

**Minutes of the
Development Review Commission
REGULAR MEETING
August 11, 2020**

Minutes of the study session of the Development Review Commission, of the City of Tempe, was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Chair David Lyon
Vice Chair Michael DiDomenico
Commissioner Scott Sumners
Commissioner Don Cassano
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Commissioner Steven Bauer

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
Dalton Guerra, Planning Technician
Joanna Barry, Administrative Assistant II

Absent:

Alt Commissioner Barbara Lloyd
Alt Commissioner Michelle Schwartz

Hearing convened at 6:04 p.m. and was called to order by Chair Lyon

Consideration of Meeting Minutes: NONE

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

- 1) Request a Preliminary Subdivision Plat to subdivide two (2) parcels into six (6) lots for **ROOSEVELT CORNER**, located at 305 South Roosevelt Street. The applicant is Larson Engineering. **(PL190166)**

- 7) Request a Use Permit to allow a second-story addition for a single-family residence for the **MERCHANT ADDITION**, located at 101 E Geneva Drive. The Applicant is Clay Sundell. **(PL200145)**

- 10) Request a Use Permit to exceed 125% of the minimum parking and a Development Plan Review for a new 718 square-foot restaurant (take-out) building with a drive-through for **SALAD & GO**, located at 3229 South 48th Street. The applicant is Stewart + Reindersma Architecture, PLLC. **(PL200066)**

- 11) Request a Use Permit to allow two-story single-family residences in the R-4 Multi-Family District and a Development Plan Review for six (6) single-family residential units for **HABITAT AT DON CARLOS** located at 1969 East Don Carlos Avenue. The applicant is Habitat for Humanity. **(PL200109)**

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

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

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

- 4) Request a Use Permit to increase the maximum wall height in the required front yard building setback from four (4) feet to six (6) feet for **OWEN RESIDENCE**, located at 1712 North Bridalwreath Street. The Applicant is Justin Owen. **(PL200045)**

PRESENTATION BY APPLICANT:

Mr. Justin Owen, applicant, gave his presentation and showed the proposed additions to the front patio wall. He stated that they have not painted the block to match the home yet, as they are waiting for the project to go through the Use Permit process first. Mr. Owen advised they built a six (6) foot wall that goes around the front patio. He stated that based on the information on the City's planning website he thought they were 100% in compliance with building code when they erected the wall. They are now coming back to make needed modifications to the wall after being contacted by Code Compliance. Mr. Owen and City staff worked together and proposed putting in openings along the upper portion of the wall to allow natural surveillance per the Use Permit. He advised that staff had proposed less openings, however, to make it more aesthetically pleasing he proposed more openings. To show that he did not intentionally plan to mislead the City, Mr. Owen provided dates and costs for past construction projects he has done on his property. Mr. Owen stated that the fee for this Use Permit application was \$958 – twice the normal \$479 fee as a result of the code violation. He advised that he was instructed that the Commission has the authority to change that and make it only the \$479 fee. He stated that per the City's Homeowner's Guide to Permits & FAQ it states that a permit is not required for a wall less than seven (7) feet. Mr. Owen later learned that in R1-6 this wall would not be an issue if it were 15 feet back from the sidewalk, however his wall is 14.4 feet back.

Commissioner Sumners stated the DRC has had several cases where applicants intentionally bypass getting a permit before starting construction, however he does not believe that is the case with this applicant. Commissioner Sumners advised he would be in support of this project and for waiving the double fee.

Commissioner Bauer asked the applicant if the openings were going to be window openings with a cap lock on top or notched out with no block above the openings. Mr. Owens advised that the design they were looking at puts a cap block on top and stated that to make it look right they will probably have to take down the top 24 inches and rebuild it with the openings and cap on top. Commissioner Bauer stated that he appreciates the applicant's investment in their home.

Commissioner Amorosi appreciates that Mr. Owen used the same block that is on the front of his house, but he is not a big fan of giant brick walls in the front yard as it does not generate a neighborhood feel. He noted that openings look very thin. He asked Mr. Owen why he built the wall so high and was advised that the reason they went up to six (6) feet was to have some privacy in the front but understand this is not what they are trying to accomplish today and that is why they are happy for the natural surveillance.

Ms. Suparna Dasgupta, Principal Planner, advised the Commission that this is not for a building permit, but rather a use permit standard to deviate from the Zoning and Development Code (ZDC) to encroach into the front yard setback. She advised that the double fee was because it was built without seeking the use permit standard from the City first, and therefore, a violation of the ZDC. Additionally, the fee schedule is approved by the City Council and neither staff nor the Commission has the authority to waive the fee.

PRESENTATION BY STAFF:

Mr. Robbie Aaron, Planner I, gave an overview of the project and advised that the applicant agreed to install visual surveillance above the four (4) foot height. The openings would be eight (8) inches by 20 inches. Mr. Aaron went over the Use Permit criteria and stated that applicant meets all criteria. No neighborhood meeting was required however Mr. Owen advised that he did reach out to a few neighbors to speak about it. Staff received one (1) phone call in support of the wall and two (2) comments in opposition.

Commissioner Bauer asked for clarification of what the minimum setback is from the front of the property line. Mr. Aaron advised that the front yard setback on an R1-6 property is 20 feet to the front of the building. The 15 feet setback is for an open structure or a patio wall as stated.

Chair Lyon stated that the applicant may have confused the requirements for the wall for those of a fence structure.

PUBLIC COMMENT:

Mr. James read a revised statement from the one he had initially submitted online. He stated this item would not be under discussion if not for the attempt to avoid fees and plan reviews. He stated that having worked with the city himself he could tell that these plans would not be allowed. He stated that after the wall was found to be in violation, the applicant worked with staff to formulate a plan that changed nothing meaningful. Whether it is a solid wall or a wall with holes, it is still over four (4) feet tall. He stated that as renovation modifications starting and completing without plan approval becomes normalized and the “ask for forgiveness versus beg for permission” approach is attempted more often; the Commission has the chance to practice integrity and consistency when deciding on this case. Allowing exceptions is the equivalent to having no codes or rules. Six (6) foot front walls will forever change the face of Tempe neighborhoods. If the code is not adhered to, people could build the walls right out to the sidewalk.

APPLICANT RESPONSE:

Mr. Owen stated that the difference between the 15 foot for the patio wall versus the 20 foot was clarified that if he had attached the patio wall to the home it would be the 20 foot, but because they left breezeway openings making the patio independent of the home it moved it to the 15 feet. Regarding the public comment, he stated he does not want walls all the way to the sidewalk. He stated that when they had the landscape remodeled they had the house appraised and it was valued \$75,000 higher than previous appraisal so he feels it will add value to the neighborhood.

COMMENTS AND DISCUSSION FROM THE COMMISSION: NONE

Motion: Motion made by Vice Chair DiDomenico to approve PL200045 and seconded by Commissioner Sumners.

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

Nays: Chair Lyon and Commissioner Amorosi

Abstain: None

Absent: None

Vote: Motion passes 5-2

- 5) Request a Use Permit to allow two-story residences in the R-2 Multi-Family District, and two Use Permit Standards to reduce the side and rear yard setbacks by 20% for three single-family units for **HABITAT AT ROOSEVELT** located at 3606 South Roosevelt Drive. The applicant is Habitat for Humanity. **(PL200108)**

PRESENTATION BY APPLICANT:

Mr. Ben Graff, Quarles & Brady, asked that since this item was pulled from the Consent Agenda due to public comment if he could listen to the public comment first so that he could respond. Chair Lyon agreed with his request.

PRESENTATION BY STAFF: NONE

PUBLIC COMMENT:

Ms. Berit Miltun owns a duplex next door to the site and is not aware of what Habitat for Humanity does. She asked how many houses would be on the property and Chair Lyon advised that she could state her questions and that the applicant would then respond. She asked how many people would be in each house and who would maintain the property. She also asked how they plan for parking especially if they have multiple vehicles because she does not want them parked in front of her house. She also wanted to know when the project was estimated to start.

PRESENTATION BY APPLICANT:

Mr. Graff stated that there would be three (3), single-family detached, two-story units. This site was previously approved for three attached units, so the applicant has never deviated from the density or number of homes that are appropriate for that site. The homes will all be owner occupied and each are responsible for their own home maintenance. He advised that the City can cite the homes for not taking care of their front yards. Regarding parking, each unit will have a two-car garage. The start of construction is anticipated for January 2021, pending approvals. The number of people living in the home would be based on the standards for a single-family residence. The units are not designed to hold multiple families or non-related individuals.

Vice Chair DiDomenico asked the applicant to explain how parking would be situated on the site. Mr. Graff advised that parking is permitted within the garages and street parking would be permitted, but not beyond the two cars per site. He anticipates residents would be parking in the garages.

Vice Chair DiDomenico stated he used to live in the Mistwood Condominium development that surrounds this project and he recalls that it was previously part of a project that was attached with one or two-story units on it. Ms. Diana Kaminski, Senior Planner, believes the property has been vacant since 2006 and before that it may have had one or two units. In looking at aerials from the past, she does not see anything showing it was related to the surrounding Mistwood Condominium development. Vice Chair DiDomenico stated that there were foundations there and he is certain this was part of the Mistwood development. Ms. Kaminski advised that the foundations were from the prior approval which was three (3) attached apartments. She stated this was around 2005 and they started the project but never continued past the foundation and rebar installation and that the site was not part of the project.

DISCUSSION BY THE COMMISSION:

Commissioner Amorosi stated that he is glad Habitat for Humanity is building in the area as it needs more single-family homes instead of an empty slab.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Motion: Motion made by Commissioner Cassano to approve PL200108 and seconded by Commissioner Amorosi.

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

- 6) Request a Use Permit to allow a travel trailer in the required front yard building setback for the **WINFREY TRAILER**, located at 2439 East Geneva Drive. The applicant is Pamela Winfrey. **(PL200112) Continued from 7/28/20 DRC Hearing**

PRESENTATION BY APPLICANT:

Ms. Pamela Winfrey, applicant, advised the Commission that since the last DRC hearing she is taking steps to move the trailer into the backyard. It is a three-step process as they will have to move pool plumbing, move a wall and make the RV gate wider.

PRESENTATION BY STAFF:

Mr. Robbie Aaron, Planner I, advised the Commission that Code Compliance will give Ms. Winfrey an additional month from today, which would be September 11, 2020, to get the trailer moved.

DISCUSSION BY THE COMMISSION:

Vice Chair DiDomenico asked staff if the Commission needed to vote of if it would be more effective for the applicant to withdraw the application. Ms. Suparna Dasgupta advised that there needs to be something on the record stating that the applicant is withdrawing their request or some other action.

THE APPLICANT OFFICIALLY WITHDREW THE USE PERMIT REQUEST FROM CONSIDERATION DURING THE MEETING AND THEREFORE, NO ACTION WAS TAKEN BY THE COMMISSION.

- 8) Request two (2) Use Permit Standards to reduce the required accessory building side (west) setback from 9 feet to 5 feet, and to increase the maximum building height from 15 feet to 15 feet – 7 inches for the **LARA RESIDENCE**, located at 1091 East Carter Drive. The applicant is Johnny A. Lara. **(PL200147)**

PRESENTATION BY APPLICANT:

Mr. Johnny A. Lara, applicant, stated that he wants to build an accessory building on the southwest portion of the property to move some cars off the street out of the view of the neighbors. He has a business and sometimes there are company vehicles at his residence. He also advised that he has a warehouse in Phoenix. He cannot park the vehicles in his two-car garage as it is currently full of tools. He stated that he spoke to the neighbor to the west of his property that would be most affected by this and the neighbor advised he is looking forward to the shade it will put into his yard. The neighbor also wrote a letter of support to staff.

The structure will be made of four (4) inch block to match the block of the house.

Chair Lyon stated that he understands what Mr. Lara is requesting and the reason for it, however he has concerns about the drawing of the building as it appears the building is unusually shaped. Chair Lyon questioned if the building was going to serve the applicant properly and if it would be a good fit for the neighborhood. Chair Lyon is concerned that the building is not very attractive for the neighborhood. Mr. Lara advised that the lot is in a weird shape and he wanted to make sure that the building matched up with the house, so he has some of the walls at angles.

Chair Lyon likes that Mr. Lara wants to use materials that look good; however, he went over so design concerns. Especially along the east side where there is an eight (8) foot plate glass window with a slump block wall on top of it which can be done but it would be very expensive to put in the lintels that are required to accomplish that. Chair Lyon also noted that the roof of the structure does not seem to match the roof of the house. He asked the applicant if the roof would be shingle and was informed that it would be. Chair Lyon advised that slope of the roof will be a problem as shingle roofs cannot be warranted at a slope that low. He advised that applicant to pick a different material or put a steeper slope on the roof.

Mr. Steve Abrahamson, Principal Planner, advised that he Use Permits that were before the Commission this evening are for single-family residential so it is more about compatibility that design.

Commissioner Johnson stated he thinks the unusual shape is a breath of fresh air compared to some of the other accessory buildings that the Commission has seen. He appreciates the use of block and believes the small windows and stone will make it look less monolithic. He believes that where it will be set back on the property should alleviate any aesthetic issues that neighbors may have. He does not have a problem supporting this project.

Commissioner Amorosi also commended the applicant for working with the odd shape of the property. He supports the project.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, gave an overview of the applicant's Use Permit requests. Staff has received two (2) public comments regarding the request; one inquiring about type of applications and what the notification requirements were for the request and this person does live in the 600-foot radius. The second public comment was from the neighbor to the west in support of the project. Staff recommends approval of the project.

Commissioner Amorosi asked if Mr. Jimenez answered Ms. Ina Mitchell's (public comment) questions and was advised that he had.

PUBLIC COMMENT:

Only public comments were those previously mentioned in the staff presentation.

APPLICANT RESPONSE:

Mr. Lara thanked the Commission for hearing his case.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Chair Lyon understands that the DRC criteria does not involve design, however one of their criteria is to look at the appropriateness of the structure and its compatibility.

Motion: Motion made by Commissioner Cassano to approve PL200147 and seconded by Commissioner Amorosi.

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

- 9) Request a Use Permit to allow a gun shop for **AZ GUNS**, located at 1510 North Scottsdale Road. The applicant is Money Shot, LLC. **(PL200148)**

PRESENTATION BY APPLICANT:

Mr. Mark Sepulveda, with Money Shot, LLC, advised that they are looking into opening a store in Tempe. He stated they did apply for a Use Permit and provided neighborhood notification to the proximity and received very little communication from that. They did receive email letter of support and one anonymous letter that appeared to be in opposition, and that staff has received some current input as well. They have been at their current location in Chandler for about five (5) years and have generated above \$2,000,000 in taxable revenue. They have not had any security incidents with either the local police department or the ATF and FBI. They have a clean record and run the business very efficiently. They currently have ten (10) employees, none of whom they have had to release due to the current crisis, and he considers that a plus.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, advised that the applicant had owned a store location in Chandler for five (5) years and has maintained their federal firearms license since the Spring of 2015 and complied with FBI and ATF rules as far as regulations. They have had zero infractions to date. The applicant will have a similar setup at the Tempe location as they do with the Chandler location. The hours of operation will be 10:00 a.m. to 6:00 p.m., Monday through Saturday, and Noon to 6:00 p.m. on Sundays. The proposed security for this shop is to have a metal bar security system. The Crime Prevention Unit has stated that the security is sufficient, but it would be optimal with roll-down security doors. The Crime Security Officer did note that the dark security window tint is not recommended as it defeats the purpose of natural surveillance into and out of the storefront. At this time there is no security plan required however one could be required in the future if Crime Prevention determines so. The applicant voluntarily conducted neighborhood outreach for this Use Permit request. Staff had suggested this early outreach as in the past the neighborhood had asked for it. Due to the pandemic, the Mayor declared a proclamation on May 5, 2020 noting alternatives for neighborhood meetings and the applicant chose to have a comment period. The applicant mailed letters stating his request to neighbors within a 600-foot radius as well as residential associations located within 1,320 feet of the plaza. The comment period ran from Saturday, July 18th through Friday, July 24th and the applicant received an email in support and handwritten note in opposition. During this time staff received an email from a neighbor that cited no major concerns with the proposed use other than proposing that rather than metal bar doors,

maybe for aesthetical reasons a metal roll-up door would help the appearance of the shop in the neighborhood. Staff did receive two (2) phone calls prior to tonight's hearing inquiring additional information about the Use Permit. Both callers had no concerns about the gun shop use, but rather the proposed security measures to be taken during and after operating hours. The use of roll-up doors was proposed and one asked if they were planning on having a security guard on staff during the day. One of the callers did submit a public comment card online earlier this afternoon and it will be read into the record. Staff supports this Use Permit and advised there are two (2) unique conditions in the staff report:

6) Storefront system shall be secured with roll-up security shutters; no folding security gates.

7) Security window film shall have a zero percent (0%) opacity.

Vice Chair DiDomenico noted there was a comment from the public asking if this will include a firing range capacity or just gun sales. Mr. Jimenez advised there are no plans for a firing range or even gun testing on the premises and noted that the applicant could speak more directly to that question.

PUBLIC COMMENT:

Mr. Steve Abrahamson, Principal Planner, advised that he had an online comment card submittal and that the commenter, Kim Gaffney-Loza, asked that it be read into the record. She is neither opposed to nor in support of the project: "I just wanted to relay some of my concerns about security and having a gun shop in my neighborhood. I am appreciative of the steps they are proposing at closing with locking up the guns in the safe and especially the roll-down shutter-like gate behind the glass, both aesthetically and for security. My major concern is during the hours they are open will customers be buzzed in. Is there going to be some type of security officer as some gun shops have? There is a pillar and planter directly in front of the shop that makes the entrance attractive and helps prevent drive-thru burglaries, however the vegetation also prevents someone in the parking lot to see what is transpiring inside. Is that a security concern? Thank you."

APPLICANT RESPONSE:

Mr. Sepulveda advised that there would not be any armed security present, however most of the staff are well versed and have a deep knowledge of firearms such as former military and some ex-law enforcement. They are always armed, and they feel that is an adequate measure. They do not plan to buzz customers into the store and feel those types of measures present obstacles to public safety and negate any benefits they may offer. Regarding the foliage in the front of the building, they specifically chose this location for those benefits to avoid a smash and grab type of burglary. He did discuss these measures with Detective Ryberg, who visited their Chander store. The applicant believes the positives of the foliage outweigh the negative, especially due the staff condition regarding the window tint.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Motion: Motion made by Commissioner Amorosi to approve PL200148 and seconded by Commissioner Cassano.

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

Nays: Commissioner Johnson

Abstain: None

Absent: None

Vote: Motion passes 6-1

Staff Announcements:

Ms. Suparna Dasgupta, Principal Planner, advised that the City Council wanted to revive the annual Boards and Commission dinner that used to occur in the past. However, as a result of Covid-19 pandemic this cannot be done so staff has a token of appreciation from the City that will be forwarded to each member.

Ms. Dasgupta advised that Mr. Levesque would like to give the Commission updates on City Council actions.

Mr. Ryan Levesque, Deputy Director, Planning, Community Development, advised that at the upcoming Thursday City Council meeting the appeal from the Hale Residence will be heard. This was a Use Permit that the Commission had previously unanimously denied for a second story addition to an existing building that is already under construction without authorization.

Vice Chair DiDomenico asked Ms. Dasgupta if there has been any update from the City on when the Commission will be able to reconvene meetings in the Council Chambers. Ms. Dasgupta advised that as far as staff understands at this point, there has not been a decision made due to the spread and containment concerns. There was also an employee survey conducted. At this time there are no plans to start anytime soon, but as staff gets updates, they will notify the Board and Commissions.

Commissioner Bauer referenced the Owen Residence item that was heard during the meeting and stated the applicant had done a good job on his research however there was no note on the building code page to state checking zoning requirements. If there was an asterick there it could have saved the applicant getting a violation fee. Ms. Dasgupta thanked Commissioner Bauer for that suggestion. She did advise that during business hours there is always a live person that an applicant can call for assistance.

There being no further business the meeting adjourned at 7:39 p.m.

Prepared by: Joanna Barry

Reviewed by: Suparna Dasgupta, Principal Planner

