



Minutes of the Development Review Commission REGULAR MEETING January 12, 2021

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
Commissioner Steven Bauer

City Staff Present:

Ryan Levesque, Deputy Director of Planning, Community Dev.
Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Robbie Aaron, Planner II
Dalton Guerra, Planner I
Joanna Barry, Administrative Assistant II

Absent:

Alt Commissioner Barbara Lloyd
Alt Commissioner Michelle Schwartz
Alt Commissioner Linda Spears

Hearing convened at 6:01 p.m. and was called to order by Chair Lyon

Consideration of Meeting Minutes:

- 1) Development Review Commission – Study Session 12/8/20
- 2) Development Review Commission – Regular Meeting 12/8/20

Motion: Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for December 8, 2020 and seconded by Commissioner Amorosi.

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

Nays: None

Abstain: Commissioner Bauer

Absent: None

Vote: Motion passes 6-0

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

- 3) Request a Use Permit to allow a restaurant with a drive-through in the GID zoning district and a Development Plan Review for a new 3,751 square-foot building for **WHATABURGER TEMPE**, located at 1800 West Elliot Road. The applicant is Jason Sanks of Sustainability Engineering Group. **(PL200246)**

Motion: Motion made by Vice Chair DiDomenico to approve PL200246 and seconded by Commissioner Johnson.

Ayes: Chair Lyon, Vice Chair DiDomenico, Commissioners Cassano, Summers, 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 allow a two-story single-family residence for the **RAO RESIDENCE**, located at 5509 South Waverly Way. The applicant is JCL Design Build LLC. (**PL200266**)

** This item was originally planned for Consent Agenda, however public comment request was made by Connie Dunham to hear it. Applicant was not available yet so agenda item #5 was moved up and heard prior to this case.*

- 5) Request a Code Text Amendment amending the Tempe Zoning and Development Code consisting of changes within Section 3-426, Medical Marijuana and other related sections for the regulation of recreational marijuana in compliance with the Smart and Safe Arizona Act for **MARIJUANA INITIATIVE (PROPOSITION 207)**. The applicant is the City of Tempe. (**PL200301**)

PRESENTATION BY STAFF:

Mr. Ryan Levesque, Deputy Director – Community Development, advised that proposition 207, called the Smart and Safe Arizona Act, was passed with 60% of statewide votes. Local jurisdictions (cities and towns) are required to enact reasonable land use and zoning regulations. The City of Tempe has prepared an ordinance, amending ZDC Section 3-246, Medical Marijuana, and renamed “Marijuana”.

Proposition 207 allows for one Marijuana Establishment license for every 10 pharmacies (same as Dispensaries). It allows a “Dual Licensee” for lawfully registered dispensaries to also sell as a Marijuana Establishment, not more than two licenses per County that contains no Medical Dispensary; or one Marijuana Establishment that contains one Medical Dispensary (1:1 ratio). The Social Equity Ownership Program will issue 26 additional licenses throughout the State. Under Prop 207, Tempe may not enact regulations that are more restrictive than comparable regulations pertaining to medical marijuana; may not enact regulations that make the operations of a Marijuana Establishment or Marijuana Testing Facility unduly burdensome; or may not enact regulations that conflict with regulations contained in the Proposition.

A local jurisdiction may enact reasonable zoning regulations that limit the use of land for Marijuana Establishments and Marijuana Testing Facilities to specified areas. This provision is identical to that in Arizona’s medical marijuana law which is also the only zoning related provision in Arizona’s medical marijuana law. They may not limit the number of Marijuana Establishments or Marijuana Testing Facilities, or both. They may not prohibit Marijuana Establishments or Marijuana Testing Facilities, or both. May not regulate the time, place and manner of Marijuana Establishment and Marijuana Testing Facility operations or prohibit/restrict delivery within its jurisdiction (Delivery unlawful until rules adopted by 2023-2025). They also may not Incorporate current Industrial Hemp Program (evaluate operations with Fire and Building Safety), solicit feedback from Medical Marijuana business representatives in Tempe, solicit input and dialogue from “Tempe Coalition to reduce underage drinking and drug use” and Tempe Chamber of Commerce, including a public survey and comments. Mr. Levesque then went over the public/community survey results for the Commission.

Current Medical Marijuana Dispensary & Proposed Marijuana Establishment separation requirements are as follows:

- 5,280 feet (1 mile) Dispensary to Dispensary
- 1,500 feet from a child care facility
- 1,500 feet from a charter, private or public school, providing elementary or secondary education
- 1,320 feet from a church, synagogue, temple or similar
- 1,320 feet from a public park, library, or public community
- 1,320 feet from a residential zoning district or a parcel devoted to a residential use in any district

This DRC hearing is the first public meeting on the ordinance. It will be presented to the City Council for their first hearing on January 28, 2021 and a second hearing on February 11, 2021.

Commissioner Sumners had a question about the options provided to the City based on a letter that came in stating that the City should ban marijuana establishments or prohibit them. Based on how he read the ordinance, it seems that the City could not restrict them. Mr. Levesque advised that some people interpret in the proposition that they could somehow be prohibited land uses. However, the City is required to allow dual licensees and not be more restrictive than the medical marijuana regulations. There are cities such as Chandler, Gilbert, Mesa, Goodyear and Surprise that have prohibited marijuana establishments. Tempe's position is that if they were to adopt a prohibition it would be more restrictive than what the current medical marijuana regulations allow.

Commissioner Amorosi asked if the legal age to smoke is 18 or 21 and was advised that it was 21 or over.

Commissioner Bauer noted there are uses that need to have more scrutiny and that Tempe does that. He stated we are going to be feeling our way through this process as the years go by and it appears that the national trend is that marijuana is going to be more prevalent and that other states will be adopting similar ordinances to what the State of Arizona has done. He feels staff has done a great job navigating what is obviously a difficult proposition for some people and he can support the ordinance as written.

Vice Chair DiDomenico brought up a question asked by Commissioner Cassano during the last meeting regarding the use of marijuana and that it would be prohibited wherever regular smoking is banned. He asked if the ordinance would follow the same method as regular tobacco use if the method of consumption was edibles since it is not smoking. Mr. Levesque advised that it would be treated similarly to regular smoking as it is not allowed in public places. People are allowed to have the marijuana on their person as long as they are not driving high.

Commissioner Cassano asked about having it on their person while on a school campus and if there are any restrictions to that or if it is up to the individual school districts or businesses to not permit it. Mr. Levesque advised that public schools and businesses are allowed to prohibit people from having it on their person while on the property. Commissioner Cassano asked if we are able to limit the number of new licenses that are issued. Mr. Levesque stated that the State of Arizona adopts the total number for the state, and they get distributed statewide. He noted that when they first established the separation requirements that there be no more than two, however it was opined that it would be better if they just established a separation requirement.

PUBLIC COMMENT:

Ms. Suparna Dasgupta, Principal Planner, read two public comment letters into the record. One was in support from Harvest and another was from ASU in opposition.

Commissioner Johnson referenced the three items in the letter from ASU and wanted clarification on where smoking is allowed and if it could be limited on Mill Avenue or close to ASU. Mr. Levesque advised that the City is limiting the number of marijuana establishments to what is currently allowed by incorporating them into the dispensary regulations. Marijuana testing facilities is a new category and would only be allowed in industrial zoning districts and a majority of the ASU campus is at least a mile or more away from an industrial zoned property.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Cassano noted that the ordinance change was not of the City's choosing, but rather approved by voters at the State of Arizona level. He feels this ordinance is doing the best it can for what we have been given by the law. He will be supporting the ordinance.

Vice Chair DiDomenico agrees with what Commissioner Cassano stated. He thinks the separation requirements are too restrictive, but he would be in support of the ordinance.

Chair Lyon stated he appreciated the letter from ASU, and he would be supportive of prohibition, however we do not have that leeway and are bound to require what has been presented. He will also support the ordinance.

Motion: Motion made by Commissioner Amorosi to approve PL200301 and seconded by Vice Chair DiDomenico.

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

- 4) Request a Use Permit to allow a two-story single-family residence for the **RAO RESIDENCE**, located at 5509 South Waverly Way. The applicant is JCL Design Build LLC. (**PL200266**)

* *Item now heard as applicant is online.*

PRESENTATION BY APPLICANT:

Mr. Jared Lineberger went over the Use Permit request for the two-story house and noted two-story structures are a normal thing in the community and that the zoning supports it. He stated the house will be owner-occupied. He would be happy to answer questions that were proposed earlier from a member of the community.

Commissioner Cassano asked if Mr. Rao will be occupying this home since he already has one across the street. Mr. Lineberger advised that Mr. Rao's son and his family will be occupying the home.

Vice Chair DiDomenico stated he has driven that cul-de-sac and he believes there are twelve homes and nine of them are two-story. Mr. Lineberger stated there are a lot of two-story homes in the area. Vice Chair DiDomenico asked if the homes on each side of this property were two-story and was advised that they were.

Ms. Dasgupta read Ms. Connie Dunham's public comment questions for Mr. Lineberger to respond to. Mr. Lineberger noted he was not sure of the actual number of two-story houses in the area but believes it is in excess of 50%. Ms. Dasgupta advised that staff does have some information on this and will provide it during the staff presentation. Regarding the height of the home, Mr. Lineberger advised they are not exceeding the maximum height of 30 feet which is the standard height for that neighborhood. He stated that the reason believes that house across the street towers over other residences is because the two houses adjacent to it are single-story.

PUBLIC COMMENT:

Ms. Connie Dunham asked: "How many other two story structures are there in the Lakes?" and "How does the height of this new structure compare to the height of his house across the street at 5502, which towers over other houses on the street?"

PRESENTATION BY STAFF:

Mr. Dalton Guerra, Planner I, noted the residence is in the R1-6 zoning district which allows single-family residential. This will be a brand-new build and the applicant has already received a demolition permit to tear down the existing home. It meets all the setback and lot coverage requirements for the R1-6 zoning district. No neighborhood meeting

was required for this request. Staff did receive two calls regarding this item, neither in support nor against it, but rather voicing concern about the height of the home from the lake side of the property. However, the zoning code defines height measured from grade which is the top of the curb at the front of the property. Mr. Guerra noted there are three other properties in the Lakes subdivision that received Use Permits for a second story addition.

Commissioner Sumners stated he would like the City to change the ordinance so that if they come to a situation like this it does not need to be brought before the Development Review Commission if more than half the residences in the area are already two-story.. Mr. Steve Abrahamson, Principal Planner, advised he would discuss with Ryan Levesque a possible code text amendment.

Commissioner Bauer noted that this is a situation to where it only applies to those properties that were originally single-story. In this instance a significant number of properties are already two-story, and it is not out of character with this area. He will be supporting the application.

COMMENTS AND DISCUSSION FROM THE COMMISSION: NONE

Motion: Motion made by Commissioner Cassano to approve PL200266 and seconded by Commissioner Sumners.

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

Staff Announcements:

Ms. Dasgupta went over the agenda items for the January 26, 2021 DRC hearing with the Commission.

There being no further business the meeting adjourned at 7:04 p.m.

Prepared by: Joanna Barry, Administrative Assistant II

Reviewed by: Suparna Dasgupta, Principal Planner

