

**CITY OF TEMPE  
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 03/13/2018  
Agenda Item: 5**

**ACTION:** Request for a Zoning Map Amendment from R-3 to R-2 for 22 WEST 9<sup>TH</sup> STREET DOWNZONE, located at 22 West 9<sup>th</sup> Street. The applicants are Jeanette L. Lucier and Gerald D. O'Neill.

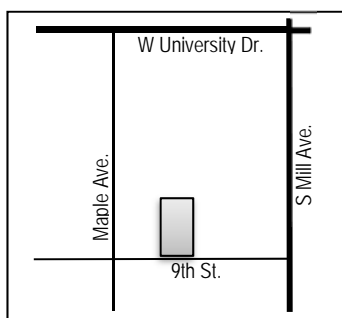
**FISCAL IMPACT:** There is no fiscal impact on City funds due to the rezoning of the property. City Council has already approved the waiving of rezoning fees and the cost of the public sign for the applications for the voluntary downzoning program.

**RECOMMENDATION:** Approve, subject to conditions

**BACKGROUND INFORMATION:** 22 WEST 9<sup>TH</sup> STREET DOWNZONE (PL170426) is requesting a Zoning Map Amendment from R-3 to R-2 for +/- 0.16 gross acres at 22 W 9<sup>th</sup> Street as part of the voluntary downzoning program. On September 14, 2017, City Council adopted Resolution No. R2017.101, allowing owners of property zoned either R-3 or R-3R to rezone (zoning map amendment) to an R-2 zoning district, which allows up to 10 dwelling units per acre. The resolution granted a waiver of hearing notice fees and the requirement of the simultaneous processing of a Development Plan Review (DPR) for applications eligible for the voluntary downzoning program. Community Development Department held an open application period from September 20, 2017 to December 31, 2017 to receive requests for zoning map amendment under this downzoning program.

The request includes the following:

ZON180005 Zoning Map Amendment from R-3 Multi-Family Residential to R-2 Multi-Family Residential



Existing Property Owner	Jeanette L. Lucier and Gerald D. O'Neill
Applicant	Jeanette L. Lucier and Gerald D. O'Neill
Zoning District (current/proposed)	R-3/R-2
Gross site area	0.16 Acres

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Robbie Aaron, Planner II (480) 350-8096

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A

Prepared by: Robbie Aaron, Planner II

Reviewed by: Suparna Dasgupta, Principal Planner

## COMMENTS:

This site is located west of Mill Avenue, east of Maple Avenue and South of University Drive on the north side of 9<sup>th</sup> Street. Existing uses on the site include: A single-family residence

This request includes the following:

ZON180005      Zoning Map Amendment from R-3 Multi-Family Residential to R-2 Multi-Family Residential

The downzoning request does not include any proposal for new development. The existing single-family home will remain on the site as is. There will be no other changes to the site or building. The application is seeking only to change the existing R-3 zoning to R-2 zoning designation.

The applicant is requesting the Development Review Commission to provide a recommendation to City Council for the item listed above.

## PUBLIC INPUT

- Neighborhood meeting required
  - Neighborhood meeting held: February 6, 2018 from 6:00 p.m. to 7:00 p.m. at the Westside Multi-Generational Center, Cahill Senior Center, 715 W 5<sup>th</sup> Street, Tempe, AZ 85281.
  - See attached summary of meeting (Attachment 5)
  - Community Development staff attended the meeting.
  - The neighborhood meeting was attended by 8 members of the public, some in support and some in opposition, and 3 Community Development staff members. The main concern from those opposing is the waiver of fees for the process. It is the opposition's belief that if they must pay to "upzone" their property than the applicants should also have to pay to "downzone" their property. Those in support of the application stated that they were grateful to have the opportunity to voluntarily downzone their properties, which would help them preserve the neighborhood character. In addition to organizing the required neighborhood meeting, staff also spoke with members of the public via phone who were both in support and opposed to the project. The stakeholder input on the phone was similar to the sentiments expressed in the neighborhood meeting.

## APPLICATION ANALYSIS

### GENERAL PLAN

#### Land Use Element:

The General Plan-designated land use for this site is residential. This site is also within the Cultural Resource Areas (CRA) identified in the General Plan, which are based on the 2001 Post World War II Subdivision Study. The General Plan desires to maintain the existing design traits of these areas because CRAs are considered culturally significant to the character of Tempe. The underlying zoning in CRA should also remain appropriate for these areas, with a projected density and intensity conforming with the zoning standards in place in 2003. As the density standards for the R-3 and R-2 zoning have not changed since 2003, the existing development on the site is consistent with the density allowed in R-2 zoning, which is 10 units/acre.

Single-Family residential is the primary character in this area and has remained like this for over 100 years. This voluntary downzoning request will help in the maintenance of the existing character for years to come by discouraging any possible assemblage of lands to develop into higher densities.

This application will help in maintaining the projected land use and residential density set forth in General Plan 2040.

## CHARACTER AREA PLAN

This project lies within the boundaries of the Draft Character Area 3 Plan. The application is consistent with the intent of the proposed NW Neighborhoods section of the Draft Plan, which has several guidelines encouraging preserving the Cultural Resource Areas (CRA) as defined in General Plan 2040 by maintaining a density at or below the zoning standards in place in 2003.

The project also meets several other proposed guidelines in the Draft Character Area 3 Plan that encourage the preservation of the historic neighborhood character, pre-and post-war subdivisions, and appropriate density throughout those subdivisions.

## ZONING

The current zoning for this property is R-3 Multi-Family Residential which allows Multi-Family Residential development up to 20 dwelling units per acre. The proposed Zoning Map Amendment to R-2 Multi-Family Residential will still allow a density of up to 10 dwelling units per acre, for any new development that may be proposed in the future.

The owners of the properties to the north and west of the subject site have also applied for rezoning to R-2 Multi-Family Residential zoning designation, while the properties to the east and south will remain as R-3 Multi-Family Residential zoned lots. Overall, the allowable uses and development standards for R-2 zoning are the same as R-3 zoning. Only the density will change from 20 dwelling units per acre for R-3 zoned lands to 10 dwelling units per acre for R-2 zoned lands.

As discussed earlier in the report, the application is consistent with the provisions of Cultural Resource Areas as shown in General Plan 2040 as the projected density will continue to conform with the zoning standards in place in 2003.

Section 6-304 C.2. Approval criteria for Zoning amendment (*in italics*):

1. *The proposed zoning amendment is in the public interest.*  
This application helps conform to the objectives of the Cultural Resource Areas, where the site falls. The rezoning application helps in the preservation of the neighborhood character as envisioned in the General Plan and Draft Character Area 3 Plan.
2. *The proposed zoning amendment conforms with and facilitates implementation of the General Plan.*  
The project lies within the boundaries of the Cultural Resource Areas defined in General Plan 2040. The proposed zoning remains appropriate for the area as the projected density will not increase above the zoning standards in place in 2003.

## REASONS FOR APPROVAL:

1. The request meets the goals and objectives of the General Plan Projected Land Use and Projected Residential Density for this site.
2. The request is consistent with the downzoning program authorized by City Council.
3. The request meets the approval criteria for a Zoning Amendment.

Based on the information provided and the above analysis, staff recommends approval of the requested Zoning Amendment. This request meets the required criteria and will conform to the conditions.

## ZON180005

### ZONING MAP AMENDMENT CONDITIONS OF APPROVAL:

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

#### General

1. The property owner(s) shall sign a waiver of rights and remedies form. By signing the form, the Owner(s) voluntarily waive(s) any right to claim compensation for diminution of Property value under A.R.S. §12-1134 that may now or in the future exist, as a result of the City's approval of this Application, including any conditions, stipulations and/or modifications imposed as a condition of approval. The signed form shall be submitted to the Community Development

Department no later than 30 days from the date of City Council approval, or the *Zoning Map Amendment* approval shall be null and void.

#### HISTORY & FACTS:

- April 3, 1909            The Gage Addition Subdivision was filed by George N. Gage initiating the first major expansion of the original townsite.
- 1938                    **Zoning Ordinance 177.** First zoning ordinance for the City of Tempe. All properties within the now Maple-Ash Neighborhood were zoned Residence District, excluding the southwest block of Eighth St. (University) and Ash Ave (Industrial District), not including Casey Moore's.
- 1948                    **Zoning Ordinance 193.** Introduction to additional zoning districts in the Maple-Ash area. Business districts along Mill Ave from Eighth to Tenth Street. Residence B (multi-family) district within the block along Eighth between Maple and Ash Avenue. Residence B district at the northwest block of Ninth and Maple.
- 1951                    **Zoning Ordinance 209.** Rezoning to Residence B (multi-family) district within Maple-Ash north of Ninth Street from Residence A (single family) districts.
- 1957                    **Zoning Ordinance 268.** Entire Maple-Ash residence area rezoned to Multi-Family districts. Zoning districts similar to current district area boundaries within Maple-Ash today. Includes R-2, R-3, R-4, C-1, C-2, and I-2 near University and the Railroad. *Note;* in R-1 Single Family district, no accessory building shall be used for sleeping or living purposes.
- 1964                    **Zoning Ordinance 405** adopted January 24, 1964. Majority of the deep lot properties along the railroad tracks and across the street of Ash Ave rezoned to R-3-A Multi-Family Residence Restricted (now called R-3R). Rezoned area previously allowed a greater density and 30 feet high buildings. This ordinance introduced several variations to single family districts such as AG, R1-15, R1-10, R1-8, R1-7, R1-6. Differences in the districts included minimum lot area and other small variations from the districts that exist today.
- 1967                    **Rezoning of Downtown** area to C-3 Central Commercial District under ordinance 405, which includes frontage along Mill Avenue from Eleventh Street to University Drive and University from Mill to Ash Avenue. Rezoned properties include districts C-1 and C-2.
- 1967                    **First, Tempe General Plan 1985** adopted May 25, 1967. Preceded state mandate for municipal planning. Projected Land Use for Maple-Ash area calls for General Commercial from Mill to Maple and University to 13<sup>th</sup> Street. Projected General Commercial from Maple to Ash and University to Tenth. Property along the east side of the railroad tracks to Ash Avenue projected Light Industrial.
- 1972                    **Second General Plan**
- 1974                    **Zoning Ordinance 808** adopted. Current regulatory document (May 2002). Existing zoning for Maple-Ash includes CCD, I-2, R-2, R-3R, R-3, R-4, and R1-PAD.
- 1978                    **Tempe General Plan 1998:** Projected Land Use for Maple-Ash area changes direction. Projected circulation realignment, "Ash Avenue Loop" to Mill and Eleventh Street. Properties north of Ninth Street projected Commercial use. The rest of Maple-Ash area projected Residential use with a maximum of 15 d.u. per acre. Small portion of projected Residential use with maximum of 10 d.u. per acre.

- 1986                    **Maple-Ash Neighborhood Association (MANA)**. On 12/04/86 area residents organize Tempe's first Neighborhood Association MANA. "To preserve and restore residential historical character in the neighborhood." Staff's perception of area residents was categorized as conservation, status quo, anti-conservation, or no opinion.
- 1989                    **Tempe General Plan 2000: Projected Land Use**. Railroad line projected as Open Space. Property frontage along Mill and University from Eleventh Street to the Railroad tracks projected Mixed Use. The rest of Maple-Ash projected Residential 11-15 d.u. per acre. All streets not defined on map.
- 1997                    **Tempe General Plan 2020: Public input** focused on density in the Maple-Ash area. Planning & Zoning voted 6-0 to recommend adoption by Council (KARL cabinet-4 drawer-4 1999.2035.136). Council adopted 12/18/97. Projected Land Use included Residential 11-15 d.u. per acre in the Maple-Ash area. This was the only area with 11-15 d.u. per acre projected land use in the city.
- December 4, 2003    **Tempe General Plan 2030: Council adopted**. Projected Land Use/Density included Residential/Cultural Resource Areas in the Maple-Ash area.
- June 20, 2005        **City of Tempe Zoning and Development Code** adopted Existing zoning for Maple-Ash includes CC, GID, R-2, R-3R, R-3, R-4, and R1-PAD.
- December 12, 2013   **Tempe General Plan 2040: Council adopted**. Projected Land Use/Density included Residential/Cultural Resource Areas in the Maple-Ash area.
- September 14, 2017   **Resolution No. R2017.101: City Council** waives the zoning fees for a zoning map amendment, cost of required hearing notices, and the requirement of an accompanying development plan for Voluntary Downzoning applications. (Attachment B)

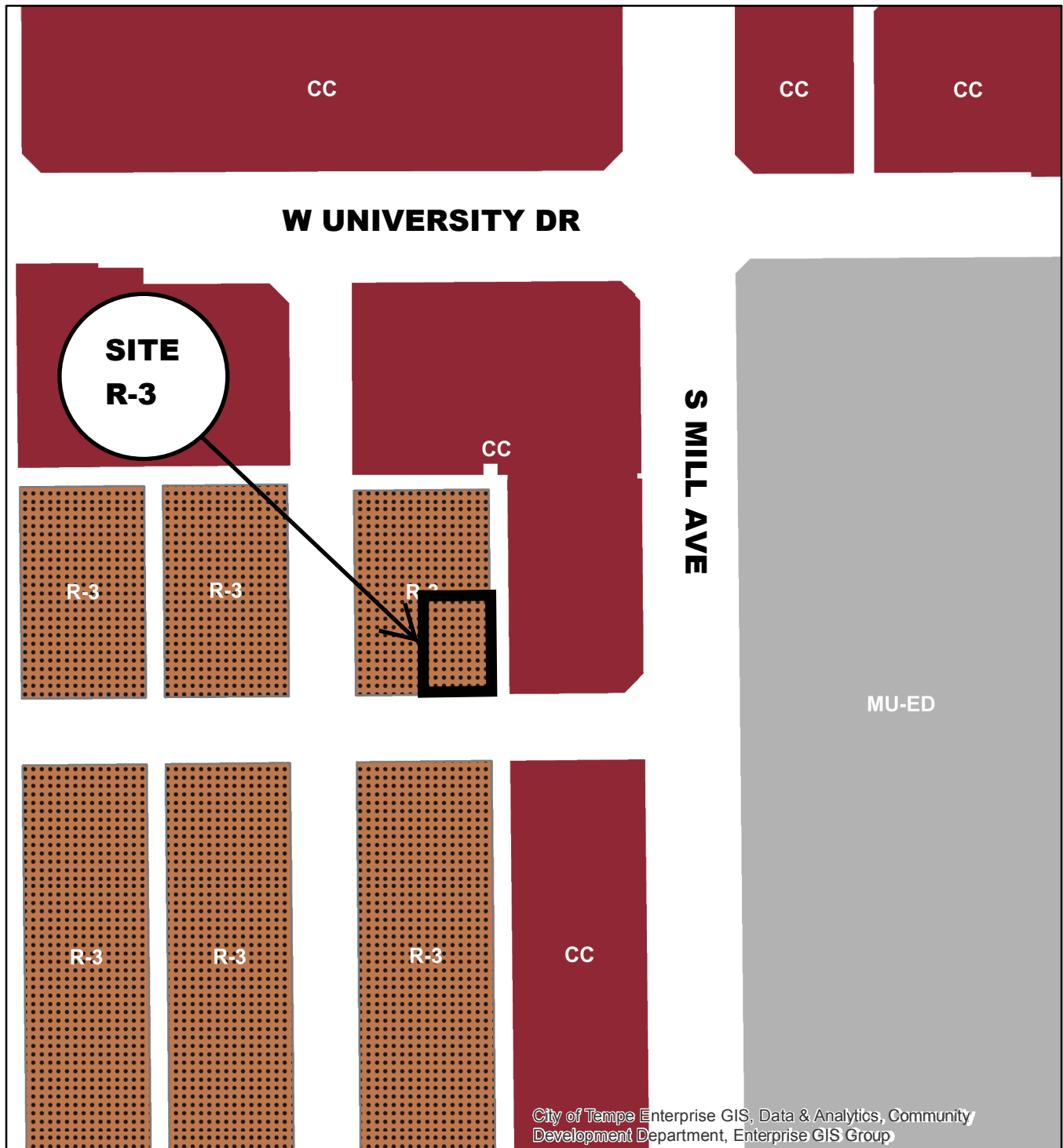
**ZONING AND DEVELOPMENT CODE REFERENCE:**  
Section 6-304, Zoning Map Amendment






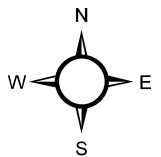
**DEVELOPMENT PROJECT FILE**  
for  
**22 W 9<sup>TH</sup> STREET DOWNZONE**  
**(PL170426)**

**ATTACHMENTS:**

1. Location Map
2. Aerial
3. Letter of Explanation
4. Neighborhood Meeting Summary
5. Waiver of Rights and Remedies



-  City Center (CC)
-  Mixed Use Educational (MU-ED)
-  Multi-Family Residential Limited (R-3)



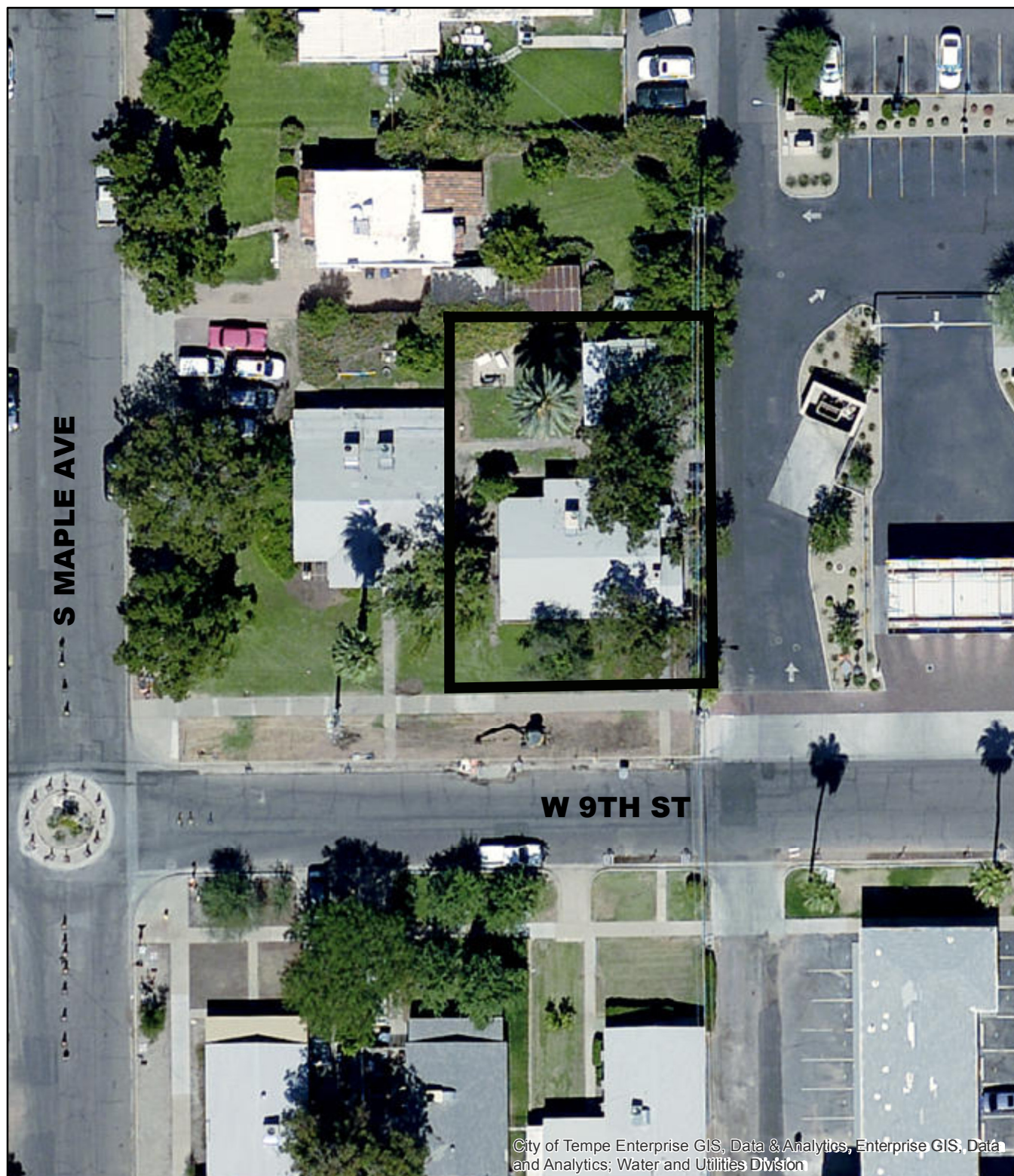




Tempe

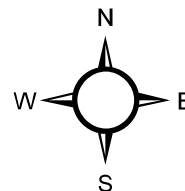
PL 170426

22 WEST 9TH STREET



City of Tempe Enterprise GIS, Data & Analytics, Enterprise GIS, Data and Analytics; Water and Utilities Division

Aerial Map





December 16, 2017

Community Development  
City of Tempe  
31 E 5<sup>th</sup> Street  
Tempe, AZ 85281

**Re: Application to voluntarily downzone property**

To Members of the DRC and City Council:

As longtime residents of and advocates for the preservation of Maple Ash Neighborhood, we are excited to submit this application for the downzoning of the property at

Address: 22 W 9<sup>th</sup> Street  
Current Zoning: R-3  
Owners: Jeanette L Lucier and Gerald D O'Neill, Jr.

We appreciate this opportunity to use this tool for the following reasons:

- To help maintain the existing neighborhood character
- To help maintain the historical character of the property
- To discourage unwanted high intensity development on the property

Compatibility with the Goals and strategies of the General Plan 2040 (GP 2040)

**GP 2040 INTRODUCTION**

PG 11 articulates a number of guiding principles. The first one is "*Balanced Land Use Ensure that land use is balanced to provide **housing variety**...*" The Maple Ash Neighborhood and a few other northwest Tempe neighborhoods provide housing stock not readily available elsewhere in the City. The City has officially acknowledged the uniqueness of this property by placing it on Tempe's Historic Register. It clearly supports this GP 2040 guideline. (GP 2040 Page 11)

**GP 2040 LAND USE AND DEVELOPMENT CHAPTER**

- The property is located within the Cultural Resources Area (CRA) in the General Plan (GP) 2040 (p 9). The GP states that it is desirable to retain the character of the areas within the CRA with appropriate densities which should not exceed those in place in 2003. (which for R-3 zoning is 20 d.u./acre, and for R-3 R 15 d.u./acre.) The requested voluntary downzoning will help to meet this GP objective.
- The downzoning will help the GP 2040 strategy (LU 7) by helping to preserve the neighborhood which is a historical resource.

- This application will also support the GP 2040 strategy (LU 9) by promoting neighborhood enhancement and livability. By keeping the appropriate density standards and zoning, livability in the neighborhood will be maintained and enhanced.

We'd like to thank the Mayor and all members of the Council for their commitment to preserving an important part of our city's cultural heritage.

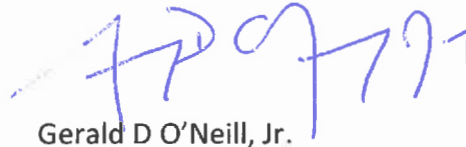
Sincerely,



Jeanette L Lucier

[ill@djit-enterprises.com](mailto:ill@djit-enterprises.com)

602.579.9310



Gerald D O'Neill, Jr.

[dan.oneill@asu.edu](mailto:dan.oneill@asu.edu)

602.549.4099

Home address: 823 S Maple Ave., Tempe, AZ 85281

## Neighborhood Meeting Summary

Date: 02/06/2018

Time: 6:00pm – 7:00pm

Location: Cahill Senior Center, 715 W 5<sup>th</sup> Street, Tempe, Arizona 85281

The neighborhood meeting was attended by 8 members of the public, some in support and some in opposition, and 3 Community Development staff members. Staff began the meeting by providing a brief overview of the Voluntary Downzoning process and how many applications were received. Staff also made those in attendance aware of the ongoing process regarding Accessory Dwelling Units and answered a few questions on that topic.

The main concern from those opposing was the waiver of fees for the downzoning process. It is the opposition's belief that if they must pay to "upzone" their property than the applicants should also have to pay to "downzone" their property. Those opposing also had two other comments regarding the process. The first being that this process should only be allowed to owner occupied units, and the second a concern that there would be special consideration given to the R-2 lots that would be interjected in to an R-3 area.

Those in support of the application stated that they were grateful to have the opportunity to voluntarily downzone their properties, which would help them preserve the neighborhood character. In addition to organizing the required neighborhood meeting, staff also spoke with members of the public via phone who were both in support and opposed to the project. The stakeholder input on the phone was similar to the sentiments expressed in the neighborhood meeting.

**WHEN RECORDED RETURN TO:**  
City of Tempe  
Community Development Department  
31 E. 5<sup>th</sup> Street  
Tempe, AZ. 85281

**WAIVER OF RIGHTS AND REMEDIES  
UNDER A.R.S. §12-1134**

This Waiver of Rights and Remedies under A.R.S. § 12-1134 (Waiver) is made in favor of the City of Tempe (City) by Jeanette L Lucier and Gerald D O'Neill, Jr. (Owner).

Owner acknowledges that A.R.S. § 12-1134 provides that in some cases a city must pay just compensation to a land owner if the city approves a land use law that reduces the fair market value of the owner's property (Private Property Rights Protection Act).

Owner further acknowledges that the Private Property Rights Protection Act authorizes a private property owner to enter an agreement waiving any claim for diminution in value of the property in connection with any action requested by the property owner.

Owner has submitted an application to the City requesting that the City approve a Zoning Map Amendment from R-3 to R-2, Multi-Family Residential District. Owner has been informed that the R-2 District has the following general development standards:

- maximum residential density of 10 dwelling units per acre;
- maximum building height of 30 feet;
- maximum lot coverage of 45%;
- minimum landscape area of 30%; and
- minimum building setbacks for the front yard at 20 feet, side yards at 10 feet, and rear yard at 15 feet.

for the following real property (Property):

Property Address: 22 W 9th St, Tempe, AZ 85281

Parcel No. or legal description: 132-42-020A

By signing below, Owner voluntarily waives any right to claim compensation for diminution in Property value under A.R.S. §12-1134 that may now or in the future exist as a result of the City's approval of the above-referenced Application, including any conditions, stipulations and/or modifications imposed as a condition of approval.

This Waiver shall run with the land and shall be binding upon all present and future owners having any interest in the Property.

This Waiver shall be recorded with the Maricopa County Recorder's Office.

Owner warrants and represents that Owner is the fee title owner of the Property, and that no other person has an ownership interest in the Property.

Dated this 15<sup>th</sup> day of DECEMBER, 2017.

OWNER: Jeanette L Lucier and Gerald D O'Neill, Jr

By Its Duly Authorized Signatory: Jeanette L Lucier and Gerald D O'Neill, Jr  
(Printed Name)

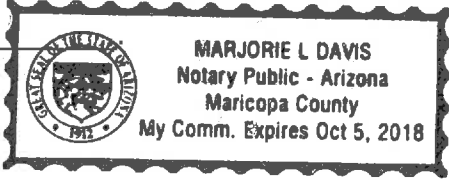
Jeanette Lucier  
(Signed Name)

Its: Owners  
(Title, if applicable)

State of ARIZONA )  
County of MARICOPA ) ss.

This instrument was acknowledged before me this 15<sup>th</sup> day of December, 2017 by Marjorie L. Davis

Notary Public  
My Commission Expires: 10/5/18



Marjorie L. Davis  
(Signature of Notary)