



CITY OF
TUCSON
ZONING
EXAMINER'S
OFFICE

Zoning Examiner's Preliminary Report

May 10, 2018

Lawrence Kappler (Representing both owners)
KBL, LLC
4847 N. Daisy Dawn Place
Tucson, Arizona 85705

**SUBJECT: Case: C9-18-02 The Baffert at 5 Points & 733 S. Stone Ave.
HC-3 to C-3 and C-3 to HC-3 (Ward 6)
Public Hearing: May 3, 2018**

Dear Mr. Kappler,

Pursuant to the City of Tucson Unified Development Code and the Zoning Examiner's Rules of Procedures (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's summary of findings for rezoning case **C9-18-02 The Baffert at 5 Points & 733 S. Stone Ave.**

At the expiration of 14 days of the conclusion of the public hearing, the Zoning Examiner's Report (complete with background information, public hearing summary, findings of fact, conclusion, recommendation, and public hearing minutes) to the Mayor and Council shall be filed with the City Manager. A copy of that report can be obtained from the Planning and Development Services Department (PDSD) 791-5550 or the City Clerk.

If you or any party believes that the Zoning Examiner's recommendation is based on errors of procedure or fact, a written request to the Zoning Examiner for review and reconsideration may be made within 14 days of the conclusion of the public hearing.

The public hearing held by the Zoning Examiner shall constitute the public hearing by the Mayor and Council. However, any person may request a new public hearing before the Mayor and Council. A request for a new public hearing must be filed in writing with the City Clerk within 14 days of the close of the Zoning Examiner's public hearing.

SUMMARY OF FINDINGS

The applicant (Lawrence Kappler, KBL, LLC) is proposing a boundary amendment to the Amory Park Historic Preservation Zone (HPZ) to develop a mixed-use project at 747 S. 6th Avenue. The new building would be called the Baffert. The property is zoned HC-3 and is within the Infill Incentive District (IID). The developer intends to use the IID, however, the HPZ development standards limit the height at this site to 24 feet. To achieve the desired project height, and ensure no net loss of historic structures within the HPZ, the applicant is proposing to remove his property at 747 S. 6th Avenue (HC-3 to C-3) from the HPZ and add (C-3 to HC-3) the parcel at 733 S. Stone Avenue, including parcel 117-07-203A, (Wanslee Motors) to the HPZ. The owners of the Wanslee Motors site have agreed to the parcel being included in the HPZ. The proposed amendment to the HPZ boundary would remove the historic structure associated with 747 S. 6th Avenue from the HPZ, while adding the historic structure associated with 733 S. Stone Avenue to the HPZ, resulting in no net loss of historic structures in the HPZ.

The applicant, representing both owners, is requesting to rezone the property located at 747 S. 6th Avenue (Parcel A) from **HC-3 to C-3** and to rezone the property located at 733 S. Stone Avenue (Parcel B) from **C-3 to HC-3** in order to “develop the KBL Property (747 S. 6th Avenue - Parcel A) as a new mixed use building and retain intact the existing historically designated Carriage House on the property. The proposed building is 3-stories (maximum 48 feet-tall) with retail space on the ground floor and 13 multi-generational units on the upper floors. The smart growth, transit oriented design of the development will enhance the 5-Points neighborhood by providing walkable and bicycle friendly dining, shopping and living opportunities.” The developer intends to use the provisions of the IID to achieve certain development goals.

To remain consistent with the application materials:

The property at 747 S. 6th Avenue is hereinafter referred to as **Parcel A**

The property at 733 S. Stone Avenue, including parcel 117-07-203A, is referred to as **Parcel B**.

Project Description

The two properties involved, Parcel A, owned by the applicant Lawrence Kappler, of KBL 747 LLC, and Parcel B, owned by Thomas and Dorothy Ann Epperson, are within the Amory Park Neighborhood and both contain contributing structures in the Armory Park National Register District. The contributing structure on Parcel A is a 720 SF carriage house dating from 1937. The contributing structure on Parcel B is “The Point” at 5-Points which has been a landmark since 1930 and perhaps the most commonly recognized structure at the 5-Points intersection. As part of the project, the applicant is currently renovating the carriage house as approved by the Armory Park Historic Zone Advisory Board and the Tucson-Pima County Historical Commission Plans Review Subcommittee. No changes are proposed for Parcel B at this time.

The applicant is proposing a 3-story, 48-foot maximum height, mixed-use development on Parcel A, which is within both the HPZ and the Downtown Infill Incentive District (IID). The IID would allow the 48-foot tall building, however, the HPZ restricts building height for new structures to the height of the nearest contributing structure of the HPZ. In this case, that is 24 feet. HPZ design standards take precedent over the IID, therefore, the only path to achieve the needed height is to seek the boundary amendment. The proposal attempts to balance the applicant's desire to revitalize and enhance the 5-Points intersection with the preservation of historic structures and inventory.

Public Hearing

At the Zoning Examiner's Public Hearing held on May 3, 2018, Mr. John Beall (PDS Staff) reported that they had received twelve (12) written approvals and eight (8) written protests.

Meeting Summary:

Rory Juneman, the applicant for the owner, gave an introduction to the project and owner. He then described the HPZ boundary revision and rezoning process, including staff's preliminary special conditions. He then told us more about the HPZ boundary revision.

Larry Kappler, the owner of the property (Parcel A), then introduced himself as a local Tucson resident and gave a history of his past and talked about his family. He then discussed his experience as a local developer and contractor who has a lot of experience with similar types of projects, especially renovating historic structures.

Mr. Kappler explained how he purchased the property in 2005 and how the project was given its name, "Baffert" out of respect to the previous family who owned the property.

He then talked about his vision for the project:

- He wants to build a Tucson project for the future
- He wants to construct a 'mixed-use' building project with:
 - Provide approximately 3,500 SF of commercial, retail, artist's studios and a small restaurant café on the ground floor with outdoor patio seating.
 - Above that, on the 2nd level, he envisioned "flexible space" which would hopefully consist of residential units for the owners of the businesses below to live in. The applicant referred to this as a "live/work" concept which may attract local artists, young professionals and other multi-generational tenants and local business entrepreneurs.
 - The 3rd level would consist of 1 and 2 bedroom residential units.

- He discussed how this project could create a living and business location for some of the small business owners who have been displaced recently from the downtown area by the new higher rents and new construction.
- He told us that this project would incorporate the existing carriage house which he had recently renovated per all historic requirements.
- He said that this building will respect and match many of architectural details and elements of its surrounding area; however, it would still be a modern new building which does not pretend to be authentically historic.
- The project will support alternative modes of transportation and discourage automobile use in favor of walking and bicycling.
- He thought that this project is and will be very sustainable.
- He discussed how this project will need to comply with the UDC's Infill Incentive District (IID) as well as needing an Individual Parking Plan (IPP) in lieu of providing the on-site parking required for the commercial and retail uses as well as for the restaurant and outdoor dining patio) proposed on the ground floor.
- He talked about how the IID requires one (1) on-site parking space per residential unit and described how they are providing it behind the building.
- He told us that the project is the "right project for this site".
- He said that they hope to attract multi-generational tenants including elderly tenants who may require ADA accessibility.
- He described the types of commercial and retail tenants he anticipated as well as talking about the proposed restaurant café. He said that the restaurant use would also include an outdoor patio, located on the west end of the building with additional seating in front of the building along 18th Street.

Rory, the applicant then spoke again.

He discussed the specific requests for this case which were:

- They are removing a vacant lot primarily from the HPZ and adding a much recognized historic and iconic auto center into the HPZ.
- They are not reducing the number of contributing structures in the HPZ.
- He discussed the text amendment recommended by the Mayor and Council along with outlining the allowed building heights in IID and HPZ.
- He said that this project is appropriate
 - Still maintains two (2) structures in the HPZ
 - Carriage house is still maintained even though it will no longer be in the HPZ. (This building will be maintained and protected by conditions of the rezoning.)
 - The owner understands the importance of historic projects.
 - There is no impact or reduction in the number of contributing structures in the HPZ.

The applicant stated that they were agreeable to the revised preliminary special conditions recommended by staff at the time of the public hearing, specifically:

- Although the carriage house was being removed from the HPZ, there is a special condition requiring HPZ design review and demolition approval.
- The maximum building height allowed will be 48' overall. This will apply to all building elements including mechanical equipment and screening elements, parapets and architectural entry features which normally would be allowed to extend 10' beyond the maximum building height limit.
 - The only item allowed to exceed the 48' maximum height will be the elevator equipment shaft which cannot be accurately determined yet. This building element will be allowed to exceed the 48' building height and will still be required to go through the IID review process. The overall height of the elevator equipment shaft shall not exceed 58'. (This represents a 10' increase above the allowed building height per the UDC).
 - The east portion of the site as described shall have a 25' maximum building height.
- The project shall comply with all parking requirements per the IID. The applicant agrees to provide restricted parking for five (5) years in front of the adjacent residences listed.
- The applicant requested that a special condition be added restricting certain uses. The applicant was told that the City cannot restrict the uses allow in the zone and that such restrictions would need to be made privately and shall not be listed as a special condition to this rezoning request.
- The applicant was happy to construct a wall on the east side of Arizona Avenue in order to provide privacy and screening for the existing residences at the east end of the driveway turning onto Arizona Avenue.
- They agreed to provide visual and sound screening to the exterior stair on the east side of the building; however, not so opaque as to make the stairway dark and unsafe.
- They requested that they not be required to limit the ground floor to only commercial & retail uses as they felt that this would place a burden on the owner if there was more demand for residential uses on the ground floor.

The applicant then spoke about the hours of operation for the businesses and restaurant. The desired hours for the commercial uses, including the restaurant are as follows:

Sunday – Thursday:	5am to 11pm
Friday & Saturday:	5am to 1pm

This concluded the applicant and owner's presentation.

I followed by asking them both the following questions:

1. Hours of operation

- a. I asked for more information and told them that I may ask if they would be willing to reduce the hours of operations after I heard from the neighbors.
2. I inquired as to where and how the parking would be provided for the commercial uses. They responded by saying that there was no parking requirement for the commercial uses per the IID. Only the residential uses required on-site parking, which they were providing at a ratio of one (1) parking space per residential unit.
3. I asked if the restaurant's proposed outdoor patio was on the west side of the building. They replied that it was, in addition to more outdoor seating in front of the building, on the south side between the building and the street parking.
 - a. I asked how they proposed to provide outdoor seating in what appeared to be a public required sidewalk. There was no other area shown on the plan to provide seating without blocking the public sidewalk. The applicant replied that the seating and tables would be in the sidewalk area.
4. I asked about the outdoor BBQ area shown on the plan to the east of the new building. The applicant explained that this would be an outdoor amenity available only to the residents and not for the public's use.
5. I asked why the building height was 48'. The applicant explained that they want to provide a high floor to ceiling height for the ground floor tenants to allow for high ceilings as well as providing adequate sound insulation to protect the residential tenants above.
6. I addressed the applicant's request for a special condition restricting certain uses.

I told the applicant that the City cannot place such a restriction on a zoning. All uses allowed in the requested zoning classification shall be allowed. Any restriction on use should be done with a private agreement.

In addition, I explained that I would not entertain such a request since this would in essence, turn this into a "residential project" instead of the publically advertised "mixed-use project". I told them if they wanted to allow residential use on the ground floor, they could ask for a continuance and hold all new public meetings with the neighbors to discuss this option. They declined and said that they would agree to the special condition requiring that all ground floor space shall be used only for retail and commercial.

Four people spoke in **favor** of this request. The following outlines a summary of the topics discussed.

- The owner of the auto facility (Parcel B) stated his desire to have his property added into the HPZ.
- Everybody who spoke talked about the very unique charm and quality of the 5-Points.

- Everybody was happy to see a “mixed-use” project with small & local business, artist’s studios and a restaurant/café. The said that these used are desired and welcomed.
- One witness provided a petition with 120 signatures. I read the written statement on the petition so that everybody could hear what the petition was for and so that it was entered into the record and became part of the public hearing’s transcript.
- Most everybody stated that this project was an improvement over a vacant lot, not counting the carriage house.
- Some stated that the building was “beautiful”.
- Some stated that they really support the concept of a “Live/Work” project in their neighborhood.
- The design Architect’s wife spoke in support of this project discussing:
 - This project promotes infill development
 - The project is sustainable, both environmentally and financially
 - This project is preferable to a vacant lot
 - The proposed HPZ boundary revision is similar to the HPZ boundary revision she had proposed (and approved) as part of a previous rezoning case for the Trinity Church.
- The Chairperson of the Armory Park Historic Advisory Board spoke and was primarily opposed to the HPZ boundary revision. She also talk about:
 - Opposed removing (or swapping) any structure from the HPZ.
 - Why was the Architect removed from the project?
 - Staff said that the Trinity Church project did not set a precedent for this project.
 - This will create a precedent, or give the inspiration, for others to pull structures out of the HPZ if they don’t agree with the HPZ’s conditions or requirements.
 - She argued that this project is not a “gateway” to the downtown area but rather a “gateway” to many historic neighborhoods.
 - Worried about the “erosion” of the neighborhood and the district.
 - She referred to a letter written on April 3, 2018, but did not read it.
 - She talked about the proposed text amendment which was requested by the Mayor and Council. She thought that the applicant should wait until this was completed so that they did not have to modify the HPZ boundary.
 - She said that she had real concerns regarding the parking, specifically that they were not providing any on-site parking for the commercial & retail uses. She questioned if this complied with the IID.
 - I asked this witness if the neighborhood was more opposed to the HPZ boundary revision or the project itself.
 - She replied that they were mainly concerned with the HZP removal of structures and modifying the boundary.

- A gentleman who said that he was the Vice-President of the Armory Park Neighborhood Association and served on the IID Design Committee as well as other appointments spoke in opposition as well.
 - He referred to the letter originally sent in by the neighborhood association.
 - He claimed that the on-street parking along 18th Street was shown inaccurately.
 - He talked about how the patio was not feasible due to an existing curb-cut on 18th Street.
 - He stated that he co-wrote the IID
 - He told us the applicant did do a lot on his part.
 - He wanted to see the restricted uses included as part of the project.
 - He felt that the entire city block should look at the requested Individual Parking Plan (IPP) and be included in the review process.
 - He felt that the hours of operation discussed by the applicant were acceptable
 - He felt that any use of the building's rooftop for the tenant's use should not be allowed after 10pm.
 - Discussed the HPZ boundary revision process in greater detail including mentioning the words "contiguous" and "adjacent" and how these two words affect the HPZ for future projects if the boundary is revised.
 - There is no precedent for the revising the HPZ boundary.
 - Although he, and most of the neighbors, are not happy with this rezoning and HPZ boundary revision, he did say that most were happy with the applicant and owner of the property.
 - Spoke in favor of a text amendment to achieve the owner's goals rather than the proposed HPZ boundary revision.

- An Architect, who is also the Chairperson of the Barrio Historico, spoke.
 - He discussed how all of the City Advisory board members opposed this project. (Including Bob Vint and all of the other board members).
 - He told us that this project represents bad planning and does not reflect or respect the goals of historic zones. He stated:
 - The project as submitted violates the following basic design principles:
 - Height
 - Setbacks
 - Form
 - Rhythm
 - Materials
 - He talked about how this project does not respect the historic context.

- He did not want to raise rents in the area and force longtime residents out of the neighborhood.
- Historic zones area created by and established by “character” and money.
- This site and this area belongs to Tucson and not to just this property owner.
- A petition is not a basis for historic approval and should not be the basis for any approvals.
- Did not want to see any structures removed (or swapped) from the HPZ.
- He stated that he was primarily opposed to the project based on “historic reasons”.
- A 30 year resident in the area had several concerns and spoke in opposition.
 - This was very personal to her since she lives near this and has lived in the area for 30 years.
 - Questioned the validity of the petition and wondered if any of the people who signed were actually residents in the area.
 - Removing a contributing structure from the HPZ is unprecedented.
 - This violates all historic values.
 - This removes the trust in the City and its ability to manage and protect HPZ’s.
 - This project does not meet any of the historic design values of the HPZ regarding height, scale, materials, proportions, setbacks and use.
 - This will have a huge impact on the surrounding area, and not a good one.
 - IID parking is not adequate for this project.
 - There is very little public transportation in this area.
I asked where the nearest bus stop was and she said it was a bit north of 17th Street.
 - Parking has always been a problem in the area since many residents in the area don’t have garages and park on the street.
 - This will have a severally negative impact on Arizona Avenue. It is a little used “alley” now, but will be the primary and sole exit for the all of the residents living in the project.
 - Many residents purchased homes and businesses in the area because of the historic quality and HPZ. This erodes the HPZ and reduces the historic nature of the area.
- Another nearby resident spoke in opposition
 - She felt that many of the existing artists in the area who have studios in their houses will be forced out by this project.
 - She asked if the hours of operation could be shortened siting that this is not an “entertainment district” and that there should be a 10pm limit on all outdoor patio dining areas because of the

proximately to all of the surrounding residences. (She stated that the exiting Liquor Store across the street closes at 9pm)

- She asked the liquor sales could be limited to beer and wine only.
- She requested that traffic on Arizona Avenue be changed to southbound “one-way only” in order to discourage traffic from leaving the project and entering the neighborhood to the north.

One (1) person spoke who was **neutral** to this rezoning request. The President of the St. Vincent de Paul Society was concerned about the increased traffic in the area and wanted to know if anyone had considered how this will impact the existing Thrift Store located on South 6th Avenue.

The applicant, Rory, addressed some of the concerns which were brought up.

He said again that they were in agreement with all of the City’s preliminary special conditions, including all of the new revised ones which were not included in Staff’s report.

He said that they would withdraw their request to have a special condition added which would restrict certain unwanted uses. He said that the owner will restrict any unwanted uses by a private agreement or restriction.

He told us again that the City will still require the owner to submit for full review and that they must meet all of the design standards and guidelines within the IID.

Larry, the owner of the property (Parcel A), then talked about why the original design Architect (Rob Paulus) was no longer involved with the project. He said that they still have a great professional relationship; however, he explained that the Architect felt that he could no longer be associated with the project. The Architect felt that there were too many differences which could not be reasonably resolved between his design vision and the design modifications requested by the neighborhood and various historic boards and reviewing agencies.

Rory spoke again about how the petition was circulated. He said that they spent one (1) day on the 5-points intersection and two (2) days in the general area. He told us that there was a map attached to the end of the petition indicating where the petition was circulated.

He also said that the owner would be agreeable to providing a Traffic Study which would hopefully show that the proposed project would not have an adverse impact on the area. In addition, he said that they would agree to make Arizona Avenue one-way, southbound. He qualified this by stating that they would have to submit this request to the City and that the City would have the final say on this idea.

Rory told us that the Preliminary Plan was extremely “preliminary” and that the street parking shown along 18th Street was only an early design at this point and

that the final design would have to be worked out with the City and any other government review agency.

He also told us again the overall height of the building will be less than the 48' feet requested. He reminded us that there will be equipment and other items on the roof which would require the actual building walls to be less than the 48' maximum height allowed. (Not including the elevation equipment enclosure.)

I then asked the applicant a few questions.

I asked if there were any alternative modes of transportation proposed or existing.

The applicant replied that there was a public city bus stop nearby and that there was a bike-share station nearby.

I asked what time the other nearby restaurants closed.

The applicant did not know; however, a member of the audience raised her hand and responded that they close at 9pm.

I asked the applicant if the owner was willing to reduce the restaurant's (and any other commercial/retail use) operating hours by possibly not opening so soon and possibly closing earlier than the originally requested (1am).

The applicant said that a restaurant, or a possible bakery, would need to open early so that they would have time to prepare the food. He did agree to change the closing time to no later than 11pm every evening.

I then asked if they would be agreeable to opening to the public no earlier than 7am, acknowledging that the staff could come in earlier to prepare for the day. He said that they would agree to such a condition.

I asked about the design for the wall which was proposed on the east side of Arizona Avenue, between the project's drive-way exit and 18th Street, which will protect and screen the existing houses from the traffic leaving the project.

The applicant stated that they want the individual owners of the impacted residences on the east side of Arizona Avenue to design the wall's overall length, height, material and color. (They will still be happy to pay for the wall per the preliminary special condition.)

After all of my questions were addressed, I asked Marty McCune, the City's acting Historic Preservation Officer to speak on this matter and to answer a few of my questions regarding the HPZ and some basic historic design questions.

Ms. McCune told us that she had not reviewed this project in detail; however, she wanted to explain a few basic concepts regarding historic projects in general.

She said that new construction was different than renovation and remodel projects within historic districts. With new construction, the intent is to not "mimic" the original buildings, but rather, "respect" the old buildings by using compatible design. New construction should still appear to be a "new" building rather than

trying to pretend to be an old one. This can be achieved through good design and research. And, most importantly, new construction should be compatible with the surrounding area's character and style.

She also said that this project would be allowed some "flexibility" with regard to historic design guidelines within the HPZ since it is a commercial project and not a residence.

Existing and Surrounding Land Uses

Existing Land Use:

Parcel A: 1937 carriage house (720 SF) on a 14,045 SF lot

Parcel B: Automobile Sales on 3,182 SF (Two parcels)

Parcel A is relatively flat and devoid of vegetation. It is undeveloped except for the carriage house. To the east, across Arizona Avenue, are two single family properties, zoned HR-3. North of these properties, approximately 65 feet north, and across Arizona Avenue from Parcel A, is a two-story apartment complex, also zoned HR-3. Immediately north of Parcel A is an auto sales lot and repair center. North of that, approximately 130 feet north of Parcel A is a glass gallery/museum that is the equivalent of 1.5 stories. North and west of the site, across S. 6th Avenue is a two-story structure used by a social service agency. Other surrounding commercial uses are in one-story structures, zoned C-3 commercial.

Field inspection by staff indicates there are currently no billboards on the rezoning site.

The existing surrounding zoning and land uses are:

North: Parcel A – Zoned HC-3; Auto Sales

Parcel B – Zoned C-3; Social Services

South: Parcel A – Zoned C-3; Commercial and Residential

Parcel B – Zoned C-3; Restaurant

East: Parcel A – Zoned HR-3; Residential

Parcel B – Zoned HC-3; Auto Sales

West: Parcel A – Zoned C-3; Restaurant

Parcel B – Zoned C-3; Public Park

Land Use Plans

Land use policy direction for this area is provided by the *Old Pueblo South Community Plan (OPS)* and *Plan Tucson*. The *OPS* covers five neighborhoods, including Armory Park. The general purpose of the *OPS* is "...overall revitalization of the *OPS* neighborhoods." The rezoning sites are not included in the Armory Park Historic Neighborhood in the *OPS*, rather they are shown within the "Minor Functional Zone: Strip Commercial", thereby supporting the zoning and the proposed use.

The rezoning sites are located within an “Existing Neighborhood” as identified on the Future Growth Scenario Map of *Plan Tucson*. Existing Neighborhoods are primarily developed and largely built-out residential neighborhoods and commercial districts in which minimal new development and redevelopment is expected in the next several decades. The goal is to maintain the character of these neighborhoods, while accommodating some new development and redevelopment and encouraging reinvestment and new services and amenities that contribute further to neighborhood stability.

Plan Tucson supports the retention and expansion of existing businesses as well as infill and redevelopment projects that reflect sensitivity to site and neighborhood conditions and also adhere to relevant site and architectural design guidelines. *Plan Tucson* policies protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate nonresidential uses. *Plan Tucson* also supports the adaptive reuse of historic landmarks.

Plan Tucson policies also promote quality and safety in design, compatibility with and adequate buffering of surrounding development, the planting and management of healthy, attractive urban vegetation, and the conservation and enhancement of environmentally sensitive habitat. Urban heat island effects should be mitigated by expanding and maintaining a healthy drought-tolerant low-water use urban forest. New development should utilize solutions and strategies included in the Design Guidelines Manual to provide an improved level of community design.

All of the uses, commercial and residential, are permitted under the existing zoning. The IID supports the use of Individual Parking Plans to address parking issues, therefore the focus of the analysis is on the design and the project’s impacts on and relationship to the adjacent Armory Park Historic District (APHD). The exchange of the properties does not reduce the number of properties, or contributing structures within the APHD. While Parcel B is on the west side of S. 6th Avenue, the parcel is a contributing property in the Armory Park National Register District, and the APHD extends west of S. 6th Avenue at 16th Street, two blocks to the north, therefore including Parcel B does not appear to have any negative impacts on the integrity of the APHD. The approved rehabilitation and adaptive reuse of the carriage house is supported by *Plan Tucson*.

DESIGN CONSIDERATIONS

Land Use Compatibility

Plan Tucson supports infill projects that are sensitive to the site and neighborhood conditions and also adhere to relevant site and architectural design guidelines. *Plan Tucson* policies protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate nonresidential uses. Staff is recommending a rezoning condition

that the ground floor remains non-residential to preserve the mixed-use intent of the building.

The 5-Points location is a unique site. The intersection's geometry as the separation point of an arterial one-way couple, and the location's gateway into Downtown support a unique infill project that serves those passing through the area, while also being scaled to the neighborhood and supportive of walking and biking.

Design Compatibility

The project complies with the above *Plan Tucson* policies through its design and orientation. The proposal is an infill development that will incorporate architectural and site features that "reinterpret" those found in the Armory Park neighborhood. The Design Compatibility Report (DCR) provides a catalog of those features. The proposed height of 48 feet is taller than other structures in the immediate area; however, the design elements will provide visual interest and prevent a "monolithic" look and feel. Building and activity orientation is toward the existing commercial-zoned properties on S. 6th Avenue and 18th Street. Pedestrian and limited vehicle access will be available onto Arizona Avenue. Balconies associated with the apartments will be on the north side, oriented toward the mountain and city views.

A condition will limit balconies to the north side.

The Preliminary Development Plan (PDP) for the Baffert site is conceptual in nature because the overall design and layout of the site and structure will be governed by the IID.

A rezoning condition will require the ultimate design to be in substantial compliance with the PDP presented for this case. Should the Design Review not comply with the PDP, the approved PDP design will govern.

To ensure the design considerations are fully vetted, staff is recommending a condition requiring review by the Armory Park Historic District Advisory Board and the Tucson-Pima County Historic Commission Plans Review Subcommittee.

Historic Reviews

On March 21, 2017, the Armory Park Historic Zone Advisory Board voted unanimously to reject the proposal to remove the property at 747 S. 6th Avenue (Parcel A) from the HPZ. Objections to the proposal centered on the removal of the property from the HPZ as irreversible; it encourages commercial encroachment upon the district, and the proposed "swap" is inequitable in terms of square feet and lack of adjacency to the neighborhood. The Armory Park Historic Zone Advisory Board Legal Action Report is attached.

On March 23, 2017, the Tucson-Pima County Historical Commission Plans Review Subcommittee voted 4 - 2 to forward a favorable recommendation to the Mayor and Council to initiate the rezoning process to amend the HPZ for the “The Baffert” project. The Plans Review Subcommittee noted that whereas it is troubling to the subcommittee anytime a property is proposed to be removed from the HPZ, it recommends the initiation due to the fact that the project area for the proposed development is a currently vacant site and no demolition of the existing carriage house or any other historic property is proposed as submitted. The subcommittee included the following conditions with their recommendation:

1. Historic carriage house will be subject to standard HPZ design review/demolition approval process for any future proposed changes in perpetuity (i.e., run with the property as a condition of the boundary amendment rezoning);
2. The proposed development and any future development on the site to be reviewed for compatibility with the adjacent HPZ by both the T-PCHC, PRS and Armory Park Historic Zone Advisory Board in perpetuity; and,
3. Building height will be limited to no higher than forty-eight (48’) feet in perpetuity.

The T-PCHC, PRS’s Legal Action Report is attached. The T-PCHC, PRS conditions of approval are included in the preliminary rezoning conditions.

City of Tucson’s Mayor & Council Legal Action Report

During the study session held on Tuesday, November 21, 2017, the City of Tucson’s Mayor and Council Members discussed the Historic Preservation Boundary Amendment (HPZ-17-15) for the Baffert Mixed-Use Buildings at 5 Points (Ward 6) SS/NOV21-17-158.

Council Member Kozachik suggested that the City’s PDS staff should begin conversations with neighborhoods subject to Historic Preservation Zones (HPZ’s) to propose a text amendment to the *Unified Development Code* (UDC) so that boundaries don’t have to continue being re-drawn.

Council Member Uhlich asked staff to consider asking the owners of nearby properties immediately north of 5-Points (especially the Primavera Foundation) whether they want to be included in the Armory Park HPZ boundary.

Michael Rankin, the City Attorney, confirmed that this would proceed though the normal rezoning process and come back to the Mayor and Council for final approval.

It was MOVED, and duly seconded, to direct staff to approve the Staff Recommendation as presented in the agenda material, subject to further discussion with the HPZ neighborhoods.

Vice Mayor Romero offered an AMMENDMENT which was ACCEPTED to include a formal direction to staff to consult with HPZ neighborhoods regarding an appropriate text amendment to the UDC.

The motion, as amended, was CARRIED by a vote of 7 to 0.

This Zoning Examiner and Preliminary Report acknowledges and supports the Mayor and Council's concerns regarding this matter as well as the direction given to staff to amend the *Unified Development Code* (UDC) in an effort to avoid redrawing boundary lines of established Historic Preservation Zones (HPZ's) due to design issues which could possibly be approved by variance or other administrative means.

While this Zoning Examiner supports these concerns, this Preliminary Report does not require any action to be taken by the applicant or staff to address these concerns. These issues shall be addressed by staff and approved by the Mayor and Council as part of the Historic Preservation Zone Boundary Amendment (HPZ-17-15) process.

Initiation of Boundary Amendment

Section 5.8.4.C.2 of the Unified Development Code (UDC) states, "[T]he Mayor and Council shall make the decision whether to initiate the process to consider the establishment of, or amendment to, a HPZ." On November 21, 2017, after consideration of the issue at a Study Session, the Mayor and Council voted 7-0 to initiate the boundary amendment.

Tucson Airport Authority (TAA)

The TAA reviewed the rezoning proposal and commented that Parcel A is within the Tucson International Airport avigation easement and public disclosure area. The developer will be required to record FAA-mandated documents. The requirements are included in the preliminary conditions.

Road Improvements, Vehicular & Pedestrian Traffic Circulation

South 6th Avenue and S. Stone Avenue are both classified as arterial roadways on the Major Streets & Routes (MSR) Map. Arizona Avenue and 18th Street are local streets. No traffic estimate was provided by the Pima Association of Governments. No road improvements are anticipated with this project. TDOT is undertaking a construction project along 18th Street, east of S. 6th Avenue. The "Five Points Sidewalk and Lighting Improvements" project will include new sidewalks and some off-street parking along the 18th Street frontage of Parcel A. Any improvements to the right-of-way, or to the traffic signal, will be the developer's responsibility. A Traffic Statement will be required at the time of the development plan submittal.

Drainage/Grading/Vegetation

There is no vegetation on the site, and the property is relatively flat. The DCR states that the site will be planted with vegetation to provide shade as well as visual interest for the structure and outdoor areas. Storm water harvesting will be built into the project to provide irrigation for the landscaping.

CONCLUSION

Land use policy direction for this area is provided by the *Old Pueblo South Community Plan (OPS)* and *Plan Tucson*. Both plans support commercial development at this site. Plan Tucson further provides for compatibility with surrounding neighborhoods. The proposal for Parcel A is in substantial compliance with plan policy. There will be no net loss of historic structures within the APHD. Subject to compliance with the attached preliminary special conditions, approval of the requested C-3 zone for Parcel A and HC-3 zone for Parcel B is appropriate.

RECOMMENDATION

The Zoning Examiner recommends **approval** of the HC-3 to C-3 rezoning on Parcel A and the C-3 to HC-3 rezoning on Parcel B subject to the attached special conditions.

Sincerely,



Steven C. Shell
Zoning Examiner

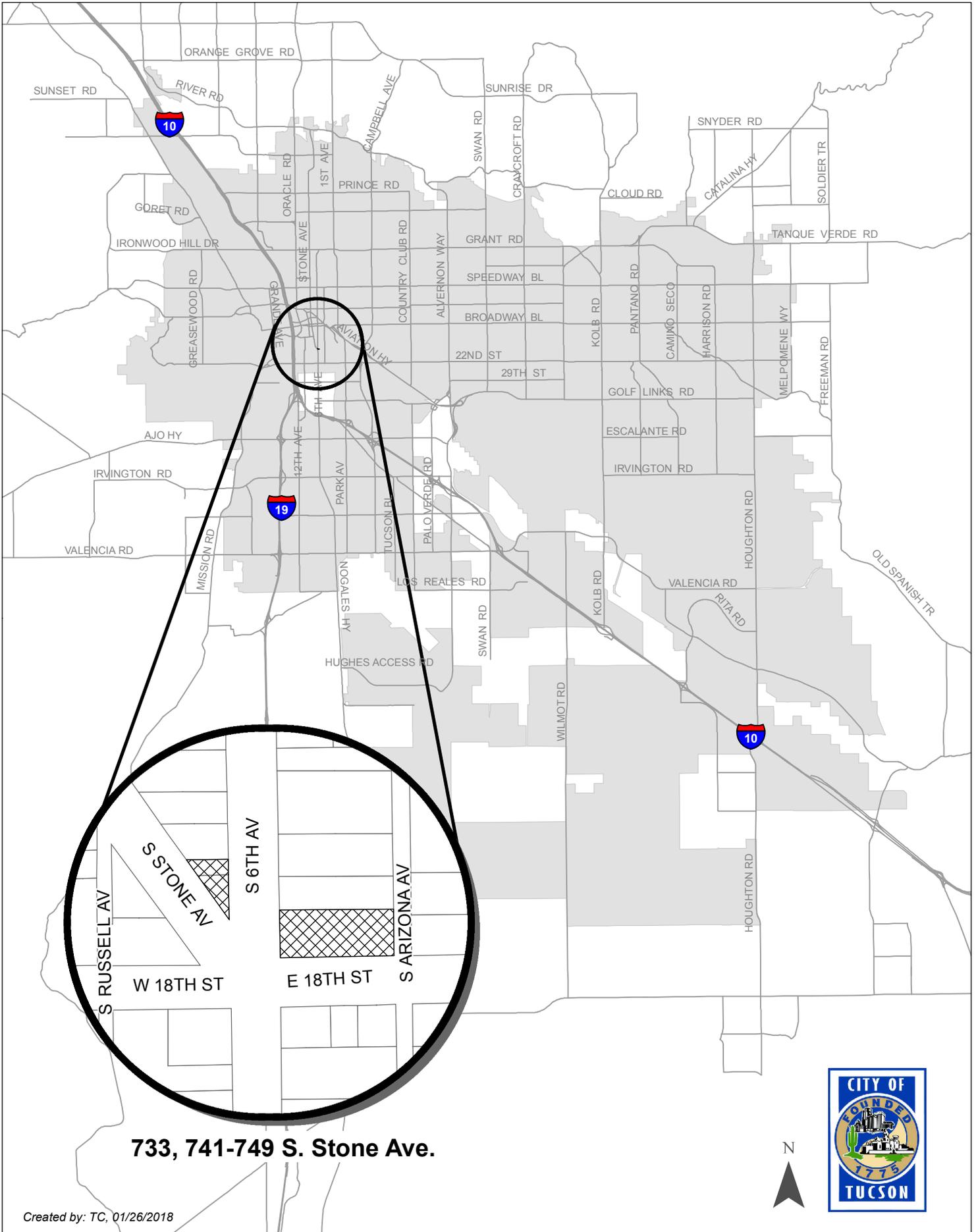
ATTACHMENTS:

Case Location Map
Rezoning Case Map
Zoning Examiner's Preliminary Conditions

cc: City of Tucson Mayor and Council

C9-18-02 - The Baffert at Five-Points

Rezoning Request: From HC-3 to C-3



733, 741-749 S. Stone Ave.



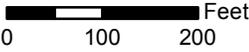
C9-18-02 - The Baffert at Five-Points Rezoning Request: From HC-3 to C-3



 Area of Rezoning Request



Address: 733, 741-749 S. Stone Ave.
Base Maps: Twp.14S Range13E Sec. 13
Ward: 6

 Feet
0 100 200

1 inch = 200 feet



PROCEDURAL

1. A development package in substantial compliance with the preliminary development plan (PDP) dated January 29, 2018, and the required reports, is to be submitted and approved in accordance with the *Administrative Manual*, Section 2-06. Should the approved IID design not be in substantial compliance with the PDP, the 110 approval will govern.
2. The property owner shall execute a waiver of potential claims under A.R.S. Sec.12-1134 for this zoning amendment as permitted by A.R.S. Sec. 12-1134 (I) in the form approved by the City Attorney and titled "Agreement to Waive Any Claims Against the City for Zoning Amendment". The completed Waiver must be filed with Planning & Development Services before the case will be scheduled for Mayor and Council action.
3. An archaeological assessment and survey shall be performed by a qualified archaeologist before any grading or other ground modification takes place. If cultural features or remains are found, testing and data recovery shall be completed as needed. Copies of testing plans, testing reports, data recovery plans and final reports shall be submitted to and approved by the City Historic Preservation Office prior to construction work commencing. If, during construction, human remains and/or associated burial items are discovered, ground disturbing activities in the vicinity of the discovery will cease, the discovery site will be secured, and the Arizona State Museum will be immediately notified as required under A. R. S. 41- 865.
4. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
5. Owner/developer shall enter into a Sewer Service Agreement with Pima County that specifies the improvements to be made to Pima County's public sewerage system, and the timing of said improvements.
6. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of the special exception land use.

LAND USE COMPATIBILITY

7. The proposed development and any future development on the site to be reviewed for compatibility with the adjacent Armory Park HPZ by the TPCHC, PRS and Armory Park Historic Zone Advisory Board.
8. Historic carriage house will be subject to standard HPZ design review/demolition approval process for any future proposed changes.
9. Building height will be limited to no higher than forty-eight (48') feet, except that the eastern thirty (30) feet of the parcel, as measured from the eastern property line, will be limited to no higher than twenty-five (25) feet. Building heights stated herein include mechanical and accessory equipment and functional elements. Should **both** the Armory Park Historic District

Advisory Board **and** the Tucson-Pima County Historical Commission Plans Review Subcommittee recommend approval, during the IID review, of a height for the elevator shaft that exceeds 48 feet, this condition will support that approved design.

10. The ground floor of the building shall be used only for non-residential uses.
11. Balconies shall be limited to the north side of the building.
12. Six (6) inch wide fence block or greater (or as determined by future design reviews) shall be used for perimeter screen walls.
13. All walls visible from a public right-of-way and/or adjacent to existing residential development, are to be graffiti-resistant and incorporate one (1) or more visually appealing design treatments, such as the use of two (2) or more decorative materials like stucco, tile, stone, or brick; a visually interesting design on the wall surface; varied wall alignments, Uog, curve, notch, setback, etc.); and/or trees and shrubs in voids created by the wall variations, or as determined by future design reviews.
14. The applicant shall file Form 7460 with the FAA at least 45 days before construction activities begin for the project. Any cranes used which are used must also be identified with Form 7460. File Form 7460 at <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>. Prior to the City's approval of any construction permit for a permanent building, the property owner shall record the Avigation Easement, which discloses the existence, and operational characteristics of the Tucson International Airport to future owners or tenants of the property and further conveys the right to the public to lawfully use the airspace above the property. The current property owner or person authorized to sign on behalf of the current property owner shall complete, sign, and record the Avigation Easement. Record the Avigation Easement with the Pima County Recorder's Office. Once the Avigation Easement is recorded, send a copy of the recorded easement to the Tucson Airport Authority.

The developer shall provide the Airport Disclosure Statement form, at time of sale, to new residential property owners with new unit purchases. In the event the development of any residential use does is offering rental residential units to the public, the new tenant shall be provided a copy of the Airport Disclosure Statement form to educate and notify the new residents that they are living near an airport. The content of such documents shall be according to the form and instructions provided. The new property owner or new tenant shall forward a signed copy of the Airport Disclosure Statement form to the Tucson Airport Authority at srobidoux@flytucson.com.
15. Developer will pay for a City of Tucson issued 24/7 parking permit for the two adjacent parcels to the property's east (738 S. 5th Ave. and 744 S. 5th Ave.) for a period of five (5) years beginning on or before the construction start date.
16. Hours of operation for all ground floor commercial, retail and the restaurant shall be:
Seven (7) days a week: 7am – 11pm

AGREEMENT TO WAIVE ANY CLAIMS
AGAINST THE CITY FOR ZONING AMENDMENT

This agreement ("**Agreement**") is entered into between _____, as the owner of the property described herein ("**Owner**") and the City of Tucson ("**City**") to waive any and all claims for diminution of value that may be based upon action by the City in response to a request from the Owner. This Agreement is entered into in conformance with A.R.S. §12-1134(l).

The Owner is the holder of fee title to the property located at _____, Tucson, Arizona, (the "Property") which is more fully described in the Owner's application to the City in Case _____ and incorporated herein. The Owner, or the authorized agent of the Owner, has submitted an application to the City requesting that the City rezone the Property. The Owner has requested this action because the Owner has plans for the development of the Property that require the rezoning. The Owner believes that the rezoning of the Property will increase the value and development potential of the Property, and that this outweighs any rights or remedies that may be obtained under A.R.S. §12-1134 et. seq.

By signing this Agreement, the Owner waives any right or claim that may arise under A.R.S. §12-1134, including any claim for the reduction in the value of the Property, as a result of the enactment of the zoning amendment in Case _____.

The Owner understands that City staff may propose, the Zoning Examiner may recommend and the Mayor and Council may adopt conditions to the requested zoning that limit the potential development of the Property. The Owner acknowledges that the rezoning and conditions are a single, integrated legislative approval. The Owner agrees and consents to all conditions that may be imposed. The Owner retains the right to withdraw the rezoning application prior to a vote by the Mayor and Council or to decline to implement the necessary requirements to effectuate the zoning if the Owner disagrees with any conditions that are proposed or approved. If the Owner does not withdraw the application, the Owner shall be deemed to have accepted all adopted conditions to the requested zoning. If the Owner withdraws the application or does not effectuate the new zoning, this Agreement is null and void.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. The Owner has agreed to the form of this Agreement provided and approved by the City Attorney. The Owner has had the opportunity to consult with an attorney of the Owner's choice prior to entering this Agreement and enters it fully understanding that the Owner is waiving the rights and remedies as set forth herein.

Upon execution, this Agreement shall be recorded in the Office of the Pima County Recorder.

The Owner warrants and represents that the person or persons listed herein as the Owner is/are the owner in fee title of the Property. The Owner further agrees to indemnify and hold the City of Tucson, its officers, employees and agents harmless from any and all

claims, causes of action, demands, losses, costs and expenses based upon an alleged reduction of value of the Property as a result of the City's action in Case _____.

Dated this _____ day of _____, 20__.

Owner: _____
(Name of Individual, Corporation,
Partnership, or
LLC, as applicable)

Owner: _____
(Name of Individual, Corporation,
Partnership, or
LLC, as applicable)

By: _____
(Signature of Owner or Authorized
Representative, if
applicable)

By: _____
(Signature of Owner or Authorized
Representative, if
applicable)

Its: _____
(Title of Individual Signing in
Representative Capacity)

Its: _____
(Title of Individual Signing in
Representative Capacity)

State of Arizona)
)
County of _____)

On this _____ day of _____, 20__, before me personally
appeared

_____ on the basis of satisfactory evidence to be the person
who

he or she claims to be, and acknowledged that he or she signed the above/attached
document.

Notary Public

My Commission expires:

City of Tucson, an Arizona municipal Corporation:

By: _____
Planning & Development Services Department

This form has been approved by the City Attorney.