

**Minutes of the
Development Review Commission
REGULAR MEETING
December 10, 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:

Vice Chair Michael DiDomenico
Alt Commissioner Barbara Lloyd
Commissioner Scott Sumners
Commissioner Thomas Brown
Commissioner Don Cassano
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Alt Commissioner Angela Taylor (for agenda items #9 and #10 only)

City Staff Present:

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

Absent:

Chair David Lyon
Alt Commissioner Michelle Schwartz

Hearing convened at 6:02 p.m. and was called to order by Vice Chair DiDomenico

Consideration of Meeting Minutes:

- 1) Study Session September 24, 2019
- 2) Regular Meeting September 24, 2019

Motion: Motion made by Commissioner Amorosi to approve Study Session minutes and Regular Meeting minutes with minor correction for September 24, 2019 and seconded by Commissioner Sumners.

Ayes: Vice Chair DiDomenico, Commissioners Sumners, Brown, Amorosi and Johnson

Nays: None

Abstain: Commissioners Cassano

Absent: Chair Lyon

Vote: Motion passes 5-0

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

- 3) Request a Development Plan Review for a new 3-story multi-family development consisting of eleven (11) dwelling units for **GEM APARTMENTS**, located at 2063 East Lemon Street. The applicant is Moderna Architects. (PL190150)
- 4) Request two (2) Use Permit Standards to increase the maximum building height from 30 to 33 feet, and to reduce the minimum rear building setback from 15 to 13 feet for **3 ON HARDY**, located at 325 South Hardy Drive. The applicant is K&I Homes, LLC. (PL190270)

- 5) Request a Use Permit to allow a commercial parking facility in the CSS (Commercial Shopping and Services) zoning district for **VLACHOS FAMILY ENTERPRISES**, located at 2525 East Rio Salado Parkway. The applicant is Pew & Lake, P.L.C. (**PL190274**)
- 6) Request a Use Permit to allow live entertainment for **DELICIOUS FACTORY**, located at 414 South Mill Avenue. The applicant is Delicious Factory. (**PL190290**)
- 8) Request a Use Permit to allow vehicle sales and rental for **RENT-A-VETTE** located at 1828 East University Drive. The applicant is Rent A Vette. (**PL190294**)
- 13) Request a Zoning Map Amendment from CSS TOD and R-4 TOD to MU-4 TOD and an Amended Planned Area Development Overlay to establish development standards for a new one- to three-story, mixed-use development consisting of 636 dwelling units and commercial uses for **EASTLINE VILLAGE**, located at 2025 East Apache Boulevard. The applicant is Gammage & Burnham, P.L.C. (**PL190059**)

Motion: Motion made by Commissioner Sumners to approve the Consent Agenda and seconded by Commissioner Lloyd.

Ayes: Vice Chair DiDomenico, Commissioners Cassano, Lloyd, Sumners, Brown, Amorosi and Johnson

Nays: None

Abstain: None

Absent: Chair Lyon

Vote: Motion passes 7-0

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

NOTE: Agenda items #9 – South Mountain Retail and #10 – In-N-Out Burger were moved to the top of the agenda and Vice Chair DiDomenico recused himself from the two cases mentioned above. Alternate Commissioner Taylor participated and Commissioner Cassano participated as the Acting Chair for these two cases.

- 9) Request a Use Permit to allow a drive-through in the CSS zoning district and a Development Plan Review for two new commercial building totaling 8,500 square-feet for **SOUTH MOUNTAIN RETAIL**, located at 2415 West Baseline Road. The applicant is Diversified Partners. (**PL190130**)

PRESENTATION BY APPLICANT:

Mr. Neil Feaser, RCAA Architects, advised they are proposing a Starbucks drive-through restaurant and a multitenant retail PAD to the south of that along Baseline Road. They feel that the Starbucks is compatible with the CSS zoning district. The retail component does not have a tenant at this time but the size of it dictates it will be in a more neighborhood type of business. The quality of design they are proposing has double the landscape area surrounding all the buildings buffering to the adjacent properties. The Starbucks building fronts on Baseline Road and the retail aspect is to the south of this building. Mr. Feaser stated there were five letters of opposition. In regard to some of their complaints, he does not feel noise will be a factor due to the landscape buffering. He also stated there is no vibration, smoke, heat, or glare to speak of with this property. There was a traffic report done. Baseline Road is a heavily trafficked road, however Mr. Feaser stated that the traffic generated by these types of businesses was already on the street, so they do not feel it is adding to the overburdening the street.

Commissioner Brown inquired why this project was one submittal and the adjacent one (agenda item #10) was a different one even though they share the same parking lot. Mr. Feaser advised that each project had a different design team. Commissioner Brown asked if there is a contingency plan with regard to pavement if the other project is not completed. Ms. Suparna Dasgupta, Principal Planner advised there is a stipulation in the staff report that in the event that the In-N-Out Burger does not get built then a minor development plan review would be required for the ingress and egress for fire and solid waste for the proposed South Mountain Retail development.

Commissioner Amorosi asked if there was the possibility of three drive-throughs for this site and the one next to it. Mr. Feaser said it was not.

Commissioner Johnson noted that they are adjacent on the south to the highline canal and asked if there was any effort to incorporate that into this development a multi-modal path for walking or biking. He also noticed there was a six-foot-high steel picket fence with masonry columns and asked if that ran the full border of the south. Mr. Feaser did and also stated they had not been asked to connect to the canal. Ms. Dasgupta advised Commissioner Johnson that staff could facilitate connecting the applicant with Transportation Department as they are the ones doing the highline improvements.

Commissioner Amorosi noted there was a crossover between this property and the In-N-Out Burger property with the driveway going through. If that property does not get approved will they still be using that driveway. Mr. Feaser stated this was correct and that there was a stipulation that they would have to provide access through the adjacent property in that event.

PRESENTATION BY STAFF:

Mr. Obenia Kingsby II, Planner I, gave a brief overview of the project. There was no neighborhood meeting required for this project. He stated that staff has received seven letters from the public, five of which were included in the staff report. Two more were provided to the Commission today. Staff is in support of the project subject to the conditions.

Commissioner Cassano noted there is a traffic signal being proposed to allow exiting traffic and asked if it would still be proposed if the In-N-Out Burger parcel does not get approved. Mr. Kingsby advised him that it would not be a requirement at that point.

Commissioner Lloyd stated that in the letters that were provided there were some comments about not being notified and asked if this was a requirement. Mr. Kingsby advised that the standard requirement is to provide notice to anyone who is in 600 feet of the property. He advised that the people in the letters were on their list so he cannot explain why they did not receive notice. To date staff had only received one returned mail. Ms. Dasgupta added that the same mailing list was used for both items since they are on the same parcel and that for some reason public received mailer for one but not the other. Commissioner Sumners asked that for some projects that are on the border of Tempe do the notices cross city lines and Mr. Kingsby stated it should for anyone in the 600-foot radius.

Commissioner Taylor asked why no neighborhood meeting was required. Mr. Kingsby advised that it was not required per zoning development code for a Use Permit or a Development Plan Review. These are usually required for a zoning case, or a variance. Commissioner Taylor asked if there has been any outreach to the neighbors to solve any of the issues and concerns they have. Mr. Kingsby was unaware of any and that he only began receiving letters last week. They did share these with the applicant. Commissioner Taylor thought that by law notification to the public had to be received. Ms. Dasgupta advised her that it is our obligation to notify and notifications were mailed out. Ms. Dasgupta stated that staff did receive calls from the businesses adjacent to the property, but as far as the residents, the notification is basically a form letter that someone used to reach out to others.

PUBLIC COMMENT:

NOTE: *Since Agenda items #9 – South Mountain Retail and #10 – In-N-Out Burger are on the same parcel, the following public comments addressed either one or both projects.*

9 & 10: Mr. Israel Torres has a law practice that immediately abuts the project property directly to the east. He stated he is confused about the notice issued. He stated he reached out to staff earlier in the week and based on the letters that were received he is surprised the applicant did not reach out to address concerns. He is not opposed to the project, but they have a lot more questions than they do answers. This is the last parcel available in that area and he wants to make sure it is done right. He agrees with Commissioner Johnson's suggestion about incorporating the canal into the plans. He would like to work with the applicant on this as there are a lot of employees who bike and walk in the area. He requests the Commission ask the applicant to meet with the residents or just look at the Use Permit on its face as he does not think it meets the criteria. Commissioner Taylor asked Mr. Torres what other concerns he has besides the Use Permit. He stated that one is the notice, secondly, he would like to understand the

site plan better to see if it is two drive-throughs or three – he does not think two drive-throughs meets the Use Permit test. The Use Permit on agenda item #10 includes a drive-through with a porte cochere on top of it so there will be a lot of gas and noise. Traffic is also a concern since this is already a very difficult area. Commissioner Taylor asked Mr. Torres if he was opposed to the new light and he stated he believes it is already there and another light would be tough. Commissioner Cassano clarified that the traffic signal light currently exists for three-way traffic and it would just add the four-way signal.

9 & 10: Ms. Pamela Thompson Leftkowitz, Tempe resident, feels it is great that they will be developing the area as it will reduce crime by not having an open space, but her main concern is the traffic. She advised she did not receive a notice on the project. Right now it usually takes three traffic lights to get onto Baseline going east. The traffic problem is horrible and it is only going to get worse, especially with the freeway work that will be starting next year. Right now there is a huge amount of people who use 48th Street from the I-10 freeway down to Baseline Road that cut through her neighborhood to bypass 48th Street and Baseline. She feels the city needs to work on the traffic in this area, possibly put a side road at the back of the property along the canal so people would have another option to get in and out of those businesses. She stated they have people that stop in the middle of the intersection all the time because they have to get ahead of somebody else. It can take three or four lights to get out of Calle. Commissioner Cassano referred to Ms. Thompson Leftkowitz not receiving notice and advised that she is out of the 600-foot notification area. He does not believe anyone in that development would have received notice.

9 & 10: Ms. Marion Brownell, Tempe resident, advised she was the only one in her area that received notice and she believes that is because she is the neighborhood association president. She stated traffic in that area is the pits and is getting worse. She did not know about the Starbucks coming in and she wishes it would not come in. In regard to the In-N-Out Burger, they will deal with if they could work with the developers. She hopes something can be done with the traffic because her neighborhood is being used as a cut-through. She hopes the Commission can do something to help them with the traffic situation. Commissioner Taylor asked that if the Starbucks was not a drive-throughs would she be okay with it and Ms. Brownell stated she would.

9 & 10: Ms. Tricia Jasinski, Tempe resident, advised she is a neighborhood association president and did not receive notice. Ms. Jasinski stated that just trying to get out of her driveway to come to tonight's meeting she had to wait for 12 cars and then gun it out of her driveway then get here on Vineyard. The cut-through has gotten worse. If the south side light is added, you will have people coming over Baseline into Calle de Cerros and coming right through the neighborhood even more. In-N-Out Burger drive-throughs can have from 15 to 20 cars at a time. The pad is not that big. They only heard about the Starbucks tonight. There is no way those both can work there because there is no space for those cars to spill onto an already congested Baseline Road. She stated she does not leave her house between four and six and try to go anywhere towards Baseline because there are 25 cars sitting there. She feels the neighborhood is being abused by cut-through traffic. She is not opposed to development but neither of these businesses are going to work unless the overflow of traffic for In-N-Out Burger goes around the back. She is opposed to this project and stated the amount of traffic has taken the joy out of living in the neighborhood.

Commissioner Cassano asked staff if it was okay to hear agenda item #10 next before voting on both since they are on the same parcel of land with the same owner. Ms. Dasgupta advised this would be okay as long as each item was voted on separately.

NOTE: *Since the two proposed developments were discussed together, please refer to minutes for PL190131- IN-N-OUT BURGER, for additional discussion.*

Motion: Motion made by Commissioner Johnson to approve PL190130 and seconded by Commissioner Lloyd.

Ayes: Commissioners Cassano, Lloyd, Brown, and Johnson

Nays: Commissioners Sumners, Amorosi and Taylor

Abstain: Vice Chair DiDomenico

Absent: Chair Lyon

Vote: Motion passes 4-3

- 10) Request a Use Permit to allow a drive-through in the CSS zoning district and a Development Plan Review for a new 3,867 square-foot commercial building for **IN-N-OUT BURGER**, located at 2401 West Baseline Road. The applicant is In-N-Out Burger. **(PL190131)**

PRESENTATION BY APPLICANT:

Mr. Jim Lockington, Manager for new store development for In-N-Out Burger, gave an overview of the project and site layout. He stated the site circulation, parking and drive-throughs is very well designed and there is no dead-end parking. There is cross-access between In-N-Out and the adjacent development, parking for 56 cars, and a dedicated drive-in queue holding 15 cars. Mr. Lockington advised they are a ground lease tenant, pulling their own permits, constructing improvements on their side on their own, but will be a ground lease tenant of South Mountain Retail which is the development on the other side. It is his understanding that if both sites are not approved that neither can proceed although staff did take into consideration if one site is built and the other is not then there would be issues with turnaround for fire and refuse. The applicant agrees with the staff report and their recommendations. Mr. Lockington responded to some concerns that were expressed members of the community. Staff received five letters of opposition from the commercial neighbors to the east, one email from Knoell Gardens, and a letter from the Arizona Grand Resort. The five letters from the neighbors to the east were basically identical except for the letterhead and signatures. The applicant is building the Baseline location with neighbors in mind. The building is 10 feet shorter than the height allowed by city code, it is set back 20 feet further from the east property line than required by code, and the buffer is filled with trees, shrubs, and ground cover. The entrance to their drive-thru is at the very rear of the site, more than 340 feet away from the Baseline driveway, which means their drive-thru queue will never negatively impact Baseline Road. Mr. Lockington responded to the concerns in the letters from their business neighbors to the east. There was a concern about decreased property values, however he stated have this business will actually drive new customers to the neighboring businesses. With regard to the claim that the use is not consistent with the current uses in the area he stated that it is zoned CSS, not residential, not mixed-use educational. Regarding noise, vibration, smoke, heat and glare – Mr. Lockington stated that an ambient vacant lot abutting Baseline Road is the ambient condition. Another concern was about the location and noise from the drive-thru speaker. Mr. Lockington advised the speaker and menu board are over 150 feet away from the nearest commercial adjacent structure and is pointed away from that building and at a height that is well below a six-foot tall wall separating the properties. The speakers have ambient noise sensing technology that adjusts to the current ambient setting. In response to the email from the Knoell Gardens resident regarding concerns about traffic cutting through on Calle de los Cerros, he explained the project is not proposing a through traffic movement from the signalized project driveway so there will be no cut-through traffic. With regard to the Arizona Grand Resort letter, he was surprised a massive resort complex would feel threatened by the impact of a 4,000 sf family-oriented hamburger restaurant. He felt the language was overly-dramatic and hyperbolic and it was hard to give any weight to the letter. Regarding their traffic concerns, Mr. Lockington stated that the project traffic engineer city staff in considering both sides of the development as one. The traffic analysis concluded that the In-N-Out Burger traffic would not significantly impact the traffic conditions on Baseline. In-N-Out does not open until 10:00 a.m., well after the morning rush hour on Baseline. Fast food restaurants derive at least half of their customer traffic from vehicles that are already on the road.

Commissioner Johnson asked if there was a way to remove the “Y” layout in the queuing area so as to avoid issues with customers getting road rage. Mr. Lockington stated that if the queuing line exceeded the 15-space length of drive-through, they would probably wrap people around into the inside corner.

PUBLIC COMMENT:

Mr. Tom Baker, Tempe resident, used to live in the area a long time ago and stated residents will be impacted with more traffic. Even though progress needs to happen, having both a Starbucks and an In-N-Out Burger in this area will be detrimental to the residents who live there.

APPLICANT RESPONSE:

(AGENDA ITEM #9) Mr. Feaser stated he feels the project meets all of the criteria of the Use Permit. He then introduced the project traffic engineer Mr. Chuck Wright, Kimley-Horn and Associates, Inc. Mr. Wright stated that they looked at both sites as one when determining the traffic impact. They worked with city staff to come up with ways to mitigate the traffic impact. They will make modifications to the existing signal on Baseline Road but will not

add another signal. There will be a new eastbound to southbound right turn lane provided at the signal and they are extending the left turn storage for westbound to southbound traffic.

Commissioner Cassano stated that earlier they were told that customers would not come out of the In-N-Out Burger and going straight across Baseline and cutting through the neighborhood but he does not see any barriers to prevent this. Mr. Wright advised they did not think this was likely due to the orientation of the Baseline Road traffic. If that is a neighborhood concern, they can add signage or other physical controls to focus turns going to the right or left out of the driveway. Commissioner Cassano asked if putting those restrictions on the light would make it harder for people at the businesses across the street to access this site. Mr. Wright stated that the main traffic on Baseline comes from the east and west on Baseline Road so that is the bulk of the traffic they see.

Commissioner Lloyd stated that in the In-N-Out Burger presentation they stated that about 50% of the customer traffic would be those already on Baseline Road and asked if they had similar information for the Starbucks site. Mr. Wright advised that the data is used for fast food establishments as a group, so the 50% would also apply to the Starbucks. Commissioner Lloyd asked staff there was a way that through traffic could not be allowed into the neighborhood to the north. Ms. Dasgupta advised that staff would have to discuss it with city's traffic engineering.

Commissioner Cassano asked that if they In-N-Out Burger was not developed how would the eastbound traffic on Baseline get into the Starbucks site. Mr. Wright stated it would be the same access since it was based on both sites together.

Commissioner Amorosi asked how many cars per day are on Baseline Road. Mr. Wright stated there were 56,802 per day. Commissioner Amorosi asked if it gets higher at peak hours but Mr. Wright advised this count was for a 24-hour time period. The busiest hour in the morning heading east on Baseline was 2,068 and westbound was 2,022. Mr. David Richert spoke on behalf of the applicant and clarified that they are not adding a new 50% of traffic. The site already had trips assigned to it when they designed the street. Commissioner Brown asked how they could account for the residents saying they are backed up 12 cars on the street. Mr. Richert stated it has been like that for 25-30 years. Since there is not much available space to build anymore, traffic will not be significantly impacted. He stated that if they put an office structure there it would make it worse as there would be peak hours in the morning and the afternoon. Retail is a better use because it is always off-peak. Commissioner Amorosi stated that with two additional driveways, eastbound traffic will be backed up even more. Mr. Richert stated the later times in morning and afternoon the traffic is not as bad through that area. Mr. Lockington stated city staff asked them to put in a right turn dedicated deceleration lane at the signalized intersection and this will help the traffic flow.

Ms. Dasgupta advised that on attachment #3 for South Mountain Retail gives the overall site plan in context with the aerial map is a good exhibit to look at in terms of this discussion.

Commissioner Amorosi asked staff if there were any plans to widen Baseline Road. Mr. Ryan Levesque, Deputy Director – Community Development, advised that there is an I-10 widening project that initially included modifications to Baseline Road but according to ADOT that portion was removed from the items that are moving forward right now.

Commissioner Sumners asked if traffic engineering makes a distinction between restaurants that are a desired destination versus the smaller ones like Taco Bell that are mainly fast food. Mr. Wright said that most of the data collected is more generic to fast food restaurants. Mr. Lockington states that the traffic impact data for this site was done from studies of actual In-N-Out drive-throughs and provided a blended average for trip generation, then corrected for the actual square footage of this location.

Commissioner Taylor stated that under section 1.3 of the general summary it says that the proposed development is expected to generate 5,792 trips on a typical weekday but the number they were given for the peak morning and afternoon hours do not add up to this amount. Mr. Wright stated that the 5,792 number is for a 24-hour period. They tend to do their analysis on the busiest hour in the morning and the busiest hour in the afternoon. She feels 5,792 additional trips is a big traffic impact. Mr. Lockington advised the Commission that is trip is counted when a vehicle enters the site, and again when they leave. Also, with pass by traffic counted as 50% of the trips, it is a lot less than the 5,792.

Commissioner Johnson asked if there has been an update of the expected traffic along Baseline with the impending opening of the South Mountain freeway. Mr. Wright stated there is not a precise projection, but it is expected it will have an impact on the volume on Baseline Road, but he cannot state how much because they do not have that level of detail. Commissioner Johnson asked staff if the city would have access to that information. Mr. Levesque stated they would look into it.

PUBLIC COMMENT:

Mr. Israel Torres stated he was a little taken aback by the tone of Mr. Lockington's presentation. He felt it was very condescending. Mr. Torres reiterated that he does not think this project meets the Use Permit standards. He stated the portico on the east facing side of the In-N-Out Burger will hold vibration and be a capture area for gas. He requests the Commission either allow time for residents to meet with applicant or deny the Use Permit.

PRESENTATION BY STAFF:

Mr. Kingsby clarified the question about the number of drive-throughs and indicated that there are currently two proposed, one at South Mountain Retail and with the In-N-Out Burger and if they wanted to add another one in the future, they are required to come back for another Use Permit. Staff recommends approval of this project.

Mr. Lockington clarified to Mr. Torres that the comment he made was intended solely on the letter from Arizona Grand Resort. He did not intend to offend the residents or neighbors. With regard to the porte cochere share, there are a lot of buffers that should alleviate noise. Commissioner Cassano asked if the applicant would be willing to continue this item to another date so they can meet with the residents and discussed concerns. Mr. Lockington stated he would rather have an up or down vote today.

DISCUSSION FROM THE COMMISSION:

Commissioner Taylor stated that 5,792 additional trips a day will not work with our permitting criteria number one and two. She will not support the projects.

Commissioner Brown stated that the impact is about a 5% increase. Since each visit to the location is counted as two trips, the increase will actually be about 2,800 increase. Commissioner Taylor stated she does not have a problem with the restaurant or Starbucks, but she does not approve of the drive-throughs.

Commissioner Sumners feels the applicant has done the right thing on this site by putting the drive-thru as far back as they did plus the high number of parking queue spots. He feels they really should have coordinated with the neighbors. He would support a continuance to allow a little more communication.

Commissioner Cassano asked the applicant for agenda item #9 if they would like a continuance. Mr. Walt Brown, Diversified Partners an owner of the land, stated there has been a "coming soon – retail" sign next to Mr. Torres' building for the last eight months. He feels both applicants did a great job of working with Planning and traffic staff on the site plans. With regard to the Arizona Grand Resort, they had started at I-10 and Baseline at the hard corner but Arizona Grand group opposed them and stated they keep suing until they could buy the corner. Then the Arizona Grand group said if they moved down the street they would support them. They sold to them with In-N-Out's consent but they are not supporting them. He would like the Commission to approve the projects and they will meet with Mr. Torres about his concerns. Ms. Dasgupta stated that they could condition that the applicant works with the city to alleviate the cut-through issue.

Commissioner Cassano asked staff that if they approved the projects could they put in a condition for the applicants to work with neighbors. She advised the applicants could also continue the cases to the January 14, 2020 DRC meeting.

Commissioner Sumners stated it appears the most contentious project is the In-N-Out Burger and that applicant has already stated he wants an up or down vote. Commissioner Sumners recommended approval of agenda item #10.

Motion: Motion made by Commissioner Sumners to approve PL190131 with the added condition that applicant continues to work with staff to address northbound cross-through traffic at the intersection and seconded by Commissioner Lloyd.

Ayes: Commissioners Cassano, Lloyd, Brown, and Johnson

Nays: Commissioners Sumners, Amorosi and Taylor

Abstain: Vice Chair DiDomenico

Absent: Chair Lyon

Vote: Motion passes 4-3

Commissioner Taylor advised the audience that if anyone disagrees with the vote they are able to file an appeal to the City Council in 14 days.

- 7) Request a Use Permit to allow an amusement business for **WILD FRONTIER AXE THROWING**, located at 420 South Perry Lane. The applicant is Wild Frontier Ax Throw. **(PL190291)**

PRESENTATION BY APPLICANT:

Mr. Richard Jones, applicant, gave an overview of the project. They do not serve alcohol at this location and they also have people sign waivers stating they are not presently under the influence of alcohol. They will allow Bring your Own Beer (BYOB) but they have a one beer per hour maximum limit.

Commissioner Amorosi asked how far they throw the axes. Mr. Jones stated it is about 12-15 feet. The lanes are 16 feet long. Commissioner Amorosi asked if there were barriers and was advised it is a plywood board with mesh wire on top like a fence. It is 10 feet high, 16 feet long and there are five lanes. They are an eco-friendly business who gets their wood out of the dumpster rather than a lumber yard.

PRESENTATION BY STAFF:

Mr. Robbie Aaron, Planner II, gave a brief presentation on the project. He does not feel this will increase vehicular or pedestrian traffic. Regarding adequate control of disruptive behavior both inside and outside, as mentioned the applicant is requesting that patrons sign a waiver. As a condition of approval staff recommends the applicant reach out to the City of Tempe Crime Prevention Unit for a security plan within 30 days.

Commissioner Sumners asked if access on McClintock a driveway or the front entrance is. Mr. Aaron advised that the entrance is on Perry.

PUBLIC COMMENT:

Mr. Jeff Benkel introduced himself owner of the Arizona Bread Company which is the neighbor of the proposed project. He has concerns that the applicant's targets are on their common wall, so he has some concerns about noise. The main issue is the alcohol. Even though it is a BYOB business, they have not applied for a license. It is not only axe throwing, they also throw knives and throwing stars. Even though there is a barrier, the holes are bigger than the weapons. He does not feel weapons and alcohol are a great combination. The application says there will be 24-hour video monitoring and he wants to know if that includes the outside. The applicant also claims they will not bother anyone because they operate in the off hours, however Mr. Benkel stated his business operates 24/7. Mr. Benkel is also concerned about the type of alcohol that will be allowed. He also wants to know if there is an age limit for throwing the axes.

COMMENTS BY THE COMMISSION:

Vice Chair DiDomenico asked Mr. Aaron if the pictures of the axe throwing were from the current location and was advised they were from a different location that Mr. Jones operates. Vice Chair DiDomenico asked how staff addressed the common walls between this suite and the neighbor. Mr. Aaron stated there is space between the barrier and the wall. There are no requirements that a solid partition be built between the sites. With regard to the BYOB permit, they would have to apply to the state liquor control board for that permit.

APPLICANT RESPONSE:

Mr. Jones stated that the issue of the noise, they do not have the targets directly on the wall. There is almost five inches of space between the target and the wall. He stated that the machinery at the baking company in the suite next to him is up against the same wall where they will be throwing the targets. This creates a lot of noise on Mr. Jones' side of the building. Mr. Jones stated the lanes are for axe throwing and only one lane is used for knife throwing. The wire mesh screening on that lane is smaller. With regard to BYOB, it is only beer and wine, there is no hard liquor allowed. Mr. Jones stated there will not be any loitering in the parking lot.

Commissioner Amorosi asked Mr. Jones to clarify the he will be applying for the BYOB liquor license and he stated he would. Commissioner Amorosi asked if he would be amenable to outside cameras. Mr. Jones stated the cameras he is installing are mainly for the inside, it was not his plan to put any outside. He would be okay with installing one camera in the parking lot.

DISCUSSION BY THE COMMISSION: NONE

Motion: Motion made by Commissioner Amorosi to approve PL190291 with the added condition of getting a state liquor license and installing a camera in the parking lot and seconded by Commissioner Cassano.

Ayes: Commissioners Cassano, Amorosi, Brown, Sumners, Lloyd and Johnson

Nays: Vice Chair DiDomenico

Abstain: None

Absent: Chair Lyon

Vote: Motion passes 6-1

- 11) Request a Use Permit to allow a fuel center and a Development Plan Review for a new 5,187 s.f. convenience store for **CIRCLE K**, located at 1900 North Scottsdale Road. The applicant is Land Development Consultants. **(PL190263)**

PRESENTATION BY APPLICANT:

Mr. David Cisiewski, on behalf of Circle K, went over the project scope and size. For the past 40 years the space has been used as a car repair and a used car lot. The property is not designated as part of a character area plan. A city traffic department determined that a traffic report was not required for this project as it would not generate any additional traffic. There will be a small seating area on the west side of the building. There are internal and external cameras for the security reasons. With regard to neighbor traffic concerns, Mr. Cisiewski stated that there is no connectivity from this facility to any of the residential areas. The current property use has received many code violations and the applicant is trying to remedy that. Applicant will work with the city police to come up with a security plan.

Commissioner Brown asked what time of day the fuel trucks arrive. Mr. Cisiewski stated this can stagger, based on amount of fuel sold. Commissioner Brown asked if there would be someone to monitor deliveries as they are backing into the lot and was advised store staff could assist based on the activity on the lot. The fence on the property line is also eight-feet high.

Commissioner Amorosi asked if Circle K has a policy to address homeless in the area, if store employees are trained on dealing with that. Mr. Cisiewski said they will work with local law enforcement, issue trespass notices if needed, have "no loitering/trespassing" signs on the property.

PRESENTATION BY STAFF:

Ms. Diana Kaminski, Senior Planner, stated that the CSS zoning does allow for the convenience store and that the Use Permit is just for the fueling center part of the project. Regarding resident concerns about deterioration of the neighborhood, staff had no information indicating a correlation with the fuel center and deterioration in the area. They will be underground power lines, relocating the bus shelter, and making landscape improvements which are an enhancement to the area. Ms. Kaminski provided information on the similar uses in the area.

A neighborhood meeting was not required for this project. Staff received two calls, one visit to the counter, and five letters in opposition of the project. Staff met with three residents to discuss their concerns. They have valid concerns that extend beyond the borders of this site. There is an existing Circle K to the north and residents did not feel they needed another one, staff presented a summary of resident expressed concerns. Staff recommends approving the application with the conditions of approval as listed.

Commissioner Lloyd asked if staff knew what will happen to the existing Circle K. Ms. Kaminski stated she had asked that question twice of applicant did not get an answer.

PUBLIC COMMENT:

Ms. Kim Gaffney Loza, north Tempe Resident, stated there are already six convenience stores and adequate gas stations in the area. She noted there are two Circle Ks in the direct area, and they tend to be less clean and less controlled than others. She stated there are many other options for businesses at that location that would benefit the neighborhood. There are also more crimes and accidents along their section of Scottsdale Road and that intersection is the worst. Regarding the character area, she advised they have not been approached by the City about this. They will be applying for a neighborhood grant to do a master plan for Scottsdale Road.

Mr. Tom Baker and Amy Baker left the hearing prior to the public comment portion, but Vice Chair DiDomenico read what they had noted on their public comment request form: "Concerns in item 11 – Circle K proposal. How this affects safety and home value. Traffic and privacy". The driveway is also very close to McKellips, right next to Starbucks so there would be no way to add a traffic light. This is currently proposed for an area where they used to sell used cars, but the Circle K will create a lot more traffic. Residents would like for other uses to be put in this area.

Ms. Darlene Justus, north Tempe resident, stated there is a Circle K on Continental and Scottsdale Road that has been there for years that is always understaffed and not cleaned up. She also brought up the problems Circle K had with skimming, 80% of them were affected by skimming in 2018. If this project went through, there would be three Circle K stores within a half mile of one another. She also advised that they do not have a character area yet.

Mr. Lane Carroway, represents Cavalier Hills, stated he has spoken to about 70 of their neighbors and it is split down the middle whether or not the Circle K built. He does not feel there was enough public input on the project. He stated the car dealership at this site has about 8-10 cars going in and out each day and it does not create any noise in the neighborhood. If the Circle K is built there would be 100 to 200 people coming in a day. He would have liked to have met with the developer. The Circle K stores in the area are dirty and not maintained and he does not see how this one would be any different. They have a large homeless population in the parks in the area and every day and they loiter and the gas stations every day, doing drugs, harassing customers and the staff does not do anything to deter this.

APPLICANT RESPONSE:

Mr. Cisiewski stated the store would have three to four employees working at a time and their presence would be a crime deterrent. A condition of approval from staff is that the applicant work with the City of Tempe police to come up with a security plan. He would be happy to include the residents in this. With regard to the Circle K to the north, the site is owned by a different investment pool, not the Circle K corporation. It is currently under a lease but in the future this new Circle K would replace that one. Regarding skimming, Circle K has taken an active and aggressive approach with this and have now about 99% of the card readers with new ones that will shut down if anyone tries to tamper with it.

Commissioner Brown asked if Circle K receives income from the two other stores in the area. Mr. Cisiewski believes they get income from the one to the north but is not sure about the other one. Commissioner Brown asked if they have standards for cleanliness and was advised they do. He had not been to the store to the north recently, but reports show they have a low level of crime. Commissioner Brown asked applicant to confirm that they will keep the new store clean. Mr. Cisiewski stated they have made a strong commitment to keeping stores maintained.

Commissioner Lloyd asked for more information on the outdoor eating area as she sees it as something that would promote loitering. Applicant stated that the newer stores provide food service they have seating both inside and

outside the stores. There would be 14-16 security cameras onsite and one would be monitoring the outdoor seating area. If they have issues with loitering at the outdoor seating, they would post the area stating no after-hours use and then trespass anyone who ignores them.

DISCUSSION BY THE COMMISSION:

Commissioner Amorosi stated that even though there is no character area there appears to be an over-saturation of convenience/gas stations. If we want to improve the area, then we should not keep approving these uses.

Commissioner Lloyd agrees with Commissioner Amorosi but believes applicant has put forth a good design.

The Commission made a motion on the project then Vice Chair DiDomenico indicated he agrees with Commissioner Lloyd, however the Use Permit for the fuel pump fits in line with the zoning for gas stations. He does not believe it is in the Commission's purview to decide when there area too many types of any specific use in the area. He stated applicant has done a good job with the design, they have screening in the back and there is not cut through. The crime and loitering is an impact to the area.

Motion: Motion made by Commissioner Cassano to approve PL190263 and seconded by Commissioner Sumners.

Ayes: Vice Chair DiDomenico, Commissioners Cassano, Sumners and Johnson

Nays: Commissioners Brown, Lloyd and Amorosi

Abstain: None

Absent: Chair Lyon

Vote: Motion passes 4-3

Vice Chair DiDomenico reminded those in attendance that if they object to the Commission's decision, they can file an appeal within 14 days and then go before the City Council.

- 12) Request a Use Permit to allow a drive-through in the CSS zoning district and a Development Plan Review for a new 2,053 s.f. restaurant for **DEL TACO**, located at 1331 North Scottsdale Road. The applicant is Sender Associates, LLC. **(PL190276)**

PRESENTATION BY APPLICANT:

Ms. Darin Sender, Sender Associates, stated the property has been vacant since the Jack in the Box was torn down in 1995. The site consists of three lots. They received a variance from the Board of Adjustments to reduce the required number of parking spaces by two spaces a couple of weeks ago. This is a very small and narrow site and also has a 2' easement dedication at the southeast. There is also a deed restriction on a third of the property that only allows residential so they could not put the building there. There is a 27% landscape coverage. There were concerns about refuse vehicle access ability but it was tested by the vehicles and there was no issue.

PRESENTATION BY STAFF:

Ms. Kaminski stated that prior to the variance at the Board of Adjustment they received many letters from residents, they had a neighborhood meeting and after that she has only received two emails from the adjacent property owner in opposition to the project. Staff recommends approval.

Vice Chair DiDomenico asked if all conditions of approval have been worked out with the applicant and was advised they had.

PUBLIC COMMENT:

Ms. Darlene Justus stated she supports the project however, since they are not a 24-hour restaurant it would be good if they had a security camera facing the outdoor seating so they can see if there are issues in the evening with the homeless. She is glad they went away from 24-hour service. She is okay with it closing at 2:00 a.m. but would prefer it close at 1:00 a.m. so the after-bar people do not hang out on the property.

Mr. Lane Carroway stated that after the neighborhood meeting, he went back to his community and there were no complaints about the project. They need something that the neighbors can walk to as there are no types of snack and go businesses in the area. The applicant has been great at working with the community and he looks forward to the project. Regarding the business hours, he would prefer it be 24 hours.

DISCUSSION BY THE COMMISSION: NONE

Motion: Motion made by Commissioner Amorosi to approve PL190276 and seconded by Commissioner Johnson.

Ayes: Vice Chair DiDomenico, Commissioners Cassano, Lloyd, Sumners, Brown, Amorosi and Johnson

Nays: None

Abstain: None

Absent: Chair Lyon

Vote: Motion passes 7-0

- 14) Request a Code Text Amendment for **MEDICAL MARIJUANA AMENDMENT**, consisting of changes within the Code that regulates the medical marijuana dispensary hours of operation in Tempe. The applicant is Harvest of Tempe. **(PL190280)**

Ms. Lauren Niehaus, Harvest of Tempe, is requesting a text amendment for the hours of operation in Tempe. Currently the State of Arizona allows hours to go until 10:00 p.m., however the city ordinance in Tempe is still 8:00 p.m. Extending the hours of operation would affect all dispensaries operating in Tempe that are interested in extending their hours. Ms. Niehaus indicated there are other cities that have extended their hours and Tempe is losing revenue to them due their current closing time. Tempe residents who work late hours must rush to make the 8:00 p.m. closing or travel to a neighboring jurisdiction. Currently, Phoenix, Candler, and Glendale close at 10:00 p.m., with Mesa closing at 9:00 p.m. and Scottsdale closing at 7:00 p.m. Harvest of Tempe is working with the Scottsdale location to get an hour extension there to close at 10:00 p.m. All Harvest locations have 24/7 electronic surveillance, secured entrances, well-lit facilities, and collaboration with local law enforcement. Working with Tempe Police, they found that the crime surrounding cannabis dispensaries is much less the other retail uses. Tempe Police have indicated they do not see any issues with the extension of business hours.

Commissioner Brown asked Ms. Niehaus if she knows who owns the vape shop two doors down from her business and she advised she did not.

STAFF PRESENTATION:

Ms. Dasgupta, Principal Planner, advised that staff has reached out to the Tempe Police Department and they have not had any increase in due to the dispensaries throughout the City of Tempe. The text amendment will affect all dispensaries in Tempe and enable them to extend their hours of operations. Staff also reached out to the Neighborhood Advisory Committee and they did not have any concerns with this change.

PUBLIC INPUT: None

Motion: Motion made by Commissioner Amorosi to approve PL190280 and seconded by Commissioner Sumners.

Ayes: Vice Chair DiDomenico, Commissioners Cassano, Lloyd, Sumners, Brown, Amorosi and Johnson

Nays: None

Abstain: None

Absent: Chair Lyon

Vote: Motion passes 7-0

MISCELLANEOUS DISCUSSION:

Vice Chair DiDomenico found out that the City of Tempe is one of the most conservative cities when it comes to indoor cannabis growing facilities. A lot of other cities do not have limitations on the size of their facilities. In Tempe he believes we have a 25,000 SF limit which is far below what other cities are doing.

Mr. Ryan Levesque, Deputy Director – Community Development, stated that there was actually a cultivation member in attendance tonight. Mr. Levesque stated the city was even more restrictive in the past where they would only allow approximately 5,000 SF of facility space. They worked with the applicant on increasing this and at the time 25,000 SF sounded reasonable. Staff has reached out to other cultivators to reevaluate this.

Vice Chair DiDomenico stated that he has heard for people looking for sites that they would like to locate in Tempe because geographically we are special, but they have redlined us because it is inefficient to build a 25,000 SF facility when they are looking to do a 50,000 or 100,000 SF facility.

Staff Announcements:

Ms. Dasgupta advised that the agenda for the January 14, 2020 meeting will be sent out to the Commission members next week.

There being no further business the meeting adjourned at 10:00 p.m.

Prepared by: Joanna Barry

Reviewed by: Suparna Dasgupta



Suparna Dasgupta, Principal Planner
Community Development Planning