



## Minutes of the Development Review Commission February 27, 2018

Minutes of the regular hearing of the Development Review Commission, of the City of Tempe, which 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 Michael DiDomenico  
Alternate Commissioner Angela Thornton  
Alternate Commissioner Nicholas Labadie

**Absent:**

Commissioner Scott Sumners  
Commissioner Andrew Johnson  
Alternate Commissioner Barbara Lloyd

**City Staff Present:**

Chad Weaver, Community Development Director  
Ryan Levesque, Comm. Dev. Deputy Director - Planning  
Suparna Dasgupta, Principal Planner  
Obenia Kingsby, Planner II  
Cynthia Jarrad, Administrative Assistant

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**Hearing convened at 6:02 pm and was called to order by Chair Linda Spears.**

**Consideration of Meeting Minutes:**

- 1) Study Session Minutes, February 13, 2018  
**MOTION:** Motion made by Vice Chair Lyon to approve Study Session Minutes for February 13, 2018. Motion seconded by Commissioner Amorosi.  
**VOTE:** Motion passes, 5-0.
- 2) Regular Meeting Minutes, February 13, 2018  
**MOTION:** Motion made by Vice Chair Lyon to approve Regular Meeting Minutes for February 13, 2018. Motion seconded by Commissioner Amorosi.  
**VOTE:** Motion passes, 4- 0.
- 3) Request for a Development Plan Review for six new single-family attached dwelling units on an existing four-unit development for **ROOSEVELT COURT TOWNHOMES**, located at 323 South Roosevelt Street. The applicant is Kontexture. **(PL170253)**

**PRESENTATION BY STAFF:**

Mr. Obenia Kingsby, Planner II, gave a short presentation. He stated that this site has a Planned Area Development (PAD) overlay approved by City Council in 2006, which established the development standards for the site. Subsequently, in February of 2008, the Development Review Commission approved ten new townhouses for the site. Four of the townhouses

were constructed by February of 2012, but the remaining six were never built and the building permits expired. The PAD is still in effect since four of the townhouses were built. The applicant is requesting approval of a Development Plan Review consisting of site plan, building elevations and landscape plan, to finish the build-out of the remaining six units, which will match the original four. Staff is recommending approval, subject to conditions. Staff has received one phone call as of yesterday, voicing opposition. That gentlemen was planning to be here tonight to go on record with his opposition.

Commissioner Amorosi inquired if the owner of the property is the same owner as in 2012, and Mr. Kingsby replied that was correct.

**PRESENTATION BY APPLICANT:** None.

**PUBLIC COMMENT:**

Chair Spears read into the record the comments of Eduarda Yates, stating "I object to having a fraternity in our residential neighborhood. This use should not be allowed here."

Mr. Chuck Lindbergh of Tempe stated that he has lived in many neighborhoods in different areas of Tempe, and now resides very close to this property. He chose this location for its proximity to ASU during his graduate studies as well as the diversity of the area and the neighbors, many of whom are long term residents. Many, including himself, and in conjunction with City efforts, have continually tried to improve the neighborhood, but unfortunately, now the City is emphasizing high density, and this neighborhood has some of the highest density developments in the City. He believes this owner should be adhering to the original stipulation, that is they were to be multi-family, for-sale products, but in reality, they have never been sold and now the property is being used as a fraternity house. The benefit of the building permits expiring is that one can review whether the original project has been carried out as planned. Commissioner Thornton asked Mr. Lindbergh for clarification as to what stipulations the owner had not adhered to. Mr. Lindbergh replied that these were to be for-sale products, and they have never been listed for sale. They are utilized as rentals, and as a fraternity house.

Mr. Merrill Darcey of Tempe stated that he lives close to this property, and also owns a second property in the vicinity. He thinks this project does not have any resemblance to single-family townhomes. The plans show small bedrooms each with their own small bathroom, with a small bathtub only large enough for a keg of beer. In actuality, this is designed as multi-family according to Code, which is two or more dwellings in one structure, and is also defined by the owner as rental property for student lodging. The owner originally obtained approval from the City with the understanding that these would be single-family, for sale products. None of them have ever been listed for sale. Parking as it stands now is inadequate for the number of vehicles. Thirty-six parking spaces would be needed for the residents here if these additional buildings are built. The site cannot accommodate that, and neither can the street.

Commissioner Amorosi inquired if Mr. Darcey had permit-parking around his homes to prevent others parking there, and Mr. Darcey responded that he did not. Commissioner Amorosi asked why not, and Mr. Darcey answered saying that was because there are not that many cars on his street to warrant it, and the street sweeping every 3 weeks by the City helps with that as well, so he simply did not think it was necessary. Roosevelt Street, however, is a different story. It is always overparked.

Mr. Kelly Calvert of Tempe, stated he also lives in the area, and besides reiterating what the previous speakers said, he wanted to point out that the MLS listing that he had with him, has never shown any of the completed structures for sale. The back half of the site, the undeveloped area, has been listed for sale, but not the structures. He believes that the original application stating single-family was not submitted in good faith. The structures have been, and are currently occupied, by fraternities. Residents have been in contact with the police and the assistant dean at ASU, and it is a fact that this is occupied by a fraternity, the members have been disciplined by ASU. There have been egregious events there, including parties with 200-300 people which included public urination, underage drinking, public sex, drunk driving resulting in harming parked cars, etc. After neighbors complained about this party and police broke it up, three cars at two residences were fire-bombed and burned. The fires were moments from catching the roofs of those homes involved when they were discovered.

Mr. Mark McIntyre of Tempe stated he also lives in that immediate area. Besides echoing what the other speakers said, he wondered if there is a process or mechanism in place which would force this owner to sell these units, as he is presenting this application as single-family, for sale units. If the original submittal was not in good faith, he does not want to see the same thing happen again.

Mr. Edward Wong, another resident from the area, has lived there for 47 years. He is opposed to the project for a few reasons. He stated there was a disagreement on the property line with this property owner, which he is adjacent to. The outcome of that has been that somehow the west wall on this site is only 6 feet, when his understanding is that a three-level single-family condo building must have an 8-foot wall. Also, perimeter trees at this site have branches that are untrimmed, he had to confront the owner to ask about trimming them, as the tree limbs are tearing off the metal flashing at his roofline. He would like to see an eight- or ten-foot wall at this site to mitigate construction noise and the noise of the fraternity parties, and the six-foot wall currently onsite changed to an eight-foot wall.

Mr. Philip Yates stated that he is representing the Riverside Neighborhood Association, and he also lives in close proximity to this site. He understands that the request before the Commission tonight is for design only, but he believes the owner of the property has no intention of selling the units, as was the original and the current request. The behavior of the residents at this site is simply not acceptable, and the parties and bad behaviors will only continue. He has a seven-year old son that is afraid to go outside. This community is discouraged because the only solution being given them is to "call the police." His understanding is that after the most egregious instance, in which his car was one of the cars burned, the outcome was only two minor citations issued. This is not a safe environment, cars traveling on Roosevelt in this area have been clocked at 80 miles per hour as well. This project should simply not go forward.

Commissioner Amorosi inquired if Mr. Yates had permit parking around his residence, and when Mr. Yates replied that he did not, Commissioner Amorosi asked why not. Mr. Yates replied that he had attempted to do so, but the process requires that all the residents within the neighborhood association's boundary streets sign a petition, and one person on 5<sup>th</sup> Street who owns more property on the street than anyone else, refuses to sign. Since the requirement is signatures representing 75% of those affected, this means their efforts at permit parking, speed bumps, parking restrictions, etc have not been successful.

#### **APPLICANT RESPONSE:**

Mr. Daniel Istrate of Kontexture, at 3334 N. 20<sup>th</sup> Street in Phoenix, is here representing the owner, who is not present this evening. He stated he is not the architect who was involved in the original project, he came on board last year to help complete the units. He stated he has much experience with single-family residential in the valley, and that one bathroom dedicated to each bedroom is not unique to this project, but is done on a widespread basis. This is the current trend, and market-driven. Regarding the rest of the comments heard tonight, he does not have control over who is currently residing in these units and their behavior, but he pointed out that the plat shows clearly that the new units are not rental units. Also there is currently a huge, vacant "back yard." With this new development, that will no longer be the case, so if that is a "party area," that may help solve the problem. The request before the Commission tonight is for the design only.

Commissioner Thornton stated that Mr. Istrate needed to hear and work with the neighbors, and what can he offer to do to make things better? Mr. Istrate stated he was completely unaware of the information he has heard tonight, but he will certainly be speaking with the owner when he gets back to this country, to come up with some solutions. Commissioner Thornton stated she understood this put him in a bad spot, and to please communicate that the owner needs to come up with some good-faith gestures.

Commissioner DiDomenico inquired if the owner lives in this area, and is he currently out of the country? Mr. Istrate stated that he was, and he would be returning soon. Commissioner DiDomenico stated he would prefer to continue the case and wait for the owner himself to come before the Commission. He believes there are some regulations according to City

Ordinance that limit the number of members of a fraternity, club, or organization residing within the same project. He also believes there is also a point at which an owner can be held liable for the behavior of his/her tenants.

Commissioner Amorosi asked if the applicant would be amenable to an 8-foot perimeter fence, as one of the speakers tonight suggested. Mr. Istrate stated yes, but reminded the Commission that a 6-foot wall requires a different foundation, so changing the existing 6-foot wall to an 8-foot does not simply mean adding two more courses of blocks, it requires a different type of footing.

Commissioner Brown inquired about the landscape plan, asking Mr. Istrate to point out where the 6-foot wall actually is, as the plans show an 8-foot wall. Mr. Istrate stated that if this was permitted as an 8-foot fence and built as a 6-foot, then that was a mistake of the building inspectors at the time. Again, to rectify this means a new fence because of the footing, but it can certainly be done.

Commissioner Brown asked staff if this needs to be voted for approval or denial only, or can a continuance be voted on. It has already been pointed out that the drawings are incorrect in regard to the height of the fence. However, the major issues have already been pointed out this evening, with is the behavior of the tenants. Chair Spears reiterated that the Commission's purview is only the design of the project, they cannot vote on any other issues, and they cannot force the units to be for sale.

Mr. Levesque then added that if the Commission voted for a continuance, staff can look into security issues, etc. Within Tempe, fraternities do require Use Permits in R-3 and R-4 zoning. This property is in R-3. Staff would have to verify if the determination has been made that this is definitively an organized fraternity house. If so, the Code Compliance division could enforce the proper use of this property. Chair Spears stated that regardless of how the vote is this evening, that research should be done, and Mr. Levesque agreed.

Ms. Dasgupta added that meetings with the other departments, Police and Code Compliance had been held prior to tonight's meeting, and the challenge is the verification of whether this is indeed a fraternity house.

Commissioner Labadie asked staff if there would be a time frame when this information could be forthcoming. His reasoning is that he would be more apt to vote for continuance if indeed there was information that these residences are currently being utilized as a fraternity house and a Use Permit is needed. He understands the plight of the neighborhood, and hearing that a Use Permit may be needed is unfortunately the first reason he has heard to possibly deny this project this evening. Otherwise, the Commission needs to vote this evening on the design, as that is their purview. Otherwise denying a project for reasons outside the scope could become a liability.

Mr. Levesque replied that to date, the definitive determination has not been made as to whether this is operating as a fraternity. He stated that staff would check with Code Compliance and the Police Department again to make sure all measures have been exhausted to obtain a clear answer. This could then be presented at the next DRC meeting.

Chair Spears stated that regardless, the possibility of needing a Use Permit is a separate issue than what is before the Commission tonight. She did not overall object to a continuance, but if that is what the Commission does, she wants to see it date specific.

**COMMISSION COMMENTS:**

Commissioner Brown stated that although the request this evening is for approval of design only, part of the documentation presented specifies that these are for-sale units. There is also a discrepancy on the height of the fence, as discussed. For these reasons, he believes the problems with these two items alone could be reason enough for the Commission to vote to deny this evening if it so chooses. The project would then most likely go on to City Council on appeal, and a full hearing there would let the neighbors be heard.

Chair Spears stated that she disagreed, if this were a new project, the Commission would have no idea if the “for-sale product” aspect would be genuine and followed through on, the Commission would still be voting on the design only.

Commissioner DiDomenico stated that he interprets it differently. In the absence of a request for a Use Permit, he has no issue with the design itself. But the testimony heard tonight and the owner himself not being present to rebut that testimony or answer the Commissioner’s questions makes him believe this should not be approved just because the design is fine. He does not believe they should vote to reward the owner by approving the design, when this site should be operating with a Use Permit. A request for a Use Permit may indeed affect design, such as addressing noise or traffic issues with orientation, wall heights, landscaping, ingress and egress, etc. He would like to hold off approving this design until the owner/applicant can be present to answer questions.

Vice Chair Lyon stated that his opinion is that what has been presented this evening about behavior and problems at the site all seem to do with Code violations. The Commission’s purview does not include any control over those items. The Commission can only judge the appropriateness of, in this case, the design of the project. Finding a reason or a way to vote against the project outside of their purview is not the right thing to do. The processes in place in the City should take care of the issues, such as Code Compliance getting involved in land use issues and the need for a Use Permit if need be.

Commissioner Labadie stated he agrees with Vice Chair Lyon, the existing City processes should be allowed to take care of existing issues at the site. With this process in place, the Commission is not the body that can act to change problems at the site. In essence the Commission could vote for a Continuance, the owner could appear and state that he will not continue to rent to the current residents, that he intends to sell the new units, etc, and therefore no Use Permit is needed. Then the Commission is back at “square one.” He believes the Commission should vote on the design, and the design only, this evening. He agrees with Vice Chair Lyon that they “shouldn’t be legislating from the bench.”

Commissioner DiDomenico asked of staff if there is exposure for a landlord for multiple citations at the same address, and if the City has the power to impose any sanctions on the property owner. He also reminded the Commission that last summer, a smoke shop operator came before the Commission requesting approval of a Use Permit, and in that instance, the shop had to be closed until the Use Permit was granted, as it had been open illegally before that. He thinks this is a similar state of affairs, if this use under the first approval in 2006 is not compliant, then an approval should be delayed until things are set right.

Commissioner Amorosi agreed with Commissioner DiDomenico, he does not feel they should reward the owner with an approval, when nothing has been done to address existing problems already at the site for more than three years.

Chair Spears stated that it is not the Commission’s job to reward or punish landowners, that is a Code Compliance and Police issue. Their only purview is design, and design only. She told Commissioner DiDomenico that the difference between this project and the smoke shop, is that by ordinance a smoke shop needs a Use Permit, so they were indeed operating illegally. Staff has not been able to determine if this site indeed houses an organized fraternity.

Commissioner Brown stated he was not focusing on the “fraternity” aspect, it is simply put, bad behavior. Chair Spears stated that may be the case, but the only stipulation that this use would need a Use Permit according to City code, is if indeed it is an organized fraternity.

Vice Chair Lyon stated that the Commission holds a small modicum of power, and though they may want to use that to do something they see as good or right, he thinks his fellow Commissioners should ask themselves if they are stretching a bit to get to this goal, and if they are, that is problematic. They are not in the position of deciding how things should work.

**MOTION:** Motion made by Commissioner Labadie to approve a Development Plan Review for six new single-family attached dwelling units on an existing four-unit development for **ROOSEVELT COURT TOWNHOMES**, located at 323 South Roosevelt Street. Motion seconded by Vice Chair Lyon.

**VOTE:** Motion fails, 4-3, with Commissioners Brown, DiDomenico, Amorosi and Thornton in the dissent

**MOTION:** Motion made by Commissioner DiDomenico to continue to April 12, 2018, the request to approve a Development Plan Review for six new single-family attached dwelling units on an existing four-unit development for **ROOSEVELT COURT TOWNHOMES**, located at 323 South Roosevelt Street. Motion seconded by Commissioner Thornton.

**VOTE:** Motion passes, 5-2, with Commissioner Labadie and Chair Spears in the dissent

Ms. Dasgupta informed the Commission that April 12, 2018 is actually the wrong date, the DRC meeting is scheduled for April 10, 2018. The motion will have to be amended.

**MOTION:** Motion made by Commissioner DiDomenico to amend the date in the previous motion to April 10, 2018. Motion seconded by Commissioner Thornton.

**VOTE:** Motion passes, 7-0

**COMMISSION ANNOUNCEMENTS:**

Commissioner Amorosi reminded all that the Urban Core Master Plan workshops would be held the next day, one in the afternoon and one in the evening at FABRIC, in Tempe. All are invited to attend.

**STAFF ANNOUNCEMENTS:**

Ms. Dasgupta reviewed the agenda for the March 13, 2018 Development Review Commission meeting. There are currently thirteen items on the agenda.

**There being no further business, the meeting was adjourned at 7:04 pm.**

Prepared by: Cynthia Jarrad



Reviewed by:  
Suparna Dasgupta  
Principal Planner, Community Development Planning