

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 9 Resolution #11-177 Council District: 2

For Meeting of February 22, 2011  
(Adoption Date)

**A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) FOR OKAZURI FLOATING SUSHI LAS CRUCES, TO BE LOCATED AT 1715 EAST UNIVERSITY AVENUE, LAS CRUCES, NEW MEXICO.**

**PURPOSE(S) OF ACTION:** To approve or disapprove a waiver of the church/school distance restriction before a public hearing to consider the issuance of a Restaurant Liquor License for Okazuri Floating Sushi Las Cruces.

<b>Drafter and Staff Contact:</b> Monica Campbell <i>mc</i>		<b>Department:</b> Legal		<b>Phone:</b> 541-2128	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Department Director			Budget	<i>[Signature]</i>	541-2107
Other			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

### **BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

Pursuant to state law, no license for the sale of alcoholic beverages shall be issued to a premises that is within 300 feet of a church or school unless the governing body of the local option district grants a waiver of the distance restriction.

A waiver is required prior to the issuance of a Restaurant Liquor License because the property line of the proposed location of Okazuri Floating Sushi is located approximately 225 feet from the property line of University Presbyterian Church.

The property owners within 300 feet of 1715 East University Avenue were notified via U. S. Mail of the City Council meeting to approve or disapprove the waiver and issuance of the liquor license.

The approval or disapproval of the issuance of the Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) is presented as a separate agenda item and its approval is contingent upon approval of a waiver of the distance restriction. Granting a waiver of the church/school distance restriction will allow Okazuri Floating Sushi to proceed to the next step of the application process.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A" - Alcohol and Gaming's conditional preliminary approval with the application attached.
3. Attachments "1" and "2" – Notices of Intent to Issue Waiver.
4. Attachment "3" – Map showing the distance between the property line at 1715 East University Avenue and University Presbyterian Church.
5. Attachment "4" – List of property owners within 300 feet of 1715 East University Avenue and form of letter sent to the property owners.
6. Attachment "5" – Form of letter sent to the property owners.
7. Attachment "6" – Letter dated August 28, 2010 from University Presbyterian Church.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>  N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
	<input type="checkbox"/>	Proposed funding is from fund balance in the (# and Fund Name) Fund.	
<b>Does this action create any revenue?</b>	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: (Fund #) in the amount of \$ _____ for FY _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

(Continue on additional sheets as required)

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes". This will approve of and consent to the issuance of a waiver of the church/school distance restrictions. Approval will allow Okazuri Floating Sushi Las Cruces to proceed with the application process.
2. Vote "No". If Council does not approve the waiver, Alcohol & Gaming will be notified of the reason(s) the waiver was not approved and the Director of Alcohol & Gaming shall not approve the issuance of the Restaurant Liquor License.
3. Vote to "Amend". Any amendments must comply with state statute and/or the requirements of Alcohol and Gaming.
4. Vote to "Table". If the Council fails to either approve or disapprove the issuance of a waiver, the matter will be submitted to Alcohol and Gaming for further proceedings.

**REFERENCE INFORMATION**

None.

**RESOLUTION NO. 11- 177**

**A RESOLUTION APPROVING THE ISSUANCE OF A WAIVER OF THE CHURCH/SCHOOL DISTANCE RESTRICTION FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) FOR OKAZURI FLOATING SUSHI LAS CRUCES, TO BE LOCATED AT 1715 EAST UNIVERSITY AVENUE, LAS CRUCES, NEW MEXICO.**

The City Council is informed that:

**WHEREAS**, according to NMSA 1978, Section 60-6B-10, no license shall be issued for the sale of alcoholic beverages at a licensed premises that is within 300 feet of a church or school; however, in 1997, Section 60-6B-10 was amended to allow for the granting of a waiver of the distance restriction by the local option district governing body for the proposed licensed premises; and

**WHEREAS**, the approximate distance from the property line of 1715 East University Avenue to the property line at University Presbyterian Church is approximately 225 feet; and

**WHEREAS**, a waiver of the distance restriction is required prior to the approval of the transfer of the liquor license; and

**WHEREAS**, approving this Resolution will allow the applicant to proceed to the next step of the application process.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:**

**(I)**

**THAT** the issuance of a waiver of the church/school distance restriction to Okazuri Floating Sushi Las Cruces, to be located at 1715 East University Avenue, Las Cruces, New Mexico, is hereby approved.

**(II)**

**THAT** a copy of this Resolution shall be conveyed to the Director of the Alcohol and Gaming Division of the Regulation and Licensing Department, Post Office Box 25101, Santa Fe, New Mexico 87504-5101.

**(III)**

**THAT** City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution.

**DONE AND APPROVED** on this 22 day of February 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

{SEAL}

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Interim City Attorney



217

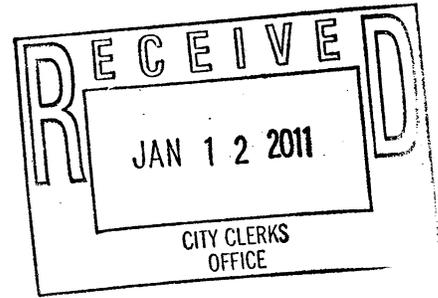
New Mexico Regulation and Licensing Department  
ALCOHOL AND GAMING DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505  
PO Box 25101, Santa Fe, NM 87504-5101  
(505) 476-4875 ▪ Fax (505) 476-4595 ▪ www.rld.state.nm.us/agd

January 10, 2011

Certified Mail No: 7006 3450 0000 3001 3143

City of Las Cruces  
Attn: Ester Martinez, Clerk  
PO Box 20000  
Las Cruces, NM 88004



Susana Martinez  
GOVERNOR

Gary J. Tomada  
DIRECTOR

Re: License / App. No. Application #A-654117  
Applicant Name: Okazuri Floating Sushi Las Cruces, Inc.  
Doing Business As: Okazuri Floating Sushi Las Cruces  
Proposed Location: 1715 E. University Avenue  
Las Cruces, NM 88001

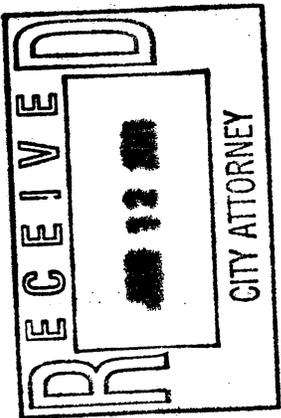
ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses. \*(Please review the revised instructions for approval or disapproval below.)

Greetings:

The Director of the Alcohol and Gaming Division has granted "Conditional" Preliminary Approval for the referenced application and is being forwarded to you in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

Within forty-five days after receipt of a notice of preliminary approval from the Alcohol and Gaming Division, the governing body shall hold a public hearing in the question of whether the department should approve the proposed issuance or transfer. Notice of the public hearing required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time and place of the hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the territorial limits of the governing body, which requires that two weeks of publication must be satisfied before a hearing can be conducted. The notice shall include: (A) Name and address of the Applicant/Licensee; (B) The action proposed to be taken by the Alcohol and Gaming Division; (C) The location of the licensed premises. The governing body is required to send notice by certified mail to the applicant of the date, time and place of the public hearing. The governing body may designate a hearing officer to conduct the hearing. A record shall be made of the hearing.

**THE APPLICANT IS SEEKING A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY).**



Alcohol and Gaming Division  
(505) 476-4875

Boards and Commissions Division  
(505) 476-4600

Construction Industries Division  
(505) 476-4700

Financial Institutions Division  
(505) 476-4885

Manufactured Housing Division  
(505) 476-4770

Securities Division  
(505) 476-4580

Administrative Services Division  
(505) 476-4800

The governing body may disapprove the issuance or transfer of the license if:

**The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. (The governing body may disapprove if the proposed location is within 300 feet of a church or school unless the license has been located at this location prior to 1981 or unless the applicant/licensee has obtained a waiver from the local option district governing body for the proposed licensed premises.)**

The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is not properly zoned. Because this office is in receipt of a zoning statement from the governing body, this is not a basis for disapproval.

The issuance would be detrimental to the public health, safety or morals of the residents of the local option district. Disapproval by the governing body on public health, safety or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or location and a copy of the record must be submitted to the Alcohol and Gaming Division.

\*Within thirty (30) days after the public hearing, the governing body shall notify the Alcohol and Gaming Division *in writing* as to whether the local governing body has approved or disapproved the issuance of transfer of the license *and* by signing the enclosed original Page 1 of the application. *The letter of approval/disapproval and the Page 1 must be returned together with the notice of publication(s).* If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the public hearing, the director may give final approval to the issuance or transfer of the license.

If the governing body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty (30) days setting forth the reasons for the disapproval. A copy of the minutes of the public hearing shall be submitted to the Alcohol and Gaming Division with the notice of disapproval (page 1 of the application page noting disapproval).

Sincerely,

Rose L. Garcia  
Hearing Officer  
Alcohol & Gaming Division  
505-476-4552

Enclosures: Original Page 1 of Liquor License Application (must be signed and returned)  
Copy of page 2 Premises, Location, Ownership & Description of Premises  
Copy of Surveyors Certificate  
Copy of Letter from the University Presbyterian Church indicating the church has no objection to the location of the proposed restaurant.



New Mexico Regulation and Licensing Department • Alcohol and Gaming Division  
P.O. Box 25101 • Santa Fe, New Mexico 87504-5101 • (505) 476-4875 • Fax (505) 476-4595 • www.rld.state.nm.us/agd

121236



### LIQUOR LICENSE APPLICATION

9-11-16-10  
Rose

NOV 09 2010

ALCOHOL & GAMING DIVISION

State Liquor License # 654117  
Application Number 654117  
Local option (AGD use) \_\_\_\_\_

Record Owner of Existing License \_\_\_\_\_  
Current D/B/A Name \_\_\_\_\_  
Current Premises Address \_\_\_\_\_

Application is for: Change of Stock \_\_\_\_\_ Change of Officers/Directors \_\_\_\_\_ Transfer Ownership of Existing License \_\_\_\_\_ Transfer Ownership and Location \_\_\_\_\_ Transfer Location \_\_\_\_\_ Other \_\_\_\_\_  
Issue New License  Type of License being applied for Restaurant Beer + Wine only

Applicant is: Individual \_\_\_\_\_ Corporation  Partnership (General or Limited) \_\_\_\_\_ Limited Liability Company \_\_\_\_\_

NAME OF APPLICANT (company or individual) Okazuri Floating Sushi Las Cruces Inc ADDRESS (including city, state, zip) 768 Paloma Dr. Chaparral NM 88081 TELEPHONE NUMBER 727-8520

D/B/A name to be used: Okazuri Floating Sushi Las Cruces Phone number for licensed premises: \_\_\_\_\_

Physical location where license is to be used: 1715 E University Ave. Las Cruces NM 88001 (Include street number / highway number / state road, city and county, state, and zip code)  
Mailing address: 805 W Resler Ste C El Paso TX 79912

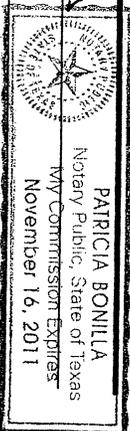
Are alcoholic beverages currently being dispensed at the proposed location? Yes \_\_\_\_\_ No  If yes, give license number and type \_\_\_\_\_

I, (print name) Luis Oscar Munoz as (title) President being first duly sworn upon oath  
deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that  
if any statements or representations herein are found to be false, the director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form in the presence of a Notary Public.

Signature of Applicant \_\_\_\_\_ Date 08-10-2010

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of October 2010 by Patricia Bonilla  
Notary Public My Commission Expires 11-16-2011



Local Governing Body of: \_\_\_\_\_ (City or County). Hearing held on \_\_\_\_\_ 20\_\_\_\_

Check one: Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ City/County Official \_\_\_\_\_ (Signature & Title)

For Alcohol and Gaming Division Use Only

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Director Approval \_\_\_\_\_ Date \_\_\_\_\_

220

UNIVERSITY  
PRESBYTERIAN  
CHURCH

WISCONSIN AVENUE

225.46'

27.1'

ADJACENT BLDG.

BLDG.

71.2'

ADJACENT BLDG.

1715  
E. UNIVERSITY AVENUE

PAN AM PLAZA  
SHOPING CENTER

788.2'

UNIVERSITY AVENUE

RECEIVED  
NOV 09 2010

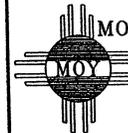
NEW MEXICO STATE  
UNIVERSITY DORMS  
BLDG.



PLAT  
SHOWING THE DISTANCES  
TO THE NEAREST CHURCH  
AND NM STATE UNIVERSITY

I, HEREBY CERTIFY THAT THE DISTANCES  
ARE TRUE AND CORRECT

*Jorge Moy*  
JORGE MOY N.M.P.S. 5939



MOY SURVEYING INC.  
414 N. DOWNTOWN MALL  
LAS CRUCES, NEW MEXICO  
88001

PHONE: (505) 525-9683  
FAX: (505) 524-3238

JOB NO. 10-0829  
DRAWN BY JUAN GARCIA  
FIELD BY KENNY/VICTOR  
DATE 11/04/10 SCALE: N/A



**AD FORM**  
**LAS CRUCES SUN NEWS**  
**LEGAL CLASSIFIED**

City contact: Monica Campbell; 541-2014 / 541-2128

Account No. 26484 (Bill to City Clerk, PO Box 20000, Las Cruces, NM 88004)

Dates to Publish: January 30 and February 6, 2011

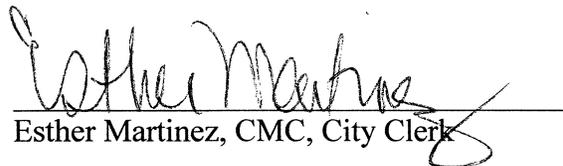
Copy to publish:

**NOTICE OF INTENT TO ISSUE WAIVER**

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss the issuance of a waiver of the church/school distance restriction for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to Okazuri Floating Sushi, Las Cruces, to be located at 1715 East University Avenue, Las Cruces, New Mexico.

The Public Hearing will be held in conjunction with the regular meeting of the Las Cruces City Council to be held on Tuesday, February 22, 2011, at 1:00 p.m. in the City Council Chambers, 700 North Main Street, City Hall. If passed, the State of New Mexico Regulation & Licensing Department may approve the transfer.

Witness my hand and seal of the City of Las Cruces on this the 19<sup>th</sup> day of January 2011.

  
\_\_\_\_\_  
Esther Martinez, CMC, City Clerk



**AD FORM**  
**LAS CRUCES BULLETIN**  
**LEGAL CLASSIFIED**

City contact: Monica Campbell; 541-2014 / 541-2128

Proof of publication/bill to: City Clerk, PO Box 20000, Las Cruces, NM 88004

Dates to Publish: January 28 and February 4, 2011

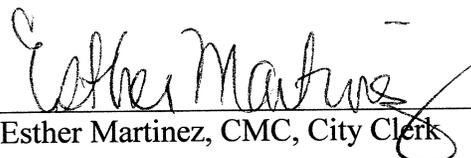
Copy to publish:

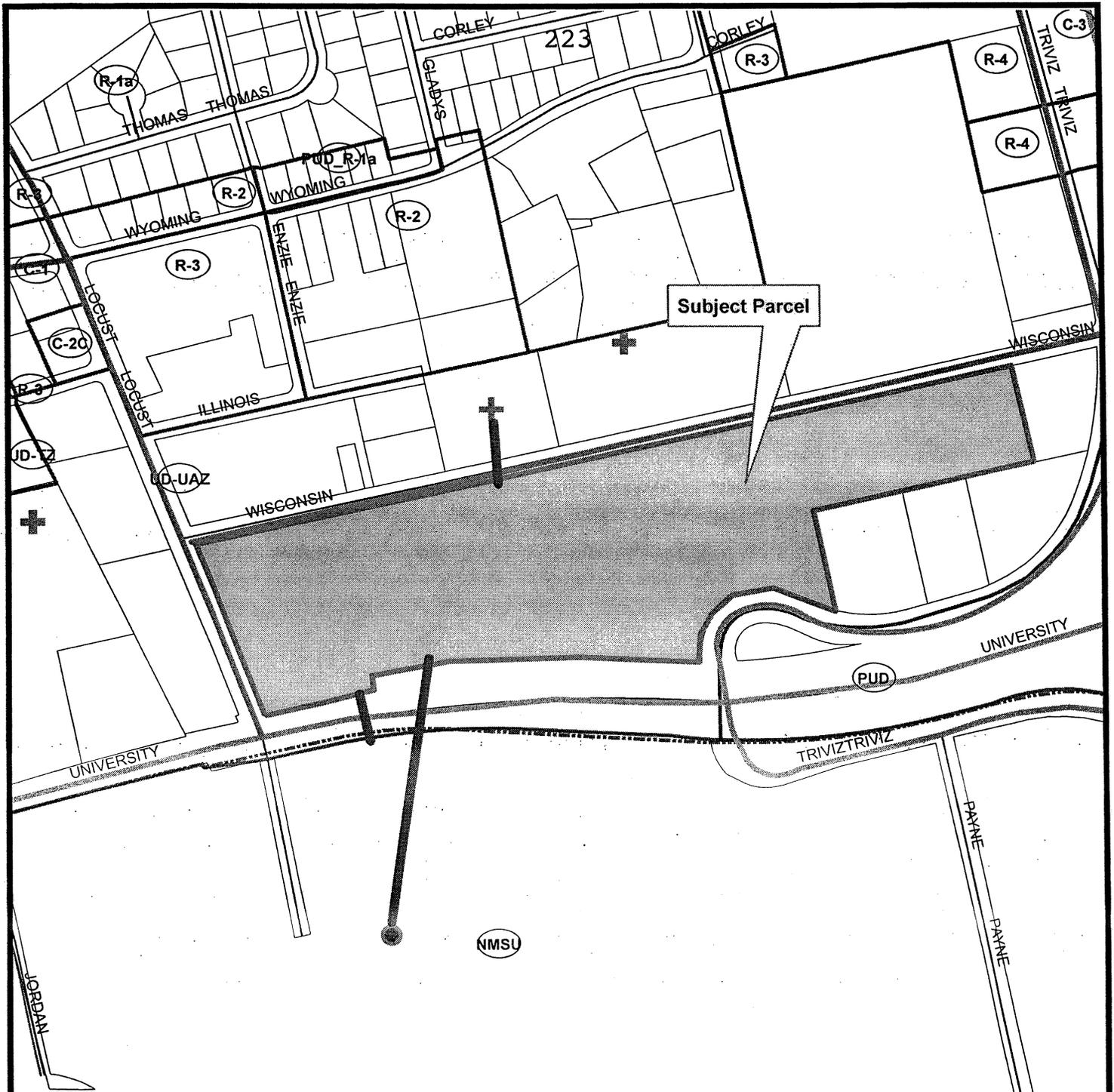
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Witness my hand and seal of the City of Las Cruces on this the 17<sup>th</sup> day of January 2011.

  
\_\_\_\_\_  
Esther Martinez, CMC, City Clerk



# VICINITY MAP

**1715 E. UNIVERSITY AVENUE**

**PARCEL: 02-15266**

**ZONING: UD-UAZ**

**DISTANCE TO NEAREST CHURCH: ~220 FEET**

**DISTANCE TO NEAREST SCHOOL PROPERTY: ~175 FEET**

**DISTANCE TO NEAREST SCHOOL BUILDING: ~785 FEET**

-  ZONING
-  CHURCH
-  SCHOOL



*This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 526-3043.*



BHG LAS CRUCES TRIVIZ LP  
C/O CIMCO  
250 FISCHER AVE  
COSTA MESA, CA. 92626

224  
CAT I LLC & CAT II LLC  
1804 WYOMING OFFICE  
LAS CRUCES, NM. 88001

GRECO TOWN RENTALS LLC  
PO BOX 6190  
LAS CRUCES, NM. 88066-6190

JLB ENTERPRISES LLC  
1212 CALLE DE EL PASO  
LAS CRUCES, NM. 88005

NEW MEXICO STATE UNIVERSITY  
DIRECTOR OF REAL ESTATE - MSC  
ORE  
PO BOX 30001  
LAS CRUCES, NM. 880038001

PEERLESS LAND & WATER CO INC  
9871 BELFAIR ST  
BELLFLOWER, CA. 90706

SB PROPERTIES LLC  
PO BOX 2427  
LAS CRUCES, NM. 88004-2427

STONER & MATHERS INVESTMENTS  
ATTN: MATHERS REALTY  
2223 E MISSOURI STE 1  
LAS CRUCES, NM. 88001

TERRITORIAL VILLAGE CONDO ASSOC  
2460 S LOCUST ST  
LAS CRUCES, NM. 88001-5797

UNIVERSITY CHURCH OF CHRIST  
1555 UNIVERSITY  
LAS CRUCES, NM. 88001

UNIVERSITY PRESBYTERIAN CHURCH  
OF LAS CRUCES  
2010 E WISCONSIN AVE  
LAS CRUCES, NM. 88001

W2005/FARGO HOTELS (POOL C)  
REALTY  
LIMITED PARTNERSHIP  
1125 17TH ST STE 1575  
DENVER, CO. 80202

WESLEY FOUNDATION AT NMSU/DACC  
INC  
PO BOX 4184  
LAS CRUCES, NM. 88003

OKAZURI FLOATING SUSHI

Attachment 4



February 7, 2011

Dear Property Owner:

Okazuri Floating Sushi Las Cruces ("the applicant") to be located at 1715 East University Avenue, Las Cruces, New Mexico, has applied to the Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico for the issuance of a Restaurant Liquor License (Beer & Wine On-Premise Consumption Only). As part of the approval process, the Liquor Control Act ("LCA") requires the applicant to obtain approval for the issuance of the Restaurant Liquor License from the governing body of the City of Las Cruces.

A public hearing to approve or disapprove the Restaurant Liquor License is scheduled before the City Council during its meeting on Tuesday, February 22, 2011 which begins at 1:00 p.m. The meeting will be held in the City Council Chambers located in City Hall, 700 North Main Street, Las Cruces, New Mexico.

The proposed location of Okazuri Floating Sushi is approximately 225 feet from University Presbyterian Church. The LCA prohibits the sale and consumption of alcoholic beverages within 300 feet of a church or school unless a waiver has been granted to the applicant. A waiver of the church/school distance restriction will be considered at the February 22, 2011 City Council meeting before the public hearing about the Restaurant Liquor License.

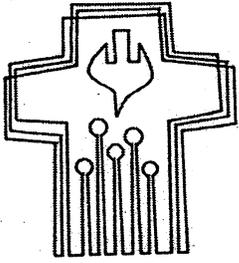
If you wish to share your views concerning the impact of the Restaurant Liquor License at 1715 East University Avenue, please attend the City Council meeting on February 22, 2011, or you may submit your views in writing to the City Attorney's Office, 700 North Main Street, Suite 3200, PO Box 20000, Las Cruces, New Mexico 88004. Letters must be received by 5:00 p.m. on Thursday, February 17, 2011.

If you have any questions or need additional information, please contact Monica Campbell at 575-541-2128.

Sincerely,

  
Harry S. (Pete) Connelly  
Interim City Attorney

Attachment 5



# University Presbyterian Church

2010 E. Wisconsin Ave.  
Las Cruces, NM 88001

Phone: 575-522-0828  
Fax: 575-522-0175  
www.upres.com

August 18, 2010

Okazuri  
865 N. Resler, Suite C  
El Paso, TX 79912

Dear Luis,

Thank you for your contact concerning the coming new restaurant. We would like you to know that we hold no objection to its opening, and hope that you will feel free to visit us on Sunday mornings at 10:00 a.m.

Respectfully,

John Pickett  
Sr. Pastor

NOV 09 2010

Attachment 6

Senior Pastor John C. Pickett  
jcickett@upres.com

Associate Pastor Patrick Tebbano  
pntebbano@hotmail.com

Diana Vicky