

## Attachment B

Planning Hearing Officer Summary of May 20, 2020  
Application Z-12-87-1(3)  
Page 1

### REPORT OF PLANNING HEARING OFFICER ACTION Adam Stranieri, Planner III, Hearing Officer Julianna Pierre, Planner I, Assisting

May 20, 2020

ITEM 2

DISTRICT 3

SUBJECT:

Application #: Z-12-87-1(3) (PHO-3-20)  
Zoning: R1-8  
Location: Approximately 410 feet northwest of the intersection of Moon Mountain Trail and Moon Spur Trail  
Acreage: 2.02  
Request: 1) Deletion of Stipulation 8 prohibiting two-story structures on five Moon Mountain lots.  
Applicant: Dennis Newcombe, Beus Gilbert McGroder  
Owner: Kulbhushan Sharma, Liquid Crystal Properties LLC  
Representative: Paul Gilbert, Beus Gilbert McGroder

### **ACTIONS**

Planning Hearing Officer Recommendation: The Planning Hearing Officer recommended approval with additional stipulations.

Village Planning Committee (VPC) Recommendation: The North Mountain Village Planning Committee chose not to hear this request.

### **DISCUSSION**

Dennis Newcombe, applicant with Beus Gilbert McGroder, stated that the subject property is part of Moon Mountain Vistas subdivision, previously known as Moon Mountain Estates, and is subject to a stipulation from the original zoning case limiting residences to one story. He stated that the lot was also stipulated to become subject to the Moon Mountain Estates Homeowners Association (HOA). He stated that the HOA's Architectural Committee reviewed the residential proposal and approved the proposal for the addition of the third-level walk-out through a private variance. He clarified that the residence is technically three stories per the City's definition, but one of those stories is a basement. He added that the architect designed the residence to blend into the surrounding mountain through color palette and style.

Mr. Newcombe stated that a City variance was previously applied for to allow a residence at 3 stories and 30 feet, which was approved subject to a stipulation. He stated that when attempting to obtain a building permit they were made aware of Rezoning Case No. Z-12-87-1 and the height limitation stipulation. He clarified that the

request to delete Stipulation 8, prohibiting two-story structures on five Moon Mountain lots, would not affect the HOA's covenants, conditions, and restrictions (CC&Rs).

Marjorie Simchak, a member of the public and vice president of the Moon Mountain Estates HOA, stated that she has lived on the mountain for 44 years and owns a vacant lot in Moon Mountain Vistas. She stated that there are existing homes similar to the proposed design and felt a variance is not necessary. She added that she was concerned about the precedent that would be set if a variance was required to allow homes with multiple stories.

David Lewis, a member of the public, stated that he agreed with Ms. Simchak and was concerned about possible changes to the private CC&Rs.

Mr. Newcombe stated that their request will only affect the stipulations from Rezoning Case No. Z-12-87-1 for the subject property. He added that the HOA's private CC&Rs could not be changed in the Planning Hearing Officer process.

Mark Tate, representative with Tate Studio Architects, stated that he had respect for the area and wanted the design of the home to reflect that. He stated that he worked with the HOA's Architectural Committee to create a design within the 30-foot height limit while still preserving view corridors.

Mr. Stranieri asked for clarification regarding the variance. Mr. Tate confirmed that the variance was to allow a 3 story, 30-foot maximum building.

Mr. Stranieri stated that emails were received from neighbors indicating concern about changes to the CC&Rs. Mr. Newcombe stated that he spoke with the neighbors and reassured him that there would be no change to the CC&Rs. Mr. Stranieri clarified that CC&Rs are private legal agreements that the City does not enforce, and the City does not have authority to modify them. He added that the emails received also detailed the issue of the City's interpretation of split-level homes. He clarified that split-level is not defined in the Zoning Ordinance, but instead defines stories by the height above grade and the space between the floor and the ceiling next above it. He stated that the maximum height allowed by the Zoning Ordinance and hillside requirements are not being modified by the PHO request or prior variance. He stated that he was inclined to recommend approval and that deletion of the stipulation would allow a design that is compatible with existing development in the area and consistent with what the HOA Architectural Committee reviewed and approved.

Mr. Stranieri stated that the site is identified as archeologically sensitive and would be subject to stipulations regarding survey and consultation with the City of Phoenix Archaeologist.

## **FINDINGS**

- 1) The original rezoning case included approximately 42.34 acres and three separate subdivisions: Moon Mountain Shadows I (five lots which include the subject property of this request), Moon Mountain Shadows II (seven custom

home lots to the northwest), and Moon Mountain Shadows III (55-lot subdivision to the west). The subject property also included approximately 11.8 acres of hillside open space situated in the center of the three subdivisions. The subdivisions were renamed and platted as Moon Mountain Vistas I-III. Two subsequent PHO actions (PHO-1-88 and PHO-2-88) modified stipulations relating to the required development option for Moon Mountain Vistas II and III. Properties in Moon Mountain Vistas I remained subject to the stipulations in the base zoning case.

- 2) The original approval contained multiple stipulations designed to control and mitigate impacts on properties in the Moon Mountain Estates subdivision, located east of the subject property in this request. This is evidenced by the public record in the original rezoning case and in Stipulations 10, 11, 13, and 14. These stipulations included requirements that the five Moon Mountain Vistas I lots allow Moon Mountain Estates to have architectural review and approval authority over home designs, that they be subject to the deed restrictions of Moon Mountain Estates, and that they join the Moon Mountain Estates Improvement Association. Further, they require that Moon Mountain Estates be notified of any stipulation modification requests.
- 3) The applicant indicated that since the original approval, the five Moon Mountain Vistas I lots have been made subject to the Moon Mountain Estates HOA and that the Moon Mountain Estates CC&R's are applicable to the five lots. Additionally, the CC&Rs have been modified to permit two-story homes through a private variance request reviewed by the Moon Mountain Estates Improvement Association Architectural Committee. The applicant's conceptual design was approved by this group. The applicant submitted correspondence from Moon Mountain Estates Homeowners Association Letter confirming their approval. The deletion of the stipulation in the current request will allow for a design that is compatible with existing development in the surrounding area and which is consistent with the private agreements reached with the entities involved in the original rezoning case.
- 4) On December 31, 2019, the Zoning Adjustment Hearing Officer approved a variance request (ZA-588-19-3) to allow a maximum building height of three stories and 30 feet subject to a stipulation to apply and pay for building permits within 18 months. The variance approval was granted without recognition of Rezoning Case No. Z-12-87-1 and Stipulation 8. The variance approval cannot be utilized without the deletion of Stipulation 8 as requested in this PHO application.

**DECISION:** The Planning Hearing Officer recommended approval with additional stipulations.

### **STIPULATIONS**

1.	That dDevelopment SHALL be under the Planned Residential Development
----	--

	option.
2.	<del>That a</del> A grading and drainage plan SHALL be submitted to the City Engineer.
3.	<del>That</del> THE maximum number of dwelling units in the entire subdivision shall not exceed 69. Development shall be in general conformance with the site plan dated October, 1986.
4.	The number of lots on Moon Mountain adjacent to Moon Mountain Estates shall not exceed five. Each of said lots shall be a minimum size of one acre.
5.	These five Moon Mountain lots shall have their primary access from Moon Mountain Trail to 15th Drive via the road connecting Moon Mountain Trail to 15th Drive and through Coral Gables Estates Subdivision. There shall only be emergency access from said lots westward along Moon Mountain Trail to 19th Avenue. There shall be a padlocked gate erected and maintained across Moon Mountain Trail on the west boundary of the northernmost of these five lots. No lots or property in the Moon Mountain Shadows development, other than these five lots, shall have access along Moon Mountain Trail from 19th Avenue beyond the padlocked gate. This is conditioned upon the applicant obtaining the necessary approvals to gain access to these five lots through the Coral Gables Estates Subdivision.
6.	<del>That t</del> The northernmost of the five Moon Mountain lots shall access the road connecting Moon Mountain Trail to 15th Drive at that road's intersection with Mountain Trail. The remaining four lots shall access Moon Mountain Trail at the existing easement through said lots. There shall be a limit of two driveways from these four lots onto Moon Mountain Trail. Those driveways shall be for the purpose of providing access for said four lots. The driveways shall be designed, built, and maintained to provide safe ingress to and egress from said four lots to Moon Mountain Trail. The existing roadway adjacent to these four lots shall be widened by approximately 11 feet to provide additional turning lane capacity for vehicles and a pedestrian walkway.
7.	Commencing at the southeast corner of the southernmost of the five Moon Mountain lots, there shall be a setback/open area 20 feet in width for a distance of 150 feet northward along the east boundary of said lot to a point. From said point and continuing northward along said east boundary, the setback/open space area shall commence reducing proportionately to a width of 15 feet at a point of termination of the setback/open space area which is 30 feet south of the northeast corner of said lot. No building, structures or other improvements shall be built or placed upon said area and the vegetation, rocks and land surface in this area shall remain undisturbed and in a natural state. This shall not limit the right of the owner of said lot to prune and trim live vegetation or to remove dead vegetation or to plant and cultivate additional indigenous vegetation within the setback/open space area.

8.	<del>That there shall be no two-story structures built or maintained on the five Moon Mountain lots. This shall not limit a split-level residence.</del>
8. 9.	As to the five Moon Mountain lots, there shall be no masonry block, stucco, wooden or other opaque fences, except as approved pursuant to paragraph 8 (relating to architectural review and approval). This shall not limit walls which are an integral architectural feature of a residence. This shall also not limit the use of retaining walls made of rock indigenous to the area or other rock similar in color and appearance.
9. 10.	<del>That</del> Buildings and improvements on the five Moon Mountain lots shall be subject to the reasonable architectural review and approval of the Moon Mountain Estates Improvement Association subject to standards of review acceptable to the applicant and the Association.
10. 11.	<del>That</del> The five Moon Mountain lots shall be made subject to the current deed restrictions of Moon Mountain estates and shall become a part of the Moon Mountain Estates Improvement Association.
11. 12.	The unplatted hillside area depicted on the subject site plan shall be restricted from future building and shall remain undeveloped open space area except for roadways and utility lines required to serve the Moon Mountain Shadows development and common open space improvements required by the City of Phoenix for Planned Residential Developments.
12. 13.	<del>That</del> There shall be a maximum of seven lots having ingress to and egress from Mandalay Lane east of 17th Avenue. No other lots or property in Moon Mountain Estates shall have access along or upon Mandalay Lane east of 17th Avenue or any extension of Mandalay Lane. Applicant agrees to cooperate with other property owners in area who enjoy access rights along Mandalay Lane east of 17th Avenue to build and maintain an entry gate on Mandalay Lane.
13. 14.	<del>That</del> These stipulations shall become part of the zoning approval on the subject real property and may not be amended or waived without a public hearing of which prior written notice shall be given to the Moon Mountain Estates Improvement and the Coral Gables Estates Homeowners Associations.
14. 15.	A one-foot, non-vehicular access easement shall be placed at the east end of Mandalay Lane, to keep traffic from subdivisions to the east from using Mandalay Lane, except for three lots lying to the east, represented by the applicant as currently having legal access rights on Mandalay Lane.
15. 16.	The maximum density permitted shall be 69 dwelling units, with a maximum number of lots in the valley or the flat area being reduced from 59 to 57 lots, in order that no lot abutting the existing Eaton Subdivision shall be less than 8,000 square feet.

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 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.

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.