

## Minutes of the Development Review Commission October 22, 2019

Minutes of the regular hearing of the Development Review Commission, of the City of Tempe, was held in the Tempe History Museum, 809 E Southern Avenue, Tempe, AZ

**Present:**

Chair David Lyon  
Vice Chair Michael DiDomenico  
Alt Commissioner Michelle Schwartz  
Commissioner Thomas Brown  
Commissioner Philip Amorosi  
Commissioner Andrew Johnson

**Absent:**

Commissioner Scott Sumners  
Commissioner Don Cassano  
Alt Commissioner Angela Taylor  
Alt Commissioner Barbara Lloyd

**City Staff Present:**

Chad Weaver, Director, Community Development  
Ryan Levesque, Deputy Director, Community Development  
Suparna Dasgupta, Principal Planner  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Dalton Guerra, Planner I  
Blake Schimke, Planning Technician  
Joanna Barry, Administrative Assistant II

Hearing convened at 6:00 p.m. and was called to order by Chair Lyon

---

**Consideration of Meeting Minutes:**

- 1) Study Session August 26, 2019
- 2) Regular Meeting August 26, 2019

**Motion:** Motion made by Vice Chair DiDomenico to approve Regular Meeting minutes and Study Session Meeting minutes for August 26, 2019 and seconded by Commissioner Johnson.

**Ayes:** Chair Lyon, Vice Chair DiDomenico, Commissioners Schwartz, Brown and Johnson

**Nays:** None

**Abstain:** Commissioner Amorosi

**Absent:** Commissioners Cassano and Sumners

**Vote:** Motion passes 5-0

---

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

- 3) Request a Development Plan Review for a new 8,448 square-foot addition for **CHAPMAN KYRENE BODYSHOP**, located at 5301 South Kyrene Road. The applicant is Barry R. Barcus Architect, Inc. (PL190146)
- 5) Request a Use Permit to allow a massage establishment for **MOON SPA**, located at 1753 East Broadway Road. The applicant is Moon Spa. (PL190243)
- 6) Request a Use Permit to allow a second-story addition for a single-family residence for the **ALAM RESIDENCE**, located at 1112 East Lodge Drive. The Applicant is Md. Shamsul Alam. (PL190260)

**Motion:** Motion made by Vice Chair DiDomenico to approve the Consent Agenda and seconded by Commissioner Amorosi.

**Ayes:** Chair Lyon, Vice Chair DiDomenico, Commissioners Schwartz, Brown, Amorosi and Johnson

**Nays:** None

**Abstain:** None

**Absent:** Commissioners Cassano and Summers

**Vote:** Motion passes 6-0

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

- 4) Request a Development Plan Review for a new 20-story mixed-use development containing 252 dwelling units and ground floor commercial uses for **707 SOUTH FOREST APARTMENTS**, located at 707 South Forest Avenue. The applicant is Sender Associates. **(PL190223)**

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

Ms. Darin Sender, Sender Associates representing Trinitas, gave an overview of the project. It is located on the southeast corner of 7<sup>th</sup> Street and Forest, adjacent to the OPUS project to the east. They are before the Commission just for the Development Plan Review, no variance or Use Permits. They are developing under the existing Planned Area Development (PAD) that was approved in 2009.

Mr. Jeff Kanable, with Trinitas Ventures, introduced Linda Irving, Design and Development Manager with Trinitas. Ms. Irving then introduced Mr. Dan Brueggert to go over the project. Mr. Brueggert, with CSO Architects went over the site plan and rendering for the project. Commercial space and leasing will be on the ground floor with a canopy to shelter pedestrians. Levels two through five will be a parking garage. The sixth floor up to the 19<sup>th</sup> floor are apartment units. The building is still configured in an "H" shape from floors six and up. At the top of the building there are amenity features and rooftop terrace.

Mr. Mark Byer, with Design Elements, went over the landscape plan and trees. He advised that based on concerns raised by the Commission during a previous Study Session regarding the corner landscape, they replaced the aloe with some grasses and other flowers and groundcovers. Regarding the hardscape, they will be using historic brick along 7<sup>th</sup> Street.

Mr. Brueggert advised that they located their infrastructure, transformers and trash along the alley to the south, so they are screened as much as possible. He stated that at the sixth level there is a terrace on each side, one faces east and the other faces west. On the south side of the top floor there is an enclosed amenity space, a small deck on the west side. The north half of the top floor consists of an outdoor terrace and a pool. There is a landscape buffer around the perimeter of the building to discourage people from getting too close to the edge. There is also a six-foot safety rail. They worked with the police department and the city to make sure they were doing everything they could to encourage safety on the balconies. They kept the balconies far apart to deter any risky behavior that someone might be tempted to engage in. Someone had inquired why there was five and a half levels of the garage. Mr. Brueggert advised that each west half of the garage is a flat plate and each east part of the garage is the slope plate. Since the slope plate ended on the east side, they called it a fifth and a half level. They are making sure the utilities on the south side have the required 30-foot clear height above them so that they can be extracted when need be. They have bike storage on the first floor of the building and other bike parking throughout the garage. They will be screening the mechanical equipment that is located on the roof. Per staff's request, they did provide a fire access plan along with a refuse plan to make sure they have the appropriate radius to bring in a truck to access the trash.

The applicant did shade studies for the building at different times and solstice. They did a shadow study at the base level to account for what the trees would screen for pedestrians.

Commissioner Brown asked what happens if a similar building is built on the lot to the east and would that side be fenced off. Ms. Sender advised that the building would be fenced off and screened in that area

The Commission asked why there was a reduction in the commercial space from 6,000 to 5,000 square feet. Mr. Brueggert advised that to build a better pedestrian experience they pulled the glass on the commercial space in a couple of feet so that it would provide more canopy cover for pedestrians. With regard to the southeastern stairwell, Commissioner Brown asked if upon exit are people to navigate through a three- or four-foot space. Mr. Brueggert advised it was an approximately five-and-a-half-foot wide space. Ms. Irving stated that if a development came into the next lot, they would work with the developer to identify what lighting would be appropriate at the ground level between the two buildings.

Commissioner Amorosi inquired if they were actively pursuing tenants for the commercial space. Ms. Irving advised they have reached out to a local retail broker and they have some ideas about what would be ideal for this location. Commissioner Amorosi asked if they manage the building personally and Ms. Irving stated that they do and that they have an excellent property management company that will hire someone locally to manage this property.

#### **PRESENTATION BY STAFF:**

Mr. Lee Jimenez, Senior Planner, went over original PAD that was approved by the City Council in 2009 and the current Development Plan Review (DPR) request. The original PAD established development standards for vehicle parking quantity and the maximum building height. The primary difference between the original project and the current one is that this project has 56 studio units, where the original project did not have any, and increased the number of both the one bedroom and two-bedroom units each from 28 to 56. There were no changes in the number of three-bedroom (30 units) or four-bedroom units (54 units), and the 28 five-bedroom units were removed from the project. The commercial space was reduced by approximately 1,500 square feet.

Chair Lyon asked if staff was comfortable with the density and design of the project. Mr. Jimenez stated he was and that there are no increased number of beds from the original project which was 530 bedrooms and that the only reduction was the elimination of the five-bedroom units and the increase to the one and two bedroom units. Chair Lyon asked how staff feel about the size of the units as some of them are very small. Mr. Jimenez advised that staff does not look at the floor plan, they mainly look at the placement of windows, entrances and exits to the building.

#### **PUBLIC COMMENT:**

Mr. Merrill Darcy, Tempe resident, stated that he likes the project but wants the Commission to make sure that the noise ordinances are adhered to. He stated when there is a construction safety arcade around the project, and he does not want pedestrians walking in the street or around traffic because the developer feels they can fence off the property and have all the pedestrians walk in the street. He also stated there are Southern Live Oak trees that the city put in 25 years ago that will be destroyed by the development. He wants them protected and the city to get an arborist in to do this.

Mr. Trevor Barger, downtown resident, thinks this is a good project to come downtown. He represents the Newman Center next to the project and has worked with them to make changes to some items. He hopes that the Commission approves the project.

#### **APPLICANT RESPONSE:**

Ms. Sender explained that with market conditions in the area and the variety of housing, that the apartment sizes are adequate. With regard to the noise, she agrees that the ordinance must be adhered to. They will take a look at the street trees to see what they can do with them.

Commissioner Amorosi asked about the acoustics of the building and what the level of noise is, even between units. Ms. Sender stated they have a stipulation for a 55 dbcc and they exceed those requirements on the interior and exterior walls.

Commissioner Brown agrees that some of the units seem small but believes the marketplace will correct. He asked what the rental price will start at. Ms. Sender stated it is always a moving target and price will be based on the move in date. Commissioner Brown also had a concern about some of the balconies facing each other and the amenity deck. He asked if the units with the better view have a higher rate. Ms. Irving stated they will be a "Class A" project

so they will be at the top of the market. With regard to the balconies facing each other she stated they have noticed that in urban markets that residents like to engage with each other, and people watch and be seen. Commissioner Brown asked if the canopy could be changed to a larger size as it looks like a postage stamp on the building. Ms. Irving stated that when the lighting is on it in the evening it will look more impressive.

Commissioner Johnson stated that looking at the aerials of the property he sees mainly palm trees, not live oaks. Mr. Byer stated that he did not notice any oak trees on the property either. Commissioner Johnson asked if they planned to salvage the palms trees and Mr. Byer advised they had not discussed that.

Chair Lyon asked if it would be okay to add a stipulation that applicant work with staff on saving any possible oak trees that may be on the site. Applicant was okay with that stipulation. Mr. Jimenez referred to attachment #4 in his report and he does not see any oak trees, all he sees are palms.

Vice Chair DiDomenico stated it seemed like applicant is fast-tracking the project and asked if they have construction drawings and if they have picked a contractor. Ms. Sender advised that the construction drawings have not started yet, but they do have a couple of good applicants for the contractor role.

#### **DISCUSSION FROM THE COMMISSION:**

Commissioner Amorosi stated he is happy that they removed the five-bedroom apartments and that the studio apartments will be more rentable. He also likes the variety of size and layouts of the units.

Vice Chair DiDomenico stated he is in support of the project.

Chair Lyon stated he feels it is a good project, but he feels it will be a madhouse when people are moving in an out. He does support the project.

#### **DISCUSSION BY THE COMMISSION:**

**Motion:** Motion made by Vice Chair DiDomenico to approve PL190223 that the applicant will work with staff on maintaining any mature trees, excluding palm trees, that remain on the property and seconded by Commissioner Brown.

**Ayes:** Chair Lyon, Vice Chair DiDomenico, Commissioners Schwartz, Brown, Amorosi and Johnson

**Nays:** None

**Abstain:** None

**Absent:** Commissioners Cassano and Summers

**Vote:** Motion passes 6-0

- 
- 7) Request for a Code Text Amendment within the Zoning and Development Code for **SHORT TERM RENTAL ORDINANCE**, consisting of a new Section 3-428, regulating vacation and short-term rentals as authorized by state law. The applicant is the City of Tempe. **(PL190238)**

#### **PRESENTATION BY STAFF:**

Mr. Ryan Levesque, Deputy Director – Community Development, went over the Code Text Amendment. He advised this would adopt a new Section 3-428 and add other regulations regarding vacation and short-term rentals as authorized by state law. In late 2017 there was a City Manager's working group to discuss issues and concerns from some residents about the recent state law changes that had occurred. The Governor at that time had authorized into state law provisions that preempted cities from regulating or controlling the use of vacation rentals within one's home or private property. The state would allow this by right, but local control would be limited. Concerns were raised regarding the vacation rentals such as parties, high occupancy, secondary effects, parking. A lot of the issues were addressed and there was discussion on how these could be addressed through Code Compliance. This year there was an amendment to the short-term rental regulation for the state. It provided attachments and basically provided

some relief and some regulation and control for local cities and municipalities on how to regulate. As a result, the City Manager's working group drafted a proposed ordinance that would require contact information for the property owner, an emergency contact for information to be displayed at the property, require owner to update their contact information within ten (10) days of the effective date of any change, name a City Manager designee to develop the necessary forms for a database to collect this information, require short-term rentals to comply with all federal and local laws, rules, and regulations, clarifies non-residential use and requires a list of non-residential use to be displayed in the short-term rental, requires property owner obtain a privilege tax license before operating the rental. It clarifies that the short-term rental operator may not offer the rental without the transaction privilege tax license and provided a definition for short-term and vacation rentals. The draft ordinance was presented to the public summary for public input where feedback was provided. They also had a neighborhood meeting to gain more feedback. The draft ordinance is now being put through the public hearing process for approval.

Commissioner Schwartz stated that she read through some of the public comments and that owner occupied was referenced a lot of times versus someone who is not on site or never there. She wanted to understand what staff has done or if that is not a part of the legislation allowed under the Governor's bill. Mr. Levesque advised that if you are the property owner and still reside on site and you rent out an additional bedroom for less than 30 days it is considered a vacation rental and is under the special privilege tax license process. The intent of the regulation is to make sure there is contact documentation and to verify they are following our state and local laws and be able to contact them if an issue should arise. Commissioner Schwartz asked that if a property owner has multiple properties if they had to get a license for each of them and was advised that they would.

Commissioner Brown wanted clarification that the tax portion was not the main issue, but rather they needed the owner information in case there was an issue such as a parking violation. Mr. Levesque stated that was correct. Commissioner Schwartz stated she felt it would be more challenging for people if they have to register multiple properties and that this will lead to less short-term rentals in the future.

Commissioner Amorosi inquired about the database and whether the public could search it to find out if a property was or was not registered and if this would give the ordinance more enforcement. Mr. Levesque advised the database was not for public use but rather for internal use so that city officials or departments can determine if it is a short-term or rental property that needs to be licensed and the status of their compliance. The police department will also use it if there is an emergency contact that they need to contact. It will also help Code Compliance with nuisance issues. Commissioner Amorosi inquired if the tax people would use this to go and check on the property and Mr. Levesque advised that they have their own checks and balances and system they utilize. Commissioner Amorosi inquired how neighbors will be able to know if a property is licensed, specifically short-term rentals, and who would be monitoring and enforcing it. Mr. Levesque advised that although there are current typical and local laws to regulate short-term rentals, they also have enforcement by state laws and issue fines for offenses to be sure they are abiding by local laws. The revenue from these fines does not go to the city. He does not believe the city can change that but will look into it. Commissioner Amorosi inquired if the ordinance would include boarding houses to which Mr. Levesque advised they would be classified as short-term rentals.

**PUBLIC COMMENT:**

Mr. Merrill Darcy, Tempe Resident, stated that he had read the House bill and it specifically said it was four bedrooms or less and that an owner or applicant could not rent more than that. With regard to the Transaction Privilege Use permit, there was no clarification that not only do you have to license the property, but that you also had to license each additional unit. He stated this law seems to be directed at more absentee owners, not the bed and breakfast type owner.

**RESPONSE FROM STAFF:**

Mr. Levesque stated he would follow up with Tax & License to specifically ask what they require on these. He noted that the State has taken away the city's ability to administer the sales tax and licensing process, so it has been taken over by them and we have to wait for that information to be sent to us.

**DISCUSSION BY THE COMMISSION:** None

**Motion:** Motion made by Commissioner Amorosi to approve PL190238 and seconded by Commissioner Johnson.

**Ayes:** Chair Lyon, Vice Chair DiDomenico, Commissioners Schwartz, Brown, Amorosi and Johnson

**Nays:** None

**Abstain:** None

**Absent:** Commissioners Cassano and Summers

**Vote:** Motion passes 6-0

**Staff Announcements:**

Ms. Dasgupta advised the Commission members that they should be receiving the final November 12<sup>th</sup> agenda this week and went over the items that would be on the agenda.

**There being no further business the meeting adjourned at 7:39pm.**

Prepared by: Joanna Barry

Reviewed by:



Suparna Dasgupta, Principal Planner, Community Development Planning