

## Attachment C

### REPORT OF PLANNING HEARING OFFICER ACTION

Adam Stranieri, Principal Planner, Hearing Officer  
Bradley Wylam, Planner I, Assisting

December 21, 2022

ITEM NO: 3	
	DISTRICT 4
SUBJECT:	
Application #:	PHO-1-22--Z-26-22-4
Location:	Approximately 430 feet east of the northeast corner of Central Avenue and Osborn Road
Zoning:	WU Code T5:6 MT
Acreage:	4.10
Request:	1) Modification of Stipulation 1 regarding a 5-foot-wide detached sidewalk and minimum 10-foot-wide landscape area.
Applicant:	Mill Creek Residential
Owner:	3443 North Central LLC
Representative:	Nick Wood, Snell & Wilmer LLP

### **ACTIONS:**

Planning Hearing Officer Recommendation: The Planning Hearing Officer recommended approval with a modification and an additional stipulation.

Village Planning Committee (VPC) Recommendation: The Encanto Village Planning Committee heard this case on December 5, 2022 and recommended approval with an additional stipulation by a vote of 7-6.

### **DISCUSSION:**

Michael Maerowitz, representative with Snell & Wilmer LLP, introduced the subject site and surrounding uses. He provided an overview of the proposed use and stated that the development of the building has presented some difficult design issues due to the existing underground parking garage and Osborn Road. He stated that Stipulation 1 would be difficult to comply with given these constraints. He provided an overview of the proposed modification of Stipulation 1 and noted that the language is different than what was stated in the written request provided with the application. He stated that the modification would allow for a 5-foot-wide landscaped area between back of curb and sidewalk as well as an additional landscaped area of three feet six inches behind the back of the sidewalk along at least 50 percent of the Osborn Road frontage. He provided an overview of the Streetscape Standards in the Midtown Character Area of the Walkable Urban Code and noted that the Osborn Road cross section requires a

greater landscaped area. He stated that the proposed modification would provide a middle ground that would allow the development to occur as expected with landscaping appropriate for the area. He stated that the sidewalk would be included in a sidewalk easement.

Adam Stranieri, Planning Hearing Officer, stated that staff did not receive correspondence regarding the item prior to the hearing. He noted that the Encanto Village Planning Committee (VPC) recommended approval with an additional stipulation by a vote of 7-6. He clarified that while the proposal does not exceed WU Code standards because collector streets, such as Osborn Road, are not mentioned, it does provide an alternative proposal for some enhanced landscaping. Mr. Maerowitz agreed that the proposal does not necessarily exceed an existing standard but explained that the Street Transportation Department is supportive of the proposal. Mr. Stranieri addressed the revised stipulation language and stated that the removal of references to specific land uses is fitting because the WU Code is mixed-use in nature. He stated that there are structural limitations due to the existing underground parking garage. He noted that a portion of the proposed public sidewalk would be on private property and noted that a sidewalk easement would be required as shown in the application. He recommended approval of the request with a modification to provide more standard language. He stated that the additional stipulation regarding tree replacement recommended by the Encanto VPC is not recommended to be added because Section 703.E.1 of the Zoning Ordinance addresses this requirement in a more clear and comprehensive manner. He stated that a recorded Proposition 207 Waiver is still required prior to preliminary site plan approval and is recommended to be added as a stipulation.

### **FINDINGS:**

- 1) The request to modify Stipulation 1 regarding the dimension of a landscape area between back of curb and sidewalk along Osborn Road is recommended to be approved with a modification. The modification is to utilize the revised stipulation language provided by the applicant during the hearing. The revised stipulation language removes references in the original application to land use (e.g., residential units, residential patios, community amenity spaces), which will ensure the stipulation applies even if the ground floor uses or frontage type in this location change. This is preferable given the site's WU Code T5:6 MT zoning which is mixed-use by nature. Additionally, the revised stipulation removes unclear language about the quantity of additional landscaping and instead requires it within a simple percentage of the frontage. The unclear language in the original application was intended to ensure the landscaping requirement did not apply where required pedestrian pathways and/or driveways crossed the landscape area however, this language is unnecessary.

- The rationale for the reduction in the dimension of the landscape area is driven by unique site issues regarding the existing underground parking garage and the need to provide continuity and support between this existing structure and the planned development. However, provision of the 5-feet of landscaping is also consistent with the Walkable Urban Code standards for landscape width on all street types (noting that the Code does not address collector streets) and the additional 3' 6" of landscaping is an enhancement. The Street Transportation Department does not oppose the request. However, they identified that the provided exhibits illustrate a public sidewalk behind the property line and noted that all public sidewalks must be encompassed within public right-of-way or a sidewalk easement. The applicant shall continue to work with staff through plan review to appropriately implement the stipulation.
- 2) The Encanto Village Planning Committee recommended one additional stipulation requiring the developer to quickly replace trees within the streetscape if they die. This stipulation is not recommended to be added. Zoning Ordinance Section 703.E.1 already addresses this requirement in a more clear and detailed manner and is applicable to the proposed development. It is not recommended to stipulate rezoning cases to existing Zoning Ordinance requirements.
  - 3) During the hearing, it was noted that the applicant did not submit a completed, notarized, and recorded Proposition 207 Waiver of Claims form and an additional stipulation was recommended to require this. Later, it was noted that this requirement already exists as Stipulation 9. Therefore, an additional stipulation is unnecessary, and the existing stipulation will remain. However, the applicant must still submit a completed, notarized, and recorded Proposition 207 Waiver of Claims form per this stipulation for this request.

**STIPULATIONS:**

1.	The developer shall construct a minimum 5-foot-wide detached sidewalk and minimum 5 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. IN ADDITION, THE DEVELOPER SHALL PROVIDE AN ADDITIONAL 3' 6" LANDSCAPE AREA LOCATED BEHIND THE BACK OF SIDEWALK ALONG 50% OF THE OSBORN ROAD FRONTAGE, AS APPROVED BY THE PLANNING AND DEVELOPMENT DEPARTMENT. 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.

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. To request a reasonable accommodation, please contact Angie Holdsworth at [angie.holdsworth@phoenix.gov](mailto:angie.holdsworth@phoenix.gov) or (602) 329-5065 or TTY: 7-1-1.

case was heard at the December 12, 2022 Laveen Village Planning Committee (VPC) meeting where they recommended a continuance of the case to the January 9, 2023 VPC meeting in order to further review signage and building design changes.

Adam Stranieri, Planning Hearing Officer, approved the continuance request to the January 18, 2023 PHO hearing.

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. To request a reasonable accommodation, please contact Angie Holdsworth at [angie.holdsworth@phoenix.gov](mailto:angie.holdsworth@phoenix.gov) or (602) 329-5065 or TTY: 7-1-1.