

## MINUTES OF THE DEVELOPMENT REVIEW COMMISSION APRIL 10, 2012

Harry E. Mitchell Government Center  
Tempe City Hall - City Council Chambers  
31 E. 5<sup>th</sup> Street, Tempe, AZ 85281  
6:00 PM (5:30 Study Session)

### Commission Present

Mike DiDomenico, Chair  
Dennis Webb, Vice Chair  
Peggy Tinsley  
Tom Oteri  
Kolby Granville  
Jim Delton  
Dave Maza

### Commission Absent:

Paul Kent  
Monica Attridge  
Nick Miner

### City Staff Present:

Lisa Collins, Interim Community Development Director  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Kevin O'Melia, Senior Planner  
Lisa, Novia, Administrative Asst. II

Chair DiDomenico called the meeting to order at 6:05 p.m., which included the introduction of the Commission and City staff. It had been determined at Study Session that Item Nos. 2 and 5 could be placed on the Consent Agenda and Item Nos. 3 and 4 would be heard.

### 1. **CONSIDERATION OF MEETING MINUTES: 3/27/12**

Approval of the minutes was postponed to the next meeting, April 24, 2012.

On a motion by Commissioner Tinsley and seconded by Commissioner Granville, the Commission with a vote of 7-0 approved the Consent Agenda, continued Gracie's Village to April 24, 2012 and approved Arizona Bank & Trust with modified Conditions of Approval read into the record and shown below:

2. Request for **GRACIE'S VILLAGE (PL110282)** (Jeff Brosman, Grace Community Church of the Valley, property owner; Francis J. Slavin, Esq., Law Offices of Francis J. Slavin, PC, applicant) consisting of a four (4) story mixed-use commercial and residential development including +/-13,180 sf. Gracie's Thrift store and sixty-five (65) dwelling units, +/-92,166 sf. overall on +/-1.99 net acres, located at 1520 East Apache Boulevard in the CSS (TOD) Commercial Shopping and Service District and Transportation Overlay District (Corridor). The request includes the following:

**GEP12001 – (Resolution No. 2012.32)** General Plan Projected Density Map Amendment from Medium-to-High Density to High Density.

**ZON12001 – (Ordinance No. 2012.16)** Zoning Map Amendment from CCS, Commercial Shopping and Service District to MU-4, Mixed-Use, High Density District.

**PAD12001 – (Ordinance No. 2012.16)** Planned Area Development Overlay to establish development standards for density, building height, building setbacks, building lot coverage, landscape lot coverage and vehicle parking quantity.

**DPR12004 –** Development Plan Review including site plan, building elevations, and landscape plan.

5. Request for **ARIZONA BANK & TRUST (PL120045)** (Nelson Klavitter, Heartland Financial USA, Inc., property owner; Chris Wilson, Metro/Land Consultants LLC, applicant) consisting of a one-story, +/-4,321 sf. bank with drive through teller and ATM service on +/- 0.632 net acres, located at 980 East Baseline Road in the PCC-2 (PAD), Planned Commercial Center General District with a Planned Area Development Overlay. The request includes the following:

**DPR12025 –** Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCr AZ Bank LCV 041012.pdf](#)

6. Security fence:
  - a. Provide a 3'-6" high steel vertical picket fence along centerline of ATM canopy columns to limit access around ATM. Coordinate fence location with ATM access panels.
  - b. Provide 3'-6" high steel vertical picket fence adjacent to parking row and parallel with north building elevation. Extend fence from concrete walkway northwest of building to parking island at east end of parking row.
12. Provide minimum 10.0 and maximum 40.0 foot-candles under drive through canopy. Provide minimum ~~2.0~~ 1.0 and maximum 10.0 foot-candles at colonnade on south and west elevations.

---

### **REGULAR AGENDA**

3. Appeal of the January 03, 2012 Hearing Officer's Decision to approve the request by **RIO SALADO CENTER – P J PROPERTIES (PL110435)** (Arnaldo Matos/P J Properties, applicant/property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for the following:

**UPA12005–** Use Permit appeal (ZUP11116) to allow a reception center with live entertainment.

STAFF REPORT: [DRCr PJProp 041012.pdf](#)

This case was presented by Sherri Lesser and represented by Lane Carraway, applicant.

Mr. Carraway stated his reason for appealing this case was based on the past history and problems with this location and the previous owners. He doesn't feel this is an appropriate use for the area and is concerned that the security plan will not be enforced.

Chair DiDomenico opened the hearing to public input.

Darlene Justus, North Tempe Neighborhood Association, addressed the Commission. Ms. Justus stated their biggest concern is that the owner of the property is the same owner as when it was Pulse Nightclub and it was leased to someone who ran the nightclub. She also indicated that in a meeting with Patti DeSylvesterie, it had been mentioned that ticket sales would not be allowed and the hall was to be by invitation only, but at the first public meeting on February 14<sup>th</sup> with the Development Review Commission, Ms. DeSylvesterie would not make that statement. Ms. Justus also stated that it is important the security plan address teen events. She stated that there is nothing to address teen events and no safeguards in place should those events occur and has concerns regarding professional security and licensed professional bartenders not being used for events.

Chair DiDomenico questioned Ms. Justus in regards to the use of the word "chaperone" in the suggested conditions of approval that the neighborhood association had brought forth and the condition of no offsite valet parking.

Ms. Justus explained that their definition of a chaperone would be an adult, such as a parent or other person of authority and in the past, valet companies have parked cars in the neighborhood.

Chair DiDomenico asked Ms. Justus if she would have issue with an adjacent property owner giving permission for them to offer their property for valet parking, as long as the neighborhood was affected.

Ms. Justus indicated her issue was only with the neighborhood being affected.

Commissioner Tinsley asked if these conditions had been brought to the owner of the property.

Ms. Justus indicated that she had met with City staff a few weeks prior to this hearing.

Paul Dunham addressed the Commission. He stated his concern in regards to City staff not meeting with the appellants of the case and with the suggested conditions of approval brought forth by Ms. Justus.

Chair DiDomenico assured Mr. Dunham that those conditions are viewed as any other material would be from a concerned or interested party.

Commissioner Maza asked Mr. Dunham if he was interested in coming to an agreement with the property owner or if he was looking for a complete denial of their application.

Mr. Dunham stated he is opposed to this venue due to the lack of trust between the homeowners and the property owner and PJ representatives. He indicated their issues were centered around applicants that had shown no interest in the concerns of the residents, traffic, parking and noise.

Chair DiDomenico read a card from Doris June Krugen into the record. Ms. Krugen is in support of the appeal.

Stan Schuck indicated that he would like to hear from the property owner and PJ Properties representative prior to addressing the Commission.

Patty DeSylvester, PJ Properties representative, spoke to address concerns brought forth by the residents. She indicated that the current owner purchased the property six years earlier and has had only one tenant in this suite, Pulse Nightclub. She indicated that there are several uses allowed in a PCC-1 district and this type of use is allowed in this district and that the reason they are seeking the Use Permit is so the property can be under the entertainment definition and a DJ would be permitted.

Chair DiDomenico questioned Ms. DeSylvester as to why if the intention was to do wedding receptions and those types of events, why did they not come forward with a list of conditions that would restrict the types of events and issues that bring forth concerns from the neighbors.

Ms. DeSylvester indicated that they could not do a teen nightclub even if they wanted to and they are happy to limit it to uses such as receptions, sweet 16 parties, bar mitzvahs, etc. She indicated that they want to be good neighbors and that Mr. Mata purchased the shopping center six years ago and did \$400,000 worth of renovations to improve the property. She addressed the issue of parking and referred to a diagram of the center and showed the parking available to their customers. They are required to have 48 parking spaces and have 89 available.

She stated they would have uniformed, unarmed security present to patrol the parking lot and one inside per every 100 people and would prefer to go with a contracted service that provides security and not off-duty police officers, as was previously suggested. Security people will also remain onsite until all of the guests have left the property. She also indicated that although occupancy would allow for over 600 people, they will limit their events to 300 people.

Ms. DeSylvester stated that the sound level would be kept to 85 decibels and they will have a device near the stage to monitor sound levels. She also referenced an improved lighting plan to assist with security and safety.

Ms. DeSylvester addressed the concerns in regards to liquor. She stated that they will contract with a company that will be hired by the party that rents the facility and that company holds the liquor license and they handle everything as it relates to the bartending, etc.

Ms. DeSylvester stated that she believed they have met all of the approval criteria for this Use Permit.

Commissioner Tinsley asked if it is a possibility to place double doors inside to keep noise inside.

Ms. DeSylvester stated that it is a possibility but doesn't feel at 85 decibels that it is necessary.

Commissioner Tinsley questioned how the security staff is expected to handle an issue.

Ms. DeSylvester indicated they are to call her and then the police.

Commissioner Tinsley asked what would happen should someone rent the hall and not hire the pour service, yet alcohol is being served. She also asked if the LLC would take responsibility for any damages to the neighborhood by people who rent out the facilities.

Ms. DeSylvester stated that she is to be called and she will have to escort the party off the premises, it will not be allowed. She also indicated that the LLC has insurance for damage incurred by people leasing the space.

Commissioner Granville clarified that events would be held for private parties only and what liquor license would be used. He also asked for clarification on the security to be used.

Ms. DeSylvester stated that they would agree to that stipulation of private parties only and a company, such as Pour Masters, has a Series 6 license. She also stated that security would be used by a private company, bonded, licensed and insured. They would not be off-duty police officers.

Commissioner Granville asked how issues will be dealt with should someone who rented the facility fail to comply with the rules and who will be held responsible.

Ms. Collins indicated that Condition No. 6 that refers to the revocation process. If there are issues, the Use Permit can be re-evaluated and put back through the hearing process.

Commissioner Maza questioned if the Use Permit is a blanket permit or is there another event permit needed for the use of a DJ. He also asked if there is any provision the Commission can place in the Conditions of Approval that would allow for a timely review should any of the Conditions of Approval or the security plan not be upheld.

Ms. Collins indicated that this is a Use Permit for live entertainment that runs with the land and there is a time frame of one year placed on this Use Permit. The applicant will need to return at that time and go through the process to determine if they are eligible for renewal. She also indicated that should any infraction occur that the Police Department presented to staff that was a safety issue, that would be something that could be discussed. When staff reviews a Use Permit for possible revocation, the applicant must be in violation of a Condition of Approval.

Commissioner Oteri questioned the parking ratio provided by the applicant.

Ms. Collins indicated that there is the parking requirement based on square footage and then there's the occupancy based on the Building Code. The Commission can cap the number of people permitted at events through the Use Permit process.

Stan Schuck, resident, addressed the Commission with concerns in regards to traffic through the neighborhood after events end late in the evening and would like to see local traffic only between 10:00 p.m. and 4:00 a.m. signs placed at the entrance to the neighborhood which may alleviate some of the traffic from driving through the neighborhood rather than using Scottsdale Road. He questioned the availability of a security plan. He also felt the issue of sound had been addressed by the applicant. He asked about the recourse residents have if these issues and Conditions of Approval brought before the Commission are violated. Mr. Schuck stated he hoped that the owner will protect the investment and keep his word and be a good neighbor.

Commissioner Granville asked Mr. Schuck what the Commission could do to address security to make him comfortable.

Mr. Schuck stated that if the events are wedding receptions and other gatherings that the applicant has indicated will be held there, then private security should suffice.

Chair DiDomenico stated that staff had received a security plan earlier that day, which had been reviewed and approved by the Tempe Police Department.

Commissioner Oteri questioned Mr. Schuck regarding his impression or experience with the teen club, Pulse.

Mr. Schuck indicated he had no issue with Pulse.

Commissioner Tinsley questioned staff as to the possibility of sign as Mr. Schuck had requested.

Ms. Collins stated that she would work with the City's Traffic Engineering Division and to whatever she can to assist in making that happen.

Commissioner Delton asked if there is any issue that would keep the operators of the site from placing cones precluding people from using that exit closest to the neighborhood when leaving events.

Ms. Collins stated that she doesn't believe there is a prohibition from doing something like that but would like to make sure that Police and Fire do not have any issues.

Darlene Justus returned to address applicant comments. She indicated that she is in support of the appeal and had contacted Lisa Collins as an individual and worked on the suggested Conditions of Approval as a backup plan should the appeal not be approved.

Chair DiDomenico closed the hearing to public input and called the applicant to return to the podium.

Lane Carraway returned to respond to comments brought forth by the Use Permit applicant, PJ Properties. Mr. Carraway disagreed that Pulse Nightclub was open only 8 nights. He disagreed with the parking and didn't feel there is adequate parking and that noise from music over 85 decibels will not be enforced. He voiced concern in regards to alcohol consumption, hours of operation, traffic and who is to be contacted when there is an issue onsite and who will enforce the security plan.

There was discussion between Mr. Carraway and the Commission as to when the security plan was received and the processing time frame.

Commissioner Oteri recalled a past club that had noise complaints and he stated that Code Enforcement did go out and take noise meter readings and reported their findings to the Commission.

Mr. Carraway asked when the security plan is required to be submitted.

Ms. Collins indicated that Sherri Lesser is the project coordinator and she is the one who has been in contact with the applicant, appellant and the Police Department. She stated that the security plan is a Condition of Approval and if the Use Permit is granted, the applicant works with the Police Department to implement the security plan. She also indicated that often times security plans are not completed until after the hearing as many times Conditions of Approval are placed within the security plan.

Chair DiDomenico explained the Use Permit process and how the security plan is developed with the assistance of the Police Department. He also questioned staff if the security plan was being held in Community Development awaiting the decision by the Commission.

Ms. Lesser indicated that it was not being held in Community Development and that it had been received from the applicant just prior to this hearing. She also indicated that Officer Fleming had stated that the security plan is still in process as they could incorporate items or Conditions of Approval into the security plan from this evening's hearing, should the appeal be denied.

Chair DiDomenico instructed the Commission that a vote in favor of the appeal would overturn the Hearing Officer's decision and the Use Permit would be denied. If the Commission voted against the appeal, the Hearing Officer's decision would then be upheld and the Use Permit granted.

Ms. Collins stated that the appeal of either decision this evening would go before the City Council and that any party can appeal within 14 days.

Ms. Collins indicated that one of the appellants would like to address the Commission.

Mr. Dunham readdressed the Commission with the concern that private party has no definition and does not only include weddings and bar mitzvahs. He also indicated that Mr. Schuck was most likely not bothered by the Pulse Nightclub as his house is situated a little further down the block and his evening routine of sleeping earlier and rising earlier caused him to miss most of the disturbances. He also stated concerns regarding parking and issues as it relates to responsibility for damages, etc. from customers leasing the property.

Commissioner Tinsley questioned if Conditions of Approval can be added.

Chair DiDomenico stated yes.

Vice Chair Webb stated that he felt the reception hall should be allowed to open for business and that the neighbors are entitled to peace and quiet and that maybe this should go back to staff and with the Police Department's assistance, create a list of stipulations that they think will work and bring it back to the Commission.

Commissioner Granville agreed with Commissioner Webb and would like to see the Conditions of Approval and security plan be put together by staff and brought back.

Commissioner Delton stated he felt it's on the property owner to make good on the promises that have been made to the neighbors and he agreed with the previous idea that Conditions of Approval and the security plan be structured at the staff level and brought back before the Commission.

Commissioner Tinsley specifically would like to see structured into the Conditions the 85 decibel sound limit, no more than 300 people, security, licensed pouring services and a designated person from management who will be onsite until all guests have left.

Chair DiDomenico indicated that eight weeks ago this Commission gave specific information to PJ Properties in order to alleviate the concerns brought forth by the neighborhood and hopefully uphold the Hearing Officer's decision and approve the Use Permit. The burden has been on the property owner and unfortunately nothing has been brought forward this evening to be able to render a decision that would allow the Use Permit to be approved.

On a motion by Commissioner Granville and seconded by Commissioner Delton, the Commission with a vote of 4-3 (Commissioners Oteri, Webb and Maza opposed) approved the appeal, thereby over turning the Hearing Officer's Decision.

- 
4. Request for **ROTHKO HOUSE (PL110385)** (Bill Tonnesen, Rothko House LLC, property owner and applicant) consisting of a request to amend a condition of approval of a previous application (DPR12026 # 4) and allow art consisting of an unclothed human figure adjacent to the public right of way, located at 2108 South Rural Road in the R-3, Multi-Family Residential Limited District. The request includes the following:

**DPR12047** – Development Plan Review for an exterior site modification including the modification of Condition # 4 of DPR12026.

STAFF REPORT: [DRCr Rothko 041012.pdf](#)

This case was presented by Kevin O'Melia and represented by Bill Tonnesen, applicant.

Mr. O'Melia gave a brief presentation of this case, which has had three previously approved administrative development plan review approvals. He also stated that staff is recommending denial based on the criteria that the item is not complimentary to its surroundings and it does not enhance the pedestrian experience at street level.

Chair DiDomenico questioned staff as to when they were first made aware that the statute had changed from what was previously represented.

Mr. O'Melia stated that staff had received a newsletter that the applicant provides as an update to customers, etc., on his projects. In that newsletter it revealed the statue as it is shown today. Staff then contacted Mr. Tonnesen to let him know that this modification is a violation of Condition No. 4. The applicant made a submittal on March 30<sup>th</sup> and we expedited the case to this hearing.

Commissioner Granville asked for clarification as to what was different in the two submittals and why one enhanced the surroundings and one didn't.

Mr. O'Melia indicated it was the clothing and position of the arms that rendered one more complimentary than the other.

Commissioner Tinsley questioned whether the statue is still being covered with tiny LED lights.

Mr. O'Melia deferred to the applicant to answer that question.

Bill Tonnesen gave a presentation on his art and design background.

Chair DiDomenico stated that the issue isn't necessarily that the statue is obscene, but rather appropriate in terms of its surroundings. He asked Mr. Tonnesen the reason for wanting to place the statue in the elevated position right on the street.

Mr. Tonnesen stated he wanted it higher to avoid vandalism and he is in the business of promoting sculptures and wants his work to be visible to the public.

Commissioner Oteri asked Mr. Tonnesen when he submitted to the City of Phoenix, did his original submittal match the end result.

Mr. Tonnesen indicated no, their process is very different.

Commissioner Tinsley asked how far the feet of the statue are from the ground and are there lights in the statue.

Mr. Tonnesen indicated about 7 feet from the ground and no lights.

Commissioner Tinsley questioned if the neighbor across the street had been asked their opinion.

Mr. Tonnesen indicated that he had not initiated contact but rather received an email from Father John at Our Lady of Mt. Carmel Church complimenting on the renovation of the property. Mr. Tonnesen had requested that he come over to view the statue but he never responded. He did state that several people are not in favor of the statue, including his wife.

Chair DiDomenico stated his issue is not with the nudity but with the fact it is not pedestrian friendly.

Commissioner Maza stated he has done great work but he is not in favor of the statue simply due to size and space. He also questioned if the figure changes slightly is he required to come back before the Commission

Mr. O'Melia indicated that should it change that it would have to come back to the Commission.

Commissioner Oteri stated that he didn't find the figure obscene (inaudible) but concerned if this is the venue for it.

Commissioner Granville made a motion and modified it to include the statement that minor modifications to the statue shall not need to return to the Commission.

On a motion by Commissioner Granville and seconded by Commissioner Tinsley, the Commission with a vote of 4-3 (Commissioners DiDomenico, Webb and Maza opposed) approved this Development Plan Review.

## 6. ANNOUNCEMENTS

Chair DiDomenico asked staff to keep in mind the idea that the Commission would like the opportunity to revisit past projects on evenings where there is a light agenda.

Darlene Justus returned to the podium to thank the Commission for their time and to apologize for any personal attacks that took place during the meeting.

The hearing adjourned at 9:35 p.m.

Prepared by: Lisa Novia, Administrative Assistant II

Reviewed by: Lisa Collins, Deputy Director Community Development Department



---

Lisa Collins, Interim Director, Community Development Department