

**REVISED**



## Minutes of the Development Review Commission January 14, 2020

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  
Commissioner Scott Sumners  
Commissioner Thomas Brown  
Commissioner Don Cassano  
Commissioner Philip Amorosi  
Commissioner Andrew Johnson

**City Staff Present:**

Chad Weaver, Director, Community Development  
Ryan Levesque, Deputy Director, Community Development  
Suparna Dasgupta, Principal Planner  
Steve Abrahamson, Principal Planner  
Diana Kaminski, Senior Planner  
Lee Jimenez, Senior Planner  
Obenia Kingsby II, Planner II  
Robbie Aaron, Planner II  
Joanna Barry, Administrative Assistant II

**Absent:**

Alt Commissioner Barbara Lloyd  
Alt Commissioner Michelle Schwartz  
Alt Commissioner Angela Taylor

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

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**Consideration of Meeting Minutes:**

- 1) Development Review Commission – Study Session 10/22/19
- 2) Development Review Commission – Regular Meeting 10/22/19

**Motion:** Motion made by Vice Chair DiDomenico to approve Regular Meeting minutes and Study Session Meeting minutes for October 22, 2019 and seconded by Commissioner Cassano.

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

**Nays:** None

**Abstain:** Commissioner Sumners

**Absent:** None

**Vote:** Motion passes 6-0

- 3) Development Review Commission – Study Session 11/12/19
- 4) Development Review Commission – Regular Meeting 11/12/19

**Motion:** Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for November 12, 2019 and seconded by Commissioner Amorosi.

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

**Nays:** None

**Abstain:** Chair Lyon

**Absent:** None

**Vote:** Motion passes 6-0

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The following items were considered for Consent Agenda:

- 5) Request a Preliminary Subdivision Plat for **DAYBREAK APARTMENTS**, located at 1935 East Apache Boulevard. The applicant is Mansour Elmakhtar. (PL190054)
- 10) Request a Use Permit Standard for side yard setback reduction from 10' to 8' and a Development Plan Review for four new single-story single-family homes for **19TH STREET RESIDENCES** located at 667 West 19th Street. The applicant is Habitat for Humanity. (PL190298)
- 11) Request an Amended Planned Area Development, a Use Permit to allow a hotel in the HID district, and a Development Plan Review for a new five-story 109-key hotel on 2.8 acres for **STAYBRIDGE SUITES**, located at 93 South Rockford Drive. The applicant is Quarles & Brady, LLP. (PL190201)

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

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

**Nays:** None

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 7-0

The following items were considered for Public Hearing:

- 6) Request a Development Plan Review for a new 13-story hotel containing 237 keys and commercial uses for **ONE HUNDRED MILL HOTEL** located at 120 South Mill Avenue. The applicant is Gammage and Burnham LLC. (PL190200)

**PRESENTATION BY APPLICANT:**

Ms. Manjula Vaz, Gammage & Burnham LLC on behalf of Supreme Bright Tempe LLC, gave an overview of the project. It will be a 13-story hotel and was part of a three-phase development. The hotel will be a five-star, full-service hotel consisting of 237 hotel rooms.

Mr. Dan Stuber, Lead Designer with Allen + Philp Partners went over the project design plan. The hotel is set on a site incline to mirror the positioning of the Hayden Silo, which is about nine degrees off of the north/south axis on Mill Avenue. When looking north, the hotel is turned 8.75 degrees towards the northwest and opens up the views from the south to the north. The hotel and restaurant patio are on the street level behind the masonry armature. The stucco walls are modulated as two-story elements. They are using metal screeds in all of the joints and bypassing the slabs so the façade will have a more monumental appearance. The upper 60% of the building is glazed. To improve the greenery of the planting bed there will be a wall of cabled vines.

Commissioner Sumners asked if there was any glazing between the vines on the edge between the patio and the sidewalk. He was advised the glazing was well behind into the depth of the building. Commissioner Sumners asked for clarification that if he was sitting on the patio and someone walked by on the street, he could speak with them and was advised that he could.

Commissioner Brown stated that the southeast corner is still on the Mill Avenue streetscape so that step back does not work well for a street view. He asked if there was any way the tower could have been moved to the west. Mr. Stuber stated that the tower massing was negotiated over several months with the City on how far in or out it could be. They agreed that it would be roughly a line that puts a third of the tower in front of that line and two-thirds behind it. Manjula advised there was a 25-foot setback that needed to be met along Mill Avenue.

Commissioner Brown stated that on attachment number 48 it shows they are 3-4 stories higher than the 222 building and inquired if it could have been held down to not exceed that. Ms. Vaz advised that the heights had been determined in the earlier plans, so they stayed with that height.

Commissioner Amorosi stated that on page 10 it mentions public artwork and inquired if they had decided to put public art on site or just donate money. Ms. Vaz advised that they had not decided yet, but their plan was to put public artwork on site. They have been working with Rebecca Rothman on some different options and are trying to work through that. Commissioner Amorosi further asked for clarification that they were going to put public art on site. Ms. Vaz stated they are going to try to have some public art on site and advised that the office building will have public art on site.

Vice Chair DiDomenico asked about the current condition and disposition of Hayden House. Ms. Vaz advised that it was still being rehabilitated and they are hoping to have it open in April 2020. Vice Chair DiDomenico asked if it was holding up well during rehab and Ms. Vaz advised him it was.

Chair Lyon stated he feels it is a handsomely detailed building and applicant took time to see how it fits. However, he mentioned that the applicant had stated that the choice of the EIFS was one they were going to convince the Commission of but is not convinced yet. He is a little concerned about stucco on what will be a 40-plus year building when stucco is more of a 20-year-ish. There is not a lot of stucco on Mill Avenue and he is concerned it is not going to feel as gracious as the applicant wants for a gateway building. Mr. Stuber advised that they did look at a few different materials to get to this point. They studied the mill and the silo which both have a conglomeration of paints and stuccos and they matched that color, scale and form. When they got to the stucco, they thought about what types of materials that are seamless across such a scale as this project. Other types of materials tend to have more joints, but they wanted more control of the seams.

**PRESENTATION BY STAFF:**

Ms. Diana Kaminski advised this is the third project on this site as part of a planned area development. They have building setbacks of zero, however on the first floor on Mill Avenue they have setbacks to allow for the sidewalk area where they are providing shade. Ms. Kaminski advised that staff did talk with the applicant about the upper floors and trying to meet the letter of the law with step back at the upper levels, however looking at the narrowness of this lot and the east and west direction bunching out at each side it did not seem to work with any other footprint.

Vice Chair DiDomenico asked that had the positioning of the Hayden Flour Mill silos did not exist, as they currently do, would the designing and the positioning of the proposed building still make sense? Ms. Kaminski stated she liked that it did not fall parallel to the street and previously asked that they add more curvature to the building, similar to the Gateway building, but that was not possible. The angle creates a deviation to the normal parallel structure adjacent to a street.

Chair Lyon asked Ms. Kaminski how comfortable she was with the stucco since this property is in such a key location. She advised they did speak about other materials, such as a limestone material and other products. The fact that 60% of the building is glazing and they are using larger monument windows helped her in terms of how much stucco there would be.

**PUBLIC COMMENT: NONE**

**APPLICANT RESPONSE:**

Ms. Vaz advised that the first condition of approval needs to be changed to reflect the correct date for the approved plan date of December 20, 2019.

**DISCUSSION BY THE COMMISSION:**

Commissioner Amorosi stated he liked the design and how the applicant made the effort to mirror the flower mill. He also likes the grouping of the large windows because it helps give the illusion that it is not as high as it is. He will be approving the project.

Chair Lyon stated he liked the clever move of slanting the building and this was a good way to work with staff.

**Motion:** Motion made by Vice Chair DiDomenico to approve PL190200 with the change in condition of approval No. 1 and seconded by Commissioner Cassano.

**Ayes:** Chair Lyon, Vice Chair DiDomenico, Commissioners Cassano, Sumners, Amorosi and Johnson

**Nays:** Commissioner Brown

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 6-1

- 7) Request a Development Plan Review for a new 8,968 square-foot vehicle service facility for **SERVICE FIRST**, located at 505 West Warner Road. The applicant is Cross Verdad Development. **(PL190265)**

**PRESENTATION BY APPLICANT:**

Ms. Wendy Hunter, Cross Verdad, advised this will be a redeveloped site. There is currently a gas station on the site, and they will be demolishing it and constructing a new automotive facility center. The applicant has had extensive negotiations with staff about the project design. She advised this is a very tight site. This is a high-end facility and will be the first one in Arizona. Applicant has no issues with the 21 conditions of approval in the staff report.

Commissioner Amorosi asked if applicant would try to save the mature trees that are on the site or take them out. Applicant advised that due to the site being extremely tight they will be removed.

**PRESENTATION BY STAFF:**

Mr. Lee Jimenez, Senior Planner, stated that the existing driveway on the site from Kyrene is being closed off, they will be keeping the existing driveway from Warner Road. There will be a six-foot screen wall along Kyrene to screen the service bay doors. Mr. Jimenez clarified Commissioner Amorosi's question and explained that some of the existing trees within the right-of-way will remain. One of the conditions of approval was that the metal panels between the screens provide no greater than a 25% opening to help provide some screening of headlights.

No neighborhood meeting was required, and staff did not receive any comments from the public. There are non-standard conditions of approval in the staff report; #6, 7 and 8. Number six was to relocate the HVAC system from the front of the building to the back of the building. Number seven referenced the maximum opening for the metal screening panels, and number eight covers a comment that was addressed by transportation/transit regarding the type of bus shelter, bus pad, and any other uses required for that installation along Kyrene Road for the existing bus stop.

Commissioner Cassano asked if there was a bus pullout or just a pad and shelter and was advised there is no bus pullout.

**PUBLIC COMMENT: NONE**

**DISCUSSION BY THE COMMISSION:**

Commissioner Brown asked if there would be an L-shaped corner return on brick veneer so that it looks like brick and not steel. He was advised there would be.

Commissioner Sumners stated that there are currently a lot of driveways in the area and anything that is an upgrade and gets rid of some of the access driveways is a big improvement for the area. He would be happy to support the project.

**Motion:** Motion made by Commissioner Cassano to approve PL190265 and seconded by Vice Chair DiDomenico.

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

**Nays:** None

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 7-0

- 8) Request a Use Permit to allow residential in the Commercial Shopping and Service (CSS) district and a Development Plan Review for a new 3-story multi-family development consisting of 28 dwelling units for **JINSTAGE TEMPE**, located at 6403 South Hardy Drive. The applicant is Perlman Architects. **(PL190275)**

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

Mr. Tristam Kesti, Perlman Architects, stated the project site is on the southwest corner of Hardy and Guadalupe and is currently undeveloped. Immediately adjacent to the property to east is an SRP owned parcel. They are proposing a townhome style development of a three-story multi-family dwellings. Eventually these will be made with a for sale condo mechanism. The current land use for the site is CSS (Commercial Shopping & Services) and they are requesting a Use Permit for residential. The dwelling units per acre for this site is currently set at 21 units per acre but they are proposing 19. The projected land use is 25 du/ac so he does not feel this will be a nuisance with traffic, density, noise or crime. The units are set up where most of the patios face to the north side to minimize sun exposure, maximize the views to the north, and to prevent any of the units from looking directly at any of the other units. There is community space in the center part of the site. On the ground floor there are two access points. The idea for putting the courtyard in the center is to block out any noise, traffic, or high intensity uses. This would also cushion them from the neighboring apartments. They worked with staff on the type of access to the property and settled on two-way access for fire department and for trash. There will be a new type B bus shelter with a 60-foot pullout. Currently there is only a bench, pad and a sign. Mr. Kesti went over the Use Permit criteria and how he feels this project meets them.

Commissioner Johnson asked for clarification from earlier in the presentation when Mr. Kesti advised these were apartments that would be turned into condominiums and how they would be platted as condominiums. He was advised the applicant had misspoke when referring to them as apartments, and that they would be condominiums for sale. Commissioner Johnson asked if they were going to continue the sidewalk along Guadalupe. He was advised they would however there would not be a sidewalk in front of the SRP site. He stated he has never spoken with staff about this as it has never come up. Commissioner Johnson asked if there would then be an 80-foot section with no sidewalk and the applicant confirmed there would be as this is SRP's right of way. Commissioner Johnson advised that SRP currently enters that site from the curb cut on the applicant's property. They will not be able to do this based on applicant site plan so he suggests working with SRP to ensure they maintain access so they can continue the sidewalk instead of leaving 80 feet of dirt in front.

Commissioner Cassano noted there is a total of nine parking spaces and does not see where overflow parking would be for visitors and guests. It would be restricted on Hardy so it looks like it would end up pushing it into the neighborhoods.

\* *The audience at this point started clapping at Commissioner Cassano's comment so Chair Lyon thanked them for it but told them to be happy with that and not do so again.*

Commissioner Cassano continued and mentioned the applicant must already meet the parking guidelines but asked if they had considered options for where the excess would go. Mr. Kesti stated they had spoken with staff to see how they could maximize parking on site and one of those was to make parallel parking along the south of the site. He advised those spaces are above and beyond the parking requirements as they are three spaces over that amount. Commissioner Cassano asked if the applicant feels they have addressed the need for guest parking. Mr. Kesti stated that the required amount is six spaces and since they had nine they did not have discussions about overflow.

Commissioner Amorosi referred to attachment #8 where there appears to be a metal fence, but he does not know what purpose it serves. Mr. Kesti advised him that they have service entrance section panels along the wall and the fence helps screen them from view. Commissioner Amorosi asked if the units would be affordable housing, marketplace, what is their price point. Mr. Kesti stated they would be priced at market rate. Commissioner Amorosi asked if the power lines would be underground. Ms. Suparna Dasgupta, Principal Planner, advised him that this was a requirement for any new development. She also referred to Commissioner Cassano's earlier question and stated it does meet minimum parking requirements for the development.

Commissioner Brown asked that since the exterior walls would not be furred out, but would rather be exposed block, if they were looking into a larger tonnage A/C unit on the three units that are facing west. Mr. Kesti stated they have had some discussions about this, and they have a plan from the HVAC perspective. Commissioner Brown noted there was a six-foot space of sidewalk between the two buildings that goes out to the property sidewalk and was concerned that it did not look very safe and secure. Mr. Kesti stated the lower courtyard walls should allow some ability to see around. Commissioner Brown asked how tall the walls were and was advised they are five feet tall.

Chair Lyon stated he sees a lot of cool ideas in the plan but he shares some of the same concerns that other Commissioners had made. Regarding the question about insulation on the CMU walls on the west side, they may need to insulate them or be made to do a modeling later showing they meet energy code. Chair Lyon likes the drain chains on the plan for harvesting water, however he is concerned about overflow so if they have not done so already, he suggests looking into the IPC plumbing code for flowrates. Chair Lyon feels that the project may be too garage dominated. He never sees a lot of people sitting out on their patios and thinks that the patio area and path seem very narrow. He believes more attention should be focused on the garages and drive. Chair Lyon stated the project still looks fairly harsh and that the landscape is not something people will get to enjoy and that is a detriment to the project. Even though the applicant is under the 25-unit capacity, he does not feel the area is large enough for all the square footage that is planned and that there is a not a lot of room people to live outside of their unit. Mr. Kesti pointed out that the ground floor common area is not the only outdoor space. The units have a second-floor deck that exits off the dining/kitchen area which he feels would be more predominantly used than the ground floor level. On the third floor there is a significant outdoor deck on the roof which is more usable. There is also the community space that has amenities on the second floor as well as a third-floor roof deck.

Commissioner Johnson stated in response to Chair Lyon's earlier comment about never seeing anyone using a patio that he has a space similar to the patio on the site plan and he does use it and does not find it confining. It depends on the person and he feels that if someone is buying one of the units they know what they are getting.

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

Mr. Obenia Kingsby II, Planner II, advised there was no neighborhood meeting required for the project. As to the parking concerns, they are in excess of three parking spaces for guests. The unit owner could also allow space in their garage for a guest to park in. With regard to public input, staff did receive one letter of opposition. Staff recommends approval subject to conditions of approval.

Vice Chair DiDomenico stated that the biggest problem he has with this case is not related to the Development Plan Review (DPR) portion of the project, as he likes some of the design features, or the density. He is more concerned with the Use Permit as the general plan calls for Commercial Shopping and Service (CSS) zoning. In an area with significant CSS development in place he could see where the city would be okay with losing commercial that is surrounded by a sea of residential. The property is surrounded by single family housing but there are no shopping amenities that are pedestrian friendly to this site. He asked why they would want to see this developed to more residential. Mr. Kingsby advised that they had looked at both sides of this and since there was no commercial nearby, they thought it would be more suitable as residential. Vice Chair DiDomenico also asked staff what the General Plan land use designation is and stated he felt it was more beneficial to the area to introduce more shopping opportunities. Ms. Dasgupta clarified that if there is an existing zoning such as CSS and then when the General Plan gets updated, it will typically mimic similar land use designation. Staff felt that in evaluating the proposed project with the surrounding areas, residential would be more compatible.

Commissioner Sumners said they heard that the power lines had to be underground but the condition of approval states "if" they need to be. Mr. Kingsby put that in there because per engineering if it is too large of a line it could not be put underground. In cases where it is suitable for them to be underground that is a requirement. With regard to parking, the applicant stated it was single family but Commissioner Sumners said it appears the parking was based on multi-family. Mr. Kingsby clarified that as these are condominiums for sale, therefore considered to be multi-family.

Commissioner Johnson looked at the overhead lines and they appear to have significant voltage. He asked if there was an overhead easement in that area. Mr. Kingsby advised that there was and the engineers will determine if they go underground or not. Commissioner Johnson asked if staff is working with utility to ensure that easement is respected and they can still maintain the lights and poles. Mr. Kingsby advised this would be looked at when the project reaches the construction document phase. Ms. Dasgupta advised they could circle back and look at that but during permit review they do address those items.

Chair Lyon observed the north drive looks to be dimensioned as 84 feet and 10 inches off of Guadalupe and asked if that was sufficient. Mr. Kingsby advised that traffic engineering reviewed it and were okay with it, mainly since it is not a major arterial street.

**PUBLIC COMMENT:**

*Chair Lyon advised that he appreciates the audience's enthusiasm earlier when they clapped, however that is not how the process is conducted. He asked the audience to keep their remarks to themselves until it is their own time to speak. Ms. Dasgupta advised Chair Lyon that some of the comment cards submitted by the audience requested their comment be read instead of them speaking.*

Mr. Erik Pearson asked for his comment to be read into the record: "There is no other building 3 stories in sight of this corner. The increased traffic without street improvements would not be good for the neighborhood. Its listed as commercial shopping use it for that."

Ms. Yvonne Pearson asked for her comment to be read into the record: "I do not want the DRC to approve a permit for a 3-story multi-family development. We already have plenty on Grove Parkway to the south and La Serena apartments next door. I would much rather a commercial business such as fast food or baby strip mall for possibly doctor offices or physical therapy or mom & pop shops."

Ms. Jane Davenport asked for her comment to be read into the record: "Negatives – more crime, more traffic, more people, too high. Positives – none, except money to people who don't live in the neighborhood and won't have to deal with the negatives."

Mr. Andre Guilles, neighbor, stated that when his parents bought the house that he currently lives in back in 1985 the lot was zoned for CSS and that was a selling point for the house. Over that time there has been no development. He understands that it does not have direct freeway access and that might not be something desirable for any business looking to set up there. They would like to maintain the property if at all possible. In regard to this design he stated it looks like a prison, especially from the west side. The west wall is very blocked and unappealing. He stated the applicant used the term "connection to nature" but Mr. Guilles does not see any connection to the neighborhood with regard to the architectural design. He stated this project runs into conflict with the rest of the neighborhood. If the project was approved, he hopes some of the architectural issues would be reviewed or challenged. He stated it is encouraging to have the lot developed.

Ms. Betty Reaume, neighbor, wanted to know what type of trees would be along Hardy Drive and if they would grow tall enough to shade the building. Chair Lyon stated he would have the applicant answer those questions when they come back up and asked if she had any other comments. Ms. Reaume mentioned that there are lot of people that are allergic to Palo Verde trees. Chair Lyon asked what trees would she like to see besides Palo Verde and she stated anything besides that tree. Ms. Dasgupta clarified that on Hardy Drive the street trees are Desert Willow and

that there are five Palo Verde but not on the Hardy side, they are more on the interior of the site. Ms. Dasgupta advised Chair Lyon that if that was an issue, staff can work with the applicant to change them.

Ms. Heidi Reid-Champigny asked for her comment to be read into the record: "Was a price point established?" Chair Lyon advised that is not typically something the Commission gets into as it is not in their purview to dictate what that should be.

Ms. Leslie Nelson asked for her comment to be read into the record: "Is there a property management company in place and covenants. I can see security problems with the pool and workout facility. What would the pet policy be? Add noise? HOA dues?"

Resident came up to speak but did not state name or fill out comment card: She mentioned that somebody asked about the residential section and she could not understand the response, so she was not sure if it was apartments, rent-to-own, or strictly residential. Chair Lyon advised they heard it was entirely condominiums, all residential, for sale product. The resident also stated that she felt quite strongly that the western wall on Hardy does look institutional. It will also be very hot if there are no trees there. She is concerned about the parking situation as well as she does not know where the guests will go.

Ms. Jane Davenport, resident, stated she lives in the La Serena apartments next to that lot. She is concerned that the condominiums could be used as an Airbnb and that would significantly add to the parking problems. If even one dwelling has 30 cars every week with different renters that would significantly add to the parking problems.

Ms. Karen Stewart, lives on Paseo Way, stated her property abuts La Serena park. She has a question about the traffic flow going into the project and if there is an entrance from the north and on Guadalupe. She knows there is one on Hardy but asked if there is a separate entrance coming in from the north end. Chair Lyon advised there is no driveway off of Guadalupe. There are two driveways coming in from the west side. With regard to analyzing traffic, Chair Lyon asked Mr. Kingsby to address this. Mr. Kingsby stated there was no traffic study required for this project and he is not an expert in this. He advised that this is reviewed during the site plan review process for any concerns and there were no traffic concerns observed for this project. Ms. Dasgupta stated that the way the project is designed there are two looping driveways for the circulation on site to maintain two egress in, ingress out, and a circulation on site that loops around. Chair Lyon advised that added traffic is a concern brought up in a lot of DRC meetings and that is looked at.

Another resident walked up to speak but did not state her name or fill out a card: She said they have been trying to work with traffic because a lot of people do not want to go down Hardy because there are traffic bumps so they are coming up McKemy Street instead. If there is more traffic then the people who currently use Hardy will not want to use it anymore and will come into the residential neighborhood on McKemy Street and it will increase traffic in their development. She asked that another traffic study be done as she does not feel it has been looked at properly and there will be a bigger issue. Chair Lyon asked Mr. Steve Abrahamson, Principal Planner, to explain the city process of looking at traffic in a situation like this. Mr. Abrahamson stated that through the site plan review process the Traffic Division reviews the plans for the anticipated change that a development like this might make. In this particular instance, there is a traffic light there at the intersection of Hardy and Guadalupe and he is sure that light could be adjusted to facilitate traffic through the intersection with the changes brought by this project. Chair Lyon pointed out that traffic is always going to be growing but it can be managed in an intelligent way so that the growth we get is not overly burdensome. Ms. Dasgupta stated that every site is assigned a number a trip generation from that site based on the land use. As this property was assigned CSS zoning, a commercial development would generate more traffic than residential so if the Traffic Engineering does not require a study, it is because the trip generation is already accounted for based on commercial use and they are comfortable with that trip generation as a result of the proposed use.

Mr. Robert Champigny, Town of Guadalupe resident, asked if this was going to be coordinated with the Town of Guadalupe. He lives off Hardy and at 5:00 p.m. there is a stop sign in Guadalupe and it is a gridlock at that time due to the stop sign. He does not see how you can fit 28 families in there. Chair Lyon asked staff what can be done



about what the Town of Guadalupe does. Ms. Dasgupta advised that Transportation and Traffic Engineers do not just look at the site, they also look at the surroundings in terms of what would warrant a stop sign being put there versus a light. There are a certain number of trips that would warrant that, but she cannot answer to that. She advised they could take the question back but does not know what they can do about the other jurisdiction.

**APPLICANT RESPONSE:**

Mr. **Testi Kesti** responded to questions and concerns from the public. He did an online search to see what shopping is near the site and said there is a Boys & Girls Club a half mile away, near the Town of Guadalupe there is a lot of shopping, restaurants, a Dollar Store which is a nine minute walk, and there is a McDonalds restaurant a nine minute walk to the east. They pushed for the third-floor roof deck as there was not a lot of outdoor space. With regard to the trees on the west side they would be happy to accommodate any allergies that are in the area. They could put a thornless mesquite on the Hardy property line to shade the façade. The material on that wall is smaller masonry blocks. He clarified that these are condominiums for sale.

Chair Lyon asked him about the traffic. Mr. **Testi Kesti** stated he relies on staff's engineers and he assumes they have done their job well and this will not adversely affect traffic.

Commissioner Johnson asked if their CC&Rs allow for Airbnb. Mr. **Testi Kesti** advised since they do not have the Use Permit yet they have not crossed that bridge so they do not have any CC&Rs in place right now.

Chair Lyon asked if they anticipate an HOA and was advised they do.

**DISCUSSION BY THE COMMISSION:**

Commissioner Sumners stated it is always great to see a vacant site developed so this is a positive thing, however the challenge he has is this is a Use Permit to allow a residential use, but it does not meet the criteria for R3 which is adjacent to R1-6. It is a 30-foot height and they are asking for 35 feet. He looked on Google Maps and saw there were a number of vehicles parked outside La Serena apartments already and feels this would exacerbate the problem. If this was near a lot of transit that would be different, but it is not. He will have a hard time supporting it.

Commissioner Amorosi feels the applicant is doing some things well, but part of this is the city process. They are following what they are permitted to do, but just because you can do it does not mean that you should do it. They are just cramming it in. The applicant is asking the Commission to change it from commercial to residential, however the residents who surround it do not get a say on how this should be developed even though they are the ones that are going to be the most impacted from this. The monolithic wall is there because the developer did not have to talk to the neighbors about what they would like to see. He has a problem with that because if you are going to change the use of a site there should be buy in from everyone about the change in the use.

Vice Chair DiDomenico stated that when it comes time to vote that they take the DPR and Use Permit as separate matters. In general, he likes the design, the way it is laid out, how the traffic is directed towards Hardy rather than Guadalupe. He likes the unique features that have been integrated into the design. There is room for a little improvement but he does not take issue with that. Vice Chair DiDomenico advised the residents that putting a commercial use in would impact traffic, this project would have the least impact. The impact to the residents is trip generation, not how many cars are parked on the site overnight. There may be a little overflow parking but that is less of an issue, it is more about how many people are coming and going and how often and when they do it. Holding to CSS will not necessarily make this better as a Dutch Bros or fast food restaurant could be built on the site and would really add to the trip generation. He does have a problem taking away commercial uses for a neighborhood that seems to be starving for it. These are two different issues but overall he likes the design.

Commissioner Johnson likes the aspects of the project, especially the permeable pavers, the bioswells treatment. A lot of projects that come before the Commission do not include this type of design so it is a huge positive. He feels the units being for sale is also a positive versus rental. There are some issues, especially the utility impact not being thoroughly thought through with the adjacent utility and the overhead power lines. With the amenities for the site and

the landscape they are definitely going to need an HOA and CC&Rs developed. In those CC&Rs they can restrict short term rentals so the issues with Airbnb can be addressed. Overall he likes the project and will support it.

Commissioner Brown stated he will not be supporting the project. It is a little stark and if it had fewer units he thinks it could have been done with a ground plain. Right now they are stacked up like shoeboxes and are tight to obviously maximize profit. It is too stark and he strongly suspects even though it is for condominiums it will be brought by investors and will be a rental. He does think people will park in the neighborhood because there appears to be a shortage of parking spaces. Adding all that up he does not think it is an appropriate design.

Commissioner Cassano is concerned about the parking issues along with other concerns that have been made about the property. Pushover parking can not go into the adjacent apartments so people are going to park where it is easiest which will be in the neighborhood. He cannot support the project.

**Motion:** Motion made by Vice Chair DiDomenico to approve the Use Permit to allow residential in CSS district for PL190275 and seconded by Commissioner Johnson.

**Ayes:** Commissioner Johnson

**Nays:** Chair Lyon, Vice Chair DiDomenico, Commissioners Brown, Cassano, Sumners, and Amorosi.

**Abstain:** None

**Absent:** None

**Vote:** Motion fails 1-6

Commissioner Sumners stated that if the Use Permit cannot go forward for residential, he is not sure how they can consider a DPR for the site plan that is a residential use. Chair Lyon asked staff if they can vote on them separately. Ms. Dasgupta advised that if the allowable Use Permit goes away then the DPR does also. Chair Lyon said it might be irrelevant but that does not mean they could not still vote on it and express their approval or disapproval. Ms. Dasgupta said that is fine but process wise they would need an affirmative on the Use Permit to go forward with the DPR. Vice Chair DiDomenico said the overarching point is that if someone wanted to appeal a denial and they get an approval on the second piece that would clear up the matter for the next step should they take it to another step. Chair Lyon asked if Mr. Abrahamson objects to them taking it as two separate motions. Mr. Abrahamson stated he has seen cases like this split in half, but he agrees with Commissioner Johnson and Ms. Dasgupta that if you vote down one you cannot bring the other back. He thinks it would be better to roll within the one vote, motion and vote on it so that it can be discussed and brought back later as one singular item. Vice Chair DiDomenico feels that splitting them up reduces the need to take the entire case back at the next level upon appeal and present all of it and also have all of the neighbors come and speak to matter that is not under appeal. Ms. Dasgupta cited the previous month's cases that the appeal process included the Use Permit portion of it for the drive-thru but as a result the Council is going to act on both as they are not independent of each other. Chair Lyon understands but feels it is good to see where the Commission stands even if a different body is going to act on it differently.

**Motion:** Motion made by Vice Chair DiDomenico to deny the Use Permit associated with PL190275 and seconded by Commissioner Sumners.

**Ayes:** Chair Lyon, Vice Chair DiDomenico, Commissioners Brown, Cassano, Sumners, and Amorosi.

**Nays:** Commissioner Johnson

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 6-1

**Motion:** Motion made by Vice Chair DiDomenico to approve the Development Plan Review associated with PL190275 and seconded by Commissioner Johnson.

*Commissioner Amorosi asked if they could ask the developer if they would like a continuance to make the property less dense. Chair Lyon stated that he does not want to entertain a continuance because making changes would not sway their opinion on the Use Permit. Ms. Dasgupta asked Chair Lyon if he wanted to ask the applicant if they wanted a continuance. Chair Lyon asked the applicant if they wanted a continuance and Mr. ~~Festi~~ Kesti stated they would not as they would like to address it with a formal appeal.*

**Ayes:** Chair Lyon, Vice Chair DiDomenico, and Commissioner Johnson

**Nays:** Commissioners Brown, Cassano, Sumners, and Amorosi.

**Abstain:** None

**Absent:** None

**Vote:** ~~Motion fails 4-3~~ Motion fails 3-4

**Motion:** Motion made by Commissioner Brown to deny the Development Plan Review associated with PL190275 and seconded by Commissioner Cassano.

**Ayes:** Commissioners Brown, Cassano, Sumners, and Amorosi.

**Nays:** Chair Lyon, Vice Chair DiDomenico, and Commissioner Johnson

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 4-3

- 9) Request a Use Permit to allow a second-story walk deck addition for a single-family residence for the **LEWIS RESIDENCE**, located at 921 South Roosevelt Street. The Applicant is Danny Niemela of ArDan Construction. (PL190295)

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

Mr. Danny Niemela, ArDan Construction, went over the site plan for the residence. The walk deck will be on the southeast corner of the residence. The front of the home will be changed to a flat roof design. The carport will remain on the front half of the property, the additions will be in the back. The staircase to the patio will be on the south side of the property. The walk deck will be an open area, they plan on having some vegetation and some seating. He showed a map indicating other homes in the area that had a second story and/or second story balcony and photos of a few of them. He addressed some of the public comments that were sent into the city about the project concerning privacy. He stated they are open to either increasing the height of the railing or installing some sort of vegetation or vines over the edge of the railing to address the privacy concerns.

Mr. Niemela introduced Brett Lewis who will be the one residing in the property. Mr. Lewis stated he has lived in Tempe for 10 years and the Maple Ash are for five. When he moved into the neighborhood five years ago he fell in love with it. There is tons of vegetation and yard space. The house he currently lives in is his roommate's home, he owns it. They spent a couple of years refinishing it and when the opportunity came they took a chance and purchased this home on Roosevelt. He works from home and wants to remodel it around his work/home lifestyle. They had bigger plans at first but due to cost they just decided to add the master suite on the back and to recoup some of the yard space that was lost by adding the deck for some more outdoor livable space. Contrary to some of the objections, this is not a frat house, it is not an Airbnb, he is not a developer. They are developing it for him and his roommate who both live in the neighborhood. He is a resident looking to permanently establish his roots in the neighborhood.

#### **PRESENTATION FROM STAFF:**

Mr. Robbie Aaron, Planner II, went over the Use Permit criteria and explained how the project meets the criteria. No neighborhood meeting was required. As of this afternoon staff has received 12 comments of opposition to the request based on concerns of privacy, noise, overall design and possible rental/Airbnb. Staff feels there are ways to mitigate such things as privacy and noise. Overall design is not something that the Use Permit covers. As for the possible rental/Airbnb, the owner has stated that is not their intent, however the city does not get into that. Staff recommends approval subject to the standard conditions.

Commissioner Cassano asked why they are looking at it as a second story addition when the use does not increase the height of the building. Mr. Aaron stated that staff and Community Development have always looked at these uses throughout the city as a second story addition whether it is enclosed livable space or open air.

Commissioner Brown asked that if it is approved could the applicant enclose it and make it a second story down the road without going through the DRC process. Mr. Abrahamson stated that would be a drastic change to the plan

they are submitting and one of the conditions is that the Use Permit is valid for the plans submitted so that change would require a reevaluation of the Use Permit. Ms. Dasgupta stated it is built into the code that that would be an intensification of the use so it would have to come back for reevaluation.

**PUBLIC COMMENT:**

Ms. Kathleen Palmer stated she lives next door to the Lewis residence on the south side. She completely objects to this outdoor patio outdoor living room due to its intrusive nature, the invasion of privacy, noise and nuisance lights. It is wrong and a detriment to the neighbors and should not be approved by the DRC or City Council. Ms. Palmer has lived in her home with her son for 41 years. She is imbedded in the community and knows all her neighbors. She has spoken to them and they do not approve of this project. The Lewis' want to add a rooftop patio that is 500 square feet, it is 35 feet long. It faces all of her property 10 feet high and 10 feet away. The properties are only 50 feet wide. It also features an outside staircase facing her patio. They are saying they are building this patio on the roof because they do not want to use the back yard. Even though this Use Permit is not a variance, there is not a hardship for the Lewis'. The owners have tons of space in their backyard so they can have a ground level patio of the same size or larger and it would conform to the neighborhood. In her conversation with Mr. Lewis, he agreed that the rooftop patio was a want and not a need. She stated that the Lewis' have been a little deceptive in calling it a walk deck, it is a big room. This will be an in your face invasion of her family's privacy and serenity. She spends a lot of time in her backyard and this is like have a second story picture window facing her that is 35 feet long, 10 feet high, and only 10 feet away with people peering down from a 10 foot height at close range with a completely unobstructed view of her entire property. It is intrusive and an invasion of her privacy. She will have to worry about who is looking and listening every time she steps out her back door. From the rooftop they can look down into her facing windows, bedroom, backdoor, side yard, entire backyard which is 135 feet deep to the alley. It is like she is onstage and the audience is in the balcony with an extensive close up view to her daily life. However, from her side she cannot see over the wall into their windows or yard unless she gets up on a ladder. Any noise will carry well because there is nothing to dampen it and she will have noise coming into her bedroom window. If they have a party their guests will be able to invade her privacy and add to the noise. This is her home and sanctuary where she seeks peace from the outside world and she wants to continue to enjoy and the Lewis' are asking her to give that up all so they can have a rooftop patio that they do not need.

Ms. Karen Morrissey lives next door to the Lewis residence on the north side. She brought her house 25 years ago. This new deck would invade her privacy, it would not just peer over her fence, they would look into her bedroom. She said the term "walk deck" is coined by the Lewis' and they are being deceptive with the plans and terminology. It is a party deck, it is 525 square feet, up in the air overlooking her yard. When she found out about the project she wanted to hire a lawyer because it means so much to her but no one would take it because the case is today. They just found out about the height three days ago because they were not forthcoming. She went around the neighborhood and rallied the neighbors and got 12. She would have gotten more but she is busy, she works for Boeing and does exports for Europe and she cannot be up late at night listening to their party deck. Ms. Morrissey went over the Use Permit criteria and stated how this project does not meet it. With regard to increased vehicle or pedestrian traffic, she does not know who will be living there, it be the owner or the owner's son, or Airbnb. A party deck is going to bring a lot of people. As for the nuisance from emissions, odor, or gas, there are going to be a lot of people on the deck will bring noise, vibration and light pollution to her backyard. The party deck will create noise and parties and will add to the deterioration of the neighborhood. This would be a great place for a fraternity. It is not compatible to existing structures and there is no 525 square foot walk deck in the neighborhood and she stated the Lewis' are being deceptive again. The addresses they showed that had second levels have small, minimal decks with second story walls. This proposed deck does not have walls. With regard to disruptive behavior, it does not matter if a single family live in the house you cannot block out the noise in backyard. The Lewis have a power line that goes over her backyard, but they do not trim the tree that is there so it causes the line to spark. She does not want to be detrimental to her neighbors but she does not like the fact that they are open it up and take away her privacy.

Mr. Tom Dare, longtime friend of Ms. Morrissey, stated he has been to her house and seen the lots. They are very deep lots so there are a lot of options. When Ms. Morrissey brought the project to his attention is seemed like the Lewis' were being a little disingenuous. He feels they have bigger plans than what they are presenting. He feels it

should be denied due to the two neighbors on either side and what it would do to their privacy. They can design the footings for what they want to do in the future. He feels the second story nature thing is a little disingenuous and he thinks they are looking at future development for expansion.

**APPLICANT RESPONSE:**

Mr. Niemela advised that there would be no direct lighting, that the lighting on stairs would be pointing down and would not shine out beyond the property. With regard to the concern about a possible future second story, that is not their intent on this project, it will just be a walk deck. As for the power line concern, part of their submittal is to do an underground power line instead of overhead.

Commissioner Cassano stated that in the letter to the Planning Department it was stated that the purpose of the walk deck was to provide additional patio seating area outdoors but still allows for an open and irrigated back yard. 4,500 SF of backyard would still exist even with the addition on the house. If you take the 525 SF on the roof of the house from the backyard you would still have almost 4,000 SF of yard. He stated the applicant could put a patio in the yard and do the same thing. To have a patio on the roof seems to be leading to other problems. He can understand the concerns of the neighbors as there is an open steel stairway that will have access and does not have protection for the neighbors as you go up to the second level. Commissioner Cassano's does not see why the patio cannot be put in the backyard and still have 4,000 SF of open space. He advised that applicant could sit on the backyard patio and do their work just as they could on the walk deck. Also, in the middle summer it will be very hot and they would not want to be up on the roof. Commissioner Cassano's concern is that it is not necessary, that it can be done on the ground level without affecting the two adjacent neighbors. Also, if the applicant had 10 or 15 people up there the neighbors would hear everything. He does not know why it is necessary to put it on the roof instead of in the backyard.

Mr. Niemela advised they would be open to planting some shrubbery and some trees along the property lines that would help with the concern for privacy. Commissioner Cassano stated that would have to be very large and they have a very narrow side yard, with a set of stairs. Mr. Niemela advised that another possibility is that they increase the heights of the walls on the north and south sides of the property with some trellises above them. Commissioner Cassano reiterated his question as to why they could not put the deck in the backyard. If you want to be a long-time neighbor, then you should accommodate your neighbors and not do some that will antagonize them right from the day you move in.

Vice Chair DiDomenico asked what the load capacity and occupancy of the walk deck would be and how many people could be up there safely. Mr. Niemela advised that he is not 100% sure of this. The addition would be concerned a second floor and he is not sure what the limit would be.

**DISCUSSION BY THE COMMISSION:**

Commissioner Sumners stated that he lives in the neighborhood and moved there because of the activity and the density. He advised the need for a Use Permit for a second story is a new thing as of a couple of years ago, as far as he knows, and it is precisely because of this reason. He does not have any issue with two-stories or a roof deck as long as it is done right and screened right. This project, as designed right now with a three-foot wall, is not anything he could support. He does not feel comfortable with increasing that height or adding it as a stipulation. He would be happy to support a continuance and encourage the applicant to work with staff on lighting and screening, and work with the neighbors and communication. Ms. Dasgupta advised the Commission that the code is not new about Use Permits as it has always been in the code. She stated the reason they are seeing it more now is that it used to go the Hearing Officer but now they come to the DRC. With regard to screening, if the applicant is amenable staff can work on it if there are different stipulations. Staff can make that a conditional of approval if it is something that the Commission would like. Commissioner Sumners advised he appreciates that, but he cannot support that.

Commissioner Amorosi advised if his neighbor was doing this he would not like them looking down into his backyard. Also, the staircase sound of people pounding up and down, early or late. He does not see why the applicant would do this without even talking to the neighbors, and if they objected why would applicant want that antagonistic

relationship while they live there, unless they are not the ones living there. He does not like this idea especially when there is no buy-in from the neighbors to the north and south.

Vice Chair DiDomenico agrees with Commissioner Sumners comments. He is not worried about what this is leading up to. If this Use Permit was for a second story enclosed addition or a bedroom this item would probably have been on the consent agenda. This is really about the privacy and compatibility with the neighbors. He would guess that any similar situations they saw in the area would probably be small balconies on second floors that would hold two or three people. This project is out of character and he would encourage a continuance otherwise he cannot support it.

Chair Lyon stated he feels at odds with what he has heard from his fellow Commissioners. He has been on the Commission long enough to remember approving many multi-story projects in this neighborhood. Many of them had residents with concerns that if there was a second story window someone is going to be looking at them while they are in my swimming pool. If it is a two-story building it is still the same issue that they could conceivably looking into your yard. He does not think this is going to increase the number of people that are going to be "partying like rock stars" on this property because if you had a backyard patio, he does not think it really changes the number. It might actually limit it a little because it is just that area instead of the full 4,500 SF of yard. Chair Lyon went over the Use Permit criteria and believes it meets them. With regard to compatibility with existing structures, he feels that one is a little stickier. A lot of these homes are old, and he asks what comes after the home there now. The Commission has approved several townhome rows that replace these. There was a property that was demolished, and a 12,000 SF McMansion was built in its place. This applicant is planning to come in and renovate the home and bring it to its next generation of life. It will expand some but not get particularly any taller. It is going to be saved from eventually being knocked down and potentially replaced by a slot of townhomes. This project is exactly what he would like to see happen to old homes. Chair Lyon has and still does enjoy sitting on his roof due to the views. There are potentials to abuse it but you can do that in your yard too. He does not think this project is obnoxious and does not see the neighbor spying on his neighbors.

Commissioner Brown asked if the loss of privacy does not constitute deterioration. Chair Lyon stated he does not feel it is a loss of privacy. He lived on South Wilson for six years and he could hear his neighbors over the wall and they could hear him and it was a one-story building. He stated the Commission has approved two-story residences in this area because by right that can be done. He does not think the project is malicious to begin with and the applicant has described that they are willing to improve the situation, and it is not a significant privacy issue.

Vice Chair DiDomenico clarified his earlier comment stating if there was a 500 SF open air deck, he has to assume that there will be at times 50 or more people on a 500 SF deck. That will be below code and below load level. If you have 50 people and they are ten feet from and above your common wall you have lost all ability to buffer any sound that is generating from that space. Vice Chair DiDomenico stated is property backs up to Rural Road and the only way he lives there is because of the wall buffer. If he tried to live above that wall, he would be miserable. He sees this as a noise nuisance that does not meet the test.

Commissioner Johnson does not have any objections to an addition or a roof deck, but there is something to be said for context and where this is. He feels there is an opportunity for applicant two work with the neighbors to see if there is something more respectful, possibly increasing the height so that there is not a direct line of sight.

Commissioner Sumners stated the Commission does not necessarily need to take what they are approving today, but what happens in ten years from now when the property may change hands and someone else is in it and what they would do.

**Motion:** Motion made by Commissioner Sumners for a continuance of PL190295 to a date to be determined to allow applicant to work with neighbors to modify the design to address the screening and privacy concerns and seconded by Vice Chair DiDomenico.

\* *Before voting, Chair Lyon asked the applicant if they would like the continuance. If the Commission votes the applicant's option would be to appeal if they do not approve. The applicant chose to continue. Ms. Dasgupta advised that due to timing of projects and agenda items it may be better to do a date*

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*unspecified and staff will re-advertise and do the normal procedures to get it on the agenda as soon as staff and neighbors can work on addressing concerns.*

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

**Nays:** None

**Abstain:** None

**Absent:** None

**Vote:** Motion passes 7-0

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**Staff Announcements:**

Ms. Dasgupta advised that there were three items on the next agenda, one being the UCMP density bonus.

City Transportation Division will be providing a presentation during the Study Session for a new transit shelter design that they have been working with.

**There being no further business the meeting adjourned at 9:26 p.m.**

Prepared by: Joanna Barry

Reviewed by: Suparna Dasgupta



Suparna Dasgupta, Principal Planner,  
Community Development Planning