



CITY OF
TUCSON
ZONING
EXAMINER'S
OFFICE

Zoning Examiner's Preliminary Report

May 10, 2018

Jim Egan
Heights Properties, LLP
6179 E. Broadway Boulevard
Tucson, AZ 85711

SUBJECT: Case: C9-18-06 Brake Masters – East Broadway (Ward 6)
O-3 & R-2 to C-2
Public Hearing: May 3, 2018

Dear Mr. Egan,

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 **C9-18-06 Brake Masters – East Broadway**.

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

This is a request by Jim Egan, on behalf of the property owner, Shalom Laytin, to rezone approximately 0.63 acres from R-2 and O-3 to C-2 zoning. The rezoning site is located north of the future Broadway Boulevard right-of-way (ROW) line, west of Norris Avenue (see Case Location Map).

The preliminary development package (PDP) proposes demolition and reconstruction of the existing automotive repair and service facility to conform to the Broadway widening at that location.

Per the applicant, "The City is taking the Brake Masters out due to the road widening project so we will replace the existing triplex and develop a Brake Masters in its place. We plan to retain the SFR at 25 Norris and provide parking in the rear of the lot."

Project Description

The existing automotive repair and service facility is located to the south of the rezoning site and currently fronts on Broadway Boulevard. This facility will be demolished to accommodate the future widening of Broadway Boulevard. This general area will be greatly impacted by the widening project. (Another automotive repair service, previously located immediately west of the current rezoning site has already been demolished. A restaurant east of the rezoning site will also be demolished as part of the road project.)

The 0.63 acre rezoning site is currently north of the property fronting onto Broadway Boulevard. After the widening, the property will become the north frontage of the road and will be the northwest corner of the intersection of E. Broadway Boulevard and N. Norris Avenue.

The site is currently developed with a triplex and a single-family residence (SFR). The SFR is a contributing property to the Sam Hughes National Register District. Although the SFR is proposed for C-2, it will be preserved as part of the project and will continue as a residence. The triplex is not a contributing structure and will be demolished to accommodate the project.

The proposed structure will be 30 feet tall and will be setback 63 feet from the residential properties to the north. The Code-required setback is approximately 33 feet.

Broadway Boulevard is designated as a Gateway Arterial Route and Norris Avenue is a local street. Typically, community commercial rezoning is not supported at an intersection with a neighborhood street, due to the potential for infiltration of commercial traffic into the neighborhood. In this case, that potential is limited by site design, as discussed below. (Refer DESIGN CONSIDERATIONS, Land Use & Design Compatibility)

Public Hearing

At the Zoning Examiner's Public Hearing held on May 3, 2018, Mr. John Beall (PDS Staff) reported that they had received two (2) written approvals and one (1) written protest.

Meeting Summary:

The applicant, Jim Egan, spoke about the case and discussed the impacts of the Broadway widening. He gave a brief description of the project and explained how this was an appropriate use which would not adversely affect the neighbors.

He also mentioned that he would be agreeable to having a development agreement with the neighborhood and existing Home Owner's Association.

When I asked the applicant, he stated that he was in complete agreement with Staff's original Special Conditions including the new added condition prohibiting overnight parking on the C-1 zoned area to south of the building, fronting Broadway Blvd.

Nobody was present at the hearing who wished to speak in **favor** of this matter.

One (1) person spoke in **opposition** to this rezoning.

She told us that she did not trust the applicant and this was based on years of being lied to and empty promises regarding the residential uses on this property, in particular, the single family residence (SFR) which is to remain at 25 N. Norris Avenue.

She further explained that the applicant was the property manager for the SFR at 25 N. Norris Ave. and that there were years of unanswered and unresolved complaints from the neighbors including:

- Poor upkeep and maintenance
- Squatters living on the property
- Residents were not clean, nor did they keep the property in an attractive manner with trash and unused items spread out all over
- Complained about numerous complaints to the police
- Mr. Egan always promised to fix-up the property and resolve the neighbor's issues and complaint. He never did, hence the mistrust.

One (1) person spoke who was **neutral** and the matter, but wanted to share her thoughts with the group.

This witness lives and owns a property directly north of the proposed auto repair and service building. (Third house west of Norris Ave. on the north side of the alley)

She said that she was happy to see that the applicant was keeping the SFR at 25 N. Norris Avenue; however, she felt that the neighbors needed some assurances as to the upkeep and maintenance of the house and property. She thought that there could be some sort of deed restriction or other means to protect the neighbors from how the property was used over the past.

She also stated that she had driven around town to look at other Brake Master projects was very pleased with how they all looked and were maintained. She hoped that this location would be very similar.

She was also happy that the business would only be open six (6) days a week and only operate between 7:30am to 6 pm. She concluded by saying that this use was a far better use than a restaurant which was open 24/7 and had a drive-through window.

When there were no other people who wanted to speak on this matter, I invited the applicant to address the neighbor's concerns and statements.

Mr. Egan told us that he was in fact, the Property Manager for the residential uses on the property. He said that he would do whatever was necessary to maintain the house at 25 N. Norris Avenue and that he was willing to have me place an additional special condition requiring that he make enter into an agreement with the neighbors and/or Home Owner's Association (HOA).

Seeing and hearing that there were no other requests to speak on this matter, I concluded the public hearing and notified the audience that I would have the Preliminary Report completed within five (5) working days which will included my preliminary recommendation.

Existing and Surrounding Land Uses

Existing Land Use:

Alley, multiple-family structure and single-family dwelling

The existing surrounding zoning and land uses are:

North:	Zoned R-1; Single-family residences
South:	Zoned C-1; Automotive repair and service facility (to be demolished)
East:	Zoned R-2; Tucson Fire Department #3
West:	Zoned C-1; Restaurant\

The site is currently developed with a triplex and a single-family residence (SFR).

Currently, the automotive repair and service facility (which will be demolished) exists south of the rezoning site.

North of the rezoning site, across a 15-foot-wide alley, are one-story single family homes, of which three of the four are contributing structures.

To the east, across Norris Avenue, is a Tucson Fire station.

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

Land Use Plans

Land use policy direction for this area is provided by the *Sam Hughes Neighborhood Plan*, *University Area Plan* and *Plan Tucson*. A primary goal of the Land Use policies in the *Sam Hughes Neighborhood Plan (SHNP)* is to maintain the quiet, single-family residential character of the Sam Hughes Neighborhood. The Development Concept Map supports office and commercial uses along the north frontage of Broadway Boulevard, including on the subject parcels. *SHNP* policy indicates general commercial uses are appropriate along the Broadway Boulevard frontage. Design features are to be used as appropriate to mitigate impacts on residential areas to the north. *SHNP* policy restricts access for non-residential uses to major streets only, and discourages traffic from using residential streets.

The *University Area Plan (UAP)* General Policies support new development on the perimeter of residential areas which serves to protect and enhance the quality of life for neighborhood residents. New development should demonstrate sensitivity to surrounding uses in the design, location, orientation, landscaping, screening, and transportation planning of new development. *UAP* policies also encourage the retention of contributing historic buildings and viable residential structures by including them as integral components of new development. Specific to commercial development, *UAP* policies support the development of new commercial and office activities which complement the scale and character of neighborhoods and commercial districts in the University Area. And they encourage the consolidation of adjacent development parcels in order to provide integrated circulation and access while reducing the number of vehicular curb cuts along the street.

The rezoning site is located within an Existing Neighborhood Building Block 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.

DESIGN CONSIDERATIONS

Land Use Compatibility

Plan Tucson policy supports infill and redevelopment projects that reflect sensitivity to site and neighborhood conditions, and adhere to relevant site and architectural design guidelines. Plan policy also strives to protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate nonresidential uses. Appropriate locations for commercial uses are supported, with priority for development in the existing urbanized area, to promote use and improvement of existing infrastructure, increase pedestrian activity and transit use, and meet residents' needs for goods and services. A mix of commercial, office and residential uses are supported along major transportation corridors. Plan Tucson also supports the retention and creation of jobs.

Established Neighborhood policies support the expansion of commercial areas into adjoining residential areas when logical boundaries, such as existing streets or drainage ways, can be established and adjacent residential property can be appropriately screened and buffered. Commercial expansions or consolidations, especially in conjunction with street widening, may be an appropriate means to preserve the vitality of the street frontage and the adjacent neighborhood.

All three plans support the development of the north frontage of Broadway Boulevard at this location with proper design, screening and buffering, and traffic control to preserve the character of the adjacent neighborhood. The plans recognize that if done appropriately, especially under special conditions, such as a road widening, commercial development on the edge of the neighborhood can be a strategy for preserving the vitality of the street frontage and the character of the neighborhood.

Broadway Boulevard is designated as a Gateway Arterial Route and Norris Avenue is a local street. Typically, community commercial rezoning is not supported at an intersection with a neighborhood street, due to the potential for infiltration of commercial traffic into the neighborhood. In this case, that potential is limited by site design, as discussed below.

Design Compatibility

The proposed design reflects the policy direction of the three plans. The building will be 22' feet tall with a 30' foot tall entry feature that encompasses approximately 500 square feet of the 5,498 square-foot building. To minimize noise impacts on the adjacent residential properties, all bay openings will be on the south side of the building, facing toward Broadway Boulevard. All exterior lighting will be regulated by the Outdoor Lighting Code, which requires full cut-off lighting to prevent light trespass onto adjacent properties.

The preservation of the single family residence (SFR) complies with the policy to incorporate historic structures into site design. While the building won't be part of the commercial use, it remains a contributing structure to the national register

district and it provides a buffer between the automotive service use and the residences to the north. Staff is proposing a rezoning condition that will require the property remain a residential use.

The proposed dumpster site does not meet the standard rezoning condition-imposed 50-foot setback from a residential property line. The preliminary development package (PDP) shows it on the north property line, at the alley, placing it 15 feet from the residential property lines to the north. There are some mitigating circumstances that provide a certain comfort level for this location.

1. The automotive repair use will not dump food waste or other odor-producing waste into the dumpster.
2. The alley is also used for trash collection for the residences to the north, therefore, the noise factor already exists. The dumpster is oriented so the truck will approach it from the south.
3. The residential property line is only 15-feet from the proposed dumpster site; however, the closest residential structure is 69' feet from the dumpster.
4. The closest properties to the dumpster have accessory structures and mature vegetation between the residence and the dumpster, thereby providing additional buffering.

Staff is recommending a condition limiting the times of trash collection to between the hours of 7:00 AM and 6:00 PM.

Due to the proximity of residential properties, staff is recommending limits on the placement of signs. Conditions are recommended to prohibit signage on the north side of the commercial building which faces the residential lot at 25 N Norris, and to limit signage along Norris to either an enclosed design, such as a cabinet or individual lettering with internal or halo method lighting to reduce light trespass. The existing Brake Masters pole sign is nonconforming for height, setback and size. The sign will be removed in the course of the road widening. Future signage will be permitted through a separate review. Staff is recommending a condition that future free-standing signage be limited to the Broadway frontage.

Road Improvements, Vehicular & Pedestrian Traffic Circulation

Plan policy restricts access for non-residential uses to major streets only, and discourages traffic from using residential streets. Policy also encourages the consolidation of adjacent development parcels to provide integrated circulation and access while reducing the number of vehicular curb cuts along the street. The applicant is proposing access from Broadway Boulevard and Norris Avenue. To minimize north-bound traffic infiltrating the neighborhood, the PDP includes a "pork chop" at the Norris access that will allow entry into the site from the north and south, but will direct all traffic leaving the site south, to Broadway. This is an improvement over the current condition which does not limit the direction of exiting traffic. In addition, the owners of the property to the west and the

applicant have an agreement for shared-use of part of the remnant property adjacent to both sites. That area will provide additional parking, as well as access to Campbell, thereby providing a northbound route for Brake Masters customers. That area is shown as the shaded area extending west of the rezoning site on the PDP.

Drainage/Grading/Vegetation

The site is relatively flat and not in a flood plain or hazard area. Storm water will be directed to depressed landscape areas.

CONCLUSION

The *SHNP*, *UAP* and *Plan Tucson* all support commercial development at this site, provided site design can properly buffer existing residences and preserve the quiet character of the neighborhood. *Plan Tucson* also supports the retention of jobs in the community. The proposed project preserves a contributing structure to the national register district, orients the noise and activity from the business toward Broadway Boulevard and away from the residences, and improves the traffic control for vehicles leaving the site by directing them toward Broadway Boulevard and away from the neighborhood. Subject to compliance with the attached preliminary conditions, approval of the requested C-2 zoning is appropriate.

RECOMMENDATION

The Zoning Examiner recommends **approval** of the C-2 zoning, subject to the attached preliminary conditions.

Sincerely,



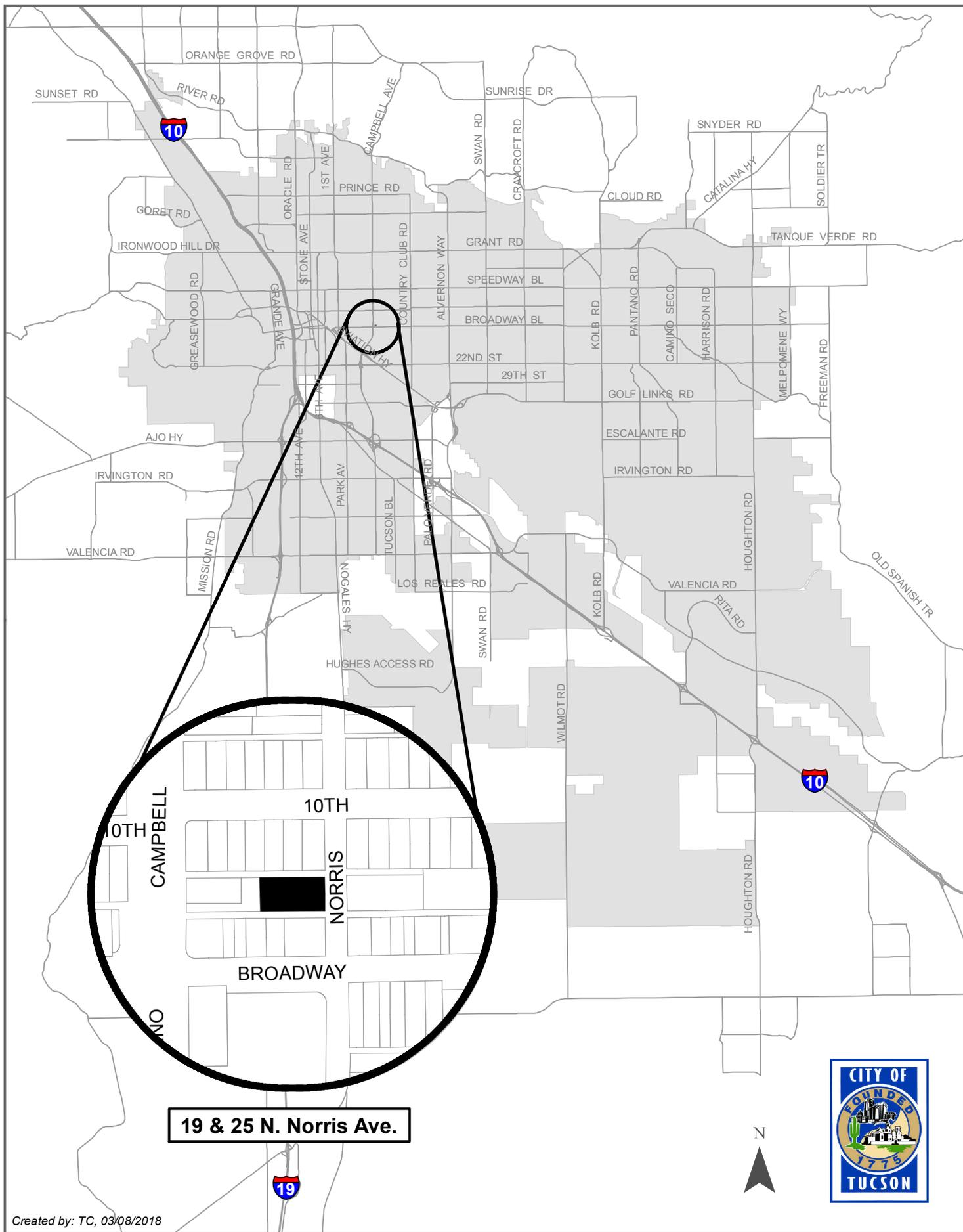
Steven C. Shell
Zoning Examiner

ATTACHMENTS:

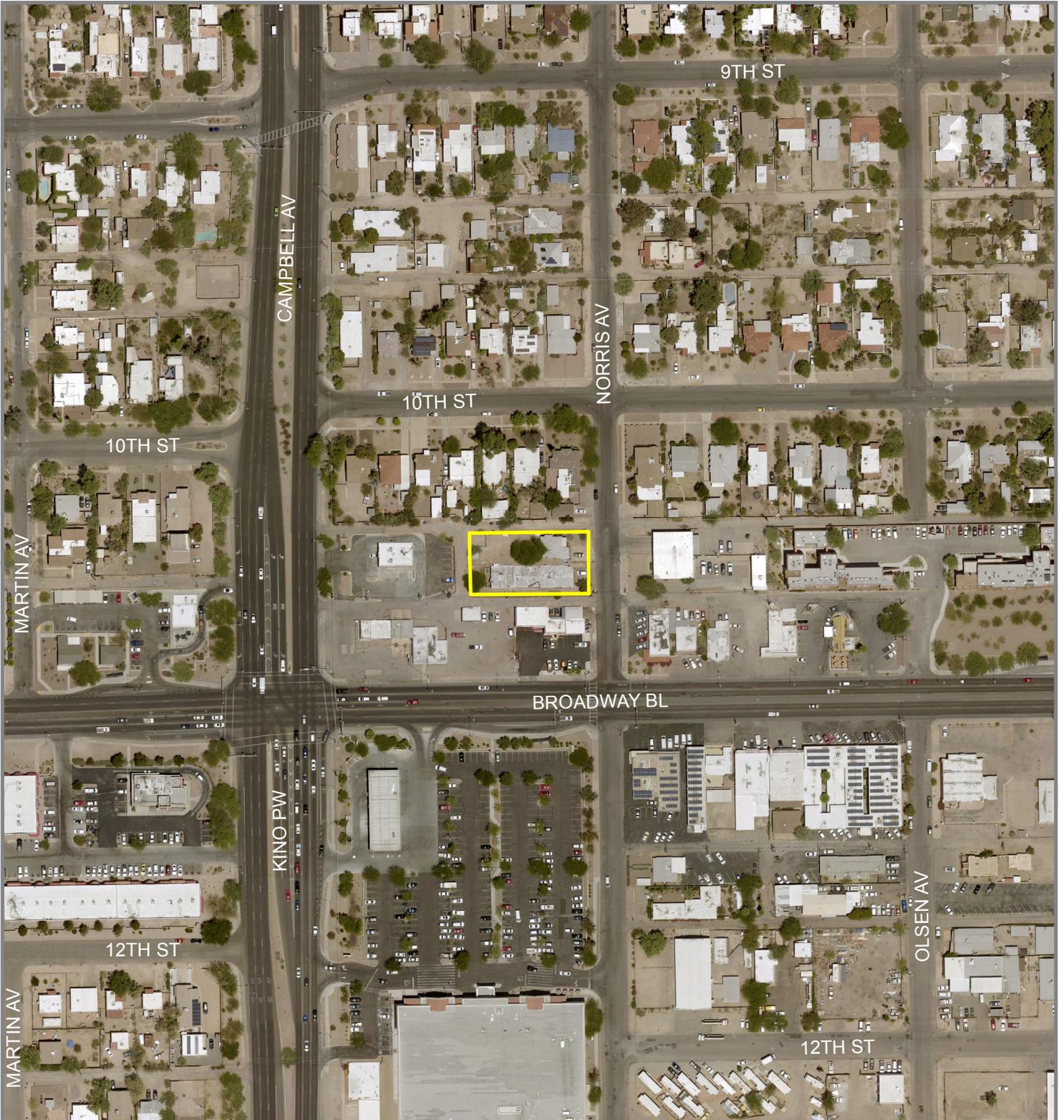
- Case Location Map
- Rezoning Case Map
- Zoning Examiner's Preliminary Conditions

cc: City of Tucson Mayor and Council

C9-18-06 Brake Masters



C9-18-06
Brake Masters



 Area of Rezoning Request



Address: 19 & 25 N. Norris Ave.
Base Maps: Twp.14S Range14E Sec. 08
Ward: 6

 Feet
0 100 200

1 inch = 200 feet



PROCEDURAL

1. A development package in substantial compliance with the preliminary development package and required reports dated is to be submitted and approved in accordance with the *Administrative Manual*, Section 2-06.
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 fully executed Waiver must be received by the Planning & Development Services Department before the item is scheduled for Mayor and Council action.
3. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Historic Preservation Officer. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director of Arizona State Museum.
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. The owner/developer shall obtain written documentation from the Pima County Regional Wastewater Reclamation District (PCRWRD) that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, sewer improvement plan or request for building permit for review. Should treatment and/or conveyance capacity not be available at that time, the owner/developer shall have the option of funding, designing and constructing the necessary improvements to Pima County’s public sewerage system at his or her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the PCRWRD.
6. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of rezoning.
7. The Owner of the single family residence (SFR) at 25 N. Norris Avenue shall maintain the structure and the property in a manner which is suitable for the neighborhood and acceptable to the neighbors and the Homeowner’s Neighborhood Association.

LAND USE COMPATIBILITY

8. The Single-family residence at 25 N. Norris Avenue (American Villa Resub, Lot 18, Block 7) shall remain a residential use.
8. Trash collection will be limited to the hours from 7:00 AM to 6:00 PM.
9. Signage shall be prohibited on the north elevation of the commercial building and on the residential property. Signs on the east elevation should be an enclosed design, such as a cabinet or individual lettering with internal or halo method lighting to reduce light trespass. Future pole sign shall be limited to the Broadway Boulevard frontage.
10. 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, (jog, curve, notch, setback, etc.); and/or trees and shrubs in voids created by the wall variations.
11. Six (6) inch wide masonry block or greater shall be used for perimeter walls.

ROAD IMPROVEMENTS/VEHICULAR ACCESS/CIRCULATION

12. The “pork chop”, depicted at the Norris Avenue access on the PDP, is required to direct traffic away from the neighborhood.
13. The area south of the proposed structure, owned by the City of Tucson, but accessible to the applicant for parking and maneuvering, and zoned C-1, shall not be used for the overnight parking of vehicles.

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(I).

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

