

Council Action and Executive Summary

Item # 19 Ordinance/Resolution# 2607 Council District: 6

For Meeting of March 7, 2011
 (Adoption Date)

TITLE: AN ORDINANCE APPROVING A ZONE CHANGE FROM O-2C (OFFICE, PROFESSIONAL-LIMITED RETAIL SERVICE-CONDITIONAL) TO C-2C (COMMERCIAL MEDIUM INTENSITY-CONDITIONAL) FOR 0.60 ± ACRES OF LAND LOCATED AT 775 S. TELSHOR BOULEVARD. THE PROPOSED ZONE CHANGE WOULD ALLOW THE USE OF A RESTAURANT/CAFÉ ON THE SUBJECT PROPERTY. SUBMITTED BY JAKE REDFORD ON BEHALF OF MACTIMSKI, LLC, PROPERTY OWNER (Z2822).

PURPOSE(S) OF ACTION: A zone change request from O-2C to C-2C to facilitate the use of a restaurant.

Name of Drafter: Adam Ochoa <i>AO for AD</i>		Department: Community Development		Phone: 528-3204	
Department	Signature	Phone	Department	Signature	Phone
Department Director	<i>[Signature]</i>	528-3066	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:

The property owner, Mactimski, LLC, is requesting a zone change from O-2C (Office, Professional-Limited Retail Service-Conditional) to C-2C (Commercial Medium Intensity-Conditional) for property 0.60 ± acres in size and located at 775 S. Telshor Boulevard (MPO classified Principal Arterial roadway). The applicant is requesting a zone change to C-2 (Commercial Medium Intensity) to allow for the development of a national restaurant chain. A restaurant use is not an allowed use in the O-2 zoning district.

The subject property is zoned O-2C and is undeveloped. On October 20, 2003, via Ordinance No. 2053, the subject property was conditionally zoned to O-2. The condition of the zone change was to restrict the maximum building height to 35-feet. This condition was established to all parcels immediately adjacent to the single-family residential area, which is located east of the subject property.

The development of a restaurant on the property will be required to adhere to all C-2 development standards. A restaurant is required to provide 1 parking space for every 2-5 seats in the restaurant as well as provide 1 bicycle parking space per every 1,000 square feet of gross floor area. In addition, 15 percent of the total parking area shall be landscaped.

Development on the site will also require a 10-foot opaque bufferyard or a 15-foot semi-opaque bufferyard along the eastern property line of the subject property as the property is adjacent to a R-3 residential zoning district. These development standards will be verified during the plan review process for a commercial building permit.

The proposed zone change is supported by several Land Use Elements within the 1999 Comprehensive Plan as noted in Exhibit "B" of this CAES packet. The proposed zone change is located adjacent to a Principal Arterial roadway where medium intensity commercial uses are encouraged. The proposed zone change is located in an area of comparable zoning, uses, and intensity.

On January 25, 2011, the Planning and Zoning Commission (P&Z) recommended conditional approval of the zone change request by a vote of 7-0-0. The conditions are stipulated as follows: (1) The maximum building height allowed is 35-feet; and (2) All new utilities shall be placed underground. Staff recommended that building height be limited to 35-feet as all adjacent commercial development was limited to the same height restriction. The maximum height allowed in the C-2 zoning district is 45-feet.

There was considerable public discussion at the meeting from property owners in the adjacent single-family residential neighborhood. Discussion at the meeting focused on the possibility of increased traffic, the possible odors being disseminated from the restaurant that may attract pests, and the restaurant may devalue surrounding properties.

SUPPORT INFORMATION:

1. Ordinance
2. Exhibit "A"- Site Plan
3. Exhibit "B"- Findings and Comprehensive Plan Analysis
4. Attachment "A"- Staff Report to the Planning and Zoning Commission for Case Z2822
5. Attachment "B"- Draft minutes from the January 25, 2011 Planning and Zoning Commission
6. Attachment "C" - Public Comments
7. Attachment "D"- Vicinity Map

SOURCE OF FUNDING:

N/A	Is this action already budgeted?	
	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 _____ Fund.	
N/A	Does this action create any revenue?	
	Yes	<input type="checkbox"/> Funds will be deposited into this fund: _____
	No	<input type="checkbox"/> There is no new revenue generated by this action.

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this affirms the Planning and Zoning Commission recommendation for conditional approval. The subject property located 775 S. Telshor Boulevard, with a combined area of 0.60 ± acres, will be rezoned from O-2C (Office, Professional-Limited Service-Conditional) to C-2C (Commercial Medium Intensity-Conditional). The zone change will allow the use of a restaurant on the subject property.
2. Vote "No"; this reverses the recommendation made by the Planning and Zoning Commission. The current zoning designation of O-2C (Office, Professional-Limited Service-Conditional) will remain on the subject property located at 775 S. Telshor Boulevard. The proposed restaurant will not be allowed to develop on the subject property.
3. Vote to "Amend" and vote "Yes"; this may allow Council to modify the Ordinance by adding conditions as determined appropriate.
4. Vote to "Table"; Council may table/postpone the Ordinance and direct staff accordingly.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Ordinance No. 2053

COUNCIL BILL NO. 11-027
ORDINANCE NO. 2607

AN ORDINANCE APPROVING A ZONE CHANGE FROM O-2C (OFFICE, PROFESSIONAL-LIMITED RETAIL SERVICE-CONDITIONAL) TO C-2C (COMMERCIAL MEDIUM INTENSITY-CONDITIONAL) FOR 0.60 ± ACRES OF LAND LOCATED AT 775 S. TELSHOR BOULEVARD. THE PROPOSED ZONE CHANGE WOULD ALLOW THE USE OF A RESTAURANT/CAFÉ ON THE SUBJECT PROPERTY. SUBMITTED BY JAKE REDFORD ON BEHALF OF MACTIMSKI, LLC, PROPERTY OWNER (Z2822).

The City Council is informed that:

WHEREAS, Mactimski, LLC, the property owner, has submitted a request for a zone change from O-2C (Office, Professional-Limited Retail Service-Conditional) to C-2C (Commercial Medium Intensity-Conditional) for property located at 775 S. Telshor Boulevard; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on January 25, 2011, recommended that said zone change request be conditionally approved by a vote of 7-0-0.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the land more particularly described in Exhibit "A," attached hereto and made part of this Ordinance, is hereby zoned C-2C (Commercial Medium Intensity-Conditional) for property located at 775 S. Telshor Boulevard.

(II)

THAT the conditions be stipulated as follows:

- The maximum building height allowed in this zoning designation is 35 feet.
- All new utilities shall be placed underground.

(III)

THAT the zoning is based on the findings contained in Exhibit "B" (Findings and Comprehensive Plan Analysis), attached hereto and made part of this Ordinance.

(IV)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(V)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____ 2011.

(SEAL)

APPROVED:

Mayor

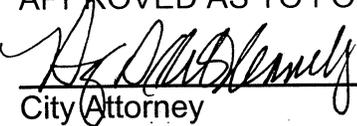
ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

" 82 "

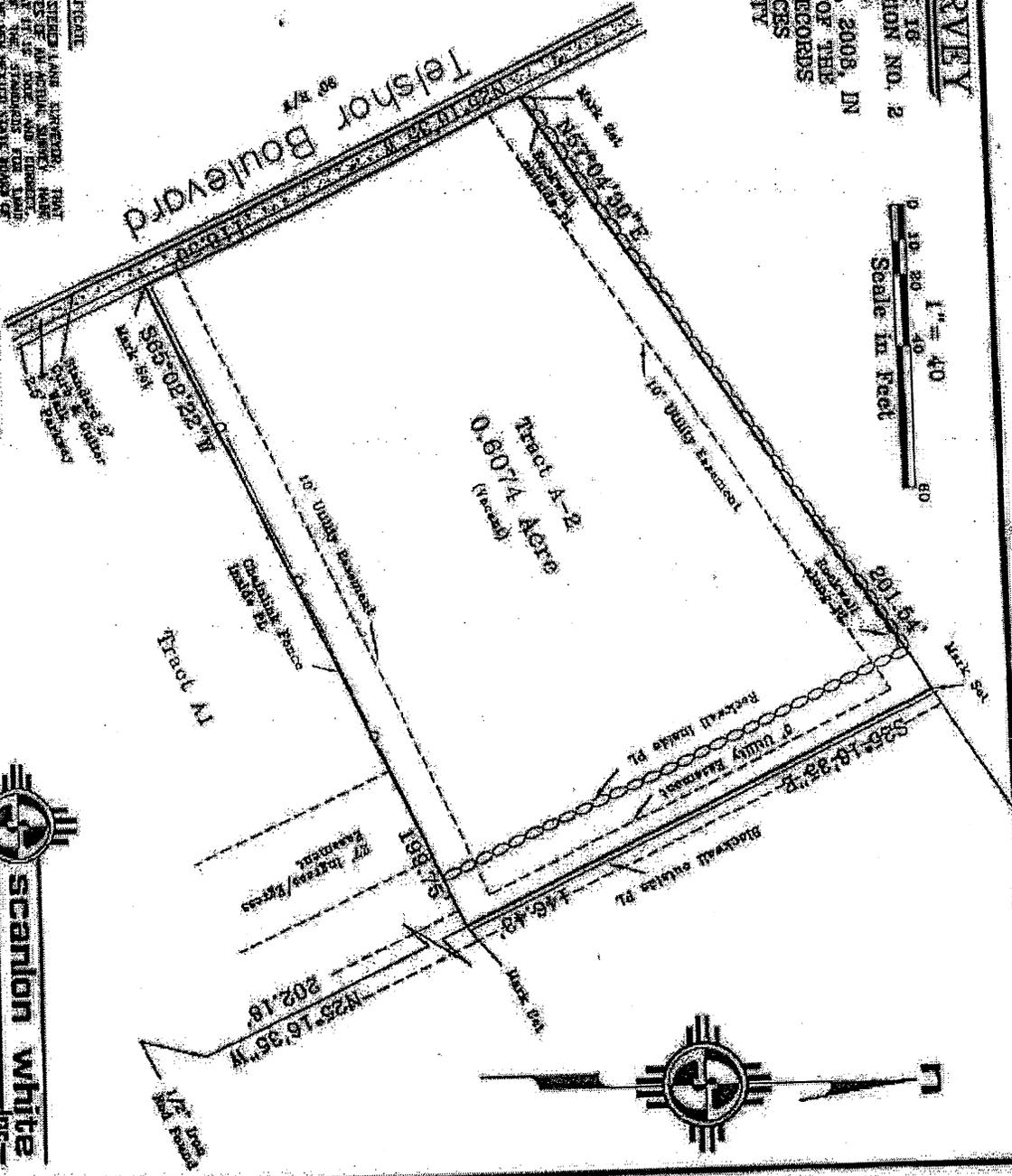
PLAN OF SURVEY

TRACT A-2, BLOCK 16
 MAJESTIC HILLS SUBDIVISION NO. 2
 REPLAT NO. 36
 PLAN FILED JANUARY 26, 2008, IN
 BOOK 22, PAGE 403, OF THE
 DONNA ANA COUNTY RECORDS
 CITY OF LAS CRUCES
 DONNA ANA COUNTY
 NEW MEXICO



TERENCE G. SCALON, REGISTERED PROFESSIONAL ENGINEER, LICENSE NO. 9433, STATE OF NEW MEXICO, HAS PREPARED THIS PLAN OF SURVEY FROM THE DATA FURNISHED TO HIM BY THE SURVEYOR, AND HE HAS NOT CONDUCTED A FIELD SURVEY THEREON. THE SURVEYOR HAS ASSURED BY THE NEW MEXICO STATE BOARD OF PROFESSIONAL ENGINEERING AND LAND SURVEYING THAT THE DATA IS CORRECT AND ACCURATE.

APRIL 7, 2008
 DATE OF SURVEY
 TERENCE G. SCALON, REGISTERED PROFESSIONAL ENGINEER, LICENSE NO. 9433, STATE OF NEW MEXICO
 245 N. WATER STREET, LAS CRUCES, NM 87801



OWNER	HEAVY
NAME	HEAVY
ADDRESS	11 ALBERTO
PHONE	505-64-4129
DATE	APRIL 7, 2008

ENGINEER TO BE BY AN "C" DESIGNATED WORK AS SHOWN ON THE PLAN. INSURANCE RATE MAP COUNTY OF DONNA ANA COUNTY, 2001-2003.1. 1991. 2001-2003.1. 1991.

Scalon White Inc.
 1570 Piedmont, Suite C
 Las Cruces, New Mexico 88011
 Phone: (505) 525-4119
 Fax: (505) 525-1288

EXHIBIT "B"**FINDINGS AND COMPREHENSIVE PLAN ANALYSIS**

1. The subject property is located at 775 S. Telshor Boulevard, is currently zoned O-2C (Office, Professional-Limited Retail Service-Conditional) and encompasses 0.60 ± acres.
2. The subject property is located on Telshor Boulevard, a Principal Arterial roadway as classified by the Metropolitan Planning Organization (MPO).
3. A condition currently exists on the subject property limiting the maximum building height to 35 feet.
4. The purpose of the zone change is to allow the use of a restaurant/café on the subject property.
5. The rezoning request is consistent with the Goals, Objectives, and Policies of the City of Las Cruces Comprehensive Plan:

Land Use Element, Goal 1 Objective 5 (Land Uses) Policies 1.5.2

Medium intensity commercial uses shall be defined as those commercial uses which provide retail and service activities within a neighborhood area. Medium intensity commercial uses shall generally serve a population of 5,000 to 30,000 people and shall be established according to the following criteria:

- a. Generally 1,500 but not to exceed 5,000 gross square feet shall be permitted for a medium intensity commercial use or center. A business may apply for a special use when said business is greater than 5,000 gross square feet, but may not exceed 6,000 square feet.
- b. Medium intensity commercial use and centers shall be located on minor collector streets, or at the intersection of streets equal to or greater than collector capacity. Mid-block locations shall be considered on a case-by-case basis: criteria shall include street capacity, distance from an intersection where appropriate, accessibility and shared vehicular access with other uses where appropriate, and consideration of the level of traffic and environmental impacts.
- c. An unlimited number of low or medium intensity commercial uses may be located adjacent to one another as long as the combined total of the uses does not exceed 5,000 gross square feet.
- d. With the exception of low intensity commercial businesses, medium intensity commercial uses shall not be located within one-half (½) mile of other commercial areas.
- e. The City shall pursue multi-modal access standards (auto, bicycle, and pedestrian transit) for medium intensity commercial use and centers.
- f. Medium intensity commercial development shall address the following urban design criteria: compatibility to adjacent development in terms of architectural design, height/density, a provision of landscaping for site screening, parking and loading areas. Architectural and landscaping design standards for medium intensity commercial use shall be established in the Comprehensive Plan Urban Design Element.
- g. Adequate space for functional circulation shall be provided for parking and loading areas.
- h. The City shall encourage the development of medium intensity commercial centers to allow for maximum shopping convenience with minimal traffic and encroachment related conflicts to adjacent uses.
- i. Low intensity commercial uses are permitted in medium intensity commercial areas.

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Planning & Zoning
Commission
Staff Report

Date: January 18, 2011

CASE # Z2822

PROJECT NAME: 775 S Telshor Boulevard (Zone Change)

APPLICANT: Jake Redford

PROPERTY OWNER: Mactimski, LLC

REQUEST: To rezone from O-2C (Office, Professional-Limited Retail Service-Conditional) to C-2C (Commercial Medium Intensity-Conditional)

PROPOSED USE: Restaurant/Café

SIZE: 0.60 +/- acres

CURRENT ZONING: O-2C (Office, Professional-Limited Retail Service-Conditional) with the condition that the maximum building height would be limited to 35 feet

LOCATION: The east side of Telshor Boulevard, 655 +/- feet south of its intersection with Foothills Road; a.k.a. 775 S. Telshor Boulevard; Parcel ID# 02-40360

COUNCIL DISTRICT: 6

PLANNING COMMISSION DATE: January 25, 2011

PREPARED BY: Adam Ochoa, Planner

STAFF RECOMMENDATION: Approval with Conditions

PROPERTY INFORMATION

Address/Location: The east side of Telshor Boulevard, 655 +/- feet south of its intersection with Foothills Road; a.k.a. 775 S. Telshor Boulevard; Parcel ID# 02-40360

Acreage: 0.60 +/-

Current Zoning: O-2C (Office, Professional-Limited Retail Service-Conditional)

Current Land Use: Undeveloped

Proposed Zoning: C-2C (Commercial Medium Intensity-Conditional)

Proposed Land Use: Restaurant/ Cafe

Is the subject property located within an overlay district? Yes No
If yes which overlay district?

PHASING

Is phasing proposed? Yes No

If yes, how many phases?

Timeframe for implementation:

ADJACENT ZONING AND LAND USE INFORMATION

Table 1: Land Uses

Location		Existing Use	Zoning District	Zoning Designation
Subject Property		Undeveloped	O-2C	Office, Professional-Limited Retail Service-Conditional
Surrounding Properties	North	Office/Business Complex	O-2C	Office, Professional-Limited Retail Service-Conditional
	South	Bank	O-2C	Office, Professional-Limited Retail Service-Conditional
	East	Single-Family Dwellings	R-3	Multi-Dwelling Medium Density
	West	Shopping Mall	C-3C	Commercial High Intensity-Conditional

HISTORY

Previous applications? Yes No

If yes, please explain: A zone change from O-1 (Office, Neighborhood-Limited Retail Service) to O-2C (Office, Professional-Limited Retail Service-Conditional) with the condition that the maximum building height would be limited to 35 feet.

Previous ordinance numbers? 2053

Previous uses if applicable: Undeveloped

COMPREHENSIVE PLAN

Elements & Policies

Land Use Element

1. Goal 1, Objective 5, Policies 1.5.2.

Analysis: The subject property is currently zoned O-2C and is surrounded by a number of office and commercial uses. The parcel is located along a principal arterial roadway which is capable of supporting high intensity uses such as a restaurant. The proposed zoning and use is similar to surrounding uses and services in the area and will serve as an additional benefit to the area.

REVIEWING DEPARTMENT COMMENTS

Fire Prevention:

	CONCERN		
	low	med	high
Accessibility Issues			
Building Accessibility	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Secondary Site/Lot Accessibility	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fireflow/Hydrant Accessibility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Type of building occupancy: Unknown. Will be verified during the building permit process

Nearest Fire Station

Distance: 0.78 miles

Address: 2802 Missouri Avenue

Adequate Capacity to Accommodate Proposal? Yes No

Additional Comments: The proposed building shall comply with all International Fire Code (IFC) requirements

Police Department:

Additional Comments: Did not review at this time

Engineering Services:

Flood Zone Designation: Zone X (2) (Outside 500 Year Flood Zone)

Development Improvements: Future development on site must comply with all City of Las Cruces Design Standards

Drainage calculation needed	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Drainage study needed	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Other drainage improvements needed	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Sidewalk extension needed	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Curb & gutter extension needed	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Paving extension needed	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>

Additional Comments: Any new improvements, at either the time of subdivision or building permit, will require conformance with the City of Las Cruces Flood Zone Ordinance 1933 and City of Las Cruces Design Standards. On-lot ponding required per building permit application or upon future subdivision activity based on City of Las Cruces Design Standards.

MPO

Road classifications: Telshor Boulevard classified as a Principal Arterial

Additional Comments: Recommendation of approval

Public Transit

Where is the nearest bus stop? 100 +/- feet south of the subject property

Is the developer proposing the construction of new bus stops/shelters? Yes No N/A

Traffic Engineering:

Is development adjacent to a State Highway System? Yes No N/A

If yes, please specify the reviewing comments by the New Mexico Department of Transportation:

Are road improvements necessary? Yes No N/A

If yes, please explain:

Was a TIA required? Yes No N/A

If yes, summarize the findings:

Did City of Las Cruces Traffic Engineer Require a TIA? No

The proposed use *will* or *will not* adversely affect the surrounding road network.

Site Accessibility

Adequate driving aisle	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Adequate curb cut	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Intersection sight problems	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Off-street parking problems	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>

On-Street Parking Impacts

None Low Medium High N/A
 Explain: On-street parking is prohibited

Future Intersection Improvements

Yes If yes what intersection?
 No If no, when (timeframe)?

Additional Comments: Recommendation of approval

Water Availability and Capacity:

Source of water: CLC Other:
 CLC water system capable of handling increased usage? Yes No N/A
 If no, is additional service available? Yes No N/A

Additional Comments: The responsible property owner/applicant/subdivider is responsible for the extension of any and all utilities to the property at either the time of subdivision or building permit process; and said extensions must conform to all City of Las Cruces requirements.

Wastewater Availability and CapacityWastewater service type: CLC On-lot septic CLC wastewater service capable of handling increased usage? Yes No N/A If no, is additional service available? Yes No Potential problems with gravity wastewater system or system connection? Yes No N/A

If yes, can potential problems be handled through development or building permit process?

Yes No

If development is being served by on-lot septic, please specify review comments by the New Mexico Environmental Department:

Additional Comments: The responsible property owner/applicant/subdivider is responsible for the extension of any and all utilities to the property at either the time of subdivision or building permit process; and said extensions must conform to all City of Las Cruces requirements.

Gas Utilities

Gas Availability

Natural gas service available? Yes No N/A If yes, is the service capable of handling the increased load? Yes No Need BTUH requirements? Yes No N/A Public Schools

Nearest Schools:

- | | |
|--|--------------------------|
| 1. Elementary: Hillrise Elementary | Distance: 0.53 +/- miles |
| Enrollment: 539 | |
| 2. Middle School: Lynn Middle School | Distance: 0.70 +/- miles |
| Enrollment: 719 | |
| 3. High School: Las Cruces High School | Distance: 2.21 +/- miles |
| Enrollment: 2326 | |

Adequate capacity to accommodate proposal? Yes No N/A

Explain: No residential use proposed

DESIGN STANDARDS ANALYSISParkingIs there existing parking on the site? Yes No N/A

If yes, how many parking spaces presently exist? How many are accessible?

If no, will parking be required for the proposed use? Yes No N/A

If yes, how many parking spaces will be required? 1 parking space per every 2-5 seats in the restaurant/café. How many accessible? Will be determined during building plan review process

Is there existing bicycle parking on the site? Yes No N/A

If yes, describe:

If no, how many bicycle parking spaces will be required? 1 bicycle parking space per every 1000 square feet of gross floor area

Comments: Currently the exact number of auto and bicycle parking is unknown. All parking requirements will be verified during the building permit process.

Landscaping and Buffering

Is there existing landscaping on the subject property? Yes No N/A

If yes, is the landscaping adequate to serve the proposed use? Yes No

If no, what landscaping will be required? ? A minimum area equal to 15% of the total parking area shall be landscaped.

Are there existing buffers/screening on the subject property? Yes No N/A

If yes, are the buffers adequate to serve the proposed use? Yes No

If no, what additional buffering/screening will be required? A minimum 10-foot opaque bufferyard will be required along the eastern property line of the subject property adjacent to the R-3 zoned properties. All other property lines will be required to follow regular setback requirements for the C-2 zoning district.

Open Space, Parks, Recreation and Trails

Are there presently any existing open space areas, parks or trails on the subject property? Yes No N/A

Explain:

Are open space areas, parks or trails a requirement of the proposed use? Yes No N/A

Are open space areas, parks or trails being proposed? Yes No N/A

Explain: Open space, parks, recreation or trails required at this time

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
EBID Facilities	No	
Medians/ Parkways Landscaping	Yes	The street median adjacent to the subject property shall be landscaped.

Table 3: Project Chronology

Date	Action
November 22, 2010	Application submitted to Development Services.
November 30, 2010	Case sent out for review to all reviewing departments
December 22, 2010	Case reviewed and discussed by staff
January 9, 2011	Newspaper advertisement
January 14, 2011	Public notice letters mailed
January 14, 2011	Sign posted
January 25, 2011	Planning and Zoning Commission public hearing

SUMMARY AND CONCLUSIONS

The proposed zone change is supported by the Development Services Staff and all reviewing departments in the City of Las Cruces. The proposed zone change meets the character and integrity of the existing surrounding area and is supported by the 1999 Comprehensive Plan. The existing zoning designation of O-2C (Office, Professional-Limited Retail Service-Conditional) has a condition limiting the maximum building height on the subject property to 35 feet. The height restriction was required for the subject property and other surrounding properties under Ordinance 2053. Staff is recommending carrying through this condition with the new proposed zone change to be consistent with the height restrictions of the surrounding properties. The proposed zone change is required to allow the proposed use of a restaurant/café on the subject property.

FINDINGS

1. The subject property is located at 775 S. Telshor Boulevard, is currently zoned O-2C (Office, Professional-Limited Retail Service-Conditional) and encompasses 0.60 +/- acres.
2. The subject property is located on Telshor Boulevard, a Principal Arterial roadway as classified by the Metropolitan Planning Organization (MPO).
3. A condition currently exists on the subject property limiting the maximum building height to 35 feet.
4. The purpose of the zone change is to allow the use of a restaurant/café on the subject property.
5. The rezoning request is consistent with the Goals, Objectives, and Policies of the City of Las Cruces Comprehensive Plan.

STAFF RECOMMENDATION

Staff has reviewed the proposed zone change and based on the preceding findings recommends approval with the following conditions:

1. The maximum building height allowed in this zoning designation is 35 feet.
2. All new utilities shall be placed underground.

DRC RECOMMENDATION

N/A

ATTACHMENTS

1. Development Statement
2. Existing Site Plan
3. Proposed Improvement Plan
4. Letter of Support
5. Comprehensive Plan Goal 1, Objective 5, Policies 1.5.2.
6. Previous Ordinance: Number 2053
7. Vicinity Map

DEVELOPMENT STATEMENT for Zoning Applications
(Use for Zone Changes, SUP's and PUD's)
 Please type or print legibly

Please note: The following information is provided by the applicant for information purposes only. The applicant is not bound to the details contained in the development statement, nor is the City responsible for requiring the applicant to abide by the statement. The Planning and Zoning Commission or City Council may condition approval of the proposal at a public hearing where the public will be provided an opportunity to comment.

Applicant Information

Name of Applicant: Jake Redfean
 Contact Person: Jake Redfean
 Contact Phone Number: (575) 635-5895
 Contact e-mail Address: jake@1stvalley.com
 Web site address (if applicable): _____

Proposal Information

Location of Subject Property 775 S. Telshor
 (In addition to description, attach map. Map must be at least 8 1/2" x 11" in size and clearly show the relation of the subject property to the surrounding area)

Current Zoning of Property: C-2

Proposed Zoning: C-2

Acreage of Subject Property: ~~.4~~ .07 acres

Detailed description of intended use of property. (Use separate sheet if necessary):

EINSTEIN Bagel (=2500 SF) There will
be another 2000-2500 SF added for
other business possibilities

Proposed square footage and height of structures to be built (if applicable):

Initial Building ≈ 2500 SF

Anticipated hours of operation (if proposal involves non-residential uses):

5 Am - 5 Pm

Anticipated traffic generation _____ trips per day (if known).

Anticipated development schedule: Work will commence on or about February, 2011
and will take approximately 3-4 months to complete.

How will storm water runoff be addressed (on-lot ponding, detention facility, etc.)?

Will any special landscaping, architectural or site design features be implemented in the proposal (for example, rock walls, landscaped medians or entryways, or architectural themes)? If so, please describe and attach rendering if available:

Attachments

Please attach the following: (* indicates optional item)

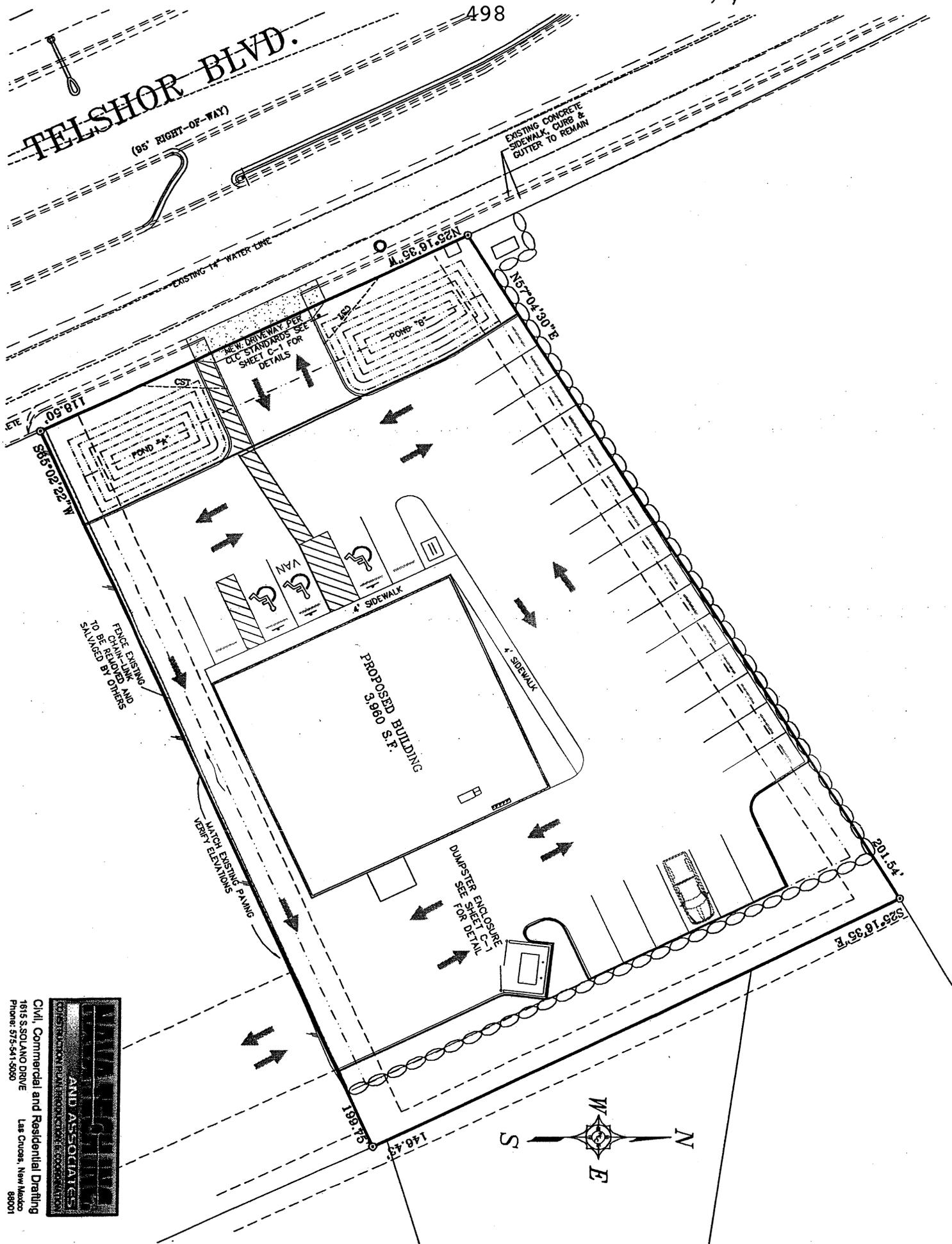
Location map

Detailed site plan

Proposed building elevations*

Renderings or architectural or site design features*

Other pertinent information*



M.H. AND ASSOCIATES
 CONSULTING ENGINEERS AND ARCHITECTS
 Civil, Commercial and Residential Drafting
 1615 S. SOLANO DRIVE Las Cruces, New Mexico 88001
 Phone: 575-541-5050



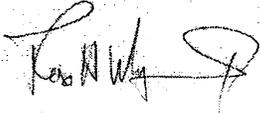


December 16, 2010

City of Las Cruces
To Whom It May Concern:

I am writing this letter to express our support for the zoning change request for the property located at 775 S. Telshor in Las Cruces, NM from O-2 Office, Professional - Limited Retail Service to C-2 Commercial Medium Intensity. This parcel is located next to our Bank of the West branch location at 795 S Telshor Blvd. Granting a zoning change from O-2 to C-2 would fit well with surrounding commercial uses and recent retail development. In this specific area of the Telshor corridor a rise in the number of restaurant businesses and other retail shops opening their doors in the past few years has brought needed business to the area and this parcel falls in line with the commercial expansion we have seen around the 775 S. Telshor address.

Ross H. Wegener, VP

A handwritten signature in black ink, appearing to read "Ross H. Wegener", written over a horizontal line.

Corporate Real Estate

Ross H. Wegener, VP Corporate Real Estate
520 Main Avenue (ND-TOW-09-C)
Fargo, ND 58124
ross.wegener@bankofthewest.com

Comprehensive Plan Analysis

Land Use Element (Land Uses)

Goal 1 Objective 5:

Policies

- 1.5.2. Medium intensity commercial uses shall be defined as those commercial uses which provide retail and service activities within a neighborhood area. Medium intensity commercial uses shall generally serve a population of 5,000 to 30,000 people and shall be established according to the following criteria:
- a. Generally 1,500 but not to exceed 5,000 gross square feet shall be permitted for a medium intensity commercial use or center. A business may apply for a special use when said business is greater than 5,000 gross square feet, but may not exceed 6,000 square feet.
 - b. Medium intensity commercial use and centers shall be located on minor collector streets, or at the intersection of streets equal to or greater than collector capacity. Mid-block locations shall be considered on a case-by-case basis: criteria shall include street capacity, distance from an intersection where appropriate, accessibility and shared vehicular access with other uses where appropriate, and consideration of the level of traffic and environmental impacts.
 - c. An unlimited number of low or medium intensity commercial uses may be located adjacent to one another as long as the combined total of the uses does not exceed 5,000 gross square feet.
 - d. With the exception of low intensity commercial businesses, medium intensity commercial uses shall not be located within one-half (½) mile of other commercial areas.
 - e. The City shall pursue multi-modal access standards (auto, bicycle, and pedestrian transit) for medium intensity commercial use and centers.
 - f. Medium intensity commercial development shall address the following urban design criteria: compatibility to adjacent development in terms of architectural design, height/density, a provision of landscaping for site screening, parking and loading areas. Architectural and landscaping design standards for medium intensity commercial use shall be established in the Comprehensive Plan Urban Design Element.
 - g. Adequate space for functional circulation shall be provided for parking and loading areas.
 - h. The City shall encourage the development of medium intensity commercial centers to allow for maximum shopping convenience with minimal traffic and encroachment related conflicts to adjacent uses.
 - i. Low intensity commercial uses are permitted in medium intensity commercial areas.

COUNCIL BILL NO. 04-039
ORDINANCE NO. 2053

AN ORDINANCE APPROVING A SERIES OF ZONE CONVERSIONS WITHIN THE GENERAL VICINITY OF SOUTH TELSHOR BOULEVARD BETWEEN LOHMAN AVENUE AND SUNDOWN ROAD. SUBMITTED BY THE CITY OF LAS CRUCES (CASE Z2533).

The City Council is informed that:

WHEREAS, The City of Las Cruces has submitted a request for a series of zone changes for land generally located along South Telshor Boulevard, between Lohman Avenue and Sundown Road, as identified on the attached Exhibit "A," and

WHEREAS, staff has inventoried/researched all parcels in the subject area and has determined the most appropriate zoning district.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the land identified on Exhibit "B," attached hereto and made a part of this Ordinance, be rezoned as indicated.

(II)

THAT Exhibits "C," "D," and "E," attached hereto and made a part of this Ordinance, reflect the zoning conditions placed on specific properties as identified on Exhibit "B."

(III)

THAT the rezoning of said properties is to be changed accordingly on the City Zoning Atlas.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 20th day of October, 2003.

APPROVED:

William Mattiace
Mayor William Mattiace

ATTEST:

Sturley Clark
City Clerk
(SEAL)

Moved by: Archuleta

Seconded by: Moore

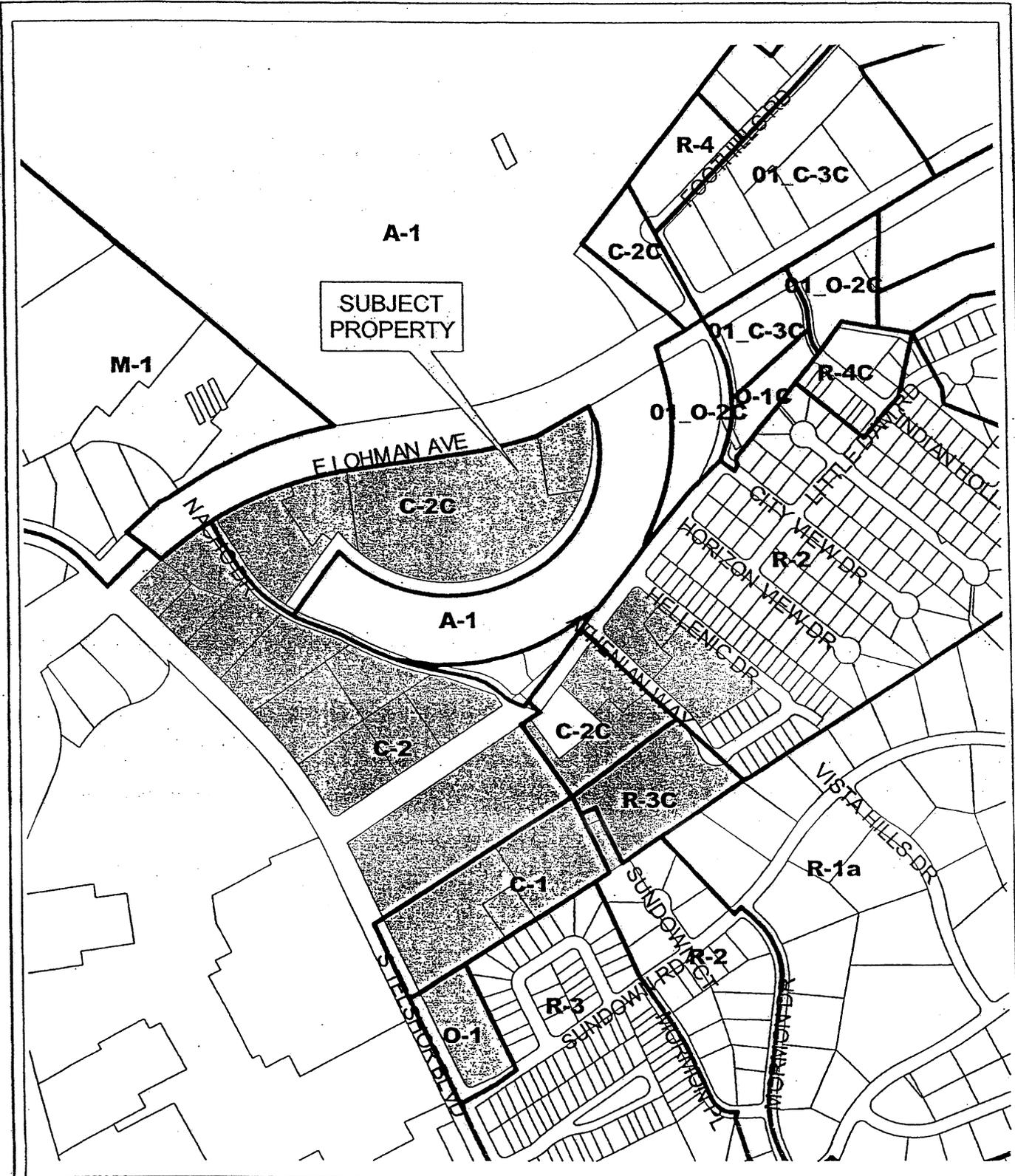
APPROVED AS TO FORM:

Tom R. Hub
City Attorney

VOTE:

Mayor Mattiace: aye
Councillor Fietze: aye
Councillor Moore: aye
Councillor Archuleta: aye
Councillor Trowbridge: aye
Councillor Strain: aye
Councillor Miyagishima: aye

503
EXHIBIT "A"



EXISTING ZONING

LOCATION: LOHMAN AVE & TELSHOR BLVD
ZONING: VARIES
CASE #: Z2533
DATE: 09-03-03



MAP GENERATED BY
COMMUNITY DEVELOPMENT
GIS
BJM
03-G-043

EXHIBIT "C"

Conditions applicable to property cross-referenced on Exhibit "B" for property immediately west of Athenian Way, approximately 335 feet south of Foothills Road and approximately 1,600 feet east of Telshor Boulevard:

1. 35-foot building setback will be required from the south property line.
2. Opaque landscape buffer/screening is to be provided at grade level along the south property line and will meet with Type A landscape standards of the Las Cruces Design Standards. The proposed landscape includes Mondel Pines, 10 foot tall, planted 10 feet apart in two rows.
3. Buildings constructed along the south setback line will be built to R-3 development standards.
4. Exterior lighting in the back along the south boundary will be directed away from the neighboring homes to the south and will comply with all provisions of the City's Outdoor Lighting Ordinance.

EXHIBIT "D"

Conditions applicable to property cross-referenced on Exhibit "B" for approximately 11 acres of property located just east of the southeast corner of the intersection of Nacho Drive and Lohman Avenue:

1. The east and south sides of the subject property shall contain landscaping and/or architectural features (such as decorative walls) to soften the visual impact of structures and uses on the property as viewed from nearby residential properties.
2. Dumpsters, loading zones, large expanses of blank walls, heating and ventilation equipment and other similar features, uses and equipment shall be screened from view on all sides of the property.
3. A southwestern regional desert character of architecture as promoted by the Land Use Element of the City's Comprehensive Plan shall be required.
4. Businesses shall use full cut-off lighting, especially towards the residential areas and shall comply with the City's Outdoor Lighting Ordinance.

EXHIBIT "E"

Conditions applicable to property cross-referenced on Exhibit "B" for property located directly south of Foothills Road, approximately 1,600 feet east of Telshor Boulevard:

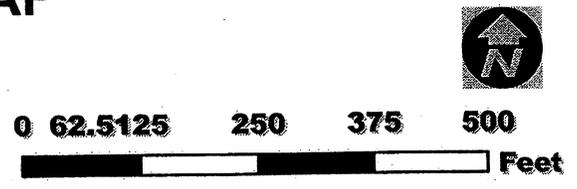
Land uses that are prohibited include:

- package liquor sales
- bowling alley
- nightclub
- any other business whose primary product is liquor sales
- fast food restaurant with a drive-up window
- adult book and video store



VICINITY MAP

CASE NO. Z2822
PARCEL: 02-40360
OWNER: MACTIMSKI LLC
ADDRESS: 775 S TELSHOR BOULEVARD
ZONING: O-2C TO C-2C



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 responsibility for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.

Community Development Department
575 S Alameda Blvd.
Las Cruces, NM 88001
(505) 528-3222

- 1
2 Evans: Aye, findings, discussion and site visit.
3
4 Scholz: Commissioner Bustos.
5
6 Bustos: Aye, findings.
7
8 Scholz: Commissioner Beard.
9
10 Beard: No, findings and discussions and site visit.
11
12 Scholz: And the Chair votes aye, findings and discussion. All right, so it's
13 approved 5-2. Thank you very much.
14
15 → 5. **Case Z2822:** Application of Jake Redford on behalf of Mactimski, LLC to
16 rezone from O-2C (Office, Professional-Limited Retail Service-Conditional) to
17 C-2C (Commercial Medium Intensity-Conditional) on a 0.6+/- acre tract located
18 on the east side of Telshor Boulevard, 655 +/- feet south of its intersection with
19 Foothills Road; a.k.a. 775 S. Telshor Boulevard; Parcel ID# 02-40360;
20 Proposed Use: Construction of a restaurant/café. Council District 6.
21 **APPROVED 7-0**
22
23 Scholz: Okay, that brings us to our next one and, Mr. Ochoa, you are up. This is
24 Z2822.
25
26 Ochoa: Good evening, gentlemen. For the record, Adam Ochoa, Development
27 Services. My first case tonight is a zone change request. It's Z2822. It's
28 a request for a zone change from O-2c, which is Office, Professional-
29 Limited Retail Service-Conditional to C-2c, Commercial Medium-Intensity
30 Conditional, for property located at 775 South Telshor Boulevard.
31 On the first slide there you can see the vicinity map. The subject
32 property's highlighted in the light bluish-stripes running through it. You
33 can see the area around it off of Telshor is heavily commercial, office uses
34 all over with some single-family, multi-family to the southeast. The
35 property is located approximately 665-feet south of the intersection of
36 Telshor Boulevard and Foothills Road. Currently it encompasses
37 approximately 0.6 acres and is currently undeveloped.
38 The applicant has come forward for the zone change for a
39 proposed use on the subject property of a restaurant/café. This use is
40 actually not permitted in the O-2 Zoning District, requiring a minimum C-2
41 designation for the subject property. Excuse me... just a little history on
42 this property. It is currently zoned, like I said, O-2c. A condition actually
43 placed on this property puts a limit on building height to 35-feet. This was
44 part of a larger zone change... this massive zone change that happened
45 in the area where this property and the properties around it and another
46 large chunk of properties in the area were placed conditions on limiting the

1 height of the actual buildings themselves. Because of that staff is
 2 recommending to keep that same condition on this proposed zoning
 3 redesignation of C-2 zoning.

4 The proposed use of a restaurant/café will require one parking
 5 space for every two to five seats in the establishment. It will also require
 6 one bicycle parking space for every one thousand square feet of GFA.
 7 Both will be verified during the building permitting process when those
 8 drawings do come in. Staff will review them and confirm that those
 9 standards are met. They will also be required to landscape a minimum of
 10 15% of the total parking area and they will also be required to install a
 11 bufferyard along the eastern property lines of the subject property
 12 adjacent to the R-3 zoned properties. A minimum of either a 10-foot
 13 opaque bufferyard or a 15-foot semi-opaque bufferyard will be required
 14 along that eastern property line. All remaining C-2 Development
 15 Standards will be required to follow for a development on the property. As
 16 you can see, gentlemen, there are a couple of letters... yeah, one letter in
 17 your packet and you see three more letters. Two letters of support, two
 18 letters protesting the proposed zone change were received by staff.

19 Here is an aerial of the subject property highlighted in the slight
 20 "lime-green" here. It is the vacant property here; bank across the street;
 21 single-family, it looks like, attached townhomes to the rear; office complex
 22 to the north of it and, of course, the Mesilla Valley Mall across the street
 23 on Telshor.

24 Here is the proposed improvement plan of the subject property
 25 showing the proposed building layout, pondings, driveway and parking
 26 and, of course, this is just a proposed improvement plan. They will be
 27 required to bring in full-scale drawings for everything that will be
 28 constructed on the subject property for the restaurant/café.

29 Staff has reviewed this zone change and recommends approval
 30 with conditions based on the preceding findings. The first condition we
 31 would like to place on this is the one that currently exists on the zoning. It
 32 is the maximum building height allowed for the zoning designation. It's 35-
 33 feet and we'll be adding a second condition stating that all utilities shall be
 34 placed underground. The recommendation of the Planning and Zoning
 35 Commission will be forwarded to City Council for final consideration.

36 Your options tonight, gentlemen: 1) to vote "yes" to approve the
 37 request as recommended by staff for case Z2822; 2) to vote "yes" to
 38 approve the request to approve the request with additional conditions as
 39 deemed appropriate by the Commission; 3) to vote "no" to deny the
 40 request, or; 4) table/postpone and advise staff accordingly. That is the
 41 conclusion of my presentation. The applicant is here if you have any
 42 questions for him and I stand for questions, as well.

43
 44 Scholz: All right, questions for this gentleman? Commissioners? No? Oh, excuse
 45 me, Commissioner Stowe.
 46

- 1 Stowe: Yes. If I remember from the site visit the east and north edge of the
2 property there's a wall.
3
- 4 Ochoa: Mr. Chairman, Commissioner Stowe, correct. I believe there is an actual
5 elevation change there and there is a wall along there as well but they will
6 still be required to put some type of bufferyard against that eastern wall.
7 That is a requirement for the C-2 zoning on the property, proposed C-2
8 zoning on the property.
9
- 10 Stowe: My question is: how tall is either of those walls? They seemed to be
11 approximately 30-feet but I didn't note that exactly when I took a look.
12
- 13 Ochoa: The applicant is present and he can answer those questions for you, sir.
14
- 15 Scholz: Okay.
16
- 17 Redford: I'm Jake Redford and I work as a commercial real estate broker for NEI
18 First Valley. To answer your question, I don't have an exact height. It's
19 right around between 25 and 30-feet, as you mentioned. I didn't get a
20 chance to get out there and measure it, both the east and north wall that
21 you're referring to.
22
- 23 Scholz: Okay, other questions for Mr. Ochoa? Okay, Mr. Redford, do you want to
24 add anything to the presentation?
25
- 26 Redford: No, I think he covered it all. I was just here to answer any questions that
27 you guys might have. I was gonna also add a little tidbit: my father-in-law
28 lives two blocks from this location and is actually part of the ownership
29 group and I just wanted you to put in a word that they enjoy what the
30 Edmund and McAllister's and Buffalo Wild Wings and also some of the
31 other restaurants that have moved into that corridor in the past couple of
32 years. He's really happy to have the ability to walk to restaurants, grab
33 lunch, grab breakfast or whatever-have-you. The intended use of it right
34 now, as they said: we have a lease signed conditioned to approval of a
35 zoning change for a National Bagel restaurant there and so any of the
36 height restrictions would be, you know, no problem to us on the 35-feet.
37
- 38 Scholz: All right, and the time of day of that restaurant is, I think, is like 5:00 am to
39 5:00 pm?
40
- 41 Redford: I put 5:00 am to 5:00 pm. I got clarification: it's actually 6:00 am to 5:00
42 pm is the corporate standards. They can't be open any more hours than
43 that. On Sunday they close at 3:00.
44
- 45 Scholz: Okay, so it's a day-time operation, right. We're not talking about night-
46 time.

- 1
2 Redford: Yes, sir.
- 3
4 Scholz: Okay, Commissioner Shipley. Oh, I'm sorry, Commissioner Beard. Your
5 light is still on. He's shutting it off. Go ahead.
- 6
7 Shipley: In here... it's a question for the applicant: it states that there is a possibility
8 that there is going to be another restaurant in there?
- 9
10 Redford: What they've proposed, the ownership group is that they're going to
11 construct about a forty-five hundred square foot building there to try and
12 comply with all of the parking, obviously, and everything. The twenty-five
13 hundred to three thousand square feet will be taken up by this bagel chain
14 and then another thousand to fifteen hundred square feet... right now
15 preliminary for a haircutter, possibly like a StyleAmerica-style haircutter.
- 16
17 Shipley: There's not going to be a drive-through?
- 18
19 Redford: Yes, there will be a drive-through with the bagel. Yes, sir.
- 20
21 Shipley: Is that going to be at the back of the building?
- 22
23 Redford: No, it's going to be on the northern side of the building. That site plan that
24 you guys have was something that they had sketched out for an
25 Eyemasters that was permitted to go there some years back. The
26 National Bagel chain hasn't submitted their exact site plan but the
27 preliminary discussions have put the drive-through at the northern end of
28 the building.
- 29
30 Shipley: So there'll be a wall built between the bank....?
- 31
32 Redford: No, there's an easement. There's an easement agreement with the bank,
33 the Bank of the West there, and there actually is a small chain link fence
34 that's there now. That's already taken out. There's a joint agreement.
- 35
36 Shipley: Access agreement.
- 37
38 Redford: Correct.
- 39
40 Shipley: But that's where the drive-through is going to go: on that side of the
41 building?
- 42
43 Redford: On the north... so towards the office...
- 44
45 Shipley: That would be the back of the building.
- 46

- 1 Redford: As you're looking at the building, facing the wall, it would be on the left
2 side.
3
- 4 Shipley: So it'd be over here?
5
6 *(Several Commissioners speaking quietly – inaudible)*
7
- 8 Redford: I guess I would refer to the back of the building as the east but I'm talking
9 it would be on the north side, if that's what you are referring, to for Adam's
10*(inaudible)*
11
- 12 Shipley: So they would drive all the way around the building and be facing the
13 street?
14
- 15 Redford: Correct. Yes.
16
- 17 Scholz: Yeah, in order to have access to the driver's side of the car, obviously.
18
- 19 Shipley: Well, I understand that but in this it didn't show one and that was a
20 question.
21
- 22 Scholz: Yeah, politics for that.
23
- 24 Shipley: Right.
25
- 26 Scholz: Okay, Commissioner Crane.
27
- 28 Crane: Remind me, again, please, how tall the building is likely to be, not what the
29 limit is.
30
- 31 Redford: 18 to 22 feet.
32
- 33 Crane: Do you have a view on whether this couple on Sundown is going to have a
34 problem with it blocking their view of the mountains? I didn't have that in
35 mind when I went and looked at it.
36
- 37 Redford: I don't foresee that as an issue being that the wall is 25-feet and so they'll
38 be sitting up around 30 to 35-feet.
39
- 40 Crane: So they are going to look way over the top of it anyway.
41
- 42 Redford: They should, yeah, I don't see.... It's going to be similar to a McAllister's-
43 type, probably, be with a façade and height. It'll be very similar to a
44 McAllister-type building.
45
- 46 Crane: Thank you.

- 1
2 Scholz: Okay, any other questions for the applicant. Okay, anyone from the public
3 wish to speak to this? Yes, please come to the microphone. Tell us your
4 name.
5
- 6 Miller: My name's Jennie Miller. My mother, Catherine Berger, is right back here
7 and her home does not abut the property; it's more adjacent to it. We feel
8 that there's considerable issues about changing this zoning. There's a
9 congested traffic already and it doesn't seem clear if they take this fence
10 down whether the traffic will come behind the bank and into the property,
11 whether they'll be allowed to do that or just from the front.
12 Food odors: that's been an issue with fans and exhausting, you
13 know, food odors over the neighborhood. It's an attractive nuisance for
14 rodents and, you know, the garbage will be right behind people's entrance
15 to the residence there. There's also... I guess there wouldn't be....
16 Probably they do have sufficient parking so it won't spill over into the bank
17 parking lot, I wouldn't think. But I do think these residents that built their
18 homes there built thinking that their properties would be, you know,
19 restricted from this kind of commercial activity behind them.
20 I would think that the employees will get there at maybe five o'clock
21 to start their work, or four-o'clock, which would make some early morning
22 noise. Even if they didn't start it running until six o'clock it, it would still be
23 more noise for the people that live there.
24 I just think this will devalue their property. Several of the homes are
25 in the, I'd say, two-hundred, to two-hundred and seventy-five thousand
26 dollars area. The neighborhood is single-family. It is not multiple-family
27 and I just think the residents deserve to have their property values kept
28 up, not let this change. There are no other restaurants on this side of
29 Telshor and in that area. There on the other side they have better access
30 than this one does so we're not in favor of it. I really do think it will make
31 my mother's property values go down.
32
- 33 Scholz: Okay, questions for this lady? Commissioner Beard?
34
- 35 Beard: Could you bring up on the map so we could see where she lives?
36
- 37 Miller: Okay, I don't know but I can tell from that one, I can tell from....
38
- 39 Scholz: Okay, here's the vicinity map. Can you pick it out on that? Actually, I like
40 the aerial view better because it shows the property better but....
41
- 42 Miller: Okay, the road that shows Sundown Road and then you start up on
43 Sundown Circle, it's the third lot in on this side that backs up to the bank.
44

1 Scholz: No, ma'am, I think that's Sundown Court you're talking about. Sundown
2 Circle is the next road. It's the U-shaped road. Yeah, and your property is
3 where?
4
5 Miller: If you see where it says "Sundown Road" right there...
6
7 Scholz: Um-hmm.
8
9 Miller: And the third lot is her lot, right there.
10
11 Scholz: I see, okay.
12
13 Miller: Um-hmm. Right there.
14
15 Scholz: Could you go back to the aerial view? Wasn't there a pizza place back
16 here at the end of this courtyard?
17
18 Shipley: There's a Greek restaurant up there.
19
20 Scholz: A Greek restaurant. Yes, that's what I was thinking of. I'm sorry.
21
22 Shipley: Tiffany's.
23
24 Scholz: Tiffany's... yeah, it's been there for years, hasn't it?
25
26 Miller: It's way up there.
27
28 Scholz: Right, but it backs up against those other properties. Okay. I just thought
29 there was a restaurant in that area. Yeah, I thought so. Other questions
30 for this lady? Okay.
31
32 Shipley: I was just going to say that when I walked that property that wall is 25-feet
33 or more. It's for a grade change: it's a retention wall and if you're
34 standing in your back yard to look down you would be able to look down
35 on the back of the building. Yeah. But I couldn't understand the reference
36 to the view of the mountains because the mountains are not that direction
37 unless you're looking at the mountains out to the west of town.
38
39 Scholz: Yeah, I think this is what this lady is talking about...
40
41 Miller: Yeah.
42
43 *(Several people speaking at the same time – inaudible)*
44

- 1 Miller: This would be more noise, more.... You know, we thought it would always
2 be more of an office or a limited retail area that would not have so much
3 noise and action there, I guess you could say.
4
- 5 Scholz: Okay.
6
- 7 Miller: You know, my mother spends a lot of time in her back yard. A bank is not
8 very offensive and she knew it was there when she bought the property
9 but she thought she was protected by the zoning to build the home that
10 she did there.
11
- 12 Shipley: Well, the third lot up from there still backs up to the bank....
13
- 14 Miller: Right!
15
- 16 Shipley: And you have to go to the sixth or seventh lot before you get to that
17 property line. So, I'm just looking... one, two, three, four, five, six
18 properties... six... so it's not really backing up to you at all.
19
- 20 Miller: Like, I say, her property does not really abut it but it's adjacent to it. I do
21 think the noise, light pollution, things like that....
22
- 23 Shipley: There shouldn't be. That shouldn't.
24
- 25 Scholz: Um-hmm. Okay, thank you, ma'am. Anyone else from the public want to
26 speak to this? Yes, sir. Come up and identify yourself, please.
27
- 28 Smith: Yes. Good evening. My name is Paul Gayle Smith and I actually live a
29 little bit closer to the vacant lot and I'd like to echo the words of the
30 previous speaker. She did an excellent job. I have to tell you that some of
31 the things that she said perhaps need to be emphasized because I live....
32 I'd like to point out where I live on that map, if I can...
33
- 34 Scholz: Sure.
35
- 36 Smith: I'm behind the bank but my next door neighbor, their house is connected
37 to mine.... They are directly behind this vacant lot, okay? Okay... so, I'm
38 there. Yeah, that's my home. Yeah. And this one that's next.... You had
39 some burglaries right there....
40
- 41 Scholz: Okay.
42
- 43 Smith:at that and these are two of the houses, are probably two of the larger
44 houses on this part of the circle. Okay? I bought my home in 2005. I
45 would not have purchased my home if there was a National Bagel place.
46 Now I have to say for the record that I lived in New York for many years. I

1 love bagels. Bagels are great food items. They're wonderful. But I
2 cannot emphasize it enough: if there had been.... and I'm really sad to
3 say it but...a bagel place....I'm guessing that he's described it properly...it
4 would really devalue, as Ms. Miller was saying, this neighborhood and it's
5 one thing to have a bank, but that bank is well-situated. It's got adequate
6 parking... more than adequate parking. Because it's a bank you have a
7 certain kind of customer. They come in a certain manner and I can tell
8 you, as a fact, okay, I can hear people making transactions at this bank
9 from my house. Okay? From my house and I'm not even directly
10 behind... well, I am directly behind them but I'm not outside. I'm inside.
11 Okay? So they have those.... The real reason I can hear them is because
12 when they go to the drive-up... I guess you can walk up, too; they have
13 some kind of mechanized system for the person inside so it's on a bit of a
14 speaker... but I can hear it, that side of it...and....

15 I think Ms. Miller mentioned the noise. When they come to clear
16 the garbage there my house shakes. That's not an exaggeration. Okay?
17 I sometimes have to apologize to people on the phone when I'm working
18 from my home because it sounds like my house is falling down because
19 they're emptying the garbage and it's really strange. I'm not an architect
20 or an engineer but if when you look at the site what you see is this huge...
21 you know, you see about 10-foot difference so the garbage... the big, we
22 call them "skips" in England, but the big... I forget the word now, but the
23 big garbage container that they change; it's as though they are knocking
24 down the bank. That's how much noise there is so noise is one thing.

25 Ms. Miller mentioned also vermin. Okay? She's being a bit polite.
26 There's a rat problem there in that neighborhood which the City should
27 take care of. I see rats all the time. It's disgusting so I can only imagine if
28 the people who would be potentially eating in this restaurant knew about
29 the rat problem they probably wouldn't go. I've actually had an interesting
30 issue, but I don't know what to make of it, but I'll mention it. I sometimes
31 see wild animals in my yard and I'm mentioning that...it's kind of a...I'm
32 not sure if I should mention it because it depends how you look at it; my
33 concern is for the wild animals, too, because I'm afraid that since they're
34 so used to coming in that direction for whatever reason... I don't know
35 why... but literally, my yard, as you can see, I don't see the desert
36 anywhere near here on this map and yet they come into my yard. There
37 have been skunks... nobody really likes skunks but, you know, they're
38 God's animals. I'm concerned that they're going to be attracted to the
39 food source and they're probably going to be killed. Okay? They're not
40 bothering anybody. Once in a blue moon the skunk, just for whatever
41 reason, makes a stink. I have actual pictures of the fox if anybody wants
42 to see them... in my yard. I'm assuming it's the same fox. But my
43 concern is that the rat problem will just be exacerbated.

44 The noise problem... I mean, five o'clock... I mean, I'm an early
45 riser but I don't want to have to hear noise at five o'clock. It's bad enough
46 with the bank. You know what happens early in the morning with the

1 bank? They have the people who do their lawn and I can hear them in my
2 house when they come in, in the morning, and with the blowers and with
3 whatever else they're doing. So, I can only imagine that no matter how
4 workers would try to be quiet in the morning... at five o'clock, when it's
5 relatively quiet even though we're off Telshor. That's, as somebody
6 mentioned, they're probably coming in at four o'clock. Bagel places are
7 supposed to start early: that's not my concern. But this is really a
8 residential area in a way that, I think, the map really doesn't show because
9 all of these houses here there are no restaurants that you can actually
10 see. So the Greek restaurant, which I go to, it's wonderful... it's so high
11 up that you don't see it. You don't hear it. You don't get any of the smells,
12 maybe because it's higher up and the wind. But this restaurant would be
13 lower down. I am sure that if there's anything to be smelled I am going to
14 be smelling it. I sometimes smell things in my neighborhood... we all
15 know happens... so my concern is there will be a constant smell, which
16 will again attract rodents.

17 I'm concerned about also what I saw on the map that was there and
18 there was talk of an easement. There's a fence there now between the
19 bank and this vacant property. If they're saying that they are going to take
20 down this fence it looks as though they are going to allow parking so I'm
21 going to be concerned that there's going to be parking all over the place,
22 you know, starting early in the morning because, see, if the bagels are
23 good people are going to be coming in at five o'clock in the morning and
24 I'm not going to be getting any sleep and probably the other people aren't
25 either and my bedroom is a little bit raised up. I'm on the second floor. I
26 have a two-story house so I've been listening intently to the talk about two-
27 story houses. Most of the people on this side, they don't, so they're even
28 closer to this source. There are a number of people who, I'm hoping, have
29 sent you letters who are those people who spend a lot of time outside here
30 that I know are not happy because we know you can absolutely hear right
31 over there.

32 My other concern is, too, this is not a vacant lot that looks like a
33 broken window in the city. I've lived in the city; I'm a city boy. I've lived in
34 the city in a couple of countries and a few states. This vacant lot is kept
35 up by somebody. I don't know by who by; maybe by the owners. It looks
36 fine. I actually think it would look better than anything being on it. It's a
37 terrible spot for a restaurant, in other words. It's a small area. It's going to
38 be a mistake to really put anything other than, maybe, another bank,
39 another small office, a little gallery. It just would spoil the entire character
40 of what I'm sure the City wants to maintain, which is an area of safe
41 neighborhood of residential housing. I don't want anybody to be distracted
42 by the fact that the Mall's across the street. If you can see from my house
43 what you look out at, at the Mall, it's done very well. You don't see, you
44 know, it's a nice view and my view would be spoiled as well even though I
45 would be able, hopefully.... I'm assuming that this structure would be no
46 higher than the bank. That's something else....

1
2 Scholz: What they're saying, Mr. Smith, was 18 to 22-feet. Yes, so that's about
3 the same height as the bank. Listen, I think we've heard all of your
4 concerns and I'm sure we appreciate them. Do you have a question of
5 Mr. Smith?
6
7 Beard: Yes. I do have a question. It is a vacant lot and zoned for Office.
8
9 Smith: Um-hmm.
10
11 Beard: Do you think putting a three-story office building in there is going to be any
12 quieter than putting in a bagel shop?
13
14 Smith: Well, that was my concern, sir. I was always concerned about...
15
16 Beard: I mean, speaking as "yes" or "no."
17
18 Smith: Well, let me answer your question, if I may. I can tell you what I would
19 have done: if I had had any suspicion that there was going to be a three-
20 story office building as opposed to something that's not much higher than
21 the bank I wouldn't have purchased that house. But if there was
22 something, a small office building, maybe a little bit higher than the bank,
23 that kind of thing I probably might still have purchased the property. But
24 the fact that it's a restaurant...and this sounds like it's a chain. It's not
25 even something that somebody could say, "This is a boutique, up-end,
26 higher-end, a little restaurant."
27
28 Beard: No. No, it's not. No, it's a chain. Right.
29
30 Scholz: I don't want to cut you off but... another question? I thought I saw another
31 question down here. Do you still have another question? Commissioner
32 Beard, go ahead.
33
34 Beard: I'd just like to make a comment.
35
36 Scholz: Go ahead.
37
38 Beard: It's vacant land. The owner has a right to put in there whatever it is. I
39 mean...it's zoned. It's zoned, isn't it?
40
41 Scholz: It's zoned.
42
43 Beard: It's zoned. That's why we're here and all we're doing is changing the zone
44 to put in the bagel store but it could be a three-story building and then the
45 neighbors have no say-so on that particular item because it is already
46 zoned that way and I think you would face as much, if not more, noise.

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(Several people speaking at the same time – inaudible)

Scholz: I think that's a matter of opinion. Is there anyone else from the audience who wishes to speak to this?

Smith: Thank you.

Scholz: Thank you, Mr. Smith. All right, I'll close it for public participation. Gentlemen, what's your pleasure? Commissioner Crane?

Crane: I find I agree with Commissioner Beard that the difference between the impact of Office, Professional-Limited Retail Service-Conditional, the current zoning, and Commercial Medium Intensity-Conditional will probably be very hard to distinguish from over the walls. The concerns have some legitimacy but it is a lot that is zoned for development and I don't feel, personally, that given that the building is relatively low that the impact on the neighborhood will be particularly negative.

I'm surprised that taking out the bank's garbage makes so much noise and there will be an increase in that respect, but I venture that the drive-in of the bagel is going to be less noisy than the drive-in at the bank. They seem to have about six or eight lanes and there's really a lot more talking goes back and forth. I'm going to support the applicant in this.

Scholz: Okay, any other discussion? Okay, I'm going to take a motion to approve.

Shipley: I move to approve case number Z2822.

Scholz: Okay, is there a second?

Shipley: With conditions... I think there were two conditions.

Scholz: With conditions, yes, there are at least two conditions.

Shipley: I believe there's a condition on the height on....

Scholz: Page seven, right.

Shipley: It restricts it to a maximum building height of 35-feet and

Scholz: And all new utilities placed underground.

Shipley:placed underground. That's correct.

Scholz: All right, is there a second.

- 1 Stowe: I second it.
 2
 3 Scholz: Okay, Shipley moved and Stowe seconded. I'm going to call the role.
 4 Commissioner Shipley.
 5
 6 Shipley: Aye, findings, discussion and site visit.
 7
 8 Scholz: Commissioner Crane.
 9
 10 Crane: Aye, findings, discussion and site visit.
 11
 12 Scholz: Commissioner Stowe.
 13
 14 Stowe: Aye, findings, discussion and site visit.
 15
 16 Scholz: Commissioner Evans.
 17
 18 Evans: Aye, findings and discussion.
 19
 20 Scholz: Commissioner Bustos.
 21
 22 Bustos: Aye, findings and discussion.
 23
 24 Scholz: Commissioner Beard.
 25
 26 Beard: Aye, findings, discussion and site visit.
 27
 28 Scholz: And the Chair votes aye for findings and discussion. Thank you,
 29 gentlemen.
 30
 31 6. **Case Z2825:** Application of ASA Architects on behalf of the Las Cruces
 32 Housing Authority to rezone from R-1a/C-2 (Single-Family Medium
 33 Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity)
 34 on a 0.68+/- acre tract located on the northwest corner of Oak Street and Union
 35 Avenue; a.k.a. 3350 Oak Street; Parcel ID# 02-13094; Proposed Use:
 36 Transitional living and counseling facility for Veterans. Council District 2.
 37
 38 Scholz: Our last case is Z2825 and, Mr. Ochoa, you are up again.
 39
 40 Ochoa: Yes, sir. The final case for tonight is another zone change application,
 41 Z2825. it is a request for a zone change from R-1a/C-2, Single-Family
 42 Medium Density/Commercial Medium Intensity to C-2, which is
 43 Commercial Medium Intensity-Conditional for property located at 3350
 44 Oak Street.
 45 The property is located on the northwest corner of Oak Street and
 46 Union Avenue. It currently encompasses approximately 0.68 acres and

523

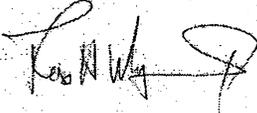


December 16, 2010

City of Las Cruces
To Whom It May Concern:

I am writing this letter to express our support for the zoning change request for the property located at 775 S. Telshor in Las Cruces, NM from O-2 Office, Professional - Limited Retail Service to C-2 Commercial Medium Intensity. This parcel is located next to our Bank of the West branch location at 795 S Telshor Blvd. Granting a zoning change from O-2 to C-2 would fit well with surrounding commercial uses and recent retail development. In this specific area of the Telshor corridor a rise in the number of restaurant businesses and other retail shops opening their doors in the past few years has brought needed business to the area and this parcel falls in line with the commercial expansion we have seen around the 775 S. Telshor address.

Ross H. Wegener, VP

A handwritten signature in black ink, appearing to read "Ross H. Wegener".

Corporate Real Estate

Ross H. Wegener, VP Corporate Real Estate
520 Main Avenue (ND-TOW-09-C)
Fargo, ND 58124
ross.wegener@bankofthewest.com

To:

Community Development Dept.

My husband and I are handicapped and unable to attend a meeting at 6p.m.

We would like it known that Case 22822 concerns us most about the height of the building proposed. We have a view out our picture window of the entire valley - all the way to the far mountains before Deming. We don't want to lose that view!

If the building is one (1) story high we have no objections. If you need proof of what we say - come see for yourselves.

The lot is very small so I assume you are planning on a small sandwich shop or cafe for daily use - not a bar for night time use. The daily use facility we would have no objection to.

Property noted is at 775 S. Telsnor next to the Bank of the West.

You may contact us at:
office: 521-1634

Mrs. Irene Caldwell
2967 Sundance Cir
Las Cruces, NM 88011-4609

Bob & Irene Caldwell

Arlyn & Elizabeth Kriegel
2955 Sundance Circle
Las Cruces, New Mexico 88011-4609

Planning & Zoning Commission
City of Las Cruces
Community Development Department
P. O. Box 20000
Las Cruces, New Mexico 88004

Subject: Case No. Z2822

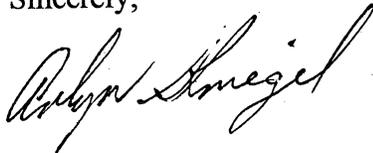
Dear Commissioners:

We respectfully request that you do not grant the zoning change requested for the following reasons:

1. We purchased and built our home based on the current zoning.
2. We believe the smoke and smell will penetrate our home and reduce the marketability of our property.
3. We believe that access from Telshor Blvd. will cause congestion on Telshor. It will back up traffic, interfere with access to the Bank of the West, and divert traffic down Sundown Road. This will cause patrons to find an alternate path through the east side of the Bank of the West parking lot, creating an alley in the back of our property and through the Bank of the West parking lot. This will disturb the peace of all the residents on the west side of Sundance Circle.
4. We believe that the restaurant patrons will park on the north side of the Bank of the West parking lot limiting the parking available to bank customers.

Again, we request that the zoning not be changed.

Sincerely,



Mr. & Mrs. Arlyn Kriegel

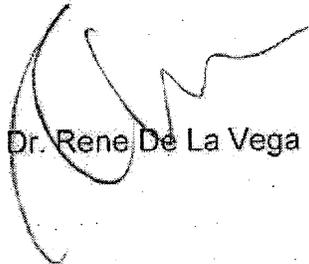
December 16, 2010

City of Las Cruces

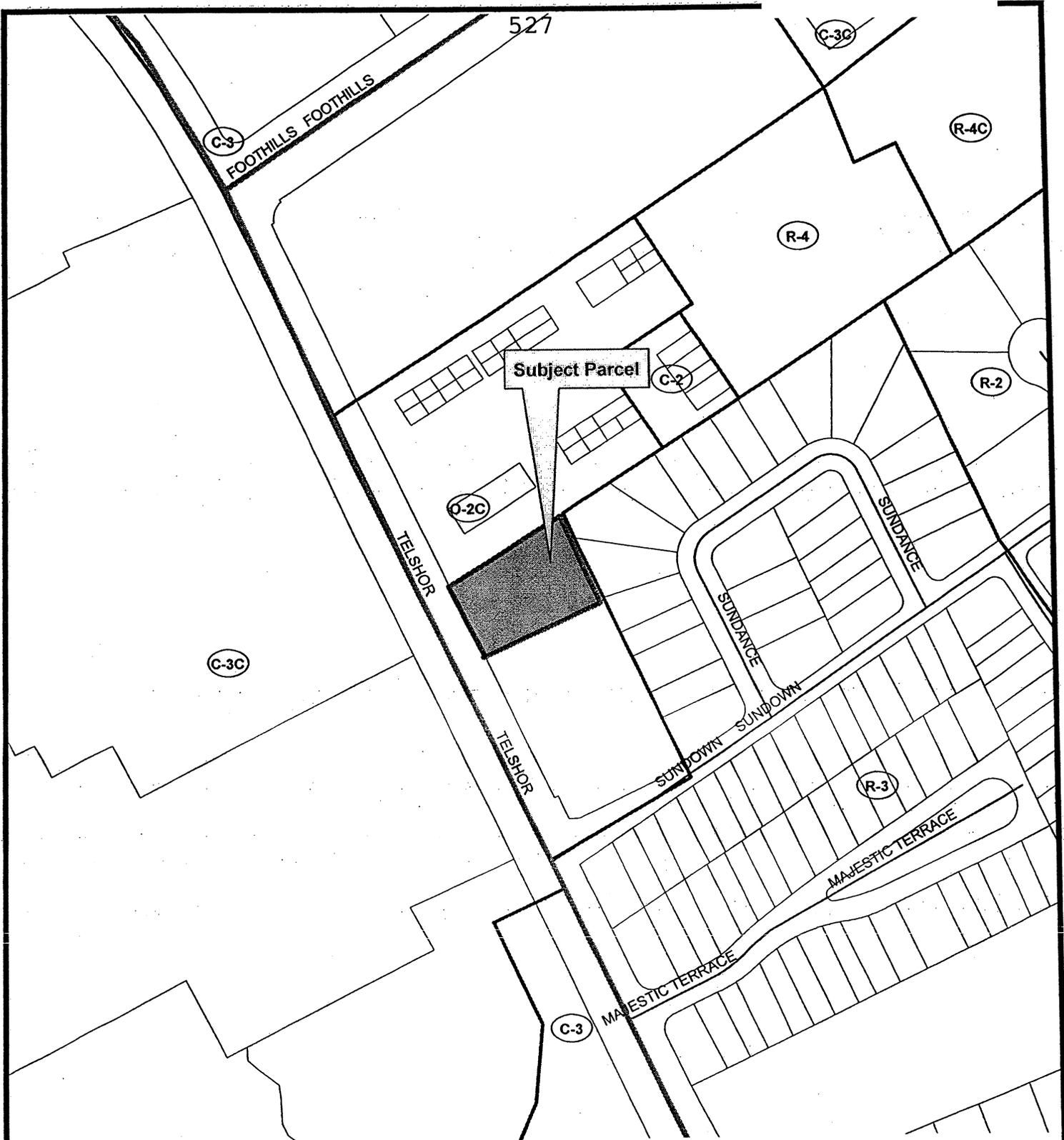
To Whom It May Concern:

I am writing this letter to express our support for the zoning change request for the property located at 775 S. Telshor in Las Cruces, NM. This parcel is adjacent to an office building that I own. A zoning change from O-2 to C-2 would fit well with surrounding commercial uses and recent retail development. As there are several other retail shops and restaurants in the area surrounding 775 S. Telshor, it is logical to change the zoning of this property to blend with the surrounding area.

Sincerely,

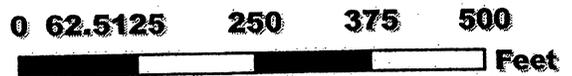


Dr. Rene De La Vega



VICINITY MAP

CASE NO. Z2822
PARCEL: 02-40360
OWNER: MACTIMSKI LLC
ADDRESS: 775 S TELSHOR BOULEVARD
ZONING: O-2C TO C-2C



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 responsibility for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.

Community Development Department
575 S. Alameda Blvd.
Las Cruces, NM 88001
(505) 528-3222