

Minutes of the Development Review Commission June 13, 2017

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

Present:

Chair Linda Spears
Vice Chair David Lyon
Commissioner Thomas Brown
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Alternate Commissioner Nicholas Labadie
Alternate Commissioner Barbara Lloyd
Absent:
Commissioner Scott Summers
Commissioner Angela Thornton
Alternate Commissioner Gerald Langston

City Staff Present:

Ryan Levesque, Deputy Comm. Devel. Director- Planning
Suparna Dasgupta, Principal Planner
Lee Jimenez, Senior Planner
Cynthia Jarrad, Administrative Assistant

Hearing convened at 6:01 p.m. and was called to order by Chair Linda Spears.

Consideration of Meeting Minutes:

- 1) Study Session and Regular Meeting Minutes, April 25, 2017.
MOTION: Motion made by Vice Chair Lyon to approve Study Session and Regular Meeting minutes for April 25, 2017. Motion seconded by Commissioner Johnson.
VOTE: Motion passes 5-0.
- 2) Study Session and Regular Meeting Minutes, May 9, 2017.
MOTION: Motion made by Vice Chair Lyon to approve Study Session and Regular Meeting minutes for May 9, 2017. Motion seconded by Commissioner Johnson.
VOTE: Motion passes 5-0
- 3) Request approval of a use permit to allow a bar (Series 6) for **5th STREET PREPARED FOOD MARKET & BAR (PL170154)**, located at 24 West 5th Street. The applicant is Huellmantel & Affiliates.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, gave a presentation about the project. This applicant is proposing to operate a restaurant and bar in the Barmeier Building located on the northeast corner of West 5th Street and South Maple Avenue. It is located in the City Center (CC) District within the Transportation Overlay District. (TOD). The establishment will be a market-style restaurant and bar, consisting of a large kitchen serving fast casual meals on weekdays and breakfast and brunch on weekends. Proposed restaurant hours of operation are from 6am – 2pm daily; and proposed bar hours of operation are 10am – 2am Monday through Friday and 8am – 2am Saturday and Sunday. There will be approximately 1200 square feet of patio along the southwest corner of the building. The parking area on the south portion of the lot will be converted to a covered patio, adding approximately 2400 square feet of outdoor bar and dining area. The second floor of the building will remain office space. Tonight's request is for a use permit only, upon approval, a Development Plan Review application will be required for proposed elevations

and site modifications. The City's Police Department Crime Prevention Unit has reviewed the application, and will require a security plan. To date, staff has received two emails in opposition to the request; both cite concern for potential noise from the outdoor bar and dining area, with proximity to residential uses as well as potential disruptive behavior when patrons exit. Staff believes the application meets all of the approval criteria for the use permit and supports this request, subject to the conditions of approval provided in the Staff Report.

PRESENTATION BY APPLICANT:

Mr. Charles Huellmantel of Huellmantel & Affiliates gave a short presentation. He stated that this building has been vacant for two years, the developer plans to keep the basic structure, but to enhance it. The design intentionally puts the patio area away from the surrounding residential uses. He pointed out how each of the conditions for granting of a use permit was met. In regards to concerns about noise or disruptive behavior, there will be a security plan in place, and the noise level will not be any louder than the many other establishments in the ambient area. The security plan is required by the city and by the state Liquor Board. There is also a stipulation which states if there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit, which may result in termination of the use permit.

Commissioner Amorosi inquired, since this is a new use permit, is there a probationary period for the liquor license. Mr. Huellmantel replied no, there is no such thing as a conditional liquor license, it is in fact unlawful. If there are problems or issues arising from the business, the liquor license can be revoked by the State, and the City could also revoke the use permit.

Commissioner Lloyd said that it had been mentioned this evening that this location is not a destination, and therefore a little less parking should not be a problem. However, if it becomes a destination, is there a plan in place for overflow parking. Mr. Huellmantel stated there was no plan for overflow parking, but given the location in the downtown area in the TOD, this is appropriate. The city is pushing for less parking, not more. Since this is a restaurant and bar, many people may consume alcohol, therefore the assumption is heavier use of light rail, Uber, walking, streetcar, etc. For those who do choose to drive, there are established parking garages in the area as well.

Commissioner Lloyd then asked if the "track record" for successful businesses owned by this developer was good. Mr. Huellmantel stated that it was.

Commissioner Johnson asked if there was planned bicycle parking. Mr. Huellmantel stated that it would be planned, but they were not to that stage of planning yet, first was obtaining the use permit. It will be included when they come back to the Commission for approval of the DPR.

Commissioner Brown stated that he thought this was a good re-use of this building, but wondered if there will be amplified noise on the patio, and if so if there is a guarantee the sound will be turned down. Mr. Huellmantel stated he cannot guarantee that, but he can assure the Commission that the protocol for complaints would be followed, and per the stipulation mentioned earlier, the issues will be addressed. If needed, City staff could ultimately review and/or revoke the use permit.

PUBLIC COMMENT:

Mr. Philip Yates of the Riverside Neighborhood Association stated that he is not opposed to the height of the building, but the look of it is not great. Bicycle parking should be addressed. In general, it is not too high, and it needs better landscaping.

APPLICANT RESPONSE:

Mr. Huellmantel stated that these concerns will be addressed during the Development Plan review, this evening's hearing is solely concerning the use permit.

COMMENTS BY THE COMMISSION:

Commissioner Johnson stated that he does not have any issues with this proposal, it sounds exciting.

Commissioner Amorosi thanked the applicant for bringing forth a good adaptive re-use project.

Vice Chair Lyon stated that he agrees this is a good adaptive re-use. He is not concerned about noise, there are plenty of statutes in place to help control that, and residents in a downtown area should realize that noise "comes with the territory."

Commissioner Labadie stated that he loved the re-use, and he was impressed that the proposed stipulation has some "real teeth" to it, he likes that.

MOTION: Motion made by Vice Chair Lyon to approve a use permit to allow a bar (Series 6) for **5th STREET PREPARED FOOD MARKET & BAR (PL170154)**, located at 24 West 5th Street. Motion seconded by Commissioner Labadie.

VOTE: Motion passes, 7-0.

- 4) Request for a General Plan Density Map Amendment, Zoning Map Amendment, Planned Area Development, Development Plan Review and Use Permit for Tandem Parking for a new mixed-use development for **APACHE AND OAK (PL160429)** located at 1461 E Apache Boulevard. (Continued from May 23, 2017 DRC Meeting.)The applicant is artHAUS Projects.

PRESENTATION BY STAFF:

Ms. Suparna Dasgupta, Senior Planner, gave a very brief presentation, explaining that the applicant had revised the parking on the east side of the project, configuring it to be perpendicular rather than diagonal, which should help to mitigate some of the cut-through traffic that may go through the neighborhood. They have also added an additional parking space, to make the total 7 rather than 6. The tandem parking is not required for the applicant to meet the parking requirements, but it is available if there is a restaurant use. Six additional comments, all negative, have been received as of today, they are in the Commissioner's binders for their review.

PRESENTATION BY APPLICANT:

Mr. Jason Boyer of artHAUS Projects gave a presentation. He brought a 3D massing model, which he placed on display. He let the Commission know that in 2020, the Dorsey Street Station will also become a streetcar stop, which will be basically at the front door of this site. He explained that in response to neighbors' concerns, the diagonal parking spaces, which faced south along Oak Street had been reconfigured to be perpendicular, so that cars leaving the site could back straight out and either go south or north. Concerning the request at the last hearing for renderings which would show views from the project back toward the neighborhood, he provided and shared those with all in attendance. The images were very clear as to what would be seen from different heights and points within and on the outside areas of the new building. In response to the concern expressed at the last meeting about a ham radio operator, the applicant is willing to add a repeater to the rooftop, which will help that person with his radio signal. Increased traffic was a concern at this location, he conceded that traffic is always a concern with every project. However, they are open to continuing to work on solutions for traffic concerns, and wish to include the neighbor to the east of the property in these discussions as well as the Hudson Manor neighborhood to the south. Concerning the comments on the viability of the trees, he explained that in this project they will have 24 inches of soil, he shared photos of foliage in other projects designed by this landscape architect, which were thriving in 8 inches of soil. They also have changed to a different tree species, which grows taller but still has a canopy, with plans for the canopy to be trimmed where it is next to the building. In response to the concern about the retail space possible remaining vacant, he shared a letter from Cushman Wakefield which supported the premise that the retail spaces should not have a problem obtaining and keeping tenants. To conclude, he explained the massing model, switching out the main building with a model of what the massing might be with a different project here, reiterating the fact that the second model had 75% lot coverage, while this project only has 17%.

Vice Chair Lyon asked Mr. Boyer to turn the model around so that the people attending the meeting could see it more clearly. He then asked the landscape architect about the trees on the south side of the project. There are only 8 or 10 feet there, and is that enough for the trees to thrive. Ms. Kristina Floor of Floor Associates stated that they were planning to utilize a Fan-West Ash in this area, as it is more vertical and heat resistant. She said the side against the building would need to be pruned, but the canopy out from the building would be unaffected and create shade.

PUBLIC COMMENT:

Mr. Justin Simon of Tempe read his prepared statement. He stated that neighbors had met with the developer in April, but the main problem for this project is the density, and that issue has not been addressed. He stated that the surrounding area is all single story homes. The project should be complying with the limitations of the General Plan, and besides that there should be collaboration between the developer and the neighbors, with creativity in finding solutions. That has not happened in this case.

Mr. Charles Buss of Tempe stated that he lives in the neighborhood right behind "Gracie's," and this development reminds him of that project. The difference being that Gracie's was on a much deeper lot than this one. Also, there are even more single story homes in this area. He feels the developer in this project has been disrespectful to the neighbors.

Ms. Beth Tom of Tempe read aloud the letter that she had sent to Staff. She stated that the citizens have already been involved in countless hours of meetings organized by the City before voting took place on character areas and the 2040 General Plan. Now all of that citizen input is being completely ignored. She believes this development should not even be considered in this area, she wondered who the condo buyers might be, as there are many vacancies in the area that have been that way for years, along with too many hookah bars. She acknowledged the city is growing rapidly, and therefore, she asks that the DRC reject any and all developments that fall outside the 2040 General Plan.

Mr. M. Kyle Woodson of Tempe, stated he lives directly southeast of the corner of this proposed development. He also has submitted a letter that is in the packet this evening, but he reiterated that the project, although beautiful, is too dense, too high, and parking and traffic will impact the neighborhood. He believes 46 units will mean 80 to 90 people, and there are only 50 parking spots provided, so where will everyone park? There will be traffic through the neighborhood because traffic can only go east on Apache when exiting this area. He agreed with previous speakers that there already vacancies in this area that have been vacant for years.

Mr. Anthony Farina of Tempe stated that he likes the project and the building aesthetics are very pleasing, but it simply shouldn't be in this location. The General Plan does not call for high density on this site and he asked the Commission to vote against changing the zoning. He spoke about the "sense of place" that exists in this neighborhood and in the city as a whole. He spoke about the older neighborhoods crumbling and disappearing as development continues to encroach upon them, he stated the oldest Tempe neighborhood doesn't even exist anymore. He believes a project such as this will set a bad precedent going forward.

Ms. Nancy Gasowski of Tempe stated that hers is a diverse neighborhood with many young families, school bus stops, etc., and she is very concerned about safety if this project and all the additional traffic becomes a reality. She thinks this project is enormous, and there is already a giant 5 story building to the west of the neighborhood. She acknowledged the architect did a fine job on a beautiful building, but she doesn't think the neighbors should be told "this is the best you will get."

Mr. Ron Gasowski of Tempe stated that he and his wife live here, and also have a second property in the neighborhood. They have worked hard at keeping the properties in great shape. With this project being proposed, it feels to him like a slap in the face. Although the design of this project is magnificent, it does not integrate with the surrounding area. He urged the Commission to deny this zoning change request.

Mr. Matthew Salenger of Tempe stated that he was speaking on behalf of Citizens for a Vibrant Apache Corridor (CVAC). He is opposed to this project and he spoke about his reasons why at the last meeting. It is a well-designed project, but the density is an issue. There should be something here in accordance with the General Plan. His concern is that this higher density could be granted, and then the property could be sold without the project being built.

Ms. Deb Gain-Braleay stated that she was speaking on behalf of the North Tempe Neighborhood Association. There was a meeting last night involving 8 neighborhoods, and they voted unanimously to speak out against this project.

Overall, neighbors feel that their opinions are being ignored. She reminded the Commission that she has spoken out in favor of projects as well, Watermark being one example. Developers and neighbors have worked together on projects in the past, to come up with solutions, that has not been the case here. Neighborhoods need to be protected, this area going from single family homes to the highest density next door is not appropriate.

Mr. Philip Yates, representing the Riverside Neighborhood Association, stated that basically no one likes this project, and for many valid reasons. He believes that the approval for the zoning to be changed to MU-4 is a problem, as in the event this project is not built and the property sold, MU-4 could entitle the property to go to 300 feet in height. He acknowledged that it was an appealing project and a nice looking building, but that it is not good for this area, specifically mentioning density and traffic. There is overwhelming opposition from the neighbors, he requested the Commission please vote to deny.

Chair Spears read aloud a statement from Eduarda Yates, which stated she agreed with Ms. Gitlis' remarks, and opposes this project for the reasons Ms. Gitlis stated.

Ms. Karen Gitlis of Tempe stated that she was speaking as Chairperson of the Maple-Ash Neighborhood Association and Chairperson of Tempe Historic Preservation Foundation. She pointed out that when the applicant Mr. Boyer spoke, he pointed out that some of the opposing voices heard at the last meeting were not from the immediate neighborhood, but from other neighborhoods in Tempe. She thought it inappropriate that he pointed that out, stating that all neighborhoods and citizens have a voice, whether they are directly impacted by this project or not. She asked the Commission not to approve this request without substantial changes. This project is directly adjacent to a Cultural Resource Area and should be protected. She also believes the General Plan should be adhered to, as it was voted on by residents of Tempe.

Ms. Gail Martelli of Tempe, stated she lives across Apache from this project. She believes that the City has asked for input from the residents in developing and then voting on the General Plan, the residents compromised and made concessions during these meetings, and the City made promises to protect the neighborhoods. That is currently not the case. Neighbors are discouraged, as she believes the developers "show cash" and then the neighborhood protections are thrown out. She implored the Commission to deny this zoning change request.

Mr. Dan Mayer of Tempe stated he has lived in this area of Tempe for 25 years. He is on the commission for Regional Rail Arts as well as the Streetcar commission. He stated that many of the points of contention have been stated tonight, the two that he wishes to mention are height and density. The developer has not met with the neighbors, and has only presented one option, which is MU-4, which neighbors are opposed to. Based on the last meeting's 17 letters received, 16 were against and one was for. That means 94% oppose this project. It is simply too big and too dense.

Mr. Ben Funke of Tempe stated he was at the original community meeting in which the developer said bluntly that he was trying to recoup some of his costs, as he had paid too much for this property and was going to sue the previous owner. He believes this is not a good reason to stray from the 2040 General Plan. The developer has changed almost nothing in response to neighbors from the last DRC meeting to this one.

Ms. Seteara Haddock of Tempe stated that she lives in the neighborhood, in one of the properties directly adjacent to this project. She would love to have a community and possibly a restaurant at this location, but this one would be looming over her back yard. She would rather see an adaptive re-use of the two buildings that are currently on the site than this project.

APPLICANT RESPONSE:

Mr. Boyer responded by saying that they have already reduced the height as much as they could, and have reduced density from 61 du/ac down to 52, and then down to 46 units in response to neighbor's concerns. He believes the references to Gracie's are a non-issue, as they are totally dissimilar projects. In regards to the "sense of place" someone mentioned tonight, he believes the ground floor of this project offers that. The 3rd floor roofs are a direct nod to the gabled roofs of the neighborhood. He says the statements about the owner trading the property for some other project are basically invalid because the requested entitlements and stipulations are for this project only. He pointed

out that adjacent to the west of this property is multi-family housing which is zoned R-4, it is also in the Cultural Resource area, and has a grandfathered height of 60 feet. He stated he is overwhelmed to hear this much negative response to what he feels is a valuable and qualitative product.

Commissioner Labadie asked if there had been any outreach or dialogue with the neighbors since the last DRC meeting, and what was the outcome. Mr. Boyer stated there had not been any, as, in their view, 9 of the 11 issues had already been addressed, and the stalemates are height and density, which they can't do anything about without making it a different building. He believes it would not be productive to meet if there is no solution, and they've already tried to accommodate where they can.

Commissioner Amorosi inquired if the City's traffic engineer agreed with the assessment of the traffic study which had been arranged and paid for by the developer, concluding that there would be little traffic impact. Mr. Julian Dresang, Traffic Engineer, City of Tempe, stated that the traffic study completed by the developer was done correctly, following accepted guidelines, and he has no reason to question it. He agreed there will be cut-through traffic but he believes it will be minimal, probably less than 50 cars per day.

COMMISSION COMMENTS:

Chair Spears inquired of Staff what would happen if the case were approved, but then not actually built within two years, would there be a reversion hearing? Ms. Dasgupta explained there would be two options. The applicant can come before the City Council to request a time extension, which Staff would then take forward, or, if the applicant is not active, Staff sends notification to the applicant on behalf of the City, for an administrative hearing to take place before the City Council. The Council can then grant an extension or could direct Staff to schedule a reversion hearing. A reversion hearing would be the same as any other public hearing, with public notification, coming before the DRC and then City Council. Also if there are any changes to the PAD, it would have to come through the same process.

Commissioner Amorosi inquired if a year had gone by and the owner sold the property, does the new owner have two more years from then? Ms. Dasgupta stated no, the PAD is for two years only, regardless of who owns the property. The new owner would have to come back to Council for a time extension, or Staff would have to get direction from Council.

Commissioner Lloyd stated this was a beautiful design and she appreciates the open space, and appreciated the model this evening. She believes the representatives of the neighborhood also brought forth very reasonable arguments. In this case, she believes the 2040 General Plan and the neighborhood should be respected. She is inclined to vote against the project.

Commissioner Amorosi stated that he wished to disclose he lives approximately 900 feet from the proposed project. He then stated that in 2013, the City asked for public input in drafting the 2040 General Plan, which took almost a year of meetings. That committee agreed that there should be buffer zones of medium density around Cultural Resource Areas. City Council and voters agreed with that plan. He thinks that Mr. Boyer did a great job on this project, but that the owner of the property wants to basically throw out what the voters approved so he can have the zoning change. This would set a precedent, and this is what happened to the Maple-Ash neighborhood. He stated that there is overwhelming opposition to this project. If residents are not listened to, it breeds apathy and distrust that the "system is rigged." He stated it is a shame that the City's Development department is recommending approval on this egregious project. He stated "the department bends over backwards to give the developers what they want, but leaves the residents on their own to fight for themselves." Whether he lived here or not, the City should not ignore, but respect the residents, all 7,433 voters and the integrity of the system. He will not support.

Commissioner Labadie said that with all due respect to the impassioned arguments, in his personal opinion, this is a fantastic project, there have been accommodations made such as the height being lowered and the density being reduced, landscape added. This type of project is what makes sense along the light rail, so it is in the right location. But there is a lot of opposition from the neighbors and neighborhood associations throughout the city, and he believes his role tonight is not to vote solely on his personal opinion, but with the approval criteria and the wishes of the residents in mind. He agrees that the voters approved the General Plan, but there is also an amendment process

to the General Plan, a General Plan is not meant to be set in concrete. The amendment process in the General Plan isn't discussed much, but it was also voted on, people might want to consider changing that in the future if there is unhappiness with that process. He reminded those present that things will change before the year 2040. The Commission is here to look at the merits of the project and see if it meets approval criteria, it has nothing to do with a "rigged system." He believes the Commission is performing its duty this evening as it should.

Chair Spears stated that she would like to respond to a portion of Commissioner Amorosi's comments. She said that about a month ago, the Commission voted on a General Plan Amendment for the ASU Athletic Facilities District, which will have a much larger impact on the City than this evening's project, and at that time she did not hear any impassioned pleas from Commissioner Amorosi about more than 7,433 voters being ignored. She stated there is an amendment process within the General Plan, and the vote for densities was not unanimous, many voters approved of higher density at this site than what it is currently zoned. With the current CSS zoning, there could be 22 units, which could actually turn into 66 to 88 bedrooms with 3 or 4 bedroom units. She believes this is a great project in exactly the right area, it does not lend itself to student housing. The city requires developers to do these mixed use projects, which has caused empty retail space, which she agrees is a problem. The developer would not have been able to put forth a 100% residential project at this site.

Vice Chair Lyon asked of Staff if, besides the General Plan, if residents also voted on the Light Rail initiative and on the Streetcar. Mr. Levesque stated that they had on Light Rail, and on funding only for Streetcar. Vice Chair Lyon stated that he appreciated all the impassioned arguments presented this evening. He reminded those in attendance that as a reference, historically there was a large project in Paris that the people were violently opposed to. The project was massive compared to its surrounding area, it didn't fit the character, etc. It was ultimately built, and is now an icon, that is of course, the Eiffel Tower. He acknowledged that we are not talking about the Eiffel Tower this evening, but he is pointing out that differences of opinion don't mean ill will, it just means that people see things differently. He agrees with what was spoken by Commissioner Labadie about the amendment process within the General Plan. He also reminded those in attendance that with the current CSS zoning, there is definitely the possibility of more people housed than what is in this proposed plan. He believes this is an excellent project, that it fits the area and the light rail corridor perfectly. He believes it is a benefit to the city and to the neighborhood at large, and he will support.

Commissioner Johnson stated that the neighborhood has spoken with a very clear and concise voice, and it appears the developer was not paying much attention to what the neighbors were saying, as there have not been any meaningful changes made to the project. Community support is important, and the support is not here in this case. He personally loves the project and loves living in a community with height and density, but that is not everyone's taste. He believes the General Plan was the will of the voters, and he will not support the project.

Commissioner Brown stated that the city is becoming denser, but there are limits to everything. He appreciates the neighbors coming to speak eloquently and he does not support the project.

MOTION: Vice Chair Lyon made a motion to approve a General Plan Density Map Amendment, Zoning Map Amendment, Planned Area Development, Development Plan Review and Use Permit for Tandem Parking for a new mixed-use development for **APACHE AND OAK (PL160429)** located at 1461 E Apache Boulevard. Motion was not seconded.

MOTION: Commissioner Lloyd made a motion to deny a General Plan Density Map Amendment, Zoning Map Amendment, Planned Area Development, Development Plan Review and Use Permit for Tandem Parking for a new mixed-use development for **APACHE AND OAK (PL160429)** located at 1461 E Apache Boulevard. Motion seconded by Commissioner Brown.

VOTE: Motion passes 5-2, with Chair Spears and Commissioner Lyon in the opposition.

STAFF ANNOUNCEMENTS:

Ms. Dasgupta reviewed the Agenda for the June 27, 2017 Development Review Commission meeting.

There being no further business, the meeting was adjourned at 8:12 pm.

Prepared by: Cynthia Jarrad

A handwritten signature in blue ink, appearing to read 'Cynthia Jarrad', is written in a cursive style.

Reviewed by:

Suparna Dasgupta, Principal Planner, Community Development Planning