 20-story mixed-use development containing 295 dwelling units, restaurant, retail, office, classroom, and church uses for **NEWMAN CENTER / THE MAXWELL ON COLLEGE (PL150419)**, located 712 South College Avenue. The applicant is Tony Wall, The Maxwell Tempe LLC.

PRESENTATION BY STAFF:

Karen Stovall, Senior Planner provided a brief description of the case including the location of the site, the history, current zoning of the property with aerial, elevations, and landscaping plans. Ms. Stovall pointed out several significant conditions of approval for this project. These include requiring the applicant to construct a southbound right turn lane on College Avenue and University Drive. Also, to provide a minimum of 444 parking spaces either on or off site as required by the code for the proposed residential uses as well as class rooms. Also, they will need an updated letter from the ASU Foundation regarding the 72 spaces required for the church use.

Commissioner Johnson asked Ms. Stovall if there were any renderings showing a right hand turn lane assuming what it would look like if constructed. Ms. Stovall replied no, but there is staff from the City's Transportation Division present to answer any questions.

Commissioner Spears asked if removing the 3 large palms would be done to create the right hand turn lane. Ms. Stovall replied that the palm trees would be removed and the sidewalk area would be shifted to the west to provide area for the right hand turn lane. Commissioner Spears asked if it could reduce the area where pedestrians would wait for the light to cross the road. Ms. Stovall replied yes.

Julian Dresang, City Traffic Engineer, explained that a right hand turn lane is needed at this location to accommodate vehicular traffic at an intersection that already has heavy pedestrian traffic throughout the day, in addition to the public transit related traffic. College Avenue is a major route for the public transit traffic to the Transportation Center. The green light time at this intersection is mostly used by pedestrians and doesn't allow for much vehicular traffic to move. As a result of this project, the pedestrian traffic will increase greatly. Mr. Dresang explained that moving the curb line back is actually moving it to its original location from the 1980's. While this addition will reduce the curb line, there will still be adequate pedestrian space for crossing. Mr. Dresang stated that the palms would be relocated with the construction of the right turn lane.

Commissioner Spears stated that she her concern that adding the right turn lane will not alleviate traffic but rather slow traffic down further and why a "pedestrian only" crossing signal is not being considered. Mr. Dresang advised that a pedestrian only crossing, which is typically referred to as a pedestrian scramble, is not recommended at this intersection because the signal timing for pedestrian scramble adds to signal timing and significantly increases the

wait time for vehicular traffic while the pedestrian traffic scramble cycle is in operation. This kind of signal is only effective where there is a high pedestrian crash rate. Chair Thornton asked Mr. Dresang if he had a count of how many pedestrians actually cross at that intersection hourly or daily. Mr. Dresang stated that during the peak hours, i.e., from 4pm to 4:15pm there are 1800 pedestrians and 4:15pm to 4:30pm there are 1500 pedestrians allowing about 3 vehicles to turn. This is because pedestrians are still crossing while the green signal is on for vehicular traffic to move. Currently, all the green time is taken by the pedestrian leaving only the orange and red signal time for vehicles to turn either left or right at this intersection.

Commissioner Spears disagrees with separating right and left turn lane would be a solution to moving traffic along because the students are on both sides of the streets. Mr. Dresang advised that having the right hand turn lane would provide relief to the vehicles turning right because currently all vehicles regardless of whether they are turning left or right are stopped at the intersection because of the pedestrian traffic.

Commissioner Brown asked there are plans in the future to close College Ave to vehicular traffic. Mr. Dresang stated that the City does not have any plans in the master transportation plan to close College Avenue and make it pedestrian only because this is all an important road to access the City's Transit Center.

Commissioner Lyon asked if there is data to show that a pedestrian scramble won't work that well. Mr. Dresang advised he did do some research on pedestrian scramble in other states and in the past the City had looked at the pedestrian scramble at this location but determined it was not going to help move the traffic efficiently.

Commissioner Killoren asked why would there be a condition for a right hand turn lane if the Maxwell project states that there would be zero vehicular trips that would be generated as a result of this project. Mr. Dresang responded that the additional bicycle and pedestrian traffic generated from this project will still have an impact on College Avenue and this intersection and will add to the existing traffic congestions.

Chair Thornton clarified that there are about 1200 pedestrians to 3 cars. Mr. Dresang confirmed that only three vehicles are able to move and only at the orange signal due to all the green time being taken by the pedestrian traffic.

Commissioner Johnson asked if the City has looked into allowing "left turn only" or "right turn only" as an option at this intersection. Mr. Dresang responded that the goal is to maximize the utilization of the intersection and not limit it. Commissioner Johnson asked if there is any data available for number of right and left turns at this intersection. Mr. Dresang stated that per the traffic study provided by the applicant, at the build-out of this project in 2017, there would be 38 cars for right turn and 54 cars for left turn projected at the AM peak and 94 right turn and 117 left turn projected during PM peak.

PRESENTATION BY THE APPLICANT:

Trevor Barger, Applicant for the projected, provided a presentation that included describing the architecture, enhancing the College Avenue experience, and keeping with the historic significance and architecture of the church. He continued to describe building design, elevations, site views, and location plans which include parking for vehicles and bicycles and consideration for pedestrian crossings.

Commissioner Killoren asked Mr. Barger what he proposes instead of the right hand turn lane. Mr. Barger stated that he has explored many different options such as closing College to vehicles and having it only available to pedestrians or have a right hand turn only lane during peak hours.

Chair Thornton asked Mr. Barger to confirm if the rationale behind not having parking spaces for the residents living in the 4 bedroom units is that these residents would not be allowed to bring their vehicle. Mr. Barger advised that it will be not be cost effective for a student to park in downtown.

Commissioner Lyon asked Mr. Barger to describe how the parking for this project will be managed and enforced. Mr. Barger stated that the intent is to have Downtown Tempe Authority (DTA) enforce parking. Parking in the garage for the 80 reserved spaces for the residents is going to be gated and access allowed only for those residents.

Commissioner Langston asked Mr. Barger for examples from downtown Tempe that have similar parking. Mr. Barger used University House as an example.

PUBLIC COMMENT: None

DISCUSSION BY THE COMMISSION:

Commissioner Lyon expressed that he did get a chance to speak with the developer of this project and go through the features and design. He stated that it is a very attractive project. His only reservation is with the parking. He appreciates the idea of more bicycles and pedestrian traffic. The second reservation he has is regarding the right turn lane and his concern is about getting only 3 cars through during the yellow light vs. 1200 to 1800 pedestrians during a cycle. He wants to know if it is possible to have a pedestrian scramble but change the timing to allow more cars through than pedestrians.

Commissioner Spears expressed that she appreciates the design and openness. She is concerned with the right turn lane and does not think it's going to accomplish anything. She thinks the concern is not the cars, but it is the pedestrians and the safety with the narrowing of the sidewalk. Commissioner Spears said that generally she will support the project.

Mr. Dresang and Mr. John Hoang, also from the City's Transportation Division, clarified the previous statement about the number of pedestrian traffic versus vehicular traffic count at that intersection and that a traffic signal cycle is 110 seconds which is 2 minutes per cycle which totals to 6 vehicles and 60 pedestrians per cycle.

Commissioner Killoren expressed that he supports the project but does not support the condition for the southbound right turn lane. He would like to remove it and that the developer will continue to work with staff to find a good solution for it. This is a quality of life issue. He also supports removing the condition on parking and believes in the logic that is applied to the parking spots.

Commissioner Brown expressed that he likes the project. Commissioner Brown asked if the brick being used is the same as the church. Mr. Jay Silverberg with Gensler replied yes it will be a medium size brick. Commissioner Brown expressed that he will support the project.

Commissioner Johnson expressed that he likes the incorporation of the brick and the connecting features between the buildings. He appreciates that there are more than one level of retail and commercial. Commissioner Johnson stated that he is conflicted with the right hand turn lane. He is concerned that reducing the existing width of the sidewalk for pedestrians and bicyclists is problematic. He hopes that there is a cleaner and better solution to resolve this issue. Commissioner Johnson also suggested that may be a different set of parking standards be created for student housing rather than using the current downtown parking standards. Commissioner Johnson does support the project and removing the two conditions as requested.

Chair Thornton expressed that she thinks it's a beautiful project and she is very excited about it. She agrees with the demographic that the developer is looking for. Chair Thornton thinks that having a right hand turn lane only and having pedestrians crossing on the left side seems like simple solution to the issue but she is not a traffic expert.

MOTION: Motion made by Commissioner Lyon to recommend approval of the Planned Area Development Overlay and a Development Plan Review for **NEWMAN CENTER / THE MAXWELL ON COLLEGE (PL150419)**, with the following changes:

Remove stipulation #10 and #11c under Planned Area Development Conditions of Approval and stipulation #8 under Site Plan.

The motion was seconded by Commissioner Killoren.

VOTE: Motion passes 7 – 0.

- 6) Hold a public hearing for an appeal of the decision by the Hearing Officer to approve a use permit to allow a pawn shop and a use permit to allow firearms sales for **ROUTE 66 PAWN & GUNS (PL150506)** located at 833 West Broadway Road. The appellant is Alexander Otto.

PRESENTATION BY STAFF:

Lee Jimenez, Senior Planner stated that this is an appeal of the Hearing Officer's decision from March 1, 2016 to approve two Use Permits. The first Use Permit is to allow a pawn shop and the second is to allow the sale of firearms. Mr. Jimenez gave a brief description of the case including the location of the site, the history of the case, and the current zoning of the property. Mr. Jimenez also stated that the appellant, Mr. Otto, raised concerns regarding the proximity of this business to the residential neighborhoods, schools, a daycare and the negative impact it could have on property values as result of this business locating at this address.

PRESENTATION BY THE APPELLANT:

The Appellant, Mr. Otto, presented reasons why the Use Permits should not have been approved by the Hearing Officer. He stated that the applicant did not submit a complete application. Mr. Otto also stated that the site plan provided by the applicant does not indicate where the gunsmithing and test firings of guns will occur in the facility. Another issue raised by the appellant is that the applicant was not aware that there is a daycare in close proximity and although the zoning code does not have separation requirement for a gun store or pawn shop, the use should have been evaluated based on the compatibility with existing uses and structures in the vicinity. Mr. Otto expressed that the City should have taken a closer look at the surrounding community of this site as there are many schools, including a daycare, very close to this site. Mr. Otto stated that this approval will have a negative impact on the property values in the surrounding area. Mr. Otto also stated that the applicant failed to meet the condition of approval regarding contacting Tempe Crime Prevention Unit for a security plan within 30 days of the approval of the Use Permit.

Chair Kent asked Mr. Otto if he was representing any specific Home Owners Association (HOA) or Neighborhood Association (NA). Mr. Otto explained that he is representing multiple residents with similar concerns but he is not officially representing any HOAs or NAs. Chair Kent reviewed with Mr. Jimenez whether the City has any separation requirements for either gun shops or pawn shops. Mr. Jimenez advised that there are no separation requirements in the zoning or development code. Chair Kent asked Mr. Jimenez to confirm the security concerns that the appellant had. Mr. Jimenez replied that an email was sent out to the applicant from Detective Ryberg on Friday April 8th, 2016 to notify the applicant that he had not received any information regarding the security plan.

Commissioner Spears asked if the building permit has been applied for and Mr. Jimenez advised that there are no building permits applied for at this time. Commissioner Spears asked for clarification regarding the condition of approval where it states that Use Permits are valid only after a building permit has been obtained and inspections have been completed. Mr. Jimenez explained that this would only be true if this was a Tenant Improvement project which is not the scope of this Use Permit request.

Commissioner Lyon asked staff if there are different types of requirements for gunsmithing and Mr. Jimenez advised no.

Commissioner Spears asked staff if there are age limitations or restrictions associated with the use and Mr. Jimenez stated that he is not aware but he would like to defer the applicant to respond to the question.

PRESENTATION BY THE APPLICANT:

Mr. Wayne Wyn, owner and applicant of the Use Permit, expressed that the condition for the security plan was for when he occupies the building. He has not occupied the building yet. He has been doing work inside the building and states that the Hearing Officer advised him that when he does in fact occupy the building is when the condition applies.

Mr. Wyn stated that he has owned a pawn shop for many years and that he is not a menace to the community but a great help by giving loans to people that could not qualify for loans with the banks. He stated that a person has to be 18 years or older to enter his business and he has owned this pawn and gun shop for 5 years.

Commissioner Thornton asked Mr. Wyn if there are separation requirements in Mesa. Mr. Wyn replied that in Mesa, there is 1200 feet restriction to public school but none for private schools.

Commissioner Brown asked if there will be testing on guns in the building. Mr. Wyn confirmed it. Commissioner Brown asked if all pawn shops sell guns. Mr. Wyn advised no, not all of them. Mr. Wyn explained that in order to sell guns, they have to be federally licensed and have through extensive background check.

PUBLIC COMMENT:

Larry Djinis, a Tempe resident of the Holdeman neighborhood and the chair of the HOA, stated that he is echoing the same concerns as his neighbors of which that he does not support a pawn and gun shop opening in the neighborhood. Mr. Djinis is concerned that the pawn and gun shop would be opening up across the street from a daycare preschool, elementary schools, and a high school.

Ernie Nickels, a Tempe resident, stated that he strongly objects to the pawn and gun shop moving into the neighborhood. Mr. Nickels gave an explanation as to why this is not an appropriate neighborhood for a pawn and gun shop. There has been a lot of beautiful work and improvements on Broadway recently completed by the City and feels that the pawn and gun shop is not right for this improved area.

Chair Kent read into record the following public comments from the comment cards:

Steve Doyle wrote that the Route 66 Pawn and Gun shop should not be built. It is too close to a preschool, elementary and high school. The proximity to the highway will bring gun buyers from all over the valley affecting security and property values.

Mark Eastwood, a Tempe resident, wrote that this is not a good location for this business and that this business will encourage property crime in the area just north of Broadway.

Lori Hianger, a Tempe resident, wrote that she is a resident in the Marilyn Ann neighborhood and stated that such a business is a danger to the neighborhood.

Sarah Klepac, a Tempe resident, wrote that she is extremely against the Route 66 Pawn and Gun shop moving into her family friendly neighborhood. This business will bring unwanted criminal activity.

Alma Wills, a Tempe resident, wrote that she lives in the neighborhood of the pawn and gun shop and she describes that the crime has increased in her area along with the increase of homeless walking around the neighborhood. Ms. Wills stated that the business needs to be further away from the schools (in an industrial area) and that it would attract a criminal type of traffic.

Eva Humbeor, a Tempe resident, wrote requesting that the Commission vote against allowing the pawn and gun shop to open because it's too close the school and a daycare preschool.

Shanna and Jon Williams, Tempe residents, requested the Commission to approve the appeal and deny the Use Permits for the Route 66 Pawn and Gun shop. They stated that there has been more than enough vagrant traffic existing and that this business will deteriorate the neighborhood's value and bring more unsavory traffic to their community.

Barbara Loyd, a Tempe resident, wrote that she is in opposition of the pawn and gun shop because it will be detrimental to property values and neighborhood image. The pawn element will bring a certain demographic that can impact burglaries and theft in the neighborhood.

Thomas Strich, a Tempe resident, wrote that he has lived on Hardy Drive for 20 years. Mr. Strich listed all the surrounding uses in close proximity to the proposed location of the pawn and gun shop and stated that this business is not appropriate for the neighborhood due to the proximity to many schools. Also, that this shop is not right for the planning and design of the Broadway Corridor. Mr. Strich expressed concerns that a gun shop will not direct development of the character of this corridor in a manner that is constructive or beneficial to the overall health of the neighborhood and the City at large.

Maria Mahar, a Tempe resident, wrote that she is a resident in the Holdeman area and feels that the proximity of the pawn and gun shop will undermine the long term efforts of the neighbors and the City to improve this area. Ms. Mahar stated that the pawn and gun shop is not an appropriate use for this location.

Bonnie Griffin, a Tempe business owner, wrote that she is opposed to the pawn and gun shop because it will attract individuals to bring in and pawn stolen items. She stated that they have worked hard to improve the Clark Park neighborhood and this will be a negative impact to this area.

Greg Lund, a Tempe resident, wrote that he is not in favor of a pawn shop at Broadway and Roosevelt.

Freda Rothermel, a Tempe resident, requested the Commission not to allow a pawn and gun shop in the neighborhood. She wrote a public comment entered in to the record that it will contribute to the deterioration of the neighborhood. She noted that there are crack houses on Farmer Avenue and that questioned why the City would spend millions of dollars to improve Hardy (Broadway to University) but still allow for a pawn shop to be located at the entrance of this neighborhood. She further stated that it is too close to schools and children and it will bring crime to the neighborhood.

Jim Walters, a resident of the Holdeman neighborhood, stated that there are studies that indicate that criminal activities increase where pawn shops are located. He stated that pawn shops can cause crimes and that they are in the same business as pay day loan and title loan businesses.

Amy Otto, a Tempe resident, stated that she feels that there are enough pawn and gun shops in the neighborhood. Ms. Otto also explained that the pawn and gun shop will lower the property value of her home. She stated the applicant's lack of paperwork in the application and lack of security shows that he does not care about the community.

Travis Well, an employee of Route 66 Pawn and Gun, stated that he has been employed for 5 ½ years and that there was no foundation to prove that the pawn and gun shop will lower property value. He explained to the Commission that in his experience as an employee working with the pawn and gun business owner and that they all work well with the community, such as it is with the Mesa Police Department from the Mesa shop.

Karyn Gittis a Tempe resident, stated that she is opposed to this project and thinks there are more appropriate places to locate this project than this particular location.

Jimmy Adame, owner of Little Foot Learning Center, stated that he is not in favor of this pawn and gun shop to be located right across the street from his daycare/preschool center. He is also concerned about the gunsmithing that would occur within the shop.

Nicholas Gilham, a Mesa resident, spoke to the character of the Pawn and Gun shop owner as a customer of the Mesa location. He stated that the owner is a trustworthy, the interest rates for loans are competitive, and they conduct business in a professional and caring manner.

Nancy Randall, a Tempe resident, stated that she lives in this neighborhood and that she and her family have experienced several burglaries this year. Ms. Randall stated that there has been an increase in homeless population in her neighborhood but she and her neighbors work together every day to maintain the integrity of the neighborhood. Ms. Randall explained that the pawn and gun shop will give a perceived notion of the type of clientele they do not want in their neighborhood.

Teresa and Jay Robinette, Tempe residents, wrote a public comment entered in to the record that they strongly opposed this establishment in their neighborhood.

Jesse Hanson, a Tempe resident and the manager of the largest gun shop in Arizona, stated that he knows the Route 66 Pawn and Gun shop owner and they are good people.

Matt Black, a Tempe resident, stated that he lives in this neighborhood and is opposed to the pawn and gun shop opening up here. He does not want the type of clientele that this shop will bring into his neighborhood.

Melissa Buchler, a Tempe resident, stated that there is low cost child care facility that resides just north of where the pawn and gun shop is located. She stated that having a pawn and gun shop so close to the child care facility could harm the child care business.

Jeremy Russ, a Tempe resident, stated that he did not wish to have a pawn and gun shop near his home because he is concerned with the stigma that comes with such a business and that it would a negative impact to the neighborhood.

Ken Hodges, bank manager that applicant works with, stated that the applicant has the training and knowledge to successfully run an establishment such as this. He believes that the applicant has met all the requirements to open this shop. The only item in question is the 30 security notice that was conditioned by the Hearing Officer.

Glen Brown, a Tempe resident stated, that there will be more taxes if this pawn and gun shop opens. Mr. Brown asked if the shop will be selling assault rifles and that it is not acceptable to locate a pawn and gun shop across the street from the daycare/preschool.

Mr. Otto restated that he is appealing the Use Permits that were granted by the Hearing Officer. Mr. Otto reiterated that the condition of approval regarding the security plan was not met by the applicant.

Chair Kent asked the appellant to give him one reason to approve the Use Permits from the listed criteria of use permits. Mr. Otto stated that the biggest reason to not approving the Use Permits is the down grading of the property values and the compatibility with existing uses and structures. The City of Tempe does not have a buffer to state a distance requirement for a pawn and gun shop near daycares and schools. He also stated that in the prior hearing nothing was stated that there would be gun firing in the shop.

DISCUSSION BY THE COMMISSION:

Commissioner Spears commented that the condition regarding the security plan was a requirement that the applicant had failed to fulfill in 30 days. Commissioner Spears expressed that she is struggling with the criteria of compatibility with existing surrounding uses and structures. Commissioner Spears is unsure if the Hearing Officer was aware of the existence of the daycare across the street. Commissioner Spears stated that she is unsure where she stands on this matter.

Commissioner Killoren expressed that he agrees with Commissioner Spears that the decision tonight has to come from the criteria of approval. He is reviewing this appeal to see if it meets all the criteria approval for a Use Permit. He agrees with criteria number 4 regarding compatibility of this business with the surrounding neighborhood and the overwhelming concerns from the residents. Commissioner Killoren supports overturning the decision of the Hearing Officer.

Chair Kent stated that he was not aware that the City Code does not have separation requirements for pawn and gun shops. Chair Kent is also overwhelmed by the resident and public concerns. Chair Kent stated that criteria number 3 would be affected. Regarding criteria number 3, he stated that he thinks that the Hearing Officer did not know there was a school nearby. Chair Kent stated that he would support to uphold the appeal.

Commissioner Lyon expressed that he does not feel that the pawn and gun shop will bring in bad cliental but he agrees with the community regarding the compatibility of the use in this neighborhood and therefore would be voting in favor of the appellant.

Commissioner Johnson expressed that he does think there is a compatibility issue with this project in this location.

Commissioner Thornton stated that she thinks the criteria number 3 & 4 are both her reasons for voting for the appellant this evening.

MOTION: Commissioner Killoren motioned to approve the appellant request to deny and overturn the decision of the Hearing Officer denying the use permit to allow a pawn shop and a Use Permit to allow firearms sales for **ROUTE 66 PAWN & GUNS (PL150506)** located at 833 West Broadway Road and seconded by Commissioner Thornton.

VOTE: 7-0 approved.

- 3). Request for a Development Plan Review consisting of a new office building on a PCC-1 zoned lot, for **TILTED KILT CORPORATION OFFICE (PL160047)**, located at 8915 South Harl Avenue. The applicant is Burak Bekat of A23 Studios.

PRESENTATION BY STAFF:

Diana Kaminski, Senior Planner presented the Tilted Kilt Corporation Office. Ms. Kaminski provided a brief description of the case including the location of the site, the history, current zoning of the property with aerial, elevations, and landscaping plans.

PRESENTATION BY THE APPLICANT:

Burak Bekat, the applicant, presented the design and development of the project. He described building materials, storefront elevations and the canopy elements of the project.

Commissioner Lyon had Mr. Bekat describe the materials used for the design and build of this project.

Commissioner Spears asked if the logo sign will be going through the sign criteria. Ms. Kaminski responded, yes, that they will be going through a separate Development Plan Review (DPR) process. Commissioner Spears recommended to not allowing the developer to use the logo.

PUBLIC COMMENT: None

DISCUSSION BY THE COMMISSION:

Commissioner Thornton stated that she agrees with Commissioner Spears regarding not using the logo sign in the signage.

MOTION: Motion made by Commissioner Thornton to approve the request for a Development Plan Review consisting of a new office building on a PCC-1 zoned lot, for **TILTED KILT CORPORATION OFFICE (PL160047)** and seconded by Commissioner Lyon.

VOTE: Motion passes 7-0.

5. Hold a public hearing for an appeal of the decision by the Hearing Officer to approve a Use Permit to allow a wall or fence over four (4) feet in height within the required front yard building setback for **CHURCH IN PHOENIX (PL150387)**, located at 1619 South Hardy Drive. The appellant is Kelly Woodson.

PRESENTATION BY STAFF:

Karen Stovall, Senior Planner presented an appeal of the decision by the Hearing Officer to approve a Use Permit to allow a wall or fence over four (4) feet in height within the required front yard building setback.

Chair Kent asked Ms. Stovall to clarify the fencing and gates. Ms. Stovall explained that there is existing fence on Hardy Drive that is already 6 feet in height. The applicant will be extending that all the way to the existing wall and installing gates. The fence will be 6 feet height with swinging gates at the drive way. On 16th Street, the applicant is proposing a 6 foot tall wall that will be designed with a 3 foot wrought iron fence over a 3 foot block wall.

PRESENTATION BY THE APPELLANT:

Kelly Woodson, the appellant, reviewed with the Commission the applicant's written statement and compared it to the General Plan and Development Code. Mr. Woodson stated that the applicant failed to justify the proposed Use Permits and whether it meets the goals, objectives and policy of the City and the General Plan. The appellant believes that there was insufficient information provided and sent out to the community by the applicant. The appellant went in to great detail with the various criteria in the City's General Plan and how the installation of this fence does not meet the intent of the General Plan.

The appellant also noted that this fence/gate is not the right fit or character for this zoned area and negatively impacts the property values. The fence is too high at 6 feet tall in comparison to the other fences in the neighborhood placed in the front yards.

Chair Kent asked Mr. Woodson to explain the difference between a fence and a gate. Mr. Woodson stated that the notice he received was for a Use Permit for a fence that would be over 4 feet tall but did not say anything about having gates or the hours of operation. It is Mr. Woodson's opinion that the gates, when closed, will make the property look like a jail or a compound.

Mr. Woodson continued to state his reasons why installing a 6 foot fence is to not going to address applicants concerns with security of the property as the property owner has not maintained the property and there are homeless people in the property right now. Mr. Woodson proposed that the applicant install a swing gate to keep crime and trespassers out. The proposed swing gate would be shorter than 4 feet.

Chair Kent confirmed the reasons of Mr. Woodson appeal, which are that the submission was not complete and the applicant does not comply with criteria 3 and 4 of the Use Permit.

Commissioner Thornton asked Mr. Woodson if he has spoken to the church to address his concern or work with the applicant on a common solution. The appellant responded that he has not spoken to anyone at the church.

Commissioner Brown asked Mr. Woodson how he felt about the surrounding schools in the neighborhood having 8 foot fences and Mr. Woodson advised that he does not have a problem with 8 foot fences in schools because they are government buildings.

PRESENTATION FROM THE APPLICANT:

Mr. Ken Casebolt, the applicant and the President of the Board of the Church in Phoenix, stated that this is not a church but a property owned by a church. The applicant stated that the Hearing Officer allowed for the use of the lockable gates. The applicant stated that the purpose of installing the fence and gates is because they have been a victim of crime and vandalism. The applicant stated that there is not anything in the code that prohibits him from having a fence around his property and that the fence will not look like a prison compound. The applicant also stated that the issue regarding negative impact to property value is only suggestive and that the appellant has not presented any evidence of that happening.

Commissioner Thornton confirmed with the applicant the need for the fence is to protect the public while there are repairs being done on the property. Mr. Casebolt, the applicant replied yes, partly, which includes the repairs to the landscaping and the roofing that could last about 6 to 8 months.

Chair Kent clarified what the Commission is making a decision on tonight is about the Hearing Officer approving a 6 foot fence with a 6 foot gate in the front yard setback.

PUBLIC COMMENT:

Jeremy Russ, a Tempe resident, stated that the wall proposed will be ugly and reduces the property value of his home and neighborhood. He feels that the fence is too big and does not understand why the City has the front yard facing 16th Street. He feels that the fence around the church will make the neighborhood uninviting.

Jesse Hanson, a Tempe resident, stated that he lives near this property and can see the fence from his home. Mr. Hanson stated the real issue is not the church but the un-kept alley ways. He feels that the church has the right to put the fence on their property to protect their property.

Ron Anderson, a Tempe resident and affiliated to the Church in Phoenix, stated that he is in favor of the decision made by the Hearing Officer. He stated that reason that they want to put the fence up is to have more security on the property.

Tom Cooney, a Tempe resident and a neighbor of the Church in Phoenix, stated that the Church in Phoenix is a good neighbor and was prompt in addressing concerns regarding spilling of lights in to his property from the new lighting installed at the church.

Janell Ramirez, a Tempe resident, expressed that she passes by the Church in Phoenix every day and night. She is supportive on improvement in the neighborhood, however, she is concerned about the 6 foot fence and gate in the front of this property. She is against this fence because she doesn't know how this will improve the neighborhood.

Chair Kent read into record Maria Mahar, a Tempe resident's, written Public Comment card. The community is confused about this property. The park was built by Kaboom for the community. The signs are still up. As a neighbor on Hardy, I am glad to have the property occupied. However, it does create a "compound" lay groundwork or set a precedent for a zoning change request?

Chair Kent read into record Thomas Strich, a Tempe resident's, written Public Comment card. I have lived in the same house for over 20 years directly across the street from the church. The proposed fence does not contribute to the friendly neighborhood feel of the current streetscape which the City of Tempe just spent a lot of money to upgrade. I am concerned that the new fence will constrict access to the current park on the church property which was built as a community service project for the park seem to go against the spirit in which this public space was created. If the church wants a gated enclave, maybe they should have considered siting their facility in an outline suburb with other gated communities. This is not how our neighborhood operates.

Chair Kent confirmed with staff that the park on this property is indeed private property.

Min-Yi Msu, a Tempe resident, expressed that he is a member of the church since 1986. He stated that he seen cars just pass through the property which creates a danger to the kids of the church, there are transients on the property.

Mr. Msu stated that they hope to get this Use Permit quickly so that they can move fast on the improvement projects.

The appellant, Mr. Woodson restated his objections for having the Use Permit for the fence and gate.

COMMISSION DISCUSSION:

Commissioner Thornton asked if the appellant understood that the Use Permit is only for one strip of land in the front of the property and that is the only item that is being discussed at this hearing. Mr. Woodson responded that he disagrees that the strip is not the only item of discussion that is wrong with case.

Chair Kent clarified that the Use Permit is just for that strip of property in the front of the church which is the front of the parking lot. He understands why the Hearing Officer did approve the Use Permit for this case.

Commissioner Spears stated that she does not see where any of the 5 listed criteria for a Use Permit have been violated. She also expressed that the owner has the private property rights to build on his property. Commissioner Johnson expressed that building a 6-foot wall versus a 3-foot wall is better for security but he is not convince that 3-foot with a wrought iron fence on top will address the security concerns of the applicant because someone can still climb over it. He stated that appellant did state a lot of valid reasons why the applicant should readdress the layout of the design and consider using vehicular fences.

Chair Kent expressed that he supports Commissioner Spear's comments. He is in support of denying the appeal and encouraged the appellant and the applicant to work together on a solution that is acceptable to both.

MOTION: Motion made by Commissioner Spears to deny the appeal of the Hearing Officer's decision to approve a Use Permit to allow a wall or fence over four (4) feet in height within the required front yard building setback decision for **CHURCH IN PHOENIX (PL150387)**, located at 1619 South Hardy Drive and seconded by Commissioner Lyon.

VOTE: Motion passes 6-1 with Commissioner Thornton in opposition.

8. Request for a Planned Area Development and Development Plan Review for six single-family homes on an R-3 zoned lot, for **9TH AND WILSON (PL150336)**, located at 431 West 9th Street. The applicant is Jerry Palmer of Palmer Architects.

PRESENTATION BY STAFF:

Diana Kaminski, Senior Planner provided a brief description of the case including the location of the site, the history, current zoning of the property with aerial, elevations, and landscaping plans.

Chair Kent asked Ms. Kaminski about the height of the walls around the project. Ms. Kaminski advised that it would be an 8 foot wall and on the east side there is an existing wall that will remain.

Ms. Kaminski informed the Commission that she received a number of emails and letters from concerned citizens regarding this project in their neighborhood since the staff report and attachments were completed and there are many residents here wishing to speak on this case.

Commissioner Killoren asked if there were any differences between the density allowed with the current zoning and the proposed PAD. Ms. Kaminski stated that the density proposed is in conformance with the density allowed by right within the R-3 zoning District. Commissioner Killoren asked to clarify if the only changes requested by the applicant are regarding setbacks and Ms. Kaminski confirmed it.

Commissioner Spears confirmed with Ms. Kaminski that these were townhomes.

Chair Kent asked Ms. Kaminski to use the site plan to point out the location of the reductions in setbacks requested by the applicant.

Commissioner Brown asked if the north side parking is being reduced from 20 feet to 3 feet. Ms. Kaminski confirmed it.

PRESENTATION BY THE APPLICANT:

Joe Risi, the applicant, described what was originally proposed on the site and how he re-designed the project based on the neighborhood concerns for architectural style and landscaping that is compatible with the neighborhood. Mr. Risi described the neighborhood meeting that was conducted and staff review process he has gone through for his proposed project.

Chair Kent asked about the zoning of the property and what is on the property now. Mr. Risi replied that it is currently zoned R-3 multi-family district. The zoning was rezoned from R1-6 to R3 in the 1960's for the entire neighborhood.

Commissioner Lyon asked if this site is flood irrigated. Mr. Risi stated that it currently is but with the proposed new development, there will be sprinkler system installed to meet current drainage standards.

Architect, Jerry Palmer, described in great detail the design plans for the project. Mr. Palmer reviewed with the Commission the context plan and the craftsman's style architectural elements of the design. Mr. Palmer explained how the project is asking for a variance on the 2 guest parking spaces within the 3-foot setback but clarified that these 2 parking spaces are more than what is required by code for this development.

Commissioner Killoren inquired about the material used for siding. Mr. Palmer explained that the siding will be painted to look like wood siding. Mr. Palmer presented the materials and color boards to the Commission and explained the reasons behind the colors and materials choices that are being used for this project.

Commissioner Spears asked if the exterior of the homes and the landscaping will be maintained by a Homeowner Association. Mr. Palmer confirmed that it would be the responsibility of the homeowners association to maintain the exterior of the project and the landscaping with CC&Rs.

Chair Kent stated that he would like see some turf or ground cover within the project as part of the landscape plan that would better fit with the character of the neighborhood. Mr. Palmer agreed to make some changes. Chair Kent asked Mr. Palmer why the applicant has to build 6 units and nothing less. Mr. Palmer explained that it is not economically feasible to build less than six units.

PUBLIC COMMENTS:

Chair Kent read into record, Theresa Lucier, a Tempe resident, wrote although significant design changes have been made, the density exceeds the limit to maintain our quality of life. Parking is already a nightmare. Reducing to 4 units and provide more parking on site and preserve the neighborhood character. We are just about to work on our own vision for the neighborhood character and part of that is to preserve the current level of density. This project will preempt the work we are about to do.

Chair Kent read into record, Linda Knutson, a Tempe resident, wrote I support the revised plan with the following conditions. More trees, grass in the areas that were marked as lawn on the proposal and larger windows or more windows on the 9th street side. I would also like the Wilson Art & Garden neighborhood to have continuous input during the development so that it fits into the neighborhood.

Chair Kent read into record, Freda Rothermel, a Tempe resident, wrote please do not allow the density or height in our neighborhood. It will destroy the charm and invade privacy and 3 houses would be fine, just not condos.

Chair Kent read into record, Caroline Burget, a Tempe resident, wrote I am here to show my support for the development at 9th and Wilson.

Chair Kent read into record, Sally Wittlinger, a Tempe resident, wrote although I prefer that large development such as this not intrude into the neighborhoods south of University, I realize Mr. Risi's right to build six units on his property and support the revised design. However, I request that turf replace the decomposed granite proposed for the front and side yards and those larger windows be incorporated into the 9th St (north) sides of the buildings to provide a better connection between the residents and the neighborhood.

Chair Kent read into record, Sarah Rich, a Tempe resident, wrote the setback (or lack of setbacks) creates tremendous safety concerns. In a neighborhood with many walkers whereas some coming from local bars. It creates impaired sight when coming around the corner. The height is invasive for existing neighbors. Street parking is already full at all times of the day and weekends. Developer has been unwilling to work with the neighborhood. Beige clashes with our vibrant neighborhood.

Chair Kent read into record, Monica Wadsworth-Seibel, a Tempe resident, wrote I am very much against this development and the insidious encroachment of this type of development. When a developer purchases property for more than the single home appraisal, it is not the onus of the city to ensure the developer gets variances in order to ensure profits or to make it "pencil out". This developer wants to put 6 units on the lots and sell them for \$400,000.00 dollars for a 1.5 to 2 million dollars and profit. It is not in character of the neighborhood. Parking is not reasonable. Historically, condo ownership turns into a rental scenario.

Brian Tomasi, a Tempe resident, expressed that this building is too tall, too expensive and will obstruct view around corner for late night walking, could be dangerous. He was also concerned about it becoming a fraternity house, and that the project is not in keeping with rest of the neighborhood.

Jeff Titone, a Tempe resident, expressed that he is against this project because of the setbacks. He believes the current zoning protects the current setbacks and this project goes against everything this neighborhood stands for.

Bonnie Gereplca, a Tempe resident, expressed that she currently on the Transportation Commission and her issue with this project is with the increase in rent that this project will cause. She suggests that we need to look at local residences, local charm, affordability, and keeping it vibrant.

Ben Funke, a Tempe resident, expressed that he is a homeowner in the neighborhood and the Vice Chair in the Metro Park Neighborhood. He states that Mr. Risi offended the residents at the neighborhood meeting. He does not see a compelling reason for the City of Tempe to grant a PAD Overlay for this development. The demolition of the current home on 9th and Wilson and the construction of the 6 new homes will be a dramatic change on the street. If this project is approved it will attract other developments to occur while changing the current zoning code. Mr. Funke is requesting that the DRC uphold the current zoning code.

Chair Kent read into record, Kiby Spittler, a Tempe resident, wrote that he opposes the PAD at 431 W 9th Street. As Fred Brittingham (a former Tempe Planner) would say – “it’s too much peanut butter for the jar”.

Sarah Capawana, a Tempe resident, expressed that she is a homeowner in the neighborhood. She stated that she is not in support of this project. She called Mr. Risi and expressed her issues with the project. With a new project, Ms. Capawana expressed that she thinks that there are elements of this project that need modifications. Ms. Capawana stated that she is very concerned about this project because it is the first project on her street and she is concerned about other nearby R-3 zoned properties that could become similar developments in the future.

Cathy Mancini, a Tempe resident, expressed that she resides in the neighborhood. She stated that she is not in support of any type of development that is out of character of the neighborhood. She thinks that adding 6 homes to one parcel is not the character of the neighborhood. If this project is allowed along University it will continue. Ms. Mancini also stated that she has never seen any colors for this project at any of the past meetings.

Megan McCluskey, a Tempe resident, expressed that this project is overpriced for the area, an area that needs affordable housing. While the Commission cannot force developers to build/sell affordable housing, they can influence and send the message that these overgrown and overpriced projects do not fit or belong. 3 to 4 bedrooms per unit will increase the already congested streets and the project does not fit with the character of the neighborhood. Existing apartments in the area have 1 to 2 bedrooms and 3 to 4 bedrooms with potential for 3 to 8 adults per dwelling is too large, especially in regards to parking.

Karyn Gillis, a Tempe resident, expressed that she is homeowner in the neighborhood. She stated in great detail a number of things about this project that she does not like. Ms. Gillis describes all the physical elements that tie this neighborhood together. She stated that Mr. Risi should not be granted the variances for the PAD to decrease the setbacks. She requested the Commission deny the approval of the PAD and that the he developer should build within the requirements of the zoning districts without asking for variances.

Commissioner Spears reminded Ms. Gillis that in the mid-1990’s City Council tried to address the concern about development in R-3 zoning districts in the Maple-Ash neighborhood but the residents of the neighborhood were unable to secure the required amount of signatures from the property owners to voluntarily down zone and rezone to a lower density zoning category.

Commissioner Lyon asked if Ms. Gillis would feel better if the Commission denied the request of this project subsequently allowing Mr. Risi would build a multi-family project as permit by code. Ms. Gillis stated that she does not care what this project would look like in the context of the neighborhood and she would support a “plain Jane box” with adequate parking over this project.

Mr. Risi addressed in great detail all the concerns raised by the residents and explained the financial aspect of the project. Mr. Risi stated that he is not asking for all of the 12 variances that were granted to this site by the Board of Adjustment in 2002. Mr. Risi stated that he is willing to work to make modifications to address the concerns about parking, colors proposed and addition of turf to the landscaping.

Mr. Palmer stated that if the Commission does not approve the PAD for a variance and getting some historical character and color to community, they will end up with a much denser project on the site which would result in a square box being built on the site as opposed to this proposed project.

Commissioner Thornton asked the applicant if he would be willing to change the design of the windows facing 9th Street and Mr. Palmer replied that he can accommodate additional or larger windows.

COMMISSION DISCUSSION:

Chair Kent expressed his concern regarding what could potentially be built under the current zoning if this PAD is not approved.

Commissioner Killoren expressed that the applicant is proposing to build what is currently allowed. He thinks that the applicant is showing good faith to work with the neighborhood. He agrees with Chair Kent that if this project gets denied, the product that could come out would be far out of character with this neighborhood than the currently proposed project. Commissioner Killoren stated that he supports the project.

Commissioner Spears expressed her concerns about what could be potentially built with the current zoning of the property. She indicated that she likes this is a single-family product and not condos or apartments. She likes that the parking has been taken off the street and there is no tandem parking. She is concerned about the amount of decomposed granite being used and the trees and indicated that the applicant needs to provide more landscaping to fit with the character of the neighborhood.

Commissioner Lyon stated that he agrees with the prior landscaping comments and hopes that the landscaping of this project can keep in character of the neighborhood. Commissioner Lyon stated that he does have some reservation of the Craftsman's style and thinks that it's a better fit than the Newport project. He will be voting in favor of the project.

Commissioner Brown expressed that he supports the project reluctantly.


MOTION: Motion made by Commissioner Spears for an approval of the request for a Planned Area Development and Development Plan Review for six single-family homes on an R-3 zoned lot, for **9TH AND WILSON (PL150336)**, located at 431 W 9th Street 9th Street & Wilson (PL150336) with conditions that the developer continue to work with staff and the neighbors to modify landscape plans that is more fitting with the neighborhood and to work with staff and the neighbors on the windows on 9th Street and seconded by Commissioner Thornton.

VOTE: Motion passes 7-0 approved.

Staff Announcements: None.

There being no further business the meeting adjourned at 11:35pm.

Prepared by: Sarah Adame

Reviewed by: 
Suparna Dasgupta
Principal Planner and Community Development Planning