

Board of Adjustment Minutes



**City Council Chambers, Upper Level
September 12, 2006**

Board members Present:

Dina Higgins, Chair
Mike Clement, Vice Chair
Craig Boswell
Garrett McCray
Dianne von Borstel
Roxanne Pierson

Board members Absent:

Randy Carter (excused)

Staff Present:

Gordon Sheffield
Jeff McVay
Lena Butterfield

Others Present:

Allen Darrall
Ronald Gilmore
Trevor Hishberg
Toni Angel
Mark Partridge
David Udall
Marney Frye
Shelby Futch
Richard Alvarez
Kelly Walton
Ray Starkweather

The study session began at 4:30 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 9:15 p.m., the following items were considered and recorded on Board of Adjustment Tapes #351, 352, and 353

Study Session 4:30 p.m.

- A. The study session began at 4:30 p.m. The items scheduled for the Board's Public Hearing were discussed.

Public Hearing 5:30 p.m.

- A. Consider Minutes from the August 8 , 2006 Meeting A motion was made to approve the minutes by Boardmember VonBorstel and seconded by Boardmember McCray. Vote: Passed 6-0
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember Clement and seconded by Boardmember Boswell. Vote: Passed 6-0

**Board of Adjustment Meeting
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Case No.: BA06-033

Location: 2332 East Alpine Avenue

Subject: Requesting a variance to allow a detached accessory building to exceed the maximum height permitted in the R1-6 zoning district.

Decision: Withdrawn

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Clement, seconded by Boardmember Boswell to withdraw this case.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
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Case No.: BA06-040

Location: 2261 East Fairbrook Street

Subject: Requesting an interpretation of the legal lot frontage in the R1-9 zoning district.

Decision: Approved as submitted

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Clement, seconded by Boardmember Boswell to approve this case as submitted

Vote: Passed 6-0

Finding of Fact:

- 1.1 The subject parcel was developed as a corner lot with frontage on Fairbrook Street e/w and Fairbrook Street n/s. The Zoning Code defines the front line of a corner lot as the shorter of the two adjacent lines to the street, which is Fairbrook Street n/s.
- 1.2 The parcel has been developed with the front of the home oriented towards Fairbrook Street e/w, generally meets the setback requirements of an R1-9 lot oriented towards Fairbrook Street e/w, the interpretation would allow construction of the proposed garage without the need for a variance, and would eliminate the eliminate the key lots.

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**Board of Adjustment Meeting
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Case No.: BA06-041

Location: 1647 East Ivyglen Street

Subject: Requesting a variance to allow a detached accessory building to exceed the maximum height permitted in the R1-43 zoning district.

Decision: Denied

Summary: Mr. Gilmore explained that he would like to build the garage in its proposed location in order to work on his classic car collection. He acknowledged that he could place it on the lot in a location that would not require a variance. He went on to explain that if he were to meet Code he would lose usable area in his rear yard. Additionally, he would have to remove two mature trees in his rear yard. He then described similar detached buildings on other properties in the neighborhood.
In response to questions from Ms. Higgins and Mr. McCray, Mr. McVay replied that he is unaware when the buildings were constructed and added that to staff's knowledge the buildings were constructed legally.
Mr. Clement inquired if the applicant would be willing to work with staff on a solution that would not require a variance.
Mr. Gilmore responded that he would like an answer regarding the variance that night, stating that he would not be open to a continuance.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember McCray to deny this case.

Vote: Passed 6-0

Finding of Fact:

- 1.1 The proposed detached garage would be located in the required rear yard. Current Code would allow a detached garage in the proposed location with a maximum height of 15 feet as measured to the mean height between the plate line and the ridge of the roof. The proposed garage would have a height of 17' 9".
- 1.2 The subject parcel is approximately 34,000 square feet in area and zoned R1-43, which requires a minimum lot area of 43,560 square feet. The parcel was created as part of Cottonwood Heights Unit Two subdivision. All the lots within Cottonwood Heights Unit Two are of similar size and orientation.
- 1.3 The zoning for the property is the result of an annexation by the City of Mesa after the subdivision was approved by Maricopa County. The City is required by State Law to establish a zoning district similar to that which had been in place while the site was under County jurisdiction.

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- 1.4** There is an existing eight-foot wide public utility easement adjacent to the rear property line of the subject property. As shown on the plat for Cottonwood Heights Unit Two subdivision an eight-foot wide public utility easement exists adjacent to the rear property line of all the lots within the subdivision. Consequently, the public utility easement does not constitute an unusual condition, unique to the applicants parcel.
- 1.5** The applicant has noted Case ZA94-129 as a comparable variance request for an adjacent property that was approved. Requests for variances are reviewed on a case-by-case basis and case ZA94-129 approved a variance that allowed the construction of a 310 s.f. two-story building with a height of 12 feet and a 20-foot encroachment into the rear setback. The height of the building is consistent with Code requirements and the variance was granted to allow the partial second floor. In comparison, the applicant is requesting a 1,952 s.f. building single-story building with a height of 17' 9" and a 15-foot encroachment into the rear setback.
- 1.6** The applicant has options available that would allow construction of a detached garage of similar size and height on the parcel that would not require a variance. Such options include construction of the garage within the buildable lot area, the use of a roof with a shallower pitch, and/or a decrease in the space between the plate line and the garage door openings that would allow a lower overall height. The site plan provided indicates the proposed garage can be accommodated without the need for a variance.

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**Board of Adjustment Meeting
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Case No.: BA06-042

Location: 7163 E Superstition Springs Boulevard

Subject: Requesting a Special Use Permit for a Comprehensive Sign Plan in the R1-6-PAD zoning district.

Decision: Continued to October 10, 2006

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Clement, seconded by Boardmember Boswell to continue this case until October 10, 2006.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
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Case No.: BA06-043

Location: 735 East Lehi Road

Subject: Requesting a variance to allow a fence to exceed the maximum height permitted in the R1-43 zoning district.

Decision: Approved as submitted

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember Clement, seconded by Boardmember Boswell to approve this case as submitted.

Vote: Passed 6-0

Finding of Fact:

- 1.1 The subject parcel is located in the Lehi sub-area. City of Mesa planning staff, working with the Lehi Community Improvement Association, prepared a Lehi sub-area plan that was adopted by City Council in January 2006.
- 1.2 To preserve a rural/agricultural identity, the Lehi sub-area plan promotes the keeping of livestock, including pasturing livestock in front setbacks. For this reason, the plan also promotes pasture view type fences within the front setback with a maximum height of five feet. The additional fence height provides secure pasturing of livestock. The applicant utilizes the front setback for pasturing horses and constructed a view type fence with a height of 4' 2" for the secure pasturing of horses.

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**Board of Adjustment Meeting
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Case No.: BA06-044

Location: 540 East 8th Street

Subject: Requesting a variance to allow a room addition to encroach into the side yard in the R1-9 zoning district.

Decision: Continued to October 10, 2006

Summary: Mr. Starkweather explained that the proposed location is the only location that will work for the addition. If he were to build the addition anywhere else the cost would be increased and it would compromise the structure of the home. He then described other properties that are in violation of the Code. Mr. McVay explained that in order to approve a variance the Board must find review variance request based on the four criteria outlined in State law. Based on State law, variance requests are reviewed on a case-by-case basis and cost cannot be a factor. Additionally, a variance must be heard on a case-by-case basis. Mr. Sheffield recommended a continuance so that staff can work with the applicant on a compromise, which could include the provision of a minimum six-foot side yard with administrative approval of a one-foot encroachment. Mr. Starkweather agreed to a continuance.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Pierson to continue this case until October 10, 2006.

Vote: Passed 6-0

Finding of Fact: N/A

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**Board of Adjustment Meeting
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Case No.: BA06-045

Location: 312 East Ingelwood Street

Subject: Requesting a variance to allow a shade structure to encroach into the side yard in the R1-6 zoning district.

Decision: Denied

Summary: Mr. Partridge explained that he needs the shade structure for a period of three years in order to establish landscaping along the side of his home. He went on to describe a problem with wind that is blowing over plants that are not established.
Mr. McVay explained that when established, the trees would provide the shade that is needed for the side of the house. However, strict application of Code would not allow the shade structure, even temporarily.
In response to questions for the Board, Mr. McVay explained that Code Compliance would be charged with enforcing a temporary variance if granted by the Board. Mr. McVay further informed the Board that granting of a variance would not waive the requirements of the Building Code, which requires fire-rated construction for structures within three-feet of the property line.
Ms. Higgins expressed concern with setting a precedent by approving a temporary variance in this case.
Mr. Clement and Mr. Boswell agreed that the wind pattern along the street is a special circumstance therefore a variance is justified.

Motion: Boardmember Clement made a motion to approve a variance that would expire in three years or the property is sold subject to Building Safety requirements seconded by Boardmember Pierson.

Vote: Technical Denial 3-3 (Voting Nay: Higgins, McCray, and von Borstel)
Note: A motion in favor of a request must pass with a minimum of four votes, based on the requirements of the Mesa Zoning Ordinance, Section 11-18-5(C)3.

Finding of Fact:

- 1.1 The proposed attached shade structure would result in a zero lot line setback. By Code, attached structures must be located within the buildable lot area. The applicant has proposed the shade structure as a means to protect plants from the effects of sun and weather, and to provide shade to the interior of the home. The applicant has proposed the Board allow the shade structure for a period of three years to allow the establishment of plants.
- 1.2 The justification provided by the applicant does not constitute a unique condition related to the land and provision of a variance would grant a special privilege not available to other residential properties within the City. The applicant has options to provide shade for sun sensitive plants and the interior of the home that do not require a variance.

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- 1.3** The construction of an attached structure with a zero lot line setback requires the provision of a firewall, based on the Building Code. This type of construction would not be compatible with the architecture of the home, would result in additional impact to the neighbor to the west, and would be permanent in nature.

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**Board of Adjustment Meeting
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Case No.: BA06-046

Location: 2050 South Roslyn Place

Subject: Requesting a Special Use Permit for a Comprehensive Sign Plan in the C-2 zoning district.

Decision: Approval, with conditions`

Summary: Mr David K. Udall, Attorney, represented this request to attach approximately 3,000 sqft of electronic and standard sign panels to what is now being called "Power Square", and had been known as VF factory Outlet or Factory Stores of America. Mr., Udall indicated that retail center had been based on the idea of factory outlet stores, and was not performing well commercially. As a plan to provide more excitement to the project, his client was intending on spending a considerable sum to remodel the exterior and interior of the buildings, including the placement of four large shade canopies consisting of one each on the southwest and northeast sides and two on the southeast side of the main building. These shade canopies have been reviewed by the Design Review Board and approved.

The proposed plan called for four large electronic message panels of 354 sqft, each, four static message signs of 176 sqft each, and four 12" high linear electronic message signs with an aggregate sign area of 844 sqft. The total aggregate sign area of all 12 attached signs is 2,966 sqft.

New detached signs are also proposed to replace the existing detached signs, one each adjacent to Baseline Rd and to Power Rd.

The Board heard testimony from Mr. Udall and several others that stated that the signs were needed in order for this center to be able to attract national tenants again, that the construction of new signs and the new parking canopy were needed to show that there was still an active retail core at this location. Steve Resnick, Dale Stark, John Phille, Vince DiBella, and Kelly Walton all spoke to the need of the signs, and the market studies that indicated the site would slowly continue to lose interest to retailers and consumers unless something "exciting" happened on the site.

Discussion between the Board and the applicant centered on the types of signs being requested, and the frequency that the applicant intended to change the electronic message. Mr. Udall and others indicted it was the intent to change messages as specified in the Mesa Sign Ordinance, which would permit message changes once an hour unless the Board of Adjustment approved a Special Use Permit for more frequent changes.

Discussion also centered on the need for the length of the one foot high message panels on the east side of the site, with several members of the Board commenting that the significant portions of the eastward facing "B" sign (sign B) would not attract drivers from Baseline Road, and should be shortened. Several on the Board did agree that the larger LED panels (the "C" signs as designated in the sign plan) did seem necessary.

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The Board also commented on the need to supplement the design of the shade canopy by using a metal fascia or some other architectural device to extend the remaining length of the lower cross beam of the canopy that would not have a electronic message panel attached to it.

Motion: It was moved by Boardmember Boswell, seconded by Boardmember Von Borstel to approve case BA06-046, conditioned upon the following:

Vote: Passed 6-0

1. *Compliance with the Comprehensive Sign Plan as submitted, except as modified by the conditions listed below.*
2. *Sign B2 (LED strip along bottom of the superstructure of the parking canopies) shall have a maximum length of 130 feet (130').*
3. *Sign B3 (LED strip along bottom of the superstructure of the parking canopies) shall have a maximum length of 150 feet (150').*
4. *A metal panel shall fill any reduction in the length of the LED panel for Signs B1, B2, B3, and B4. the color of the panel shall be reviewed and approved by the Planning Director, in consultation with Design review staff.*
5. *The messages displayed on Signs B1, B2, B3, B4, C1, C2, C3, and C4 shall remain static for a minimum period of one hour.*
6. *Issuance of sign permits for Series "B" attached signs (LED message strips) shall specify and require that all attached signs that provide tenant identification not attached to the same individual tenant space shall be removed.*
7. *Issuance on sign permits for Series "A" attached signs (Power Square) shall specify and require that all attached signs for "Factory Outlets of America" or other general identification of the outlet mall shall be removed.*
8. *The number of attached tenant identification signs for individual major tenants, as defined by this comprehensive sign plan, shall be limited to two.*
9. *Tenant identification signs attached to the outlet mall building for mini-majors and shops shall only be allowed in the event the tenant space is directly accessible by customers and the general public from outside, without having to pass through intervening hallways or other tenant spaces. Such signs shall be reviewed and considered on a case-by-case basis by the Zoning Administrator, and may be approved without the need for additional public hearings.*
10. *Compliance with the requirements of the Building Safety Division in the issuance of sign permits.*

Finding of Fact:

- 1.1 The proposed revisions to the Comprehensive Sign Plan (CSP) are for the 208,702 square foot factory outlet mall now known as Power Square and associated pad sites. The revisions are one part of a plan improve the commercial viability of the outlet mall. The primary portion of this remodeling effort is the construction of four, triangle shape parking lot shade canopies, which are intended to add interest to the site and improve visibility of the outlet center from Baseline and Power

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Roads. The parking lot shade canopies have been reviewed and approved by the Design Review Board.

- 1.2** The applicant has proposed four detached signs along Baseline Road and three detached signs along Power Road. The resulting aggregate sign height and sign area are less than what could be allowed by current Code. Two existing multi-tenant signs, one on both Baseline and Power Roads, will be replaced with new multi-tenant signs that use a design consistent with the new parking lot shade canopies.
- 1.3** The Board approved up to 2,666 square feet of new attached signage, based. All of this signage would be attached to the superstructure of the parking lot canopies. Four attached signs of 176 square feet each are proposed at the ends of the parking lot canopies to provide center identification. Existing attached signs used for identification of the outlet mall should be removed, as that identification will be accomplished through the new signage.
- 1.4** Four, 12- inch wide LED message strips of varying lengths are proposed to be attached to the base of the parking canopy superstructure. Based on the useful visibility and the amount of text that can be safely read traveling 45 MPH, signs B2 and B3 should be reduced in length to 130 and 150 feet, respectively. A red metal panel shall fill the reduction in the length of the LED panel for Signs B2 and B3, based on the Design Review Board approval.
- 1.5** Attached signage may be approved on a case-by-case basis through an administrative review by the Zoning Administrator for individual tenants that have independent public entrances.
- 1.6** Shopping centers in which primary access to many of the center's stores comes from a common interior hall or corridor are a unique condition that warrants some deviation from Code requirements. The outlet mall is an approximately 210,000 square foot building located at the intersection of two major arterial streets that is easy to pass without notice. The majority of the signage will be attached to new architectural features that will add interest to the building.

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**Board of Adjustment Meeting
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Case No.: BA06-047

Location: 2725 East McKellips Road

Subject: Requesting a Special Use Permit for a Comprehensive Sign Plan in the C-2 zoning district .

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis

Motion: It was moved by Boardmember McCray, seconded by Boardmember Pierson to approve this case with the following conditions.

1. *Compliance with the Comprehensive Sign Plan as submitted, except as modified by the conditions listed below.*
2. *The number of attached signs for the Wal-Mart Neighborhood Market shall be limited to four (4), identified as sign numbers 1, 2, 3, and 7 on the sign chart found on the building elevation exhibit of the Comprehensive Sign Plan, not counting modifier signs.*
3. *Attached sign for the Wal-Mart Neighborhood Marker, identified as Sign 4 (read "DriveThru →") on the sign chart found on the building elevation exhibit of the Comprehensive Sign Plan shall not be allowed.*
4. *Compliance with the requirements of the Building Safety Division in the issuance of sign permits.*

Vote: Passed 6-0

Finding of Fact:

- 1.1** The applicant has proposed detached signage along McKellips Road with an aggregate height slightly greater than could be allowed by the current Sign Ordinance and detached signage along Lindsay Road with aggregate area and height significantly less than could be allowed by the current Sign Ordinance.
- 1.2** The applicant has proposed attached signage for future group commercial developments on Lots 2A, 2B, 3, 4, and Future Lease Lot that complies with current Sign Ordinance maximums.
- 1.3** The applicant has proposed increases in the number and aggregate sign area of attached signs for the Wal-Mart Neighborhood Market. As such, the Board is required to make a finding that unique conditions, design or site are present with this request.

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- 1.4** The approved Wal-Mart Neighborhood Market is approximately 42,000 square feet. An increase in the number of attached signs is justified by the need to identify the different areas of the business. The relatively minor increase in number and aggregate attached sign area is offset by detached signs adjacent to Lindsay and McKellips Roads that are either significantly under or generally consistent with current Code maximums.
- 1.5** Attached Sign 4 is intended to provide on-site directions for the pharmacy drive-thru window. The “wayfinding” intended by Sign 4 may also be accomplished through one or more ground-mounted directional signs placed in any one of several various places in the parking lot.

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**Board of Adjustment Meeting
September 12, 2006**

Case No.: BA06-048

Location: 6210 East McKellips Road

Subject: Requesting a Special Use Permit for an electronic message display that remains static for less than one hour in the C-2 zoning district.

Decision: Boardmember Pierson declared a conflict of interest, and refrained from participation in the discussion and vote on this request. Approved with conditions

Summary: Jerry Wilson and Shelby Futch of the Painted Mountain Golf Resort represented this request to allow the message change frequency of an electronic message panel to occur more than once an hour. The applicants had initially indicated they would like to change the messages as quickly as once every three to five seconds, but amended their request on the floor to state that they would accept once every 15 seconds, as recommended by staff.

Both men indicated that the electronic message panel was needed to help raise awareness of their restaurant and help it compete with national chain restaurants in the area. By allowing frequent message changes, they would be able to use larger fonts, and make the sign more legible from a greater distance, and still communicate with longer messages.

They also stated that the sign would not "flash", and it would comply with the transition requirements specified in the Mesa Sign Ordinance. Mr. Wilson emphasized that there was no agreement between the golf resort and the neighboring subdivision being built regarding the design of this sign, and that the sign was some 200' away from the rear property line of the nearest lot.

Bob Terrell, representing the owners of Tuscany Village, objected to the proposed rapid change of the messages, indicating a concern that flashing messages would have a damaging effect on the nearby residential lots. He posited that the shining of such a sign would be considered obtrusive into the living areas of these forthcoming residential properties. He believed the ordinance standard of one message change an hour would not be considered too fast.

Boardmember Clement believed that one message every 15 seconds, similar to past decisions of the Board, was not too fast or too frequent.

Motion: It was moved by Boardmember McCray and seconded by Boardmember Von Borstel, that case BA06-048 be approved, conditioned upon the following:

1. *Message changes shall occur no more than once every fifteen (15) seconds, with transitions between messages complying with the requirements of Sec 11-19-8(D)17(a).*
2. *A review and report of any effects of the frequency of the message changes upon the neighboring residential subdivision to the west shall be made to the Board 180 days from the date of this hearing.*

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Vote: Passed 4-1-1 (Chair Higgins voting nay, Boardmember Pierson abstaining)

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Finding of Fact:

- 1.1 This request involves the use of an electronic display panel on a conforming detached sign. The applicant would like to display a single message every two to three seconds. The intent is to use several successive messages to communicate a longer text.
- 1.2 The decision is based on the speed limit of the adjacent street, compatibility with other signs in the vicinity, and the presence of other distracting influences in the area. The speed limit on McKellips Road is 45 mile per hour (approximately 66 feet per second).
- 1.3 The potential for distracting motorists is high if a sign changes as frequently as 5 to 8 times over a quarter-mile viewing path. At 45 mph, the sign would be visible for about 20 seconds. Messages on a local road appearing that frequently would have the potential of causing a distraction to a passing driver. Allowing the messages to change once every 15 seconds would mean one, maybe two messages would be seen over that 20 second/quarter-mile long viewing period.
- 1.4 The electronic message panel should not, as a predominant feature, give an appearance of motion or movement. Keeping a message static for 15 seconds, in which a message would appear once, maybe twice, over a quarter-mile viewing path, would avoid the distraction that a sign appearing to have moving messages would have to passing drivers.
- 1.5 Road construction in the immediate vicinity of the case site will generally be of a short duration, if there is any construction. It is also important to remove as many potential driver distractions from construction zones as possible.
- 1.6 The six-month review period would allow the effects of the more frequent message changes to be reviewed and a determination made as to any detrimental impacts.

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**Board of Adjustment Meeting
September 12, 2006**

Case No.: BA06-049

Location: 2244 West Ella Street

Subject: Requesting a Development Incentive Permit (DIP) to allow the development of a Condominium development in the R-4 zoning district.

Decision: Approved with conditions

Summary: This case was on the consent agenda and not discussed on an individual basis

Motion: It was moved by Boardmember Clement, seconded by Boardmember Boswell to approve this case with the following conditions.

1. *Compliance with the site plan and landscape plan as submitted, except as modified by the conditions listed below.*
2. *Compliance with current Zoning Code requirements unless modified by the conditions listed below.*
3. *Provision of a pedestrian path from Buildings 2, 5, and 7 to the courtyard that utilizes stamped concrete, brick pavers, or other material approved by the Design Review Board.*
4. *Compliance with the Residential Development Guidelines, which shall require that building elevations be submitted for administrative review and approval by the Planning Director.*
5. *Compliance with all requirements of the Building Safety Division with regard to the issuance of a building permit.*

Vote: Passed 7-0

Finding of Fact:

- 1.1 The applicant is proposing seven two-story buildings consisting of 34 dwelling units. The R-4 zoning district permits a maximum density of 25 dwelling units per acre. The applicants have proposed a density of 10.88 dwelling units per acre that is significantly less than what would be allowed by code.
- 1.2 The 2.96 parcel was created assembling several smaller parcels. Given the size and shape of the parcel, as well as the developments proposed, the requested deviations from current Code requirements are reasonable.
- 1.3 The proposed landscaping on the north and west property lines exceeds the minimum required additional vines, accents and ground cover on the south and east property lines where the number of shrubs is slightly below Code minimums.

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- 1.4 A condominium development is consistent with the Mixed Use Residential designation on the General Plan and will be compatible with and not detrimental to the surrounding neighborhood. The surrounding neighborhood has been neglected and would benefit from reinvestment and redevelopment.

- 1.5 The proposed site plan, including staff recommended stipulations, will bring this site into a degree of conformance with current Code that is comparable to, or exceeds similar multiple residence developments in the vicinity of this site.

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Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Lena Butterfield, Planning Assistant

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