

# Attachment D

**PLEASE RESPOND ELECTRONICALLY TO BRAD WYLAM 2ND FLOOR, 602-256-3322**



## City of Phoenix

PLANNING & DEVELOPMENT DEPARTMENT

**To:** Departments Concerned  
**From:** Alan Stephenson  
Planning & Development Department Director  
**Date:** November 16, 2022  
**Subject:** **P.H.O. APPLICATION NO. PHO-1-22--Z-26-22-4** – Notice of Pending Actions  
by the **Planning Hearing Officer**

1. Your attention is called to the fact that the **Planning Hearing Officer** will consider the following case at a public hearing on **December 21, 2022**.
2. Information about this case is available for review at the Zoning Counter in the Planning and Development Department on the 2nd Floor of Phoenix City Hall, telephone 602-262-7131, Option 6.
3. Staff, please indicate your comments and respond electronically to [pdd.pho@phoenix.gov](mailto:pdd.pho@phoenix.gov) or you may provide hard copies at the Zoning Counter in the Planning and Development Department on the second floor of Phoenix City Hall by **November 23, 2022**.

### **DISTRIBUTION**

Mayor's Office (Tony Montola), 11th Floor  
City Council (Stephanie Bracken), 11th Floor  
Aviation (Jordan D. Feld )  
CED (Michelle Pierson), 20th Floor  
Fire Prevention (Aaron Conway), 2nd Floor  
Light Rail (Joel Carrasco/Special TOD Only)  
Neighborhood Services (Gregory Gonzales, Lisa Huggins), 4th Floor  
Parks & Recreation (Natasha Hughes), 16th Floor  
Public Transit (Michael Pierce)  
Street Transportation Department (Maja Brkovic, Alan Hilty, Chris Kowalsky), 5th Floor  
Street Transportation - Ped. Safety Coordinator (Mailen Pankiewicz), 5th Floor  
Street Transportation - Floodplain Management (Kristina Jensen, Elise Moore, Rudy Rangel), 5th Floor  
Water Services (Don Reynolds, Victor Romo), 8th Floor  
Planning and Development (Alan Stephenson, Joshua Bednarek), 3rd Floor  
Planning and Development/Information Services (Ben Ernyei, Andrew Wickhorst), 4th Floor  
Planning and Development/Historic Preservation Office (Kevin Weight), 3rd Floor  
Planning Hearing Officer (Tricia Gomes, Adam Stranieri, Brad Wylam), 2nd Floor  
Village Planner (Racelle Escolar, Deer Valley Village)  
Village Planning Committee Chair (Brent Kleinman, Encanto Village)



# City of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT

## APPLICATION FOR PLANNING HEARING OFFICER ACTION

**APPLICATION NO: PHO-1-22--Z-26-22**

**Council District: 4**

**Request For:** Stipulation Modification

**Reason for Request:** Modification of Stipulation 1 regarding a 5-foot-wide detached sidewalk and minimum 10-foot-wide landscape area.

<b>Owner</b>	<b>Applicant</b>	<b>Representative</b>
3443 North Central LLC	Mill Creek Residential	Nick Wood, Snell & Wilmer LLP
2901 East Camelback Road, Suite 201	15210 North Scottsdale Road, Suite 210	400 East Van Buren Street, Suite 1900
Phoenix AZ 85016	Scottsdale AZ 85254	Phoenix AZ 85004
(602) 382-6824	(602) 382-6824	P: (602) 382-6824 F: (602) 382-6070
Ngriemsmann@swlaw.com	Ngriemsmann@swlaw.com	Ngriemsmann@swlaw.com

**Property Location:** Approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road

Zoning Map: H8 Quarter Section: 16-28 APN: 118-33-137F Acreage: 4.10

Village: Encanto

Last Hearing: CC HEARING

Previous Opposition: No

Date of Original City Council Action: 10/12/2022 230 PM

Previous PHO Actions: \_\_\_\_\_

Zoning Vested: WU Code T5:6 MT

Supplemental Map No.: \_\_\_\_\_

Planning Staff: 075891

An applicant may receive a clarification from the city of its interpretation or application of a statute, ordinance, code or authorized substantive policy statement. To request clarification or to obtain further information on the application process and applicable review time frames, please call 602-262-7131 (option 6), email [zoning.mailbox@phoenix.gov](mailto:zoning.mailbox@phoenix.gov) or visit our website at <http://phoenix.gov/pdd/licensetimes.html>.

A Filing Fee had been paid to the City Treasurer to cover the cost of processing this application. The fee will be retained to cover the cost whether or not the request is granted

Fee	Fee Waived	Fee Date	Receipt	Purpose
\$1,080.00	\$0.00	11/04/2022	22-0095069	Original Filing Fee

Signature of Applicant: \_\_\_\_\_ DATE: \_\_\_\_\_

### Hearing Results

Planning Hearing Officer	Planning Commission	City Council
Date: <u>12/21/2022 1000 AM</u>	Date: _____	Date: _____
Appealed?: _____	Appealed?: _____	
Action: _____	Action: _____	Action: _____

# Snell & Wilmer

ONE ARIZONA CENTER  
400 E. VAN BUREN, SUITE 1900  
PHOENIX, AZ 85004-2202  
602.382.6000 P  
602.382.6070 F

Noel J. Griemsmann  
(602) 382-6824  
ngriemsmann@swlaw.com

November 17, 2022

Planning Hearing Officer  
Planning and Development Department  
City of Phoenix  
200 West Washington Street  
Phoenix, Arizona 85003

Re: Planning Hearing Officer Review Application Request for the Eastern Half of the Property Addressed as 3443 North Central Avenue, Commonly Known as the “Phoenix Financial Center” in Phoenix, Arizona

Dear Planning Hearing Officer:

On behalf of Mill Creek Residential, I am pleased to submit for your consideration the enclosed Planning Hearing Officer Application request for the eastern 4.1 acres of the property addressed as 3443 North Central Avenue, otherwise known as Maricopa County Assessor’s Office (“MCA”) Parcel Number (“APN”) 118-33-137 (the “Property”) (Exhibit A). Note, the project is limited to only the eastern 4.1 acres of the property addressed as 3443 North Central Avenue and does not include any of the existing office/retail buildings as shown on Exhibit A.

The Property is approximately 4.1 acres in size and was recently rezoned to Walkable Urban Code Transect 5:6 Midtown (Ordinance Section 1302) via Ordinance G-7031 (Case No. Z-26-22-4). The purpose of this letter is to provide a summary of the proposed request, as more detailed on the enclosed materials.

## **A. Project Overview.**

The Property is currently developed with a five (5) building complex with office and retail uses, known as “Phoenix Financial Center” that was developed in the 1960’s. Mill Creek Residential, a national developer of high-quality apartment communities, proposes to redevelop a portion of the Property as a multi-family residential community with approximately 335 dwelling units (the “Project”). In order to facilitate development of the Project, Mill Creek Residential will utilize the existing Walkable Urban Code T5:6 development rights and underlying residential zoning provisions thereof, which is discussed in more detail below.

Planning Hearing Officer  
November 17, 2022  
Page 2

The Project is proposed to be developed on the eastern half of the Property, developing over the current surface parking lot and 2-story underground parking garage. The garage will be maintained “as-is” and will have its own access ramps retained for exclusive use of the office and retail building. There are no proposed modifications to the existing Phoenix Financial Center buildings and the Project does not modify these structures.

The Project as currently contemplated will include a mix of one, two, and three-bedroom apartment units. The proposed building height for the Project is seven (7) stories at up to eighty (80) feet in total height. The Project will incorporate customary residential amenities, including open courtyards, a swimming pool and will be built on and around a podium style parking structure.

As to Project access, the primary vehicular entrances to the existing development and to the Project will be located off Osborn Road (east existing entry for office and new west entry for residential), with secondary ingress and egress on Mitchell Drive to the north which is intended to provide balanced traffic patterns from both the residents and visitors, while retaining the current ingress/egress pattern for the office and retail users.

One key consideration regarding the Project and this request is the limitations placed on the final design due to the need to construct over an existing subterranean parking garage. The building design needs to be compatible with already established constraints due to the location of the garage, its construction materials/methods as well as the placement of supporting columns and foundations. Therefore, unlike a vacant site, there are challenges with building placement compelling flexibility in applying the applicable codes and ordinances to the Project.

## **B. PHO Request Overview.**

The eastern portion of Property was recently part of a rezoning application (Case No. Z-26-22-4) that rezoned the eastern 4.1 acres of Property from “Commercial C-2 District – Intermediate Commercial” (“C-2”) (Ordinance Section 623) and High-Rise H-R District – High-Rise and High Density District (Ordinance Section 631), and “P-2 Parking” (“P-2”) (Ordinance Section 640) and “High-Rise H-R District – High-Rise and High Density District” (“HR”) (Ordinance Section 631) to Walkable Urban Code Transect 5:6 (Ordinance Section 1302) via the adoption of Ordinance G-7031. During our follow up Pre-Application meeting with the City of Phoenix (KIVA 21-4782), it was brought to our attention during the review that the project was in conflict with Stipulation 1 of the approved Ordinance (Exhibit B). The requested modification is to reduce the required 10-foot-wide landscape area to minimum 5-foot-wide landscape area consistent with the underlying code requirements of the Walkable Urban Code Transect 5:6, IN ADDITION TO PROVIDING ADDITIONAL LANDSCAPE AREA ADJACENT TO THE GROUND FLOOR RESIDENTIAL UNITS. This request does not intend to modify any other sections of Stipulation 1.

Planning Hearing Officer  
November 17, 2022  
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## Modification of Stipulation No. 1:

*“1. The developer shall construct a minimum 5-foot-wide detached sidewalk and minimum ~~40~~5-foot-wide landscape area located between the back of curb and sidewalk along the north side of Osborn Road planted to the following standards. IN ADDITION THE DEVELOPER SHALL PROVIDE AN ADDITIONAL 3’-6” LANDSCAPE AREA LOCATED BETWEEN THE SIDEWALK AND ANY RESIDENTIAL UNITS ALONG THE OSBORN ROAD FRONTAGE (NOT INCLUDING AREAS IN FRONT OF GROUND FLOOR PATIOS AND THE COMMUNITY AMENITY SPACES). Where utility conflicts exist, the developer shall work with the Planning and Development Department on alternative design solutions consistent with the creation of a comfortable pedestrian environment.*

*a. All trees shall be of a large canopy, shade, and single-trunk variety with a minimum 3-inch caliper.*

*b. At tree maturity, the trees shall shade the sidewalks to a minimum 75 percent.*

*c. Drought tolerant shrubs and vegetative groundcovers maintained to a maximum height of 24 inches to provide a minimum of 75 percent live coverage at maturity.”*

### **C. Rationale.**

The intention of the Project has been and still is, to meet the code requirements set forth in the Walkable Urban Code T5:6. Per Section 1312(C) of the Zoning Ordinance, within the Transit Midtown Character Area along minor collector and local streets: i) Minimum sidewalk width: five feet; and ii) minimum landscape width: five feet (if no public utility conflict). The stipulation requires an additional 5-foot-wide landscape area that exceeds the minimum per landscape area required per code. Note that the design team always designed to code standards (at minimum) and that the design shown to the public and approved by the Encanto Village Planning Committee, Planning Commission, and City Council during the entitlement process is consistent with the request herein.

As shown on Exhibit C, the Project exceeds the minimum code requirements for streetscape standards along Osborn Road. Because the stipulation is in conflict with the code, and the design that was approved through the public hearing process, we respectfully request that the Ordinance be modified to state that: “The developer shall construct a minimum 5-foot-wide detached sidewalk and minimum 5’ wide landscape area located between the back of the sidewalk along the north side of Osborn Road planted to the following standards....”, thus reverting to the minimum code requirement as was always intended by the design team.

As noted above, the proposed design as depicted in Exhibit C, exceeds the minimum requirements per Section 1302(C) of the Walkable Urban Code, for approximately 38% of the Osborn street frontage. The Project currently proposes an additional 3’-6” landscape areas from

Planning Hearing Officer  
November 17, 2022  
Page 4

the back of the sidewalk as shown in Exhibit C. As noted above, the Project is proposed to be built over an existing 2-story underground parking garage. The original master plan for the original Central to 3<sup>rd</sup> St development (as shown on Exhibit D) shows that the masterplan contemplated a building over the garage. Although the design of the structure to be built over the garage has changed, the concept of building something above it has not.

The structural columns of the underground parking garage were originally engineered to handle a load of a building above. As part of the Project, additional load bearing columns will be required for the new building and must stack directly on the existing columns below. New columns are strategically located to tie the new and existing structures together and have little to no tolerance for placement to successfully tie the new structure into the existing structure. The current site plan has been coordinated and scrutinized to ensure the existing and proposed building have been structurally designed for a safe and seamless design that ties the project together into a single, unified whole, and maintains the structural integrity of both the existing and proposed building.

The additional 5' of landscape area across the entire Osborn Road street frontage would require an entire redesign of the project to redesign around structural loads as noted above. This redesign may not even be feasible due to impacts on the structure below, as well as to its parking spaces (which would be reduced in total count if columns are placed through them) which would impair the office building to the west as to its ability to meet its parking requirements.

In conclusion, the Project as currently designed creates a horizontal mix-used environment to compliment and integrate the existing office and retail uses, the proposed residential development intends to connect with the existing development from the perspectives of design, massing and shared gathering spaces. The integration of the residential uses into the larger commercial complex will provide a mixed-use environment that will be attractive to those that want a live/work/play environment. Furthermore, the additional 3'-6" landscape area that the Project provides for approximately 38% of the Osborn Road street frontage, exceeds the minimum code requirements, contributes to a high-quality pedestrian environment along Osborn Road. Finally, this request is to correct the adopting Ordinance's stipulations to be consistent with the design shown during the public hearing process.

Please feel free to contact me should you have any questions or need any additional information as you review this request.

Respectfully submitted,

Snell & Wilmer



Noel J. Griemsmann, AICP  
Senior Urban Planner



## Exhibit A – Site Aerial



## Exhibit B





**City of Phoenix**  
PLANNING & DEVELOPMENT DEPARTMENT

November 4, 2022

Nick Wood, Esq.  
Snell & Wilmer, LLP  
100 East Washington Street, Suite 2700  
Phoenix, Arizona 85004

Dear Applicant:

RE: Z-26-22-4 – Approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road

Please be advised that the Phoenix City Council, in accordance with the provisions of Section 601 of the Zoning Ordinance, as amended, has on October 12, 2022, approved Zoning Ordinance # G-7031.

Development and use of the site is subject to compliance with all applicable codes and ordinances.

Sincerely,

Joshua Bednarek, LEED AP ND  
Acting Assistant Director, Planning Division  
Planning & Development Department

Attachment: Signed Ordinance

c: 3443 North Central, LLC, 2901 E. Camelback Rd., #201, Phoenix, AZ 85016  
Mill Creek Residential, 15210 N. Scottsdale Rd., #210, Scottsdale, AZ 85254  
File  
Tricia Gomes, PDD–Planning–Special Projects Administrator (Electronically)  
Racelle Escolar, PDD–Planning–Principal Planner (Electronically)  
Nick Klimek, PDD–Planning–Village Planner (Electronically)  
Ben Kim, PDD–GIS (Electronically)

ORDINANCE G-7031

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP ADOPTED PURSUANT TO SECTION 601 OF THE CITY OF PHOENIX ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE PARCEL DESCRIBED HEREIN (Z-26-22-4) FROM C-2 H-R TOD-1 (INTERMEDIATE COMMERCIAL, HIGH RISE INCENTIVE DISTRICT, INTERIM TRANSIT-ORIENTED ZONING OVERLAY ONE) AND P-2 H-R TOD-1 (PARKING, HIGH RISE INCENTIVE DISTRICT, INTERIM TRANSIT-ORIENTED ZONING OVERLAY ONE) TO WU CODE T5:6 MT (WALKABLE URBAN CODE, TRANSECT 5:6, TRANSIT MIDTOWN CHARACTER AREA).

---

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX, as

follows:

SECTION 1. The zoning of a 4.10 acre site located approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road, in a portion of Section 29, Township 2 North, and Range 3 East, as described more specifically in Exhibit "A", is hereby changed from 0.53-acres of "C-2 H-R TOD-1" (Intermediate Commercial, High Rise Incentive District, Interim Transit-Oriented Zoning Overlay One) and 3.57 acres of "P-2 H-R TOD-1" (Parking, High Rise Incentive District, Interim Transit-Oriented Zoning Overlay One) to 4.10 acres of "WU Code T5:6 MT" (Walkable Urban Code, Transect 5:6, Transit Midtown Character Area).

SECTION 2. The Planning and Development Director is instructed to modify the Zoning Map of the City of Phoenix to reflect this use district classification change as shown in Exhibit "B".

SECTION 3. Due to the site's specific physical conditions and the use district applied for by the applicant, this rezoning is subject to the following stipulations, violation of which shall be treated in the same manner as a violation of the City of Phoenix Zoning Ordinance:

1. The developer shall construct a minimum 5-foot-wide detached sidewalk and minimum 10-foot-wide landscape area located between the back of curb and sidewalk along the north side of Osborn Road planted to the following standards. Where utility conflicts exist, the developer shall work with the Planning and Development Department on alternative design solutions consistent with the creation of a comfortable pedestrian environment.
  - a. All trees shall be of a large canopy, shade, and single-trunk variety with a minimum 3-inch caliper.
  - b. At tree maturity, the trees shall shade the sidewalks to a minimum 75 percent.
  - c. Drought tolerant shrubs and vegetative groundcovers maintained to a maximum height of 24 inches to provide a minimum of 75 percent live coverage at maturity.
2. The developer shall incorporate bicycle infrastructure as described below and as approved by the Planning and Development Department.
  - a. All required bicycle parking for multifamily use, per Section 1307.H.6.d of the Phoenix Zoning Ordinance, shall be secured parking.
  - b. Guest bicycle parking for multifamily residential use shall be provided at a minimum of 0.05 spaces per unit with a maximum of 50 required spaces near entrances of buildings and installed per the requirements of Section 1307.H of the Phoenix Zoning Ordinance.

- c. A bicycle repair station ("fix it station") shall be provided and maintained by the developer near secure bicycle parking area.
3. The developer shall dedicate a sidewalk easement for any streetscape area that falls outside of dedicated right-of-way, as approved by the Planning and Development Department.
4. 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.
5. Developer to record a Notice to Prospective Purchasers of Proximity to Airport, as required by the State, prior to final site plan approval.
6. The developer shall provide documentation to the City prior to final site plan approval that Form 7460-1 has been filed for the development and that the development received a "No Hazard Determination" from the FAA. If temporary equipment used during construction exceeds the height of the FAA and a "NO Hazard Determination" obtained prior to the construction start date.
7. The developer shall grant and record an aviation easement to the City of Phoenix for the site, per the content and form prescribed by the City Attorney prior to final site plan approval.
8. 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.
9. 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.

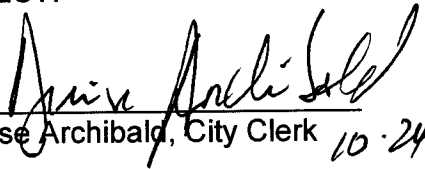
SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED by the Council of the City of Phoenix this 12th day of October,  
2022.



MAYOR

ATTEST:

  
Denise Archibald, City Clerk 10-24-2022



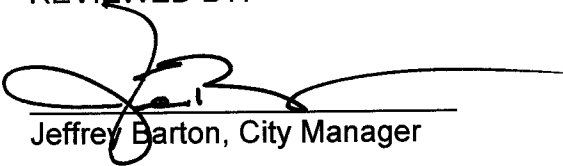
APPROVED AS TO FORM:  
Cris Meyer, City Attorney

By: 

Deryck R. Lavelle, Assistant Chief Counsel

*Pml*

REVIEWED BY:

  
Jeffrey Barton, City Manager

Exhibits:

A – Legal Description (1 Page)

B – Ordinance Location Map (1 Page)

PL:tml:LF22-1586:10-12-2022:2340745v1

EXHIBIT A

LEGAL DESCRIPTION FOR Z-26-22-4

LOCATED IN THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 3 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER, FROM WHICH THE EAST QUARTER CORNER BEARS SOUTH 89 DEGREES 23 MINUTES 59 SECONDS EAST, A DISTANCE OF 2663.82 FEET;

THENCE SOUTH 89 DEGREES 23 MINUTES 59 SECONDS EAST, ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 484.31 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 39 MINUTES 44 SECONDS EAST, A DISTANCE OF 434.20 FEET TO THE MONUMENT LINE OF EAST MITCHELL DRIVE;

THENCE SOUTH 89 DEGREES 24 MINUTES 33 SECONDS EAST, ALONG SAID MONUMENT LINE, A DISTANCE OF 411.36 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 10 SECONDS WEST, ALONG THE PROLONGATION OF THE WEST LINE OF LOT 1, AS RECORDED IN BOOK 726, PAGE 48, A DISTANCE OF 434.27 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;

THENCE NORTH 89 DEGREES 23 MINUTES 59 SECONDS WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 412.18 FEET TO THE POINT OF BEGINNING.

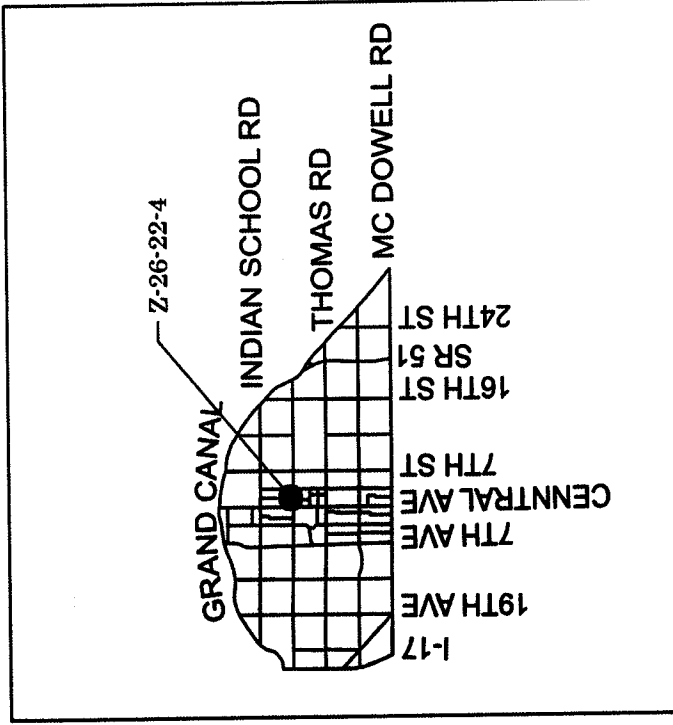
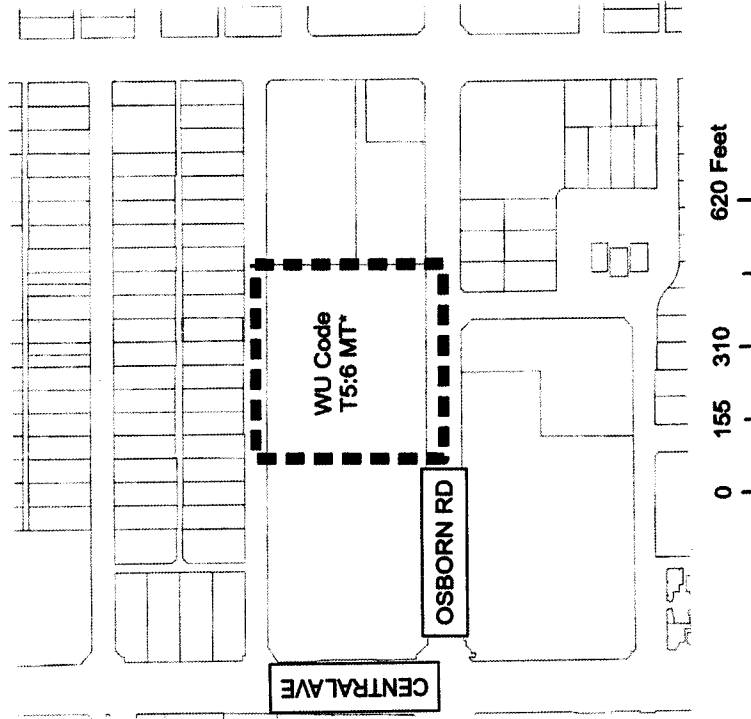
SAID PARCEL CONTAINS 178,804 SQUARE FEET OR 4.105 ACRES, MORE OR LESS.

EXHIBIT B

ORDINANCE LOCATION MAP

Zoning Case Number: Z-26-22-4  
Zoning Overlay: N/A  
Planning Village: Encanto

ZONING SUBJECT TO STIPULATIONS: \*  
SUBJECT AREA: ■ ■ ■ ■ ■



NOT TO SCALE



Drawn Date: 9/14/2022

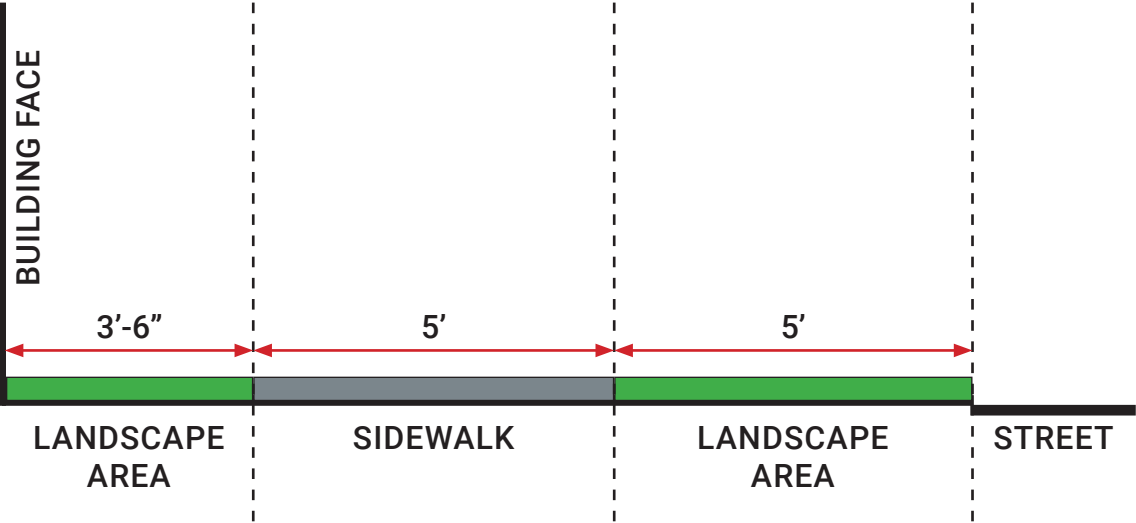
\\sawg001\Shared\Department\ShareInformation Systems\PI GIS\GIS\_Town\Case\_Functions\Zoning\Supp\Maps\_Cutflaps\2022\Ord110\_12\_22\10\_12\_22.aprx

Ordinance G-7031



## Exhibit C

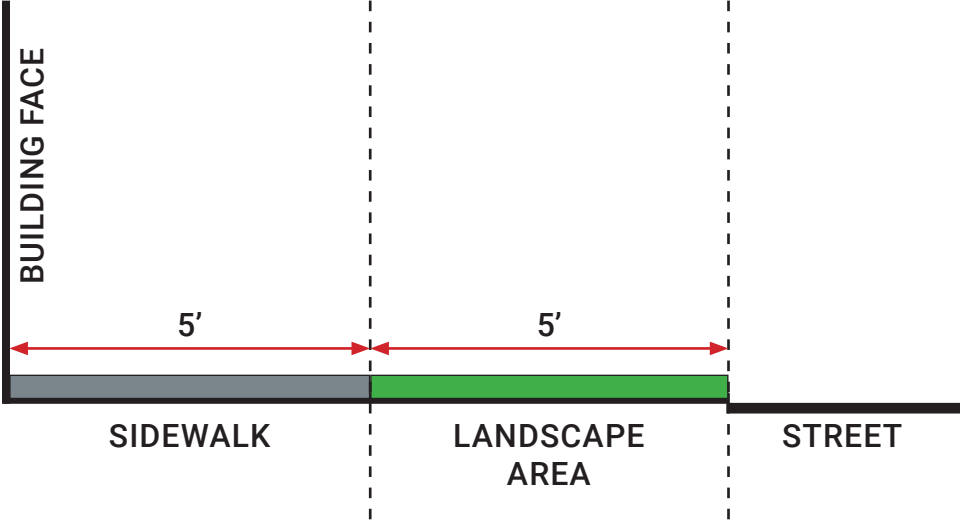
A: OSBORN RD STREETSCAPE AT UNITS



REQUIRED BY WU CODE: 5' SIDEWALK; 5' LANDSCAPE AREA

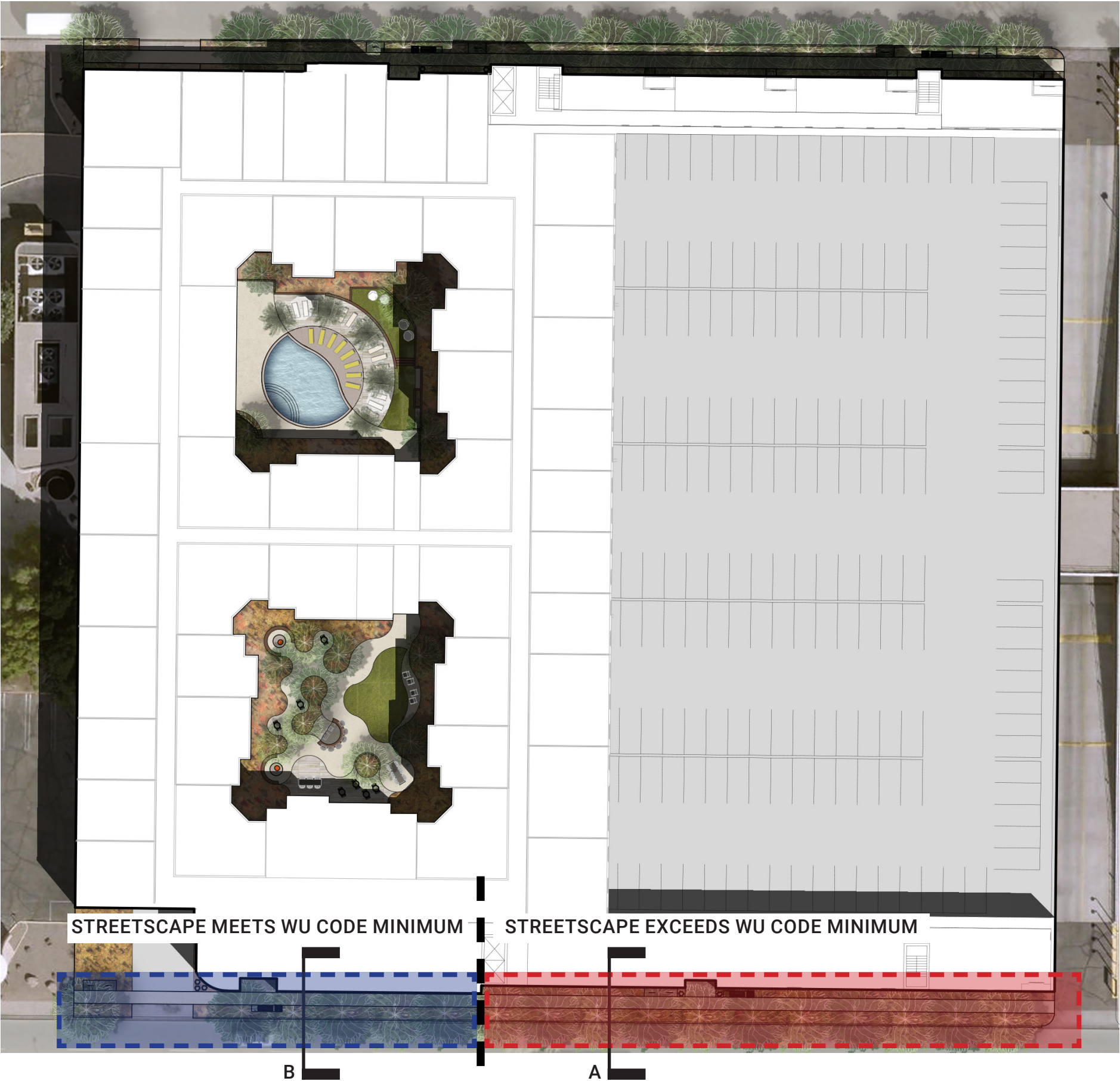
PROVIDED: 5' SIDEWALK, 8'-6" LANDSCAPE AREA (TOTAL)

B: OSBORN RD STREETSCAPE AT LOBBY

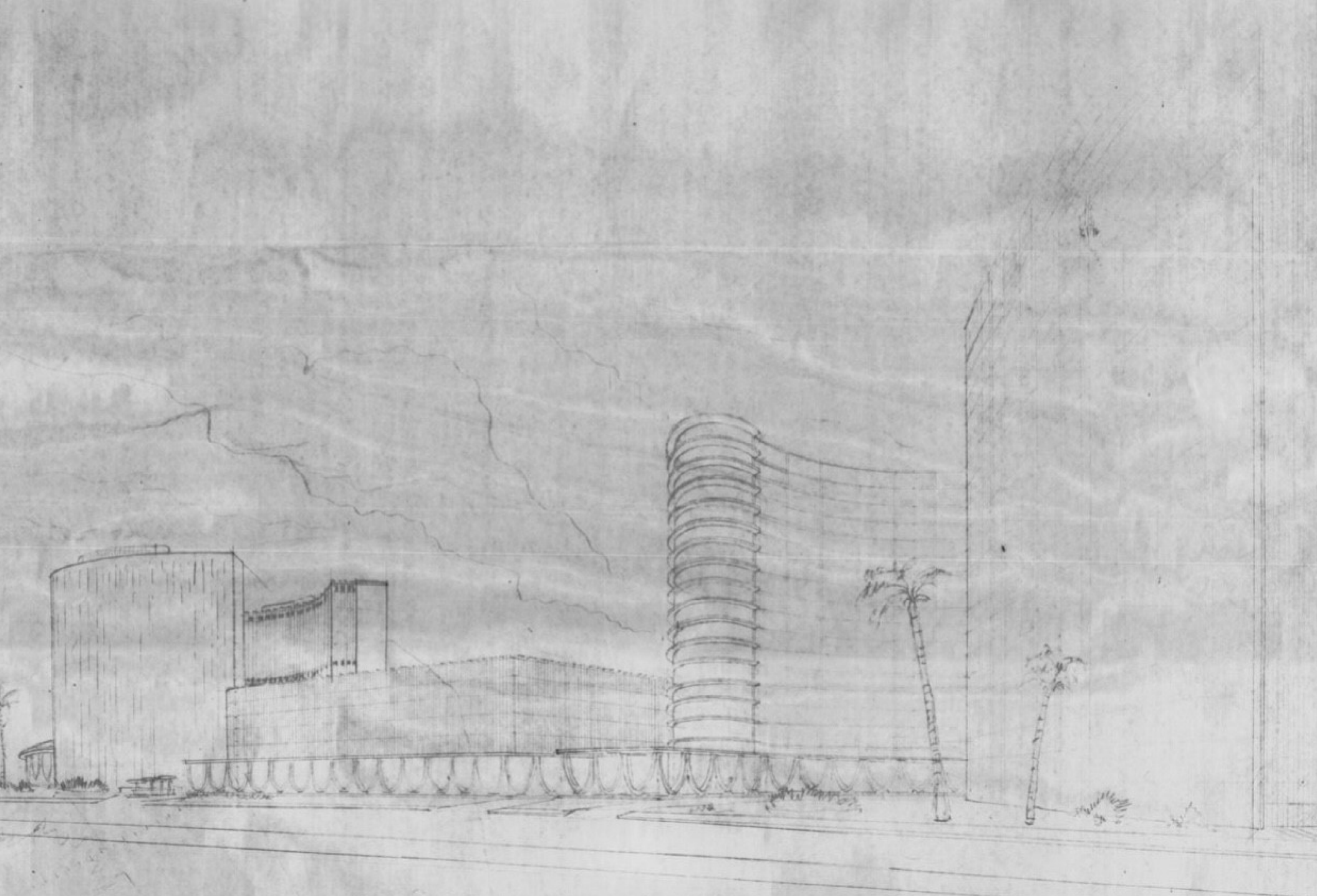


REQUIRED BY WU CODE: 5' SIDEWALK; 5' LANDSCAPE AREA

PROVIDED: 5' SIDEWALK, 5' LANDSCAPE AREA



## Exhibit D



AL CENTER  
CORNER OF 3RD STREET & OSCEOLA RD  
ARIZONA

Sarmiento ARCHITECTS  
ST. LOUIS MISSOURI

ORDINANCE G-7031

AN ORDINANCE AMENDING THE ZONING DISTRICT MAP ADOPTED PURSUANT TO SECTION 601 OF THE CITY OF PHOENIX ZONING ORDINANCE BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE PARCEL DESCRIBED HEREIN (Z-26-22-4) FROM C-2 H-R TOD-1 (INTERMEDIATE COMMERCIAL, HIGH RISE INCENTIVE DISTRICT, INTERIM TRANSIT-ORIENTED ZONING OVERLAY ONE) AND P-2 H-R TOD-1 (PARKING, HIGH RISE INCENTIVE DISTRICT, INTERIM TRANSIT-ORIENTED ZONING OVERLAY ONE) TO WU CODE T5:6 MT (WALKABLE URBAN CODE, TRANSECT 5:6, TRANSIT MIDTOWN CHARACTER AREA).

---

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX, as follows:

SECTION 1. The zoning of a 4.10 acre site located approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road, in a portion of Section 29, Township 2 North, and Range 3 East, as described more specifically in Exhibit "A", is hereby changed from 0.53-acres of "C-2 H-R TOD-1" (Intermediate Commercial, High Rise Incentive District, Interim Transit-Oriented Zoning Overlay One) and 3.57 acres of "P-2 H-R TOD-1" (Parking, High Rise Incentive District, Interim Transit-Oriented Zoning Overlay One) to 4.10 acres of "WU Code T5:6 MT" (Walkable Urban Code, Transect 5:6, Transit Midtown Character Area).

SECTION 2. The Planning and Development Director is instructed to modify the Zoning Map of the City of Phoenix to reflect this use district classification change as shown in Exhibit "B".

SECTION 3. Due to the site's specific physical conditions and the use district applied for by the applicant, this rezoning is subject to the following stipulations, violation of which shall be treated in the same manner as a violation of the City of Phoenix Zoning Ordinance:

MOD

1. The developer shall construct a minimum 5-foot-wide detached sidewalk and minimum 10-foot-wide landscape area located between the back of curb and sidewalk along the north side of Osborn Road planted to the following standards. Where utility conflicts exist, the developer shall work with the Planning and Development Department on alternative design solutions consistent with the creation of a comfortable pedestrian environment.
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- c. A bicycle repair station ("fix it station") shall be provided and maintained by the developer near secure bicycle parking area.
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6. The developer shall provide documentation to the City prior to final site plan approval that Form 7460-1 has been filed for the development and that the development received a "No Hazard Determination" from the FAA. If temporary equipment used during construction exceeds the height of the FAA and a "NO Hazard Determination" obtained prior to the construction start date.
7. The developer shall grant and record an aviation easement to the City of Phoenix for the site, per the content and form prescribed by the City Attorney prior to final site plan approval.
8. 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.
9. 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.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

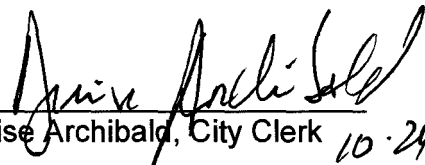


PASSED by the Council of the City of Phoenix this 12th day of October,  
2022.




MAYOR

ATTEST:

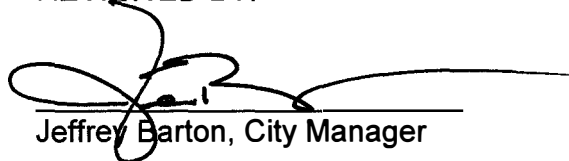
  
Denise Archibald, City Clerk 10-24-2022



APPROVED AS TO FORM:  
Cris Meyer, City Attorney

By:   
Deryck R. Lavelle, Assistant Chief Counsel  
Pml

REVIEWED BY:

  
Jeffrey Barton, City Manager

Exhibits:  
A – Legal Description (1 Page)  
B – Ordinance Location Map (1 Page)

PL:tml:LF22-1586:10-12-2022:2340745v1

EXHIBIT A

LEGAL DESCRIPTION FOR Z-26-22-4

LOCATED IN THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 3 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER, FROM WHICH THE EAST QUARTER CORNER BEARS SOUTH 89 DEGREES 23 MINUTES 59 SECONDS EAST, A DISTANCE OF 2663.82 FEET;

THENCE SOUTH 89 DEGREES 23 MINUTES 59 SECONDS EAST, ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 484.31 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 39 MINUTES 44 SECONDS EAST, A DISTANCE OF 434.20 FEET TO THE MONUMENT LINE OF EAST MITCHELL DRIVE;

THENCE SOUTH 89 DEGREES 24 MINUTES 33 SECONDS EAST, ALONG SAID MONUMENT LINE, A DISTANCE OF 411.36 FEET;

THENCE SOUTH 00 DEGREES 33 MINUTES 10 SECONDS WEST, ALONG THE PROLONGATION OF THE WEST LINE OF LOT 1, AS RECORDED IN BOOK 726, PAGE 48, A DISTANCE OF 434.27 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;

THENCE NORTH 89 DEGREES 23 MINUTES 59 SECONDS WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 412.18 FEET TO THE POINT OF BEGINNING.

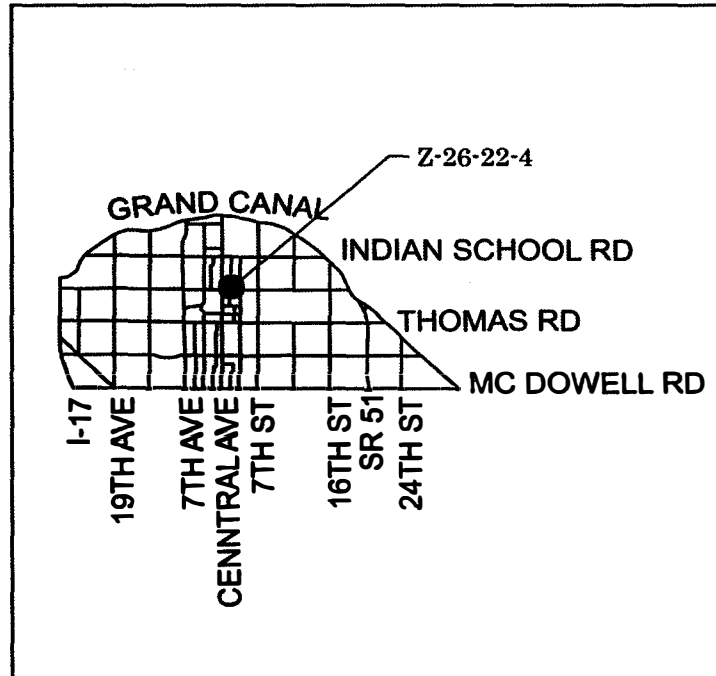
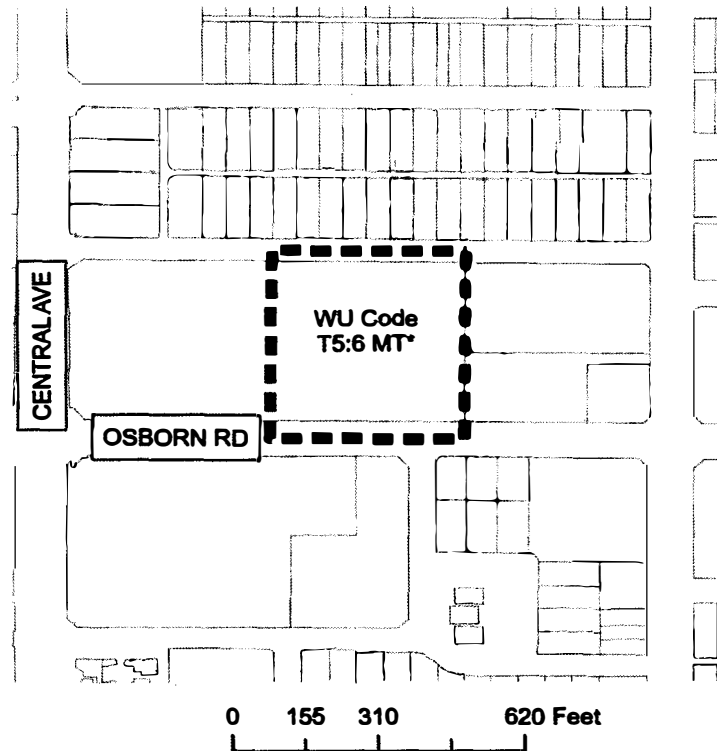
SAID PARCEL CONTAINS 178,804 SQUARE FEET OR 4.105 ACRES, MORE OR LESS.

# ORDINANCE LOCATION MAP

EXHIBIT B

ZONING SUBJECT TO STIPULATIONS: \*  
SUBJECT AREA: ■ ■ ■ ■ ■

Zoning Case Number: Z-26-22-4  
Zoning Overlay: N/A  
Planning Village: Encanto



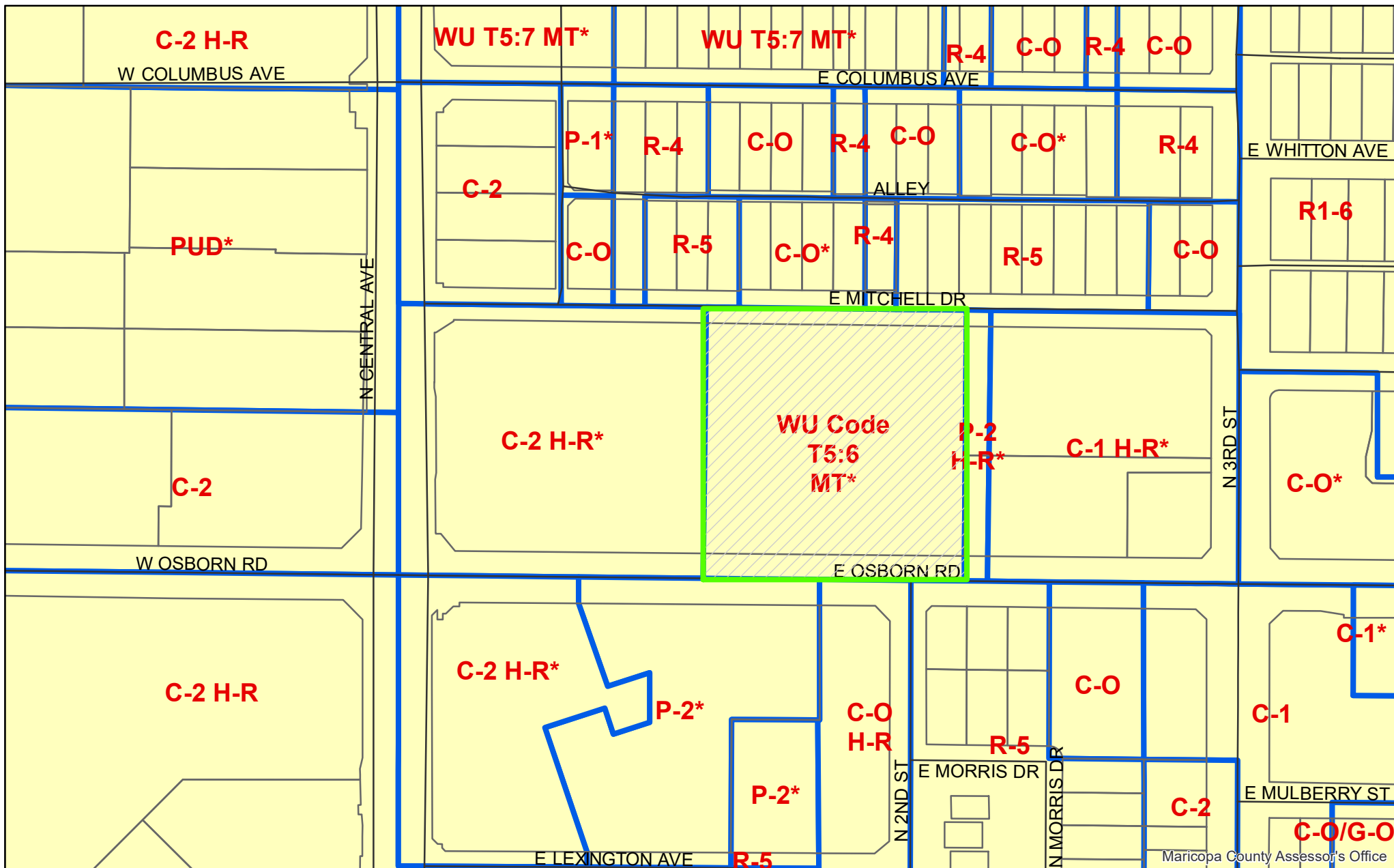
NOT TO SCALE



Drawn Date: 9/14/2022

\\sone\fd\Shared\Department Share\Information Systems\PL GIS\GIS\_Team\Core\_Functions\Zoning\SubMaps\_OrdMaps\2022 Ord\10-12-22\10-12-22.aprx





PHO-1-22--Z-26-22-4

**Property Location: Approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road**





PHO-1-22--Z-26-22-4

**Property Location: Approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road**





**DAVIS**  
PARTNERSHIP  
ARCHITECTS

2301 Blake Street, Suite 100  
Denver, CO 80205  
303.961.5555

Consultant(s)

Stamp

**PROGRESS PRINTS**  
NOT FOR  
CONSTRUCTION  
3/11/2022 2:45:28 PM

Issuance	Date
REZONING SUBMITTAL	2022.03.25
Revisions	Date No.

CITY OF PHOENIX  
140 E. 1ST AVENUE  
PHOENIX, ARIZONA 85004

Project Information

**Modera Midtown at Punchcard**  
OSBORN RD. AND CENTRAL AVE.  
PHOENIX, AZ 85012

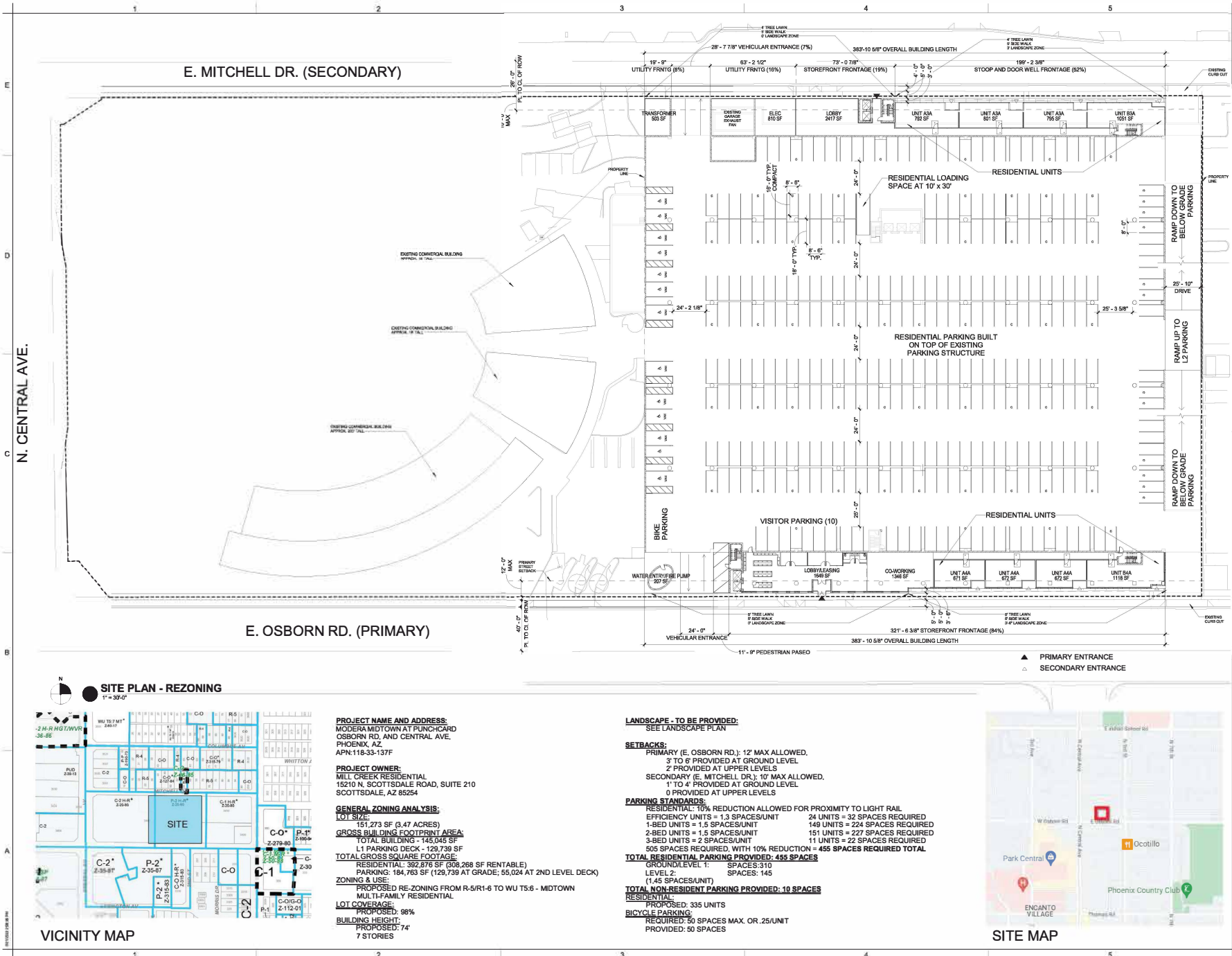
Sheet Information

Sheet Title:  
**CONCEPTUAL SITE PLAN**

Sheet Number:

**A-100**

DPA Project: 21165.00.000





- 80** Amend City Code - Ordinance Adoption - Rezoning Application Z-3-22-3 (12th & Greenway PUD) - Approximately 175 Feet North of the Northwest Corner of 12th Street and Greenway Parkway (Ordinance G-7035)

**This item was adopted.**

- 81** Amend City Code - Ordinance Adoption - Rezoning Application Z-26-22-4 - Approximately 430 Feet East of the Northeast Corner of Central Avenue and Osborn Road (Ordinance G-7031)

**This item was approved with adoption of the related ordinance.**

- 82** Amend City Code - Ordinance Adoption - Rezoning Application Z-29-22-4 - Northwest Corner of 4th Avenue and Osborn Road (Ordinance G-7032)

**This item was adopted.**

- 83** Amend City Code - Ordinance Adoption - Rezoning Application Z-39-22-5 - Approximately 340 Feet East of the Southeast Corner of 29th Avenue and Northern Avenue (Ordinance G-7033)

**This item was adopted.**

- 84** Amend City Code - Ordinance Adoption - Rezoning Application Z-38-22-6 - Southeast Corner of 10th Street and Pasadena Avenue (Ordinance G-7038)

**This item was adopted.**

- 85** Amend City Code - Ordinance Adoption - Rezoning Application Z-13-22-8 - Approximately 150 Feet West of the Northwest Corner of 9th Street and Portland Street (Ordinance G-7030)

**This item was adopted.**

- 86** Amend City Code - Ordinance Adoption - Rezoning Application Z-24-22-8 - Approximately 370 Feet West of the Southwest Corner of 48th Street and McDowell Road (Ordinance G-7036)

**This item was adopted.**

- 87** Amend City Code - Ordinance Adoption - Rezoning Application Z-28-22-8 - Northwest Corner of 23rd Avenue and Baseline Road (Ordinance G-7034)

**This item was adopted.**

- \*88** \*\*\*ITEM CORRECTED (SEE ATTACHED MEMO)\*\*\* Amend City Code - Ordinance Adoption - Rezoning Application Z-45-22-8 - Southeast Corner of 59th Avenue and Dobbins Road (Ordinance G-7039)

**Committee Member Mahrle** made a motion to approve the request per the staff recommendation with the following additional stipulation: “the developer shall incorporate solar panels with a kW range of not less than 100 kW”. The motion was seconded by **Committee Member Matthews**.

### **DISCUSSION**

None.

### **VOTE**

**8-2-0**; motion passed with Committee Members Bryck, Cothron, Jewett, Mahrle, Matthews, Procaccini, Schiller, and Chair Kleinman in support, George and Vice Chair Rodriguez in dissent, and none in abstention.

**Committee Member Searles** experienced technical difficulties and was unable to vote during the item and, for the purpose of the vote, is considered absent.

4. **Z-26-22-4**: Presentation, discussion, and possible recommendation regarding a request to rezone 4.47 acres located approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road **from** P-2 H-R TOD-1 (Parking, High-Rise Incentive District, Interim Transit-Oriented Zoning Overlay District One) and C-2 H-R TOD-1 (Intermediate Commercial, High-Rise Incentive District, Interim Transit-Oriented Zoning Overlay District One) **to** WU T5:6 MT (Walkable Urban Code, Transect 5:6 District, Transit Midtown Character Area) to allow multifamily residential.

*No virtual speaker cards were received on this item.*

### **STAFF PRESENTATION**

**Mr. Nick Klimek**, staff, provided an overview of the site including its physical and policy contexts, the applicant’s proposal, and the staff recommendation. The subject site is located approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road, immediately east of the Phoenix Financial Center. There is no single-family residential near the subject site which is surrounded by commercial uses with built or entitled heights of between 56 and 250 feet. The subject site is located within the Encanto Village Core, within a short walk to the nearest light rail station, and within the Midtown TOD Policy Plan area.

The conceptual zoning plan contained within the Midtown TOD Policy Plan identifies the site as T6:22. T6:22 would allow a maximum height of 250 feet which is significantly more than the 80 feet permitted in T5:6. The conceptual zoning plan includes a disclaimer that its recommendation is guidance only and that a more thorough analysis should be completed during the rezoning process. The site includes significant constraints including an obligation of the sale/purchase to accommodate a large volume of off-site vehicle parking. In terms of physical constraints, the subterranean parking structure that occupies virtually the entire site

provide a structural limit on the yield possible on the site without fully redeveloping the site and accommodating the full parking load for both the off-site user and the new development. Due to these financial, logistical, and structural constraints, it is unlikely that the site will achieve heights beyond T5:6 which is therefore the staff recommendation in response to the applicant's proposal.

The subject site is presently developed with a surface and subterranean parking structure with a total of 1,178 parking spaces for the adjacent but off-site Phoenix Financial Center. The applicant's proposal preserves this off-site parking arrangement and adds 335 multifamily units to be built atop the parking structure for a total above grade height of approximately 75 feet. The development includes five percent private open space as required by WU Code.

Staff is recommending approval subject to 9 stipulations.

## APPLICANT PRESENTATION

**Mr. Nick Wood**, of Snell and Wilmer, introduced himself as representing the applicant. He presented on the site, the proposal, and offered to answer questions from the committee. Mill Creek Residential is a national developer focused on lifestyle and this will be their second project in Phoenix with the first located in the Kierland area and they primarily pursue development with a build-hold strategy.

The subject site is challenging but exciting due to its physical constraints and the design opportunities. In collaboration with the Phoenix Financial Center the proposal will create a connected mixed-use community with jobs, dwellings, public open space, and resident amenities. The subject site currently houses virtually all parking for the Phoenix Financial Center and is entirely developed by a parking structure with two below grade levels and a surface level with a total of 1,178 spaces. Historically, the subject site was master planned with the Phoenix Financial Center and was proposed as a lower-rise commercial structure that would sit atop the parking structure. The current proposal will structurally reinforce the parking structure to accommodate seven stories of multifamily development above grade.

A condition of the purchase from the owners of the Phoenix Financial Center required that the applicant replace the 385 surface parking spaces with at least 120 unreserved spaces, in addition to also preserving all 768 underground spaces used by the Phoenix Financial Center. The proposal adds 335 dwelling units with a marginal increase in the total amount of parking on the site. The above grade parking structure is wrapped by units on the west, north, and south with the podium and elevated surface parking that will open onto the east.

The proposal includes: two ground level amenity areas for residents that will be surrounded by units; an electrical transformer that will allow for up to 50 percent of all units in the parking structure to be EV charging stations; and will include efficient fixtures and building materials.

He concluded by stating that the applicant is in full agreement with all the staff stipulations.

## QUESTIONS FROM COMMITTEE

**Committee Member Cothron** asked if the project will pursue LEED Certification and if there have been any neighborhood concerns. **Mr. Tyler Wilson**, of Mill Creek Residential, introduced himself and stated that they will not pursue LEED Certification but that their proposal would meet many of the certification points. **Mr. Wood** stated that the neighborhood outreach process exceeded the minimum requirements established by the City of Phoenix and there is only one opponent who doesn't like multifamily or any development on the site.

**Vice Chair Rodriguez** stated that the Midtown TOD Policy Plan identifies the site as being appropriate for more intensity. She asked for confirmation that structural analyses revealed that the parking structure cannot handle additional load beyond 75 feet. **Mr. Wood** confirmed. **Vice Chair Rodriguez** stated that parking costs will always fall back onto the tenants and expressed concern that the applicant's presentation had failed to mention the light rail or the many bikeways in Central Phoenix including the 3rd Street Promenade. She asked for detail on the target renters and if they would all be drivers. **Mr. Wilson** responded that the likely renter profile includes a mix of everyone but that there will likely be a focus toward medical employees due to the concentration of uses including St. Joseph Hospital, Creighton University, and others within proximity. Mill Creek Residential targeted the site due to the light rail, the 3rd Street Promenade, Park Central, and collectively, the energy focused around this area. **Vice Chair Rodriguez** stated that it sounds like they are targeting prospective tenants who want to live near they work. She asked if the units will be energy efficient. **Mr. Wilson** responded that the development will be a long-term hold and that energy efficient building systems will benefit them as owners but also their tenants.

**Vice Chair Rodriguez** stated that the most sustainable thing that a developer can do is reduce its parking supply to mitigate the urban heat island crisis. She stated that reducing parking is also an important way to address the affordable housing crisis facing Phoenix. She expressed concern that the site is over-parked. **Mr. Wood** agreed with the premise that parking is expensive but stated the proposal is displacing surface parking which must be accommodated within the development. **Vice Chair Rodriguez** responded that it is only displacing parking if the parking area is utilized, which the surface lot is not.

**Committee Member Procaccini** expressed concern that the units located on the eastern half of the site and oriented onto the elevated surface parking area will not be desirable. **Mr. Wood** responded that there will be shade structures for the elevated surface parking, that the units will be located five feet above the parking area to eliminate headlight glare. He concluded by stating that that they do not

expect that they will need to discount the units because, in part, the units will have a clear view of Camelback Mountain and will have larger patios than the other units.

**Committee Member Procaccini** asked if it is possible to add trees to the elevated surface parking and then suggested that they consider adding more curves into the design in tribute to the Phoenix Financial Center. **Mr. Wilson** stated that they will need to explore whether trees are viable given the structural limitations of the parking structure. He stated that plants and shrubs will be viable and that there will be structural shade for vehicles on the elevated surface parking area.

**Vice Chair Rodriguez** asked if staff expressed concerns about the project. **Mr. Wood** responded that they have worked closely with staff regarding the site plan and its interfaces with the public streets and with the Phoenix Financial Center.

**Vice Chair Rodriguez** asked Klimek to confirm that members of the VPC can recommend stipulations. **Klimek** confirmed. **Vice Chair Rodriguez** suggested that a parking maximum is appropriate for this site and be added to the committee's recommendation.

**Chair Kleinman** asked Wood if the inclusion of unreserved parking in exchange for the displaced surface spaces was a condition of the property purchase. **Mr. Wood** confirmed that they are obligated to include 120 unreserved spaces in exchange for the 384 surface spaces that will be displaced.

**Committee Member Schiller** asked if the retail referenced in the site was onsite or if was located on the site of the adjacent Phoenix Financial Center. **Mr. Wood** confirmed the latter.

## PUBLIC COMMENTS

**Chair Kleinman** identified a raised hand in the audience and asked Klimek if anyone from the public had registered to speak and, if not, whether the committee can elect to hear a comment. **Klimek** confirmed that no one had registered to speak but that the Chair has the discretion to invite public comment. **Chair Kleinman** invited John Glenn to address the committee.

**Mr. John Glenn** introduced himself, greeted the committee, and expressed his support for the project.

## APPLICANT RESPONSE

**Mr. Wood** stated that there were many hurdles associated with the site but explained that he feels the project complements the Phoenix Financial Center in both design and layout and maximized the density on this infill parcel.

**Vice Chair Rodriguez** asked for an explanation of how the parking supply is calculated including the preserved parking for the Phoenix Financial Center, the displaced parking at surface level, the unreserved parking to offset a portion of the displaced parking, and the total supply of parking for residential uses. Wood summarized the parking calculations including conditions of the sale. **Chair Kleinman** asked for confirmation that the proposal adds 335 dwelling units, removes 379 spaces, and adds 499 spaces. **Mr. Wood** confirmed.

**Vice Chair Rodriguez** invited other members of the committee to learn more about the impact of parking supply on housing costs.

#### FLOOR/PUBLIC DISCUSSION CLOSED: MOTION, DISCUSSION, AND VOTE

**Chair Kleinman** asked Vice Chair Rodriguez if she would like to make a motion. **Vice Chair Rodriguez** declined.

#### **MOTION**

**Chair Kleinman** made a motion to approve the request per the staff recommendation. **Committee Member Jewett** seconded.

#### **DISCUSSION**

None.

#### **VOTE**

**7-3-0**; motion passed with Committee Members Bryck, Jewett, Mahrle, Matthews, Procaccini, Schiller, Wagner, and Chair Kleinman, in support, Committee Members Cothron, George, and Vice Chair Rodriguez in dissent, and none in abstention.

**Committee Member Searles** experienced technical difficulties and was unable to vote during the item and, for the purpose of the vote, is considered absent.

#### 5. Discussion on in-person Village Planning Committee meetings.

**Chair Kleinman** asked staff if there were any updates on when the Encanto VPC may return to in-person meetings. **Mr. Klimek** responded that no direction has been provided by the City Council or the City Manager's Office and indicated that those bodies will determine when and how in-person meetings resume. He added that issues related to staffing may arise if a hybrid model is proposed because it would functionally be two meetings in one.

**Chair Kleinman** stated that he supports the return to in-person meetings because virtual meetings have decreased community involvement and the civic exercise that comes from gathering physically.

**Committee Member Cothron** stated that she prefers in-person meetings.

REPORT OF PLANNING COMMISSION ACTION  
September 1, 2022

ITEM NO: 16	
	DISTRICT NO.: 4
SUBJECT:	
Application #:	Z-26-22-4
Location:	Approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road
From:	C-2 H-R TOD-1, and P-2 H-R TOD-1
To:	WU Code T5:6 MT
Acreage:	4.10
Proposal:	Multifamily Residential
Applicant:	Mill Creek Residential
Owner:	3443 North Central, LLC
Representative:	Nick Wood, Snell & Wilmer, LLP

**ACTIONS:**

Staff Recommendation: Approval, subject to stipulations.

Village Planning Committee (VPC) Recommendation:

**Encanto** 8/1/2022 Approval, per the staff recommendation. Vote: 7-3.

Planning Commission Recommendation: Approval, per the Encanto Village Planning Committee recommendation.

Motion Discussion: N/A

Motion details: Vice Chair Mangum made a **MOTION** to approve Z-26-22-4, per the Encanto Village Planning Committee recommendation.

Maker: Vice Chair Mangum  
Second: McCabe  
Vote: 7-0  
Absent: Busching and Simon  
Opposition Present: No

**Findings:**

1. The development is consistent with the General Plan Land Use Map designation of Commercial.
2. The proposal, as stipulated, will create a strong pedestrian environment along both Osborn Road and Mitchell Drive with shaded and detached sidewalks to convey residents safely and comfortably within the Encanto Primary Core and to the Osborn Road Light Rail Station.



3. The proposal will create additional housing options in line with the Housing Phoenix Plan's goal of preserving or creating 50,000 housing units by 2030.

Stipulations:

1. The developer shall construct a minimum 5-foot-wide detached sidewalk and minimum 10-foot-wide landscape area located between the back of curb and sidewalk along the north side of Osborn Road planted to the following standards. Where utility conflicts exist, the developer shall work with the Planning and Development Department on alternative design solutions consistent with the creation of a comfortable pedestrian environment.
  - a. All trees shall be of a large canopy, shade, and single-trunk variety with a minimum 3-inch caliper.
  - b. At tree maturity, the trees shall shade the sidewalks to a minimum 75 percent.
  - c. Drought tolerant shrubs and vegetative groundcovers maintained to a maximum height of 24 inches to provide a minimum of 75 percent live coverage at maturity.
2. The developer shall incorporate bicycle infrastructure as described below and as approved by the Planning and Development Department.
  - a. All required bicycle parking for multifamily use, per Section 1307.H.6.d of the Phoenix Zoning Ordinance, shall be secured parking.
  - b. Guest bicycle parking for multifamily residential use shall be provided at a minimum of 0.05 spaces per unit with a maximum of 50 required spaces near entrances of buildings and installed per the requirements of Section 1307.H of the Phoenix Zoning Ordinance.
  - c. A bicycle repair station ("fix it station") shall be provided and maintained by the developer near secure bicycle parking area.
3. The developer shall dedicate a sidewalk easement for any streetscape area that falls outside of dedicated right-of-way, as approved by the Planning and Development Department.
4. 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.
5. Developer to record a Notice to Prospective Purchasers of Proximity to Airport, as required by the State, prior to final site plan approval.
6. The developer shall provide documentation to the City prior to final site plan approval that Form 7460-1 has been filed for the development and that the development received a "No Hazard Determination" from the FAA. If temporary equipment used

during construction exceeds the height of the FAA and a “NO Hazard Determination” obtained prior to the construction start date.

7. The developer shall grant and record an avigation easement to the City of Phoenix for the site, per the content and form prescribed by the City Attorney prior to final site plan approval.
8. 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.
9. 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.

This publication can be made available in alternate format upon request. Please contact Les Scott at 602-261-8980, [leslie.scott@phoenix.gov](mailto:leslie.scott@phoenix.gov) or TTY: Use 7-1-1.