



# MEMORANDUM

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DATE: August 15, 2007  
For August 30, 2007 Hearing

TO: Peter M. Gavin  
Zoning Examiner

*Albert Elias*  
FROM: Albert Elias, AICP  
Urban Planning & Design  
Director

SUBJECT: REZONING – URBAN PLANNING AND DESIGN REPORT  
C9-07-15 Tu Nidito – Mountain Avenue, R-1 to P (Ward 3)

**Issue** – This is a request by Anthony Falgiano with Roinette Architects, Inc., on behalf of the property owners, Tu Nudito, to rezone approximately 0.20 acres from R-1 to P zoning. The rezoning site is located at 3922 North Mountain Avenue, the southeast corner of Mountain Avenue and Duke Drive (see Case Location Map). The preliminary development plan proposes a new surface parking lot on the east side of the existing buildings.

**Department of Urban Planning and Design Recommendation** – The Department of Urban Planning and Design recommends approval of P zoning, subject to the attached preliminary conditions.

## **Background Information**

Existing Land Use: Undeveloped & Existing Tu Nidito Medical Service to the west.

### Surrounding Zones and Land Uses:

North: Zoned R-2; Single-family residences

South: Zoned R-2; Single-family residences

East: Zoned R-1; Single-family residences

West: Zoned R-2; Tu Nidito Medical Service; single-family residences across Mountain Avenue.

Previous Cases on the Property: none

### Related Cases:

C9-03-05 Costco – Grant Road, R-3 to P. This was a request to rezone approximately 2.43 acres from R-3 to P zoning to allow a parking lot expansion comprised of 98 spaces. The rezoning site was located north of Grant Road, south of the Pantano Wash, approximately 800 feet west of the Wilmot Road alignment. The Mayor and Council authorized the rezoning on September 15, 2003.

C9-02-18 Ft. Lowell Real Estate – Fort Lowell Road MH-1 to P. This was a rezoning request for 0.24 acres to allow additional parking for an existing office use and one proposed building. The rezoning site was a land-locked parcel located south of an existing office site and north of the Blackledge Wash. On November 18, 2002, Mayor and Council authorized the rezoning. The Mayor and Council adopted Ordinance No.10312 on November 12, 2006, effectuating the requested zoning.

**Applicant’s Request** – The applicant has requested to rezone a portion of the property (approximately 0.20 acres) from R-1 to P to provide additional surface parking for the R-2 zoned portion of the property developed with a Medical Service use.

### **Planning Considerations**

The *Northside Area Plan (Plan)* and the *General Plan (GP)* provide policy direction for the rezoning site. Both plans support additional parking for allowed uses, providing the proposed parking area is designed to preserve and enhance the integrity of surrounding neighborhoods. The *Northside Area Plan* encourages locating on-site parking to the side or rear of new developments, and requires all parking and vehicle maneuvering areas to be located off-street. In addition, the *Plan* encourages buffering along the edges of new development adjoining less intense development by integrating landscaping with decorative perimeter walls.

The rezoning site is undeveloped and surrounded by low density residential development zoned R-1 and R-2, except for the Tu Nidito Medical Service use, which is directly to the west and zoned R-2. Vehicular access to the proposed parking will be from Duke Drive at an existing location. The existing driveway will be widened from 20 feet to 24 feet. Mountain Avenue provides vehicular access to the drop-off area located on the west side of the existing medical building. Mountain Avenue is identified as a collector roadway with a future right-of-way of 64 feet between Prince and Speedway on the *Major Streets and Routes Plan* map.

The Pima Association of Governments - Transportation Planning Division (PAG-TPD) estimates that the proposed development will not generate any additional vehicle trips per day. Field inspection by staff indicates there are currently no billboards on the rezoning site.

### **Design Considerations**

Land Use Compatibility – The subject parcel is zoned R-2 and R-1, creating a split zone development site. The applicant has requested to rezone the R-1 portion of the property to P to provide additional surface parking. A Medical Service use is permitted with special exception in the R-2 zone, thus the R-2 portion can remain R-2. Residential units are not allowed in the “P” zone.

To minimize the impacts on adjacent residential development, the applicant proposes to provide a masonry wall, five feet in height, and landscaped borders with trees along the north, east and

south property lines as shown on the Preliminary Development Plan. The proposed wall will be designed to complement the materials and color of the existing building and will create a stable edge along the perimeter with adjacent residential properties. In addition, the preliminary development plan indicates that all security lighting will be either low bollard or wall mounted to reduce spillover onto adjacent properties.

There appears to be potential for archaeological remains on the site. This is addressed with the standard condition of rezoning regarding archaeological resources.

Drainage/Grading/Vegetation – The rezoning site lies within the Mountain Wash watershed, a "non-designated" basin. The site is subject to shallow flooding from local flows and overflow from Mountain Wash. Mountain Wash flows along Mountain Avenue, west of the rezoning site and along the frontage of the existing Tu Nidito site. Detention is not required. However, since the development is greater than 1 acre in size and considered to be a commercial development, threshold retention of the 5-year flow volume is required. Both water harvesting and retention can be accomplished in the same manner and the volume retained in water harvesting area counts toward the threshold retention requirements. The applicant has indicated that water harvesting will be used to meet the threshold retention requirement. If retention is accomplished via shallow water harvesting areas, conditions concerning retention will not be applicable as water harvesting areas are not considered to be detention/retention basins.

Soils are Hydrologic Types C and D and have low permeability. Retention in shallow water harvesting areas will aid in providing basins that drain within a shorter period of time to reduce the chances of mosquito breeding.

Road Improvements/Vehicular Access/Circulation – The parking proposed will be accessed from Duke Drive at an existing driveway location. The existing driveway will be widened from 20 feet to 24 feet. Duke Drive is a local, public-maintained street that extends along the north boundary of the west half of the property before veering northeast.

**Conclusion** – The proposed rezoning is consistent with, and supported by, the policy direction provided in the *General Plan* and the *Northside Area Plan*. Subject to compliance with the attached preliminary conditions, approval of the requested P zoning is appropriate.

## Preliminary Conditions

1. A development plan in substantial compliance with the preliminary development plan dated June 21, 2007, and the Design Compatibility Report, is to be submitted and approved in accordance with Section 5.3.8. of the *Land Use Code*.
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”.
3. 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.
4. Six (6) inch wide fence block or greater shall be used for perimeter walls.
5. Preparation of a complete Drainage Report, including details of retention, is required.
6. If the owner/developer cannot accomplish retention via shallow water harvesting areas, the following conditions shall apply:
  - a) Each retention basin shall include a sediment trap, or other sediment control measures as approved by the City Engineer, to prevent sedimentation of the detention/retention basin. Each sediment trap, or other sediment control measure, shall have a provision for total drainage.
  - b) Retention basin floors shall be graded to drain either toward the outlet structure or other logical point. Basin floors shall not be flat.
  - c) Retention basins in or adjacent to the residential area shall be located adjacent to a street or accessible common area. Basin sideslopes in the adjacent area(s) shall be designed and constructed in accordance with the requirements of the Detention/Retention Manual for human activity zones.
  - d) Rectangular basin shapes shall be avoided unless necessitated by recreational or visual amenities within the basin.
  - e) Vegetation shall be used as screening and/or security barrier for a minimum of ten percent of the basin perimeter.
  - g) All security barriers and screening for retention basins shall meet Safe By Design guidelines.

Preliminary Conditions

7. 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.
8. “Safe by Design” concepts shall be incorporated in the subdivision plat for review by the Tucson Police Department.
9. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
10. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of rezoning.

Preliminary Conditions

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.

Preliminary Conditions

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

By: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires:

City of Tucson, an Arizona municipal Corporation

By: \_\_\_\_\_  
Urban Planning and Design