

ZA Narrative
Request to Remove Time and General Conformance Stipulations
SWC Camelback Road and Central Avenue

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Purpose

This narrative is being provided in support of Cornerstone at Camelback LLC's (the "Applicant" and the "Property Owner") request to:

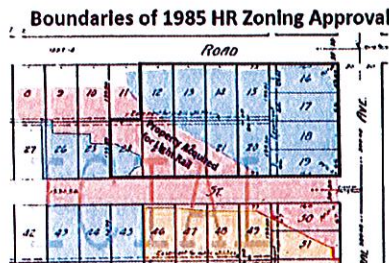
- 1) Request additional time in which to initiate development of the Site and removal of the remaining general conformance stipulations in Case ZA-206-17 for the property located at the southwest corner of Camelback Road and Central Avenue.
- 2) Remove Stipulation No. 2 (lot coverage) from this set of approved variances if Central Ave. and Camelback Road are considered by the City to be "transit streets" in which then the Transit Overlay District ("TOD") lot coverage standard would supersede the underlying High-Rise ("HR") lot coverage standard pursuant to **Sec. 662 C. Inconsistencies of Underlying Districts which reads; *In the event that the underlying zoning district standards, or other ordinance or regulations are inconsistent with these overlay Zoning Ordinance standards or any other provisions herein, the standards of the TOD-1 shall apply.***

The TOD lot coverage standard is listed in **Sec. 662 I. Development Standards for Permitted Uses 3. a. Lot coverage** which states that "There shall be no maximum lot coverage for parcels fronting a transit street." A "transit street" is defined by both Camelback Road and Central Avenue have the Light Rail tracks in them near the Site and the Transit Station passes by the west boundary or edge of the Site. The 100% TOD standard is greater than the variance requested in Variance No. 2; see Attachment No. 1 for the Variance History on page 6 to this document.

These variance requests were originally approved in 2007 (ZA-409-07), but were subject to an initial 5-year time stipulation; see Attachment No. 1 to this narrative. The reason for the original time limit and the general conformance stipulations is not documented in the ZA histories on these variances, but the Property Owner has learned through experience that the time limit on these variances has substantially hindered marketing the Site for development utilizing the existing entitlements. In order to appreciate the reasons for this request, it's important to review the property's entitlement history.

Background

The subject site was originally a 4.11-acre site that was originally granted C-2 HR zoning in application No. Z-132-85-5 back in the mid-1980s. In 2003, the City imposed the TOD on the property which served to supersede most of the underlying zoning's development standards. Then, in the mid 2000's, the City condemned roughly the southern 1/3rd of the property thus creating an irregularly shaped triangular shaped Site. In response to these actions, applications were submitted in 2006 to modify and update the 1985 High-Rise rezoning stipulations and to request approval of several variances to account for the impacts of the new irregularly shaped site. The effects of these new regulations could not be addressed in the context of a PHO zoning stipulation application.



Justification for Approval

Just as it was determined in 2006 that it was appropriate to remove the 1985 rezoning stipulation requiring commencement of development within a specific timeframe, it is similarly appropriate to now remove the variance time limits and the remaining design oriented general conformance stipulations 12 years after they were removed from two of the variances; *regarding density and lot coverage*. We are now almost 14 years after the variance approvals and this is still a worthwhile project. The passage of time has proven to the Property Owner that the time stipulation and the general conformance requirements have significantly hindered the marketing of the development because these appear to be temporary and revocable approvals.

The requirement for general conformance to the site plan and elevations was removed from the overall Site in 2007 but the variances having to do with design-oriented elements were retained. Unfortunately, the intent of "general conformance" was changed in 2012 after these approvals were granted. That kind of change to an existing approval creates substantial doubt and significantly increases the difficulty of marketing of the development that much more difficult. Moreover, the City's new specific definition for general conformance conflicts with the lack of specificity of the original exhibits which the ZAHO himself admitted were vague. This disparity has the real potential of creating interpretation problems during site plan review at DSD.

These variance approvals are fundamental and should be a permanent part of the property's entitlements. A copy of the current applicable stipulations for these variances is attached to this narrative as well as the stipulations from the most recent time extension, ZA-206-17, which added stipulations in exchange for the most recent time extension.

The initial five-year time limit imposed in 2007 was understandable at the time. Virtually all variances granted in the City are subject to some type of time limit. But for such a significant development, the 5-year period has proven to be too short given the various obstacles which have delayed the ability to obtain financing, secure development partners and users and design and additionally entitle the project in enough time to obtain the necessary construction plan and permit approvals.

It's important to understand the myriad of obstacles this site has faced which have caused the delays. The first reason for the project's delay was the construction of the Light Rail line thru the Site and the Light Rail station adjacent to the Site. Construction of the Light Rail system which did not finish adjacent to the Site until shortly before Light Rails opening in Dec. 2008, two full years after the zoning stipulation modification and 1.5 years after the variance approvals.

The second reason for the project delay was obviously the Great Recession which began just as Light Rail was beginning operations. Fortunately, we are now well beyond that difficult period in our history and development, renovation and new development in the Valley, and in Central Phoenix in particular, is robust. Since the approval of these variances, there have been no changes in circumstances on the Site or area that eliminates the need for, or the purpose of, these variances. Again, this is a significant project and the variances are a necessary and integral part of the design parameters.

The third reason is the ongoing complications and construction hinderances caused by the existing groundwater and soil contamination that ADEQ began to address in 1999. In 2005, a Soil Vapor Extraction system ("SVE") was chosen as the most appropriate remedy for the subsurface soil contamination at the former Maroney's facility. With an SVP system, soil is not removed from the site – it is cleaned through exposure to air which breaks down the composition of the contamination. The location of the SVE equipment is still obstructing construction of the Site 12 years after it was installed. It can possibly be moved albeit at a significant expense. Later, came changes in the City's plans for the Bus Lane adjacent to the Light Rail Station.

Concurrently with all of the above is the fact until the past few years, there was no market for high-rise residential or office buildings taller than 4 stories in Midtown or Uptown Phoenix – only in Downtown. Only now are we seeing proposals to develop multi-story high-rise projects in Midtown and Uptown.

In light of these delays, hinderances and obstructions, it just isn't practical or fair to continue limiting the length of the variance approvals. The variances are currently valid until June 8, 2021. We are hopeful that development of the Site will occur in the near future in light of the recent zoning approvals nearby in the Central Corridor.

Interim Use of the Property Prior to Development

Ten years ago, the City thought that a bus lane with drop-off (that parallels the Light Rail line adjacent to this Site) and the Light Rail Station would work well in tandem but it didn't work out that way. So, the City shifted its goals and decided that since the bus lane and drop-off wasn't working as intended, that land should be sold. In March of 2017, the City and the Property Owner, reached an agreement to purchase the abandoned bus lane.

Shortly thereafter, when the most recent time extension was considered on June 8, 2017, the ZA left all of the 2007 stipulations in place but added a requirement to comply with two (2) additional new stipulations related to the bus lane purchase agreement. Specifically, the Applicant/Property Owner was given 90 days to present an Interim Beautification Plan, agreed to by the Property Owner in a separate agreement with the City, to the adjacent Four Corners Neighborhood Association. (Copies of the interim beautification plan, both in color and black and white, are included with this application.) The ZA then also required that the Interim Beautification Plan obligations be completed within 1 year.

Both of these new obligations were already addressed in the separate agreement with the City. But the imposition of these unrelated stipulations highlights the mercurial nature of time limited approvals and the ever-changing perspectives of new hearing officers which creates doubt in the minds of investors and developers.

In that bus lane Purchase Agreement, the Property Owner was required to complete four (4) out of ten (10) items to essentially activate the property until it was to be developed. The most significant item was the construction of landscaped pedestrian connections from the bus stops on both Camelback Road and Central Avenue across the property to connect with the Light Rail station in exchange for the purchase of the bus lane. These and other improvements were required by the Purchase Agreement to be completed within 12 months of purchase, or May of 2017. Those items were completed on time and include:

- Two (2) pedestrian connections;
- handicapped/accessible parking;
- landscaping and irrigation; and
- site grading.

In addition to those four (4) items, although not required, the Applicant pursued completion of the following items:

- bicycle parking;
- local merchants parking program;
- signage/wayfaring for local merchants; and
- shading (trees)

Additional Item

One more item to beautify the interim site condition that was not technically part of the Interim Use Plan, i.e. removal of the existing three (3) sided Billboard, was accomplished last summer in May 2019 with the support of the local community.

Our view is that the City was already benefitting from the Property Owners agreement to purchase the City's unused and unnecessary bus lane and that agreement to effectuate that purchase had its own timing obligations. The addition of the additional stipulation to the 2017 variance time extension was duplicative and illustrative of another reason why the time limit on all of these necessary variances should be removed. The status of these variances should not be arbitrary or be used to achieve other unrelated objectives having nothing to do with the development itself.

Conclusion

While this project is certainly desirable and appropriate in this area, its market is slightly different than other areas of the City and failure to comply with a time condition should not be the reason this project fails. The market is truly working as it should. These variances were not a luxury, they were and are still necessary due to the right-of-way take,

the irregular shape of the remaining property and the imposition of the TOD on land that had been zoned almost 20-years prior.

The Property Owner's efforts to development the property have not ever waned. The Property Owner has been constantly evaluating the market, cooperating with ADEQ on the soil contamination remediation efforts, and again most recently with the City's decision to abandon the bus lane next to the Site.

With regard to removal of the general conformance stipulations, the intent of "general conformance" has been changed since 2006 when these approvals were first obtained due to the City's adoption in 2012 of a precise definition for "general conformance". That kind of change to an existing approval creates substantial doubt in the minds of investors and significantly increases the difficulty of marketing of the development that much more difficult.

In practice, at this point in time given all of the above, the variance time limits and general conformance requirement are proving to be a negative distraction to investors since they are subject to the potential of being revoked or altered by a hearing officer in another time extension request.

The zoning on this Site, and the TOD development standards, imposed on the Site in 2003 after the HR zoning approval, are not subject to a time limit. These variance approvals varied some of those TOD standards to, in effect re-set the applicable development standards for the Site to account for the Site's unusual circumstances after the imposition of the TOD overlay in 2003. Again, the owners of this property did not request that TOD zoning change and the development standards should be permanent. This importance of this position is reinforced by the fact that several TOD standards, that were varied for this Site, have been subsequently modified by the City further illustrating the need for permanency.

This project is precisely the type and style of development that the City has and continues to seek in the Central Corridor. The Site utilizes and integrates with the Light Rail and due to the TOD overlay will implement as much of the TOD as is feasible given the property's history, circumstances and shape. We therefore respectfully request approval of the variance to eliminate the requirement to have a time limit and the modified stipulations to allow these variance approvals become a fundamental and permanent part of this Site's entitlements.

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Attachment No. 1

Variance History

➤ **Approved February 6, 2007 / ZA-882-06**

This application was the City's first consideration of the variances.

The variances were generally approved but there was concern with several of the stipulations. An appeal was initially submitted but then withdrawn and a second variance application was submitted.

The first variance in that application was to request approval for the variances to be heard again by the Zoning Administrator within one-year. That application was ZA-409-07.

➤ **Approved June 5, 2007 / ZA-409-07**

Approvals:

1. Variance to re-hear request within a 1-year timeframe.
2. Modification of stipulations of ZA-882-06 to remove general conformance to Variance No 1 (density) and Variance No. 2 (lot coverage). Variance Nos. 2-9 (listed below) subject to general conformance.

➤ **Approved December 1, 2011 / ZA-407-11**

Approval:

1. Time extension of ZA-409-07

Stipulations:

1. 5 years to apply for building permit
2. Previous stipulations remain in place (**E&C - See updated variance list below.**)

➤ **Approved June 8, 2017 / ZA-206-17**

Approval:

1. Time extension of ZA-407-11

Stipulations:

1. 4 years to apply for building permit. (**current expiration June 8, 2021**)
2. Previous stipulations remain in place

The following stipulations were added to the case:

3. 90 days to present to adjacent Four Corners Neighborhood Association with site plan for interim beautification plan
4. One year to complete construction of interim beautification

NOTE: The numbering of the stipulations changed in this case from ZA-409-07 since Variance No. 1 in ZA 409-07 wasn't subject to a time extension.

The following is a compilation of the approvals of ZA-882-06 as amended by ZA-409-07.

ZA-409-07:

1. *Item #1 was approved. This was the variance to allow the variances, first presented in ZA 882-06-4, to be considered again sooner than 1-year.*
2. *Item #s 2 and 3 were approved with the following stipulation:*
 - a. *Eliminating requirement for general conformance to site plan and elevations.*
3. *Item #s 4 through 10 were approved with the following stipulation:*
 - a. *With no changes to previous stipulation from ZA-882-06-4.*
4. *5 years to apply for permits.*

The full list of the requested variances including the Zoning Ordinance code sections, the code requirements and the ZA stipulations as amended are listed provided below.

- a. **Variance #1:** To re-hear request within 1-year timeframe. Section 607 B.
- b. **Variance #2:** To reduce the minimum lot area for each dwelling unit to 125 square feet and 0 square feet for each hotel guestroom; Not less than 450 square feet for each dwelling unit and 200 square feet for each guestroom required, Section 631.B.2.a.
Denied as filed. Approved at 125 sf per dwelling unit. 50 sf per hotel room.
- c. **Variance #3:** To increase the lot coverage to 80%; maximum 50% allowed, Section 631.B.2.a. Section 631.B.2.e. Lot coverage.
Approved.
- d. **Variance #4:** To allow up to a 20-foot build-to line along Central Avenue and Camelback Road; Maximum 6-foot build-to line required, Section 662.I.1.a. (formerly Section 662.H.1.a.)
Approved subject to general conformance with site plan and elevations.
- e. *Variance #4 that was requested in Case ZA 882-06-4 regarding unobstructed sidewalks was WITHDRAWN thus changing the numbering of these variance requests in ZA-409-07.*
- d. **Variance #5:** To reduce the shading method ratios; 25% structured shading along entire length of building proposed (75 50% required), and 25% other methods of shading along entire length of building (75 50% required), Section 662 I.2.c. (formerly Section 662.H.1.c. Shading methods.)
*NOTE: *The previous TOD standard of 50% was changed by the City to 75% after the Variance was approved.*
Approved for a minimum depth of 10 feet from building façade and subject to general conformance with site plan and elevations.
- e. **Variance #6:** To allow a maximum of 150% of the City required parking spaces; Maximum 125% allowed, Section 662 L.1. (formerly Section 662.K.1.)
Approved subject to general conformance with site plan and elevations.

- f. **Variance #7:** To reduce the number of loading berths to 5; Minimum 7 loading berths for up to 490,000 square feet of aggregate floor area plus 1 additional berth for each additional 90,000 square feet of aggregate gross floor area, Section 702.B.2. (aka Section H.2.)
Approved, subject to design mitigation to prevent vehicles which are loading or unloading from entering adjacent neighborhoods as determined by the Development Services Department (which now means PDD) and subject to general conformance with site plan and elevations.
- g. **Variance #8:** To reduce minimum building frontage to 45% along Camelback Road and 35% along Central Avenue; Minimum 75% building frontage required, Section 662 I.2.a. (formerly Section 662.H.2.a.) NOTE: This variance assumed that Central and Camelback were classified as "transit streets".
Approved subject to general conformance with site plan and elevations.
- h. **Variance #9:** To allow non-clear windows along the building frontage length onto Camelback Road and Central Avenue; Minimum 60* 50% clear windows required, Section I.2.a. (formerly Section 662.H.2.a.) **The previous TOD standard of 50% was changed by the City to 60% after the Variance was approved.*
Denied as filed; approved for a maximum of 22% tint for 1st and 2nd floors. Level of reflectivity above 2nd floor as approved by DSD (which now means PDD) and subject to general conformance with site plan and elevations.
- i. **Variance #10:** To not provide a main building entry oriented towards transit platform; Main building entry oriented toward transit platform and/or primary pedestrian accessway required, Section 662 I.2.b. (formerly Section 662.H.2.b.)
Approved, with a secondary entrance oriented toward transit platform as approved by DSD (now PDD) and subject to general conformance with site plan and elevations.