



ZONING EXAMINER

REPORT TO MAYOR AND COUNCIL

**C9-18-09 SHK Future Development LLC – Broadway Blvd.
R-1 to C-1 Zoning
July 6, 2018**

BACKGROUND

This is a request by Brian Underwood, of the Planning Center, on behalf of the property owners, SHK Future Development LLC, to rezone approximately 0.20 acre from R-3 to C-1 zoning. The rezoning site is located on the north side of East Broadway Boulevard; approximately 1,850 feet east of Craycroft. The preliminary development plan proposes future improvements/redevelopment of the existing drive-through restaurant including additional parking, dumpster location and landscaping and a potential new 2,467 square foot commercial building.

Land use policy direction for this area is provided by the Sewell-Hudlow Neighborhood Plan (SHNP) and *Plan Tucson (PT)*.

PUBLIC HEARING SUMMARY (Minutes Attached)

At the June 21, 2018, Zoning Examiner's Public Hearing, staff reported one written approval and one written protest outside the 150-foot protest area. Only the applicant spoke at the hearing; no representatives of the neighborhood or any other speakers spoke.

The applicant described the project and stated no objection to the Planning and Development Services' rezoning conditions.

The applicant indicated that while a 5-foot high screen wall is required on the residential property line to the north, the wall will be built 6 feet tall to match the wall on the Arby's site to the west. He reiterated that no traffic will access 10th Street to the north.

After the public hearing was closed, another neighbor arrived in the M&C chamber. She agreed to speak with the applicant outside the chamber. I advised that she was welcome to submit a letter to the Zoning Examiner for consideration after the hearing.

The applicant stated no objection to the Planning and Development Services' rezoning conditions.

C9-18-09 SHK Future Development LLC

Rezoning: R-3 to C-1

FINDINGS OF FACT

Existing Land Use and General Location

The undeveloped Rezoning site is zoned R-3. This zone provides for high density, residential development and compatible uses. Civic, educational, recreation, religious uses, and select other uses, such as day care and urban agriculture, are also permitted that provide reasonable compatibility with adjoining residential uses.

Surrounding Zones and Land Uses:

North: Zoned R-3 & R-1; 10th Street and Single Family Residential
South: Zoned C-1; Restaurant with drive-through
East: Zoned R-3 & C-1; Apartments and Commercial
West: Zoned C-1; Restaurant with Drive-through

Land Use Plans

The rezoning site is located within a Mixed-use Corridor as identified on the Future Growth Scenario Map of *PT*. Mixed-use corridors provide a higher-intensity mix of jobs, services, and housing along major streets. The businesses and residences within these corridors will be served by a mix of high-frequency transit options, as well as pedestrian and bicycle facilities.

Within Mixed-use Corridors, *PT* supports the redevelopment and/or expansion of existing strip commercial development that will improve traffic flow, pedestrian mobility and safety, and streetscape quality when: the project stabilizes and enhances the transition edge when adjacent to existing and future residential uses; primary access can be generally provided from a major street; and, required parking, loading, and maneuvering, screening and buffering can be accommodated on site and oriented away from adjacent residential uses. Adjacent uses can consolidate design elements, where feasible, such as access points, parking, landscaping, and screening.

PT also provides for consideration of the expansion of commercial areas into adjoining residential areas when logical boundaries, such as existing streets or drainageways, 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.

The overall *SHNP* goals are to preserve and protect the integrity of established low-density neighborhoods; identify appropriate locations for new development and provide safe and efficient circulation systems for all modes of transportation including pedestrian. The Plan supports efficiently designed, nonresidential developments that minimizes the number of vehicular access points and integrates vehicular and pedestrian circulation systems and other common amenities such as landscaping and walls. Commercial development is supported

C9-18-09 SHK Future Development LLC

Rezoning: R-3 to C-1

along on Broadway Boulevard, including the subject parcel, as shown on the Land Use Development Maps.

The rezoning site is approximately the north one-third of a parcel with split zoning. The south two-thirds of the parcel which fronts onto Broadway Boulevard, an arterial street, is zoned C-1 and is developed with a restaurant with a drive-through. The rezoning portion of the lot is undeveloped and fronts onto East 10th Street, a local street. A rezoning condition will prohibit access to East 10th Street. Single-family homes exist across E. 10th Street from the rezoning parcel. The rezoning is generally supported by the residents given the proper screening and landscaping along the road frontage and the no-access condition.

The Pima Association of Governments - Transportation Planning Division (PAG-TPD) estimates that the proposed development will generate no additional vehicle trips per day.

Site Plan Considerations

Land Use Compatibility – The rezoning site is relatively flat, with disturbed desert scrub vegetation. The Design Compatibility Report indicates that any new commercial structure will occur toward the south two-thirds of the overall site (currently zoned C-1). Should it be warranted, a patio area may be developed south of a future structure, moving the northern portion of the structure onto the rezoning site. However, the outdoor activity as well as the drive-through activity will remain nearly 300 feet from the residential properties. The maximum height of the future structure will be 30 feet. The rezoning site will be developed for parking and the dumpster area. The proposed dumpster location is nearly 100 feet from the residential properties. A 6-foot tall masonry wall and a 10-foot wide landscape border will provide screening along the 10th Street frontage.

Drainage/Grading/Vegetation – There are two watersheds draining the site. Most of the C-1 portion of the overall property drains to Broadway, however there is a depressed landscape area at the north boundary of the existing development. Currently, overflow from the depressed area runs north onto the rezoning site and toward the northeast corner of the lot, into the 10th Street right-of-way (ROW), and is conveyed to the Sahuara Wash in the Chantilly Drive ROW. The site is not within a designated critical or balanced basin, and is less than one acre in size, therefore retention/detention is not required. The depressed landscaping areas in the developed portion of the rezoning site will retain storm water.

Road Improvements/Vehicular Access/Circulation – The current circulation pattern and road access will be retained for future development. Ingress and egress will remain as separate access point to Broadway Boulevard. There will be no site access to 10th Street.

CONCLUSION

The rezoning substantially complies with Plan Tucson and the Sewell-Hudlow Neighborhood Plan.

C9-18-09 SHK Future Development LLC

Rezoning: R-3 to C-1

ZONING EXAMINER’S RECOMMENDED CONDITIONS

PROCEDURAL

1. A development package in substantial compliance with the preliminary development package and required reports dated April 4, 2018, 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.

LAND USE COMPATIBILITY

7. Drive-through speakers shall be designed and placed to direct sound away from residential uses.
8. Dumpster shall be located at least 50 feet from any residential property line.
9. Developer shall provide a six-foot (6’) tall wall along the East 10th Street 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

C9-18-09 SHK Future Development LLC

Rezoning: R-3 to C-1

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. Minimum six (6) inch wide masonry block or greater shall be used for perimeter walls.

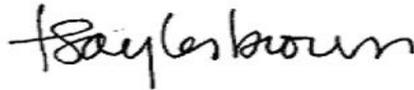
ROAD IMPROVEMENTS/VEHICULAR ACCESS/CIRCULATION

12. No access shall be permitted to East 10th Street.

RECOMMENDATION

The Zoning Examiner recommends approval of the rezoning to the C-1 zone subject to the Zoning Examiner's recommended conditions.

Respectfully Submitted,



Thomas Sayler-Brown, AIA, NCARB
Zoning Examiner

ATTACHMENTS:

Public Hearing Minutes

ZONING MEMBERS PRESENT

Thomas Sayler-Brown, Zoning Examiner
Michael Wyneken, Planning & Development Services
Cindy Leyba, City Recording Clerk

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1 ZONING EXAMINER: Sir, who just came in. Do you expect to
2 speak tonight? Are you? Oh, okay. You're an Applicant? Okay.
3 Thank you. So, we're gonna get started.

4 First, I'm gonna apologize. My printer wasn't working, so, the
5 speech that I have to read to you right now, I'm reading off this.
6 And my eyes aren't what they used to be last week. So, I'm gonna take
7 it a little slow here.

8 My name is Thomas Sayler-Brown and I'm the Zoning Examiner
9 for the City of Tucson. I conduct special exception hearings and
10 rezoning hearings on behalf of the Mayor and Council and make
11 findings-of-fact.

12 In the case of rezonings, I prepare a report, along with
13 the recommendation, which I'll then send to Mayor and Council. I'll
14 also be doing that for the special exception tonight because it's
15 gonna be decided by Mayor and Council. For the special exception,
16 after tonight I will prepare a decision, or recommendation, I should
17 say, that I will send to Mayor and Council in five working days.

18 If I don't close the public hearing this evening, I'll
19 continue it to a date not more than 30 days from now. In my decision,
20 I will recommend approval, approval with conditions or denial of the
21 application. I'll mail, I will mail the Notice of the decision on an
22 application within three days after I render my decision. The Notice

1 of the decision will be mailed to the Applicant and all persons who
2 request the notice.

3 My decision may be appealed by a party-of-record to the Mayor
4 and Council in accordance with the Unified Development Code, Section
5 3.4.3-j by submitting a Notice of Intent to appeal to the City Clerk
6 within 14 days from the date of decision with a copy delivered to the
7 Planning & Development Services Department. The complete appeal
8 materials must be filed within 30 days of the decision.

9 An Applicant may request a change in the condition of
10 approval of a special exception land use and the request shall be
11 reviewed by Staff for, for recommendation to me. The request shall
12 then be considered at a public hearing in accordance with UDC Section
13 3.9.2.

14 I am sorry. This lettering is really small. Now in the
15 case of rezonings, I'll prepare a preliminary report and a final
16 report. After I close the hearing, I'll prepare a preliminary report
17 within five working days. I will prepare a final report two weeks
18 after the close of the public hearing.

19 For those of you who wish to receive a copy of my
20 preliminary report, and you're not already a principal listed on the
21 case, please fill out one of the orange cards that are up on the
22 podium. A copy of the final report will be available from the
23 Planning & Development Services Department and I'll send that report
24 to the Mayor and Council. They may consider my recommendation, along
25 with other factors and make their decision.

1 Now, a little bit about procedure. At the start of the
2 hearing, I'll request Staff to give me background on the presentation.
3 Sitting with me is Michael Wyneken of the Planning & Development
4 Services Department. After that, I'll ask the Applicant to come up
5 and present the case.

6 After the Applicant presents, those wishing to speak in
7 favor of the case may be called up, followed by those in opposition.
8 Then I'll ask anybody who may not have a position, but still wants to
9 speak, to make a presentation to me.

10 I will allow the Applicant up to 20 minutes to present
11 their case and every other speaker up to five minutes to provide
12 information on the case. If you wish to speak tonight, I ask that you
13 print your name and address on that sign-in sheet.

14 And I want to make sure I can properly associate a name
15 with testimony. So, please write very clearly. I'll also ask you to
16 announce your name and address clearly for the record. We are
17 recording this and the clerk will want to know everybody who's
18 speaking.

19 So, at this time, I'd like to swear in anybody who thinks
20 there's any possibility that you're gonna speak tonight. So, if you
21 would, anybody who's gonna possibly speak tonight, please stand up and
22 raise your right hand. Do you swear or affirm to tell the truth, the
23 whole truth, and nothing but the truth?

24 (Affirmative.)

1 ZONING EXAMINER: Thank you. Okay. Here's another one.
2 Only people that I recognize can speak. So, if anybody is up there
3 speaking at the microphone, that's the only person I want to hear
4 speaking. That's - I think that's it.

5 So, our first case tonight is C9-18 - oops. It's not that
6 one. It's C9-18-09 SHK Future Development LLC. Mr. Wyneken.

7 MR. WYNEKEN: This is a request by Brian Underwood of the
8 Planning Center on behalf of the property owners, SHK Future
9 Development LLC to rezone approximately .2 acres from R-3 to C-1
10 zoning.

11 Rezoning site is located on the north side of East Broadway
12 Boulevard approximately 1850 feet east of Craycroft Road. The
13 Preliminary Development Plan proposes future improvements,
14 redevelopment of the existing drive-through restaurant, including
15 additional parking, dumpster location and landscaping and potential
16 for a new 2467-square-foot commercial building.

17 Land use policy direction for this area is provided by the
18 Sewell-Hudlow Neighborhood Plan and Plan Tucson. Rezoning site is
19 located within a mixed-use corridor as identified in the Future Growth
20 Scenario Map of Plan Tucson. Mixed-use corridors provide a higher
21 intensity mix of jobs, services and housing along major streets.

22 The businesses and residents within these corridors will be
23 served by a mix of high-frequency transit options, as well as
24 pedestrian and bicycle facilities. Within mixed-use corridors, Plan
25 Tucson supports the redevelopment or expansion of, of existing strip

1 commercial development that will improve traffic flow, pedestrian
2 mobility and safety and streetscape quality when the project
3 stabilizes and enhances the transition edge when adjacent to existing
4 and future residential uses.

5 Plan Tucson also provides for consideration of the
6 expansion of commercial areas into adjoining residential areas when
7 logical boundaries such as existing streets can be established and
8 adjacent residential property can be appropriately screened and
9 buffered.

10 Sewell-Hudlow Neighborhood Plan goals are to preserve and
11 protect the integrity of established, low-density neighborhoods,
12 identify appropriate locations for new development. Development,
13 commercial development is supported along Broadway Boulevard,
14 including on the subject parcel, as shown on the land use development
15 map.

16 The rezoning site is approximately the north one-third of a
17 parcel with split zoning. The south two-thirds of the parcel fronts
18 onto Broadway Boulevard, an arterial street, is zoned C-1 and is
19 developed with a restaurant and drive-through.

20 The rezoning portion of the lot is undeveloped, fronts onto
21 East 10th Street, a local street. Rezoning condition will prohibit
22 access to East 10th Street. A six-foot masonry wall and ten-foot
23 landscape border will provide screening along the East 10th Street
24 frontage.

1 The depressed landscape areas in the development of the
2 portion of the rezoning site will retain storm water, maintain a pre-
3 development runoff of 2.2 cubic feet per second, with the overflow
4 following the same pattern into the 10th Street right-of-way.

5 The Sewell-Hudlow Neighborhood Plan and Plan Tucson support
6 commercial zoning on the site. The proposed future layout of the site
7 keeps the commercial activity significant distances from the
8 residences to the north. Six-foot wall and landscape border offers
9 screening for the residences.

10 Subject to compliance with the Preliminary Conditions,
11 approval of the requested C-1 zoning is appropriate. To date, we have
12 one approval and one protest on this project. The protest is outside
13 the 150-foot protest area. Therefore, a simple majority vote at this
14 time of the Mayor and Council would be required to adopt the zoning
15 ordinance. That concludes the presentation.

16 ZONING EXAMINER: Okay. Mr. Underwood, are you here?

17 MR. UNDERWOOD: Good evening, Mr. Zoning Examiner.

18 ZONING EXAMINER: Could you also make sure you sign in?

19 MR. UNDERWOOD: Yeah. Absolutely. And thank you for
20 hearing our case tonight. My name is Brian Underwood and I'm with the
21 Planning Center, 2 East Congress here in Tucson. I'm also joined
22 tonight by Lexi Weller and Linda Morales also with the Planning
23 Center. And I do have a brief presentation that I've prepared that I
24 have a couple extra copies for you and Mr. Wyneken, as well as an
25 extra copy here for anybody else that's in the audience.

1 Mr. Wyneken did an excellent job of, of presenting our, our
2 rezoning request, so, I'll try to be as brief as possible and, and not
3 beleaguer this location map and, and kind of orientation to get us all
4 on the same page with, with the property.

5 The first slide that you'll see there, the regional
6 location, just sort of shows that we are east of Craycroft, west of
7 Chantilly Drive on the north side of Broadway Boulevard. You can see
8 the property there outlined in red with a pink, pink fill here.

9 If you take a look at the next map in your packet there,
10 it's the site aerial. And you can see the, the overall 5. - or
11 .53-acre parcel is outlined in yellow. And the rezoning area is
12 hatched in red.

13 And you can see in this photo that the existing development
14 to the east is an apartment complex, and then we have a fast food
15 restaurant to the west, the Arby's, and additional restaurants and
16 commercial development beyond the adjacent, adjacent uses to the east
17 and west.

18 Taking a look at the surrounding zoning, the property
19 itself where the existing Wienerschnitzel restaurant is and parking
20 area is currently zoned C-1. And the northern portion of the parcel
21 is R-3.

22 And to the west, we have C-1 zoning and R-3. And to the
23 east, we have the back portion of those apartments zoned R-3 and, and
24 the front portion fronting onto Broadway zoned C-1. And everything
25 north of 10th Street being zoned R-- R-1, excuse me.

1 Taking a look at our proposed Preliminary Development Plan,
2 what, what we're showing here is, is more or less an extension of the
3 parking area. And we're contemplating a future redevelopment option
4 for the, the Wienerschnitzel building.

5 In the interim, until that expansion is done, I think the
6 tenants are actually really excited about getting out and expanding
7 the parking lot as, as the first improvement that they make.

8 So, they'll, they'll likely be extending - knocking down
9 that wall that currently exists along the zoning line and extending
10 that parking area there to make for some, make for some additional
11 parking for, for the Wienerschnitzel or, or a future tenant if, if
12 that changes.

13 Now, as part of the rezoning, we will be providing a six-
14 foot masonry wall along the northern boundary adjacent to 10th Street.
15 It's required to be a five-foot, but after going out and doing our
16 site visit, the Arby's has a six-foot wall, and so, we're gonna match
17 up with, with their wall so that it doesn't have a jog in it.

18 And really, we, we had our, our neighborhood meeting, we
19 had one attendee. And, and I did receive a, a phone call from a
20 neighbor directly to the north, Ms. Sally Gollob (ph.). And the, the
21 concerns mainly were just the existing vacant use of the property.

22 That it's sort of an eyesore for folks on the pro- -- or
23 folks in the neighborhood. It's become a dumping ground where people
24 come and, and will dump mattresses or old furniture. And, and so
25 it's, it's, it's an area that, you know, at least these adjacent

1 neighbors are excited to see it developed and, and turned into
2 something different. And with that, I will open it up to any
3 questions.

4 ZONING EXAMINER: I personally don't have any questions
5 right now. You answered the one that I might have had.

6 MR. UNDERWOOD: Okay. Thank you.

7 ZONING EXAMINER: So, I'm gonna move on. I have - is there
8 anybody here who maybe walked in later who's here to talk in support
9 of this project? 'Cause the only name I have up here is - and I'm
10 gonna probably pronounce it wrong, but I'm gonna try. Xilian Pang.
11 Did I say that right? Close enough?

12 Okay. Would you like to come up and speak as soon as Mr.
13 Underwood is done? Did, did you want to speak? You, you don't need
14 to? Okay. All right. Anybody else want to speak at all? All right.
15 I'm gonna close the public hearing. Mr. Underwood, did you have
16 anything else you wanted to add?

17 MR. UNDERWOOD: I was just going to ask if you'd like me to
18 address some of the concerns that were in Mrs. Pang's protest letter.

19 ZONING EXAMINER: Sure. I'd be happy to hear that.

20 MR. UNDERWOOD: Yeah. Absolutely. I believe there were
21 some concerns about additional, additional noise and traffic and
22 pollution that would come with the rezoning. And so, I just wanted
23 to, to take a moment to, to briefly touch on the fact that we are
24 going to restrict all access to Broadway. So, no, no traffic will be
25 going out to 10th Street and, and mixing with, with neighborhood

1 residential traffic and it is an existing use. So, so there is a
2 Wiener Schnitzel restaurant that, that is currently there.

3 And just given the, the layout and dimensions of the
4 property, it's not likely that you could get a much larger building on
5 there that would increase that traffic or, or, or, you know, size,
6 size of restaurant.

7 And, and then in terms of pollution, once again, the
8 building is already there. We don't anticipate additional traffic as,
9 as a result of, of the rezoning request. Thank you.

10 ZONING EXAMINER: Okay. Thank you very much. So, I will
11 write a preliminary report and have that ready in five business days.
12 Thank you very much.

13 (Case: C9-18-09 was closed.)

I hereby certify that, to the best of my ability the foregoing is a true and accurate transcription of the original tape-recorded conversation in the case reference on page 1 above.

Transcription Completed: 07/01/18



KATHLEEN R. KRASSOW - Owner
M&M Typing Service