

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 13Ordinance/Resolution# 2635

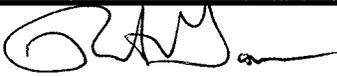
For Meeting of September 19, 2011  
(Ordinance First Reading Date)

For Meeting of October 3, 2011  
(Adoption Date)

**TITLE:** AN ORDINANCE APPROVING A ZONE CHANGE FROM R-2 (MULTI-DWELLING LOW DENSITY) TO C-2C (COMMERCIAL MEDIUM INTENSITY-CONDITIONAL) FOR 0.17 ± ACRES OF LAND LOCATED AT 132 W. WILLOUGHBY AVENUE. THE ZONE CHANGE REQUEST INCLUDES ONE VARIANCE FOR A NUMERICAL REDUCTION OF 10-FEET TO THE MINIMUM REQUIRED 10-FOOT OPAQUE BUFFERYARD. SUBMITTED BY SUSAN FRARY, PROPERTY OWNER (Z2840).

### **PURPOSE(S) OF ACTION:**

Zone change will facilitate the primary uses of a commercial art studio with a sculpture garden (outdoor display) and secondary use for a single-family residence.

<b>COUNCIL DISTRICT: 1</b>		
<b><u>Drafter/Staff Contact:</u></b> Adam Ochoa	<b><u>Department/Section:</u></b> Community Development / Development Services	<b><u>Phone:</u></b> 528-3204
<b><u>City Manager Signature:</u></b>		

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

The proposed zone change is for a 0.17± acre property at 132 W. Willoughby Avenue located on the north side of Willoughby Avenue, 150 ± feet west of its intersection with Main Street. The property is in Area 3 of the Alameda Depot Neighborhood Overlay. The subject property is developed as a single-family residence with three (3) accessory structures. The applicant proposes to redevelop the subject property for a primary use of an art studio with a sculpture garden and a secondary use of a single-family residence. The applicant also proposes to condition the zone change by limiting the C-2 uses on the subject property to an art studio, private lessons, and the outdoor display of items for sale.

Along with the zone change request, the applicant requests a variance to the required ten (10) foot opaque bufferyard for the subject property. The applicant proposes to construct an eight (8) foot tall semi-opaque wall in the front portion of the property along the western property line and an eight (8) foot tall opaque wall in the rear portion of the property along the western property line all with a zero (0) foot bufferyard.

Area 3 of the Alameda Depot Overlay is the "Residential Core" intended to accommodate primarily detached single-family dwelling units and to maintain and protect a low-density residential character of development. Low-intensity, neighborhood commercial uses are supported in context with home occupation uses as described in Section 38.52 of the 2001 Zoning Code. For example, an art studio is an allowed home occupation use; however, outdoor displays (e.g., sculpture garden) are not permitted with home occupation uses.

The staff report to the Planning & Zoning Commission (P&Z) recommended denial of the zone change request and variance request. For a complete analysis of the recommendation, please refer to Exhibit "B" (Findings and Comprehensive Plan Analysis) as well as pages 3-4 and 8-10 of Attachment "A" (Staff Report to Planning & Zoning Commission for Case Z2840).

On August 23, 2011, the P&Z recommended conditional approval for the proposed zone change and numerical variance by a vote of 4-1-0 (two Commissioners absent) based on findings, discussion, and site visit. The condition stipulates that the commercial uses on the subject property shall be limited to an art studio, private lessons and the outdoor display of items for sale. During the meeting the public voiced their support for the proposed zone change and variance stating that the proposed uses will not negatively affect the surrounding area and that in their opinion the Alameda Depot Neighborhood Overlay was developed to support and allow such uses. The P&Z discussed the compatibility of the proposed zone change and variance with the surrounding area and discussed the impact the proposed uses may have on the adjacent neighborhood. No letters supporting or objecting the proposed zone change and variance have been submitted to staff.

**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 Z2840.
5. Attachment "B", Draft minutes from the August 23, 2011 Planning and Zoning Commission meeting.
6. Attachment "C", Project Proposal.
7. Attachment "D", Vicinity Map.

**SOURCE OF FUNDING:**

N/A	<b>Is this action already budgeted?</b>	
	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	<b>Does this action create any revenue?</b>	
	Yes	<input type="checkbox"/> Funds will be deposited into this fund: in the amount of \$ _____ for FY ____.
	No	<input 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

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will affirm the Planning and Zoning Commission recommendation for conditional approval. The subject property located at 132 W. Willoughby Avenue will be rezoned from R-2 (Multi-Dwelling Low Density) to C-2C (Commercial Medium Intensity-Conditional). The zone change will allow the use of an art studio with a sculpture garden (outdoor display) and a single-family residence with one variance of a numerical reduction of 10-feet to the minimum required 10-foot opaque bufferyard.
2. Vote "No"; this will reverse the recommendation made by the Planning and Zoning Commission. The current zoning designation of R-2 (Multi-Dwelling Low Density) will remain on the subject property. An art studio is a permitted home occupation use with the R-2 zoning district; however, outdoor display (e.g., sculpture garden) is not permitted.
3. Vote to "Amend"; this could allow Council to modify the Ordinance by adding conditions as determined appropriate.
4. Vote to "Table"; this could allow Council to 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 2597.

**COUNCIL BILL NO. 12-013**  
**ORDINANCE NO. 2635**

**AN ORDINANCE APPROVING A ZONE CHANGE FROM R-2 (MULTI-DWELLING LOW DENSITY) TO C-2C (COMMERCIAL MEDIUM INTENSITY-CONDITIONAL) FOR 0.17 ± ACRES OF LAND LOCATED AT 132 W. WILLOUGHBY AVENUE. THE ZONE CHANGE REQUEST INCLUDES ONE VARIANCE FOR A NUMERICAL REDUCTION OF 10-FEET TO THE MINIMUM REQUIRED 10-FOOT OPAQUE BUFFERYARD. SUBMITTED BY SUSAN FRARY, PROPERTY OWNER (Z2840).**

The City Council is informed that:

**WHEREAS**, Susan Frary, the property owner, has submitted a request for a zone change from R-2 (Multi-Dwelling Low Density) to C-2C (Commercial Medium Intensity-Conditional) for property located at 132 W. Willoughby Avenue; and

**WHEREAS**, Susan Frary, the property owner, has submitted a variance request for the numerical reduction of 10-feet to the minimum required 10-foot opaque bufferyard; and

**WHEREAS**, the Planning and Zoning Commission, after conducting a public hearing on August 23, 2011, recommended that said zone change request be conditionally approved by a vote of 4-1-0 ( two Commissioners absent).

**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 132 W. Willoughby Avenue.

**(II)**

**THAT** the condition be stipulated as follows:

- The permitted commercial uses shall be an art studio, private lessons, and

outdoor display of items for sale only.

(III)

THAT the variance for the numerical reduction of 10-feet to the minimum required 10-foot opaque bufferyard is hereby granted.

(IV)

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

(V)

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

(VI)

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.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

VOTE:

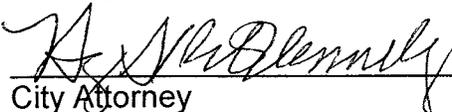
Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

(SEAL)

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

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

APPROVED AS TO FORM:

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

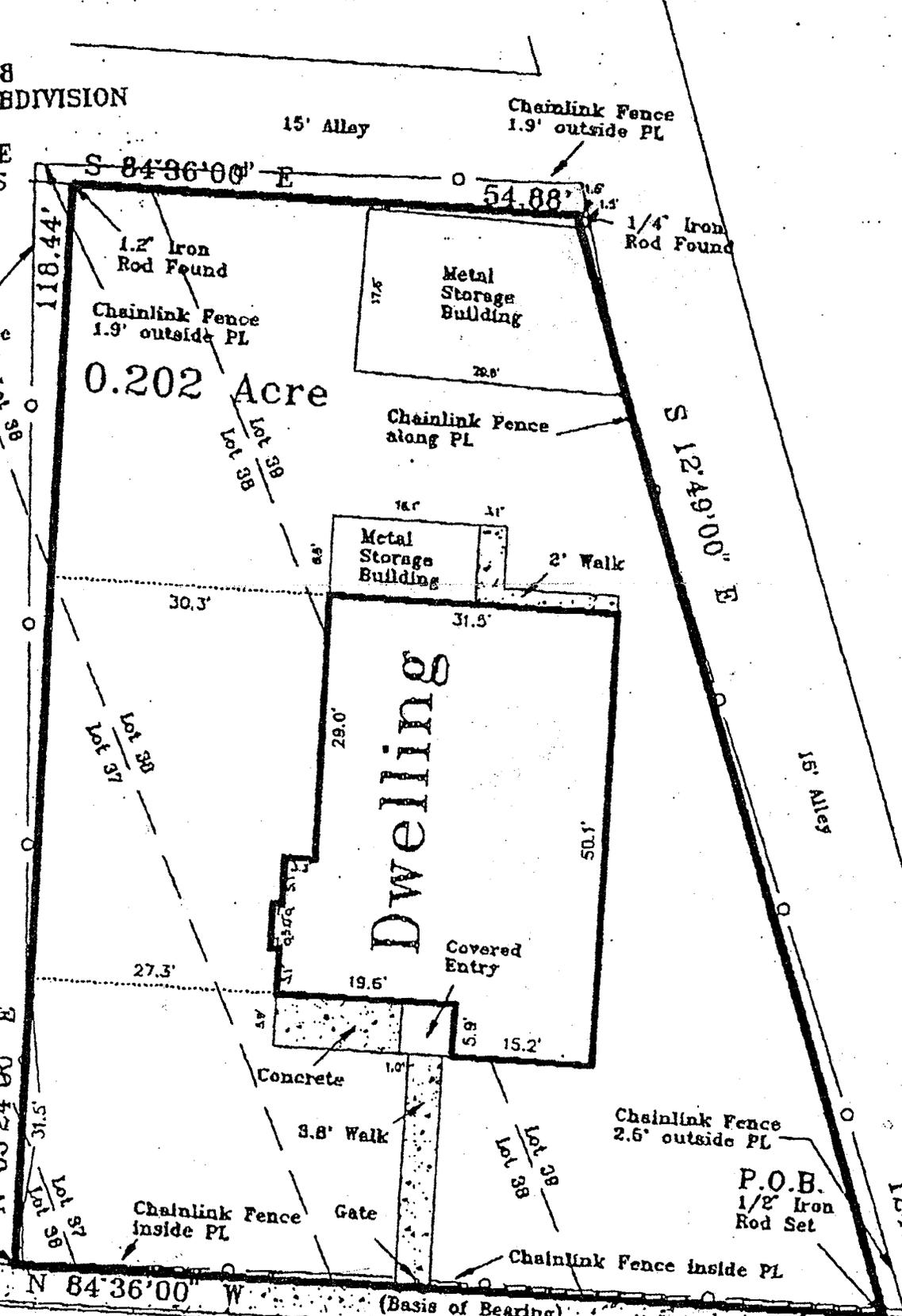
# SURVEY

PROPERTY IS IN AN "AE" DESIGNATED ZONE AS SHOWN ON THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 95013C0518 P. EFFECTIVE SEPTEMBER 6, 1995.

TRACT  
36, 37, 38  
39, BLOCK 8  
HEGAN SUBDIVISION  
27, 1914  
12 OF THE  
Y RECORDS  
CRUCES  
OUNTY  
ICO

Chainlink Fence  
.7' outside PL

DECEMBER 8,  
ES 908-909.  
TY RECORDS.



**FINDINGS & COMPREHENSIVE PLAN ANALYSIS**

1. The subject property is located at 132 Willoughby Avenue, is zoned R-2 (Multi-Dwelling Low Density) and encompasses 0.17 +/- acres.
2. The subject property is located within Area 3 of the Alameda Depot Neighborhood Overlay.
3. The subject property currently consists of a single-family residence.
4. The proposed zone change would allow the use of a residence a commercial art studio with a sculpture garden.
5. A variance of ten (10) feet to the minimum required ten (10) foot opaque bufferyard is required for the proposed zone change.
6. Policy 3.4 of the Alameda Depot Neighborhood Plan calls out Area 3 as the residential core where a low-density residential character is desired and low-intensity, neighborhood commercials uses are encouraged.
7. Land Use Element, Goal 1, Policy 1.5.2b of the 1999 Comprehensive Plan calls out medium intensity commercial uses to be located on streets designated as collector roadways, or higher.
8. The following polices from the 1999 Comprehensive Plan are relevant to the current proposal:

**Land Use Element, Goal 1 (Land Uses)****Policies**

- 1.5.1. Low intensity commercial uses shall be defined as those commercial uses which generate small-scale retail and service activities as a convenience to adjacent neighborhoods which also include home occupations (home businesses). Low intensity commercial uses shall be established according to the following criteria.
  - b. Low intensity commercial uses
    - i. A maximum of 1,500 gross square feet shall be permitted for low intensity commercial uses. Special uses are required for any business which is greater than 1,500 square feet, but may not exceed 2,000 square feet. Special uses to allow additional square footage are permitted for single uses only.
    - iii. The location of low intensity commercial uses shall be considered on a case-by-case basis: criteria shall include location on a street of local capacity and above, accessibility, and consideration of the level of traffic and environmental impacts.

- iv. Low intensity commercial development areas shall generally not locate within one-quarter ( $\frac{1}{4}$ ) mile of other commercial development areas.
- v. The City shall pursue multi-modal access standards (auto, bicycle, and pedestrian transit) for low intensity commercial uses.
- vi. Low intensity commercial development shall address the following urban design criteria: compatibility to adjacent development in terms of architectural design, height/density, and the provision of landscaping for site screening, parking and loading areas. Architectural and landscaping standards for low intensity commercial uses shall be established in the Comprehensive Plan Urban Design Element.
- vii. Adequate space for functional circulation shall be provided for parking and loading areas.

- 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 ( $\frac{1}{2}$ ) 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.

#### Urban Design Element

Policy 3.9.1 Residential and Commercial development should preserve a regional Desert Southwestern image rooted in a variety of architectural styles and design elements and strengthened by creative contemporary expression.

**City of Las Cruces****Community Development  
Interoffice Memorandum**

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TO: Planning and Zoning Commission

FROM: Adam Ochoa, Planner *AO*

THROUGH: Cheryl Rodriguez, Development Services Administrator

SUBJECT: Case Z2840

DATE: August 16, 2011

M-11-181

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Attached is the Staff Report for Case Z2840, a request for a zone change from R-2 (Multi-Dwelling Low Density) to C-2C (Commercial Medium Intensity-Conditional). This case was postponed from the July 26, 2011 Planning & Zoning Commission meeting.



Date: July 12, 2011

**CASE #** Z2840

**PROJECT NAME:** 132 W. Willoughby Avenue

**APPLICANT:** Susan Frary

**PROPERTY OWNER:** Susan Frary

**REQUEST:** To rezone from R-2 (Multi-Dwelling Low Density) to C-2C (Commercial Medium Intensity-Conditional) and to numerically deviate from the required ten (10) foot opaque bufferyard to a zero (0) foot opaque bufferyard.

**PROPOSED USE:** A single-family residence and a commercial art studio with a sculpture garden (outdoor display)

**SIZE:** 0.17 ± acres

**CURRENT ZONING:** R-2 (Multi-Dwelling Low Density)

**LOCATION:** The north side of Willoughby Avenue 150 ± feet west of its intersection with Main Street in Area 3 of the Alameda Depot Neighborhood Overlay; 132 W. Willoughby Avenue; Parcel ID# 02-04369

**COUNCIL DISTRICT:** 1

**PLANNING COMMISSION DATE:** July 26, 2011

**PREPARED BY:** Adam Ochoa, Planner *AO for AD*

**STAFF RECOMMENDATION:** Denial for the zone change  
Denial for the variance

**PROPERTY INFORMATION**

Address/Location: The north side of Willoughby Avenue 150 ± feet west of its intersection with Main Street in Area 3 of the Alameda Depot Neighborhood Overlay; 132 W. Willoughby Avenue; Parcel ID# 02-04369.

Acreage: 0.17 ±

Current Zoning: R-2 (Multi-Dwelling Low Density)

Current Land Use: Single-Family Residence

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

Proposed Land Use: A primary commercial art studio with outside storage and a secondary single-family residence.

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

If yes which overlay district? The subject property is located in Area 3 of the Alameda Depot Neighborhood Overlay where it is intended to accommodate primarily detached single-family dwelling units to maintain and protect a low-density residential character of development and to maintain the historic appearance of this central area of the neighborhood as closely as possible. This area allows properties to keep their underlying zoning designations, but requires them to follow the development standards set forth by the Alameda Depot Neighborhood Overlay.

**Table 1: Site analysis**

Development Standards for Alameda Depot Neighborhood Overlay Residential	
Minimum Lot Size	3,500 square feet
Minimum Lot Width/Depth	40 feet/70 feet
Maximum Height	35 feet
Front Setback	Within the range of primary building setbacks on both sides of the same block.
Secondary Front Setback	5 feet
Side Setback	5 feet
Rear Setback	10 feet
Development Standards for Alameda Depot Neighborhood Overlay Non-residential	
Minimum Lot Size	5,000 square feet
Minimum Lot Width/Depth	60 feet/70 feet
Maximum Height	35 feet
Front/Secondary Front Setback	5 feet
Side Setback	5 feet
Rear Setback	10 feet
Existing Subject Property	
Existing Building Square Footage	2,000 square feet
Existing Lot Size	8,000 square feet

**PHASING**

Is phasing proposed? Yes  No

If yes, how many phases?

Timeframe for implementation:

**ADJACENT ZONING AND LAND USE INFORMATION**

**Table 2: Land Uses**

Location		Existing Use	Zoning District	Zoning Designation
Subject Property		Single-Family Residence	R-2	Multi-Dwelling Low Density
Surrounding Properties	North	Single-Family Residence	R-1a	Single-Family Medium Density
	South	Single-Family Residence	C-2/R-3	Commercial Medium Intensity/ Multi-Dwelling Medium Density
	East	Used Auto Sales	C-2	Commercial Medium Intensity
	West	Single-Family Residence	R-2	Multi-Dwelling Low Density

**HISTORY**

Previous applications? Yes  No

If yes, please explain: An ordinance creating the Alameda Depot Neighborhood Overlay

Previous ordinance numbers? 2597

Previous uses if applicable:

**COMPREHENSIVE PLAN**

Elements & Policies

Land Use Element

- 1. Goal 1, Policy 1.5.1.
- 2. Goal 1, Policy 1.5.2.

Urban Design Element

- 1. Goal 3, Policy 3.9.1

Analysis: The applicant is seeking a zone change from R-2 to C-2C to facilitate the use of a single-family home and a commercial art studio with a sculpture garden (outdoor display) on the subject property. The applicant is proposing the commercial art studio and sculpture garden as the primary use on the subject property and residential dwelling as the secondary use on the subject property. The subject property is located within Area 3 of the Alameda Depot Neighborhood Overlay. The proposed C-2C (Commercial Medium Intensity-Conditional) zoning designation is not supported by the Alameda Depot Neighborhood Plan, because the Plan encourages only low-intensity, neighborhood commercial uses in Area 3. The Alameda Depot Neighborhood Plan supports a low-intensity, neighborhood commercial use in Area 3 if the residential component of the property is retained such as a home occupation as described in Section 38.52 of the 2001 Zoning Code, as amended. The proposed zone change would not

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 follow the regulations of that section. The subject property is also at the outer area of a predominantly residential area and the proposed commercial zoning on the subject property is out of character with the existing neighborhood. The subject property is also located on a local roadway where commercial uses are discouraged. Overall, this zone change request is not supported by the 1999 Comprehensive Plan or by the Alameda Depot Neighborhood Plan.

**REVIEWING DEPARTMENT COMMENTS**

Fire Prevention:

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

Type of building occupancy: R Occupancy

Nearest Fire Station

Distance: 0.30 ± miles

Address: 201 E. Picacho Avenue

Adequate Capacity to Accommodate Proposal? Yes  No

Additional Comments: Any new construction shall meet International Building Code and International Fire Code requirements. Recommendation of conditional approval.

Police Department:

Additional Comments: Did not review the development application.

Engineering Services:

Flood Zone Designation: Zone X

Development Improvements: On-lot ponding must meet 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 type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Curb & gutter extension needed	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Paving extension needed	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>

Additional Comments: Recommendation of approval.

MPO

Road classifications: Willoughby Avenue is classified as a Local roadway.

Additional Comments: Recommendation of approval

Public Transit

Where is the nearest bus stop? 0.1 ± miles north of the subject property on Main Street.

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 type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" 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 for special events at the art studio should be limited to a maximum of 6 to 10 vehicles max.

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: If the fire flow requirement increases, water system improvements may be needed.

Wastewater Availability and Capacity

Wastewater 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: N/A

Additional Comments: Recommendation of approval.

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: Alameda Elementary Distance: 0.35 +/- miles  
Enrollment: 451
- 2. Middle School: Sierra Middle School Distance: 1.20 +/- miles  
Enrollment: 864
- 3. High School: Mayfield High School Distance: 1.40 +/- miles  
Enrollment: 2298

Adequate capacity to accommodate proposal? Yes  No  N/A

**DESIGN STANDARDS ANALYSIS**

Parking

Is 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? 6 to 10 How many accessible? 1

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 will be required.

Will bicycle parking be required for the proposed use? Yes  No  N/A

Comments: The proposed zone change and uses of an art studio and outdoor display area (sculpture garden) as the primary uses on the property will require the subject property to follow all parking requirements of the 2001 Zoning Code, as amended, for commercial uses. The subject property currently has no improved parking and the applicant has stated that a minimum of three (3) regular auto parking stalls and one (1) ADA accessible auto parking stall can be located on the subject property. The Alameda Depot Neighborhood Overlay would permit the subject property to utilize two (2) on-street parking spaces allowing the subject property to meet

the minimum number of parking stalls required<sup>297</sup>. One (1) bicycle parking stall will be required to be located on the subject property. 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? The Alameda Depot Neighborhood Overlay requires a minimum area equal to 25% of the entire lot excluding the main building area to be landscaped. The existing landscaping is for the existing single-family residential use on the property and will have to be upgraded to the minimum 25% of the entire lot to follow standards.

Are there existing buffers 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 will be required? A ten (10) foot wide opaque buffer is required along the western property line of subject property adjacent to the R-2 zoned property. The applicant is proposing to install a parking area directly adjacent to the western R-2 zoned property with an eight (8) foot tall semi-opaque and opaque wall on the property line to serve as a buffer. The proposed parking area will leave no room to add a ten (10) foot wide opaque buffer.

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

If yes, how is connectivity being addressed? 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: There are no requirements of open space, parks, recreation, or trails for the proposed zone change.

**Table 3: Special Characteristics**

Characteristic	Applies to Project?	Explanation
EBID Facilities	No	N/A
Medians/ Parkways Landscaping	No	N/A

**VARIANCE ANALYSIS**

**Table 4. Variance Hardship Determination**

	Factor	Analysis	Supports Request?	
			Yes	No
1	A physical hardship relative to the property (i.e. topographic constrains or right-of-way takes resulting reduced development flexibility, etc.) in question	The subject property is an existing residential property that is trying to be retrofitted to allow commercial uses on it.		X
2	The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted.	The proposed art studio and outdoor display sculpture garden may provide a minimal economic development contribution at a neighborhood or city-wide level.		X
3	Monetary considerations not as a whole but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.	The cost of converting the residential property into a commercial property may be high for the applicant in order to comply with all of the City's development codes.		X

**Table 5: Project Chronology**

Date	Action
June 3, 2011	Application submitted to Development Services
June 7, 2011	Case sent out for review to all reviewing departments
June 14, 2011	All comments returned by all reviewing departments
July 5, 2011	Staff reviews and recommends approval of the zone change
July 10, 2011	Newspaper advertisement
July 15, 2011	Public notice letter mailed to neighboring property owners
July 17, 2011	Sign posted on property
July 26, 2011	Planning and Zoning Commission public hearing

**SUMMARY AND CONCLUSIONS**

The proposed zone change is not supported by staff and is not supported by the 1999 Comprehensive Plan and the Alameda Depot Neighborhood Plan. The subject property is located within Area 3 of the Alameda Depot Neighborhood Overlay. The proposed C-2C (Commercial Medium Intensity-Conditional) zoning designation is not supported by the Alameda Depot Neighborhood Plan, because the Plan encourages only low-intensity, neighborhood commercial uses in Area 3. Policy 3.4 of the Alameda Depot Neighborhood Plan supports a low-intensity, neighborhood commercial use in Area 3 if the residential component of the property is retained such as a home occupation as described in Section 38.52 of the 2001 Zoning Code, as amended. The proposed zone change would not follow the regulations of this section. Area 3 of the Alameda Depot Neighborhood Overlay is intended to accommodate primarily detached single-family dwelling units to maintain and protect a low-density residential character of development and to maintain the historic appearance of this central area of the neighborhood. Staff has concerns on how this newly rezoned medium intensity commercial lot may fit in the predominantly residential Area 3 of the Alameda Depot Neighborhood Overlay.

Staff also feels that the proposed zone change and proposed uses on the subject property may require additional variances when the subject property begins the building permit process. The applicant has submitted information showing how the subject property would be able to follow all requirements of the 2001 Zoning Code, as amended, but without a professionally produced improvement plan that is done to scale, staff is unable to verify that all requirements can and will be followed for the redevelopment of the

lot. It is staffs opinion that the size of the subject<sup>299</sup> property is too small to make a viable commercial property.

The applicant is proposing further conditions on the proposed C-2 zoning designation by limiting the permitted uses to an art studio, private lessons and outdoor display of merchandise for sale. The business owner's residence will be a secondary use on the subject property and the commercial business will be the primary use. Staff does not support the proposed zone change with the conditions stipulated by the applicant.

The proposed variance to the required ten (10) foot opaque bufferyard is also not supported by staff. The applicant has proposed to install an eight (8) foot semi-opaque wall in the front portion of the property along the western property line and an eight (8) foot opaque wall in the rear portion of the property along the western property line. Staff feels that the subject property is too small and very limited in its ability to accommodate the required bufferyard and possibly other development requirements of the proposed C-2C zoning designation. Staff believes that a bufferyard is needed to help alleviate any nuisances for the existing adjacent residential property with the new commercially zoned property.

### **FINDINGS**

1. The subject property is located at 132 Willoughby Avenue, is zoned R-2 (Multi-Family Low Density) and encompasses 0.17 +/- acres.
2. The subject property is located within Area 3 of the Alameda Depot Neighborhood Overlay.
3. The subject property currently consists of a single-family residence.
4. The proposed zone change would allow the use of a residence a commercial art studio with a sculpture garden.
5. A variance of ten (10) feet to the minimum required ten (10) foot opaque bufferyard is required for the proposed zone change.
6. Policy 3.4 of the Alameda Depot Neighborhood Plan calls out Area 3 as the residential core where a low-density residential character is desired and low-intensity, neighborhood commercials uses are encouraged.
7. Land Use Element, Goal 1, Policy 1.5.2b of the 1999 Comprehensive Plan calls out medium intensity commercial uses to be located on streets designated as collector roadways, or higher.

### **STAFF RECOMMENDATION**

Staff has reviewed the proposed zone change and recommends denial for the proposed zone change.

Staff has also reviewed the proposed variance to the minimum required buffer yard and recommends denial.

### **DRC RECOMMENDATION**

N/A

**ATTACHMENTS**

1. Development Statement
2. Site Plan
3. Proposed Site Plan
4. Narrative from the Applicant
5. Comprehensive Plan Elements and Policies
6. Aerial Map
7. Vicinity Map

DEVELOPMENT STATEMENT for City Subdivision/Zoning Applications

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 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: Susan Frary
Contact Person: Same
Contact Phone Number: 575-202-2420
Contact e-mail Address: susan@shadetreeproducts.biz
Web site address (if applicable): N/A

Proposal Information

Name of Proposal: Art Studio
Type of Proposal (single-family subdivision, townhouse, apartments, commercial/industrial) Mixed Use - Residence, Art Studio & Sculpture Garden

Location of Subject Property 132 W. Willoughby
(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)

Acreage of Subject Property: 1/5 acre

Detailed description of current use of property. Include type and number of buildings: residence with detached workshop/garage (currently - zero off-street parking on property)

Detailed description of intended use of property. (Use separate sheet if necessary): Use detached workshop/garage as studio for metal sculpture, side yard for sculpture garden and live in residence. Open sculpture garden for special events, primary business is through commissions and commercial galleries.

Zoning of Subject Property: R2

Proposed Zoning (If applicable): C2 - Mixed use (C2 @ residential)

Proposed number of lots 1, to be developed in 2 phase (s).

Proposed square footage range of homes to be built from 0 to

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

New storage shed: 36' x 6' open front (10 ft max. roof height)

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

first Friday art ramble, studio tours, Saturday mornings (hours: Farmers Market)

Anticipated traffic generation 5-10 per week ~~trips per day~~

Anticipated development schedule: work will commence on or about September 2011 and will take 6 months to complete.

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

on-lot ponding

Will any special landscaping, architectural or site design features be implemented into the proposal (for example, rock walls, landscaped medians or entryways, entrance signage, architectural themes, decorative lighting)? If so, please describe and attach rendering (rendering optional). see attached

Is the developer/owner proposing the construction of any new bus stops or bus shelters? Yes \_\_\_ No X Explain: \_\_\_\_\_

Is there existing landscaping on the property? yes

Are there existing buffers on the property? mature trees

Is there existing parking on the property? Yes \_\_\_ No X

If yes, is it paved? Yes \_\_\_ No \_\_\_

How many spaces? \_\_\_\_\_ How many accessible? \_\_\_\_\_

**Attachments**

Please attach the following: (\* indicates optional item)

- Location map
- Subdivision Plat (If applicable)
- Proposed building elevations
- \*renderings of architectural or site design features
- \*other pertinent information

## Statement of Hardship for Variance Requests

If you are applying for any variances, please provide a brief explanation as to whether or not your request lends support to the following questions. If you have no variance requests, please disregard this form.

1. Is there a physical hardship relative to the property (i.e. topographic constrains or right-of-way takes resulting reduced development flexibility, etc.) in question?

① Plot is irregular in shape,  
Meets minimum dimensions,  
but not minimum size.  
Variance requested for size.

③ Adding new parking, request variance  
for landscape buffers beside  
parking areas.

2. Is there a potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted?

Las Cruces Downtown Partnership has  
claimed that ART is a significant  
necessity for the redevelopment to succeed.

Subject property is along the "Gateway  
to Downtown" corridor.

3. Are there monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options case considerable monetary hardship under strict application of code provisions?

Property owner has been on property  
since 1997. Must receive "C2"  
zoning in order to proceed with  
business plan as "sculptor" or  
sell and move out of city.

# SURVEY

PROPERTY IS IN AN "AE" DESIGNATED ZONE AS SHOWN ON THE FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 35013C0518 F. EFFECTIVE SEPTEMBER 8, 1995.

TRACT  
36, 37, 38  
19, BLOCK 8  
HEGAN SUBDIVISION  
27, 1914  
12 OF THE  
Y RECORDS  
CRUCES  
OUNTY  
ICO

Chainlink Fence  
1.7' outside PL

15' Alley

Chainlink Fence  
1.9' outside PL

S 84°36'00" E

54.88'

1/4" Iron  
Rod Found

1.2" Iron  
Rod Found

Chainlink Fence  
1.9' outside PL

Metal  
Storage  
Building

0.202 Acre

Chainlink Fence  
along PL

S 12°49'00" E

DECEMBER 8,  
ES 908-909.  
TY RECORDS.

Metal  
Storage  
Building

2' Walk

Dwelling

15' Alley

20

Lot 27  
Lot 28

30.3'

31.5'

27.3'

29.0'

50.1'

19.6'

15.2'

Covered  
Entry

Concrete

8.8' Walk

Chainlink Fence  
2.6' outside PL

Found

N 05°24'00" E

Chainlink Fence  
inside PL

Gate

P.O.B.  
1/2" Iron  
Rod Set

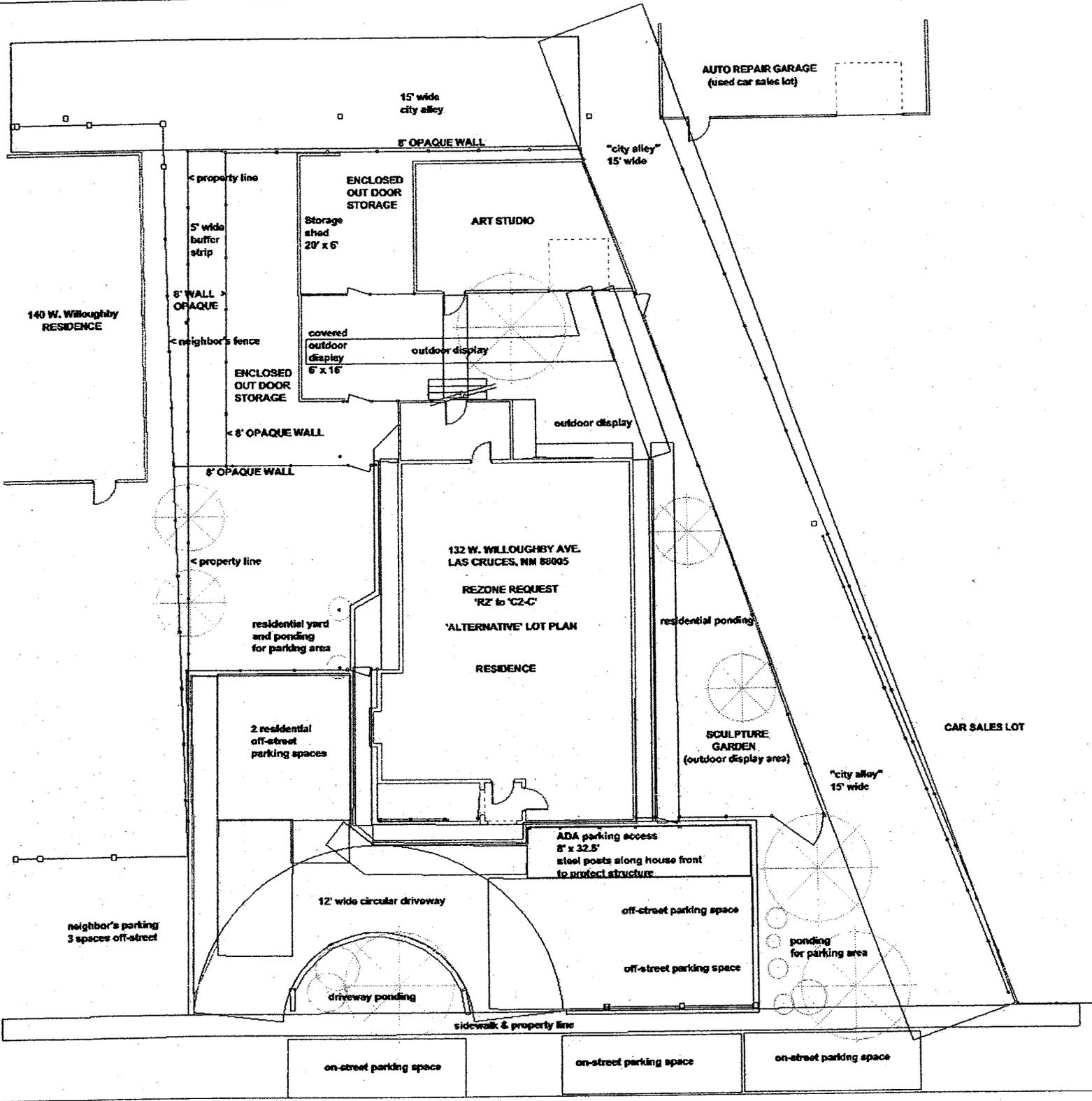
Chainlink Fence inside PL

N 84°36'00" W

(Basis of Bearing)

93.86'

32 Willoughby Ave



**Requested: a zone change from 'R-2' (Residential, Medium Intensity) to 'C-2-C' (Commercial, Medium Intensity, Conditional) for 8800 square feet of land located at 132 W. Willoughby Ave.**

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The proposed zoning change, from R2 to C2C, brings the subject property into compliance with the 2001 zoning code, as amended. Property owner desires a live-work property; will live in the residence and use accessory workshop/garage as an art studio. No renovation to existing buildings is planned; construction limited to: adding a circular driveway, off-street parking, storage shed and new fences. Property improvements proposed are shown in the lot plan(s) attached. *Conditional uses requested are:* residential, accessory building, cottage industry, art studio, lessons, outdoor display of merchandise and outdoor storage (warehousing accessory to office, retail, service or industry).

### Overview & history

Subject property is located at the edge of the Alameda Overlay District, ~ 110 feet from Main Street, a major Federal Highway (Principal Arterial), and one block north of the intersection of Main Street and Picacho Avenue. The neighborhood is not classic residential. It is very urban, downtown in flavor. Heavy, constant traffic noise (sirens from the Fire Station and Police Station, semi-trucks braking for the stop-light, etc.), traffic flow by drivers 'short-cutting' the traffic lights on Main and also off of Alameda as well as business traffic for existing C2 properties located next door to subject property are normal for the neighborhood. Neighborhood is mixed zoning: large shopping center at the corner of Main & Picacho, various commercial properties along Main visible from subject property, including the old 'Tommy's Roller Rink' on the east side of Main. West Willoughby includes R1, R2 and R3 residences (single family homes, duplexes, several apartment complexes and a group living residence center - currently listed for sale). Subject property is next door to a C2 zoned 'used car lot' and across the street is a C2 zoned 'Rib café' (which runs an outdoor, wood-fired meat-smoker 24 hours, 6 days a week). See pictures and maps, attached.

Located at a gateway between a high traffic commercial area and the ADO3 Alameda residential district, as defined in the 2010 Overlay, subject property is an adobe bungalow with a metal accessory building at the back edge of the property. The proposed plan splits the property roughly in half – lengthwise. The east side, facing the used car lot, will be for 'Commercial' usage; the remainder will be 'Residential' usage. Design includes 'buffers' between commercial use area and neighboring residential properties and public by-ways.

An 'art studio with on-site owner residence' fits within live-work classification and mixed-use standards for the Alameda District Overlay. Property is a historical property, but is not listed in Historical Register. No changes to residential building are proposed.

Building(s) appropriate for use as Art Studio and residence as well as location near the downtown Las Cruces area were the primary reasons owner purchased property in 1997 after viewing properties through-out Dona Ana County. The property was selected with the expectation that it would become a prime art studio location when the "Downtown Renovation" was complete. Now, 2011, the Downtown reconstruction is nearing completion. "Arts and Culture", including artists, are encouraged in the Downtown Redevelopment Plan.

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Owner has been a resident of Las Cruces since 1976 and is a 3<sup>rd</sup> generation New Mexico native who has worked in the arts since the mid 1970's, originally in Alamogordo. Owner is a mixed media artist who works with textiles, leather, glass, concrete, 'found materials' with a special emphasis on metalwork to create functional art, jewelry and sculptures. A safe studio work-space is essential, separate from the residence. Studio building is a 500 square foot steel and concrete workshop/garage. On-site studio is desired (versus a separate off-site workspace) for many reasons: expense of separate rental or purchase; security for tools, inventory and equipment; short commute to work; intermittent immersive nature of the work; and safety – rest and breaks are essential.

Commercial activities will be limited. "Sculpture Garden" viewing hours will be posted and set to coincide with Farmers Market, First Friday Ramble, Studio Tours or other market activity scenarios as appropriate for a working art studio. ***Drop-in visitors will not be allowed*** due to the mental focus and safety issues in craftwork. Commissioned works may involve studio visits by clients - which will be 'by appointment only' and very limited in nature. Artist-owner will continue to exhibit and work with commercial galleries; in Las Cruces, nationwide and on-line. All outdoor display and storage areas will be fenced, see perspective drawings attached.

Property land usage will be approximately 45:55 (ratio) between residential to commercial areas, see 'space use analysis' attached. The balance is larger toward commercial use - due to all the required off-street parking and buffer areas, not due to large commercial buildings. Owner will reside on-site, use rear accessory building as 'Art Studio', display yard sculptures in "Sculpture Garden" (enclosed outdoor display) on east side yard and rear of residence, and keep materials and samples in 'enclosed outdoor storage' and 'storage shed' at rear of property. To be added: commercial and residential off street parking, circular access driveway, fences, landscaping and new storage shed 'accessory building'. Existing non-compliant storage shed will be demolished and temporary portable storage removed.

TWO LOT PLANS ARE PRESENTED FOR CONSIDERATION. (1) The 'Preferred Plan' has a more '*Residential Style*' and includes a request for an 'encroachment agreement' for use of a 5' strip of the City alley on the north side of the subject property. (See discussion included about the alleys.) In the 'Preferred Plan' the subject property's residential side yard 'steps back' to a 15 foot buffer yard at rear of property between R2 neighbor and 'enclosed display and storage area'. (2) The 'Alternative Plan' would be more expensive to build and has a more '*Commercial Style*' due to the use of 8' tall opaque walls around the back commercial area. This plan provides more 'outdoor storage' for materials and less 'residential yard' for the owner. In the 'Alternative Plan' the west side buffer strip would be only 5' wide and would essentially be available for use of the neighbor to the west as part of that property's rear yard. 'Alternative Plan' does not include fence along west rear property line. *Lot plans and space use analysis are included for both alternatives.*

Design considerations: Existing adobe residence dates to 1929, was extensively remodeled approximately 1995 by previous owner. Existing garage/workshop/studio accessory building was constructed new approximately 1995. It replaced the original wood carriage shed garage

built on site during original construction. Residence is in the “California Bungalow Style” which is the predominant style of the Jones Hagen Sub-division neighborhood.

**OFF-STREET PARKING:** *Parking needs in the neighborhood are extreme due to current, non-conforming parking allowed for restaurant, apartments and group home.* Owner proposes to convert existing residential 26 foot front yard setback into 12 foot wide circular access drive around mature landscaping to access added off-street parking. Proposed parking plan adds 4 off-street spaces, including 1 ‘ADA van accessible’, loses 2 on-street spaces for curb cuts (driveway ingress/egress lanes); an overall gain of 2 parking spaces to neighborhood. All parking and access to drain onsite to landscape areas.

**FENCING:** Proposed fencing and landscape design, to be in “Bungalow Style” with steel arches and lattice in-fill panels and vines or espaliered fruit trees, will shield views of commercial area while allowing light and air-flow. Neighborhood has a variety of house & fence styles. Lattice is used on 3 other properties along Willoughby as part of the ‘Bungalow Style’. Arched windows, gates and doorways are common in the area; subject house has two arches on entry way. Proposed fence design has an open appearance and provides visual screening from the public right-of-way.

**Proposed landscaping plan:** Retain existing large pecan trees, shrubs and add additional landscape elements; espaliered fruit trees, miniature roses, bird of paradise, honeysuckle, jujube and sedum. Visual buffer provided by opaque fence panels shield residential neighbors from ‘commercial areas’. Used car lot located to east, zoned C2, not affected.

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**Variations and administrative exceptions requested are listed below.** Community Development authority exists for all exceptions requested. Property is in the Alameda Overlay, is a historical property and no structural changes are planned to existing buildings. Property improvements planned include: addition of off-street parking (4 spaces, including 1 ADA compliant), new storage shed and new steel modular panel fences.

**Variance** requested for minimum size requirement – property meets all minimum lot dimensional requirements except square footage; 8800 actual property size vs. 10,000 required. Street frontage is 93 feet, depth is 118 feet; lot is irregular in shape. (Alleys vacated would bring property into size compliance. See discussion following, and property size analysis.)

**Variance** requested for minimum landscape buffer depth: 2 places. In front, between parking spaces and public sidewalk, numerical reduction of 8' from required 8'. 3' tall by 15' long pierced concrete block buffer wall between parking area and sidewalk to provide visual separation between public by-way and parking area. On west side, between residential parking and neighbor's yard, numerical reduction of 1' from 5' minimum required.

**Exception** requested for C2 property zoning for property roadway access - not located on a "major local street". Subject property is ~110 feet from Main Street. Neighborhood is 'mixed use'. Numerous uses already occur on Willoughby Avenue which are non-residential, including deliveries by restaurant suppliers and unloading of commercial car haulers. Planned usage is 'Art Studio' which will not increase street traffic on a daily basis. Location of subject property is appropriate for an Art Studio and is in agreement with the City of Las Cruces 'Down Town Redevelopment Plan'. The 'Alameda Neighborhood Overlay' specifically encourages 'live-work' properties within the area and allows for 'mixed use' options.

**Exception** requested for use of semi-permeable materials for driveway and parking areas, versus solid concrete paving - requested for cost savings, improved drainage and appearance. Use of 'faux' flagstone or brick will be a better design fit for the property and the neighborhood, yet more affordable and durable than actual flagstone or brick.

**Exception** requested for "automated irrigation system" - Cost is prohibitive. This is a single historical property with existing mature trees on site being upgraded, not a sub-division being built on raw land.

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**INFORMATION: ‘Alley vacate or encroachment agreements.’**

Two 15’ wide alleys, in a ‘T-shaped’ configuration, are alongside two sides of the subject property as shown in lot plan as platted on the city records in the Jones Hagen Subdivision from (1917?). Currently 5 (of 12) property owners on the block have signed notarized statements in support of vacating the two alleys. These alleys are not being maintained by the city. They are impassable and dangerous. 2 of the 3 street access curb cuts are non-existent. The adjacent streets were completely repaved in (1992?), with new underground utilities. Curb cuts were not included at that time. Unclear if they existed before that. No one in the neighborhood can remember when the alleys were last accessible. Rock walls have been built encroaching into the alleys so long ago they are falling down. A review of property descriptions for properties on the block shows that the “alley” is mentioned in some of the property descriptions, but not all.

The EBID ditch in the alleyway is unmaintained – because the ditch can not acquire water - due to damage to the underground source pipeline which is located on city owned land on or near to the flood control area between Chestnut Street and the Police Station. (Information verified with EBID. Pressure truck was unable to dislodge blockage from pipeline between man-hole at 1100 N. Main Street and Las Cruces Lateral.) New Mexico ‘aquecia water law’ requires the property owner whose land ‘ditch’ is on to maintain it, i.e. the City. The 3 property owners with EBID water rights (the ditch users) are in agreement to negotiate to sell or transfer their rights, either to [a specific farmer in the south valley] or to the City or other interested parties. If water rights are transferred, the ditch can be ‘abandoned’. Until then the EBID easement remains effective.

A ‘vacate’ of the alleys is “probably going to happen” if the City doesn’t enforce against encroachments and begin maintaining alleys. (Some owners are already enjoying full use of the land, others are prohibited. Subject property was denied use of the ‘alley’ in 1989, which was THREE owners ago and is still being denied.) This topic is included in ‘rezone request’ because the ‘vacate’ timing affects construction schedule for property improvements and requirements for buffer area to the north.

Discussion: PLUS SIDE - after ‘vacate’ the property will be over the 10,000 square foot minimum size for ‘C2’. MINUS SIDE - the existing alley provides the ‘required buffer’ for the rear ‘R1a’, fencing off buffer area, after vacate, means subject property owner will gain very little usable area from vacate of ‘east-west’ alley. Only a ‘vacate’ of the north-south alley provides a usable benefit to subject property owner.

*Details provided (in the plans, construction details and space analysis) are more extensive than if this situation didn’t exist. Proposal is submitted assuming no ‘alley vacate’ until unknown future date. Subject property owner plans to build using a ‘modular’ fence panel system and will reposition fences to remain compliant when, or if, any alley ‘vacate’ occurs.*

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Description of proposed construction –

(Building permit required, to be performed by licensed contractor).

Accessory buildings: Demolish existing 8' x 12' two story 'playhouse/storage' shed, which was on the property when purchased. Remove owner's temporary portable storage. Build new detached storage building, 35' x 6' with shed style roof; maximum height 10', steel pole construction with steel siding to match existing steel workshop garage.

Retaining curbs: Remove existing old 'railroad tie' retaining curbs around residence, replace with 1' tall x 8" wide concrete block curbs or poured in place 6" wide curbs; in same location on west side and at 6' from residence on east side, add gravel infill along residence east and west sides for drainage to protect old adobe structure. South side curbs to be as shown on lot plan, with corner angle on west end and against residence beside ADA access aisle at east end. Install 3' steel posts, minimum 3" schedule 40, at 4' minimum spacing between residence and ADA access aisle. Additional retaining curbs will be necessary around the parking and driveway areas to retain fill required due to 'sunken' yard.

Sidewalks: Install new 3' wide, 2" thick concrete slab sidewalk inside retaining curb; as shown on lot plan around front of residence and on east side (offset by 3'), parallel to building, in display area for access to outdoor display in 'sculpture garden' and to art studio area. Install brick paver sidewalks between studio, north display area and residence, as shown on lot plan. ADA van access aisle to be concrete, 8' x 32', with sloped ramp area to provide access to gated sidewalk leading to 'sculpture garden'.

Gated access to rear of property:

East side access is currently provided by alley. Access to rear provided, as shown in lot plan, by installing one 7' wide gate panel in east front fence as shown on lot plan. (Add second 7' wide gate panel when alley vacated.)

West side access provided by two removable panels, 8' wide each, in west front fence for occasional use. (West access not changed when alley vacated.)

Off-street parking: Driveway and parking pads to be constructed of semi-permeable material and sloped for drainage on-site; material proposed is faux brick or flagstone in a terra cotta or tan color. (Driveway and parking pads will not be impacted by alley vacate. Curb cut for east alley will be retained for access to rear of property when alley vacated.)

Curb cuts: Construction to follow Municipal design standards. Curb cut locations for half-circle 12' wide driveway ingress and egress lanes across city sidewalk, one at south-west corner of property and second 24' to the east. Location retains two (2) on-street parking spaces and mature 'native pecan' tree on subject property. Driveway: 12' wide, 12' inside radius half-circle (slightly elliptical to maintain 12' width between residence front sidewalk and landscape area) drainage sloped into the center landscaping.

Parking pads: Residential parking (2 spaces) 18' x 24' semi-permeable material draining to west residential yard. Commercial parking (2 spaces) 18' x 24'

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Ponding current: Residence yard is sunken (1 foot below sidewalk level) for ponding. Dirt removed from yard was used in construction of raised EBID ditch in alley behind property. Existing berms and railroad tie curbs acted with yard ponding areas to protect adobe residence through many years when this area was frequently flooded. Subject property was rated a 'Class AE' flood danger when purchased, in 1997. Flood danger was reduced, but not completely resolved, by drainage and area ponding in city flood control project on Chestnut Street when it was built by Corps of Engineers.

Drainage & ponding planned: Compacted fill and semipermeable paving used to raise driveway and parking areas: (1) to 2" below street level at low areas and (2) to street level at high spots located on a line with the new sidewalk curb across front of residence. Curb and 'high spot' necessary to protect existing adobe residence from street drainage inward through driveway curb cuts down onto property. (Owner has watched street water rise over curb on several occasions even after Corps of Engineers flood control measures built.)

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FENCES - STAGED CONSTRUCTION PLAN (before/after alley vacate.)

Building permit required, construction to be done by property owner.

Five fence styles are proposed – see separate description and drawings attached.

South side – owner build and install new Style 'F1' arched panel fences across front of property in a line with the residence to the east side (27' back from sidewalk, 25' of panels 8' wide x 8' tall) and at the back of the residential parking areas (46' back from sidewalk, 22' of panels 7' wide x 7.5' tall. (When alley vacates, add NEW additional 7' panel added across half of former east alley to meet new location of car lot fence.)

East side – remains as is, except remove 25' of chain-link at south end along alley. (Car lot plans to move 6' chain-link to new property line when alley vacates.)

North side – two possible locations

'Preferred plan' - Owner build and install 58 feet of new fence, Style 'F2' semi-opaque, continuing 140 West Willoughby neighbor's current fence line (5' encroachment into platted alley). (When alley vacates - move to NEW location "5 feet in from NEW property line location", wherever the PL is determined to be by City survey, to provide 'buffer zone' between 'R1a' property to the north and 'outdoor storage area'.)

'Alternative plan' - Owner build and install modular fence panels in style 'F3', full opaque, on property line. (Reposition if alley vacate occurs to "wherever Codes requires".)

Buffer fence –

'Preferred plan' - Build and install new modular panel semi-opaque fence (style 'F2') and storage shed along a line 15' in from west property line. (No change planned when 'alley vacates' except to the north of the storage shed where matching fence will be installed or removed as needed to meet up with north fence, whichever.)

'Alternative plan' – Build and install new modular panel, fully opaque fence (Style 'F3' at 5' inside west property line as shown in lot plan. Leave neighbor access to the 'buffer strip' for use as part of the back yard of that property.

West side –

'Preferred plan' - Fence on neighbor's property remains as is. Replace with appropriate shared co-located fence on property line, Style 'F1' between residential areas

(58') and remainder in Style 'F2' on actual property line at rear opposite 'outdoor commercial area' as shown in plans, when budget allows. (See discussion following.)

'Alternative plan' – New fence installed on neighbor's property on current fence line in Style 'F1' from neighbor's front fence 58' back to meet up with new fence around proposed 'outdoor storage area'. Neighbor will have the option to have a much nicer back yard by removing existing back fence for access to '5' wide buffer yard plus the 2'7" of owned area currently blocked by existing fence line,.

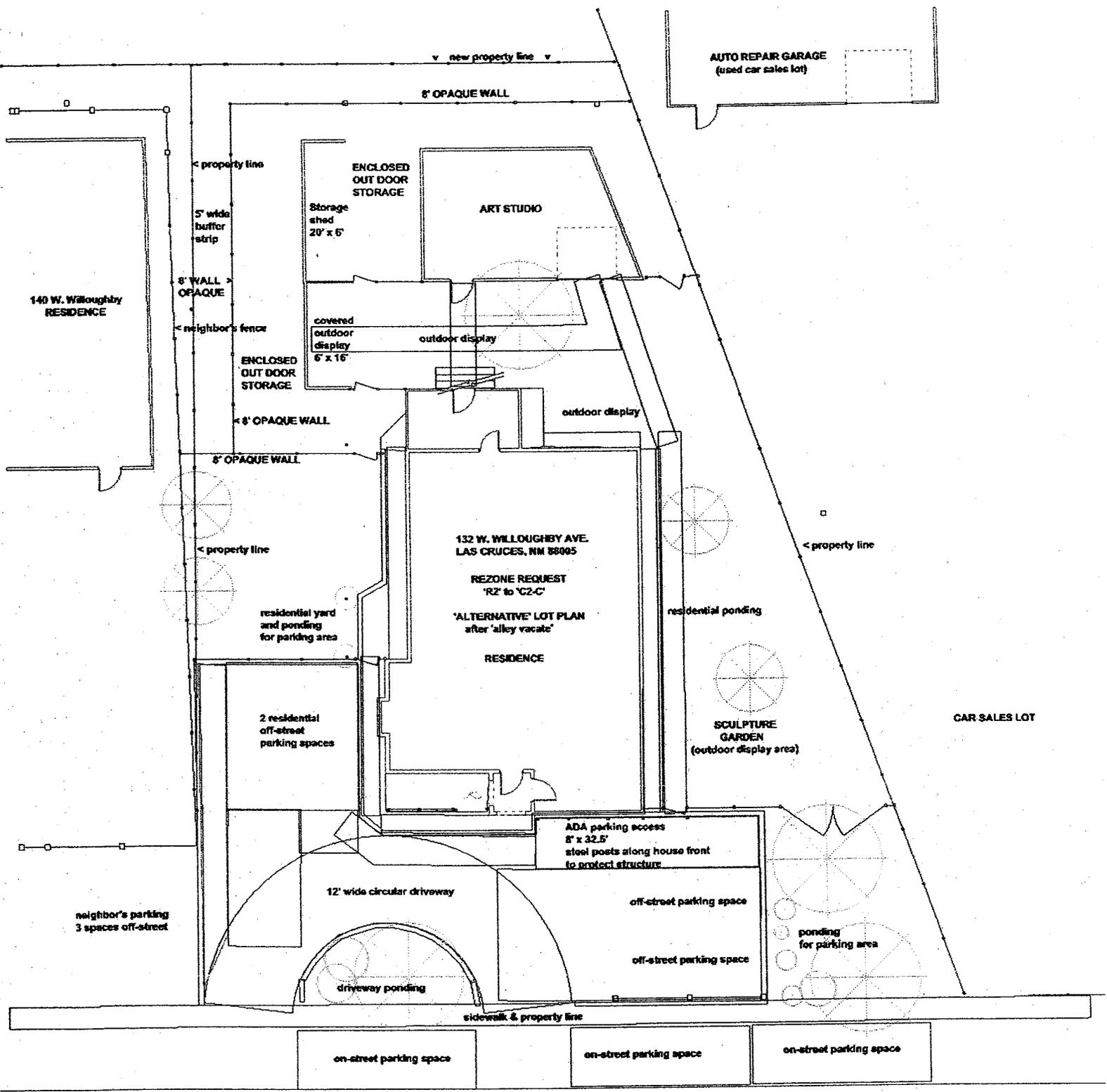
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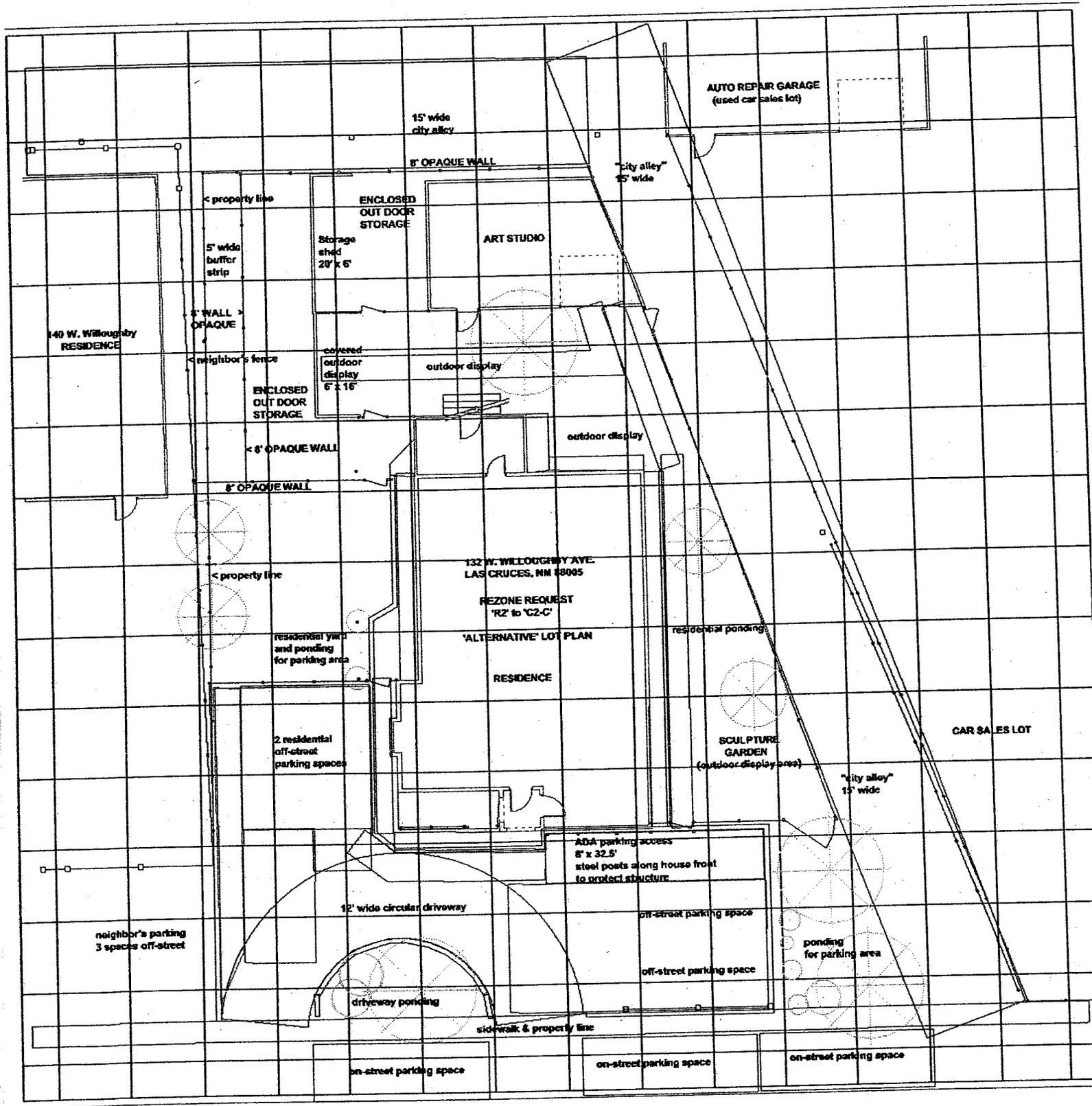
INFORMATION: Property lines and 'R2' neighbor's shared fence to west

A 'sliver' of land between the two properties is outside the existing mutual fence, between subject property and 140 W. Willoughby. The fence is not on the property lines. In the front yard, it is ~1' inside subject PL, at the back it is 2.7' outside PL on neighbor's land. Majority of the fence is 3' chain link set on a 1' concrete retaining wall, the rest is 4' tall concrete block. It can't be readily moved and putting an additional fence beside it on the property line would create hazardous conditions.

Subject property owner and neighbor do not wish to transfer ownership of the 'sliver' to subject property. Rebuild of fence, along mutual property line is preferred – as finances allow.

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**'ALTERNATIVE' LOT PLAN SPACE ANALYSIS 132 Willoughby Ave. LC, NM 88005 - Rezone request information package (page 1 OF 3)**

Item	size (sq. ft.)	percent of total	description
Total Lot *	8800	100	
Total building area	2120	24	3 buildings – residence, studio & NEW storage shed
Total sidewalk area	520	6	<i>hardscape</i>
Total drive/park area	2154	24	<i>semipermeable</i>
Total soft-scape	3900	44	<u>display, storage, yard, drainage, buffers, ponding &amp; green space.</u>
Residence	1500	17	existing
Art studio	500	5	existing
Enclosed storage	120	2	NEW 6 x 20 shed
Covered display	96	1	NEW 6 x 16 'continuance of enclosed storage shed'
Sidewalks	585	6	NEW 3' wide x 105' concrete, 3' x 50' brick, 8' x 15' ADA concrete access aisle
Residential parking	450	5	NEW 18' x 25'
Commercial parking (1 ADA)	504	6	NEW 18' x 28'
Driveway	680	7	NEW 12' wide, 12' inside radius, half-circle driveway & connecting areas
Gravel drainage	285	3	NEW east & west sides of residence
Residential yard	756	8	28' x 27'
South front landscape	225	2	half circle, 12' radius
West front landscape	240	3	6' x 40'
East front landscape	375	2	truncated triangle
East display yard	500	6	right triangle
North display yard	525	7	15' x 35
North storage area	0		
West storage area	842	10	~ 42' X 16' + 10' x 17'
West buffer yard	215	2	5' X 43'
Front parking buffer	0		VARIANCE: numerical reduction of 8' from required





# Shade Tree Products, Ltd.

Art Studio

- & -

Sculpture

Garden

Open by appointment only

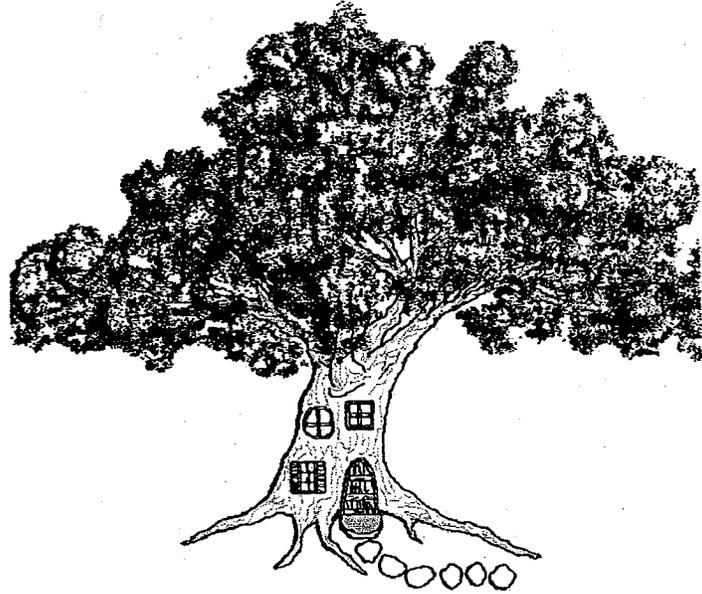
Restroom facilities not available

For information:

[www.shadetreeproducts.biz](http://www.shadetreeproducts.biz)

Telephone # 575-202-xxxx

No answer? Leave a message.



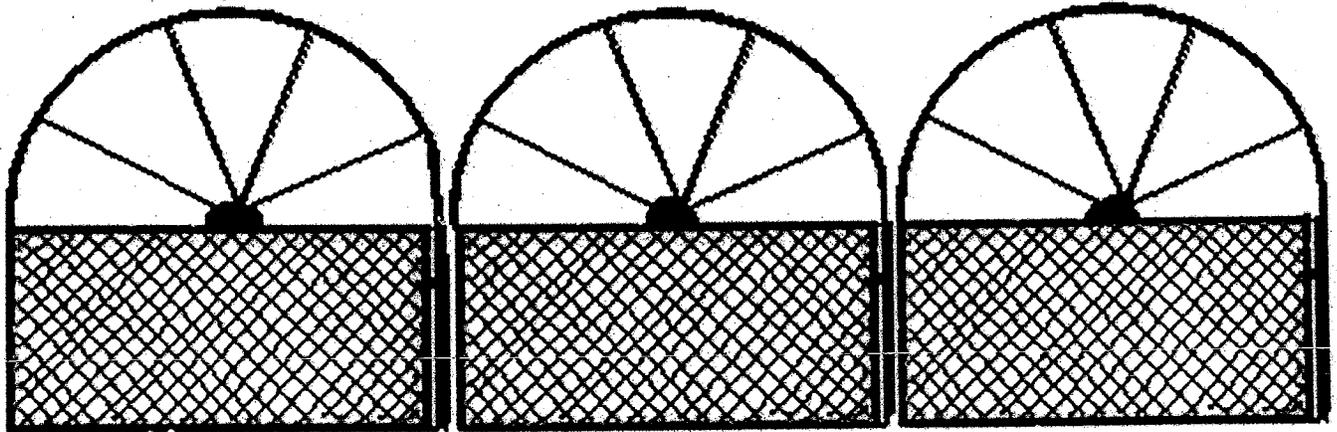
Fence style/construction details: see drawings.

**(Style F1)** "Modular arched fence panels" Used in front, a form of decorative 'iron' fencing. This fence is 'open view' style. To be used for 61' of north-south fence on west side, co-located with neighbor at 140 W. Willoughby

Steel panels built in 2 sizes, 7' wide and 8' wide, with lattice for visual screen in lower section. Panel material: 1" x 2" steel tubing, semi-circular top arch welded onto horizontal rectangle, rectangle in-filled with 4' welded wire fence and 4' vinyl trellis material. Panels installed with bolts through welded tabs to steel posts set in concrete. Steel frame color = brown, vinyl lattice inserts = tan to match residence and studio.

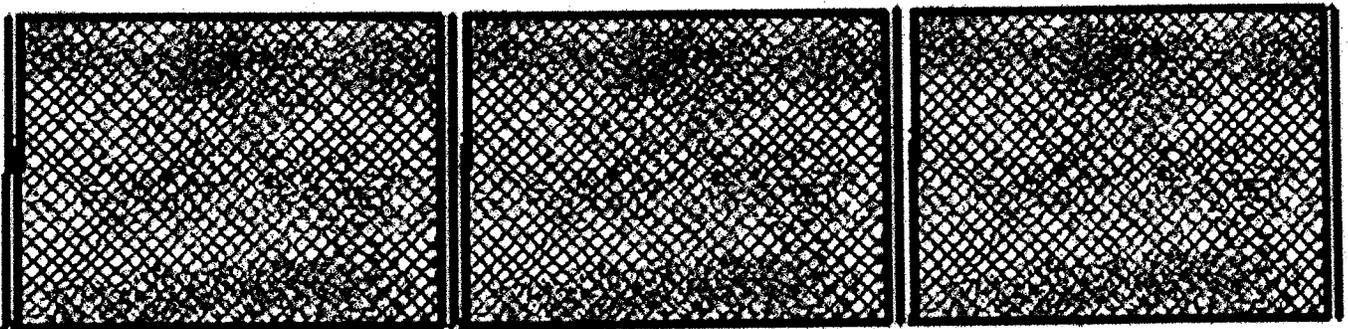
Use of 7' diameter semi-circular elements (cut hoops) is proposed for east front side of residence, resulting in modular fence panels that will be 7.5' tall by 7' wide with the lattice infill rectangle being 4' tall x 7' wide. Art studio access gate will be custom built steel ART GATE, 3.5' wide x 8' tall, accessing NEW 3' wide sidewalk through 'outdoor sculpture display area. One of the 7' wide fence panels to be hinged on steel post for occasional use as access gate. (If or when 'alley vacated', a matching gate panel to be installed across resulting 7.5' gap.)

Use of 8' wide cut hoops is proposed for west front side; panel size to be 8' tall x 8' wide, rectangular infill to be 4' tall x 8' wide. West front fence will include reconstructed 3' x 7' vintage gate beside residence.



**(Style F2)** "Modular 'semi-privacy' fence"

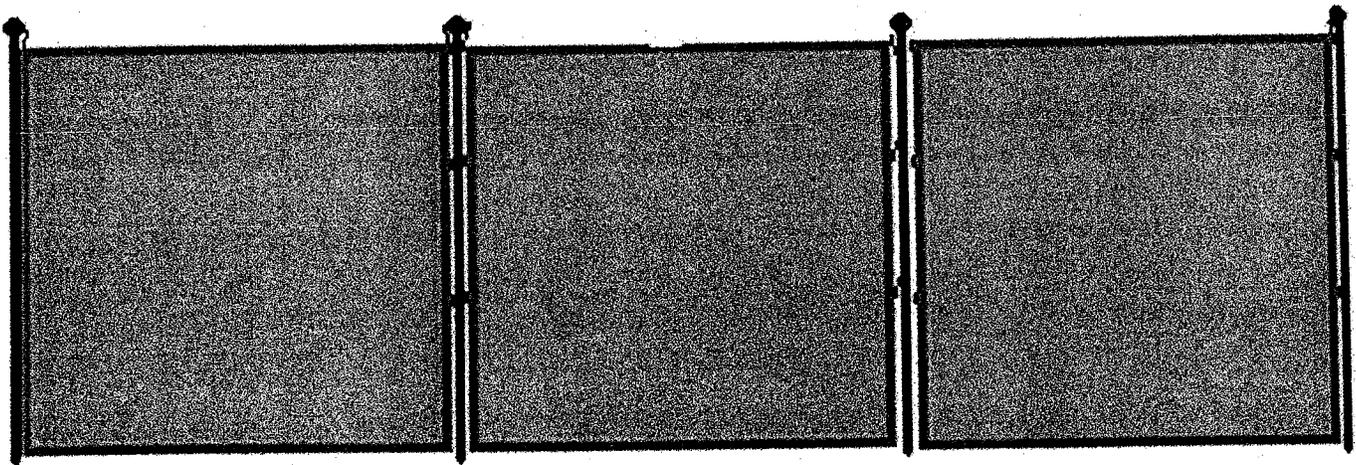
Open appearance, high opacity (75% or higher, various choices available) fence panels composed of steel



frames bolted to steel posts set in concrete. Each panel will be 6' tall and 8' wide. Construction: 1" x 2" rectangular steel tubing welded frame with 3 layers of infill materials; vinyl lattice, welded wire steel fencing and commercial shade cloth. Metal screws used to affix lattice and shade cloth for ease of replacement when required due to age deterioration. Steel frame color = brown, vinyl lattice inserts = tan to match residence and studio. (Alternative size considered was 8' x 8' panels, but these are not appropriate in scale for the neighborhood.)

**(Style F3)** "Modular 'privacy' fence"

Full coverage 100% opacity fence composed of steel framed panels bolted to steel posts set in concrete. Each panel will be 8' tall and 8' wide. Construction: 1" x 2" rectangular steel tubing welded frame with screwed on steel siding or composite material to match workshop/garage. Steel frame color = brown, inserts = tan to match residence and studio.

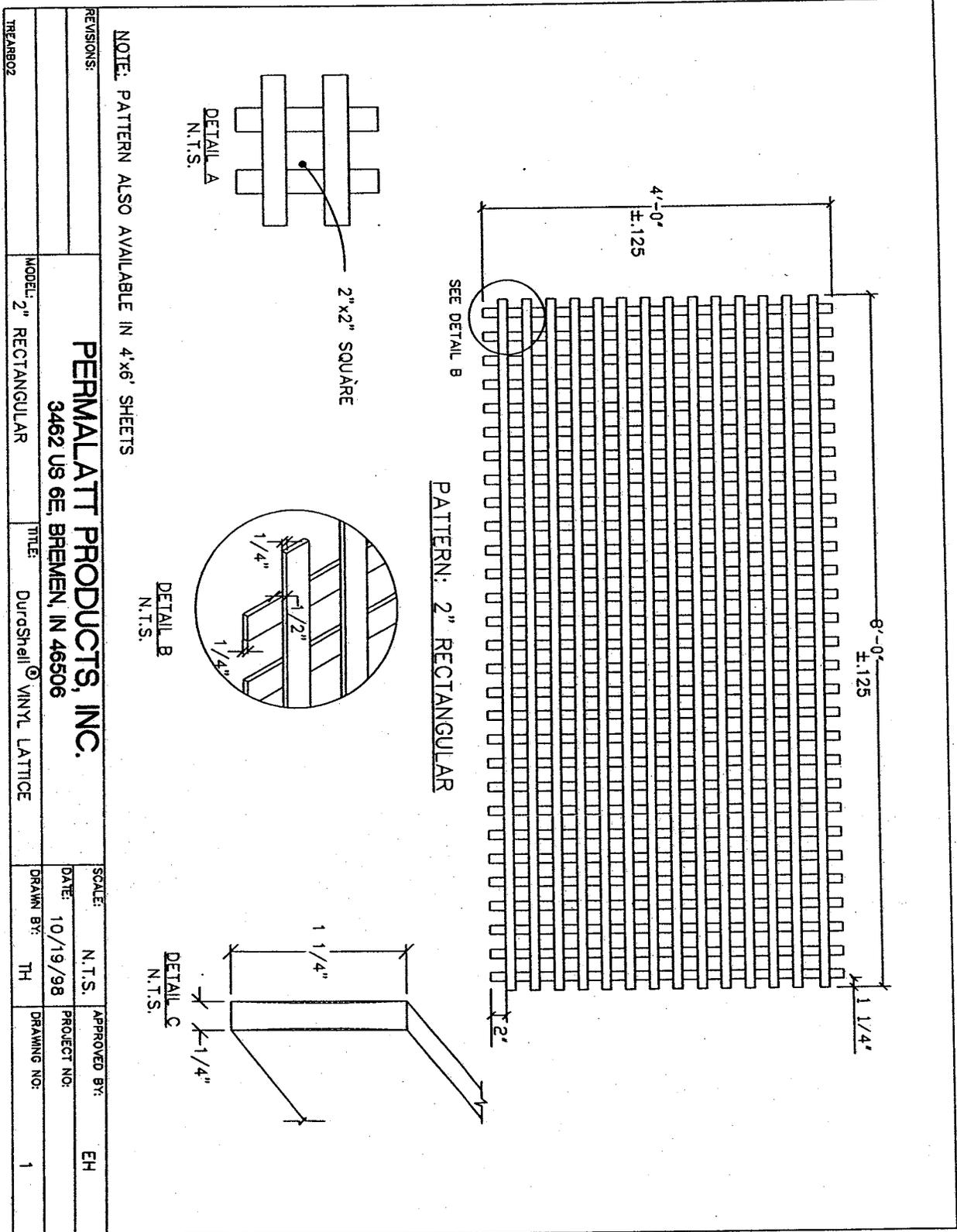


**(Style F4)** existing chain link fence

Side fence - east -remains as is. Fence on used car lot property will have 60' of 6' vinyl inserts installed in chain link for partial visual screen of sculpture garden and residence.

(Visibility of subject property from Main Street is currently dependent on which vehicles are parked on the used car lot and where. Subject property owner purchased inserts in 2007 and installed them into car lot fence for privacy, then later moved them to rear fence along alley for 'visual screen' of storage area. Inserts to be re-installed along car lot fence when new rear 'privacy' fence completed.)

**(Style F5)** Parking buffer fence -3' tall concrete block fence - either solid or pierced block, as preferred by neighbors during public comment, to be located between 'commercial parking area' and sidewalk.



**132 W. Willoughby Avenue - Property size & Options**

Property description, as shown in assessor's records, is source of measurements used in size calculations. Assessed size is listed as 7450 square feet. **This number is incorrect, source unknown.**

Subject property is an irregular shape, wider in the front than the rear and longer on one side than the other; all four sides are different in length. The enclosed area can be determined by summing two areas: long rectangle plus a long triangle (angle of 18.2 degrees).

**CURRENT:** The property contains just over 8800 square feet.

Rectangle	$118.44 \times 54.88 = 6499.9872$	6500
Triangle	$118.44 \times \frac{1}{2} (93.86 - 54.88) = 2308.3956$	2310
<b>SUM</b>	<b>8808.3828</b>	<b><u>8810 current size</u></b>

(See 'Alternative plan' which is more 'commercial' in style, but fits onto the 'existing lot size'.)

**ENCROACHMENT AGREEMENT REQUESTED** – easement agreement allowing rear fence to "encroach" into back alley (5' beyond "property line") in alignment with fence at 140 W. Willoughby. Without legally 'vacating' the alley; city retains title to all platted alleys on block. Subject property existing fence is 1.9' encroaching outside the property line, according to survey done at purchase in 1997. NEW location is reasonable and NEW fence is neighborhood improvement. **Many properties' fences and some buildings on the block are currently encroaching into the platted alleys; some encroach to or over the alley centerline.** City refusing to allow subject property owner encroachment easement would require city to enforce *all other landowners on block to cease encroachment or legal (court approved) justification for refusal.*

Owner requests agreement to build new 'panel constructed' fence across rear of subject property along the existing fence line of the properties to the west. The 'usable' area would be:

Lot/land area calculations:

Depth = 123.44' (118.44 +5), front width remains 93.86

Rear width = 53.24' (1.64' less than previous due to 18.2 degree side angle)

Area =  $(123.44 \times 53.24) + \frac{1}{2} \times ((93.86 - 53.24) \times 123.44)$

=  $6571.95 + 2507.07 = 9079.01$

**9080 sq. ft. proposed 'preferable' usable size**

Proposed fence-line allows for 10' buffer to north 'R1a' residential property . Upon 'vacate of alleys' this modular fence could be moved inward, if necessary to provide sufficient buffer. The overall area to be gained to the east when that alley vacates will compensate for the reduced area to the north.

---

There are two, fifteen (15) foot wide platted alleys adjoining two sides of subject property; one is 124 feet long and one is 55 feet. Alleys are expected to be 'vacated' by the city at some time, due to existing conditions on the block and failure of city to enforce or maintain these alleys. "T-shaped Alley" has no access through 2 of the 3 platted street intersections, and is impassable. EBID 'Small Tract Owner' irrigation ditch located in platted alley is unable to acquire water due to damage in underground culverts - on city-owned land several blocks away from subject block.

If (or 'when') vacated, the alley land will be allocated among property owners on the block as determined by the city engineers, surveyors or land use staff. Final allocation would have two possible outcomes relative to subject property, based on two alternatives for the location of the NEW rear property line. Size analysis is below for two expected alternatives.

The amount of land gained by subject property, while significant, is less than would/will be gained by the neighboring 'used car lot' – which is expected to gain approximately 1995 square feet ( $7.5 \times (124 + 15 + 127)$ ) due to vacate of the platted north-south alley between Willoughby and Greening, regardless of which way the east-west alley is split.

If the 15 wide east-west alley adjoining subject property is split allocating 7.5 feet to 132 Willoughby and 7.5 to 121 Greening and the 15 foot wide north-south alley is split at 7.5 feet along the east side of 132 Willoughby, subject property depth becomes 125.94' while, due to the side angle, the new back width becomes 60.74' and the new front width becomes 101.76'. The approximate area will be:

Rectangle	$(125.94) \times (60.74) = 7649.6$	7650
Triangle	$(125.94) \times \frac{1}{2} (101.76 - 60.74) = 2583.03$	2580
SUM	10232.93	<u>10230 sq. ft. min. new size</u>

A review of the actual circumstances, fence-lines and platting of properties and alleys on subject city block indicates the following 'possible' allocation of property upon 'vacate' - due to the east-west alley, paralleling Willoughby, being of two widths. Alley width changes mid-block; west of this point the alley is platted as 10' wide, centerline offset by 2.5' from same alley east, and aligns with an alley on the block west of subject block. (Alley on next block to the west also is not 'as shown' on city map; one leg of the "T" as plotted is non-existent.) If the 10' wide east-west alley is split 5':5' along a straight line running through the rest of the block (see map) and the line continues along 132 W. Willoughby, it would mean an increased 10 foot deep area across the north end of subject property and remain 7.5 foot along the east side: the new rear width would become 59.09', new front width remains 101.76' and depth becomes 128.44'. The new total area calculates to:

Rectangle	$(128.44) \times (59.09) = 7589.52$	7590
Triangle	$(128.44) \times \frac{1}{2} (101.76 - 59.09) = 2740.27$	2740
SUM	10329.79	<u>10330 sq. ft. 'possible' new size</u>

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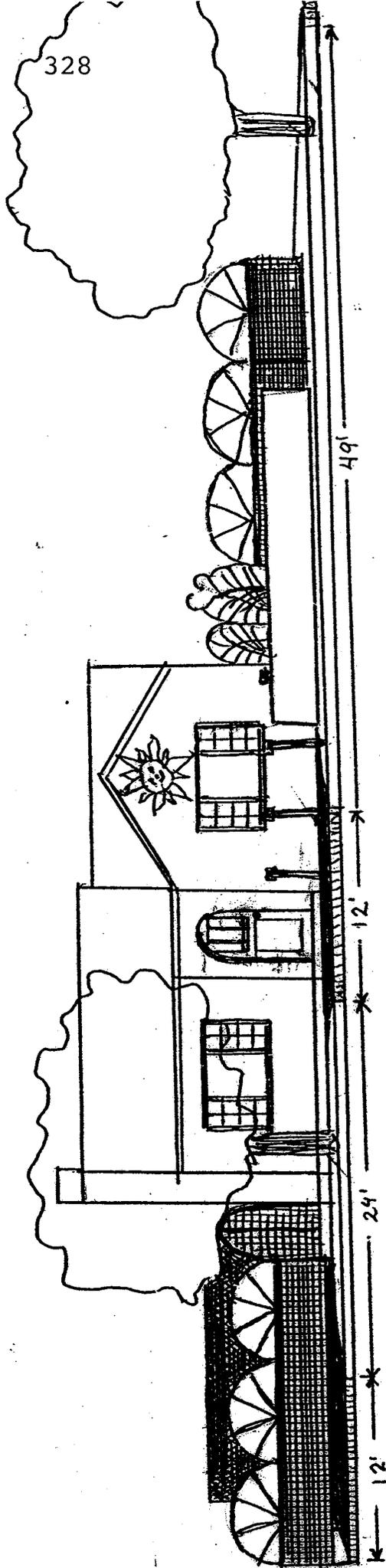
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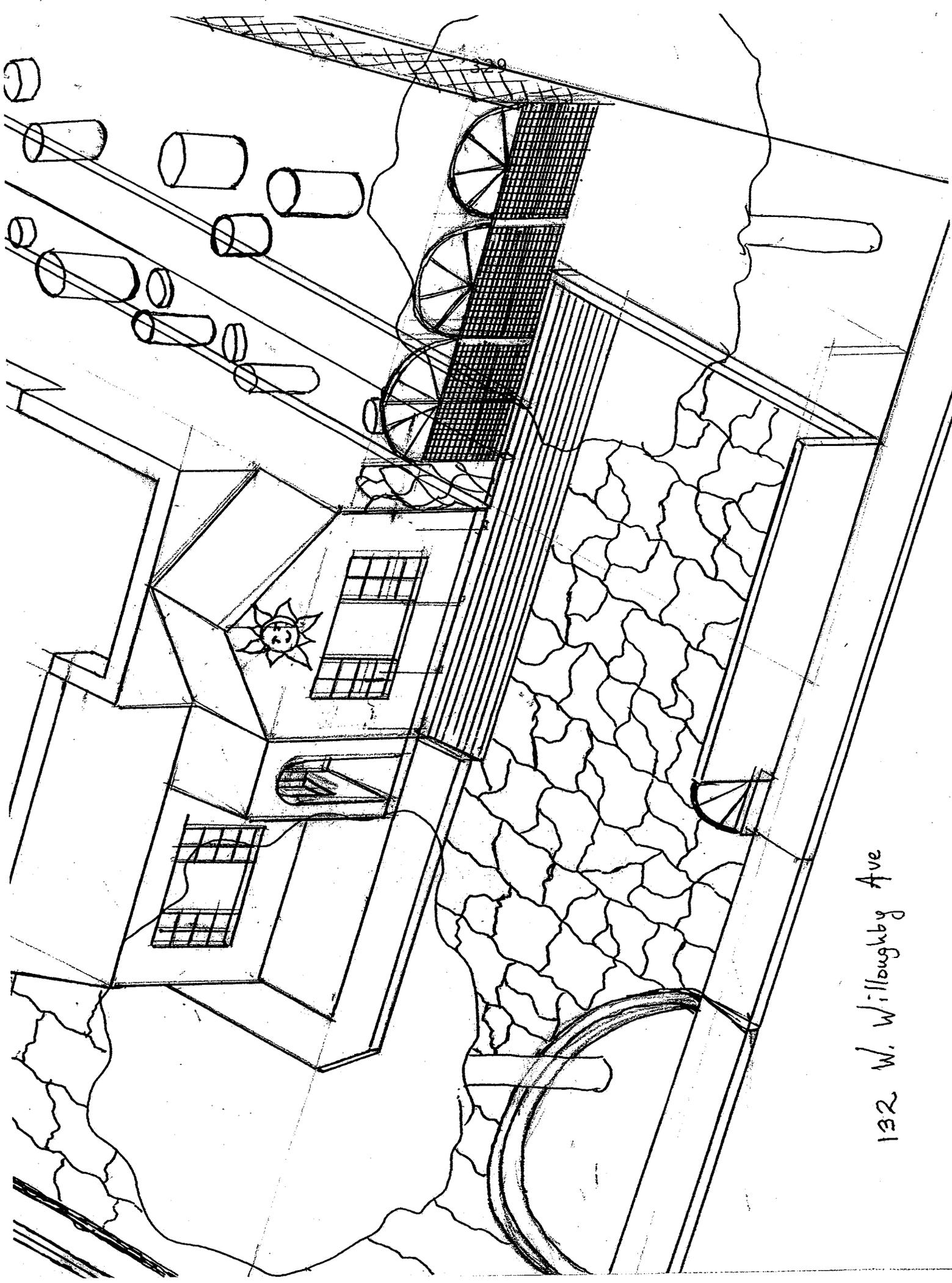
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132 W. Willoughby AvenueOn-site measurements – recorded 1 May 2011

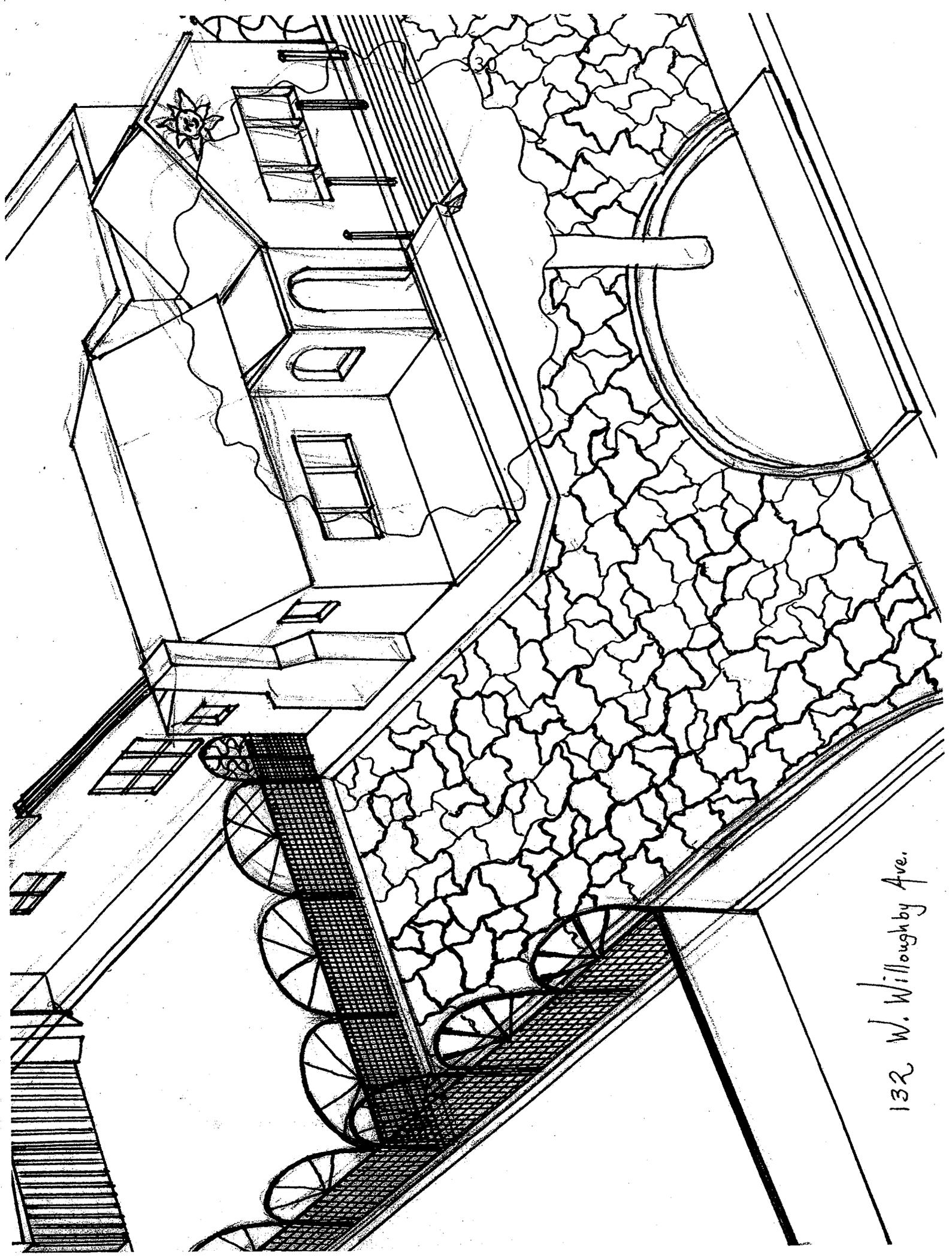
House to sidewalk	26' 4"
Front patio to west fence	27' 4"
Fireplace wall to west fence	26' 3"
Proposed west front fence to sidewalk	47'
Residential parking and access depth	
House corner to west fence	27' 11"
Front of house to east fence	25' 1"
Rear of house to east fence	8' 3"
Rear of house to studio, east corner	23'
Rear of house to studio, west corner	14' 5"
Studio corner front (property line) to car lot fence, east	11' 8"
Fence corner to car lot garage building corner	9' 10"
Studio to back fence, east corner	6'
Studio to back fence, west corner	5'
Studio to property line (green T pole), west	31' 8"
Studio front corner to west fence	35' 3"
Studio back corner to west fence	37'
Current rear north-west fence corner to rear fence at 129 Greening	24'
Rear of house, kitchen/laundry junction to property line	29' 3"
Rear of house, kitchen/laundry junction to west fence	31' 3"
Fence line corner to Shawna's fence corner	5' 4" offset
Concrete block fence (Shawna's bathroom to rear fence)	16' 4" total length
Sidewalk to Shawna's front fence	21' 3"



132 W. Willoughby Ave



132 W. Willoughby Ave



132 W. Willoughby Ave.

## **COMPREHENSIVE PLAN ELEMENTS AND POLICIES**

### **Land Use Element, Goal 1 (Land Uses)**

#### **Policies**

- 1.5.1. Low intensity commercial uses shall be defined as those commercial uses which generate small-scale retail and service activities as a convenience to adjacent neighborhoods which also include home occupations (home businesses). Low intensity commercial uses shall be established according to the following criteria.
- b. Low intensity commercial uses
    - i. A maximum of 1,500 gross square feet shall be permitted for low intensity commercial uses. Special uses are required for any business which is greater than 1,500 square feet, but may not exceed 2,000 square feet. Special uses to allow additional square footage are permitted for single uses only.
    - iii. The location of low intensity commercial uses shall be considered on a case-by-case basis: criteria shall include location on a street of local capacity and above, accessibility, and consideration of the level of traffic and environmental impacts.
    - iv. Low intensity commercial development areas shall generally not locate within one-quarter (¼) mile of other commercial development areas.
    - v. The City shall pursue multi-modal access standards (auto, bicycle, and pedestrian transit) for low intensity commercial uses.
    - vi. Low intensity commercial development shall address the following urban design criteria: compatibility to adjacent development in terms of architectural design, height/density, and the provision of landscaping for site screening, parking and loading areas. Architectural and landscaping standards for low intensity commercial uses shall be established in the Comprehensive Plan Urban Design Element.
    - vii. Adequate space for functional circulation shall be provided for parking and loading areas.
- 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

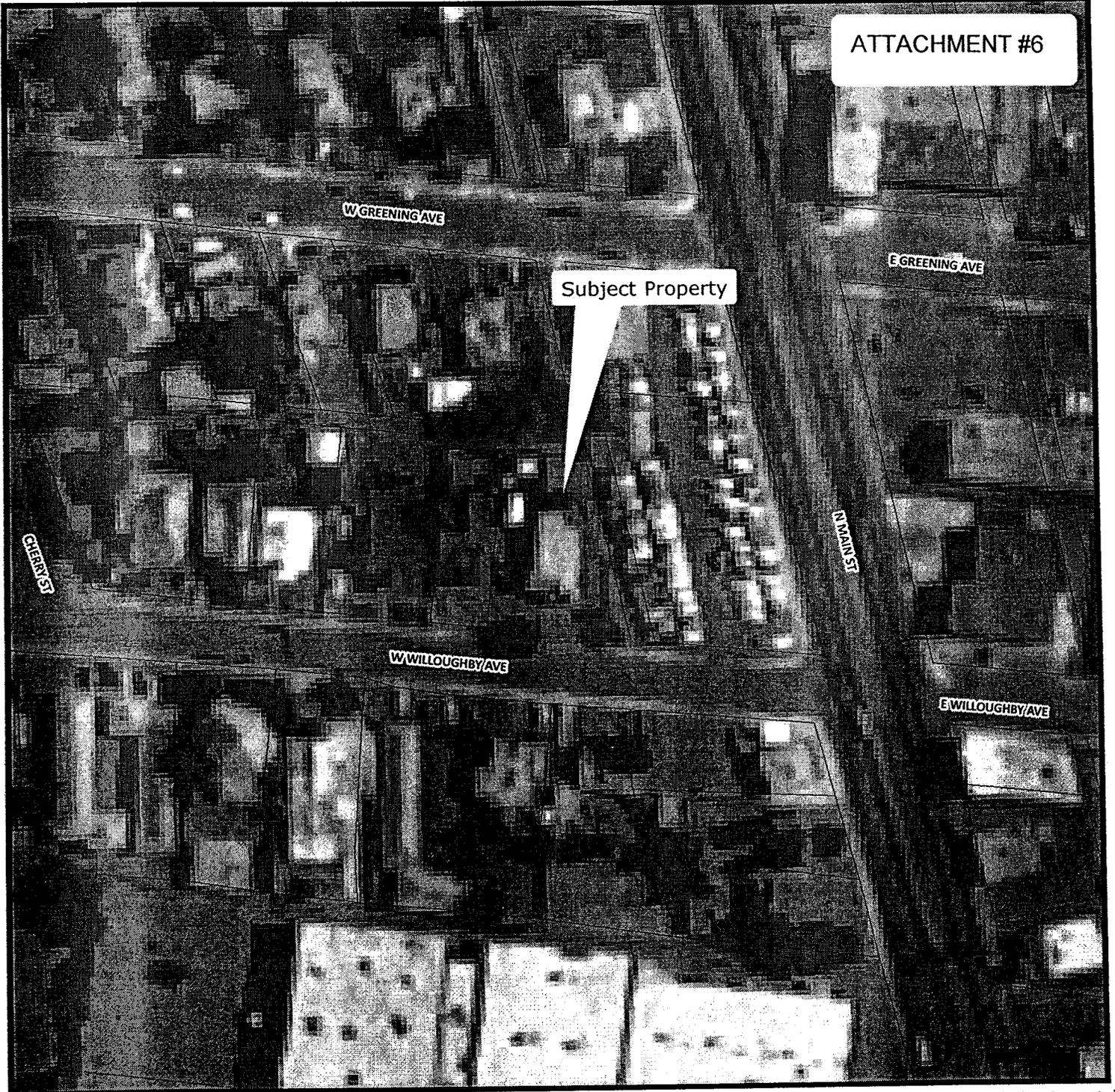
special use when said business is greater than 5,000 gross square feet, but may not exceed 6,000 square feet.

- 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 ( $\frac{1}{2}$ ) 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.

### Urban Design Element

Policy 3.9.1 Residential and Commercial development should preserve a regional Desert Southwestern image rooted in a variety of architectural styles and design elements and strengthened by creative contemporary expression.

ATTACHMENT #6



*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 City (575) 528-3043.*

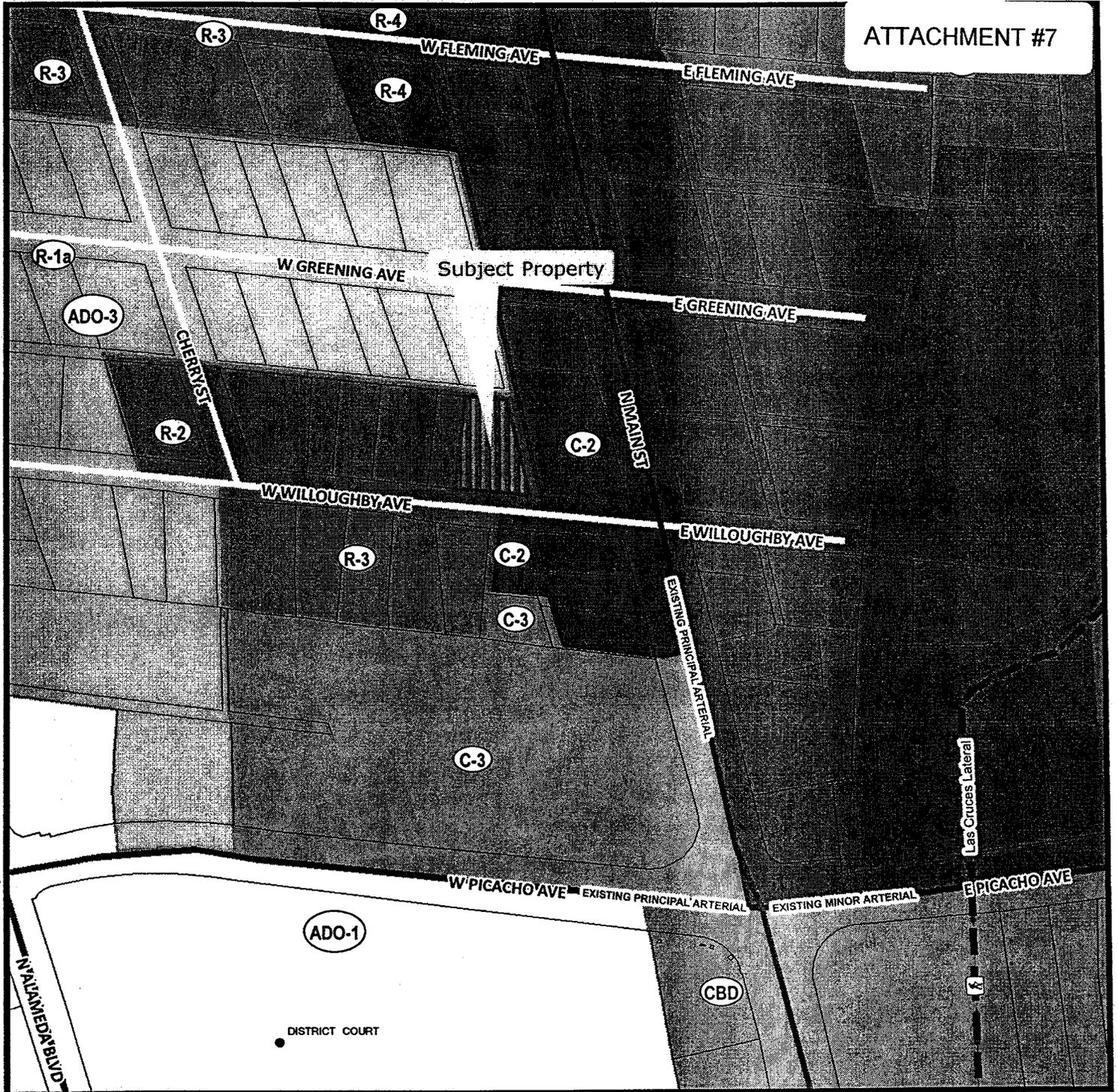


### Legend

- Public\_Facilities
- City Parcel
- Interstates\_Highway
- EBID Water System
- +— Railroad
- ▨ Arroyo
- ▨ Rio Grande



Community Development Department  
700 N Main St  
Las Cruces, NM 88001  
(575) 528-3222



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**Legend**

● Public_Facilities	▬ EXISTING LIMITED ACCESS	▬ PROPOSED INTERCHANGE/UNDERPASS	▬ Non Designated Trail
▬ EXISTING PRINCIPAL ARTERIAL	▬ PROPOSED PRINCIPAL ARTERIAL	▬ Proposed Paved EBID	▬ Proposed Unpaved EBID
▬ EXISTING MINOR ARTERIAL	▬ PROPOSED MINOR ARTERIAL	▬ City Parcel	▬ Interstates_Highway
▬ EXISTING COLLECTOR	▬ PROPOSED COLLECTOR	● EBID Water System	▬ Railroad
▬ PROPOSED LIMITED ACCESS	▬ PROPOSED CORRIDOR	▬ Rio Grande	▬ Arroyo

150 75 0 150  
 Feet

**Community Development Department**  
 700 N Main St  
 Las Cruces, NM 88001  
 (575) 528-3222

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**PLANNING AND ZONING COMMISSION  
FOR THE  
CITY OF LAS CRUCES  
City Council Chambers  
August 23, 2011 at 6:00 p.m.**

**BOARD MEMBERS PRESENT:**

- Charles Scholz, Chairman
- Godfrey Crane, Vice Chair
- Charles Beard, Secretary
- Ray Shipley, Member
- William Stowe, Member
- Donald Bustos, Member
- Shawn Evans, Member

**BOARD MEMBERS ABSENT: NONE**

**STAFF PRESENT:**

- David Weir, Director, Community Development
- Adam Ochoa, Acting Senior Planner
- Helen Revels, Planner
- Lorenzo Vigil, Acting Assistant Planner
- Srijana Basayat, Planner
- Mark Dubbin, CLC Fire Department
- Jared Abrams, CLC Legal Staff
- Bonnie Ennis, Recording Secretary

**I. CALL TO ORDER (6:00 pm)**

Scholz: Good evening and welcome to the Planning and Zoning Commission meeting for Tuesday, August 23, 2011. I'm Charlie Scholz, the Chair of the Commission. Before we begin our proceedings I want to identify the members of the Commission who are here tonight. On my far right is Commissioner Crane. He represents Council District 4. Next to him is Commissioner Stowe. He represents Council District 1. On my immediate right is Commissioner Beard. He represents Council District 2 and I represent Council District 6.

**II. APPROVAL OF MINUTES – July 26, 2011**

Scholz: The first order of business is always the approval of minutes and I see an errant member coming in the door. It's Commissioner Evans who represents District 5. So we'll wait until he sits down and then we'll go

1 *Those items on the consent agenda will be voted by one motion with the*  
2 *acceptance of the agenda. Any Planning and Zoning Commissioner, Staff or*  
3 *member of the public may remove an item from the consent agenda for*  
4 *discussion by the commission.*

- 5
- 6 1. **Case PUD-11-01:** Application of DVI on behalf of Sierra Norte Land
- 7 Holdings, LLC and Barbra W. Johnson for a Concept Plan for a Planned
- 8 Unit Development known as Metro Verde Amendment No. 1 PUD. The
- 9 subject properties encompasses 695 ± acres and are located in the
- 10 Sierra Norte area north of the future expansion of Arroyo Road and
- 11 south of the City Limits; Parcel IDs 02-36419, 02-36420, 02-36421, 02-
- 12 36422, 02-37650, 02-38810, 02-38811. Proposed Use: A mixed-use
- 13 development with single-family/multi-family residential, commercial,
- 14 office, retail, and manufacturing land uses with a golf course; Council
- 15 District 5.

16  
17 Scholz: Is there anyone who cares to speak to case PUD-11-01?

- 18
- 19 2. **Case PUD-11-02:** Application of DVI on behalf of Sierra Norte Land
- 20 Holdings, LLC and Barbra W. Johnson for a Final Site Plan for a
- 21 Planned Unit Development known as Metro Verde Amendment #1 PUD.
- 22 The subject properties encompasses 695 ± acres and are located in the
- 23 Sierra Norte area north of the future expansion of Arroyo Road and
- 24 south of the City Limits; Parcel IDs 02-36419, 02-36420, 02-36421, 02-
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- 26 development with single-family/multi-family residential, commercial,
- 27 office, retail, and manufacturing land uses with a golf course; Council
- 28 District 5.

29  
30 Scholz: All right, how about PUD-11-02? Okay, I'll entertain a motion to accept  
31 the consent agenda.

32  
33 Evans: So moved.

34  
35 Scholz: Evans moved.

36  
37 Beard: Second.

38  
39 Scholz: And Beard seconds. All those in favor same sign. All right, the  
40 consent agenda is passed.

41  
42 **V. OLD BUSINESS**

- 43
- 44 1. **Case Z2840:** Application of Susan J. Fray to rezone from R-2 (Multi-
- 45 Dwelling Low Density) to C-2C (Commercial Medium Intensity-
- 46 Conditional) and to numerically deviate from the required ten (10) foot

1 opaque bufferyard to a zero (0) foot opaque bufferyard on a 0.17 ± acre  
 2 lot located on the north side of Willoughby Avenue 150± feet west of its  
 3 intersection with Main Street in Area 3 of the Alameda Depot  
 4 Neighborhood Overlay; a.k.a. 132 W. Willoughby Avenue; Parcel ID# 02-  
 5 04369. Proposed Use: A single-family residence and a commercial art  
 6 studio with a sculpture garden; Council District 1.

7 **(POSTPONED FROM JULY 26, 2011 REGULAR P&Z MEETING)**

8 **APPROVED 4-1**

9  
 10 Scholz: All right, then we are on to our next item which is old business and this  
 11 is case Z2840. Now the way this works, for those of you who haven't  
 12 been here before, is the City presents its case and then the applicant  
 13 presents his or her case and then we open it to public discussion and  
 14 then when we're through with that we close it. Then the  
 15 Commissioners discuss it among themselves and then we vote. All  
 16 right. So, Mr. Ochoa, you're up. I take it we're waiting on the  
 17 computer to...

18  
 19 Ochoa: Yes, sir.

20  
 21 Scholz: Okay. It always increases the tension.

22  
 23 Ochoa: For the record, Adam Ochoa, Development Services. The first case  
 24 tonight, gentlemen, is old business. This was postponed from the July  
 25 26, 2011 Planning and Zoning Commission meeting. This is a zone  
 26 change Case Z2840. That is a request for a zone change from R-2,  
 27 which is Multi-Dwelling Low-Density, to C-2C, which is Commercial  
 28 Medium Intensity-Conditional, for approximately 0.17 acres of land  
 29 located at 132 West Willoughby Avenue. In front of you, you will see a  
 30 vicinity map of the subject property as it's highlighted in the light green  
 31 box with stripes through it, as you can see, located here along  
 32 basically a residential area and adjacent directly or just about one lot  
 33 west of North Main Street.

34 Some case specifics: like I said the subject property is located  
 35 on the north side of Willoughby Avenue approximately 150-feet west of  
 36 its intersection with Main Street. The subject property is located in  
 37 Area 3 of the recently approved Alameda Depot Neighborhood Overlay.  
 38 Like I said, the subject property does encompass approximately 0.17  
 39 acres and there is currently an existing single-family dwelling unit on  
 40 the subject property. The applicant tonight is seeking a zone change  
 41 to facility the use of a single-family home as it exists now on the  
 42 property along with a commercial art studio with a sculpture garden or  
 43 outdoor display on the subject property. Essentially what will happen  
 44 with this zone change is yard studio and sculpture garden will become  
 45 the primary use on the property while the single-family home will be  
 46 kind of a secondary or tertiary use on the subject property. The

1 applicant is proposing further conditions with the zone change basically  
2 limiting the permitted uses on the subject property to an art studio,  
3 private lesions and outdoor display of merchandise for sale, which  
4 would be the sculpture garden that is being proposed. The applicant  
5 has submitted information and it is in your staff report, showing how  
6 the subject property would be able to follow most requirements of the  
7 2001 Zoning Code, as amended.

8 With the zone change the applicant is requesting a variance  
9 from the required ten-foot opaque bufferyard requirement to a zero-foot  
10 bufferyard requirement. The applicant, in place of the 10-foot opaque  
11 bufferyard requirement is proposing to install an eight-foot-tall semi-  
12 opaque wall on the front portion of the subject property along the  
13 western property line, which is where she would required a buffer.  
14 We'll go back to the vicinity map to kind of dictate where that would be.  
15 And then an opaque eight-foot-wall would be located along the rear  
16 portion of the subject property along the western property line. Just to  
17 go back to the vicinity map that...the buffer requirement would be  
18 along here adjacent to the residential property to the west so this is  
19 what she's proposing the variation in the bufferyard requirement, which  
20 would be required with the zone change to C-2C on the property.

21 Here's an aerial of the subject property with the home and just  
22 an accessory structure to the rear, like I said, located along  
23 Willoughby, which is just an existing Local road in the City of Las  
24 Cruces and about one property west of Main Street, which is an  
25 existing Principal Arterial as described on the Metropolitan Planning  
26 Organization in the City of Las Cruces.

27 Here's a site plan of the subject property showing the dwelling  
28 unit and one of the storage units that are on the property and a 16-foot  
29 alley along the east of the property and a 15-foot alley to the north of  
30 the property.

31 Here is a proposed site plan and improvement plan, if you will,  
32 that the applicant has proposed: still having the single-family home  
33 here with the art studio in the rear utilizing an outdoor sculpture garden  
34 to the east of the home, the east side of the property; the front part of  
35 the subject property being used for a commercial parking area with, I  
36 believe, up to four off-street parking stalls with one of them being ADA  
37 required and with three on-street parking spaces as well.

38 Now we get to findings: Policy 3.4 of the Alameda Depot  
39 Neighborhood Plan actually calls out Area 3 as the residential core  
40 where a low-density residential character is desired and low-intensity,  
41 neighborhood commercial uses are encouraged; essentially kind of a  
42 home-occupation is what would be encouraged in this area.  
43 Furthermore, Land Use Element, Goal 1, Policy 1.5.2b of the 1999  
44 Comprehensive Plan calls medium intensity uses, which is what the  
45 subject property is trying to be zoned, are encouraged to be located  
46 along streets designated as Collector or higher. In this case

1 Willoughby is just designated as a regular Local street. From staff's  
 2 perspective a hardship does not exist on the subject property to justify  
 3 the proposed variance to the required 10-foot opaque buffer yard. It is  
 4 staff's belief that the subject's property is simply not large enough to  
 5 support the development standards for the proposed zoning  
 6 designation for C-2C.

7 With that staff has reviewed the zone change request and  
 8 recommends denial based on the preceding finding. Staff has also  
 9 reviewed the variance request and recommends denial based on the  
 10 preceding findings. The recommendation of the Planning and Zoning  
 11 Commission tonight for this case will be forwarded to City Council for  
 12 final consideration.

13 With that, gentlemen, your options tonight are to: 1) to vote  
 14 "yes" to approve the zone change request and variance; 2) to vote  
 15 "yes" to approve the zone change and variance with conditions as  
 16 seen fit by the P & Z; 3) vote "no" to deny the zone change and  
 17 variance request as recommended by staff for case Z2840 and; 4) to  
 18 table or postpone the proposed zone change. That is the conclusion of  
 19 my presentation. The applicant is here as well if you have any  
 20 questions for her and I stand for questions as well.

21  
 22 Scholz: All right, questions for this gentleman? Commissioner Crane.

23  
 24 Crane: Do I understand you to say, Mr. Ochoa that is was not a hardship? It  
 25 says in the previous page that there was a hardship. The third  
 26 bullet...a hardship does exist.

27  
 28 Ochoa: I apologize about that. That is a misprint, sir. A hardship does not  
 29 exist on the subject property. Like I said, staff just simply feels that the  
 30 property is not large enough to be able to support a commercial use on  
 31 the property.

32  
 33 Scholz: All right, other questions? Commissioner Beard.

34  
 35 Beard: That was my question also.

36  
 37 Scholz: Okay.

38  
 39 Crane: Thank you.

40  
 41 Scholz: Commissioner Beard, another question.

42  
 43 Beard: I'm not fully sure why it has to be Commercial other than the parking.  
 44 Is the parking the main thing for changing it from Residential to  
 45 Commercial?  
 46

- 1 Ochoa: Mr. Chair, Commissioner Beard, the zone change request by the  
2 applicant in order to use the subject property as a commercial art  
3 studio with an outdoor display area. Essentially that is the key here.  
4 The C2 zoning designation is the least intense, if you will, of all zoning  
5 designations in the City of Las Cruces that allows outdoor display of  
6 items for sale so C2 is the minimum zoning designation required in  
7 order to do so and to be able to do the sculpture garden that the  
8 applicant is requesting.  
9
- 10 Beard: Thank you. Another question: the metal shed that's in the back...isn't  
11 that a variance to a setback requirement. Was there a variance  
12 granted for that already?  
13
- 14 Ochoa: Mr. Chairman, Commissioner Beard, since the subject property is  
15 located in the Alameda Depot Overlay there are some more lenient  
16 Development Standards in that area not only allowing for zero  
17 setbacks for properties in the Alameda Depot area; but the C2 zoning  
18 designation also allows for a zero-foot setback, as well, along the rear  
19 and side property lines.  
20
- 21 Scholz: All right, I have two questions: when I looked at that property...oh, it's  
22 probably a month-and-a-half ago now...I didn't see any alley on the  
23 north. Is there actually an alley there?  
24
- 25 Ochoa: Mr. Chairman, there is an actual platted alley in the rear although the  
26 applicant may be able to speak on this a little bit better. Basically the  
27 whole neighborhood along that alley has utilized the alley as their  
28 property, if you will, walls in the alley and so forth.  
29
- 30 Scholz: Right, that's the impression I got and I think that's true of the side alley  
31 as well, the one that runs parallel to Main Street. Isn't it? I noticed it  
32 was closed off at the north end at the next street.  
33
- 34 Ochoa: Yes, sir.  
35
- 36 Scholz: Yeah, okay. So would that affect the setbacks?  
37
- 38 Ochoa: Setbacks? No, sir.  
39
- 40 Scholz: It wouldn't.  
41
- 42 Ochoa: No, sir.  
43
- 44 Scholz: Okay. All right, any other questions, gentlemen? Okay, may we hear  
45 from the applicant, please?  
46

1 Frary: Hello, my name's Susan Frary and I'm it. I'm she.

2  
3 Scholz: You want to stay on mike, please, Ms. Frary.

4  
5 Frary: Okay.

6  
7 Scholz: There we go.

8  
9 Frary: Okay. To answer some of your questions the alley as shown platted  
10 by the City has got buildings and walls that have been in it so long the  
11 old rockwalls and buildings are falling down; many of the properties  
12 along that alley...not my property, but on that alley, which is shown as  
13 a "T-shaped" alley. The only place on that alley that still exists is on  
14 the east side of my property and it ends at the end of my property.  
15 That alley as shown, platted as a fifteen-foot alley, is the bufferyard  
16 that my property has from the neighbor behind me and if we vacate  
17 that alley, which I already have five notarized statements from my  
18 immediate neighbors wanting to vacate that, then my fence line would  
19 not move back, even though everyone else on the block would move  
20 their fence line back into that alley and that compensates for the  
21 bufferyard on the north side. Because the properties all along the Main  
22 Street side are already C2 zoned I would not have to have a bufferyard  
23 separating me from the used car lot beside me.

24 The size: if, in fact, we vacate the alley, the "T-shaped" alley,  
25 which is on two sides of my property then my property does reach the  
26 minimum size for a commercial property. Right now it doesn't by 10%,  
27 I believe, 12%..I'm smaller than the required size for a C-2 property  
28 and the question of whether to progress...

29  
30 Ochoa: A point of correction, Mr. Chair. Since the subject property is located  
31 in the Alameda Depot area a non-residential property, which is what  
32 the zone change would be for, is only required a 3500 square foot lot.  
33 So you are in compliance for lot size for the C2 zoning designation in  
34 the Alameda Depot Overlay; just a point of clarification for that.

35  
36 Scholz: Oh. Thank you. All right.

37  
38 Frary: That's one problem taken care of. As of right now my property has no  
39 off-street parking on it and has never had off-street parking since I  
40 bought it in 1997. In order to meet the requirements for off-street  
41 parking for a commercial property I'm taking out the entire front yard,  
42 putting in four parking spots and a circular driveway so that people can  
43 ingress and egress in a forward direction. I'll have the only circular  
44 driveway in quite a distance in either direction but it'll be real nice. The  
45 front lawn, because I knew I was planning on putting in parking, I quite  
46 kind of maintaining the lawn, because that's a lot of water to keep the

1 grass. So I apologize for the in-between weed status that we have  
2 right now.

3 So the Alameda Overlay AD-03 area that I'm in requires us to  
4 go with our underlying zoning and, as of right now, my property is  
5 shown as R-2. The property behind me is R-1. The property beside  
6 me is R-2. The one across the street is C-2. It's a very mixed up  
7 zoning neighborhood. I'm not trying to move a residential property in  
8 the middle of a residential property into commercial. I'm abutted on  
9 commercial on two sides so I don't feel like I'm trying to totally change  
10 the flavor of the neighborhood.

11 The neighborhood, for those of you who don't spend a lot of  
12 time over there on Willoughby Street, the used car lot beside me  
13 unloads their big semi-trucks full of cars on those big car haulers out in  
14 the street either on Willoughby or Greening, the next street over in  
15 front of the R-1 neighborhood behind me and they normally do that  
16 about 2:00 am. They used to do it in the middle of the day but the big  
17 trucks parked out there were a problem so now they do it in the middle  
18 of the night. It doesn't interrupt traffic any more. It just wakes us all up  
19 in the middle of the night. The Harbor Freight and Dollar Store that are  
20 in the big shopping center at the corner of Main and Picacho have their  
21 big delivery trucks come in between 2:00 and 5:00 am; all of them  
22 unrolling their doors and putting out their ramps and slamming the  
23 boxes in and out are normal noises in our neighborhood. This is not a  
24 cute, quiet little residential neighborhood. The sirens from the police  
25 station and the fire station half a block away go off, especially in the  
26 middle of the night, more so than in the day time; the big semi-trucks  
27 all braking to a stop at Picacho and Main.

28 That's all part of that "urban flavor" that we have Downtown and  
29 I knew about that when I bought this property. I knew that I was a  
30 metal sculptor when I bought this property in 1997. They had just  
31 published the "Rubot," I believe it's pronounced, planning for bringing  
32 the Downtown into the new development stages and it was going to be  
33 an arts and culture district and artists were being encouraged to move  
34 into the Downtown area...and I bought in November 1997 next door to  
35 a used car lot, a property that had sat there unpurchased for a long  
36 time thinking that that was a good neighborhood for metal sculptor to  
37 move into.

38 Mr. Ochoa and I have had a lot of discussions over the last  
39 year-and-a-half, quite a few meetings, and I have done everything I  
40 can to try to design this layout so that it meets all the rules and all the  
41 regulations and all the codes, which have changed during that time  
42 frame. I feel pretty comfortable with what I'm proposing; not being a  
43 problem for my neighbors or my neighborhood. I'm not trying to make  
44 it a primarily commercial property. We had it listed as 55% commercial  
45 and 45% residential because that's the minimum requirement that they  
46 will allow me to list it at. I'm still going to continue to live there. I'm not

1 really trying to run a big commercial operation there. I want to be able  
 2 to work in the studio in the back, which is a nice, separate building. I  
 3 want to be able to display my metal sculptures, which are large. They  
 4 need to be outdoors; they're yard sculptures. And I would like to be  
 5 able to be open Saturday morning during the Farmers Market. I want  
 6 to be open during special studio openings. I do not want people  
 7 walking in and out. I'm not planning on being open six days a week.  
 8 When I'm working that's not a good time to have people come in and  
 9 talk and interrupt me. It's not that kind of work.

10 Up until now 80-90% of my business has been commission  
 11 work. People usually see my work and say, "Oh, gee. That's really  
 12 nice but I'd like it bigger," or, "I'd like it blue," or, "Can you make one  
 13 like this instead of like that?" And that's pretty much what I expect to  
 14 be doing in the future so what is going to be out in the yard is samples.  
 15 It is ideas; it's conceptions of things that I like to do. Questions?

16  
 17 Scholz: Gentlemen, questions for this lady? Commissioner Crane.

18  
 19 Crane: Ms. Frary, if your work is primarily commission tell me again why you  
 20 need a display or at least a large display. Right now it seems that  
 21 most of the space around your house is occupied by your sculptures.  
 22 If it's commission work why do you need the driveway, the parking  
 23 spaces and the large display area?

24  
 25 Frary: The driveway and parking is one of the minimum requirements for  
 26 going to a C-2 space. The Commercial designation instead of Home  
 27 Occupation is because I have outdoor display and the Codes do not  
 28 allow outdoor display for anything less than a C-2. The reason that  
 29 they need to be outdoors is because they are so large and I would  
 30 have to enclose my entire property in order to have then be under a  
 31 roof instead of outside. Did I answer your question?

32  
 33 Crane: Yes...in part. Okay, I understand what you're saying about the parking  
 34 and the driveway. The visual impact would be reduced if you had less  
 35 display, it seems to me or the display was more discretely in the back.  
 36 Does the C-2 zoning require you to...it doesn't require you to fill up  
 37 your lot with displayed items, does it?

38  
 39 Frary: Some of what is in the yard is not ever meant for display. My mother  
 40 and my sister both passed a couple years back and I brought a lot of  
 41 our family stuff down from the place in Alamogordo. If, in fact, I do not  
 42 get this zoning change done and I cannot be a sculptor and live in  
 43 Downtown Las Cruces, I do own another property over in Alamogordo  
 44 and another one in Silver City so I am going to have to sell one of them  
 45 in order to pay for all these changes; but I haven't listed them for sale  
 46 because I need to find out if I'm going to be able to stay or not. So I

1 brought a lot of personal objects in that will be over on the residential  
2 side as my personal property and not for sale.

3  
4 Crane: Thank you.

5  
6 Scholz: Other questions? All right, thank you very much, Ms. Frary.

7  
8 Frary: Also...audience people including my neighbor and people from the  
9 Downtown Development...should we bring them up?

10  
11 Scholz: Yeah, we'll have public comment in just a moment.

12  
13 Frary: Okay, thank you.

14  
15 Scholz: All right, anybody from the public wishes to speak to this? I see  
16 several hands...the gentleman in the back with the hat.

17  
18 Sarvo: I'm Monty Sarvo. I'm on the Alameda Depot Neighborhood  
19 Association, the Civic Association, and I'm one of the chief architects  
20 of the Plan and Overlay for the Alameda Depot District, as most of you  
21 may well know.

22 I'd like to address this from the angle of:  
23 let's get back to what our Plan says and what our Overlay says. One  
24 of the main goals in it was to recreate an environment of mixed use in  
25 our neighborhood that has kept that neighborhood intact for many,  
26 many, many years. One of the parts of that Plan that point that out is it  
27 discusses mixed use; it discusses corridors and that area there,  
28 obviously being surrounded by commercial and...if you want to talk  
29 about lot size the little *(inaudible - moved away from the*  
30 *microphone)* is a much smaller lot and is commercial lot and it's been  
31 a restaurant on and off for years.

32 The nature of the Alameda Depot Neighborhood is that people  
33 would have Joe's Plumbing in a house for twenty years and then it  
34 because Joe's mother's house. The whole idea in our Plan, if you read  
35 it, was to create an environment in which we wouldn't be doing what  
36 we're doing here. You would be able to go, "Oh, well the Plan says we  
37 can do mixed use. People don't have to change their zoning if they  
38 want to have Joe's Barbershop and then next year grandma's living in  
39 the house." That was a main goal and it's central throughout the  
40 document, I assure you.

41 So I believe what Susan was saying, and I'll be brief, is that she  
42 was trying to do all of that and fit into that and she basically got  
43 railroaded into going for C-2 because staff was just "No, no, no." Well,  
44 this started before the Overlay was final. The Overlay is now final and  
45 I think it's time to invest in the purpose of the Overlay to save ya'll, the  
46 City and the citizens a lot of time. Susan presented this to our

1 neighborhood group. Everybody thinks it's a grand idea that she does  
 2 this. She's put a lot of time and thought into it. Let's look at the  
 3 purpose of the Overlay...is to let people like her have businesses like  
 4 that there. Period.

5 So I'm asking you to look beyond...obviously the staff is still  
 6 learning what the Overlay is about evidenced by the fact that, you  
 7 know, they had to present to you as an afterthought that their main  
 8 reason, as he presented earlier, for resisting this becoming C-2 was,  
 9 "The lot isn't big enough." But yet they came up afterwards and very  
 10 nicely admitted, "Hey, we made a mistake." So if the main reason is  
 11 gone I think we should just move forward and approve this. I'd  
 12 appreciate it if you give that thought and I'm open to any questions you  
 13 might have.

14  
 15 Scholz: Commissioner Beard.

16  
 17 Beard: Does the Overlay encourage the mixed use within the residential  
 18 areas, though?

19  
 20 Sarvo: On the edges of the residential areas mixed use is encouraged. They  
 21 have corridors that are stated such as the Picacho Avenue Corridor.  
 22 We discussed adding a Main Street Corridor. The only reason we  
 23 didn't add it was because they didn't want to do one more corridor.  
 24 Don't ask me why; but they said that's obvious. Anybody along Main  
 25 Street is going to be able to convert to C-2 if they are a boarder house  
 26 without any problem just like they could in a non-Overlay neighborhood  
 27 'cause the underlying zoning still remains in principal what the City  
 28 decides on as they go. And very often people take homes like that that  
 29 are next to commercial properties that are the first house in from the  
 30 commercial and turn them into C-2 all the time. Every attorney along  
 31 Alameda's gotten away with it; nobody said "no" to them. They said  
 32 you have to keep the look and feel of it as a residential primarily and  
 33 they've done that. Now I believe that's what she's here for.

34  
 35 Scholz: All right, Commissioner Evans.

36  
 37 Evans: Yes, Chairman Scholz. So it appears to me you are substantially  
 38 changing the look from residential to commercial with the addition of  
 39 the driveway and the parking lots. Is that...and maybe this is a  
 40 question for the applicant: is that something that, I guess: number one,  
 41 that the Alameda Depot Overlay Commission, is that something that  
 42 they're looking to do or is that something that was...

43  
 44 Sarvo: I can tell you that the reason that she was asking to do that is because  
 45 she was being refused, what I feel, and the meaning of the Overlay  
 46 should have been allowed to begin with...

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Evans: Right.

Sarvo: ...without that change and she introduced that to our group. Our group met and said, "If that's what it takes, since you're on the edge of C-2; it's no different than anywhere in town if you're next to a big commercial property and you want to turn it into a lawyer's office, it's pretty rudimentary to get that done these days." So should we deny it here?

Scholz: Monty, can we hear from the applicant?

Sarvo: Yes, sir. I thought you were asking me.

Frary: I was pretty resistant to taking my entire front yard out and turning it into 1500 square feet of parking. I will admit that was kind of a hard one for me to get over but I sat out in front one evening when I pulled up and I looked at it and I realized that a circular driveway and all this nice off-street parking would actually be a big improvement for my property. We have a parking problem on that street anyway because of the restaurants and the apartment across the street that's grandfathered in with half the required amount of parking and the senior center two doors down that only has two parking spots for twelve beds and parking is a problem. So if me taking part of the street side and turning it into off-street parking helps this, that's okay. I'm not planning on putting in blacktop or asphalt. I'm actually going to be spending a whole lot more and going for the modular, semi-permeable, it's kind of a faux flagstone-looking stuff. It's about \$5.00 a square foot, very pricy, and it will look nice. So even though I don't understand how that became such a sticking point but if that's what it takes to get over it I can do it.

Evans: So going back to my original concern was that the Overlay was intended to allow that flexibility and now that somebody wants to come in and utilize that flexibility staff is requiring them go to C-2 which, all of a sudden, drives all the parking requirements and some of these other things; which isn't what the real intent of the Overlay was really driving to, to keep the flavor and the feel for the neighborhood of what it is. So there seems to be a conflict between what the Overlay's intention was and then going to C-2 and driving all these other things which is changing the appearance of the community. Am I missing something? I mean, is that kind of what the problem is?

Frary: It's what it feels like. Because, like I say; I sat out front and I really looked at it and I thought, "You know, this makes it look like a large

1 estate-type home with this circular driveway. I'll have the fanciest  
2 driveway in the neighborhood..."

3

4 Evans: Right.

5

6 Frary: Because I'm not doing solid fences; because I am doing them on an  
7 ornamental iron fence and all the sculptures, to answer your question,  
8 will be behind the fence. Once the fences are built the sculptures are  
9 going behind the fences so driving by you're going to see what looks  
10 like a large house. My property being triangular-wedge shaped like it  
11 is, is much wider at the front on the street side so it appears to be a  
12 large property from the front and it's going to look like a big, fancy  
13 house, I hope.

14

15 Scholz: All right, anyone else from the public wants to speak to this? Okay, I  
16 see a gentleman over here. I'm sorry; a lady over here. Sorry about  
17 that. The lighting's very poor in that area, you know.

18

19 Foster: *(not at microphone for first name - inaudible)*... Foster. I live at 140  
20 West Willoughby, which is directly to the west of Susan. I bought the  
21 house in 1998 and when she used to be on the artists tours studio  
22 where they would come through on weekend she is more of what she  
23 plans to do than a 24/7 business. I have no problems with it. It was  
24 great to see people in there looking at art and appreciating art. I do  
25 agree there's a parking problem already. When I come home on my  
26 lunch break my street is lined with cars from the Rib Shack, which I'm  
27 not sure how much off-street parking they are supposed to have; but  
28 from what it looks like they don't have enough. Every day I come  
29 home and it's a one-way road now. We have cars lining the streets  
30 both ways Monday through Saturday. I don't see how Susan putting in  
31 the art studio with or without the parking is going to change that at all.

32

33 Scholz: Okay.

34

35 Foster: Thank you.

36

37 Scholz: Thank you very much and I saw another hand over here. Yes, ma'am,  
38 come on down.

39

40 Bonneau White: Good evening. My name is Pat Bonneau White. I happen to be on  
41 the Board of Downtown Las Cruces Partnership and I just wanted to  
42 say that one of the biggest jobs that we have is trying to get people to  
43 move their businesses Downtown. It consumes a great deal of our  
44 time and, although we've done some good advertising and good  
45 promotions, we don't have as much success as we would like and, in  
46 this particular case, we have someone who wants a business

1 Downtown. It sure would be nice if we could say, "Come on ahead.  
2 We'd like you to be part of us." The other thing is the Arts and Culture  
3 District that Las Cruces will be asked to take a look at with regard to  
4 Downtown needs artists in it to fulfill the arts and culture portion of the  
5 request from the state and if we have artists Downtown, Ms. Frary, her  
6 business can be used as an example so that we can achieve this  
7 status. So I'm voting for her.  
8

9 Scholz: Thank you. Yes, sir.

10  
11 Binns: My name is Eddie Binns and I have a hard time sitting there and not  
12 expressing an opinion so that you gentlemen can see part of the  
13 bureaucracy problem that Las Cruces face every time they want to try  
14 to do something. The rules and regulations that evolved were through  
15 a series of hearings, through many of the City staff people, and since  
16 then the staff has changed many times and they have forgotten what  
17 took place at many of the public hearings and what the interpretation  
18 and intent was and our current zoning has gotten to point that the staff  
19 looks at it by the hard numbers of what we're trying to live with, with a  
20 planning and zoning package; and it's darn near impossible for the  
21 public to sort through it and even the staff has a hard time has a hard  
22 time sorting through our planning and zoning trying to figure out what  
23 we can do, what we can't do, what's permitted with the various ones;  
24 but it is something that I recommend you gentlemen take a hard look at  
25 and thing about trying to do some clean up on our current planning and  
26 zoning.

27 With this particular case we've got a young lady that wants to  
28 try to invest some money, try to make a living, do something positive,  
29 and here we've got staff that has no choice other than to recommend  
30 against it because of the bureaucratic regulations that we have  
31 saddled ourselves with. This one: I just want to recommend you give  
32 this young lady an opportunity to make a living at her level and  
33 encourage those types of things to take place because that's what  
34 America's about. Thank you. *(Applause from audience)*  
35

36 Scholz: Thank you. Please hold your applause. Thank you. Oh, I was asking  
37 people to hold their applause, Eddie, until we're finished tonight. I'm  
38 sure there'll be a round of applause at the end of this relatively long  
39 meeting. Anyway, I'm glad I heard from the public on this. I'm going to  
40 close it to public discussion now and, Commissioners, what is your  
41 wish?  
42

43 Crane: Mr. Chairman?

44  
45 Scholz: Yes.  
46

- 1 Crane: I have one question for the staff. If Ms. Frary is unable to get this  
2 rezoning will she be able to continue what she is doing now, which is  
3 primarily commission art work with metal?  
4
- 5 Ochoa: Mr. Chairman, Commissioner Crane, she would be allowed to pull a  
6 home occupation license for her home and still do the art work, if you  
7 will, but she will not be allowed to do the outdoor display as she  
8 currently has. That is basically the point for the zone change is for the  
9 outdoor display of items for sale which is the sculptured art work.  
10
- 11 Crane: Thank you. May I ask Ms. Frary a question?  
12
- 13 Scholz: Most certainly.  
14
- 15 Crane: How bad an impact would it be on your life if you could not have the  
16 outdoor display?  
17
- 18 Frary: I'm a metal sculptor and I make big metal sculptures so I would have to  
19 pay for a storage area off-site and haul them, which usually involves  
20 several people, over there to store them and then if people want to see  
21 them I have to make an appointment with them to go to that other area.  
22
- 23 Crane: Thank you.  
24
- 25 Scholz: All right, any other discussion, gentleman? I'm sorry, it's closed to  
26 public discussion, ma'am. Commissioner Beard.  
27
- 28 Beard: My big problem is—I don't want to discourage business. I don't think  
29 anybody wants to discourage business. But my problem is trying to  
30 determine where we stop changing Residential to Commercial. Let's  
31 say that we go ahead and make this a commercial site how do we  
32 know that that person two houses on down or three houses down  
33 wants to do the same thing; if they were to make it commercial? They  
34 can always come back and say, "Well, we've make this exception.  
35 Why can't we make another exception and little bit further into the  
36 residential area?" Where do we start and where do we stop? And  
37 that's my big concern is: where do we stop? We do have a Code and  
38 I think that we should abide by the Code. If the Code isn't correct then  
39 we should change the Code.  
40
- 41 Scholz: Thank you. Anyone else? Commissioner Evans.  
42
- 43 Evans: Yes, Chairman Scholz. I second what Commissioner Beard just said.  
44 I'm not sure that going to C-2...so I support the effort and I really like  
45 what you're doing and I think it falls in line what the Overlay, you know,  
46 what your intent was. However, just like Commissioner Beard just

1 said, are we going to start advocating and promoting C-2 throughout  
2 the whole neighborhood? Because if one individual changes the  
3 zoning and they sell the property and someone else comes in that's C-  
4 2, you know, it may not be the pretty sculpture that we once thought  
5 was going to be there forever it may be something else.

6 So we went into this Overlay to preserve and in the process,  
7 when we convert all this stuff to C-2 you're doing the exact opposite of  
8 not preserving it. I mean, to me there just seems to be a fundamental  
9 problem with advocating for C-2 and in an Overlay which was intended  
10 to preserve the area as it stands; because C-2, you know, if it's  
11 allowed to propagate through that area it's going to change it. So I  
12 support the idea but going to C-2 doesn't seem to be the avenue to  
13 meet your needs and the intent of the Alameda Depot Neighborhood  
14 Overlay, which we spent how many years doing? A long time...six  
15 years; I mean, before I was on the Board...well, maybe it was about  
16 that time. So I guess I don't know what the answer is and I would  
17 actually like to postpone this and have staff go back and meet with the  
18 Overlay guys, you know, the Commission, which is still out there and  
19 come up with something that's going to preserve the intent of the  
20 Overlay; at the same time giving the flexibility of the owners to be more  
21 flexible than they would in R-1, R-2.

22  
23 Scholz: All right, thank you, Commissioner Evans. Commissioner Crane, you  
24 have a question or a comment?

25  
26 Crane: I'm sympathetic to what Commissioners Beard and Evans have said  
27 about not ignoring Code simply because it's convenient and because it  
28 has nasty implications for the future; but this case is a little bit different  
29 from somebody further down the street wanting to establish a  
30 business. This one is already established and, from the look of the  
31 sculptures, they've been there several years. We're looking at  
32 regularizing here something which is consummate with the Alameda  
33 Neighborhood Overlay simply because it currently exists. If somebody  
34 further down the street were to ask for a similar change to make a  
35 radical conversion of a residential to commercial, to C-2, I would  
36 oppose that, but this is a going concern. I would hate to see it closed  
37 down. I admire anybody who tries to make a living from art and I'm  
38 pretty much with the Downtown lady who said, "This is exactly the kind  
39 of thing we want to get clustered down there." Downtown Las Cruces  
40 is never going to come back as a commercial center but it is definitely  
41 an art center at present and I am personally happy to live in the area.  
42 So I'm inclined to support Ms. Frary's application.

43  
44 Scholz: Thank you, Commissioner Crane. I am, too, frankly. I think this is a  
45 good deal and having been a party to the Alameda Overlay and  
46 listening to your presentations over the last several years I think this

1 was the intent so I certainly would support it. Anyway, I'll entertain a  
2 motion to approve.  
3  
4 Crane: So moved.  
5  
6 Scholz: Crane moves and...  
7  
8 Stowe: Second.  
9  
10 Scholz: Stowe seconds.  
11  
12 Ochoa: If I may interject, Mr. Chair. The applicant has stated that she would  
13 like to further the conditions of the zone change from C-2 and it would  
14 be to C-2C with the conditions limiting the uses on the subject property  
15 to an art studio, private lessons and outdoor display of items for sale.  
16  
17 Scholz: All right, is that listed somewhere in our packet? Okay, I didn't find it.  
18  
19 Ochoa: That was a condition set forth by the applicant that she has stated in  
20 her documents and so forth and I would like to ask if she is still  
21 comfortable with those conditions so that's a condition that you might  
22 want to put with this zone change whichever way you would vote, or  
23 with what you recommend or with what you take forward for a vote.  
24  
25 Scholz: All right. So what we're voting on is this with the conditions. I'm sorry;  
26 I don't find them in my packet. I'm probably looking at the wrong page.  
27  
28 Ochoa: You see your screen there, sir. On the third row there's a dictation  
29 from the applicant stating, again, her conditions with the zoning  
30 designation by limiting the permitted uses to an art studio, private  
31 lessons...  
32  
33 Scholz: Here we go. I got it.  
34  
35 Ochoa: ...and outdoor display of merchandise for sale.  
36  
37 Scholz: Thank you. Commissioner Crane, would you read that, please?  
38  
39 Crane: Yeah, I'm going to try to modify the motion: that the application be  
40 approved with the further conditions that the uses are limited to an art  
41 studio, private lessons and outdoor display of merchandise for sale.  
42  
43 Scholz: All right. Fine. I'll call the role. Commissioner Crane.  
44  
45 Crane: Aye findings, discussion and site visit.  
46

1 Scholz: Commissioner Stowe.

2

3 Stowe: Aye findings, discussion and site visit.

4

5 Scholz: Commissioner Evans.

6

7 Evans: Aye findings, discussion.

8

9 Scholz: Commissioner Beard.

10

11 Beard: No.

12

13 Scholz: Would you give us your reasons, please?

14

15 Beard: Findings, site visit and discussions.

16

17 Scholz: And the Chair votes aye findings, site visit and discussions. All right,  
18 so it passes 4-1. *(Applause from audience)* Lively audience tonight,  
19 isn't it?

20

21 Crane: I've never heard applause before...hissing, booing.

22

23 Scholz: I beg your pardon, Commissioner Crane.

24

25 Crane: I've never heard applause before.

26

27 Scholz: Well, sometimes people favor us, I guess. We used to say, "Don't  
28 applaud, just throw money," but that's probably too crass.

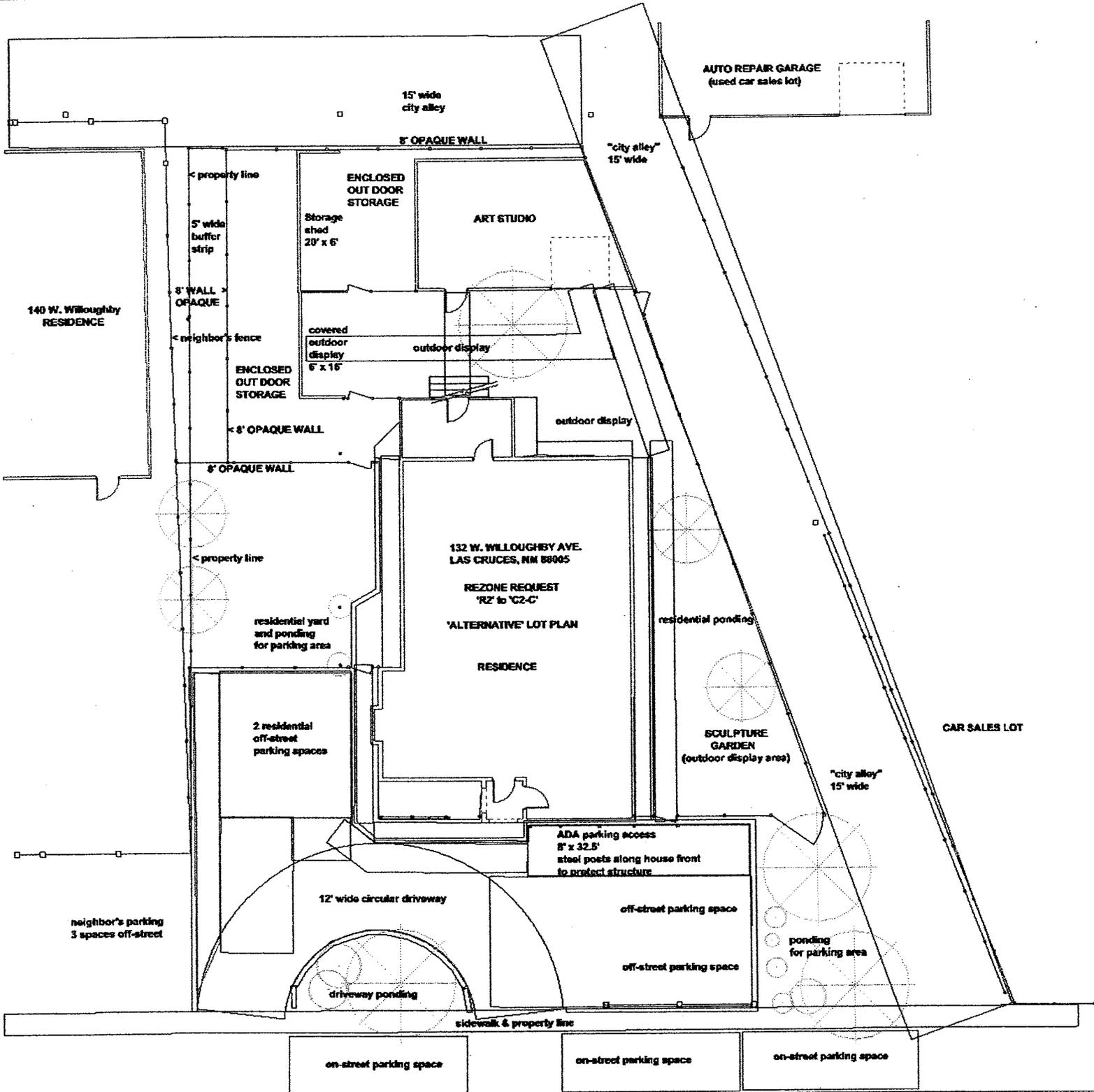
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30 **VI. NEW BUSINESS**

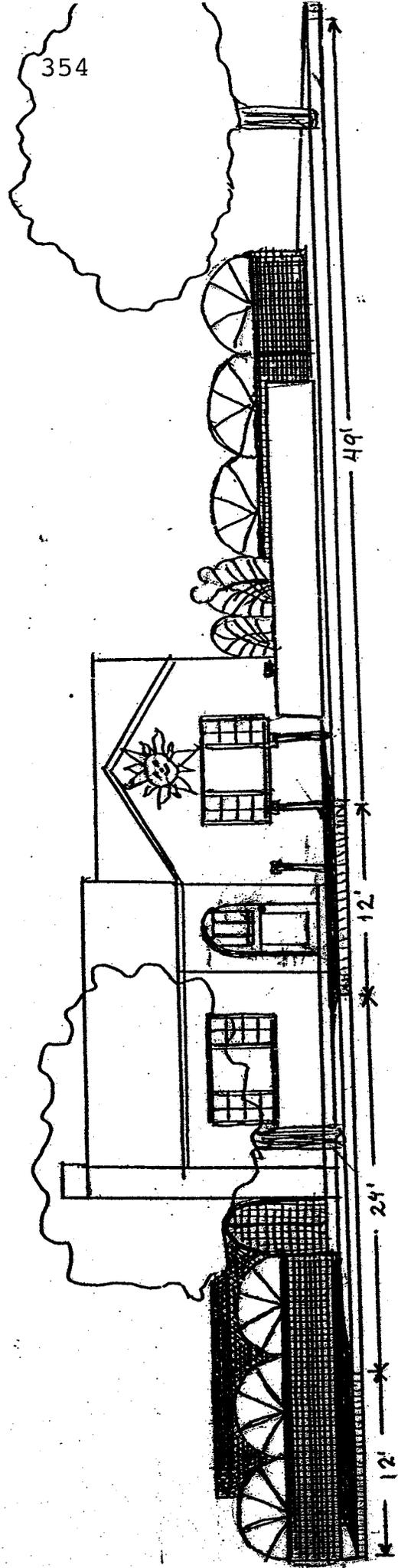
31

32 1. **Case S-09-053:** Application of Underwood Engineering on behalf of  
33 Eddie Binns for a master plan amendment for 279.438 ± acres known as  
34 the Rancho Del Rey Master Planned Area. The master plan identifies 23  
35 planning parcels with a range of 2,877 to 3,941 dwelling units. The  
36 amendment proposes to align planning parcel boundaries with zoning  
37 boundaries, create a new planning parcel for open space recreation  
38 purposes, and establish land uses consistent with the 2001 Zoning Code  
39 for properties on and adjacent to the Sandhill Arroyo. The property is  
40 located generally east of Roadrunner Parkway, north and south of  
41 Settlers Pass; a.k.a. Rancho Del Rey; Parcel ID# 02-38952 and 02-  
42 07938; Proposed Use: Single-family/multi-family residential,  
43 neighborhood commercial, light industrial, and open space recreation;  
44 Council District 5.

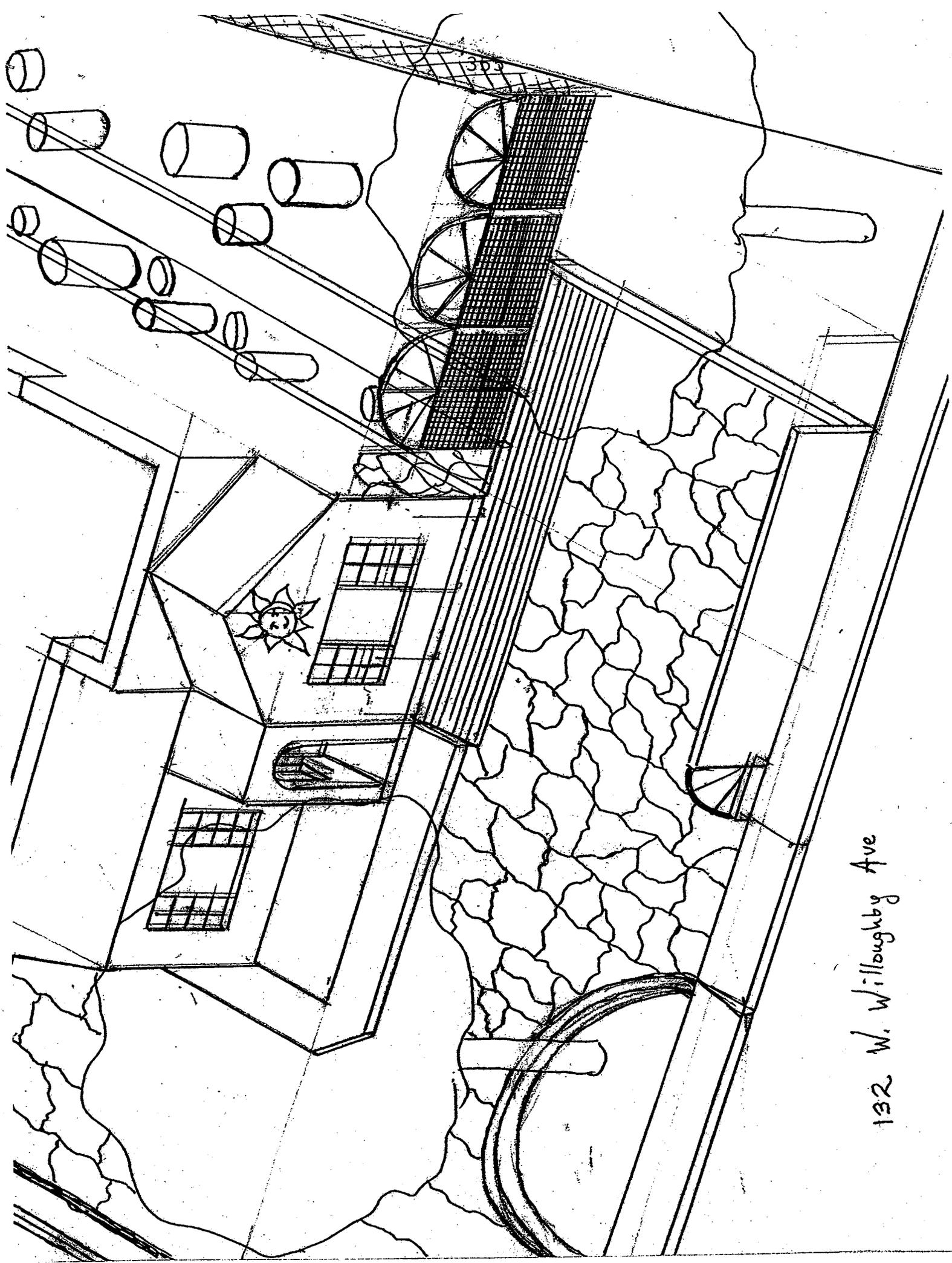
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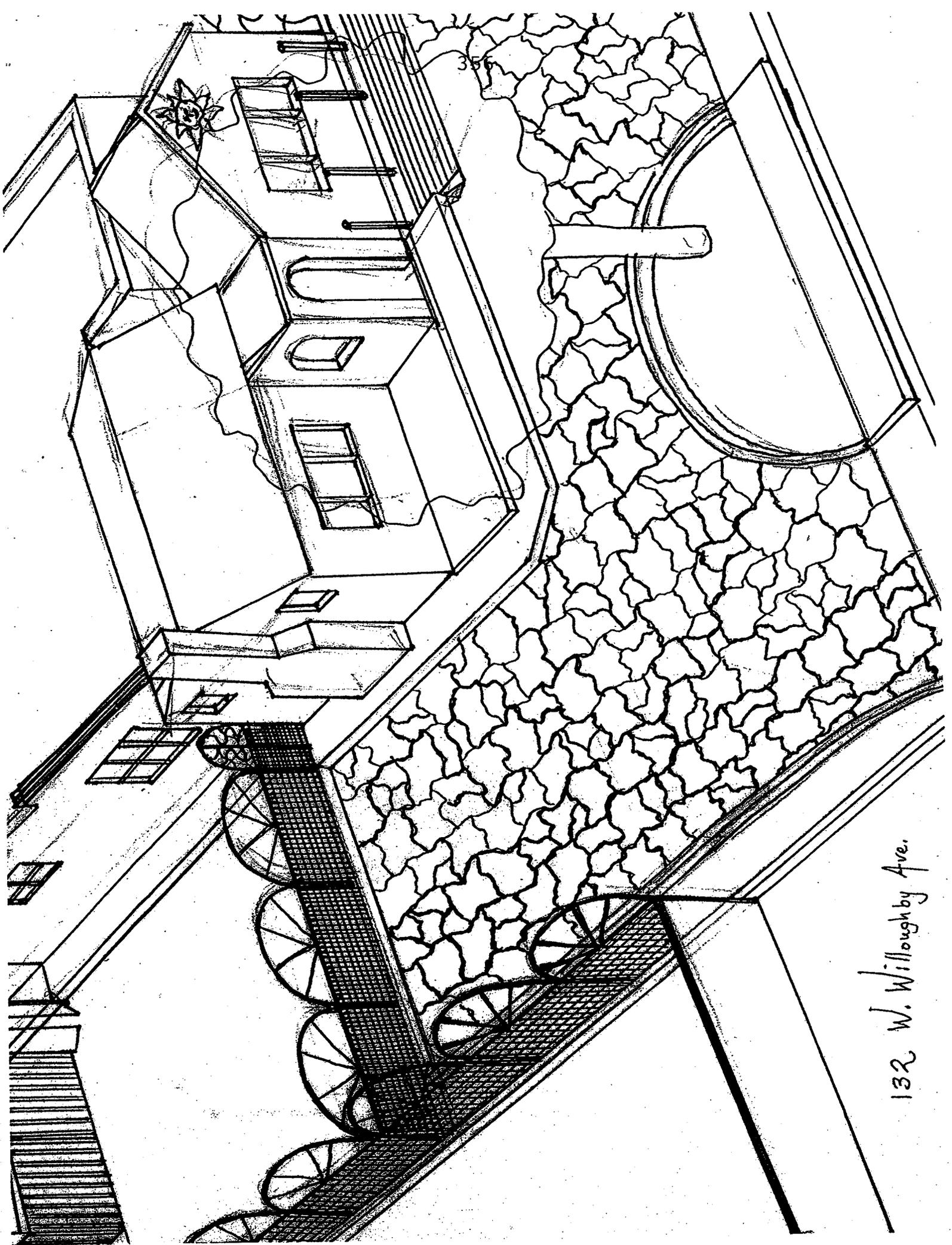
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132 W. Willoughby Ave

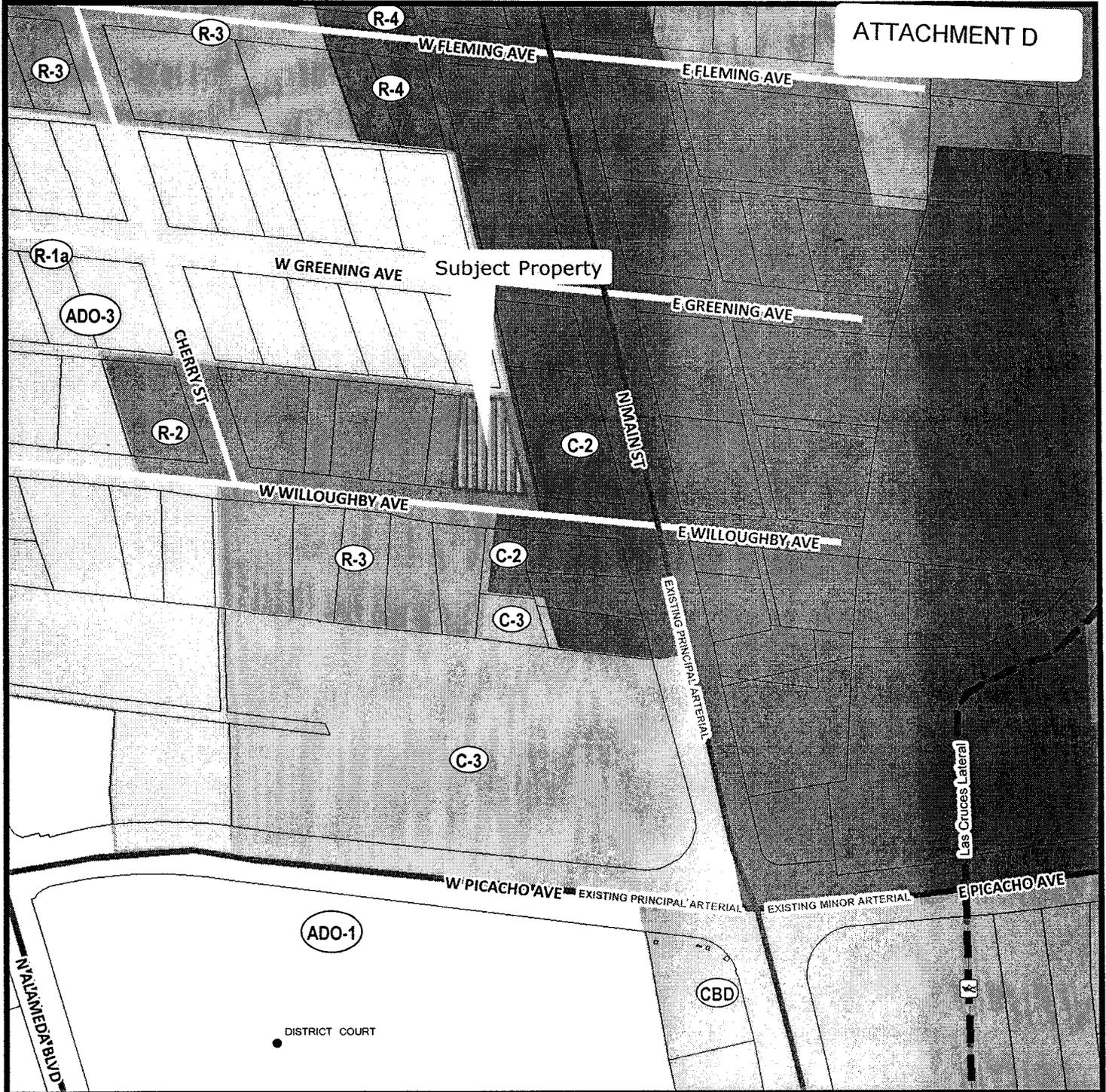


132 W. Willoughby Ave



132 W. Willoughby Ave.

**ATTACHMENT D**



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**Legend**

● Public_Facilities	▬ EXISTING LIMITED ACCESS	▬ PROPOSED INTERCHANGE/UNDERPASS	--- Non Designated Trail
▬ EXISTING PRINCIPAL ARTERIAL	▬ PROPOSED PRINCIPAL ARTERIAL	▬ Proposed Paved EBID	
▬ EXISTING MINOR ARTERIAL	▬ PROPOSED MINOR ARTERIAL	▬ Proposed Unpaved EBID	
▬ EXISTING COLLECTOR	▬ PROPOSED COLLECTOR	▬ City Parcel	
▬ PROPOSED LIMITED ACCESS	▬ PROPOSED CORRIDOR	▬ Interstates_Highway	
		● EBID Water System	
		— Railroad	
		▬ Rio Grande	
		▬ Arroyo	



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