



## Minutes of the Development Review Commission April 10, 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 Scott Sumners  
Commissioner Michael DiDomenico  
Commissioner Andrew Johnson

**Absent:**

Alternate Commissioner Barbara Lloyd  
Alternate Commissioner Nicholas Labadie  
Alternate Commissioner Angela Thornton

**City Staff Present:**

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

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**Hearing convened at 6:04 pm. and was called to order by Chair Linda Spears.**

**Consideration of Meeting Minutes:**

The following Agenda items #1 and #2 were considered together.

- 1) Study Session Minutes, March 27, 2018
- 2) Regular Meeting Minutes, March 27, 2018  
**MOTION:** Motion made by Vice Chair Lyon to approve Study Session and Regular Meeting Minutes for March 27, 2018. Seconded by Commissioner DiDomenico.  
**VOTE:** Motion passes, 6-0, with Commissioner Sumners in abstention
- 5) Request an Amended Planned Area Development Overlay; a Use Permit for tandem parking spaces; and a Development Plan Review for a new 21-story, mixed-use development consisting of 269 dwelling units and commercial uses for **THE COLLECTIVE**, located at 708 South Myrtle Avenue. The applicant is Gammage & Burnham PLC. (PL170363)

**PRESENTATION BY STAFF:**

Ms. Karen Stovall, Senior Planner, gave a presentation. She stated the property is located at the southwest corner of Myrtle and 7<sup>th</sup> Street, just east of Mill Avenue and north of University Drive. The site is currently vacant and is zoned City Center (CC) PAD TOD. She shared the site plan with an aerial overlay and reminded the Commission that the proposal today includes three requests:

- a. An Amended Planned Area Development Overlay for the .4-acre site.
- b. Use Permit to allow 38 tandem parking spaces with a garage.

- c. Development Plan Review for a new 21-story building containing 269 units and 6,000 square feet of commercial space on the ground floor.
- The proposed density is 672 du/ac and proposed maximum building height is 245 feet.
  - The plans show a driveway off Myrtle that leads to an above-grade, four-level parking garage containing 121 spaces.
  - The garage entrance from the alley leads to one below-grade parking level with 34 spaces.
  - Nine on-street parking spaces are also provided for a total of 164 vehicle parking spaces for the project.
  - Within the garage, there are 38 tandem spaces, providing between 4 and 5 of these double-loaded stalls per floor.
  - Residential amenity decks are provided on the 5<sup>th</sup> floor and above the 21<sup>st</sup> floor on the rooftop.

She then shared the site plan and landscape plan and stated:

- The building elevations show concrete and storefront windows at the first floor. Steel canopies project into the right of way for a distance of eight feet to shade the sidewalks along both street frontages.
- The parking garage incorporates perforated metal, metal panels, Exterior Insulation and Finish System (EIFS,) and integral colored Concrete Masonry Units. (CMU).
- Residential units between the 5<sup>th</sup> and 21<sup>st</sup> floor are finished with EIFS and metal screening. Balcony patios are enclosed with aluminum railing with glass panels.
- The rooftop deck is surrounded by these same glass panels.

She then stated that Staff recommends approval of the Use Permit for tandem parking and the Development Plan Review requests. However, staff recommends denial of the proposed PAD. The applicant is proposing alternative parking ratios of .57 spaces per dwelling unit, which would require only 155 vehicle parking spaces whereas the Zoning Ordinance requires 215. This is a shortage of 60 spaces. Such a reduction in parking could limit the type of residents interested in renting the units, prevent the development from being converted into owner-occupied housing in the future, and could have a negative impact on the availability of parking in the immediate neighborhood. If the Commission recommends approval of the PAD to City Council, staff has included conditions of approval to address the parking deficiency.

Commissioner DiDomenico inquired about the conditions which address the deficiency in parking. Ms. Stovall pointed out that they are in the PAD Conditions of Approval, number 1. She read them into the record as follows: "The Development shall comply with the minimum number of vehicle parking spaces required by the City Center Parking Standards, Zoning and Development Code Table 4-607A. This may be accomplished with one or more of the following options:

- a. Reduction in number of dwelling units or bedrooms.
- b. Addition of below-grade parking.
- c. Addition of above-grade parking, which will increase the proposed building height and affect exterior building design. The increase in height shall be allowed with an administrative update to the PAD.
- d. Off-site parking, with the recordation of a parking affidavit."

Commissioner Amorosi inquired the exact number of spaces staff was suggesting and Ms. Stovall replied that staff was recommending the number per code, which would be 215 spaces.

#### **PRESENTATION BY APPLICANT:**

Ms. Manjula Vaz of Gammage and Burnham then gave a presentation. She stated this project would be one of the "bookends" of the block, with the Westin Hotel in the middle. It is shorter in height, with less units than that project, and City Council has stated they wanted residential and hotel in this area, so that is what their focus.

Mr. Chad Matesi, Executive Vice President of Development at CORE Spaces then spoke, stating his company has been growing the student housing program, and this project is focusing on the “young professionals” market. Their first project of this type was in Madison, Wisconsin, and since then have built the same in Ann Arbor and Portland, with each of these projects being successful. He stated the demolition of an old apartment building on the site has taken place, so the lot is now vacant. This project will conform with the General Plan for density.

Mr. Jeff Zelisko, architect with Antunovich Associates then spoke, sharing many images while presenting. He described more details of the building and units, with retail space along 7<sup>th</sup> Street, the lobby along Myrtle Avenue, with dense plants along both streets. There will be a total of 269 units with an amenity level as well. There will be courtyard spaces with many small and quiet spaces, so that people can be “alone together.” This “alone together” concept with many common areas is part of the luxury market design. They have insured that the units are very efficient, examples being beds folding into a couch, large closets and generous bathrooms. Each of the units will have an open feeling with the use of a lot of glass. There will be a roof garden on the 22<sup>nd</sup> floor. The building design has a colorful base, with a strong shaft element and interest at the top of the building as well. There is use of contemporary colors and materials, he pointed out the art elements of the building, with each side being unique. Parking was not an afterthought, and the exterior design of the parking floors is incorporated into the design.

Mr. Andrew Weider, Chief Investment Officer of CORE Spaces then spoke about parking, and explained why the applicant was asking for less than the minimum amount of parking. He stated this is appropriate for the area, there are many community benefits to fewer cars, such as increased use of transit, reduced traffic and pollution, and increased road safety. This trend has become more prevalent over time, there will be shared vehicles on site, and companies such as Uber and Lyft are utilized by the target population as a norm. There is a biking culture here, and they will have additional moped spaces as well. Young people do not purchase vehicles as they did in the past, surveys show a 30% drop from 2010 to 2015 alone. Their studies show that there is only 36% parking needed for this project, and they will be providing 56%, so in essence, they are over-parked, not under-parked.

Vice Chair Lyon inquired how they came up with the number of parking spaces they should have, from what we have heard Mr. Weider say, they should have said they need zero spaces. Ms. Vaz stated that they have been working with staff, and they came up with 155 spaces by requesting parking at a rate of .5 per unit, rather than .5 per bedroom.

Commissioner Brown inquired how the shared cars concept would work. Mr. Matesi replied that the cars will remain on site, as they are owned by the developer.

Chair Spears inquired about guest parking, where will guests park if there are only seven onsite guest parking spaces. Ms. Vaz responded that guests would have to use and pay for public parking.

Commissioner Sumners asked how many levels are devoted to parking, is it five? Mr. Zelisko responded that it was four, and if they needed to increase parking, they would either have to add it “up” or “down.”

**PUBLIC COMMENT:**

Mr. Philip Yates stated that this plan is not a good way to provide parking for this project. Adding density in this area will only cause more problems and it will not benefit Tempe. This will be especially problematic during downtown events.

Chair Spears asked if the applicant, Ms. Vaz, wanted to respond to the public comment.

**APPLICANT RESPONSE:**

Ms. Vaz stated that City Council does not require guest parking, and that is why they are not providing it.

**COMMISSION COMMENTS:**

Commissioner Johnson stated he actually lives across from where this building will be, and he thinks it is a nice building. He did not want to be perceived as contradicting himself, as he voted against the EIFS on the Westin project, but he thinks this looks much better. The building in which he lives does not provide guest parking either, and he still has visitors. People learn to use public parking. He would like to defer to staff, but in this instance, he disagrees a bit. He believes there is a new standard, and there should be some flexibility.

Commissioner Amorosi stated he likes the design. He agrees that staff should be a bit flexible, as he believes these units will be desirable to those who do not need or utilize the parking anyway.

Commissioner DiDomenico stated he likes the design as well, and likes that it is different. He also likes the pedestrian feel. He is concerned about parking, not because of impacts on neighborhoods and streets, but that in the long run, if people who will use parking opt not to purchase units because of limited parking, then it will become a place for students. He stated these scenarios with limited or no parking are common in places like San Francisco, but we are not San Francisco. We may be moving in that direction, but we are not there yet. However, if we do not try it, we will not know if it works. He thinks it will work, and he will support.

Commissioner Sumners stated he is one who typically thinks rules should be followed, but the Commission also has the leeway to vary from the rules. He is a fan of one of this developer's projects in downtown Phoenix, he sees that it works, it is very bold and he loves it. This evening's proposed project will be within the most urban square mile of the state. He also has personal experience with a family member who attends a university in another city without a car, and there are no issues. He believes the trend is here and he is happy to support the project. He understands staff's concerns, but he is against adding the condition of approval in regards to parking spaces.

Vice Chair Lyon stated his fear is that this will become student housing. Young professionals are in this area, but he still believes the project is under-parked. He does not like tandem parking spaces. He agrees that we are headed in that direction, but we are not a Seattle or San Francisco yet. The pedestrian experience in this area is mostly students, and he does not believe it will appeal to young professionals. He is opposed to the PAD and also to the design. In his opinion the building is not beautiful, it looks like a box with many different architectural languages, each side looks like a different building.

**MOTION:** Motion made by Commissioner Sumners to approve **PL170363**, with the deletion of PAD180007 Condition number 1. Seconded by Commissioner Brown.

**VOTE:** Motion passes, 5-2, with Chair Spears and Vice Chair Lyon in dissent.

- 6) Request a Zoning Map Amendment, Planned Area Development and Development Plan Review for a new seven-story, mixed-use development consisting of 391 dwelling units and commercial uses for **MIXED-USE DEVELOPMENT AT APACHE BLVD AND TERRACE RD**, located at 1100 East Apache Boulevard. The applicant is Snell & Wilmer, LLP. (**PL180025**)

**PRESENTATION BY STAFF:**

Ms. Diana Kaminski, Senior Planner, gave a presentation. This site includes several existing uses that are in operation, and the remnant parcel that the city acquired when light rail became a reality here. Therefore, the development agreement and disposition of that parcel is incorporated into the development of this project. She stated this is a mixed-use project, and would increase density from 20 dwelling units per acre (du/ac) to 71 du/ac. The site is currently zoned Commercial Shopping & Services (CSS) and the request is for Mixed-Use High Density (MU-4). The project is in conformance with the General Plan, and will provide three types of housing: work-force, student housing, and market rate, within separate buildings. The proposed buildings will be 94 feet in height with 63% lot coverage. She shared renderings, elevations, site plan, landscape plan, etc. She explained that the driveway entrance is at the north end, off Terrace Road, and discussed the parking provided for each of the unit types. She stated there will be a sheltered area for people being dropped off/picked up and for

deliveries and pickups, avoiding any issues with drop-offs at the street front. The building materials used will be masonry, metal, EIFS and some cement products in different colors. The building has been broken up with a series of wraps and they have used window treatments on the recessed areas of the building and shade canopies. The landscape plan has a very diverse palette which includes street trees to create a sense of place. The buildings will be phased, and be constructed first, then second, then third, not all at the same time. The applicant has met all of staff's requests through the site plan review process. There have been no calls of concern from the public, and staff is recommending approval of the project with no special conditions.

Commissioner DiDomenico inquired, since the buildings are phased, are there any guarantees that workforce housing construction will not be delayed. Ms. Kaminski and Mr. Levesque replied that this requirement is part of the development agreement, completion of work-force housing will be date-specific.

Commissioner Amorosi inquired about the possibility of a right turn out of Terrace Road because it is a one-way street with light rail there, he is worried about traffic backing up to their driveway or past their driveway. Ms. Kaminski stated that traffic engineering had been consulted about this and the challenge is that the city is already taking right of way on both street frontages for streetcar. Traffic engineering did not feel the turn lane was necessary, the traffic study that was done does not warrant it.

Commissioner Brown asked about the remnant of publicly-owned land that is part of this project, and is that where the work-force housing will be. Also, was acquiring this land part of the motivation for this developer to develop work-force housing? Ms. Kaminski stated yes, that was part of the requested proposal, and that if they went forward with the project they would need to provide work-force housing. The city did not specify where on the site it needed to be, but the city specifically requested activation of that corner.

#### **PRESENTATION BY APPLICANT:**

Mr. Nick Wood of Snell & Wilmer, LLP, on behalf of owner Gilbane, spoke next. He stated, in response to the Commissioner DiDomenico's previous question, they would be happy to comply with a stipulation that says they will commence construction of building three, which contains the work-force housing, within six months of the issuance of the first building permit on the site. They have already agreed to all the terms that staff has requested. In answer to Commissioner Amorosi's question about a right-turn lane, they may have the ability to create the turn pocket that he inquired about, but all of the engineering has not yet been finished, as they are configuring land and reconfiguring three lanes as part of streetcar improvements. He acknowledged that the city wanted the triangle shaped parcel at the east end activated, and they believe they are accomplishing that, but there have been challenges. There have been significant landscape additions, with enhanced sidewalks, with a restaurant on every corner. The restaurant on that east corner will have outdoor seating that will always be shaded because of building cover. This development will include 55 work-force housing units, which are sorely needed in Tempe. Units are being designed so that they can easily be converted in the future if needed or desired. Again, they agree with all stipulations.

Commissioner DiDomenico inquired if the work-force housing units are different than the market-rate, or is the only difference price point. Mr. Wood responded that the only difference is price point, everything else is the same.

Commissioner Brown asked about the quality of materials, appliances, etc. within work-force housing. Will they be high- or low-end? Mr. James Lovato with Todd & Associates stated that all finishes will be the same, as their company does not want anything that is not top-quality. Quality would be described as stainless-steel appliances, quartz or granite countertops, no plastic laminates, etc.

Chair Spears inquired if the affordable units will be integrated with the market rate units, so that there is no distinction to an average viewer? Mr. Wood stated that was correct, and they will also share all the same amenities, club room, fitness center, mail center, elevator, and so on. The intent was not to differentiate. Different types of units would be in the different buildings, within buildings, they are the same.

**PUBLIC COMMENT:** None.

**COMMISSION COMMENTS:**

Commissioner Amorosi thanked the developer for including work-force housing that is the same as market-rate, and he is happy to support the project.

Vice Chair Lyon stated this was a solid project and that he will support it.

Commissioner DiDomenico said he is familiar with Gilbane's reputation, and he appreciates that Mr. Wood said he would be happy to add a condition concerning timelines for the work-force housing. It is sufficient in his mind to know that it is the intention of the developer to move quickly on phase three, (work-force housing), and as long as the city is aware that this is their intention and it is incorporated into the development agreement, he does not feel the need to add a stipulation to a motion this evening.

Commissioner Sumners gave kudos to the city and the developer for the patience to wait a year to "get it right", wrap the other parcel in, and meet one of the city's long-term goals.

Chair Spears also thanked the developer and the city for finally starting to tackle the issue of work-force housing.

**MOTION:** Motion made by Commissioner DiDomenico to approve **PL180025**. Seconded by Vice Chair Lyon.

**VOTE:** Motion passes, 6-1, with Commissioner Brown in the dissent.

- 3) Request 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 Kontecture. (**PL170253**).

Chair Spears took a moment to remind everyone that the Commission had asked for a postponement of this project to allow the owner of the property to come and address some of the issues that had been raised. She understands there is a lot of public neighborhood sentiment about this, but the Commission's issue tonight is to approve or not approve the design. The issues that are of concern to the neighborhood are really enforcement issues and issues that City Council deals with. If public speakers spoke on this project in the past, their testimony is part of the public record, so she would ask them not to repeat themselves.

**PRESENTATION BY STAFF:**

Mr. Obenia Kingsby, Planner II, gave a presentation. He stated this case was previously heard by the Commission on February 27, 2018 and continued to today. The site had a PAD overlay approved by City Council in 2006, which established the development standards for the site; and subsequently in February of 2008, the Development Review Commission approved ten new townhouses for the site. Four of the townhouses were constructed by February 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 now requesting a Development Plan Review to add six new single-family attached dwelling units to the four units existing units on-site. The applicant is proposing to design the new building to match those existing. On March 28<sup>th</sup> of this year, staff met with the applicant and property owner to discuss the resident's concerns and how the property owner will address them. The owner was amenable to strengthening the CC&R's and leasing agreements to deter renters from having parties that will lead to disruptive behavior, hiring a property management company for the entire site, and increasing the height of the east wall to eight feet. Staff is recommending approval, subject to conditions.

**PRESENTATION BY APPLICANT:**

Mr. Chan Sahota read the following statement:

My name is Chan Sahota and I am the owner of Roosevelt Court. I came to Tempe in 1978 to work at Garret Corporation. I bought some old apartments at 510 W. University Drive from a Canadian investor with the hope that I can put something new and live there. I always kept my residency in Tempe since 1978. University Drive hardly had any new building at that time. In 1985-1986, after a long effort, I was able to build 2 front buildings containing 16 units with pool, masonry 6' fence around the lot and paved parking and landscape. Today, there are 40 condos units with 82 parking spaces under the name Hermosa place. At that time, Hermosa Place, Seen One, and Hayden Square (5<sup>th</sup> St) were the only new buildings around. City officials were trying to revitalize University Drive and down town area. University of Phoenix started right across from our buildings.

I lived at Hermosa Place for about 20 years myself. There are many ASU students living there. There are many owners, but most units are rented. May be 25% owners related occupancy. I have never seen any big party gathering up there. Because there is no open area for people to gather. Police calls are very rare. I am still HOA president and the condo complex Hermosa Place is doing well. As I speak, a company is putting a new layer of asphalt there at a cost \$35,000 to make it look nice like University Drive. I bought this property at 323 S. Roosevelt Street in 2003 with 4 to 6 wooden units. By January 2012 I was able to complete 4 town houses and all the site requirements such as utilities, landscape, retention and parking area.

**Complaint 1: Not enough parking, reduce the number of units.**

According to R3 category, Roosevelt Court lot size could accommodate up to 11 units. I have 10 units and 28 parking spaces. We have provided number of parking spaces required by the city for R3 development. At Hermosa Place, we have 40 2 & 3-bedroom units with 82 parking spaces. It works okay even after 32 years. There is no parking allowed on University Drive.

**Complaint 2: Owner is not selling these family units.**

These neighbors who are complaining about my ownership, themselves own many rental houses. Todd Green, owns 8-9 old rental old houses in this neighborhood. There is no law which prohibits me from owning these townhouses. Even the President of the USA, owns many houses in many states. Mark McIntyre is a real estate broker, he is naturally inclined to sell all real estate properties.

**Complaint 3: East side wall is not 8' high.**

That wall is on Mr. Wang property. If he agrees and foundation holds, we could try to add a couple of blocks to that wall height. I will pay for it.

**Complaint 4 & 5: Fraternity parties and associated problems.**

First point I want to make is that when all new 6 buildings are completed, there will be no open area left for any kind of party. This point was made by the architect too. At Hermosa Place, many times more ASU students live, we still don't see any party throughout the year.

There was one big party in June 2017 at this subject property. One tenant lady from neighboring house told me that partying people got okay from all neighbors except Mr. Lindberg. It should not be portrayed as an everyday situation.

It should be noticed that Mr. Lindberg who is the closest neighbor on the same side of the road did not make any bad remarks about the party. He did ask me once to tell my tenants not to throw around empty cups. I will have a management company and apply more rigid rules. There will be no fraternity activity on this site, with or without the consent of neighbors. Also, we shall insist on people under the threat of towing to park their cars inside the garage and keep garbage containers in the garage too. However, owner or management company cannot deny

accommodation to any one because he/she is an ASU student. It is against the law. I have no contact with any fraternity.

**Complaint 4,5 (b):**

Yates lives across the street. I don't know where Calvert lives. Their claims are totally false. Here are their claims: Cars coming at 80 mph, parties with lot of people, public urination, public sex, underage drinking, drunk driving, fire bombs, crashing of cars and police don't do anything about it. Tenants living there are decent ASU students and they are not criminals. Police can't arrest innocent people. Tenants living at Roosevelt Court are very friendly, well behaved. I would not hesitate to give good reference to anyone living there. I seldom see them in the open area. I don't see them parking on Roosevelt Street. I walk to this property quite often to check or clean yard. These complaints have no merit but tarnish the character of ASU students, that is appalling. How can a car travelling at 80 mph turns at 90-degree angle to enter? Yates' house is across from entrance Roosevelt Court. My house is on south- east side bordering this development separated by 8' wall. I don't hear all the disturbance as these two neighbors are claiming. My hearing and eye sight may not be as good as of a 20-year-old but I still have a valid Arizona driver's license.

I hired a surveillance company CHIEF to give us their unbiased opinion, about topics of complaints by Yates and Calvert from Monday (March 19) thru Saturday (March 26, 2018). I hope that Commissioners have 8 pages of their daily reports.

Here is what I saw in their report: Seen no public drinking, no noise, no speeding down the street, all is quiet, no disturbance or fraternity activity on property, cars parked in the driveway, on March 23 saw one big truck waiting to pick a guy from neighboring house to townhouses, on March 23, 24 heavy curve side parking due to Tempe Art Festival and people walking to Mill Avenue but there was normal in and out activity at subject property. Surveillance report from CHIEF proves that commentary of Yates and Calvert has no real basis and is totally false. They are making up false stories. Yates call the police with similar made up stories. Tenants living at Roosevelt Court tell me that they never see him going to work. He lives well with big tire vehicle parked on the road.

It seems that Yates, Lindberg and Darcy have a negative view of any new housing development. I saw them complaining against a triplex development on April 3 at 422 W. Brown St, nearby to this location. They successfully derailed the request from the architect to have 33' building height. It is bad news for the city and this area if city is going to be guided by nay-sayers only. I removed two dozen old houses and apartments and replaced them with new ones in Tempe. That is not a bad performance for an immigrant. There are lot of people who would like to see new buildings but they don't attend these city hearings. You see only people with complaints. ASU students contribute greatly to downtown Tempe housing market. Real estate prices will fall and vacancy rate will increase dramatically if ASU were to provide accommodation to all its students. New buildings attract economically better off people that is good for the city. City and county also collect more in taxes. Every time new buildings go up, prices of nearby land go up too. In that sense neighbors will benefit economically without any investment from these new buildings at Roosevelt Court. May be surrounding neighbors will take cash by selling their land to developers and go to neighborhoods more suitable to their taste. That will be good all around.

Chair Spears asked Mr. Sahota if he has considered applying for multi-housing rather than townhomes, as that would seem more appropriate with the current use. Mr. Sahota replied that they are townhouses. Chair Spears said that from what she has heard, they seem to be rental properties and not owner-occupied. She asked Mr. Sahota his intent as to whether he will be selling or renting these units, and Mr. Sahota replied that he was 77 years old, and he does not want any loans sitting on his head.

Commissioner Amorosi commented that Mr. Sahota hired security for one week only, and it was conspicuously after the St. Patrick's Day weekend. He asked Mr. Sahota if he has considered participating in the "Crime-free single-family rental" program within Tempe, then he would be alerted if there are infractions on his property, and would know that the neighbors



are not lying. Mr. Sahota responded that the opposition simply does not like him, he lives in the vicinity, and he does not see this bad behavior take place.

**PUBLIC COMMENT:**

Before beginning public comment, Chair Spears reminded the public speakers that the Commission can only vote on design, so please contain your comments to design and nothing else. This is a design case only, not an enforcement case, and she will be limiting the time for each speaker this evening to two minutes.

Chair Spears read into the record a comment from Ms. Eduardo Yates and Mr. Ronald Yates: "This was originally approved as single-family attached dwelling units. It was not planned to be what it has become a fraternity house, which has caused many problems for neighbors. If not returned to its original use, it should not be approved. "

Ms. Justine Yates stated none of the neighbors like the fact that they have to be here this evening, none of them are public speakers, and they are all long-term residents. She listened to the DRC members' comments from the last meeting and heard over and over again that it is not the responsibility of the DRC to make moral or political decisions. However, the same Commission approved the height and density for this terrible project eight years ago and now neighbors have to live with it. No one at this development ever parks in their garages, and this developer makes promises that he does not keep.

Mr. Chuck Lindberg stated that he has lived in the neighborhood for years and worked on plans to enhance the neighborhood. He understands how the system works, and the PAD was granted with the goal that the City had in mind, increased density, which gave economic enhancements to developers and added stipulations under the PAD. Mr. Sahota brought up Hermosa Place, and it was a precursor of the same things that have happened here, with the same types of problems. Even with a system with defined goals and aspirations does not anticipate people abusing the system to their own ends.

Mr. Merrill Darcy stated he owns two properties on Brown Street, and he is concerned about this type of development. The DRC continues to have this type of project come through. There is no HOA, no standards, no management company, and basically no CC&R's. If anything, he would like to see the R-1 zoning invalidated, it is twelve years old, and go back to R-3, or please insist on the most stringent use permit that is available.

Mr. Ed Wong stated he is opposed to this development, most of the residents have the same concerns, but his biggest concern is his west wall. His foundation and six-foot wall was there previously, and this developer needs to build his own eight-foot wall as it should have been many years ago. The DRC and the City building inspectors must make him build the wall with the correct structure, with 8x8x16 blocks.

Mr. Kelly Calvert stated that according to the City Council minutes from September 2006 when this project was approved, it was approved with conditions. One was a building permit shall be obtained on or before September 2008. Second was the plat shall be recorded prior to the issuance of permits for September 7, 2007. And if these items not done on time, the zoning shall revert to that in place at the time of the application. Condition number five stated failure to record the plan within one year shall make the plan null and void. These conditions were not met, also the developer did not build a wall along the north side either, which is along his property, he is obligated to do that. Lastly, there are several pending loud party citations against the property, Mr. Sahota is responsible for these and has not taken care of them.

Chair Spears then asked staff to elaborate on the question of the validity of the PAD. Ms. Dasgupta stated that PADs always had an expiration date with a condition about zoning reversion but the zoning reversion is not automatic. State law states that a municipality may revert a zoning if a process for such exists in the code. Prior to the 2014 PAD Reform Ordinance, the City did not have a process for zoning reversion and the developer and City worked in good faith with permit applications. The zoning reversion process was established with this ordinance in 2014. Additionally, in November 2006, Proposition 207 (also called the Private Property Rights Protection Act) passed statewide and municipalities implemented a Waiver of Rights and Remedies form to be signed by developers/property owners for all zoning cases. After that PAD Reform Ordinance was

adopted, older inactive cases were evaluated by staff based on whether the cases had a signed Waiver of Rights and Remedies form associated with the properties. Only properties with such sign-offs could potentially be subject to a zoning reversion.

Commissioner DiDomenico then asked if the original case had been approved by City Council, they still carry the power of the original approval. Ms. Dasgupta stated that was correct. The developer and the City worked in good faith with approved projects. Now if PADs expire, they are subject to an administrative hearing by City Council to authorize a reversion.

Ms. Karyn Gitlis stated she was speaking on behalf of the Maple-Ash Neighborhood Association. These entitlements go back to 2006 and 2008. She thinks this PAD process should now be reformed so neighbors can have input before a project is allowed to be continued ten years later. She believes it is egregious that opponents are being confined this evening on what they can speak about, after all, parking is part of design. She also finds it offensive that the speaking time is only two minutes.

Mr. Philip Yates of the Riverside Neighborhood Association stated that this design seems to be very inviting to students renting, and there is absolutely no reason to think that it will not be exactly the same with six more identical units being built. Getting in and out of this complex looks to be dangerous, if there is any kind of fire, a fire truck could not even get through to the back. More cars will mean parking will be an even bigger problem, with ten garbage cans out in front of the townhouses four days a week. Basically very, very unappealing to the neighborhood.

Chair Spears asked if Mr. Sahota wanted to respond to the public comments.

**APPLICANT RESPONSE:**

Mr. Sahota stated that an additional wall cannot be placed on the east side, and Mr. Wong does not want to help building the wall. With Hermosa Place as an example, the police will not find even one complaint, and there are 40 units there, rather than ten. Once the large lot in the back is constructed, there will not be a place for the large parties.

Vice Chair Lyon asked Mr. Sahota if he agreed with the stipulation that states he will build an eight-foot block wall on the east side of his property, and Mr. Sahota replied yes, "we will build another wall." Vice Chair Lyon then asked, and do you agree with the condition to build a similar wall on the north side of your property? Mr. Sahota responded that it will be a wall which is consistent with "our wall, and his wall is the same kind of block wall, consistent color, that we have, just shorter. It will be an eight-foot wall".

**COMMISSION COMMENTS:**

Commissioner DiDomenico asked for clarification from Mr. Kingsby, if the existing DPR requires an eight-foot wall on both the north and east boundaries, is that correct? Mr. Kingsby responded that was correct. Commissioner DiDomenico continued, stating that the ownership of the north wall needed to be verified. If the existing wall belongs to Mr. Calvert, then another wall needs to go up against it.

Commissioner Brown reminded those in attendance that walls six feet in height or less are not engineered, and the City will permit them without engineering review. Blocks cannot just be added to a six-foot wall to make it an eight-foot wall, this is a problem.

Commissioner DiDomenico asked of staff if the DRC has ever added a condition of approval requiring third party professional management of a multi-family rental project. Ms. Dasgupta responded not to her knowledge, as the challenge would then be enforcing such a condition on private property. That is why you see staff requesting these items to be addressed with a Covenants, Conditions, & Restrictions (CC&R's), as staff has to review and ensure all the items stated in the condition of approval are addressed with the CC&R prior to finalizing and recordation.

Chair Spears commented that she is having a real issue with this case because it does not sound to her like this is going to be a for sale townhouse project, it sounds like it is going to be a rental project. Therefore, are there different development standards for multi-family versus owner-occupied projects, and do any of the other Commissioners see that as a problem?

Commissioner DiDomenico said he sees it the same way, some of the development standards deal with the operation of the property and interaction of the tenants within the project as well as interaction with the neighborhood around it. This clearly was never intended to be a townhouse project, it is multi-family rental.

Commissioner Amorosi stated that he agreed with Chair Spears and Commissioner DiDomenico.

Commissioner Brown stated he had visited this site three times, and the parking is very tight, turnarounds are hard even with an economy car. Therefore, this design is deficient in many ways.

Commissioner Sumners asked staff about the diagram that looks at fire lane striping. He wondered if it is sufficient and meets the city's requirements for vehicle turnaround and fire truck apparatus. Ms. Dasgupta stated that since these are built as for-sale units and are considered single-family, the parking does meet the code. Staff cannot control the intent of an applicant, staff can only consider whether a project meets the planning and zoning code. The width of the driveway for emergency access meets the current code. Staff has asked the applicant to address prohibiting parking in the actual driveway area, as cars are intended to be parked in the garage.

**MOTION:** Motion made by Commissioner DiDomenico to approve **PL170253** with the added condition of adding a wall on the east property line. Seconded by Vice Chair Lyon.

**VOTE:** Motion fails, 6-1, with Commissioners Spears, Brown, DiDomenico, Sumners, Amorosi and Johnson in the dissent.

**MOTION:** Motion made by Commissioner DiDomenico to deny **PL170253**. Seconded by Commissioner Amorosi.

**VOTE:** Motion passes, 6-1, with Vice Chair Lyon in the dissent.

**COMMISSION ANNOUNCEMENTS:** None.

**STAFF ANNOUNCEMENTS:**

Ms. Dasgupta reviewed the agenda for the April 24, 2018 Development Review Commission meeting. There is currently one item on the agenda.

**There being no further business, the meeting was adjourned at 8:26 pm.**

Prepared by: Cynthia Jarrad



Reviewed by:  
Suparna Dasgupta  
Principal Planner, Community Development Planning