

REVISED



**Minutes of the
Development Review Commission
REGULAR MEETING
June 9, 2020**

Minutes of the regular hearing of the Development Review Commission, of the City of Tempe, was held in Council Chambers 31 East Fifth Street, Tempe, Arizona

HEARING CONDUCTED VIA WEBEX EVENTS

Present:

Chair David Lyon
Vice Chair Michael DiDomenico
Commissioner Scott Summers
Commissioner Thomas Brown
Commissioner Don Cassano
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Alt Commissioner Michelle Schwartz (observing only)

City Staff Present:

Chad Weaver, Director, Community Development
Ryan Levesque, Deputy Director, Community Development
Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Dino Accardo, Plan Review Manager
Obenia Kingsby II, Planner II
Dalton Guerra, Planner I
Joanna Barry, Administrative Assistant II

Absent:

Alt Commissioner Barbara Lloyd
Alt Commissioner Angela Taylor

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

Consideration of Meeting Minutes:

1. Development Review Commission – Study Session 4/28/20
2. Development Review Commission – Regular Meeting 4/28/20

Motion: Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for April 28, 2020 and seconded by Vice Chair DiDomenico.

Ayes: Chair Lyon, Vice Chair DiDomenico, Commissioners Summers, Brown, Cassano, Amorosi and Johnson.

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

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

3. Request a Preliminary Subdivision Plat for **VELOCITY COMMERCIAL COMPLEX**, located at 660 West Warner Road. The applicant is Commercial Properties, Inc. (PL200037)

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

Ayes: Chair Lyon, Vice Chair DiDomenico, Commissioners Summers, Brown, Cassano, Amorosi and Johnson.

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 second-story addition for the **HALE RESIDENCE**, located at 1849 East Hayden Lane. The applicant is Whitney Hale. **(PL200064)**

PRESENTATION BY APPLICANT:

Mr. Whitney Hale, applicant, expressed his frustration with the Planning Department's professional review of his project. He feels it is flawed or retaliation for something he may or may not have done. He stated this is his residence and he will be living there and it not for any municipal department to speculate on the use. Mr. Hale advised that his property is zoned R-4 and is designed to allow single family and multi-family residences to be compatible. The zoning allows for multiple stories up to 40 feet in height. He noted the concerns the Planning Department had regarding the number of entrances, number of bathrooms and number of kitchens. He stated they are speculative cause for concern about the amount of landscaping and amount of parking. He indicated that the Planning Department has not communicated with him at all. He mentioned there was a brief conference about why he wanted so many bathrooms in the house. He had asked if there was any building code or zoning ordinance against that and was told there was not. He stated there is a reason for the way he has designed his house and it is for medical reasons that he does not have to disclose. Regarding the number of doors, he stated that is for building code required egress and due to his medical condition, he does not want to climb out windows. As for the number of kitchens, he stated he only has one kitchen as there is only one with a range/oven in it. He stated that per Tempe Zoning Code the definition a kitchen means "an enclosed place equipped with cooking facilities" and noted a counter with a sink and small beef refrigerator is not classified as a kitchen.

Mr. Hale stated there will be more landscaping if this permit is approved and there will also be more landscaping towards the street. He noted that per zoning and building codes, he could easily have the same square footage on the ground level without obtaining a Use Permit, however he chooses to have a second story because he would like more landscaping. Mr. Hale showed pictures of properties on the same street that had very little landscaping and a lot of concrete. He feels it would be unfair to allow the owners of the vacant property on either side of him to build more than a single story in the future if his Use Permit is denied. He noted that all the properties within 500 feet on three sides of him are zoned R-4 and many currently have more than two stories. It would be would unfair and contrary to current zoning to deny him having a master bedroom on an upper level.

Regarding parking, he went over the Tempe zoning ordinance minimum standards he used on his plans. He also advised there is parking available on his street only a block away in a multi-family density area. He only plans to have a single-family residence so the only time there would be parking on the street is if he had guests over. Mr. Hale stated that he has a larger landscaping area that what he would have under multi-family requirements, where he would only be able to have 44% landscaping.

Mr. Hale stated that staff's stipulations are based on flawed logic and he will not agree to any of them. He will agree to plant eight more Acacia Willardianas, four along the east and west sides of the building, to further the desired landscaping. He would also agree to adding two more parking spaces to the south of those already approved.

Mr. Hale showed pictures of the area surrounding his property, and the current construction status. He advised that he went ahead with the second story even though he knew he needed a Use Permit as he never expected this kind of pushback.

Chair Lyon advised Mr. Hale that properties can change hands after construction so when reviewing projects, the Commission has to look out how the property will be used in the future and if it is being put together in a way that works with that. Chair Lyon noted that even though Mr. Hale plans to use the property a certain way, a future owner might decide to divide it up into separate units. Chair Lyon asked Mr. Hale why he does not want to go through the more stringent multi-use process and make sure the property will be satisfactory down the line. Mr. Hale stated he did that in the very beginning of his application and no one has ever communicated to him about what goes on. Regarding turnover of the property, he does not believe that anything he is doing is any different than what would be

required if he were building a multi-family use on the property. He stated if someone were to subdivide the property or the inside of the building, they would be doing it illegally and would have to apply for a different use.

Commissioner Amorosi asked Mr. Hale how large his family is and was told it consists of five individuals. Commissioner Amorosi stated that in looking at the plans he sees a stairwell on the second floor but he does not see where that shows up on the first floor. Mr. Hale stated it would drop straight down in the larger room in the back. Commissioner Amorosi asked why this was not more clearly stated on the plans. Mr. Hale advised that he initially submitted his plans with two stories and was then informed that he needed a Use Permit. He was not aware of that and had assumed the second floor would be fine as he was not coming close to the 40-foot height limit. He submitted the plans for two stories but when he was told he could not have that he removed the second story. He indicated that the missing stairs on the first floor on his plans may have just been a drafting error. He does not know if there were ever stairs shown on the first floor but he imagines that there was but it was not added in this documentation. Commissioner Amorosi referenced the second story and noted that if people wanted to have a big bathroom that is fine, however they usually put them together and not on opposite sides of the wall. Commissioner Amorosi stated that seems like an invitation for someone to put a stud wall in between it and make two small rooms. Mr. Hale stated that could not be done without a building permit and that is not what he wants to do. He wants to have his and her bathrooms separated.

Commissioner Brown noted that Mr. Hale had stated he initially applied for two stories, however during the application process he found out he would need a Use Permit, so he eliminated the second floor and submitted a permit. Mr. Hale stated that was correct. Commissioner Brown asked if Mr. Hale then decided to build a second floor and was advised that was correct. Commissioner Brown referenced Mr. Hale's earlier comment where he stated people would not do something against code, yet he proceeded with the second floor. Mr. Hale stated he could not deny that however he thought this was going to be a slam dunk and he would get approval through planning. He noted that if he does not get approved he would have to tear the second story down. Commissioner Brown asked Mr. Hale why he did not follow the code on this and was informed by Mr. Hale that he follows code on every project he does, however on this one he did not. He advised that he would never do that with a client's property and only did it because this was his property. He did not believe this would be such a process.

PRESENTATION BY STAFF:

Mr. Dalton Guerra, Planner I, advised the Commission that in 2017 there was a two-story house proposed with a permit request submitted to Building Safety. The applicant was informed in the plan review process that a Use Permit was required. In the second submittal the second story was removed from the plans. In 2018 a building permit was issued for a one-story, single-family home. In April of 2020 a Use Permit request was submitted for a second story to the existing single-family home. In May of 2020 a Stop Work Order was issued by the Building Safety division as construction was being done on site without a permit. Mr. Guerra also clarified that staff did meet with Mr. Hale at one point before the hearing and inquired about the intent of the design however Mr. Hale did not want to discuss it. Staff never inquired about the applicant's medical condition during that meeting nor anytime prior to this hearing. Mr. Guerra advised that staff also does not review landscaping for single-family uses, so they did not discuss any landscaping changes or modifications to the building footprint. Regarding tandem parking, Mr. Guerra advised if this was for a multi-family use then a Use Permit would be required for it. Mr. Guerra went over the Use Permit criteria for the project and stated the proposed floor plan raises a concern that this property will not function as a single-family home. If the development functions as a multi-family use, the project would not meet the parking, landscaping and lighting requirements that a normal multi-family project would have to meet. Mr. Guerra advised that no neighborhood meeting was required for this request and that staff did receive one letter of support. Staff recommends denial based on the Use Permit criteria along with staff's analysis. However, if the Commission decides to approve the Use Permit there are special conditions of approval staff would like to see implemented. One would be the elimination of the second bathroom on the second story, another the removal of the second story kitchen facilities and proposed great room kitchen, and that the east curb cut on Hayden Lane be removed and replaced with a curb, gutter, and sidewalk.

RESPONSE FROM APPLICANT:

Mr. Hale wanted to apologize to anyone who thought it was presumptuous of him to go ahead and add the second story, but he really believed that the building as proposed is a much better transition between the apartments that might be built to the side of him on a larger lot. He stated he has no intention of moving from the property, but he understands the City has to question the use. He does not see that there are a great deal of changes and it does not make sense to him. He is not sure how the tandem parking got on the plan; it just may be an old plan that he grabbed to make this presentation. He intends on using both the existing curb cuts. He does not like the idea of tandem parking.

Chair Lyon stated there is a path for collaboration where the building could be reworked a bit so that if for some reason it ever changed hands it would work out well regardless of what the new owner would want to do with it.

Commissioner Amorosi noted that he did not see a garage in the plans and asked Mr. Hale to address that. Mr. Hale stated he does not like garages in the front of his property and that is where it would have to be. He uses his vehicle frequently and does not park in a garage right now. He did not really think about that.

STAFF COMMENT:

Mr. Steve Abrahamson, Principal Planner, advised the Commission that Mr. Dino Accardo, Plan Review Manager with Building Safety, was online for the meeting in case the Commission wanted to hear from him.

Chair Lyon asked Mr. Accardo to share any concerns he has regarding this project. Mr. Accardo stated his concern right now is regarding the Stop Work Order that was issued on May 27, 2020. The second floor was erected on what was originally approved as a single-family, one-story residence. There could be some impacts structurally.

Commissioner Sumners informed Mr. Accardo that recently the Commission has seen an increase in applicants who choose not to follow the rules regardless of what the code states. He noted there is now an ordinance that charges applicants double the fees for this but at some point if this keeps up he would like an opportunity to meet and discuss some more preventative measures they can do to stop this from happening.

PUBLIC COMMENT: NONE

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Commissioner Sumners stated that the Commission hears a lot of comments about parking with projects that come before it, especially with neighbors when it comes to on-street parking and the problems it creates. He understands how Mr. Hale plans to use the residence however he cannot ignore the fact that this could easily be converted to a multi-family property with ten or fifteen people living there with ten or fifteen cars on the street. He cannot support a project that pushes that out to the neighborhood.

Commissioner Amorosi stated that he cannot get over the fact that Mr. Hale is an architect but somehow did not know all the rules to follow in the City of Tempe. That really bothers him, and he cannot support this project either.

Commissioner Cassano stated in looking at the plans it appears that each area could be converted into a single apartment/unit and in the future someone may come in and chop it up and make it multi-family. Parking is also a concern and it does not appear there is really any parking. He cannot support the project the way it looks.

Chair Lyon stated that the Commission has to look at the plans and if it is quirky and does not seem to fit with what they believe works they need to start asking questions. There are some issues here as it looks like it could easily be divided into single units which would not be good units. He will not be able to support the application.

Motion: Motion made by Commissioner Brown to deny PL200064 and seconded by Commissioner Amorosi.

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

PRESENTATION BY STAFF: NONE

Staff Announcements:

NONE

There being no further business the meeting adjourned at 7:23 p.m.

Prepared by: Joanna Barry

Reviewed by: Suparna Dasgupta



Suparna Dasgupta, Principal Planner, Community Development Planning