



**CITY OF TEMPE
REQUEST FOR COUNCIL ACTION**

**Council Meeting Date: 11/03/2016
Agenda Item: 6C8**

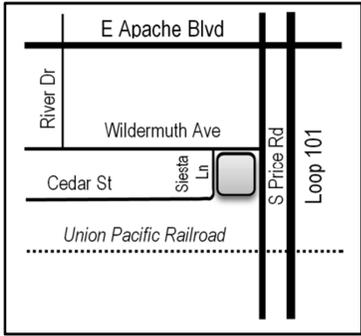
ACTION: Hold the second and final public hearing to adopt an ordinance for a Zoning Map Amendment for DANARI TEMPE LLC, located at 1401 South Siesta Lane, from General Industrial District (GID) and Transportation Overlay District to GID. The applicant is Lewis Roca Rothgerber & Christie. (Ordinance No. O2016.62)

FISCAL IMPACT: There is no fiscal impact on City funds.

RECOMMENDATION: Adopt Ordinance No. O2016.62
Development Review Commission – Approve (6-1 vote, Commissioner Amorosi dissenting), subject to conditions

BACKGROUND INFORMATION: The DANARI TEMPE LLC (PL160239) property consists of 1.48 acres, situated South of East Wildermuth Avenue between South Siesta Lane and South Price Road in the General Industrial District (GID) and in the Transportation Overlay District (TOD). The applicant is requesting a Zoning Map Amendment to remove the property from the TOD with the GID to remain; and a Use Permit to allow vehicle sales in the GID. DANARI TEMPE LLC has leased the property to JSL Enterprises, Inc. dba American Leasing & Sales to use for the storage, warehousing, distribution, wholesaling, and ancillary retail sales of automobiles. American Leasing & Sales has a long history of conducting vehicle sales at its current location at 1769 West University Drive in the GID; in compliance with the applicable zoning laws. The Development Review Commission approved a Use Permit to allow vehicle sales on September 27, 2016 contingent upon approval of the Zoning Map Amendment. The request includes the following:

- 1. Zoning Map Amendment from General Industrial District (GID) and Transportation Overlay District (TOD) to GID.



Existing Property Owner	Danari Tempe, LLC
Applicant	Michael J. Phalen, Lewis Roca Rothgerber & Christie PLLC
Zoning District (current/proposed)	GID (TOD) / GID
Gross / Net site area	1.48 acres
Total Building Area	25,592 s.f.
Vehicle Parking	36 spaces (36 min. required per 9/7/96 Variance)
Bicycle Parking	0 spaces (4 min. required)

ATTACHMENTS: Ordinance, Development Project File

STAFF CONTACT(S): Ryan Levesque, Deputy Community Development Director, (480) 858-2393

Department Director: Jeff Tamulevich, Interim Community Development Director
Legal review by: Teresa Voss, Assistant City Attorney
Prepared by: Lee Jimenez, Senior Planner

COMMENTS

The DANARI TEMPE LLC property is located south of the Apache Boulevard Light Rail Corridor on the southeast corner of Wildermuth Avenue and Siesta Lane in the GID. The surrounding zoning consists of R-4 multi-family to the north and GID zoning to the south and west. East of the property is public right-of-way consisting of Price Road and the Loop 101 freeway. The existing 25,592 square foot office/warehouse building located on the property was constructed in 1997 and has been used for permitted office/warehouse uses ever since. According to Chapter 3 of the Zoning and Development Code (ZDC), office/industrial districts are designed to provide for office/industrial business involved in research, warehousing, wholesaling, and manufacturing. The facilities range from administrative and research institutions to assembly and production. Specifically, the GID permits office uses, warehousing, wholesaling, assembling and manufacturing of building materials, machinery and other commodities to provide employment centers and production.

The DANARI TEMPE LLC property is also located within the TOD which was adopted by City Council on November 17, 2005. Shortly after, the TOD boundary map was established by City Council on June 1, 2006. Property within the TOD is identified as any portion of a parcel or development that is adjacent to a public right-of-way located within 1,950 linear feet from the center of a light rail station platform, measured along the center of the public right-of-way; or along a corridor ranging in width up to 800 feet centered on the light rail line. The purpose of the TOD is to encourage appropriate land development and redevelopment that is consistent with the community's focused investment in transit, bicycle and pedestrian infrastructure in certain geographic areas of the City. The subject property is the only GID zoned property south of Wildermuth Avenue and east of River Drive that is located within the TOD. The public right-of-way adjacent to the property is approximately 1,875 linear feet from the center of the Price-101 Freeway / Apache Boulevard Station (see Attachment 3). For property located in the TOD with a GID underlying zoning such as the subject property, shipping or distribution, warehouse transport center, vehicle sales, and warehouse or other indoor storage uses are prohibited.

On September 8, 2016 a Zoning Administrator Opinion was issued to DANARI TEMPE LLC, per ZDC Section 6-301 Code Interpretations and Similar Use Rulings, who requested an opinion of a non-conforming use, seeking certain exemptions from the TOD for a site zoned GID and whether such uses are permissible by right for the intended use of the property. The use occupancy for the subject site has remained office/warehouse as identified on the property's certificate of occupancy issued on January 14, 1997. As a result, such defined use for general office, warehouse, storage and related distribution is permitted under the legal non-conforming use provisions pursuant to the ZDC, Part 3, Chapter 5, Non-Conforming Use or Development. The result of the allowed uses would also allow a business to warehouse vehicles for storage and distribution, so long as vehicle sales and/or rentals does not occur. "Vehicle Sales/Rental (indoor or outdoor)" is specifically identified within the GID as requiring a use permit. Such use would not be considered a legal non-conforming use and is prohibited within the TOD.

PUBLIC INPUT

- Neighborhood meeting required
- Neighborhood meeting held: August 17, 2016 from 6:00 p.m. to 7:00 p.m. at Tempe Police Department – Apache Substation, 1855 East Apache Boulevard.
- See attached summary of meeting provided by the applicant in the Public Involvement Plan Final Report, (Attachment 20-22).
- Community Development staff attended the meeting.
- A letter of support was received by staff on September 27, 2016 from EST Companies located at 2166 East Cedar Street (across Siesta Lane west of the DANARI TEMPE LLC property) who is currently in the process of negotiating the purchase of the long-term leased property (Attachment 23).
- An email in opposition was received on September 27, 2016 from a concerned resident of the Hudson Manor Neighborhood, approximately 1 mile west of the DANARI TEMPE LLC property (Attachment 24).

DEVELOPMENT REVIEW COMMISSION

On the September 27, 2016 DRC public hearing, the Commission recommended approval of the Zoning Map Amendment request and approved the Use Permit (6-1 vote, Commissioner Amorosi dissenting), subject to conditions. The Commission expressed concern about the possibility of auto financing being offered at the site of which the applicant and the tenant stated that there would no on-site financing. Another concern that the Commission raised was the impact to local traffic when loads of vehicles are delivered. The tenant indicated that the property is large enough to handle all turning maneuvers required by the vehicle delivery trucks and the accompanying trailers. The Commission raised a point that the existing operation at 1769 West University Drive has no resemblance of an auto dealership.

No one from the neighborhood attended the hearing, including both the parties in support and opposition to the requests.

USE PERMIT CONDITIONS OF APPROVAL (for reference purposes only):

1. *This Use Permit is valid contingent upon City Council approval of the Zoning Map Amendment to remove the property from the Transportation Overlay District.*
2. *If this Use Permit results in a change in occupancy, a building permit is required and the Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed, and a Final Inspection has been passed.*
3. *The Use Permit is valid for the plans as submitted within this application and is limited to (1) internet vehicle sales, (2) wholesaling of vehicles, and (3) ancillary retail sales not to exceed 15% of the total building area's primary industrial use. Any additions or modifications may be submitted for review during building plan check process.*
4. *All required State, County and Municipal permits shall be obtained or the Use Permit is void.*
5. *If the City receives verified complaints of a violation of the approval criteria or conditions of approval of the Use Permit, City staff will determine if a public hearing is warranted, which may result in possible termination of the Use Permit. (MODIFIED BY THE CITY ATTORNEY'S OFFICE)*
6. *Any intensification or expansion of use shall require a new Use Permit.*
7. *All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details to be approved by Development Services Division.*
8. *Replace all dead or missing trees along all landscape areas and islands along with any other missing landscape material.*
9. *All rear exit doors require a security vision panel. Details to be approved by Development Services Division.*
10. *Provide required bicycle parking spaces per City of Tempe Public Works Department bicycle rack detail T-578 standard.*
11. *Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within 14 days or by November 17, 2016.*

PROJECT ANALYSIS

ZONING

The property was originally developed as a single industrial warehouse building in 1997, consistent with the General Plan Industrial designation and the GID zoning at the time. On November 17, 2005 City Council established the TOD and subsequently established the TOD boundary map on January 1, 2006 which placed the DANARI TEMPE LLC property in the TOD. The building has been used for office and warehouse uses for almost 20 years. DANARI TEMPE LLC argues that there is little connection between the property and the Price-101 / Apache Boulevard Light Rail Station. In fact, the property

narrowly falls within the 1,950 foot distance requirement to be designated within the TOD. Moreover, the light rail station is on the other side of the Loop 101 freeway which acts as both physical and psychological barriers to potential light rail users, at least from this property. The General Plan 2040, ratified by the voters on May 20, 2014, projects this site with a Projected Land use of "Industrial". This Zoning Map Amendment and Use Permit request for the subject property is consistent with the General Plan 2040 maps.

Section 6-304 C.2. Approval criteria for Zoning Map Amendment (*in italics*):

1. *The proposed zoning amendment is in the public interest.*

Although DANARI TEMPE LLC is supportive of the City's goal of encouraging use of the Valley Metro Light Rail System, the TOD Map designation makes it impractical, if not impossible; to use the property in the manner it was intended. The very nature of the property conflicts with the TOD Map designation. The warehouse use requires the product being warehoused on the property to be shipped in and out of the warehouse building by separate vehicles; therefore, the light rail system provides no commercial benefit to the property or its office and warehouse uses. The office and warehouse uses conducted on the property are not people or pedestrian oriented, so for commercial reasons, continuing to tie the property to the TOD provides no benefit to the City, the property owner or their tenant.

2. *The proposed zoning amendment conforms with and facilitates implementation of the General Plan.*

The TOD conflicts with the property's "Industrial" land use designation under the General Plan 2040, as well as the GID zoning on the property. Should the City approve the Zoning Map Amendment, the property will return to conformance with the City's General Plan 2040 and in conformance with ZDC Section 6-304C.

REASONS FOR APPROVAL:

1. The project meets the General Plan Projected Land Use.
2. The project meets the development standards required under the Zoning and Development Code.
3. The proposed project meets the approval criteria for a Zoning Map Amendment.

Based on the information provided and the above analysis, staff recommends approval of the requested Zoning Amendment. This request meets the required criteria and will conform to the conditions.

ZONING MAP AMENDMENT CONDITIONS OF APPROVAL: EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The property owner(s) shall sign a waiver of rights and remedies form. By signing the form, the Owner(s) voluntarily waive(s) any right to claim compensation for diminution of Property value under A.R.S. §12-1134 that may now or in the future exist, as a result of the City's approval of this Application, including any conditions, stipulations and/or modifications imposed as a condition of approval. The signed form shall be submitted to the Community Development Department no later than 30 days from the date of City Council approval, or the Zoning Map Amendment approval shall be null and void.

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

ZONING AND DEVELOPMENT CODE: Specific requirements of the **Zoning and Development Code** (ZDC) are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through www.tempe.gov/zoning or purchase from Community Development.

HISTORY & FACTS:

- August 7, 1996 The Hearing Officer approved a variance request to reduce the required on-site parking from 42 spaces to 36 spaces for EATON WAREHOUSE BUILDING (BA960191) located at 1401 South Siesta Lane in the GID.
- January 14, 1997 Certificate of Occupancy (BP960713) granted for office/warehouse building located at 1401 South Siesta Lane in the GID.
- November 17, 2005 City Council established Transportation Overlay District.
- January 1, 2006 City Council established Transportation Overlay District boundary map.
- September 8, 2016 Zoning Administrator Opinion defined uses for general office, warehouse, storage and related distribution permitted under the legal non-conforming use provisions pursuant to the ZDC, Part 3, Chapter 5, Non-Conforming Use or Development for DANARI TEMPE LLC (PL160239) located at 1401 South Siesta Lane in the GID (TOD).
- August 17, 2016 Neighborhood meeting was held by DANARI TEMPE LLC (PL160239) from 6 to 7pm at the Tempe Police Department – Apache Substation located at 1855 East Apache Boulevard.
- September 27, 2016 The Development Review Commission recommended approval of the Zoning Map Amendment request to remove the DANARI TEMPE LLC (PL160239) property from the Transportation Overlay District (TOD) and approved the use permit request to allow vehicle sales/rentals in the GID (TOD) contingent upon City Council approval of the Zoning Map Amendment.
- October 27, 2016 Introduce and hold the first public hearing to adopt an ordinance for a Zoning Map Amendment for DANARI TEMPE LLC, located at 1401 South Siesta Lane, from General Industrial District (GID) and Transportation Overlay District (TOD) to GID.
- November 3, 2016 The second and final public hearing to adopt an ordinance for a Zoning Map Amendment for DANARI TEMPE LLC, located at 1401 South Siesta Lane, from General Industrial District (GID) and Transportation Overlay District (TOD) to GID.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 6-304 Zoning Map Amendment