



CITY COUNCIL REPORT

Meeting Date: May 5, 2020
General Plan Element: *Character and Design*
General Plan Goal: *Foster quality design that enhances Scottsdale as a unique southwestern desert community.*

ACTION

Detroit Coney Grill Awnings and Canopy – Appeal to City Council

2-DR-1994#3

Location: 6953 North Hayden Road

Request: Request by the property owner and applicant for City Council to reconsider the Development Review Board's approval of case 2-DR-1994#3 that included a stipulation for the existing orange awnings and canopy to be replaced with a teal color or other compatible color at a restaurant located in the Gateview Park shopping center.

OWNER

Robert Ong Hing and Alice Y Hing Family Trust

APPLICANT CONTACT

David Najor
602-791-9978

BACKGROUND

Zoning

The site is zoned Planned Community Center (PCC). The purpose of this district is to provide a large variety of retail goods and personal and professional services for multiple neighborhoods. The entire Gateview Park shopping center was rezoned from Single-family Residential (R1-43) to Planned Community Center (PCC) in 1987.

Context

The site is located southeast of the East Indian Bend Road and North Hayden Road intersection. The subject parcel is surrounded by other commercial uses in the shopping center, residential subdivisions to the north and west, and a golf course and Arizona Canal to the south. Please see context photos.

Key Items for Consideration

- Commercial and Restaurant Design Guidelines
- Orange awnings were installed without exterior design approval in the fall of 2019
- Case was continued at the Development Review Board on December 19, 2019 with a 6-1 vote

Action Taken _____

- Orange canopy above the southern patio was installed after Development Review Board continuance
- Case was approved with stipulations at the Development Review Board on January 16, 2020 with a 4-2 vote
- DRB stipulation required orange awnings and canopy to be switched out for teal color or other more appropriate color in context with the shopping center
- Property owner and applicant filed appeal to the City Clerk
- City Clerk scheduled the appeal case to be heard by City Council on March 17, 2020
- Appeal case was continued at City Council to a later date at the request of the applicant

DEVELOPMENT PROPOSAL

Goal/Purpose of Request

The applicant's proposal is to utilize four new orange fabric awnings and one new orange fabric canopy at an existing restaurant pad building. The awnings are located over the new main entrance on the northside of the building, windows and doors along the westside of the building, and the canopy is located over the existing large patio seating area along the southside of the building. The awnings and canopy have been installed without exterior design approval, but the canopy and columns have received building safety structural approval.

DEVELOPMENT REVIEW BOARD CRITERIA ANALYSIS

The Development Review Board (DRB) originally approved the Gateview Park shopping center in May 1994 with Case 2-DR-1994. The approval included a 105,000-square-foot commercial center with a major tenant of Albertsons, three retail buildings, and three pad sites. The design throughout the center included various tan stucco façades, dark brown trim, and teal accent tiles, awnings, and canopies.

This individual restaurant pad building design was approved with Case 2-DR-1994#2. Originally a Boston Market, design approval included materials and colors to match the existing center with a beige façade, teal awnings, and accent teal bands. Per the Development Review Board report, staff recommended against the use of a red band and striped plastic awnings as the colors, red, black, and white did not blend with the pastel colors in the center.

From aerial and street views, it appears that teal awnings were utilized on the pad restaurant building from 1999 to 2018 (see attachment #6). In early 2019 the awnings were switched out to a tan color, which does not have record of an approval. In fall of 2019, a new restaurant user, Detroit Coney Grill, requested to replace the tan awnings with bright orange fabric awnings over windows, the new main entrance, and southern patio area because orange is a corporate color.

Although the scope of work is relatively small, an administrative staff approval did not seem appropriate due to the Commercial Design Guidelines and impact of the color change on the entire center's design. The shopping center utilizes teal colored tiles, metal canopies, and fabric awnings as originally approved in 1994 (see attachment #8). The bright orange awnings and canopy are not consistent with the warm neutral and pastel color scheme of the surrounding development.

Per the Commercial Design Guidelines:

- “Buildings that derive their image primarily from applied treatments that express corporate identity are discouraged.”
- “Business identity, either by awnings, accent bands, paint or other applied color schemes, signage, parapet details, decorative roof details or materials should not be the dominant architectural feature. Accent colors should be used judiciously.”
- “Buildings that are stylized in an attempt to use the building, or portion of the building to identify a particular user is generally discouraged, particularly where the proposed architectural design is the result of a corporate or franchise prototype design.”
- “The design of a building that occupies a pad or portion of a building within a planned project or shopping center should share similar design characteristics and design vocabulary. Precise replication is not desirable, instead utilizing similar colors, materials and textures as well as repeating patterns, rhythms and proportions found within the architecture of other buildings in the center can be utilized to achieve unity.”

The restaurant building has three orange building wall signs that were approved and permitted per code. Signage is subject to the Zoning Ordinance and Master Sign Program regulations, which allow the use of corporate colors. Building design, including exterior awning and canopy color, is subject to DRB or staff design approval. Based on the guidelines noted above, allowed signage would be an appropriate way to express brand identity.

While there are instances of different colored awnings in other commercial locations in Scottsdale, including some with corporate influence, the Commercial Design Guidelines speak to the context of a pad building located within a planned shopping center. The intent is that the pad building design compliments and shares similar design characteristics to its surrounding, which in this shopping center would include a prominent use of teal and tan color schemes.

Staff supported additional shading but a more limited use of the orange color. Staff recommended that the proposed awnings and canopy be replaced with teal or other appropriate color to match the overall center for a comprehensive architectural approach per Stipulation #3.

PREVIOUS DRB HEARINGS

[Development Review Board - 1st Hearing \(Click to watch\)](#)

On December 19, 2019, the Development Review Board heard case 2-DR-1994#3 and voted 6-1 to continue the case. The case was continued to allow the applicant to work with the owner of the shopping center to achieve a more cohesive design update and provide a letter of intent (see attachment #14).

The owner of the shopping center agreed to replace existing ripped and torn teal awnings throughout the center with new fresh teal awnings as well as repaint areas that need maintenance with the existing color scheme. However, there are no immediate plans to use the proposed orange awning and canopy color in any other locations throughout the shopping center besides at Detroit Coney Grill.

Development Review Board - 2nd Hearing (Click to watch)

On January 16, 2020, the Development Review Board voted 4-2 to approve case 2-DR-1994#3 with a staff recommended stipulation that required the applicant to replace the orange awnings and canopy with a teal or other appropriate color that matches the overall color scheme of the existing shopping center. Stipulation #3 is the subject of this appeal to City Council.

Neighborhood Outreach

Staff has sent postcards to all property owners within 750 feet of the site for both Development Review Board meetings and City Council. At the time of report writing, staff has received one phone call and four emails in support of the proposal and one email regarding the first DRB hearing. Submitted case comments can be found on attachment #15. Citizens spoke in favor of and opposition to the proposal at the previous Development Review Board meetings.

DEVELOPMENT INFORMATION

• Existing Use:	Restaurant
• Proposed Use:	Restaurant
• Parcel Size:	0.9 net acres
• Total Building Area:	3,071 square feet
• Total Patio Area:	1,060 square feet
• Existing Building Height:	19 feet
• Proposed Canopy Height:	12 feet
• Parking Required:	29 spaces
• Parking Provided:	49 spaces

RESPONSIBLE DEPARTMENT

Planning and Development Services

Current Planning Services

STAFF CONTACT

Katie Posler

Planner

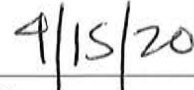
480-312-2703

E-mail: kposler@ScottsdaleAZ.gov

APPROVED BY



Katie Posler, Planner, Report Author



Date

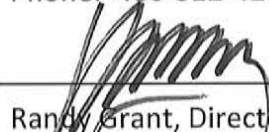


Tim Curtis, Current Planning Director

Phone: 480-312-4210 E-mail: tcurtis@scottsdaleaz.gov



Date



Randy Grant, Director

Planning and Development Services

Phone: 480-312-2664 E-mail: rgrant@scottsdaleaz.gov



Date

ATTACHMENTS

1. Context Aerial
2. Close-Up Aerial
3. Zoning Map
4. Appeal Document
5. Development Review Board Stipulations
6. Previous teal canopies on pad building
7. Awning locations in center
8. Photos of teal accents throughout center
9. Narrative
10. Site Plan
11. Proposed Building Elevations
12. Photos of the orange canopies
13. Material Example
14. Letter of Intent
15. Citizen comments
16. DRB hearing speaker and written comment cards
17. December 19, 2019 DRB Marked Agenda
18. January 16, 2020 DRB Marked Agenda
19. Neighborhood Outreach Map



Context Aerial

2-DR-1994#3



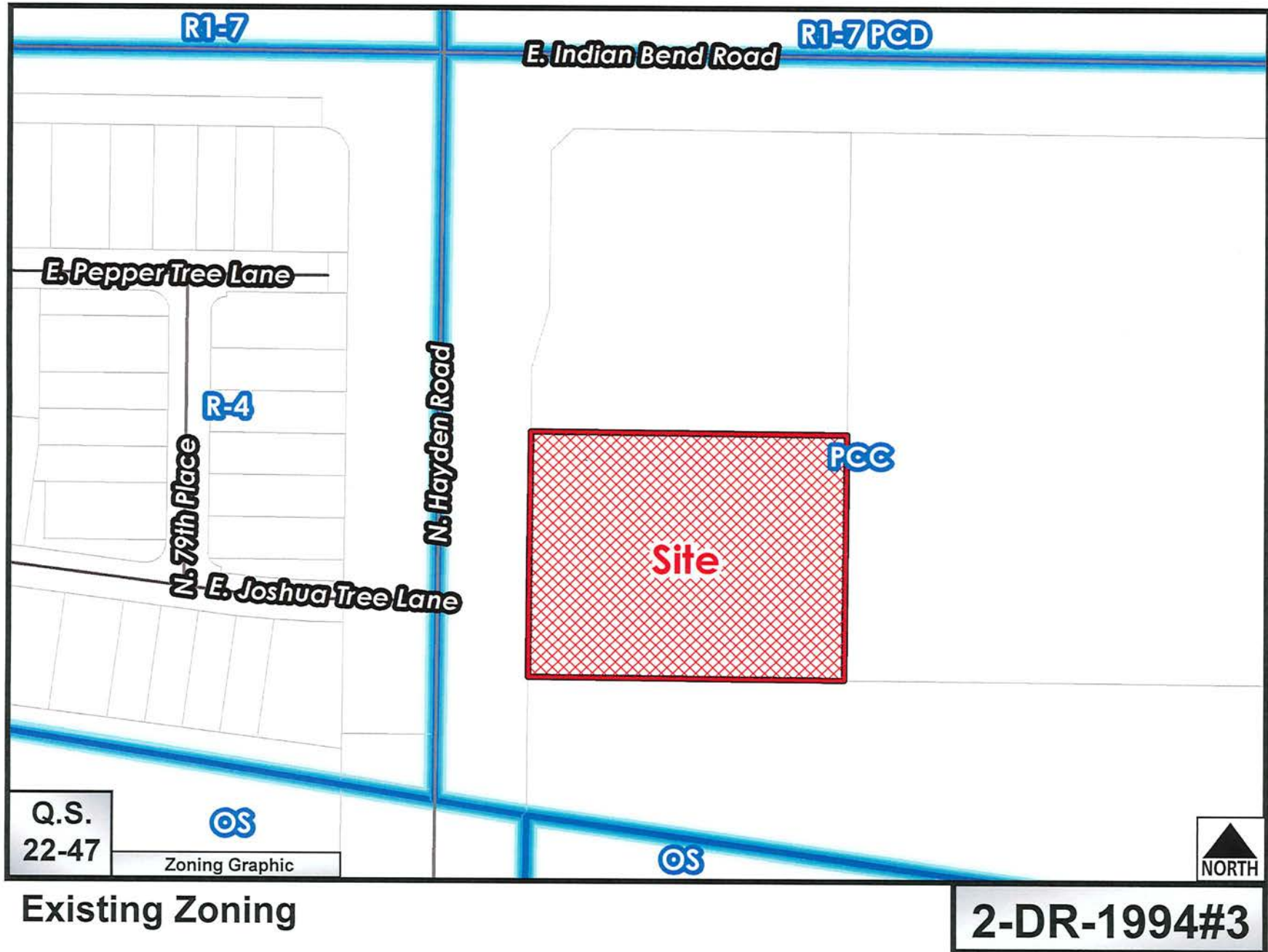
Context Aerial

2-DR-1994#3



Close-up Aerial

2-DR-1994#3



Existing Zoning

OFFICE OF THE
CITY CLERK

2020 FEB 27 PM 3:13



Office of the City Clerk
Memorandum

To: Process Servers and Document Filers
From: Carolyn Jagger, City Clerk
Date: February 23, 2018
Re: Service/Filing of Documents with the City Clerk's Office

This Memorandum is to advise you of the policy of the Scottsdale City Clerk with respect to service and/or filing of documents. The Clerk's Office cannot give you legal advice. Filing and/or service of documents is subject to the policies set forth below and acceptance of documents should not be construed in any other fashion.

City of Scottsdale

Pursuant to court rules, the City Clerk is the person authorized to accept documents designated for service and/or filing with the City of Scottsdale municipal corporation, which is the only legal entity your documents will be considered served and/or filed.

Individual


The Clerk's Office does not accept service for persons in their individual capacity, and will only accept service and/or filing of documents on behalf of City of Scottsdale employees in their representative capacity. The Clerk's Office does not accept service for any Police Department employees. The Police Department Records office will accept service of subpoena duces tecum for records only; and other civil service may be arranged with the Police Department employee directly.


* * * * *

Regardless of whether others are named in your document, the Clerk's Office is not accepting service for any person or entity not specifically identified in this policy. If multiple persons or entities are listed in the document being filed or served, you remain responsible for filing and/or service upon them.

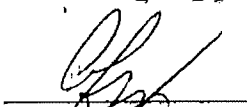
CITY OF SCOTTSDALE

CITY CLERK'S OFFICE


Carolyn Jagger, City Clerk


Staff Initials

The undersigned hereby acknowledges receipt
of the foregoing policy.


Acknowledged by (Name and Service)

ATTACHMENT 4

ie

2/27/2020

Robert Ong Hing (#000991)
STOCKTON & HING PA
6609 N. Scottsdale Road, Suite 202
Scottsdale, Arizona 85250
Telephone: (480) 951-0882
roberthing@stocktonhing.com

OFFICE OF THE
CITY CLERK
2020 FEB 27 PM 3:13

Attorneys for Property Owner Robert Ong Hing and Alice Y. Hing Family Trust

Geoffrey S. Kerckmar (#020528)
Jessica A. Wilson (#032549)
KERCKMAR & FELTUS PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
Telephone: (480) 421-1001
Facsimile: (480) 421-1002
gsk@kflawaz.com
jwilson@kflawaz.com

Attorneys for Applicant DCG McCormick Ranch, LLC

BEFORE THE CITY COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA

ROBERT ONG HING AND ALICE Y.
HING FAMILY TRUST

Owner,

And

DCG MCCORMICK RANCH LLC dba
DETROIT CONEY GRILL

Applicant.

Case No. 2-DR-1994#3

**AMENDED NOTICE OF APPEAL
UNDER SECTION 1.907(A)**

Property Owner Robert Ong Hing and Alice Y. Hing Family Trust ("Hing") and
Applicant DCG McCormick Ranch, LLC dba Detroit Coney Grill ("Detroit Coney Grill")

hereby give timely¹ notice that, pursuant to Section 1.907(A)(1) of the Scottsdale, Arizona Code of Ordinances, they appeal the decision of the City of Scottsdale Development Review Board (the “DRB”) of January 16, 2020 to the City Council of the City of Scottsdale, Arizona in Case 2-DR-1994#3. That decision requires Detroit Coney Grill to replace its existing “orange awnings and canopy with teal or another color more consistent with the design theme of the center.”

The grounds for this appeal are that the January 16, 2020 decision should be reversed or modified for at least four reasons. First, the DRB imposed on Hing and Detroit Coney Grill an unclear, *de facto*, and previously unknown legal burden that has not been imposed on this property owner or previous applicants. Second, the Decision lacks credible supporting evidence. Third, the Decision affects only an aesthetic concern unrelated to public health, safety, or welfare and is therefore not reasonably related to the ends sought to be achieved. Fourth, allowing the Decision to stand would result in an arbitrary and capricious policy enforced by the City of Scottsdale and its agents. *See Austin Shea (Az.) 7th St. and Van Buren, L.L.C. v. City of Phoenix*, 213 Ariz. 385, 142 P.3d 693 (App. 2006); *Preston v. Hallman*, 2009 WL 8236846 (Az. Super. Ct., July 8, 2009).

1. The DRB’s decision imposed an unclear, previously unknown legal burden on Hing and Detroit Coney Grill that has not been imposed on previous applicants.

The DRB’s decision to prefer “teal or another color consistent with the ... center”—that is, apparently, any color but the one chosen by the applicant—was the result of the application of unclear standards, made worse by the lack of a clear statement from either the DRB or staff regarding which color or colors would be acceptable for the awnings. This is the predictable result of the application of the City of

¹ The original Notice of Appeal was filed with the City Clerk on February 14, 2020. Thereafter, the City notified Hing and Detroit Coney Grill that an amended notice of appeal would have to be filed by Hing no later than February 28, 2020. (*See Exhibit A.*) This amended notice complies with the City’s instruction.

Scottsdale's Commercial Design Guidelines² (the "Design Guidelines"), which do not mandate any color or colors for awnings. Rather, the Design Guidelines state only that:

Where awnings are used they should be functional and provide maximum shade to the window area. Awnings should be of opaque architectural material and should not be internally lit. Metal awnings are preferred to fabric awnings for reasons of durability and strength of appearance. *Awnings of a single color are preferred.*

(Design Guidelines at p. 12 (emphasis added.)) Detroit Coney Grill's awnings are a single color, namely, Desert Blossom orange.³ Accordingly, neither Hing nor Detroit Coney Grill were aware that Detroit Coney Grill's single color could be deemed problematic under the Design Guidelines.

To be clear, Hing does not seek to limit its shopping center, Gateway Park, to a scheme of one or two colors, or a single accent color; only the DRB seeks this result. Indeed, the Master Sign Program for Gateway Park was amended in 2011. (**See Exhibit B.**) In the amendment, the City agreed to allow "increased design flexibility." That took the form of allowing the building signage to in the "tenant's choice of colors." The amendment further allows tenants "the use of *corporate colors and logo* as well." (*See id.*) (emphasis added.) Andrew Chi approved the amendment on behalf of the City on September 9, 2011, but the DRB never considered this allowance in its deliberations.

Other applicants in the City are not required to adopt a single-color scheme established by a shopping center decades before. Hing and Detroit Coney Grill will present evidence of numerous circumstances (many on Hayden Road) where awnings of a

² Version adopted December 7, 2000, found at https://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Design/DG_Commercial.pdf

³ Elsewhere, the Design Guidelines state that, "Business identity, either by awnings, accent bands, [or] paint . . . should not be the dominant architectural feature. Accent colors should be used judiciously." *Id.* at p. 16. But neither the DRB nor staff concluded Detroit Coney Grill's awnings are "the dominant architectural feature" of the building, nor that the use of Desert Blossom orange was injudicious. Instead, the DRB adopted staff's reasoning that the color orange was not "consistent with the design theme of the center"—a standard that is not found *anywhere* in the Design Guidelines.

different color than the shopping center's primary color are used. Many of these instances reflect the use of corporate colors for a building that sits on a separate pad—the exact situation in this case.⁴

2. The DRB's decision lacked credible evidence.

In reaching its decision, the DRB relied heavily on the Development Review Board Report compiled by staff contact Katie Posler (the "Report"). As is typical, that Report was well-written and accurate. But it was incomplete, and relying on it alone to reach a decision was an error.

As stated above, at a meeting of the City Council, Hing and Detroit Coney Grill will present numerous examples of buildings that have awnings (or notable accent colors) differing from the primary color of the shopping center. The DRB failed to consider such examples.

3. The DRB's decision, and the Design Guidelines themselves, are based only on aesthetics, not public health, safety or welfare.

Just as significantly, the DRB never considered or voiced any concern with the awnings (let alone the awning *color*) other than the aesthetics presented. Recall, the design, placement, and all other aspects of the awning design have been approved. But a municipal corporation may not simply rely on aesthetic concerns to impose the will of its bureaucrats on citizens; rather, such deliberations must be grounded in some articulated concerns of public health, safety, or welfare. Indeed, the text of the Design Guidelines fails to establish any reason to conclude that awning color—or, more generally, any building color scheme—has any relationship to the community's health, safety, or welfare. And without this connection, the goals of the Design Guidelines are not reasonably related to a permissible police power. As a result, the enforcement of those

⁴ It bears emphasizing that the number, shape, structural design, canopy material and placement of the awnings have all been approved by staff. Thus, no matter what color is used for the awnings, that color will dominate to the same extent as the Desert Blossom orange. In other words, the issue is not that the awnings impermissibly predominate, the issue is a matter of taste regarding color.

guidelines exceeds the authority of a municipal corporation.

While some states permit municipal corporations to issue building ordinances solely on the basis of aesthetics, no Arizona decision supports that view. *See, e.g., Preston*, 2009 WL 8236846. Accordingly, the DRB was obligated to decide the application of Hing and Detroit Coney Grill by considering the impact of the awning color on the health, safety, and welfare of the public. Because there is no relationship between the color of those awnings and such serious considerations, the DRB chose to ignore this entirely, and focused only on subjective aesthetics.

4. The DRB's decision was arbitrary and capricious.

In sum, the DRB ignored the issues of public health, safety, and welfare, had an extremely limited factual record, ignored the impact of the 2011 amendment to the shopping center's master sign program allowing for "increased design flexibility" and "the use of corporate colors," and ignored the comments specific to awnings in the Design Guidelines ("Awnings of a single color are preferred"), all while creating an entirely *new* standard under the Design Guidelines—that is, a new requirement that awning color *must* match a shopping center's primary or secondary color.⁵

Put another way, the DRB reduced its decision to one of *personal taste*. No Design Guideline requires awnings to match the primary or secondary color of a shopping center. The owner, Hing, does not require it and has imposed no such rule on its tenants. No evidence was offered that all other shopping centers in Scottsdale adhere to such a rule, nor were contrary examples gathered or offered by staff for the DRB to weigh. No consideration of public health, safety, or welfare was mentioned staff or the board members—let alone a finding that such considerations were directly tied to the DRB's creation of a new standard that awnings must match the primary or secondary color of a

⁵ Even worse, staff indicated that terra cotta—a color that, according to the Report (p. 5), is neither the shopping center's primary color (tan), the trim color (dark brown) nor the accent/secondary color (teal)—would be acceptable, leading to the fair conclusion that "anything but what you have now" could have been the actual criteria employed for staff recommendations.

shopping center.

At bottom, neither staff nor the majority of the DRB *liked* the color. And so they nixed it. The proper way to describe such a decision by an appointed municipal board is “arbitrary and capricious.”

RELIEF REQUESTED

Hing and Detroit Coney Grill request that the City Council modify the DRB’s approval of 2-DR-1994#3 by removing the stipulation that Hing and Detroit Coney Grill commence “replacement of the orange awnings and canopy with teal or another color more consistent with the design theme of the center,” and allowing the current design aesthetic to stand.

Dated this 27th of February, 2020.

STOCKTON & HING PA

By: /s/ Robert Ong Hing (with permission)

Robert Ong Hing
6609 N. Scottsdale Road, Suite 202
Scottsdale, Arizona 85250
*Attorneys for Property Owner Robert Ong Hing and
Alice Y. Hing Family Trust*

KERCSMAR & FELTUS PLLC

By: /s/ Geoffrey S. Kerksmar

Geoffrey S. Kerksmar
Jessica A. Wilson
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
Attorneys for Applicant DCG McCormick Ranch, LLC

EXHIBIT A



KERCSMAR
& FELTUS^{PLLC}
www.businesslawaz.com

Geoffrey Kerksmar

From: Posler, Kathryn <KPosler@Scottsdaleaz.gov>
Sent: Friday, February 21, 2020 3:39 PM
To: dave najor; Geoffrey Kerksmar
Cc: Jagger, Carolyn; Curtis, Tim; Grant, Randy; Padilla, Joe
Subject: DRB Appeal Update

Importance: High

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Attention David Najor and Geoffrey S. Kerksmar,

The Notice Of Appeal in case 2-DR-1994#3 filed with the City Clerk on Feb. 14, 2020 was forwarded to the Planning Department, a review of the notice indicates that it was submitted by applicant DCG McCormick Ranch LLC (Detroit Coney Grill). Be advised that pursuant to Scottsdale Revised Code Sec. 1907.(A)(1) only the property owner is authorized to submit a written appeal of the Board's decision to the City Clerk. The property owner of record is Robert Ong Hing and Alice Y Hing Family Trust.

To hold a City Council hearing on March 17, 2020 a valid amended Notice Of Appeal would need to be filed by the property owner with the City Clerk no later than noon on February 28, 2020.

Please let us know if you have any questions.

Thank you,

Katie Posler, Planner

City of Scottsdale
Planning & Development Services
7447 E. Indian School Rd., Ste. 105
Scottsdale, AZ 85251
480.312.2703

Total Control Panel

[Login](#)

To: gsk@kflawaz.com

Message Score: 30

High (60): Pass

From:

My Spam Blocking Level: High

Medium (75): Pass

prvs=4320d5afd8=kposler@scottsdaleaz.gov

Low (90): Pass

[Block this sender](#)

[Block scottsdaleaz.gov](#)

EXHIBIT B



KERCSMAR
& FELTUS^{PLLC}
www.businesslawaz.com

**GATEVIEW PARK
MASTER SIGN PROGRAM AMENDMENT**

Date: 8/26/11

ASSOCIATED CASE: 2-MS-94

REQUEST: Approve amendment to the Gateview Park Master Sign Program

PROJECT NAME: Gateview Park

LOCATION: SEC Hayden Rd. & Indian Bend Rd.

DEVELOPER/OWNER: Hing Properties

PREPARED BY: Dave Shaw, Higher Signs & Lighting, Inc.

Discussion: This amendment is being proposed to the Gateview Park Master Sign Program to update terminology and allow for increased design flexibility.

Building Signage:

The building signage shall consist of individually (internal) illuminated pan channel letters.

5 inch wide, .040 aluminum returns to be tenant's choice of colors.

The backs of the letters shall be .063 aluminum for any letters 24 inches or taller and .040 aluminum for any letters smaller than 24 inches.

Acrylic face colors are to be tenant's choice of .117 thick acrylic colors.

This would also allow the use of corporate colors and logos as well.

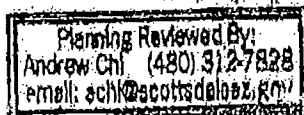
1 sq. ft. per tenant (every 1' of frontage = 1 sq. ft. of signage)

Trimcap edges should be 1 inch for all letters over 24 inches tall & 3/4 inch for all letters under 24 inches.

Letters 24 inches or taller will have double stroke illumination. Letters can be illuminated with either (option 1) 30 ma neon, with all secondary electrical connections to be double back connections and transformers to be remote. (Option 2) Low voltage LED illumination with remote power supplies. All signs are to display U.L. labels and be installed in accordance to all NEC codes.

The maximum height of each tenant sign will be 24 inch for minor tenants and 48 inch for majors. Location of the tenant signage is to be within designated sign bands on the tenant's frontage.

The landlord reserves the right to approve and or disapprove all signage on a case by case basis.



13-MS-2011
STIPULATION SET
RETAIN FOR RECORDS

APPROVED

09/22/11 *Chi*
DATE INITIALS

**Stipulations for the
Development Review Board Application:
Detroit Coney Grill Awnings and Canopy
Case Number: 2-DR-1994#3**

These stipulations are intended to protect the public health, safety, welfare, and the City of Scottsdale.

APPLICABLE DOCUMENTS AND PLANS:

1. Except as required by the Scottsdale Revised Code (SRC), the Design Standards and Policies Manual (DSPM), and the other stipulations herein, the site design and construction shall substantially conform to the following documents:
 - a. Architectural elements, including dimensions, materials, form, color, and texture shall be constructed to be consistent with the building elevations submitted by Ross Design Group, with a city staff date of 12/6/19.
 - b. The location and configuration of all site improvements shall be consistent with the site plan submitted by Ross Design Group, with a city staff date of 12/6/19.
 - c. Landscape improvements, including quantity, size, and location shall be installed to be consistent with the preliminary landscape plan submitted by Ross Design Group, with a city staff date of 12/6/19.

RELEVANT CASES:

Ordinance

- A. At the time of review, the applicable Zoning and DRB cases for the subject site were: 95-ZN-1987, 2-DR-1994, and 2-DR-1994#2.

ARCHITECTURAL DESIGN:

DRB Stipulations

2. Previous main entrance along the west side of the building should be replaced with windows that match the existing windows on the building instead of retaining the original doors and locking them in place.
3. Applicant shall replace the orange awnings and canopy with a teal or other appropriate color that matches the overall color scheme of the existing shopping center, subject to staff approval.

LANDSCAPE DESIGN:

Ordinance

- B. With final plans, applicant shall provide a landscape plan showing additional plants and trees located in the various vacant landscape islands on site.

EXTRIOR LIGHTING:

Ordinance

- C. All exterior luminaires mounted eight (8) feet or higher above finished grade, shall be directed downward.
- D. Any exterior luminaire with a total initial lumen output of greater than 1600 lumens shall have an integral lighting shield.
- E. Any exterior luminaire with a total initial lumen output of greater than 3050 lumens shall be directed downward and comply with the Illuminating Engineering Society of North America (IES) requirements for full cutoff.
- F. With final plans, the applicant shall provide additional cut sheet information on the proposed lighting, included lumen count, to determine what shielding is necessary.





Awning Aerial

2-DR-1994#3





CLEANERS

EM SALON

LUNCH SPECIALS
11:30 AM - 2:00 PM
Monday - Friday
CHINA
10% OFF

FIRE LANE



CLEANER

SALON

C12

C11



MATTRESSFIRM

SAVE
UP TO
\$600

OPEN

MATTRESS
FIRM





6929

GOLDMAN'S DELI

AREA TEAST

SOUPS

SANDWICHES

HELP WANTED





Narrative: 6953 N. Hayden Road / Pad B / Gateview Park Shopping Center

Use of Desert Blossom in Awning Colors

The Gateview Park Shopping Center has stood on the northeast corner of Hayden Road and Indian Bend for nearly two decades. The Center contains a grocery store on the eastern portion of the property, and is fronted by smaller retail pads facing Hayden Road. Drivers traveling north and south on Hayden, or east on Indian Bend, first encounter the Center through these smaller retail pads. They are the “face” of the property. Of these, Pad B currently houses Detroit Coney Grill. This pad was designed for restaurant tenants and has been home to various restaurants over the years.

The Center currently has a desert-color palette. The base building color is a two-tone tan scheme, accented by some terra cotta, turquoise tiles, and tan and blue canopies. The landlord selected this color scheme specifically to accommodate a range of colors that future tenants may desire. Indeed, the Center’s Master Sign Program (as amended) expressly contemplates a range of colors to allow the use of corporate logos and branding. This expressly includes orange.

Anyone driving by the Center can see that it has aged in its two decades’ worth of existence. This is especially true of the retail pads facing Hayden Road. The colors look drab and the awnings are tired (and in some cases torn). Again, the first encounter that motorists have with the Center is through these retail pads. Right now, the Center is not making a good first impression.

To spruce up the Center and make it more appealing to potential customers, Detroit Coney Grill wishes to play up the more vibrant end of the desert-color spectrum by using orange awnings around its windows, doors, and covered patio. The proposed orange color fits squarely into the desert-blossom color palette and reflects the regional mix of plant colors occurring in the surrounding desert. Indeed, the proposed orange color can be found reflected in the following regional plants, just to name a few:

- o Indian Paint Brush,
- o Buckhorn cholla cactus blossoms,
- o Butterfly milkweed,

- o Candy-barrel cactus,
- o Mariposa lily,
- o Prickly-pear cactus blossoms, and
- o The Mexican bird of paradise.

Most important, the proposed orange color complements the turquoise and blue hues on the roofs and awnings of the nearby structures, and it brightens the entire retail side of the Center, making the Center more attractive, while keeping the Sonoran Desert environmentally sensitive design principles in mind. Not only will this drive more business in Scottsdale, but it improves the overall aesthetics of this very busy Scottsdale corner.

The awnings have been designed within the existing building framework to avoid any interruption to the current building lines. For example, Pad B's existing patio is attached at the south end of the building, which is enclosed with a 42-inch-high masonry wall painted to match the base building color. Because of the patio's location, it has received little use in the past due to the hot Arizona sun. Detroit Coney Grill would like to make this space usable by building a covered awning above it. To do so, Detroit Coney Grill is investing many thousands of dollars to build an attractive covering, which will maximize the viability of its business, improve the curb appeal of the Center, and provide residents with a delightful area to enjoy sitting outdoors. To match this new awning, Detroit Coney Grill would refurbish all existing awnings (currently a drab tan color) with the desert-blossom orange color. This will give Pad B a cohesive look and greatly improve the look of the Center.

Door Placement, Lighting and Other Miscellaneous Changes

In addition to the incorporation of the desert-blossom palette through the awnings, Detroit Coney Grill has proposed the following changes:

- o **Patio-Bar Seating.** Detroit Coney Grill will operate under a Series 12 liquor license. The Pad's enclosed patio walls and existing exit gates on the east and west sides meet all requirements of liquor control and other applicable regulations. Bar seating inside the patio will be 42 inches high—the same height as the patio screen walls—and will not be visible from outside the

patio walls. (Bartop seating will be a tan color, similar to the base building paint color and not reflective.)

- o **Television Placement.** Televisions will be placed in the patio area along the south wall, with the bottoms of the televisions placed at eight feet between the awning trusses, which will not be visible from outside of the patio because the bottom apron of the patio awning is eight feet as well. (Please refer to the section on sheet A402.)
- o **Lighting.** The scheme for lighting below the patio cover will be strung within the awning framework so that the lights would not be seen below the eight-foot height of the awning drop-down panels. All exterior lighting located underneath the existing awnings and hidden from sight will remain. (Please refer to sheet D3 for the type of lighting, and refer to page A204 and A402.)
- o **Movement of Existing Doors.** The existing entry doors, located on the west face of the building, are being transformed to two fixed glass panels. This is being achieved by welding the doors shut and adding a break metal-face frame to cover the seam between the doors. All storefront break metal will match existing frames, which are a dark anodized bronze. This change is desirable because the location of the existing entry doors interrupt the flow of the dining area, causing potential hazards from crowding.
- o **Addition of New Doors.** Detroit Coney Grill will add two new doors. A new entry/exit door will be added to the north corner, facing west with a side-lite fill-in panel. A second similar door is being added to fill in an existing glass panel along the north wall. Both are accessible per code by adjacent sidewalks of proper width.
- o **In respect to some additional criteria in sec. 1.904**

No ingress and egress nor traffic circulation is not impacted existing to remain.

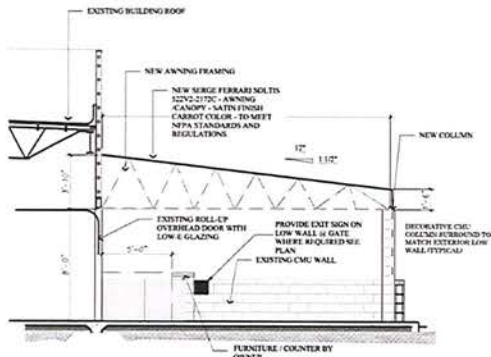
Landscape is like in kind fill in per the code located only in the front of the building facing the front parking. Replacement in kind per the original landscape standards approved for the center.

Existing accessibility to the public is retained and not impacted.

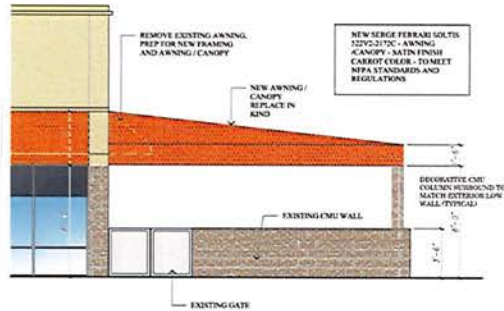
David Ross / Project Manager

Ross Design Group / Architecture LLC

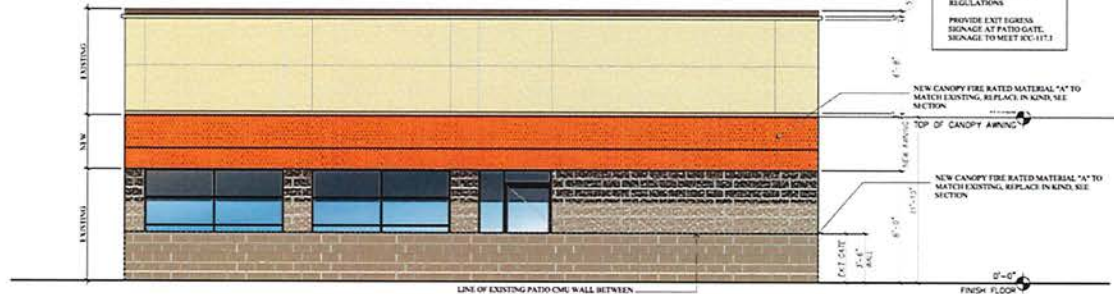
david@rossdesign.biz / (602) 908-7405



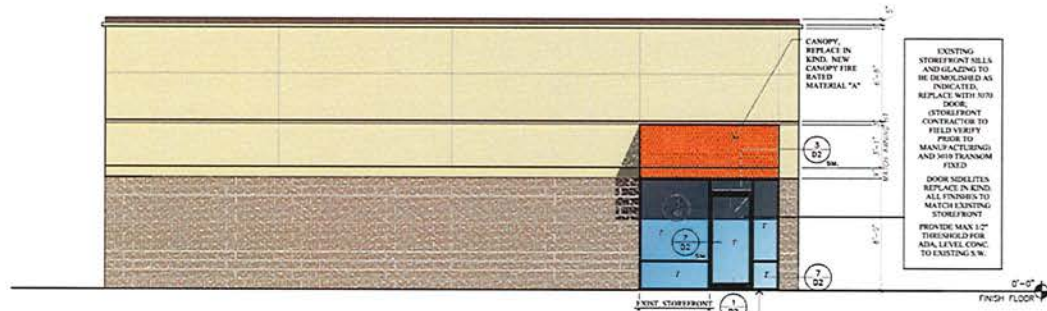
NEW WALL / BUILDING SECTION GRAPHIC SCALE 1/4" = 1'-0"



NEW PARTIAL WEST ELEVATION GRAPHIC SCALE 1/4" = 1'-0"



3 NEW SOUTH BUILDING ELEVATION GRAPHIC SCALE 1/4" = 1'-0"



2 NEW NORTH BUILDING ELEVATION GRAPHIC SCALE 1/4" = 1'-0"



1 NEW WEST BUILDING ELEVATION @ EXISTING PATIO GRAPHIC SCALE 1/4" = 1'-0"

ROSS DESIGN GROUP L.L.C.
ARCHITECTURAL INTERIORS PLANNING PROJECT MANAGEMENT
1000 N. CENTRAL AVENUE
SUITE 1000
SCOTTSDALE, ARIZONA 85257
PH: 480.344.1111
WWW.ROSSDESIGNGROUP.COM

REVISIONS
1
2
3

DETROIT CONEY GRILL
GATEVIEW PARK CENTER
6953 N. HAYDEN RD.
SCOTTSDALE, AZ 85250



ADMIN DESIGN REVIEW
DATE: 11/26/19
SCALE: AS SHOWN
REMARKS: A402
CHECKED: [Signature]
NEW EXTERIOR WORK 11/26/19

ATTACHMENT 12





CONEY GRILL



"Top 10 Best Burger In The USA"

**NOW
OPEN**

7th



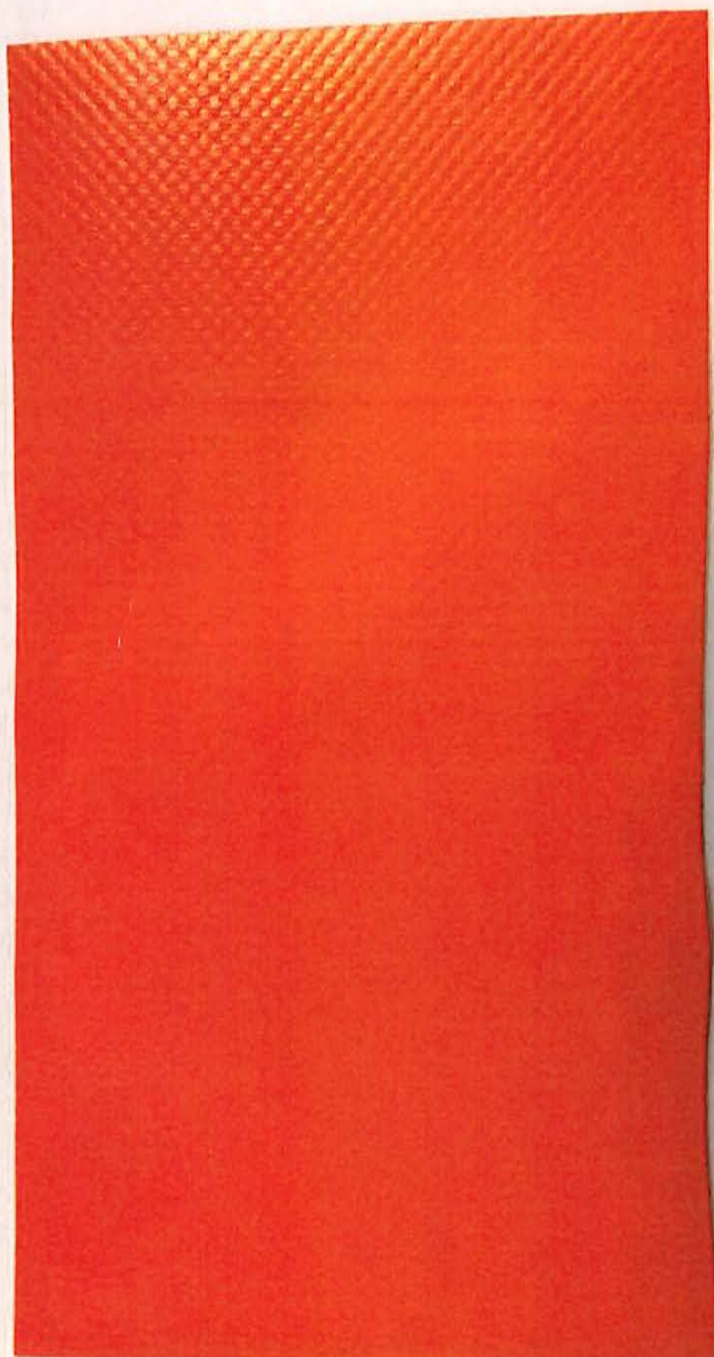






6953





ATTACHMENT 13

LAW OFFICES OF
STOCKTON & HING
A PROFESSIONAL ASSOCIATION
DEAUVILLE BUILDING
6609 NORTH SCOTTSDALE RD, #202
SCOTTSDALE, ARIZONA 85250
TEL: (480) 951-0882
FAX: (480) 483-7721

January 7, 2020

David Najor
General Manager
Detroit Coney Grill
6953 N. Hayden Road
Scottsdale, AZ 85250

Re: Gateview Park; Southeast corner of Hayden Road and
Indian Bend Road, Scottsdale, Arizona

Dear Dave:

This is to inform you that we are in the process of upgrading the above shopping center, of which Detroit Coney Grill is a part.

All torn awnings are being replaced by Arizona Awnings as of December 23, 2019. However, they will require approximately 7 weeks to special order the fabric and color.

We have also retained a painting contractor to do painting at the center – retaining walls, light bases, sign banks and any other items requiring painting.

You should also know that as of September, 2011, the Master Sign Program for the above center was amended and permits “the use of corporate colors and logos.” (13-MS-2011; 2-MS-1994)

We would be happy to provide you with any additional information.

Sincerely,



Robert Ong Hing

ROH:em

Acevedo, Alex

From: desertpeach@gmail.com
Sent: Wednesday, January 08, 2020 7:36 PM
To: Acevedo, Alex
Subject: Detroit Coney Grill

⚠ External Email: Please use caution if opening links or attachments!



I absolutely LOVE the beautiful orange colors of the awning and logo on the Coney Grill. It is well done and not intrusive at all - it's happy and cheerful just like the owners and staff (not to mention the food is SO good!) Home Depot has orange colors in their logo as do other chain stores. It is absolutely ludicrous that there is time, effort, and tax dollars being spent on an attempt to have the orange changed for some dull teal color. Stop this silliness now and let the orange canopy stay! -- sent by Kathy Morgan (case# 2-DR-1994#3)



© 2020 City of Scottsdale. All Rights Reserved.

Acevedo, Alex

From: budnpfc@gmail.com
Sent: Wednesday, January 08, 2020 7:39 PM
To: Acevedo, Alex
Subject: Coney Grill

⚠ External Email: Please use caution if opening links or attachments!



Coney Grill is an asset to our community. It is family oriented with excellent food and is becoming a neighborhood meeting place. It is run with class and kindness and I personally love the bright colors...a breathe of fresh air in a drab plaza. -- sent by Harold Eckholm (case# 2-DR-1994#3)



© 2020 City of Scottsdale. All Rights Reserved.

From: [Development Review Board](#)
To: [Berry, Melissa](#)
Subject: Development Review Board Public Comment (response #85)
Date: Wednesday, January 15, 2020 12:39:23 PM

Development Review Board Public Comment (response #85)

Survey Information

Site:	ScottsdaleAZ.gov
Page Title:	Development Review Board Public Comment
URL:	https://www.scottsdaleaz.gov/boards/development-review-board/public-comment
Submission Time/Date:	1/15/2020 12:39:10 PM

Survey Response

COMMENT	
Comment:	<p>On December 19, 2019 I attended the Development Review Board meeting to speak in opposition to Agenda Item #4(2-DR-1994#3- Detroit Coney Grill Awnings). After I spoke in front of the Board, I walked to the rear of the Kiva. I stood on the ADA ramp, directly under the cameras used to record the meetings. I was immediately approached by a man who had been sitting with the applicant's team during my three minutes of public comment. After the meeting I learned the man who approached me was William Luzader, the applicant's attorney. He asked my name and why I was there. I gave him my name and told him I lived in the neighborhood. His questions immediately escalated to a more aggressive tone. "Did Steve tell you to be here?" I was caught off-guard by the question and didn't know to whom he was referring. When I asked who he was talking about, he seethed, "STEVE". I realized he was asking about Steve Venker on City Staff. I told him nobody asked me to attend and that I came because I lived in the neighborhood. He continued to press me, aggressively... "who told you to come today", "why are you here". When he grew frustrated with my answers he started to question where I work, what I do for a living, etc. The last</p>

thing he said to me, before walking back up the stairs toward the entrance, was "Im going to find out who sent you here. You can't do this". Mr Luzader's actions show a disregard for the 1st Amendment to the Constitution--- my right to freedom of speech. I found his insinuations and line of questioning to be inappropriate at best, and an attempt at intimidation at worse.

Comments are limited to 8,000 characters and may be cut and pasted from another source.

PLEASE PROVIDE YOUR NAME:

First & Last Name:

Christian Serena

AND ONE OR MORE OF THE FOLLOWING ITEMS:

Email:

ChristianCSerena@gmail.com

Phone:

Address:

Example: 3939 N. Drinkwater Blvd, Scottsdale 85251

Posler, Kathryn

From: Zimmer, Christopher
Sent: Thursday, January 16, 2020 1:00 PM
To: Cid Merrill
Cc: Posler, Kathryn
Subject: RE: Case # 2-DR-1994#3

Thank you Ms. Merrill. I will bring your comments over to the Board for their consideration. Your email will become a part of the report as well.

If you have any further concerns please let me know.

Thank you,

Chris Zimmer

Planning Specialist
City of Scottsdale
(480) 312-2347
czimmer@scottsdaleaz.gov



From: Cid Merrill <cidmerrill@cox.net>
Sent: Thursday, January 16, 2020 12:55 PM
To: Zimmer, Christopher <CZimmer@Scottsdaleaz.gov>
Cc: Posler, Kathryn <KPosler@Scottsdaleaz.gov>
Subject: Case # 2-DR-1994#3

⚠ External Email: Please use caution if opening links or attachments!

This is to express our shock and displeasure with how the Detroit Coney Grill is being treated.

We don't understand how something as simple as the color of the awning should create as issue for a new business coming into Scottsdale to bring great food, and a lot of "hometown" feeling for those of us who came from Michigan.

We've been Scottsdale residents (and tax payers!) for over 30 years and are just astounded at this flippant manor of treating not only the Detroit Coney Grill, but those of us who long for a great coney dog, loose hamburger, Faygo soda (pop) and the Midwest feeling of being appreciated when there for breakfast, lunch or dinner.

Hope someone on the Board show the heart we thought Scottsdale always had in the past for the new businesses and well as the tax paying residents.

Cid Merrill

480.767.3432



Cid

Posler, Kathryn

From: Zimmer, Christopher
Sent: Thursday, January 16, 2020 1:01 PM
To: Sam Merrill
Cc: Posler, Kathryn
Subject: RE: Case # 2-DR-1994#3

Thank you Mr. Merrill. I will bring your comments over to the Board for their consideration. Your email will become a part of the report as well.

If you have any further concerns please let me know.

Thank you,

Chris Zimmer

Planning Specialist
City of Scottsdale
(480) 312-2347
czimmer@scottsdaleaz.gov



From: Sam Merrill <sammerrill@cox.net>
Sent: Thursday, January 16, 2020 12:59 PM
To: Zimmer, Christopher <CZimmer@Scottsdaleaz.gov>
Cc: Posler, Kathryn <KPosler@Scottsdaleaz.gov>
Subject: FW: Case # 2-DR-1994#3

⚠ External Email: Please use caution if opening links or attachments!

Dear Review Board,

This is to express my shock and displeasure with how the Detroit Coney Grill is being treated.

We don't understand how something as simple as the color of the awning should create as issue for a new business coming into Scottsdale to bring great food, and a lot of "hometown" feeling for those of us who came from Michigan.

I've been Scottsdale resident (and tax payers!) for over 30 years and are just astounded at this flippant manor of treating not only the Detroit Coney Grill, but those of us who long for a great coney dog, loose hamburger, Faygo soda (pop) and the Midwest feeling of being appreciated when there for breakfast, lunch or dinner.

Hope someone on the Board show the heart we thought Scottsdale always had in the past for the new businesses and well as the tax paying residents.

Let's not have a law suit that will further show the citizens of Scottsdale how little regard we have for small business owners!

*Sam Merrill
480.767.3432*



REQUEST TO SPEAK

4

Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.

Public testimony is limited to three (3) minutes per speaker.

Additional time **MAY** be granted to speakers representing two or more persons.

Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) CHRISTIAN SERENA MEETING DATE 12/19/19

NAME OF GROUP/ORGANIZATION (if applicable) _____

ADDRESS ON RECORD ZIP _____

HOME PHONE _____ WORK PHONE _____

E-MAIL ADDRESS (optional) _____

☒ I WISH TO SPEAK ON AGENDA ITEM # 4 ☐ I WISH TO DONATE MY TIME TO _____

☐ I WISH TO SPEAK DURING "PUBLIC COMMENT"* CONCERNING _____

*Citizens may complete one Request to Speak "Public Comment" card per meeting and submit it to City Staff. "Public Comment" time is reserved for citizen comments regarding non-agendized items. The Board and Commission may hear "Public Comment" testimony, but is prohibited by state law from discussing items which are not listed on the agenda.

This card constitutes a public record under Arizona law.



REQUEST TO SPEAK

5

Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.

Public testimony is limited to three (3) minutes per speaker.

Additional time MAY be granted to speakers representing two or more persons.

Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) CHRISTIAN SERENA MEETING DATE 1-16-26

NAME OF GROUP/ORGANIZATION (if applicable) _____

ADDRESS 6929 N. HAYDEN RD ZIP 85258

HOME PHONE 602. 743.9959 WORK PHONE _____

E-MAIL ADDRESS (optional) _____

☒ I WISH TO SPEAK ON AGENDA ITEM # 5 ☐ I WISH TO DONATE MY TIME TO _____

☐ I WISH TO SPEAK DURING "PUBLIC COMMENT"* CONCERNING _____

*Citizens may complete one Request to Speak "Public Comment" card per meeting and submit it to City Staff. "Public Comment" time is reserved for citizen comments regarding non-agendized items. The Board and Commission may hear "Public Comment" testimony, but is prohibited by state law from discussing items which are not listed on the agenda.

This card constitutes a public record under Arizona law.



REQUEST TO SPEAK

5

Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.

Public testimony is limited to three (3) minutes per speaker.

Additional time MAY be granted to speakers representing two or more persons.

Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) LARRY BISCHOFF MEETING DATE 1/16/28

NAME OF GROUP/ORGANIZATION (if applicable) _____

ADDRESS 8412 E. VIA DE DORADO ZIP _____

HOME PHONE 480-646-6003 WORK PHONE N/A

E-MAIL ADDRESS (optional) _____

☒ I WISH TO SPEAK ON AGENDA ITEM # 5 ☐ I WISH TO DONATE MY TIME TO _____

☒ I WISH TO SPEAK DURING "PUBLIC COMMENT"* CONCERNING Coney Island

*Citizens may complete one Request to Speak "Public Comment" card per meeting and submit it to City Staff. "Public Comment" time is reserved for citizen comments regarding non-agendized items. The Board and Commission may hear "Public Comment" testimony, but is prohibited by state law from discussing items which are not listed on the agenda.

This card constitutes a public record under Arizona law.



REQUEST TO SPEAK

Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.

Public testimony is limited to three (3) minutes per speaker.

Additional time MAY be granted to speakers representing two or more persons.

Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) Will Luzader MEETING DATE 1/16/2019

NAME OF GROUP/ORGANIZATION (if applicable) Detroit Long Grill

ADDRESS _____ ZIP _____

HOME PHONE (602) 421-2102 WORK PHONE _____

E-MAIL ADDRESS (optional) Will @ luzader-law.com

☒ I WISH TO SPEAK ON AGENDA ITEM # 5 ☐ I WISH TO DONATE MY TIME TO _____

☒ I WISH TO SPEAK DURING "PUBLIC COMMENT"* CONCERNING DCG #15

*Citizens may complete one Request to Speak "Public Comment" card per meeting and submit it to City Staff. "Public Comment" time is reserved for citizen comments regarding non-agendized items. The Board and Commission may hear "Public Comment" testimony, but is prohibited by state law from discussing items which are not listed on the agenda.

This card constitutes a public record under Arizona law.



REQUEST TO SPEAK

Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.

Public testimony is limited to three (3) minutes per speaker.

Additional time MAY be granted to speakers representing two or more persons.

Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) Tracy Heinze MEETING DATE 1/16/20

NAME OF GROUP/ORGANIZATION (if applicable) Detroit Grill

ADDRESS 7745 N. Via De La Sombra ZIP 85258

HOME PHONE _____ WORK PHONE 602-302-1977

E-MAIL ADDRESS (optional) tracy.heinze@usrenalcare.com

☒ I WISH TO SPEAK ON AGENDA ITEM # 5 ☐ I WISH TO DONATE MY TIME TO _____

☐ I WISH TO SPEAK DURING "PUBLIC COMMENT"* CONCERNING _____

*Citizens may complete one Request to Speak "Public Comment" card per meeting and submit it to City Staff. "Public Comment" time is reserved for citizen comments regarding non-agendized items. The Board and Commission may hear "Public Comment" testimony, but is prohibited by state law from discussing items which are not listed on the agenda.

This card constitutes a public record under Arizona law.



REQUEST TO SPEAK

5

Request to Speak cards must be submitted to City Staff **BEFORE** public testimony begins.
Public testimony is limited to three (3) minutes per speaker.
Additional time MAY be granted to speakers representing two or more persons.
Cards for designated speakers and the person(s) they represent must be submitted together.

NAME (print) CHIP SEMRAY MEETING DATE 1-16-19

NAME OF GROUP/ORGANIZATION (if applicable) _____

ADDRESS 6249 N. 78th ST #22 ZIP 85250

HOME PHONE 2 480-548-8001 WORK PHONE _____

E-MAIL ADDRESS (optional) _____

☒ I WISH TO SPEAK ON AGENDA ITEM # 5 ☐ I WISH TO DONATE MY TIME TO _____

☐ I WISH TO SPEAK DURING "PUBLIC COMMENT"* CONCERNING _____

*Citizens may complete one Request to Speak "Public Comment" card per meeting and submit it to City Staff. "Public Comment" time is reserved for citizen comments regarding non-agendized items. The Board and Commission may hear "Public Comment" testimony, but is prohibited by state law from discussing items which are not listed on the agenda.

This card constitutes a public record under Arizona law.



WRITTEN COMMENTS

5

This card is used to submit written comments to the Board or Commission.
Written comment cards may be submitted to the Staff at any time. Cards submitted after public testimony has begun will be provided to the Board or Commission at the conclusion of the testimony for that item.

NAME (print) KOBLET CHURCH MEETING DATE 1-16-20

NAME OF GROUP/ORGANIZATION (if applicable) in support of Detroit Cony

ADDRESS 5641 N 69th PL PV ZIP 85253

HOME PHONE 602-316-3472 WORK PHONE 602 316-3472

E-MAIL ADDRESS(optional) _____

AGENDA ITEM # 5 ☒ SUPPORT ☐ OPPOSE

COMMENTS (additional space is provided on the back) If large corp. chains can
use orange then there is no good reason
Detroit Cony can't. they are a good neighbor &
running a good business

This card constitutes a public record under Arizona law.

SCOTTSDALE

DEVELOPMENT REVIEW BOARD MEETING

MEETING NOTICE AND **MARKED** AGENDA



DEVELOPMENT REVIEW BOARD

Guy Phillips, Council Member/Chair
Tammy Caputi, Vice Chair
Prescott Smith, Planning Commissioner
Doug Craig, Design Member

Shakir Gushgari, Design Member
Joe Young, Design Member
William Scarbrough, Development Member

Thursday, December 19, 2019

1:00 P.M.

DEVELOPMENT REVIEW BOARD MEETING

City Hall Kiva Forum, 3939 N. Drinkwater Boulevard

Call to Order – **1:01 pm**

Roll Call - **ALL PRESENT**

Administrative Report – Steve Venker

1. Identify supplemental information, if any, related to the December 19, 2019 Development Review Board agenda items, and other correspondence.

Minutes

2. Approval of the December 5, 2019 Development Review Board [Meeting Minutes](#).
APPROVED 7-0; MOTION BY BOARD MEMBER SCARBROUGH, 2ND BY VICE CHAIR CAPUTI.

REGULAR AGENDA

3. [20-DR-2019#2 \(Honor Health Osborn Phase One Medical Office Building\)](#) Bryan Cluff
Request approval of the east building elevation for a new 5-story-tall medical office building with approximately 116,000 square feet of building area on a 3.8-acre site.
7242 East Osborn Road
Devenney Group, LTD., Architect/Designer
APPROVED 7-0 WITH ADDED STIPULATION; MOTION BY BOARD MEMBER YOUNG, 2ND BY BOARD MEMBER SCARBROUGH.

4. [2-DR-1994#3 \(Detroit Coney Grill Awnings and Canopy\)](#) Katie Posler
Request approval of the site plan and building elevations for new awnings above doors and windows and a new canopy above an existing patio at a restaurant located on a 0.9-acre pad site in the Gateview Park shopping center.
6953 North Hayden Road
Ross Design Group, Architect/Designer
CONTINUED FOR 30 DAYS 6-1; MOTION BY BOARD MEMBER YOUNG, 2ND BY COMMISSIONER SMITH WITH VICE CHAIR CAPUTI DISSENTING.
5. [13-DR-2019 \(Marvelle Arcadia\)](#) Meredith Tessier
Request approval of the site plan, landscape plan and building elevations for a new minimal residential healthcare facility comprised of 160 dwelling units in three-story-tall building, with approximately 170,000 square feet of building area, all on a 5.8 gross acre site.
6080 East Thomas Road
ORB Architecture LLC, Architect/Designer
APPROVED 5-1 WITH ADDITIONAL STIPULATIONS; MOTION BY BOARD MEMBER YOUNG, 2ND BY BOARD MEMBER CRAIG WITH BOARD MEMBER GUSHGARI DISSENTING AND COMMISSIONER SMITH RECUSING.
6. [35-DR-2019 \(Raintree Internalized Community Storage\)](#) Katie Posler
Request approval of the site plan, landscape plan, and building elevations for an internalized community storage building, with approximately 110,844 square feet of building area in a 2-story-tall building with a basement, all on a 2.5-acre site.
14900 North Pima Road
EAPC Architectural Engineers/Michelle Bach, Architect/Designer
CONTINUED 6-1; MOTION BY VICE CHAIR CAPUTI, 2ND BY BOARD MEMBER SCARBROUGH WITH BOARD MEMBER GUSHGARI DISSENTING.

Non-Action Agenda

7. [28-DR-2019 \(North Scottsdale Self Storage\)](#) Jesus Murillo
This is a non-action item. Staff is requesting that the Development Review Board provide comments regarding conceptual building elevations for the design of an internalized community storage building.
10830 North Scottsdale Road
EAPC Architectural Engineers, Architect/Designer
THE BOARD DISCUSSED AND STAFF PROVIDED COMMENTS REGARDING THE CONCEPTUAL BUILDING ELEVATIONS.

Adjournment - 2:52 PM



PERSONS WITH A DISABILITY MAY REQUEST A REASONABLE ACCOMMODATION BY CONTACTING STAFF AT

(480-312-7767). REQUESTS SHOULD BE MADE 24 HOURS IN ADVANCE, OR AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE ACCOMMODATION. FOR TTY USERS, THE ARIZONA RELAY SERVICE (1-800-367-8939) MAY CONTACT STAFF AT (480-312-7767).

SCOTTSDALE

DEVELOPMENT REVIEW BOARD MEETING

MEETING NOTICE AND MARKED Agenda



DEVELOPMENT REVIEW BOARD

Solange Whitehead, Council Member/Chair
Prescott Smith, Planning Commissioner
Doug Craig, Design Member

Shakir Gushgari, Design Member
Joe Young, Design Member
William Scarbrough, Development Member

Thursday, January 16, 2020

1:00 P.M.

DEVELOPMENT REVIEW BOARD MEETING

City Hall Kiva Forum, 3939 N. Drinkwater Boulevard

Call to Order - 1:00 PM

Roll Call - ALL PRESENT

Administrative Report – Brad Carr, AICP

1. Identify supplemental information, if any, related to the January 16, 2020 Development Review Board agenda items, and other correspondence.

Minutes

2. Approval of the December 19, 2019 Development Review Board [Meeting Minutes](#).
APPROVED 6-0; MOTION BY BOARD MEMBER SCARBROUGH, 2ND BY BOARD MEMBER YOUNG.

CONSENT AGENDA

3. [68-SW-2019 \(AT&T PHX36-003D Small Wireless Facility \(SWF\)\)](#)
Request approval of a new Type 3 Wireless Communication Facility (WCF) to be placed within a new 30-foot tall artificial cactus, with associated ground mounted equipment.
6602 East Chaparral Road
Bechtel Infrastructure & Power Corp., Architect/Designer
APPROVED 6-0; MOTION BY BOARD MEMBER CRAIG, 2ND BY BOARD MEMBER SCARBROUGH.

Keith Niederer

4. [7-PP-2019 \(118th & Ranch Gate\)](#) Jeff Barnes
Request by owner for approval of the preliminary plat for a 42-lot residential subdivision with amended development standards, on a +/- 65.6-acre site with Single-family Residential Environmentally Sensitive Lands (R1-43 ESL) zoning and Open Space Environmentally Sensitive Lands (O-S ESL) zoning.
NEC of North 118th Street & East Ranch Gate Road
Kimley Horn, Architect/Designer
APPROVED WITH REVISED STIPULATION 4-0; MOTION BY BOARD MEMBER YOUNG, 2ND BY BOARD MEMBER SCARBROUGH WITH BOARD MEMBER CRAIG AND COMMISSIONER SMITH RECUSING.

REGULAR AGENDA

5. [2-DR-1994#3 \(Detroit Coney Grill Awnings and Canopy\)](#) Katie Posler
Request approval of the site plan and building elevations for new awnings above doors and windows and a new canopy above an existing patio at a restaurant located on a 0.9-acre pad site in the Gateview Park shopping center.
6953 North Hayden Road
Ross Design Group, LLC, Architect/Designer
APPROVED 4-2; MOTION BY BOARD MEMBER YOUNG, 2ND BY BOARD MEMBER SCARBROUGH WITH BOARD MEMBER GUSHGARI AND COMMISSIONER SMITH DISSENTING.
6. [35-DR-2019 \(Raintree Internalized Community Storage\)](#) Katie Posler
Request approval of the site plan, landscape plan, and building elevations for an internalized community storage building, with approximately 110,844 square feet of building area in a two-story-tall building with a basement, all on a 2.5-acre site.
North Pima Road and East Raintree Drive
RKAA Architects, Inc., Architect/Designer
APPROVED 6-0 WITH STIPULATIONS; MOTION BY BOARD MEMBER YOUNG, 2ND BY BOARD MEMBER SCARBROUGH.
7. 2020 Election of Vice Chair Brad Carr, AICP
Staff requests that the Board nominate and elect the Vice Chair for 2020.
APPROVED WILLIAM SCARBROUGH AS VICE CHAIR 6-0; NOMINATION BY BOARD MEMBER GUSHGARI.



PERSONS WITH A DISABILITY MAY REQUEST A REASONABLE ACCOMMODATION BY CONTACTING STAFF AT (480-312-7767). REQUESTS SHOULD BE MADE 24 HOURS IN ADVANCE, OR AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE ACCOMMODATION. FOR TTY USERS, THE ARIZONA RELAY SERVICE (1-800-367-8939) MAY CONTACT STAFF AT (480-312-7767).

8. [2019 Development Review Board Annual Report](#)
Review and possible approval of the 2019 Development Review Board
Annual Report.
**APPROVED 6-0; MOTION BY BOARD MEMBER CRAIG, 2ND BY
COMMISSIONER SMITH.**

Brad Carr, AICP

Adjournment - 2:31 PM

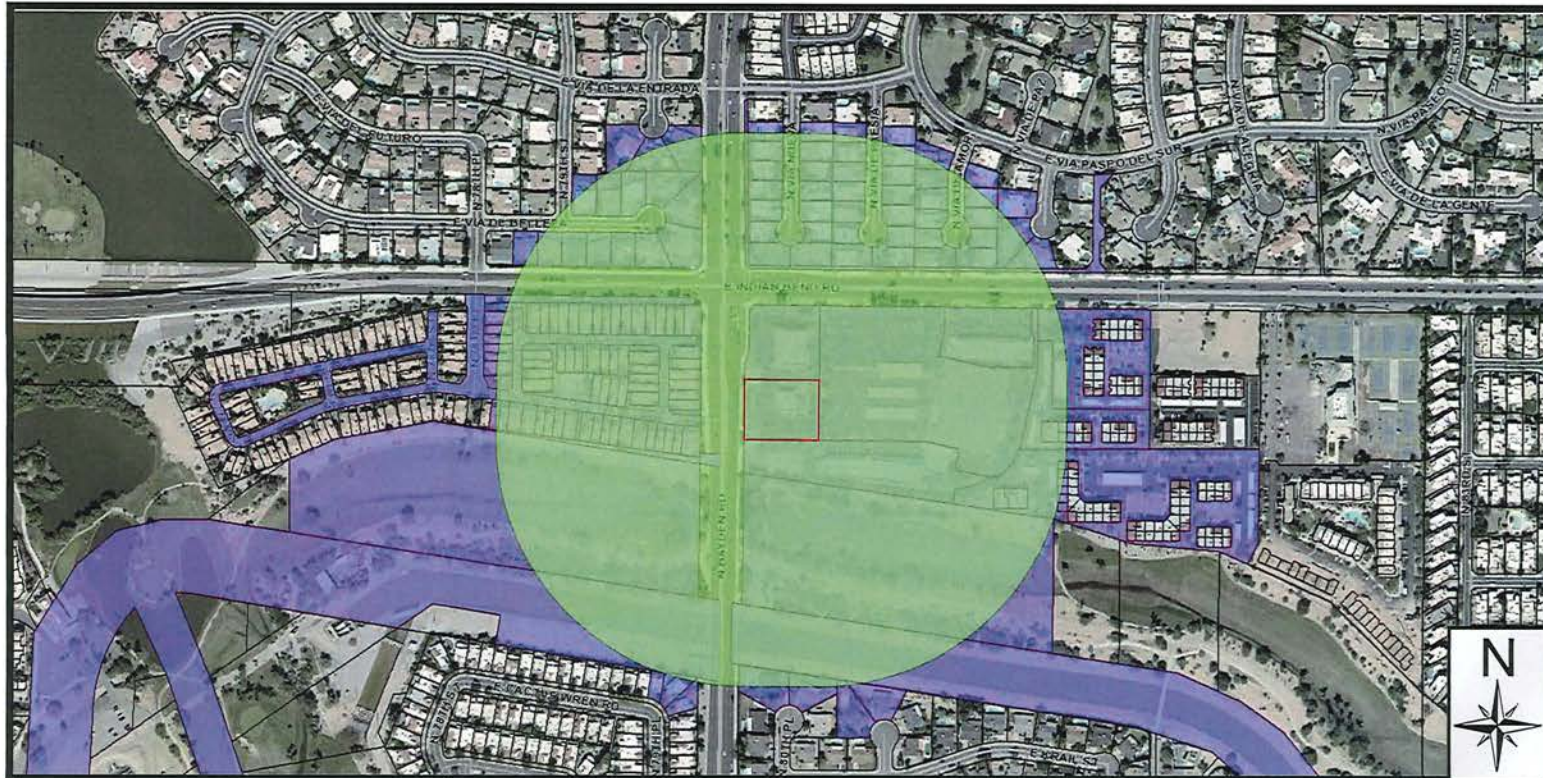


PERSONS WITH A DISABILITY MAY REQUEST A REASONABLE ACCOMMODATION BY CONTACTING STAFF AT (480-312-7767). REQUESTS SHOULD BE MADE 24 HOURS IN ADVANCE, OR AS EARLY AS POSSIBLE TO ALLOW TIME TO ARRANGE ACCOMMODATION. FOR TTY USERS, THE ARIZONA RELAY SERVICE (1-800-367-8939) MAY CONTACT STAFF AT (480-312-7767).

City Notifications – Mailing List Selection Map

Detroit Coney Grill Canopies

ATTACHMENT 19



Additional Notifications:

Interested Parties List
 Adjacent HOA's
 P&Z E-Newsletter
 Facebook
 Nextdoor.com
 City Website-Projects in the hearing process

Pulled Labels
 November 26, 2019

Map Legend:



Site Boundary



Properties within 750-feet

Postcards: 215

2-DR-1994#3

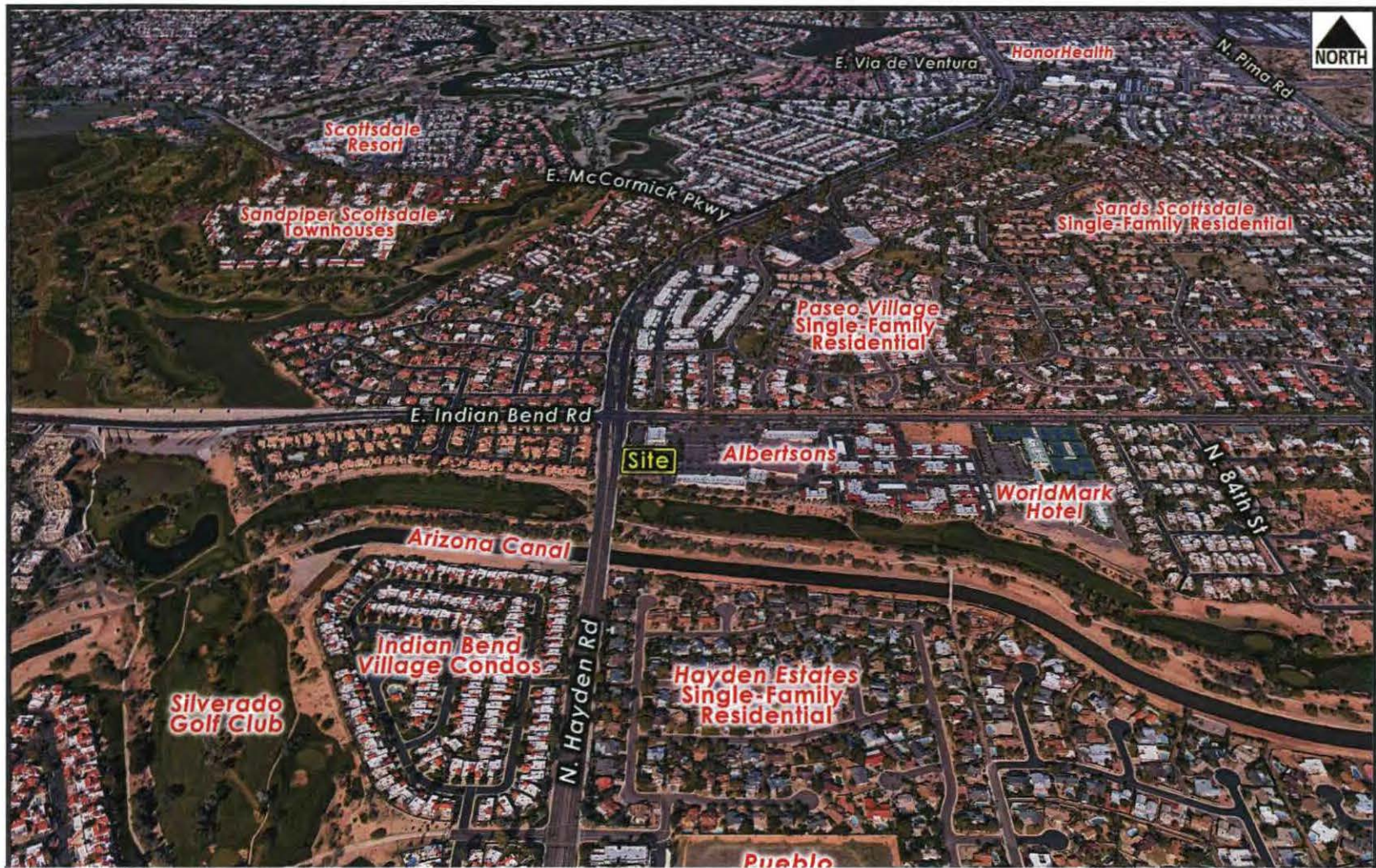
Detroit Coney Grill Awnings and Canopy

2-DR-1994#3

City Council Appeal

5/5/20

Coordinator: Katie Posler



Context Aerial

2-DR-1994#3



Context Aerial

2-DR-1994#3



Detail Aerial

2-DR-1994#3

Request:

By property owner & applicant for City Council to reconsider the Development Review Board's approval of case 2-DR-1994#3 which included a stipulation for the existing orange awnings & canopy to be replaced with a teal or other compatible color

Request: City Council Appeal of DRB stipulation

Key Items

- Orange awnings installed without design approval in fall of 2019
- Request was taken to DRB based on Commercial Design Guidelines & shopping center context on December 19, 2019
- Case was continued at DRB on December 19, 2019 with a 6-1 vote
- Case was continued to allow the applicant to work with the shopping center owner to achieve a cohesive design update
- Orange southern patio canopy was installed after DRB continuance

Key Items

2-DR-1994#3

Key Items

- Case was approved with stipulations at DRB on January 16, 2020 with a 4-2 vote
- DRB stipulation required orange awnings & canopy to be replaced with teal or other appropriate color in context w/the center
- Property owner & applicant filed appeal to City Clerk on February 14, 2020
- Case was scheduled to March 17, 2020 City Council meeting & was continued to a later date at applicant's request
- Canopy & columns have received building safety approval

Key Items

2-DR-1994#3



Photos of the shopping center

2-DR-1994#3



Photos of the shopping center

2-DR-1994#3



Photos of the shopping center

2-DR-1994#3



Awning Locations

2-DR-1994#3

2007

2013

2018

Pad Building History

2-DR-1994#3



Photos of installed awnings

2-DR-1994#3



Photos of installed awnings

2-DR-1994#3



Photos of installed canopy



2-DR-1994#3

Subject of appeal:

DRB stipulation: Applicant shall replace the orange awnings and canopy with a teal or other appropriate color that matches the overall color scheme of the existing shopping center, subject to staff approval.

DRB Stipulation

2-DR-1994#3

City Council Options:

- 1. Affirm DRB decision (requiring a teal color or other color in context with the shopping center)**
- 2. Modify DRB decision (keep orange color)**
- 3. Reverse DRB decision (deny the case for new awnings & canopy)**

City Council Options	2-DR-1994#3
-----------------------------	--------------------

THE CITY COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA

APPEAL UNDER SECTION 1.907(A) OF CASE No. 2-DR-1994#3

Robert Ong Hing
STOCKTON & HING PA
6609 N. Scottsdale Road, Suite
202
Scottsdale, Arizona 85250
roberthing@stocktonhing.com

Attorneys for Property Owner
Robert Ong Hing and Alice Y. Hing
Family Trust

Geoffrey S. Kerksmar
KERCSMAR & FELTUS PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
gsk@kflawaz.com

Attorneys for Applicant
DCG McCormick Ranch, LLC

THE BACKGROUND OF THIS APPEAL

- Detroit Coney Grill is a locally owned neighborhood restaurant in Gateway Park, a shopping center at the south-east intersection of Hayden Road and Indian Bend Road.
- The shopping center is owned by the Robert Ong Hing and Alice Y. Hing Family Trust. Mr. Hing represents his family trust, and he joins in this appeal.
- This appeal is from a January 16, 2020 decision of the Development Review Board.
- That decision **approved** the overall design plan of Detroit Coney Grill.
- The decision also approved the number, shape, structural design, canopy material and placement of Detroit Coney Grill's exterior awnings and canopy.
- But the decision required Detroit Coney Grill to replace its existing "orange awnings and canopy with **teal or another color** more consistent with the design theme of the [shopping] center."

DETROIT CONEY GRILL



ABOUT DETROIT CONEY GRILL

- Detroit Coney Grill is locally owned by David Najor and Dr. Merrill Stromer, two local businessmen.
- The first Detroit Coney Grill opened in 2013 in Tempe.
- Now there are three locations: Tempe, Phoenix (2015) and Scottsdale (December 2019).
- The Scottsdale location is the company's biggest. The space was selected because of excellent visibility from the Hayden & Indian Bend intersection.
- Detroit Coney Grill employs 36 people, 25 of them at the Scottsdale location.
- The Scottsdale location served 300 people a day (before the shut-down).
- Detroit Coney Grill's culture emphasizes close community involvement, especially with First Responders due to its quick-serve philosophy, expansive hours and offerings, and its neighborhood atmosphere.

FOUR GROUNDS FOR THIS APPEAL

1. The DRB imposed on Gateway Park and Detroit Coney Grill an unclear and previously unstated standard, which is not imposed on other applicants.
2. The decision of the DRB lacks supporting evidence.
3. The decision of the DRB is based solely on an aesthetic concern, which is unrelated to public health, safety, or welfare.
4. Under Arizona law, allowing this decision to stand would result in an arbitrary and capricious policy, enforced by the City of Scottsdale.

1. UNCLEAR STANDARD AND BURDEN

- Page 12 of the City of Scottsdale's Design Guidelines:
"Where awnings are used they should be functional and provide maximum shade to the window area. Awnings should be of opaque architectural material and should not be internally lit. Metal awnings are preferred to fabric awnings for reasons of durability and strength of appearance. **Awnings of a single color are preferred.**"
- Detroit Coney Grill's awnings are a "single color": Desert Blossom orange.
- The Design Guidelines do not require a single color **per shopping center**.

ABOUT GATEWAY PARK'S SIGNAGE

- The Master Sign Program for Gateway Park was amended by the City on September 9, 2011.
- Andrew Chi approved the amendment on behalf of the City.
- In that amendment, the City agreed to allow Gateway Park “increased design flexibility,” including building signage in the “tenant’s choice of colors.”
- The amended Master Sign Program also allows tenants “the use of **corporate colors and logo** as well.”
- The DRB never considered the amended Master Sign Program in its deliberations.

2. THE LACK OF EVIDENCE

- The DRB failed to consider the many exceptions in Scottsdale to enforcing a “one accent-color per shopping center” rule on Gateway Park and Detroit Coney Grill.
- Here are some examples of what is permitted in the City’s other shopping centers

CULVER'S 8688 E. SHEA BOULEVARD SCOTTSDALE AZ 85260



WHATABURGER
9990 N. 90TH STREET
SCOTTSDALE AZ 85258



SCHLOTZSKY'S
10070 N. 90TH STREET
SCOTTSDALE AZ 85258



JIMMY JOHN'S 10460 N. 90TH STREET SCOTTSDALE AZ 85258



MCDONALD'S
8001 E. INDIAN SCHOOL ROAD
SCOTTSDALE AZ 85257



MODERN MASSAGE & WELLNESS

13802 N. SCOTTSDALE ROAD
SCOTTSDALE AZ 85254



BOSTON MARKET

15784 N. FRANK LLOYD WRIGHT BOULEVARD
SCOTTSDALE AZ 85260



IN-N-OUT BURGER

7467 E. FRANK LLOYD WRIGHT BOULEVARD
SCOTTSDALE AZ 85260



3. THE DECISION WAS NOT BASED ON CONCERNS ABOUT PUBLIC HEALTH, SAFETY OR WELFARE

- This decision was about the DRB's aesthetic taste—not the public's health, safety or welfare.
- The DRB has not articulated any health, safety or welfare concern presented by Detroit Coney Grill's awnings.
- But Arizona law requires decisions of this type to be grounded in health, safety or welfare.
 - *Austin Shea (Az.) 7th St. and Van Buren, L.L.C. v. City of Phoenix*, 213 Ariz. 385, 142 P.3d 693 (App. 2006)
 - *Preston v. Hallman*, 2009 WL 8236846 (Az. Super. Ct., July 8, 2009)

THE IMPACT OF CORONAVIRUS

- This Council is very aware of the current situation with coronavirus impacting the City, state and country.
- On March 20, the State ordered all restaurants to close dine-in operations.
- As a direct result, Detroit Coney Grill has lost 90% of its business.
- It is not unique: every restaurant in Scottsdale has been similarly affected.
- The bottom line is that the City's restaurants are struggling, at the same time that the citizens depend on those restaurants for take-out.

THE IMPACT OF CORONAVIRUS

- Even when the shut-down ends, restaurants will be severely affected because their customers have been economically impacted.

RESTAURANT APOCALYPSE: More than 110,000 restaurants expect to close up forever in the coming weeks, with millions out of work and the industry's future uncertain

Kate Taylor Mar 31, 2020, 6:50 AM



Employees stand in the empty dining room of a Sacramento, California, restaurant on March 17, 2020. AP Photo/Rich Pedroncelli

- The restaurant industry lost an estimated \$25 billion in sales and more than three million jobs in the first 22 days of March, as the coronavirus outbreak swept the US.
- Roughly 30,000 restaurants have already closed for good across the country, with more than 110,000 expected to shutter in the next month, according to estimates by the National Restaurant Association.
- "Any pundit who thinks that they're going to use a recent history — and by recent history, I mean the last 100 years, including the Depression — as a template for what is going to go on here? They're kidding themselves," said restaurant industry investor and advisor Roger Lipton.

THE IMPACT OF CORONAVIRUS

Apr 23, 2020 - Economy & Business

High unemployment could be here for a while



Dion Rabouin



Illustration: Eniola Odetunde/Axios

Unemployment is likely to hit levels not seen since the Great Depression and remain elevated, economists warn, weakening the U.S. economy and making a V-shaped recovery increasingly doubtful.

Why it matters: That will be true even if states allow businesses to reopen sooner than expected, as surveys show most Americans aren't ready to go back to their normal routines.

- The City's restaurants can be expected to struggle due to customers' financial struggles.
- That will have a trickle-down impact on tourism in Scottsdale too.

THE IMPACT OF CORONAVIRUS

- This is not the time for the City to work against its locally owned businesses.
- Detroit Coney Grill is a valuable corporate citizen of Scottsdale.
- It is known for community outreach with First Responders:



4. THE IMPACT OF THIS DECISION

- This decision, if not reversed, would be arbitrary and capricious.
 - The DRB ignored the issues of public health, safety, and welfare.
 - The DRB had an extremely limited factual record.
 - The DRB ignored the impact of the 2011 amendment to the shopping center's Master Sign Program allowing for "increased design flexibility" and "the use of corporate colors."
 - The DRB ignored the comments specific to awnings in the Design Guidelines that, "Awnings of a single color are preferred."

SUMMARY

- In effect, the DRB created an entirely **new** standard under the Design Guidelines that awning color **must** match a shopping center's primary or secondary color.
- This decision would affect all the chain restaurants we just saw.

Or,

- This decision has created a two-tiered design criteria: one for big companies from outside Arizona who can use their corporate colors, and another for the “little guy” from our own town, who cannot.

OUR REQUEST TO THIS COUNCIL

- We ask you to **modify** the January 16, 2020 decision by **removing** the requirement that Detroit Coney Grill must replace its existing “orange awnings and canopy with teal or another color more consistent with the design theme of the [shopping] center.”

THANK YOU FOR YOUR TIME!

THANK YOU FOR YOUR WORK IN THIS CRISIS!

BE SAFE, AND BE WELL!

Detroit Coney Grill Awnings and Canopy

2-DR-1994#3

City Council Appeal

5/5/20

Coordinator: Katie Posler

1



2



3



4

Request:

By property owner & applicant for City Council to reconsider the Development Review Board's approval of case 2-DR-1994#3 which included a stipulation for the existing orange awnings & canopy to be replaced with a teal or other compatible color

5

Key Items

- Orange awnings installed without design approval in fall of 2019
- Request was taken to DRB based on Commercial Design Guidelines & shopping center context on December 19, 2019
- Case was continued at DRB on December 19, 2019 with a 6-1 vote
- Case was continued to allow the applicant to work with the shopping center owner to achieve a cohesive design update
- Orange southern patio canopy was installed after DRB continuance

6

Key Items

- Case was approved with stipulations at DRB on January 16, 2020 with a 4-2 vote
- DRB stipulation required orange awnings & canopy to be replaced with teal or other appropriate color in context w/the center
- Property owner & applicant filed appeal to City Clerk on February 14, 2020
- Case was scheduled to March 17, 2020 City Council meeting & was continued to a later date at applicant's request
- Canopy & columns have received building safety approval

7



Photos of the shopping center

2-DR-1994#3

8



Photos of the shopping center

2-DR-1994#3

9



Photos of the shopping center

2-DR-1994#3

10



11



12



Photos of installed awnings

2-DR-1994#3

13



Photos of installed awnings

2-DR-1994#3

14



Photos of installed canopy

2-DR-1994#3

15

Subject of appeal:

DRB stipulation: Applicant shall replace the orange awnings and canopy with a teal or other appropriate color that matches the overall color scheme of the existing shopping center, subject to staff approval.

16

City Council Options:

- 1. Affirm DRB decision (requiring a teal color or other color in context with the shopping center)**
- 2. Modify DRB decision (keep orange color)**
- 3. Reverse DRB decision (deny the case for new awnings & canopy)**

THE CITY COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA

APPEAL UNDER SECTION 1.907(A) OF CASE No. 2-DR-1994#3

Robert Ong Hing
STOCKTON & HING PA
6609 N. Scottsdale Road, Suite
202
Scottsdale, Arizona 85250
roberthing@stocktonhing.com

Attorneys for Property Owner
Robert Ong Hing and Alice Y. Hing
Family Trust

Geoffrey S. Kerckmar
KERCKMAR & FELTUS PLLC
7150 East Camelback Road, Suite 285
Scottsdale, Arizona 85251
gsk@kflawaz.com

Attorneys for Applicant
DCG McCormick Ranch, LLC

1

THE BACKGROUND OF THIS APPEAL

- Detroit Coney Grill is a locally owned neighborhood restaurant in Gateway Park, a shopping center at the south-east intersection of Hayden Road and Indian Bend Road.
- The shopping center is owned by the Robert Ong Hing and Alice Y. Hing Family Trust. Mr. Hing represents his family trust, and he joins in this appeal.
- This appeal is from a January 16, 2020 decision of the Development Review Board.
- That decision **approved** the overall design plan of Detroit Coney Grill.
- The decision also approved the number, shape, structural design, canopy material and placement of Detroit Coney Grill's exterior awnings and canopy.
- But the decision required Detroit Coney Grill to replace its existing "orange awnings and canopy with **teal or another color** more consistent with the design theme of the [shopping] center."

2

DETROIT CONEY GRILL



3

ABOUT DETROIT CONEY GRILL

- Detroit Coney Grill is locally owned by David Najor and Dr. Merrill Stromer, two local businessmen.
- The first Detroit Coney Grill opened in 2013 in Tempe.
- Now there are three locations: Tempe, Phoenix (2015) and Scottsdale (December 2019).
- The Scottsdale location is the company's biggest. The space was selected because of excellent visibility from the Hayden & Indian Bend intersection.
- Detroit Coney Grill employs 36 people, 25 of them at the Scottsdale location.
- The Scottsdale location served 300 people a day (before the shut-down).
- Detroit Coney Grill's culture emphasizes close community involvement, especially with First Responders due to its quick-serve philosophy, expansive hours and offerings, and its neighborhood atmosphere.

4

FOUR GROUNDS FOR THIS APPEAL

1. The DRB imposed on Gateway Park and Detroit Coney Grill an unclear and previously unstated standard, which is not imposed on other applicants.
2. The decision of the DRB lacks supporting evidence.
3. The decision of the DRB is based solely on an aesthetic concern, which is unrelated to public health, safety, or welfare.
4. Under Arizona law, allowing this decision to stand would result in an arbitrary and capricious policy, enforced by the City of Scottsdale.

5

1. UNCLEAR STANDARD AND BURDEN

- Page 12 of the City of Scottsdale's Design Guidelines:
"Where awnings are used they should be functional and provide maximum shade to the window area. Awnings should be of opaque architectural material and should not be internally lit. Metal awnings are preferred to fabric awnings for reasons of durability and strength of appearance. **Awnings of a single color are preferred.**"
- Detroit Coney Grill's awnings are a "single color": Desert Blossom orange.
- The Design Guidelines do not require a single color **per shopping center**.

6

ABOUT GATEWAY PARK'S SIGNAGE

- The Master Sign Program for Gateway Park was amended by the City on September 9, 2011.
- Andrew Chi approved the amendment on behalf of the City.
- In that amendment, the City agreed to allow Gateway Park "increased design flexibility," including building signage in the "tenant's choice of colors."
- The amended Master Sign Program also allows tenants "the use of **corporate colors and logo** as well."
- The DRB never considered the amended Master Sign Program in its deliberations.

7

2. THE LACK OF EVIDENCE

- The DRB failed to consider the many exceptions in Scottsdale to enforcing a "one accent-color per shopping center" rule on Gateway Park and Detroit Coney Grill.
- Here are some examples of what is permitted in the City's other shopping centers

8

CULVER'S
8688 E. SHEA BOULEVARD
SCOTTSDALE AZ 85260



9

WHATABURGER
9990 N. 90TH STREET
SCOTTSDALE AZ 85258



10

SCHLOTZSKY'S
10070 N. 90TH STREET
SCOTTSDALE AZ 85258



11

JIMMY JOHN'S
10460 N. 90TH STREET
SCOTTSDALE AZ 85258



12

MCDONALD'S
8001 E. INDIAN SCHOOL ROAD
SCOTTSDALE AZ 85257



13

MODERN MASSAGE & WELLNESS
13802 N. SCOTTSDALE ROAD
SCOTTSDALE AZ 85254



14

BOSTON MARKET
15784 N. FRANK LLOYD WRIGHT BOULEVARD
SCOTTSDALE AZ 85260



15

IN-N-OUT BURGER
7467 E. FRANK LLOYD WRIGHT BOULEVARD
SCOTTSDALE AZ 85260



16

3. THE DECISION WAS NOT BASED ON CONCERNS ABOUT PUBLIC HEALTH, SAFETY OR WELFARE

- This decision was about the DRB's aesthetic taste—not the public's health, safety or welfare.
- The DRB has not articulated any health, safety or welfare concern presented by Detroit Coney Grill's awnings.
- But Arizona law requires decisions of this type to be grounded in health, safety or welfare.
 - *Austin Shea (Az.) 7th St. and Van Buren, L.L.C. v. City of Phoenix*, 213 Ariz. 385, 142 P.3d 693 (App. 2006)
 - *Preston v. Hallman*, 2009 WL 8236846 (Az. Super. Ct., July 8, 2009)

17

THE IMPACT OF CORONAVIRUS

- This Council is very aware of the current situation with coronavirus impacting the City, state and country.
- On March 20, the State ordered all restaurants to close dine-in operations.
- As a direct result, Detroit Coney Grill has lost 90% of its business.
- It is not unique: every restaurant in Scottsdale has been similarly affected.
- The bottom line is that the City's restaurants are struggling, at the same time that the citizens depend on those restaurants for take-out.

18

THE IMPACT OF CORONAVIRUS

- Even when the shut-down ends, restaurants will be severely affected because their customers have been economically impacted.

RESTAURANT APOCALYPSE: More than 110,000 restaurants expect to close up forever in the coming weeks, with millions out of work and the industry's future uncertain



Employees stand in the empty dining room of a Sacramento, California, restaurant on March 11, 2020. (AP Photo/David J. Phillip)

- The restaurant industry lost an estimated \$20 billion in sales and more than three million jobs in the first 22 days of March, as the coronavirus outbreak swept the US.
- Roughly 10,000 restaurants have already closed for good across the country, with more than 110,000 expected to shutter in the next month, according to estimates by the National Restaurant Association.
- "Any pundit who thinks that they're going to use a recent history — and by recent history, I mean the last 100 years, including the Depression — as a template for what is going to go on here? They're kidding themselves," said restaurant industry investor and advisor Roger Lighter.

19

THE IMPACT OF CORONAVIRUS

Apr 23, 2020 | Economy & Business

High unemployment could be here for a while

1 | Devin Robinson



Unemployment: Economic Consequences

Unemployment is likely to hit levels not seen since the Great Depression and remain elevated, economists warn, weakening the U.S. economy and making a V-shaped recovery increasingly doubtful.

Why it matters: That will be true even if states allow businesses to reopen sooner than expected, as surveys show most Americans aren't ready to go back to their normal routines.

- The City's restaurants can be expected to struggle due to customers' financial struggles.
- That will have a trickle-down impact on tourism in Scottsdale too.

20

THE IMPACT OF CORONAVIRUS

- This is not the time for the City to work against its locally owned businesses.
- Detroit Coney Grill is a valuable corporate citizen of Scottsdale.
- It is known for community outreach with First Responders:



21

4. THE IMPACT OF THIS DECISION

- This decision, if not reversed, would be arbitrary and capricious.
 - The DRB ignored the issues of public health, safety, and welfare.
 - The DRB had an extremely limited factual record.
 - The DRB ignored the impact of the 2011 amendment to the shopping center's Master Sign Program allowing for "increased design flexibility" and "the use of corporate colors."
 - The DRB ignored the comments specific to awnings in the Design Guidelines that, "Awnings of a single color are preferred."

22

SUMMARY

- In effect, the DRB created an entirely **new** standard under the Design Guidelines that awning color **must** match a shopping center's primary or secondary color.
- This decision would affect all the chain restaurants we just saw.

Or,

- This decision has created a two-tiered design criteria: one for big companies from outside Arizona who can use their corporate colors, and another for the "little guy" from our own town, who cannot.

23

OUR REQUEST TO THIS COUNCIL

- We ask you to **modify** the January 16, 2020 decision by **removing** the requirement that Detroit Coney Grill must replace its existing "orange awnings and canopy with teal or another color more consistent with the design theme of the [shopping] center."

THANK YOU FOR YOUR TIME!

THANK YOU FOR YOUR WORK IN THIS CRISIS!

BE SAFE, AND BE WELL!

24

Smith, Erica

From: webmaster@scottsdaleaz.gov
Sent: Monday, May 04, 2020 9:57 PM
To: Smith, Erica
Subject: Comment on 05-05-2020 Agenda Item (response #31)

Comment on 05-05-2020 Agenda Item (response #31)

Survey Information

Site:	ScottsdaleAZ.gov
Page Title:	Comment on 05-05-2020 Agenda Item
URL:	https://www.scottsdaleaz.gov/council/meeting-information/agenda-comments/05-05-2020
Submission Time/Date:	5/4/2020 9:56:54 PM

Survey Response

AGENDA ITEM	
Which agenda item are you commenting on?	#14
COMMENT	
Comment:	<p>Good afternoon- I'm highly disappointed in the outcome of the Development Review Board's decision regarding the Coney Grill's awnings and canopy and hope the council makes the decision to reverse it. As a resident close to the establishment, the restaurant has been a positive influence to the shopping center who is struggling to retain tenants. The awnings are tastefully done and add an enhanced look to the older exterior. I listened to review board's meeting and do see the applicant's point about special treatment to large corporations. Prior to my move, I lived next to the Bashas and McDonald's on Indian School Road and Hayden Road. McDonald's awnings and colors do not match the shopping centers colors. In the review board meeting, Scottsdale staff couldn't answer the question of how that was approved for McDonald's. While I recognize that staff were not around at that time, it's the city's responsibility to maintain records of prior approvals to ensure fair and equitable treatment for all business owners. I would implore the City Council to look into these perceived differences of treatment. In addition, I hope the council understands that the</p>

		awnings are adding value regardless if they are teal or orange. I hope the council approves the changes. During these unprecedented times, do we want to add additional costs to a tenant that is benefitting the community? Thank you.
Comments are limited to 8,000 characters and may be cut and pasted from another source.		
NAME		
Name:	Ben Kauffman	
CONTACT INFORMATION		
Please provide the following information so someone may follow up with you if they have questions about your comment (optional).		
Email:		
Phone:		
Address:		
Example: 3939 N. Drinkwater Blvd, Scottsdale 85251		