

## ATTACHMENT C

### REPORT OF PLANNING HEARING OFFICER ACTION Byron Easton, Planner III, Hearing Officer Teresa Garcia, Planner I, Assisting

July 17, 2024

ITEM NO: 1	
	DISTRICT NO. 2
SUBJECT:	
Application #:	PHO-3-24--Z-6-12-2
Location:	Southwest Corner of North Valley Parkway and Sonoran Desert Drive
Zoning:	C-2 M-R NBCOD
Acreage:	2.61
Request:	1) Request to modify Stipulation 2 regarding the review of the conceptual site plan and elevations.
Applicant:	Matt Updegraff, Kimley-Horn and Associates
Owner:	Gary Davidson, LDR-Sonoran Parkway, LLC
Representative:	Paul Gilbert, Gilbert Blilie PLLC

#### **ACTIONS:**

Planning Hearing Officer Recommendation: The Planning Hearing Officer took the case under advisement. On August 9, 2024, the Planning Hearing Officer took the case out from under advisement and recommended approval with a modification.

Village Planning Committee (VPC) Recommendation: The North Gateway Village Planning Committee heard the request on July 11, 2024 and recommended approval with a modification and an additional stipulation.

#### **DISCUSSION:**

Paul Gilbert, representative with Gilbert Blilie PLLC, 701 North 44<sup>th</sup> Street, gave an overview of the request. He stated that the relocation of the commercial access driveway on the self-service storage warehouse site to the south was a primary concern for nine neighbors in the adjacent neighborhood. He stated the accessway comes off North Valley Parkway, cuts through the property and goes north. He stated the proposed site plan will eliminate the existing accessway and keep the proposed McDonald's as far away from the neighborhood as possible. He stated they made several changes to the proposed site plan per meetings with the North Gateway VPC including a 25-foot landscape buffer, pedestrian walkways, bike racks, outdoor seating, and select development standards.

Byron Easton, Planning Hearing Officer, indicated only one modification request was advertised for the conceptual site plan and elevation review. He stated the North Gateway VPC recommended approval with an additional stipulation regarding the relocation of the existing accessway. Mr. Easton recommended approval of the modification request, replacing the existing stipulation language requiring review with a general conformance stipulation to the conceptual site plan and elevations. Mr. Easton asked Mr. Gilbert who started the conversation about relocating the existing accessway. Mr. Gilbert stated the neighbors did.

Mr. Easton asked why the request was not included when they filed for the PHO hearing. Mr. Gilbert stated they assumed the self-service storage warehouse would have been further along in construction before McDonald's, therefore the construction of the accessway would commence with the construction of the storage facility. He stated that after several meetings, it was decided that the relocation of the proposed accessway would commence when construction on the first project began.

Mr. Easton stated he had several concerns with the proposed stipulation. He stated that the subject property of the PHO request does not encompass the entire site that is shown on the site plan. The self-service storage warehouse site to the south was entitled in a separate and unrelated rezoning case and was evidently on a separate project timeline. He also noted that the self-service storage warehouse is not adjacent to the proposed McDonald's project site because there is a vacant parcel in between the two sites. He stated the language of the additional stipulation may create a situation where a potential owner of the center parcel won't have any say over the improvements on the site.

Mr. Gilbert stated the owner of the middle parcel is the same owner that owns the McDonald's and the self-service storage warehouse site. Mr. Easton asked if the middle parcel was being created. Mr. Gilbert stated they have not created the parcel yet. He stated his client has no problems with the intent of the stipulation and stated he does not see it as a reason to justify not agreeing to the stipulation.

Mr. Easton clarified he has no issues with the intent of the stipulation, however the issue is the legality of accomplishing the request through a rezoning stipulation in a case that is off-site to the impacted area. He stated if any development were to occur on the future center parcel, it will need to come back to PHO for review of plans per existing stipulations, further proving the point that the self-service storage warehouse and McDonald's sites are not adjacent to each other. He stated that due to these conflicts, he could not recommend approval at this time. He noted that there is an active lot split application submitted to the City, proposing creation of two lots, not three as the site plan showed. He observed that there is a lot going on with the larger site generally and does not think the stipulation is appropriate at this time.

Mr. Gilbert asked if the last sentence of the stipulation could be modified to say “If McDonald’s restaurant commences construction prior to the self-storage facility, construction of the referenced driveway will be part of McDonald’s improvements.” He stated a lot of neighbors will be upset if this stipulation is not added.

Mr. Easton noted that the PHO provided recommendations only and not final approvals. He stated it sounds like a private matter between the neighbors and the developer as this PHO action is not the proper way to settle it. He stated the PHO does not control off-site improvements as they raise legal concerns. Mr. Easton recommended taking the case under advisement.

### **FINDINGS:**

- 1) The request to modify Stipulation 2 regarding general conformance to a site plan and elevations is recommended to be approved with a modification. The modification is to replace the existing stipulation with a new general conformance stipulation. During the initial rezoning the commercial development was only shown as a location without a specific site plan. The original stipulation was created to require a review by the Planning Hearing Officer of the site plan and elevations of the commercial portion once the market conditions were viable for development.

As planned, there is one building totaling approximately 3,780 square feet. The primary architectural features provide visual interest through the application of canopies over entrances, three different and complimentary paint colors, horizontal reveals, and vertical plane breaks.

- 2) The North Gateway Village Planning Committee recommended an additional stipulation regarding off-site improvements. This stipulation is not recommended for approval.

The VPC and the applicant proposed the stipulation to require the developer to relocate an existing drive aisle adjacent to existing single-family homes, along the west side of property to the south of the subject site, if the project commences before the approved “adjacent” self-storage facility to the south. It should be noted that the self-service storage warehouse site is not adjacent to the subject property of this PHO request and is entitled under a separate rezoning case. Further, the location of the referenced drive aisle is off-site to the subject property of this PHO request. It is not advised to stipulate off-site improvements in a rezoning or PHO case. The stipulations in a rezoning or PHO case are relevant to the subject property of the case itself.

The intent of the stipulation is to provide assurance to the neighbors that the drive aisle will be relocated at the commencement of the first

development project on the parcels adjacent to their community. While I have no issue with the intent of the stipulation and agree with the assertion that it would be of benefit to the impacted residences, I do not recommend adopting a stipulation requiring off-site improvements in a rezoning case for an unrelated property.

The statement that the proposed self-service storage warehouse is “adjacent” to the subject property of the PHO is inaccurate, there is vacant property between the subject site and the self-service storage warehouse site. If any development were to occur on the vacant parcel, it is stipulated to appear at the PHO for a review of conceptual plans. At that future PHO hearing, it would absolutely be an appropriate time to stipulate to this type of condition as the case would involve the impacted property and be related to development of said property. This may also be an issue between the developers and/or owners of the various sites involved which could be resolved through a development agreement or other private contract or legal arrangement.

**STIPULATIONS:**

SITE PLAN AND ELEVATIONS – RESIDENTIAL PORTION	
1.	The development shall be in general conformance with the site plan and elevations date stamped February 1, 2021, as modified by the following stipulations and approved by the Planning and Development Department.
SITE PLAN AND ELEVATIONS – COMMERCIAL PORTION	
2.	<p>THE DEVELOPMENT SHALL BE IN GENERAL CONFORMANCE WITH THE SITE PLAN AND ELEVATIONS DATE STAMPED MAY 31, 2024, AS MODIFIED BY THE FOLLOWING STIPULATIONS AND APPROVED BY THE PLANNING AND DEVELOPMENT DEPARTMENT.</p> <p><del>Conceptual site plan(s) and elevations shall be reviewed and approved by the Planning Hearing Officer through the public hearing process for stipulation modification prior to preliminary site plan approval as each parcel is to be developed. This is a legislative review for conceptual purposes only. Specific development standards and requirements may be determined by the Planning Hearing Officer and Planning and Development Department.</del></p>
STREET TRANSPORTAION	
3.	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 or modified by the Planning and Development Department. All improvements shall comply with ADA accessibility requirements.
4.	Coordinate driveway locations, design, and construction with the City's Street Transportation Department Capital Improvement Program project (ST85110090) and contact the project manager, Chris Kowalsky, at 602-495-3697.
5.	The sidewalk on North Valley Parkway and Sonoran Desert Drive shall be setback a minimum of eight feet from the back of curb as approved by the Planning and Development Department.
6.	The developer shall dedicate right-of-way totaling 70 feet for the west half of North Valley Parkway for the entire frontage as approved by the Planning and Development Department.
7.	The developer shall construct roadway improvements at a width of 52 feet to the face of curb for the west half street improvements to North Valley Parkway for the entire frontage of the site as approved by the Street Transportation and Planning and Development Departments.
8.	The developer shall dedicate sufficient right-of-way to accommodate a bus bay, including a transit accessory pad, on North Valley Parkway south of Sonoran Desert Drive in accordance with Standard Detail P1256-2.
9.	The developer shall provide a bus bay, including a transit accessory pad, on North Valley Parkway south of Sonoran Desert Drive in accordance with Standard Detail P1256-2.
10.	The developer shall provide conduit and junction boxes at Sonoran Desert Drive and North Valley Parkway for future traffic signal equipment on the southwest corner of the intersection. The plan is to be submitted to the Street Transportation Department for review and approval. Submittal will be made as a separate document that shows the entire intersection with existing conduit runs and junction boxes. The Developer will submit the <u>approved</u> plan to the Civil Plans Coordinator as part of the civil engineering plan set. All work related to the construction or reconstruction of the conduit runs and junction box installation is the responsibility of the Developer.
11.	A letter shall be submitted to the Street Transportation Department Traffic Signals Engineer that indicates the applicant's commitment to pay 25% for the cost of traffic signals at North Valley Parkway and Sonoran Desert Drive when the Street Transportation Department warrants the installation

	of the signal infrastructure.
12.	The developer shall dedicate right-of-way totaling a minimum of 70 feet for the south half of Sonoran Desert Drive for the entire frontage as approved by the Street Transportation and Planning and Development Departments. Additionally, the developer shall dedicate sufficient right-of-way to accommodate an intersection flare for eastbound traffic at the southwest corner of North Valley Parkway and Sonoran Desert Drive.
13.	The developer shall work with the Street Transportation and Planning and Development Departments to provide for, as necessary, drainage and slope easements along Sonoran Desert Drive as defined in the Sonoran Desert Drive: Interstate 17 to North Valley Parkway Design Report, or as modified by the Street Transportation and Planning and Development Departments.
14.	The developer shall provide required pavement transitions, as necessary, on Sonoran Desert Drive to the west and on North Valley Parkway to the south, as approved by the Planning and Development Department.
15.	A 25-foot right-of-way triangle shall be dedicated at the southwest corner of the intersection of Sonoran Desert Drive and North Valley Parkway as approved by the Planning and Development Department.
16.	All driveway access points along Sonoran Desert Drive and North Valley Parkway shall be restricted to right-in / right-out turning movements only within 660 feet of the intersection of Sonoran Desert Drive and North Valley Parkway as approved by the Planning and Development Department.
17.	A completed MAG Transportation Improvement Program Form shall be provided and submitted to the Street Transportation Department with a copy to the Planning and Development Department.
18.	Complete the Red Border Letter process to notify the Arizona Department of Transportation of development adjacent to the I-17 freeway corridor and submit a copy to the Street Transportation Department and to the Planning and Development Department.
OTHER	
19.	The developer shall show the planned 69kV underground power lines on the site, landscape, and grading and drainage plans. All utilities and other construction shall be coordinated with the City and APS so as to not conflict with the planned power lines.

20.	The applicant shall 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. Further archaeological monitoring and/or testing (trenching) may be necessary based on the results of the survey.
21.	Prior to final site plan approval, the property owner shall record documents that disclose to purchasers of the property within the development the existence and operational characteristics of the mining operation near the development, that it is an active mine, has the potential to be active seven days a week, 24 hours a day, and is anticipated to continue until the rock resources are exhausted, which could be for 20 or more years. The form and content of such documents shall be reviewed and approved by the Law Department.
22.	That prior to final site plan approval, the property shall record documents that disclose to purchasers of the property within the development the proximity to building heights up to 190 feet on the north, south and west and up to 56 feet on the east of the subject site. 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.
23.	That prior to preliminary site plan approval, the landowner shall execute a Proposition 207 Waiver of Claims in a form approved by the City Attorney's Office. 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.
24.	That the property owner shall record documents that discloses the existence, and operational characteristics of the Deer Valley Airport to future owners or tenants of the property. The form and content of such documents shall be according to the templates and instruction provided which have been reviewed and approved by the City Attorney.

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