

REPORT OF PLANNING HEARING OFFICER ACTION

Adam Stranieri, Planner III, Hearing Officer

Bradley Wylam, Planner I, Assisting

July 21, 2021

ITEM NO: 2

DISTRICT 2

SUBJECT:

Application #: PHO-1-21--Z-51-20-2
Location: Approximately 4,000 feet north of the northeast corner of
Black Canyon Highway and Jomax Road
Existing Zoning: R-3A
Acreage: 20.08
Request: 1) Modification of Stipulation 6 regarding the minimum
landscape setback required along the west property line
and along the frontage road.
2) Modification of Stipulation 7 regarding the minimum
landscape setback required along the south property line.
Applicant: Chuck Chisholm, K. Hovnanian Homes
Owner: Fred Bishop, et al.
Representative: Nick Wood Esq., Snell & Wilmer LLP

ACTIONS

Planning Hearing Officer Recommendation: The Planning Hearing Officer took this case under advisement. On July 28, 2021, the Planning Hearing Officer took this case out from under advisement and recommended approval with modifications.

Village Planning Committee (VPC) Recommendation: The Deer Valley Village Planning Committee was scheduled to hear this request on July 8, 2021 but did not have a quorum.

DISCUSSION

Noel Griemsmann, representative at Snell & Wilmer, gave an overview of the proposal and described existing and proposed developments surrounding the subject site, which includes multiple new multifamily residential developments. He stated that the project consists of single-family residential townhomes, with the main entrance along the I-17 Freeway frontage road. He stated that the requested stipulation modifications are due to a misunderstanding of Stipulations 6 and 7 regarding minimum landscape setbacks of 20 feet required along the west and south property lines. He stated that the development was designed to provide a minimum average landscape setback of 20 feet, and that presumptions were made during stipulation review by their team that resulted in the misunderstanding. He stated there are two specific locations where the

landscape setback would be below the stipulated 20-foot minimum. He presented graphics that depicted these locations, one each on the south and west property lines. He stated that on the neighboring properties to the south and west, adjacent to the proposed setback reduction areas, there were proposed parking areas. Additionally, he noted that on the subject site, the units in the proposed setback reduction area also have private, fenced back yard that would abut the landscape setback, which would further separate the residential buildings from the perimeter property line. He stated the private yards for these properties would likely need to be decreased if the proposed modifications were not approved. He noted that they were scheduled to attend the Deer Valley Village Planning Committee on July 8, 2021, but the Committee did not have quorum and the meeting did not occur.

Adam Stranieri, Planning Hearing Officer, noted that the applicant's written narrative stated that the proposed modifications were intended to allow development of the site plan that was used and presented throughout the rezoning process. He noted that the staff's intent in the original rezoning case was not to stipulate conformance to this plan and that staff instead recommended enhanced perimeter standards. He stated that the intent of Stipulations 6 and 7, as described in the staff report, was to mitigate impacts of the freeway and to provide consistency with other developments in the area.

Mr. Griemsmann stated that the applicant is not asking to decrease standards on the portion of the landscape setback adjacent to the frontage road but only to allow the average setback to apply to the locations noted in the presentation. He stated that the stipulated landscape setback, if not modified, would result in a decrease of private yard space for impacted units. He stated that the private yards would retain open space behind the units but would be walled off to allow for private outdoor space for residents. He stated that the stipulations also list tree requirements for the landscape setbacks, which could be complied with and would provide additional screening to neighboring developments.

Mr. Stranieri asked to confirm the applicant's understanding of the R-3A landscaping standards and stated that the R-3A district would require a minimum 15-foot landscape setback in these areas. He stated that the stipulations in question enhance these standards. He expressed concern that modifying the stipulations as requested could be interpreted to decrease the minimum landscape setback along the frontage road, although that is not what is being presented. He stated that original written request lacked clarity in terms of defining a minimum (in addition to average) setback, identifying that the reduction was not intended to apply along the entirety of the west property line, and the area in which the average would be calculated. Mr. Griemsmann stated that at no point does the proposed reduction go below 15 feet. Mr. Stranieri clarified that Mr. Griemsmann would be looking for an average of 20 feet with a minimum of 15 feet in the two locations depicted in the presentation.

Mr. Stranieri stated that the application materials caused some misunderstanding of the request, and that it was unclear how the average would be calculated. Mr. Griemsmann stated there is no desire from the applicant to adjust the site plan that was presented as

part of the original rezoning case. Mr. Stranieri stated there are two things that he would like to reevaluate related to the request. He suggested that a minimum landscape setback be established, which would ensure the variation would not be reduced below Ordinance standards. He also stated he would like to clarify the locations to which the decreased standards could be applied.

Mr. Stranieri stated that he would like the applicant to formally submit the exhibit depicted in the presentation that identified the setback reduction areas. He stated that this exhibit would be useful in establishing stipulation language that achieved the applicant's intent as described in the hearing. He suggested that this exhibit include a title identifying it as the proposed stipulation modification exhibit, with a key to identify the locations to be addressed by the modification. He stated he would evaluate language to establish both an average and minimum landscape setback relevant to the requested exhibit. He took the case under advisement to obtain this exhibit and consider a related recommendation.

FINDINGS

- 1) The applicant stated in their narrative that the request was intended to allow for the development of the site plan that was utilized in the rezoning process. They also noted that the conceptual site plan included in the original rezoning case included perimeter setbacks consistent with the R-3 zoning district and did not account for the enhanced standards included in Stipulations 6 and 7. However, the staff recommendation in the original rezoning case, which included the text of Stipulations 6 and 7, did not recommend general conformance to the site plan presented by the applicant. Instead, the staff report stated that due to its location immediately adjacent to the Black Canyon Freeway, staff recommends Stipulations 6 and 7 to enhance the perimeter treatment and provide enhanced separation to mitigate impacts of the freeway. It stated that these enhancements were also intended to achieve consistency with other developments in the surrounding area. The staff recommendation did not intend to recommend development consistent with the conceptual site plan as presented.
- 2) The applicant requested modification of Stipulations 6 and 7 regarding the minimum landscape setbacks along the frontage road and west property line (Stipulation 6) and the south property line (Stipulation 7). The proposed modifications would change the minimum setback from 20 feet in these locations to an average of 20 feet. Following the initial hearing, the applicant submitted a supplementary exhibit that indicated they were amenable to providing a minimum 15-foot, average 20-foot landscape setback in the impacted areas and a minimum 25-foot landscape setback along the frontage road. Based on this exhibit, the applicant's requests are recommended to be approved with modifications.

For Stipulation 6, the modification will clarify that the 20-foot average setback will be calculated over the area that includes the west property line adjacent to the

frontage road and the interior/north west property line. Additionally, a minimum landscape setback of 15 feet will be maintained. Finally, to enhance the intent of the original stipulation, for the portion of the west property line adjacent to the frontage road only, a minimum 25-foot landscape setback will be provided. This will allow the applicant to retain the lots in their current positions without removing the proposed private yards while meeting the staff intent of providing mitigation from the impacts of the I-17.

For Stipulation 7, the modification will include a minimum landscape setback of 15 feet to ensure that the landscape setback along the entire south property line continues to meet or exceed Zoning Ordinance standards. This maintains the intent of the original staff stipulation while allowing the applicant to retain the lots in their current positions without removing the proposed private yards.

DECISION: The Planning Hearing Officer took this case under advisement. On July 28, 2021, the Planning Hearing Officer took this case out from under advisement and recommended approval with modifications.

STIPULATIONS

1.	The maximum building height shall be 30 feet.	
2.	The development shall be limited to a maximum of 285 units.	
3.	All elevations of the buildings shall contain architectural embellishments and detailing such as textural changes, pilasters, offsets, recesses, variation in window size and location, and/or overhang canopies, as approved by the Planning and Development Department.	
4.	A sidewalk and landscaping strip shall be provided along the Black Canyon Freeway Frontage Road and shall be detached with a minimum five-foot-wide landscape area located between the sidewalk and back of curb and planted to the following standards, as approved by the Planning and Development Department.	
	a.	Minimum 3-inch caliper large canopy, single-trunk, shade trees placed a minimum of 25 feet on center or equivalent groupings to provide a minimum of 75 percent shade on adjacent sidewalks.
	b.	Drought tolerant shrubs and vegetative groundcovers.
5.	An enhanced landscaped entry shall be provided at the main entryway into the development off of the frontage road with a minimum 300 square feet of landscaped area on each side of the entrance. The landscaped areas shall be planted and maintained with a variety of at least three different plant	

	materials, as approved by the Planning and Development Department.
6.	A 15-FOOT minimum, 20-FOOT AVERAGE landscape setback of 20 feet shall be required along the west property line and along the frontage road, EXCEPT THAT ALONG THE FRONTAGE ROAD, THE LANDSCAPE SETBACK SHALL BE A MINIMUM 25 FEET, AS DEPICTED ON THE PROPOSED STIPULATION MODIFICATION EXHIBIT DATE STAMPED JULY 21, 2021, AS APPROVED OR MODIFIED BY THE PLANNING AND DEVELOPMENT DEPARTMENT. These landscape setbacks shall include minimum 3-inch caliper large canopy shade trees planted a minimum of 20 feet on center or in equivalent groupings, as approved by the Planning and Development Department.
7.	A 15-FOOT minimum, 20-FOOT AVERAGE landscape setback of 20 feet shall be required along the south property line and shall include minimum 2-inch caliper trees planted a minimum of 20 feet on center or in equivalent groupings, as approved by the Planning and Development Department.
8.	There shall be a minimum of two private open space amenity areas. Each area shall provide, at a minimum, two of the following active amenity elements or other similar elements, as approved by the Planning and Development Department:
a.	Swimming Pool
b.	Fire Pit
c.	Pavilion or Ramada
d.	Barbecue and Picnic Area
9.	Perimeter walls adjacent to the frontage road and private drive to the north shall incorporate stone veneer, stonework, integral color CMU block or faux stone, and be compatible with the existing wall on the property line to the north, as approved by the Planning and Development Department.
10.	The developer shall submit a cross-access agreement prior to preliminary site plan approval for APN 204-23-001A to support future cross-access of Oberlin Way.
11.	All frontage improvements, access control and location of driveways shall be permitted and approved through ADOT.
12.	The developer shall construct all streets within and adjacent to the

	development with paving, curb, gutter, sidewalk, curb ramps, streetlights, median islands, landscaping and other incidentals, as per plans approved by the Planning and Development Department. All improvements shall comply with all ADA accessibility standards.
13.	The property owner shall record documents that disclose the existence, and operational characteristics of Phoenix Deer Valley Airport (DVT) to future owners or tenants of the property. The form and content of such documents shall be according to the templates and instructions provided which have been reviewed and approved by the City Attorney.
14.	The developer must file FAA Form 7460 and provide City FAA's no hazard determination prior to construction permit approval, as per plans approved by the Planning and Development Department.
15.	The developer shall grant and record an avigation easement to the City of Phoenix Aviation Department for the site, per the content and form prescribed by the City Attorney prior to final site plan approval.
16.	If determined necessary by the Phoenix Archaeology Office, the applicant shall conduct Phase I data testing and submit an archaeological survey report of the development area for review and approval by the City Archaeologist prior to clearing and grubbing, landscape salvage, and/or grading approval.
17.	If Phase I data testing is required, and if, upon review of the results from the Phase I data testing, the City Archaeologist, in consultation with a qualified archaeologist, determines such data recovery excavations are necessary, the applicant shall conduct Phase II archaeological data recovery excavations.
18.	In the event archaeological materials are encountered during construction, the developer shall immediately cease all ground-disturbing activities within a 33- foot radius of the discovery, notify the City Archaeologist, and allow time for the Archaeology Office to properly assess the materials.
19.	Prior to preliminary site plan approval, the landowner shall execute a Proposition 207 waiver of claims form. The waiver shall be recorded with the Maricopa County Recorder's Office and delivered to the City to be included in the rezoning application file for record.

Upon request, this publication will be made available within a reasonable length of time through appropriate auxiliary aids or services to accommodate an individual with a disability. This publication may be made available through the following auxiliary aids or services: large print, Braille, audiotape or computer diskette. Please contact the Planning and Development Department, Tamra Ingersoll at voice number 602-534-6648 or TTY use 7-1-1.