



Minutes of the Development Review Commission REGULAR MEETING JANUARY 26, 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:

Vice Chair Michael DiDomenico
Alt Commissioner Michelle Schwartz
Commissioner Scott Sumners
Commissioner Don Cassano
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Commissioner Steven Bauer

City Staff Present:

Ryan Levesque, Deputy Director, Community Development
Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Karen Stovall, Senior Planner
Diana Kaminski, Senior Planner
Dalton Guerra, Planner I
Joanna Barry, Administrative Assistant II
Brittainy Nelson, Administrative Assistant II

Absent:

Chair David Lyon
Alt Commissioner Barbara Lloyd
Alt Commissioner Linda Spears

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

Consideration of Meeting Minutes:

- 1) Development Review Commission – Study Session 01/12/21
- 2) Development Review Commission – Regular Meeting 01/12/21

Motion: Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for January 12, 2021 and seconded by Commissioner Amorosi.

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

Nays: None

Abstain: Commissioner Schwartz

Absent: Chair Lyon

Vote: Motion passes 6-0

ITEM(S) CONTINUED OR WITHDRAWN FROM AGENDA:

- ~~3) Request an appeal of the December 17, 2019 Staff decision to approve a minor DPR for the RED DEVIL PLAZA, located at 204 West Southern Avenue. The appellant is Baron D. Abboud. (PL200274 / GM200453)~~ ITEM WITHDRAWN FROM AGENDA

- 5) Request a Use Permit to allow a car wash in the GID zoning district and a Development Plan Review consisting of a new 5,220 square-foot automatic car wash for **SUPER STAR CAR WASH**, located at 1139 West Broadway Road. The applicant is Cawley Architects. (PL200232)

CONTINUED TO 2/23/21 DRC HEARING

Project Planner: Karen_Stovall@Tempe.gov or (480) 350-8432

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

- 4) Request a Use Permit to allow a massage establishment for **ASTONISHED! MESSAGE AND FACIAL SPA**, located at 2520 East University Drive. The applicant is Astonished! Massage and Facial Spa, LLC. **(PL200280)**
Project Planner: Dalton_Guerra@Tempe.gov or (480) 350-8652
Motion: Motion made by Commissioner Cassano to approve Consent Agenda and seconded by Commissioner Johnson.
Ayes: Vice Chair DiDomenico, Commissioners Schwartz, Sumners, Cassano, Amorosi, Johnson and Bauer
Nays: None
Abstain: None
Absent: Chair Lyon
Vote: Motion passes 7-0

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

- 6) Request a Zoning Map Amendment from HID to MU-4, a Planned Area Development Overlay for an existing office building on Lot 1, a new apartment community on Lot 2 and new 13,500 s.f. retail and restaurant uses on Lot 3 to establish development standards and a Development Plan Review for Lots 2 and 3 for **RIO EAST**; the site is 14.2 acres located at 98 South River Drive. The applicant is Quarles and Brady, LLC. **(PL200251)**
Project Planner: Diana_Kaminski@Tempe.gov or (480) 858-2391

PRESENTATION BY APPLICANT:

Mr. Ben Graff, Quarles and Brady, LLC, went over the project team members. The applicant is requesting rezoning from HID to MU-4, a PAD overlay, and a Development Plan Review for lots 2 and 3. The proposed uses are an existing office building on lot 1, a new 335-unit luxury residential community on lot 2, and new 13,500 SF retail and restaurant uses on lot 3. Mr. Graff stated that the only opposition that he is aware of to this case tonight, or for the development of this entire master planned community, has come in from the litigation attorney for the adjacent property to the east of the site which is still an active industrial use. The opposition is based on a pending litigation that is requesting access between the two sites. From what Mr. Graff has read, unlike the other opposition which has come from neighbors in typical zoning cases, he has not found that the opposition technically has merit in the realm of a zoning area. The courts will determine the pending litigation, but he has not seen any actual zoning issues or development issues with their site. Therefore, for this evening he will focus on the land use and zoning issues for this site.

The current zoning for the majority of this area is Heavy Industrial. The entire area has been slated for mixed-use by the Tempe General Plan and asks for dwellings units of 65 per acre. The existing office to the north has direct access and flow-through to the multi-family below. River Drive is a private drive which then comes out onto Rio Salado Parkway and provides its own access point and traffic mitigation. On prior traffic reports, even prior to proposing this project, a new traffic signal would have to be installed at River Drive and Rio Salado Parkway. This has been installed by the master developer and it is functioning today and that was a huge step to making sure there was proper traffic mitigation for this location. The applicant has worked with City staff on the project and stipulations and they are in full support and are not asking for any modifications to the stipulations.

When the existing office building was originally proposed it was the Planning staff's preference that it would eventually be pulled into an MU-4 zoning category along with the residential and retail. They have accommodated that request by incorporating the underlying land, however no tweaks or changes have been made to prior approvals for the office building and it remains the same. The lot 2 proposed luxury residential community at the northeast corner of the Rio Salado Parkway is The Cameron. It is four-stories with a 4.5-story parking structure and currently renting and leasing very well.

The PAD is used to not only incorporate the height standards, but they have also outlined a parking reduction for the multi-family. The height is not inconsistent with the existing offices. The parking reduction was not done haphazardly; they hired a traffic engineer to do a parking feasibility and analysis. They worked with staff and it was reviewed by Planning staff and their Traffic Department. Based on rental terms and leasing for The Cameron, they are already 27% parked over the existing demand for leasing. They do not believe the parking code is over 27%, but for this development in this particular area with a 10% parking reduction, they found that was feasible for them to have less garage space and flattop and respond to a better design.

Vice Chair DiDomenico asked if the landscaping shown on the presentation was fairly representation as to what is planned or artistic license. Mr. Graff advised that it was very accurate in terms of what they are trying to accomplish with staff. All tree types are yet to be determined but it is a very close representation.

Commissioner Cassano noted that the Commission was provided with copies of the lawsuit that has been filed. He inquired how the applicant expects that not to impact their project or why it should not delay any approvals that DRC might grant on the project. Mr. Graff clarified that he is not part of this litigation and if need be Andy Abraham, Tom LeClair's litigator, is on the phone and can be brought in. The reason Mr. Graff is confused by the litigation is because the development agreement in question predates the land that is before the Commission tonight coming into ownership by LeClair and being part of the development. At the time the development agreement was put in place the "adjacent land" to 2100 Rio Salado was in fact the land that is before the Commission tonight. That development agreement asked for there to be reasonable commercial efforts to give access to adjacent properties. By the fact that Mr. LeClair purchased the property that is before the Commission tonight and incorporated it into the development, that action gave it commercially reasonable access to that site. In Mr. Graff's knowledge there is no legal basis why a DRC or City Council would deny or bring question to the case based on pending litigation that is asking for access from the industrial site to the far east and the overall master plan.

Commissioner Amorosi asked if Mr. Graff was familiar with the Mayor's new "Hometown for All" policy since it has to do with new developments in Tempe. Mr. Graff stated that he was aware of it and is in favor of it. This policy encourages developers to potentially make a donation to the Affordable Housing Fund if affordable housing is not available on their site. He stated that he and the Mayor have had a conversation about this specific project and the new policy. He cannot make any commitments tonight in terms of any specific donations as they are not at that part in the process. They are aware of it and are currently discussing it with the Mayor.

Commissioner Summers asked about the building height since on the staff report it states 80 feet however from what he sees on the plans it shows four-story residential which is typically more like 50 or 60 feet. Mr. Graff stated that the PAD needs to incorporate the existing office building as well as the retail and multi-family and because of that the PAD needs to show the maximum height for the top of the highest building in the PAD, which is the office building that is at 80 feet. The residential development is about 70 feet.

PRESENTATION BY STAFF:

Ms. Diana Kaminski, Senior Planner, gave an overview of the project. The Zoning Map Amendment is for the Heavy Industrial to become an MU-4, mixed-use, high-density district. The PAD is to establish the development standards for all three lots. The Development Plan Review is for the site plan, building elevations and landscape plan for lots 2 and 3. The total site is 14.2 acres. This site was previously approved as The Millennium back in 2018. That project did not move forward but it did contemplate about 260 apartments on the lot 2 site as part of that original entitlement.

The proposed landscape pallet was somewhat established by the existing pallet in the other portions of what is known as 2100 Rio. They tried to tie some of the tree species in and some of the ground covers, but on the residential side there are a lot more tree species and density of plant material and it is a more lush environment adjacent to the residential. It is a little sparser on the commercial side, but it ties in with the other commercial buildings on the 2100 Rio development. Along the river drive there are a combination of trees trying to put larger shade trees on the west side of the sidewalk such as Pistache.

A neighborhood meeting was required so a virtual meeting was held on October 6, 2020 from 6:00 p.m. to 7:00 p.m. Three representatives of the property to the east were in attendance, as were Community Development staff. Since this meeting staff has received two emails and one phone call regarding the project. One email suggested a name for the residential community, another email was from the adjacent property owner to the east, in opposition to the project. They are seeking access to the development from their site to the east and have concerns about traffic impacts from this development. One phone call was received from a property owner to the south who was concerned about traffic and existing parking on River Drive south of the intersection where people are parking so close to the intersection on Rio Salado that it is hard to pull out onto River Drive. Ms. Kaminski has forwarded that information to Traffic Engineering. The only unique Condition of Approval for this project is number 15: RF-01 – Canopy Roof – Proposed architectural asphalt shingle shall be replaced with concrete tile of similar color or metal panel; asphalt shingle product shall not be used.

Commissioner Amorosi asked if the developer agreed to the tree and roofing materials and was advised that they did.

Commissioner Sumners noted that the property owner to the east was asking for access, however the only thing that he saw in the papers that he could recall was that they were asking for financial relief/compensation. He asked if they do actually want access as well. Ms. Kaminski advised that they were requesting to have access to River Drive that has the new signaled intersection and apparently there was also discussions with the development team that they could not come into agreement for however they would participate in that.

PUBLIC COMMENT:

Mr. David Brooks, with Brooks & Affiliates, PLC. in Mesa, AZ, is representing the Brock parties to the east. In reference to Mr. Graff's previous comment that he did not believe Mr. Brooks' client's opposition had anything to do with the zoning issues that are before the Commission, Mr. Brooks stated that as in the letter he presented to staff the prior day, one of the provisions in the zoning code basically outlines one important principle. This is that those who deal with the City need to be held to a standard as to comply with the promises and obligations they make with respect to the City. If they do not comply, then the decision-making body can withhold approval or deny approval until they comply with the prior commitments. He stated this issue raises a unique situation as it is part of the zoning code and part of a zoning question, which really is whether the City of the Commission on behalf of the City will hold those who deal with the City to prior agreements or obligations.

Mr. Brooks' clients own properties immediately east to this property that is currently the subject of this request, which is currently known to those in the area as the "bowling alley". He stated that when Mr. LeClair acquired the property from Mira Vista he also took over the obligations of it to the property to the east. The property that is known as the "bowling alley" was all subject to the agreement that was entered with the City that would provide them an opportunity to get a 40-year Government Property Lease Excise Tax (GPLET) benefit. The GPLET benefit was valued by staff with the City Council back in August of 2016 at about \$64.8 million as they were going to get about 40 years of tax abatement as part of this agreement with the City. During that meeting in August of 2016 a motion was made by a member of the City Council to address connectivity. The connectivity problem is that the Brocks directly to the east are in a spot where the current proposed development increases traffic along Rio Salado. During that City Council meeting Mr. Brooks' clients were under the impression that the developer would have to talk with them and then work on commercial best efforts so that his clients could access River Road from their property immediately to the east so that they could then use the lights at River Road and Rio Salado. His clients need to be able to have access to that road both for traffic flow and also for safety. His client's issue is that the developer signed an agreement that said that they would take the commercial best efforts to facilitate access to all the adjacent parcels. In his client's view, the developer had not used commercial best efforts to work with them to accomplish getting access, which is why there is also a lawsuit. He asks for the Commission to delay review of this item while it goes through the legal process.

Commissioner Bauer asked Mr. Brooks to explain why he believes the applicant and property owners to the west have not used commercial best efforts. Mr. Brooks stated there have been no substantive meetings that have yielded reasonable negotiations for price, cost, what the new developer might ask his client to contribute to the effort.

This process has been going on since 2016 and there is no proposal in the plan that would facilitate his client's access onto River Road.

Vice Chair DiDomenico asked that if the applicants project was built today as designed, and later Mr. Brooks' client won the litigation, would there be irreparable damage that access could not be created and given to his client's parcel because of the way the development is designed. Mr. Brooks stated that he could not say that if it was constructed today that access could not be accomplished sometime later. It would require tearing down portions of the wall that has already been installed along the area where the office building is and installing the appropriate roads. It could happen later but in his view the issue of the process of why the City would not want to enforce its code if someone is not choosing to comply with their prior obligations. Vice Chair DiDomenico said his comment had more to do with Mr. Graff's earlier comments regarding the agreement with the City and Mr. Brooks response. He stated that at some point in time agreements were made that said that the party that was getting the GPLET benefit would grant these rights to access and use commercially reasonable efforts, however he does not know where that parcel ended at that point in time and subsequent acquisition of additional parcels extended those boundaries.

Commissioner Cassano asked Mr. Brooks what process they are at with the court; whether the lawsuit has just been filed, whether a court date has been set, etc. Mr. Brooks advised that as a lawyer he believes the Motion to Dismiss is not likely to succeed and he believes the case will move forward. The developer has not answered the complaint yet and they are not yet in disclosure or discovery so he would expect that if the parties do not resolve the matter there is probably quite a long time of litigation to go.

APPLICANT RESPONSE:

Mr. Graff stated he felt it has been made evident tonight that the DRC has been asked to take the place of the Maricopa Superior Court and the only two issues that he heard come up. One was whether their zoning request should be denied because they failed to meet a prior agreement. Mr. Graff noted that they are under no notice or initial conversations with anyone from the City telling them that they have failed to meet an agreement with the City. On the record, the only party stating that an agreement has not been met is Mr. Brooks. The only other item that was brought up is traffic. They have already spent up to \$850k on the traffic light on River Drive, which is a private drive, but will also have other traffic mitigation efforts. He stated that at its core from a Planning perspective, the City would not find itself in the position of requiring an access point from a mixed-use site and a heavy industrial site. He has not seen evidence to deny this case.

Commissioner Bauer asked (only if applicant can speak on it due to pending litigation) if the property, his application, and the property to the north are all part of the GPLET. Mr. Graff asked Andy Abraham, litigator for applicant, to answer the question. Mr. Abraham stated he does not want to get into any litigation issues but does want to answer the question that was asked. He advised that all of the property is under the original development agreement for the remediation of about 79ish or so acres, however because of certain time periods that were applicable to that development, the future development agreement and the future GPLET would have to go back for a new process and there is no pending process requesting a GPLET at this point in time.

Vice Chair DiDomenico asked for Mr. Graff to confirm that the applicant agrees to all stipulations and Conditions of Approval as stated and he advised that they were.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Bauer stated that has been a lot of good dialogue this evening and there is a very good land use plan before the Commission. There are issues that need to be addressed and other levels that are not in the DRC's purview, but are important issues. Since around 2020 the developer has looked to redevelop a blighted piece of property and has been successful. The one thing this Commission and the City tends to look to is efficiency of traffic movement between properties. He thinks that is critical here, however he agrees with Mr. Graff that the current use of the Brock property may not need access right now. Should the Brock property transition to a use that is more in line with the General Plan it would be appropriate, and the applicant has made efforts should a development agreement be reached between the parties.

Commissioner Amorosi stated that he liked the modern southwestern design of the building and he appreciates that they broke up the mass and put in courtyards. He stated that the commercial aspect seems to be more of an afterthought as it relates to the residential part. He is more concerned however that this become active retail space.

Motion: Motion made by Commissioner Bauer to approve PL200251 and seconded by Commissioner Sumners.

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

Nays: None

Abstain: None

Absent: Chair Lyon

Vote: Motion passes 7-0

Staff Announcements:

Ms. Suparna Dasgupta, Principal Planner, gave the Commission an overview of the items that will be on the February 9, 2021 DRC agenda.

There being no further business the meeting adjourned at 7:25 p.m.

Prepared by: Joanna Barry, Administrative Assistant

Reviewed by: Suparna Dasgupta, Principal Planner

