

Minutes of the Development Review Commission REGULAR MEETING December 8, 2020

Minutes of the Regular Meeting 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
Alt Commissioner Barbara Lloyd

City Staff Present:

Ryan Levesque, Deputy Director, Community Development
Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Robbie Aaron, Planner II
Dalton Guerra, Planner I
Joanna Barry, Administrative Assistant II

Absent:

Commissioner Steven Bauer
Alt Commissioner Michelle Schwartz
Alt Commissioner Linda Spears

Hearing convened at 6:09 p.m. and was called to order by Chair Lyon

Consideration of Meeting Minutes:

- 1) Development Review Commission – Study Session 11/10/20
- 2) Development Review Commission – Regular Meeting 11/10/20

Motion: Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for November 10, 2020 and seconded by Commissioner Amorosi.

Ayes: Chair Lyon, Commissioners Cassano, Sumners, Amorosi and Johnson

Nays: None

Abstain: Vice Chair DiDomenico and Commissioner Lloyd

Absent: None

Vote: Motion passes 5-0

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

- 4) Request a Use Permit to increase the maximum height of walls/fencing within the required front yard building setback from 4 feet to 5 feet six 6 inches, and a Use Permit Standard to reduce the required front yard building setback from 20 feet to 16 feet for **THE BELEC RESIDENCE**, located at 3124 South Orm Drive. The applicants is Eric and Hannah Belec. **(PL200229)**
Project Planner: Lee_Jimenez@Tempe.gov or (480) 350-8486
- 5) Request a Use Permit to allow required parking within the front yard setback for the **ROBERTSON RESIDENCE**, located at 737 East Tulane Drive. The applicant is Trevor Robertson. **(PL200234)**
Project Planner: Dalton_Guerra@Tempe.gov or (480) 350-8652

- 6) Request a Use Permit to allow a tobacco retailer for **SKYWATER SMOKE SHOP**, located at 1301 East University Drive. The applicant is Yiru Chen. **(PL200243)**
Project Planner: Robbie_Aaron@Tempe.gov or (480) 350-8096

- 8) Request a Use Permit to allow a fuel center in the PCC-1 zoning district and a Development Plan Review for a new 1,066 square-foot sales kiosk and 5,418 square-foot fuel canopy for **FRY'S 607 FUEL CENTER**, located at 1831 East Baseline Road. The applicant is Jason Sanks of Sustainability Engineering Group. **(PL200220)**
Project Planner: Robbie_Aaron@Tempe.gov or (480) 350-8096

- 9) Request a Use Permit Standard to reduce the minimum parking setback from 20 feet to 18 feet, and a Development Plan Review consisting of a new 7,800 square-foot single-story surgical center for **QUANTUM SURGICAL CENTER**, located at 4611 South Lakeshore Drive. The applicant is DWL Architects-Planners, Inc. **(PL200225)**
Project Planner: Lee_Jimenez@Tempe.gov or (480) 350-8486

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

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

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

- 3) Request a Use Permit to increase the maximum height of walls/fencing within the required front yard building setback from 4 feet to 6 feet for **THE ANTONIELLO RESIDENCE**, located at 616 East Carver Road. The applicant is Beus Gilbert McGroder, PLLC. **(PL200209)**
Project Planner: Lee_Jimenez@Tempe.gov or (480) 350-8486

PRESENTATION BY APPLICANT:

Ms. Cassandra Ayres, Beus Gilbert McGroder, gave an overview of the request. The applicant is building the wall as a buffer from the road, for themselves and for their pets. The proposed wall will be constructed of a solid wall with brick veneer on the lower portion and decorative Victorian wrought iron view fencing on the top. There will be four gates made in the same style as the fence. The front gate will swing inwards towards the driveway, not out towards the street.

Vice Chair DiDomenico asked if the masonry portion of the fence was already constructed and Ms. Ayres advised him that it was. Vice Chair DiDomenico then asked if she was applying for a permit for something that was already done, and Ms. Ayres stated the from her knowledge it had been started but not completed yet. Vice Chair DiDomenico noted that he had observed other fences in that neighborhood that did not have the 3-foot lower portion. They had 10-foot columns with fencing in between. He asked Ms. Ayres if she had found any other examples that were similar to what they are proposing and was advised she had not. Vice Chair DiDomenico inquired about a large structure that was in the northwest corner of the yard. Ms. Ayres stated this was an art studio. Vice Chair DiDomenico asked if there was any commercial use associated with this property and was advised there was not. Vice Chair DiDomenico asked if they had consulted the neighbors to the east and west of this property. Ms. Ayres advised that they had not, however they were notified about the project and the applicant did not receive any comments.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, provided a presentation on the request. He advised that staff has only received one public comment that was from someone nearby who supports the project and thinks it is well-designed. A neighborhood meeting was not required for this request. Mr. Jimenez showed the Commission a couple of pictures of the property he had received from the applicant so that they could see the design. He advised that the applicant is still looking for a vendor to provide and install the wrought iron fence. There is only one unique condition of approval, #2, that calls for a final inspection at the completion of the project.

Commissioner Sumners asked how this project came to the City's attention. He stated that normally when an applicant starts construction on a project and then comes in for a permit it is because someone has complained. Mr. Jimenez noted that there was not a Code Compliance complaint against this lot. He advised that the applicant may be able to provide more information on that.

PUBLIC COMMENT: NONE

APPLICANT RESPONSE:

Ms. Ayres advised that their client had started construction of the wall and did not know that a permit was required for the view fencing portion of it. When she found out about this, she immediately filed for the Use Permit to complete the view fence portion.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Sumners stated he did not have any issues with this project when he reviewed the report and he appreciated Ms. Ayres' answer as to how this came to be in front of the DRC. He is happy to support the project.

Motion: Motion made by Commissioner Johnson to approve PL200209 and seconded by Commissioner Cassano.

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

- 7) Request a Use Permit to allow temporary outdoor vending (commissary kitchen) for **REEF KITCHENS**, located at 830 West Broadway Road. The applicant is REEF Kitchens Kelly Milligan. **(PL200253)**
Project Planner: Lee_Jimenez@Tempe.gov or (480) 350-8486

PRESENTATION BY APPLICANT:

Mr. Kelly Milligan, REEF Kitchens, gave a presentation about their request. This Use Permit will be for a mobile commissary kitchen. They will be hooked up to the adjacent building's power and water. They cater through third-party delivery applications only. They prepare and cook food on-site and then hand it off to delivery drivers like DoorDash, Uber Eats, etc. The adjacent business, Friendly Markets, is a convenience store. They have received full support from the business owner and landowner.

Mr. Milligan went over the Use Permit criteria and advised that the traffic at that location will increase due to the drivers coming and going, but he does not feel that it would be burdensome. They plan to hook up to power from the adjacent site so there will be no need for a generator. They are proposing option #1 out of the two possible parking locations on the site. Regarding security, they have an extensive security network and camera inside the vehicle, and they would also partner with the adjacent building.

Chair Lyon asked for more information on what is being proposed. He noted that Mr. Milligan keeps saying "vessel". Mr. Milligan advised that was their interval vernacular for the food trucks. It is a 24-foot, tow-behind commercial kitchen/food trailer. Chair Lyon asked if the applicant had anything he could show to give the Commission a better idea about this this would look like.

Mr. Milligan brought up some slides showing their food trucks/kitchens. They do not plan to have any chairs for sit-down service in the parking area as food can be purchased for delivery only. The trailers include full size commercial kitchens. Chair Lyon stated that seeing the pictures helped clarify things and alleviate some of his concerns.

Commissioner Amorosi stated that he is used to seeing commercial kitchens in industrial areas, not in retail spaces, and asked if there was a reason for it being in retail versus commercial. Mr. Milligan advised that the REEF Kitchens business model is to go where the people are located, mainly as close to residential as zoning allows.

Commissioner Lloyd noted that since this will not be a brick and mortar location, she is concerned about how they will address the restaurants down the street who do need to pay the brick and mortar rents. She inquired about the type of agreement the applicant has with the convenience store that would make it more fair for the market. Mr. Milligan advised that they do have an agreement with the business owner that requires them to pay rent for the spaces that they need. Part of their sunk costs would be making some necessary upgrades to the business owner's building. They would not necessarily gain benefit from this in the long run if and when their lease agreement expires. This range is in about the tens of thousands of dollars to fully enable the site with 200 amps and adding another hose connection to support their needs and various other site improvements that are required in order for them to do business the building owner; such as bathrooms, upgrades, and other things mentioned in the Use Permit. They are also required to add two bicycle spots. He believes that in fairness they are committed to the site and want and plan to make the needed upgrades along with the monthly rent that they would be paying.

Vice Chair DiDomenico stated that his concern was more with the parking and traffic flow on the site since it is not a large site and the applicant vehicle will be taking up more of the parking lot with infrastructure. Vice Chair DiDomenico noted that this is not a location where a consumer could come to order and pick up but rather it is primarily serviced through DoorDash, Uber Eats, Postmates, etc. Mr. Milligan stated that is correct. He believes they have the ability to allow an end user to order and pickup from their location, but 90-95% of their service is through the third-party delivery applications. Chair DiDomenico asked what their projections show for the number of trips to pick up food at this site on their busiest day. Mr. Milligan did not have the answer at the moment but would reach out to his team for their projections. Vice Chair DiDomenico asked what their average store generates in trips and Mr. Milligan did not have that information directly on hand.

Commissioner Amorosi asked how the applicant discourages walkup customers who come to the convenience store and want to get food from them. Mr. Milligan advised that even though they do not actively discourage a customer, a customer is directed to use a third party delivery service as the kitchen does not have any way to accept cash and credit cards. If they did not have the application downloaded, they would give them instructions for that. There are options in each delivery application for them to order to pick up items at a particular location.

Mr. Milligan advised the Commission that he now has a response to Vice Chair DiDomenico's question about the number of trips. On any given night, the maximum they typically see is about 15-20 orders per hour on the busiest of nights. They normally do more business later at night and that allows for the slower coming and going of traffic at that time.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, went over the request and stated that the temporary outdoor vending description basically means it is not in a permanent building. Regarding time constraints, he stated that could be conditioned if needed. There were two options vetted through the application for the location of the trailer, but staff is only supportive of option #1 as stated in condition #2 of the conditions of approval. No neighborhood meeting was required for this this request. There was a public inquiry, but no concerns were cited. Mr. Jimenez went over the non-standard conditions of approval for this project. He also advised that since this will be takeout only with no seating or dining, that it meets the parking requirements for the site. Mr. Jimenez also stated that any signage/wrapping on the food truck is subject to a sign permit.

Commissioner Sumners asked Mr. Jimenez how code addresses parking for this kind of use. He notes that ten spaces are required for this site and there are currently eleven spaces. However, since the food truck will take up two spaces that only leaves nine spaces for parking. Mr. Jimenez advised that the ten-space requirement is for both the food truck and the convenience store. Since the food truck is parked as a takeout restaurant it is similar to retail which is one space per every 300 feet, so only one parking space is required for the food truck. He also noted that there is one space just north of the food truck where parking is available.

Vice Chair DiDomenico stated that 15-20 drivers for 15 hours a day until 2:00 a.m. drive onto the property, negotiate the parking spaces shared with the convenience store, and then leave their vehicle. There would possibly be four or five people picking up at a time as well as four or five employees working in the food truck who most likely used a vehicle to get to work and parked it on site. Mr. Jimenez stated that based on the applicant's letter of explanation, they plan to only have two employees in the food truck at a time. He also stated that this site is zoned CSS (Commercial Shopping & Services) so if the convenience store decided to become a restaurant, as would be allowed in that zoning, the traffic would be similar as it is to the convenience store. Regarding picking up, Mr. Jimenez advised there are parking spaces that could be loading zones (not official ones) along the street wall to the southwest corner if the lot gets too busy during peak hours.

Commissioner Amorosi noted that if there are two employees, they are going to have to get to the site somehow so there is two parking spots taken up so there will be less parking spaces. Mr. Jimenez advised that he is strictly looking at the square footage and parking ratios for the proposed uses in determining the parking requirements. Regarding the operation and number of employees on site, that is out of his control when coming up with the parking requirements based on the code. Mr. Jimenez stated that staff has a condition of approval they can add to the scope of the Use Permit request where the applicant would be required to come back during a certain period of time, typically six months, for a review of compliance in order to review the Use Permit and determine whether the use is still appropriate. If needed, at that time staff could provide additional conditions of approval or have a hearing to discuss whether the use may not be appropriate. Commissioner Amorosi liked the option of the added condition of approval. He asked for Mr. Jimenez to clarify if the Use Permit is good for the location but not necessarily the business and if they leave could another kitchen just come in and take over the use without any review. Mr. Jimenez confirmed that the Use Permit could be transferred at the staff level if this occurred through an administrative review process. At that time staff would evaluate the appropriateness and ask the applicant if they are going to continue operating similar to how it was originally approved or if there are modifications required or disagreements with any of the conditions of approval that are assigned to that Use Permit. If they disagree with any of the conditions at that time then they can apply for a new Use Permit to supersede the old one and identify any conditions that they do not agree with and apply for consideration of whether that new use with those modified conditions can work out in this area. There is also the possibility that there are complaints filed on the use and it could go through the revocation process if necessary. Mr. Jimenez read into the record the standard condition of approval for the review period: "To return to the appropriate decision-making body for review of compliance with conditions of approval within six months. The timing for the six-month review period to commence is when the business is in full operation and advises Community Development staff that they are in full operation". If approved by the Commission, it would be condition of approval #11.

Commissioner Johnson expressed his support for the added condition of approval as he still has concerns with the parking on the site. He drives by the site quite often and rarely sees a lot of vehicles parked in that lot so he thinks it would work fine, however revisiting in six months down the road is a good idea.

PUBLIC COMMENT: NONE

APPLICANT RESPONSE:

Mr. Milligan understands this is a unique situation. With a lot of people working from home he feels their business model can support that need. Regarding staffing, their goal is to hire between 15 to 18 total staff, preferably from the community. They would have two staff members there at any given time. They are in support of the six-month review period condition of approval and making any necessary changes.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Sumners thinks the six-month review will help but he does not understand how this business will function with just walkups, not seating, not restrooms being 30 feet away from single family homes. There are too many red flags for him to be able to support the request.

Vice Chair DiDomenico likes the use but thinks this is the wrong location for it. He noted that there are several industrial businesses on the other side of Broadway Road where it would be better suited. He likes the added condition for a six-month review. He would have preferred that it occur in three months, however based on the infrastructure improvements the applicant needs to make he understands the six-month period.

Ms. Suparna Dasgupta, Principal Planner, read a comment that Mr. Milligan just sent to staff to clarify that they do not accept walkups, that it is just for delivery.

Commissioner Amorosi had big reservations about this request as another similar one in his neighborhood caused a lot of traffic and they had to ask it to leave. He believes these kinds of uses should go into industrial areas.

Chair Lyon stated that he lives down the street from this property and has seen it for years and it always felt underutilized. He does not believe he has ever seen more than two cars at the site. The only thing on the permit criteria that he has heard is about the traffic. If there are 15-20 trips per hour, he does not believe the driver is going to sit there for fifteen minutes so you are likely not going to have more than 4 to 5 people accessing the site. He will support the request.

Commissioner Lloyd asked for clarification that the six-month review would open the discussion up to any nuisance complaint or any of the other conditions regarding this site, and not only for parking. Mr. Jimenez advised that was correct.

Commissioner Cassano noted that the lockdown situation has forced people to look at businesses in a totally different way. People are getting more to go food or using food delivery services, etc. and he does not think that things will completely go back to how they were before the pandemic. He likes having some options to see if this works along with the review period. He will be supporting this request.

Commissioner Sumners asked if the applicant would consider a closing time a little early than 2:00 a.m., such as 10:00 p.m. Mr. Milligan stated that their main demand is for late night food orders. They could possibly agree with 12:00 a.m. He also noted that if demand does seem to spike and there is more traffic, they can shrink their delivery size zone in a moment's notice to help reduce the potential increase in traffic. They could appeal to a larger area in the daytime, and if it picks up later, they can reduce it.

Commissioner Johnson noted that he does not think the late-night deliveries would create a traffic issue since there would not be a lot of people on the road. He also stated that some of those on the road at that hour maybe should not be driving due to possible impairment. He would prefer the late closing so that people would use delivery versus getting on the road when they should not be.

Motion: Motion made by Commissioner Amorosi to approve PL200253 with added condition and seconded by Commissioner Cassano.

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

Nays: Commissioner Sumners

Abstain: None

Absent: None

Vote: Motion passes 6-1

Staff Announcements: None

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

Prepared by: Joanna Barry, Administrative Assistant II
Reviewed by: Suparna Dasgupta, Principal Planner

A handwritten signature in black ink, appearing to read "Suparna Dasgupta". The signature is written in a cursive style with a large, stylized initial "S".