

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10

Resolution# 13-075

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of November 19, 2012
(Adoption Date)

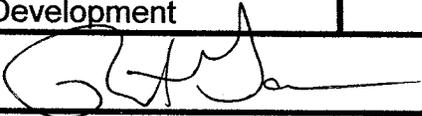
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION REVERSING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 25, 2012 FOR A SPECIAL USE PERMIT APPLICATION TO ALLOW AN ADULT ENTERTAINMENT ESTABLISHMENT TO BE LOCATED AT 2221 WESTGATE COURT, PARCEL 02-18451, IN AN M-2 INDUSTRIAL ZONING DISTRICT WITHIN THE CITY OF LAS CRUCES. THE APPEAL SEEKING THIS ACTION WAS SUBMITTED BY MS. KAREN WOOTTON, LEGAL COUNSEL FOR THE APPLICANT, MS. MARIAH HERNANDEZ FOR CENTRAL PARK, LLC. (SUP-12-03).

PURPOSE(S) OF ACTION:

An appeal to reverse a decision by the Planning and Zoning Commission.

COUNCIL DISTRICT: 4		
<u>Drafter/Staff Contact:</u> Susana Montana	<u>Department/Section:</u> Community Development	<u>Phone:</u> 528-3207
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The purpose of the appeal by the applicant, Mariah Hernandez, manager of Central Park LLC, represented by Karen Wootton, is to reverse the decision by the Planning and Zoning Commission on September 25, 2012 for a Special Use Permit (SUP) request. The SUP, Case SUP-12-03, is to allow for the operation of "The Bronx," an adult entertainment venue (topless dancing) and a bar at 2221 Westgate Court.

After reviewing the staff report and related materials and hearing comment from staff, the applicant's representative, members of the general public, and neighbors of the proposed site, the Commission voted to amend several recommended conditions outlined in the staff report. The Commission made a motion to approve the SUP with these amended conditions and voted 3 to 1 (3 members absent) against the motion to approve the Special Use Permit, based on the finding that the granting of the Special Use Permit would have a detrimental effect on the surrounding property in the vicinity, as well as the City as a whole.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY: N/A

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 reverse the Planning and Zoning Commission's denial of the Special Use Permit and would allow the adult entertainment establishment to be built and operated at 2221 Westgate Court with the conditions noted in the Resolution.
2. Vote "No"; this will uphold the Planning and Zoning Commission's denial of the Special Use Permit.
3. Vote to "Amend"; this would reverse the Planning and Zoning Commission's denial of the Special Use Permit and would place additional or changed conditions of approval on the permit.
4. Vote to "Table"; this would postpone the appeal hearing and could allow Council to direct staff and the Appellant to provide additional information to the Council at a later appeal hearing.

REFERENCE INFORMATION:

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

1. N/A

RESOLUTION NO. 13-075

A RESOLUTION REVERSING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 25, 2012 FOR A SPECIAL USE PERMIT APPLICATION TO ALLOW AN ADULT ENTERTAINMENT ESTABLISHMENT TO BE LOCATED AT 2221 WESTGATE COURT, PARCEL 02-18451, IN AN M-2 INDUSTRIAL ZONING DISTRICT WITHIN THE CITY OF LAS CRUCES. THE APPEAL SEEKING THIS ACTION WAS SUBMITTED BY MS. KAREN WOOTTON, LEGAL COUNSEL FOR THE APPLICANT, MS. MARIAH HERNANDEZ FOR CENTRAL PARK, LLC. (SUP-12-03).

The City Council is informed that:

WHEREAS, the Planning and Zoning Commission (Commission) held a duly-noticed public hearing on September 25, 2012 to consider the Special Use Permit request of the applicant, Ms. Mariah Hernandez, for Case Number SUP-12-03, which would allow an adult entertainment establishment (topless dancing) at 2221 Westgate Court located within an M-2 industrial zoning district in the City of Las Cruces; and

WHEREAS, after hearing comment from members of the general public and neighbors of the proposed site and considering the staff recommended conditions of approval, the Commissioners crafted and voted in the affirmative to place the six conditions of approval shown in Exhibit A to this Resolution on the permit should it be approved; and

WHEREAS, after reviewing the staff report and related materials, hearing comment from staff, the Applicant's legal counsel, members of the general public and neighbors of the proposed site, the Commission made a motion to approve the SUP with the amended conditions and voted three to one (three members absent) against the motion to approve the Special Use Permit, based on the finding that granting of the Special Use Permit would have a detrimental effect on the surrounding property in the vicinity, as well as, the City as a whole; and

WHEREAS, the Applicant appealed the decision pursuant to Section 38-13(C) of

the 2001 Las Cruces Zoning Code, as amended, on October 4, 2012 citing:

- 1) Lack of substantial evidence to support the denial;
- 2) Failure of the Commission to correctly apply the Design Code standards;
- 3) Violation of the Applicant's rights under the First and Fourteenth Amendments of the United States Constitution; and

WHEREAS, the City Council (Council), at a duly-noticed public hearing to consider the appeal, reviewed the record of the September 25, 2012 Planning and Zoning Commission meeting, heard and considered comment by the Appellant's legal counsel, heard clarification of issues and questions by City staff, and discussed the record and testimony about the appeal.

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

(I)

THAT the Council finds that the decision by the Planning and Zoning Commission to deny Case Number SUP-12-03 is incorrect because the Commission: 1) Lacked substantial evidence to support the denial; and 2) failed to correctly apply the applicable Zoning Code criteria and standards.

(II)

THAT the Council hereby reverses the decision of the Planning and Zoning Commission of September 25, 2012 for Case Number SUP-12-03 and by adopting this Resolution hereby conditionally-approves the Special Use Permit with the conditions of approval listed in Exhibit "A", attached hereto, and made part of this Resolution.

(III)

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

DONE AND APPROVED this ____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

[Handwritten Signature]

City Attorney

Conditions of approval as decided by the Commission on September 25, 2012 for the Special Use Permit No. SUP-12-03 for 2221 Westgate Court:

1. The Applicant shall pay the cost to the City for installing no parking signs along both the east and west sides of Westgate Court. The signs would be approved by the City of Las Cruces and in accordance with the City of Las Cruces Design Standards. The signs would be installed prior to operation of the club. The Applicant shall post a large visible warning sign at the entrance of the club urging patrons not to park on Westgate Court and advising drivers that parking is prohibited along both sides of Westgate Court and vehicles parked there will be towed at owner's expense.
2. There shall be no outdoor special events or outdoor entertainment activities permitted on the premises in order to mitigate potential noise impacts.
3. Landscaping, as proposed by the Applicant, approved by the City of Las Cruces, and in accordance with the City of Las Cruces Design Standards, shall be provided along the perimeter of the Site as well as next to the proposed building.
4. A rock wall, as an opaque screen wall, shall be built along the perimeter of the Site with the exception of the driveway.
5. Off-street parking shall not exceed the maximum number allowed using the "bar" land use calculation.
6. The Applicant shall ensure that all property within 200 feet of the Applicant's property and accessible by the general public, with the permission of the affected property owners, excluding those areas adjacent to Amador Avenue, shall remain clean of trash on a daily basis.



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October 4, 2012

Via Hand-Delivery

Las Cruces City Council
City Hall



Re: Notice of Appeal of Planning and Zoning decision in SUP-12-03

Dear Council:

This firm represents Central Park, LLC, and Central Park West NY, LLC (New Mexico limited liability companies), the applicants for SUP-12-03. Consistent with the City of Las Cruces Design Code, § 38-10(L) and § 38-13, and NMSA 1978, § 3-21-8, this letter constitutes an appeal of the decision of the Las Cruces Planning and Zoning Commission (hereinafter the "Commission"), denying the application in Case No. SUP-12-03, heard on September 25, 2012. This appeal is based on: 1) the lack of substantial evidence to support the denial; 2) the failure of the Commission to correctly apply the Design Code standards; and 3) the violation of the applicants' rights under the First Amendment and Fourteenth Amendment of the United States Constitution.

All evidence presented to the Commission demonstrated that the zoning for the property allows adult entertainment, and that the application complies with the requirements for a Special Use Permit ("SUP"). The recommendations of staff in the report and supporting documentation submitted to the Commission (and available to the public on-line), and the presentations by City staff, supported approval of the SUP. The public input in opposition to the SUP was based on opposition to adult entertainment, not on any evidence that the application failed to satisfy applicable City Code requirements. No evidence was presented to the Commission that contradicted the detailed findings of City staff that the application complied with all applicable requirements.

The decision of the Commission was contrary to the City's Design Code, New Mexico zoning laws, the New Mexico Constitution, and the First and Fourteenth Amendments of the United States Constitution. *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986); and *City of Albuquerque v. Pangaea Cinema, LLC*, 2012-NMCA-075, 2012 WL 3643045 (2012), *cert.granted*. While the City of Las Cruces had the right to consider secondary effects of adult entertainment in establishing its zoning

Las Cruces City Council
October 4, 2012
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regulations (including when enacting and applying the SUP requirements), “[t]he rationale of the ordinance must be that it will suppress secondary effects - and not by suppressing speech.” *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 445, 449-450, 122 S.Ct. 1728, 1740 (2002) (Kennedy, J., concurring). “The purpose and effect of a zoning ordinance must be to reduce secondary effects and not to reduce speech.” *Id.* 535 U.S. at 445, 122 S.Ct. at 1740. The purpose of the Commission’s decision was to suppress the expression inherent in adult entertainment, and the effect would be to infringe on the applicants’ and potential patrons’ rights of expression protected by the First Amendment.

For these reasons, the Council should reverse the decision of the Commission, and approve SUP-12-03.

Sincerely,


Karen E. Wootton

c: Mariah Hernandez, Manager, Central Park, LLC
Jesse Hernandez, Manager, Central Park West NY, LLC
Rusty Babington, City Attorney’s Office
Esther Martinez-Carrillo, City Clerk
Raúl A. Carrillo, Jr., Esq.



PLANNING AND ZONING COMMISSION
OFFICIAL NOTIFICATION OF DECISION
September 28, 2012

CASE SUP-12-03:

Application of Central Park West NY LLC for a Special Use Permit (SUP) to allow construction of a 4,000 square foot metal building and parking lot to house and operate an adult entertainment venue providing topless dancing and sale of alcohol on a parcel lying within an M-2 Industrial Zoning District located at 2221 Westgate Court, Parcel No. 02-18451. The hours of operation would be Monday through Saturday from 11 AM to 2 AM and meeting the Special Use Permit requirements of the 2001 Zoning Code, and LCMC 1997, §§38-54.B and 38-33G. (Council District 4, Nathan Small).

FINDINGS

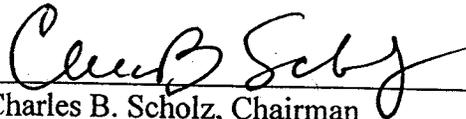
The Planning and Zoning Commission, having reviewed City staff report and having heard applicant's counsel and having heard public input, finds that the granting of said special use permit would have a detrimental effect on the surrounding property in the vicinity, as well as the City as a whole.

DECISION

On September 25, 2012, the Planning and Zoning Commission voted to DENY the requested Special Use Permit (Case SUP-12-03) by a vote of 3 to 1 (three Commissioners absent).

APPEAL

Per LCMC 1997, §38-13, any person or department, commission, board or bureau of the City that is affected by a decision of an administrative official, commission, committee, or board in the administration or enforcement of this Code may appeal such decision to the City Council. Such appeal must be initiated in writing within fifteen (15) calendar days after the date of the decision and after all other procedures established by this code have been exhausted. Any appeal should be submitted to the Community Development Director.



Charles B. Scholz, Chairman
Planning and Zoning Commission
City of Las Cruces

c: Robert Kyle, AICP, CBO, Building & Development Services Administrator

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
September 25, 2012 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Charles Scholz, Chairman
Godfrey Crane, Vice Chair
Charles Beard, Secretary
Ray Shipley, Member

BOARD MEMBERS ABSENT:

Donald Bustos, Member
Shawn Evans, Member
William Stowe, Member

STAFF PRESENT:

Robert Kyle, Building and Development Administrator, CLC
Katherine Harrison-Rogers, Senior Planner, CLC
Adam Ochoa, Planner, CLC
Susana Montana, Planner, CLC
Mark Dubbin, CLC Fire Department
Chris Miller, Deputy Chief CLC Police
Rusty Babington, CLC Legal Staff

Becky Baum, Recording Secretary, RC Creations, LLC

I. CALL TO ORDER

Meeting was called to order at 6:01 p.m.

Scholz: Good evening, and welcome to the Planning and Zoning Commission for Tuesday, September 25th, 2012. Before I do the call to order, since this is an important meeting, all meetings are important; but this particular one, I'd like the media people to identify themselves. Are there media people here in the crowd? Okay, would you tell us who you represent please? Beg your pardon? Sun News. Okay. Bulletin? Channel 4. Sun News. Oh the Sun News is double-teamed tonight. Okay. Oh, and you, ma'am?

Unknown: KFOX.

Scholz: Thank you very much. KFOX. I wanted to correct some misinformation which was in the media, I think, on Saturday and what I want to talk about is the makeup of the Commission. This is a Commission by the way not a Board, and we are volunteers. We are appointed by the Council members

1 or by the Mayor to represent particular districts in the City. We're not paid
 2 for this. This is, as I said, a volunteer operation. We do this because we
 3 think it's important. We are what is called a Judicatory Body and I always
 4 have trouble with that word and a lot of people don't know what it means.
 5 It means basically that we make judgements about things. Okay. We
 6 don't have a staff. We got our information from the Community
 7 Development Department. They're the people, you know, who issue
 8 planning and zoning things. They issue permits, they do inspections, they
 9 suggest a plan for or a possible direction for developers and contractors,
 10 and they also present us with variances and zoning changes and special
 11 use permits.

12 Now it's our job to judge these things and decide whether or not
 13 they should be approved or not approved. The Community Development
 14 Department, of course, gives us their opinion on these and then we render
 15 our decision. In the case of zoning variances and special use permits, we
 16 make the decision here. In the case of zoning changes, we recommend to
 17 the City Council, then City Council makes the final decision. Okay, I just
 18 wanted to clear that up because there was some misinformation I think
 19 about our operations.
 20

21 **II. CONFLICT OF INTEREST** - At the opening of each meeting, the chairperson
 22 shall ask if any member on the Commission or City staff has any known conflict
 23 of interest with any item on the agenda.
 24

25 Scholz: Okay, we have a conflict of interest statement. Gentlemen of the
 26 Commission, any conflicts of interest in the cases we're going to review
 27 tonight?
 28

29 All: No.
 30

31 Scholz: No, all right. Community Development staff, any conflicts of interest
 32 there? No, okay, we're fine.
 33

34 **III. APPROVAL OF MINUTES**

35 1. July 24, 2012 - Regular meeting
 36

37 Scholz: All right, next on the order is the approval of the minutes. These would be
 38 the minutes of July 24th, 2012. Any additions or corrections to those
 39 minutes? Commissioner Shipley? No, okay. All right I'll entertain a
 40 motion to approve the minutes.
 41

42 Shipley: I so move to approve the minutes.
 43

44 Scholz: Okay.
 45
 46

1 Crane: Seconded.
 2
 3 Scholz: And it's seconded. All those in favor say aye.
 4
 5 Shipley: Aye.
 6
 7 Crane: Aye.
 8
 9 Scholz: Aye. Those opposed same sign. And abstentions?
 10
 11 Beard: Abstain.
 12
 13 Scholz: One abstention. Passes 3:1.

14
15 **IV. POSTPONEMENTS**

16
 17 Scholz: Okay, next item, any postponements, Mr. Ochoa.
 18
 19 Ochoa: No sir, none tonight.

20
21 **V. CONSENT AGENDA**

- 22
 23 1. **Case Z2855:** Application of the Immaculate Heart of Mary Cathedral to
 24 rezone from R-1a (Single-Family Medium Density) to R-3 (Multi-Dwelling
 25 Medium Density) on a 6.00 +/- acre lot located on the northwest corner of
 26 Idaho Avenue and Espina Street; a.k.a. 1240 S. Espina Street; Parcel ID#
 27 02-11480. The proposed zone change would facilitate the additional use of a
 28 preschool on the subject property; Council District 3 (Olga Pedroza).
 29
 30 2. **Case S-12-018:** - MOVED TO NEW BUSINESS.
 31
 32 3. **Case S-12-021:** - MOVED TO NEW BUSINESS.

33
 34
 35 Scholz: And then we have the consent agenda. There are three items on the
 36 consent agenda and here's how that works. If there is anyone from the
 37 public who wishes to speak to the consent agenda or the items on the
 38 consent agenda then we'll put it in the first place on the new business
 39 agenda and take care of it that way. Is there anyone from the
 40 Commission who wishes to speak to the items on the consent agenda?
 41 No? Anyone from Community Development staff? No. Okay, anyone
 42 from the public wishes to speak to these items? These are cases Z2855,
 43 Case S-12-018 and Case S-12-021. All right, seeing no one. I see one
 44 hand. Okay, which case do you wish to speak to ma'am?
 45

46 ELDERLY GENTLEMAN SPEAKING, NOT AT THE MICROPHONE.

1
2 Scholz: Yes, you wish to speak to these cases? Okay, which one particularly?
3 Which case particularly do you wish to speak to?
4

5 ELDERLY GENTLEMAN SPEAKING, NOT AT THE MICROPHONE.
6

7 Scholz: Are you talking about Case Z2855 or Case S-12-018 or Case S-12-021?
8 Oh, you're talking about the new business case. Yeah. Well, we'll all get
9 to that in a few minutes. Okay, ma'am, which case did you want to speak
10 to?
11

12 Stanley: Case S-12-018 and S-12-021.
13

14 Scholz: Okay. Well, fine. We'll put those first on the new business agenda. So,
15 gentlemen, there's only one case then on the consent agenda, that's Case
16 Z2855. All right, we'll simply take a voice vote on this. All those in favor
17 say aye.
18

19 All: Aye.
20

21 Scholz: And those opposed same sign. All right, that's approved.
22

23 **VI. OLD BUSINESS**
24

25 Scholz: Okay, any old business, Mr. Ochoa.
26

27 Ochoa: No sir, none tonight.
28

29 Scholz: All right, thank you.
30

31 **VII. NEW BUSINESS**
32

33 1. **Case S-12-018:** Application of Borderland Engineers and Surveyors on
34 behalf of Armando F. Villegas for a master plan known as AGI Subdivision
35 Mater Plan on a 1.716 +/- acre lot located on the northeast corner of Porter
36 Road and Payan Road; 6075 Payan Road; Parcel ID# 02-20035. Proposed
37 use: A master plan for a single-family residential subdivision proposed in two
38 (2) phases. Council District 5 (Gill Sorg).
39

40 2. **Case S-12-021:** Application of Borderland Engineers and Surveyors on
41 behalf of Armando F. Villegas for a preliminary plat known as AGI Subdivision
42 Phase 1 Preliminary Plat on a 0.982 +/- acre portion of a lot located on the
43 northeast corner of Porter Road and Payan Road; 6075 Payan Road; Parcel
44 ID # 02-20035. Proposed use: Phase 1 of the AGI Subdivision Master Plan
45 creating seven (7) single-family residential lots and one (1) tract. Council
46 District 5 (Gill Sorg).

1
2 Scholz: Okay, our first case of new business then is Case S-12-018 and the next
3 one will be S-12-021. So may we hear from the City presentation? The
4 way this works, folks, by the way, is that the City makes its presentation
5 first, then the applicant makes his or her presentation, then we open it for
6 public discussion. After we have public discussion we close it and then
7 the Commissioners make their decision.
8
9 Kyle: Mr. Chairman.
10
11 Scholz: Yes, Mr. Kyle.
12
13 Kyle: Staff would recommend that on Case S-12-018 and S-12-021 to modify
14 the rules, discuss both cases together and then vote on them separately.
15
16 Scholz: Okay, do you want us to simply suspend the rules for the moment?
17
18 Kyle: Mr. Chairman, the Commission would need to officially suspend the rules
19 if they so choose to. We can hear each of them individually.
20
21 Scholz: Okay. Well, let's hear them together and let's suspend the rules.
22
23 Shipley: I move to suspend the rules for Cases S-12-018 and S-12-021.
24
25 Scholz: Okay, is there a second?
26
27 Beard: Second.
28
29 Crane: Second.
30
31 Scholz: Okay, it was a tie. All right, all those in favor say aye.
32
33 All: Aye.
34
35 Scholz: Those opposed same sign. All right the rules are suspended. We can
36 discuss both cases at the same time. Mr. Ochoa.
37
38 Ochoa: Mr. Chairman, before I begin would you like a full presentation or would
39 you like to see what is her general question for the subdivision?
40
41 Scholz: Well, what's your pleasure? We already know about it, you know. We've
42 read the packet. Is there anything you want to add?
43
44 Ochoa: I guess that's a question you might want to ask the lady in the public, see
45 if she would like a full presentation on this?
46

- 1 Stanley: No, I just have a question.
2
- 3 Ochoa: Just a question. I believe she just has a question.
4
- 5 Scholz: Okay. Well, who is the applicant here? Would you care to speak to this at
6 all?
7
- 8 Scanlon: Mr. Chairman, Commissioners, my name's Ted Scanlon. I represent the
9 applicants. No, but I will be happy to answer whatever question she has if
10 I can be of assistance in doing that.
11
- 12 Scholz: Okay. Good. Thank you, Mr. Scanlon. Yes, ma'am, would you come up
13 to the microphone and identify yourself please?
14
- 15 Stanley: My name is Robin Stanley. I live on Payan Road. And my only concern
16 about this proposal is on my street it is a very narrow road and we have a
17 development on one side of the street at the beginning of the street, which
18 is across from where they're developing this plot, and there's not enough
19 parking for the people that live in those residences. The driveways are
20 very short but the backyards are very long. And the way they built them
21 when they have company or even if they live in the house, if they have
22 more than two vehicles they park on the curb. Well, our street is very
23 narrow and I have a concern about emergency vehicles being able to turn
24 that corner and get down that road if both sides are developed. We're
25 going to have problems if we don't have adequate parking for those seven
26 plots to park their vehicles into their driveways and if they have room for
27 one more, because they're going to park on the curb and then we're going
28 to have cars parked on both sides of the curb and it's going to leave a real
29 narrow space in the middle. I'm sure they've thought of it but that was my
30 only concern. I have four generations in my household and one of them is
31 74 and I do have occurrence to call 911 for her and I have a toddler in the
32 house and things happen, and that's my concern.
33
- 34 Scholz: Okay, thank you. Mr. Scanlon, I have a question then: what is the width of
35 that road that she's talking about?
36
- 37 Scanlon: Payan Road is a standard minor local street width. It's ...
38
- 39 Scholz: What is that, about 45 feet, something like that?
40
- 41 Scanlon: It's 37 feet.
42
- 43 Scholz: Thirty-seven feet. Okay.
44
- 45 Scanlon: And of course we'd need to meet all the requirements for off street parking
46 and everything that are written into the codes and we intend to do that.

1
2 Scholz: Okay. Any other questions? Questions for this gentleman?
3 Commissioners? Okay, thank you, Mr. Scanlon. Any discussion?
4 Gentleman? No, okay, I'll entertain a motion to approve.
5
6 Shipley: We need to reinstate the rules. So I motion that we reinstate the rules.
7
8 Scholz: Thank you. Okay, a second to that?
9
10 Crane: Seconded.
11
12 Scholz: Okay, it's been moved and seconded we reinstate the rules, therefore
13 we'll vote on each item separately. All those in favor say aye.
14
15 All: Aye.
16
17 Crane: Are we doing # 18?
18
19 Scholz: Thank you. Okay. Now on Case S-12-018 I'll entertain a motion to
20 approve.
21
22 Shipley: So moved.
23
24 Scholz: Thank you.
25
26 Beard: Second.
27
28 Scholz: It's been moved and seconded. I'll call the role. Commissioner Shipley.
29
30 Shipley: Aye, findings, discussion, and site visit.
31
32 Scholz: Commissioner Crane.
33
34 Crane: Aye, findings and discussion.
35
36 Scholz: Commissioner Beard.
37
38 Beard: Aye, findings and discussions.
39
40 Scholz: And the Chair votes aye for findings, discussions, and site visit. Okay.
41 Case S-12-021, entertain a motion to approve.
42
43 Shipley: I move to approve S-12-021.
44
45 Scholz: Is there a second?
46

1 Crane: Seconded.
2
3 Scholz: Okay, it's been moved and seconded, I'll call the role. Commissioner
4 Shipley.
5
6 Shipley: Aye, findings, discussion, and site visit.
7
8 Scholz: Commissioner Crane.
9
10 Crane: Aye, findings and discussion.
11
12 Scholz: Commissioner Beard.
13
14 Beard: Aye, findings and discussions.
15
16 Scholz: And the Chair votes aye for findings, discussion, and site visit. Okay.
17
18 3. **Case No. SUP-12-03:** Application of Central Park West NY LLC for
19 construction of a 4,000 square foot metal building and parking lot to house
20 and operate an adult entertainment venue providing topless dancing and sale
21 of alcohol on a parcel lying within an M-1/M-2 (Industrial Standard) zoning
22 district located at 2221 Westgate Court, Parcel ID# 02-18451. The hours of
23 operation would be Monday through Saturday from 11 AM to 2 AM. Council
24 District 4 (Nathan Small).
25
26 Scholz: Okay, you said there was no old business, Mr. Ochoa, so our next case of
27 new business is Case No. SUP-12-03. Ms. Montana, are you giving the
28 presentation on this one?
29
30 Montana: Yes, sir.
31
32 Scholz: All right, you're up.
33
34 Montana: Thank you, Mr. Chair, for your patience and Commissioners. My name is
35 Susana Montana.
36
37 Shipley: Mr. Chairman.
38
39 Scholz: Yes.
40
41 Shipley: We have quite a few people standing at the rear. There are vacant seats
42 down in the audience. If we take a moment and let people be seated, I
43 think it's basically, you want to do that for safety and so they're not
44 standing in the aisle.
45
46 Scholz: And comfort, yes. Thank you, Commissioner Shipley. Yes, there are

1 plenty of vacant seats. If you have a vacant seat next to you will you hold
 2 up your hand so people can see it? There we go. Ms. Montana, I think
 3 we're ready for you.
 4

5 Montana: Thank you, Mr. Chair, Commissioners. For the record, Susana Montana,
 6 Planner with the Community Development Department. You have before
 7 you a request for a Special Use Permit to allow operation of an adult
 8 entertainment establishment. This adult entertainment establishment
 9 involves topless dancing and it would also have a full liquor bar. It would
 10 involve new construction on nearly an acre of vacant lot in an M-2
 11 industrial district. The building would be 4,000 square feet. It would be a
 12 metal building to blend in with its industrial neighbors. And a couple of
 13 slides from now you'll be able to see the site plan and its parking,
 14 landscaping, and it will also have outdoor lighting. It will have the required
 15 signage per our Zoning Code for adult entertainment and I'll show you that
 16 in a few slides. It will also have sound proofing insulation in the building
 17 and no openings except for two doors and that is to keep the music
 18 contained within the building and, of course, within the property. It would
 19 have a screen wall or an opaque fencing along the Amador Avenue
 20 frontage. The bar would open at 11 AM and it would close at 2 AM. The
 21 dancing, the adult entertainment would start about 4:00 until 2 AM.

22 You have before you a slide showing the approximate location of
 23 the property and it's facing Amador Avenue. It's accessed from Westgate
 24 Court. It's bounded by, the area is bounded by Motel Boulevard, 17th
 25 Street. These are about half a mile from the property and Valley Avenue
 26 is about a mile away. I want to draw your attention to the site here. It's a
 27 vacant property, as I said. It's within a business park, the Westgate
 28 Business Park; access from this cul-de-sac.

29 I want to bring your attention to the businesses around it: this is the
 30 FedEx distribution center. It has parking, off-street parking for its vehicles,
 31 its service vehicles and for its customers. This is the CSR Garage. The
 32 owners of this garage have submitted letters, comment letters to you,
 33 which are in your packet. They again have off-street parking. This is the
 34 Burns Construction office building and it has a shaded or canopied parking
 35 here and the Eros Video store and bookstore has off-street parking as
 36 well; so very little cause for off-street parking. It has been said that
 37 customers of the Eros Video store who bring their big rigs or large trucks
 38 occasionally park on the cul-de-sac and make their turn in the cul-de-sac
 39 and occasionally drive over the sidewalks and curbs and that is a concern
 40 of the auto repair business here.

41 I also want to bring to your attention this little driveway. It has an
 42 access from Amador street; however, it's a substandard driveway and
 43 curb but it is not used by the Burns Construction Company. In fact it is
 44 gated, locked, and there is a sign that says, "Use the Westgate Court
 45 access".

46 This is an image of the vacant parcel, the subject parcel. This is

1 the Burns Construction which is immediately to the east of the subject
2 parcel. As you can see here this is a bollards and a chain which prevents
3 access to that driveway. That driveway is on the property of the subject
4 parcel. This is immediately to the west, the Eros video store property, and
5 you can see it has its off-street parking. This is to the northeast on the
6 cul-de-sac, the CSR Garage and this is the FedEx distribution center.

7 The Zoning Code, the City of Las Cruces Zoning Code has criteria
8 for the establishment of adult entertainment businesses. They must be
9 located within an industrial district. They must be located a minimum of
10 1,000 feet from the property line of a school, church, nursery or daycare, a
11 public park or recreational facility, or residential zoning district. There
12 must be a minimum of 500 feet from the property line of an establishment
13 that has a liquor license. And they also must affix a sign to the exterior
14 door entrance which states, "Warning adult establishment. The business
15 within is sexually oriented". So those are the zoning criteria for locating an
16 adult entertainment establishment.

17 This is the proposed site and it does lie within an industrial district,
18 an M-2 Industrial District. This is the site here and within 500 feet radius
19 there are no establishments with a liquor license. Within 1,000-foot radius
20 there are no schools, churches, daycare/nurseries, or residential zoning
21 districts. However, you may be interested in seeing where the closest of
22 those establishments are to the subject property; so staff did conduct an
23 inventory, so to speak, a survey to identify where those establishments
24 are in relation to the property and they are at least ... this is the nearest
25 liquor license. It's 2,800 feet from the property. This is the nearest park at
26 Burn Lake at 1,500 feet plus. The nearest church is 4,000 feet. The
27 nearest daycare is over a mile. So this site does meet the distance
28 requirement of the Zoning Code. In addition, the nearest residential
29 districts are over 3,000 feet from the subject property. The applicant is
30 here tonight and she will explain the details of her operation but I just want
31 to go over some features of the site plan that may be of interest in
32 establishing conditions if you choose to approve the project. The single
33 access is from Westgate Court. There is parking for customers and
34 secured parking for employees. There will be indoor and outdoor security
35 guards to make sure that the parking area is safe. There is landscaping
36 around the building and landscaping around the perimeter of the property
37 here on these three sides.

38 The owner of the auto repair shop on the cul-de-sac, CSR Garage
39 has commented and you have it in your packet that he suggests that
40 access be provided from Amador Street, Amador Avenue and that access
41 be limited to this area here, rather than Westgate Court. He is concerned
42 that the big rigs would park on Westgate Court and other people would
43 park and cause parking congestion on Westgate Court. He also suggests
44 that if this were the single access, that there be a screen wall or perimeter
45 wall around the entire property. The applicant is proposing only a screen
46 wall on Amador Avenue frontage.

1 This is a focus or a zoom-in of the property, the area around the
 2 building and the interior of the building, there's a single access and exit; for
 3 security reasons, it's a controlled entrance for patrons. There is a single
 4 access for employees. It's a coded security door for the employees and
 5 there are dressing rooms and lounge areas for the employees; disc
 6 jockey, theater style seating around the stage, and a bar, restrooms, and
 7 storage areas.

8 Our staff evaluation was presented to you in your staff report in
 9 greater detail, but in summary the proposal meets all the zoning code,
 10 special use permit, distance requirements, and based on our evaluation
 11 we find that because it's in an industrial neighborhood there is no
 12 proximity to what we call sensitive land uses and that of residential land
 13 uses or daycare and nursery and that sort of thing. However, we believe
 14 that even though it is further distant from these uses, there still could be
 15 what we might call an attractive nuisance or reason for people to be
 16 coming to the area that may not realize that it's adult activity if there were
 17 outdoor activity, and this may cause congestion, parking congestion, and
 18 noise. So, later on in our conditions we propose mitigation for this kind,
 19 for the potential for noise and attractive nuisance and parking congestion.

20 The hours of operation related to noise and traffic impacts, except
 21 for lunch hour traffic where the nearby workers would be traveling, there
 22 shouldn't be any parking or traffic congestion in the area due to the off-
 23 peak hours of this operation, it's a late night operation. There is that
 24 concern about the big rig parking. There are two truck stops at Motel
 25 Avenue and Amador and there is concern that those drivers would take
 26 their big rigs, bring them to the site or park in the cul-de-sac. And we have
 27 a suggestion in our conditions to mitigate that concern.

28 There is also the issue of the amount of parking: typically for adult
 29 entertainment the parking requirement is 1:250 square feet. We feel
 30 because there's a full service bar that the parking should be based on a
 31 bar calculation at 1 space per 75 square feet and that would allow about
 32 55 spaces.

33
 34 Scholz: Require. Require about 55.

35
 36 Montana: Yes, require 55.

37
 38 Scholz: Thank you.

39
 40 Montana: We feel the security design of the property and the interior space is
 41 adequate, it's a good design and we believe that we have, we propose
 42 mitigation measures to make sure that there is security or sound security
 43 for both the employees and patrons.

44 Our recommendation is that the City prohibit parking of any kind of
 45 vehicles; whether it's big rigs or automobiles on Westgate Court, and this
 46 would mitigate the potential concern about congestion on the cul-de-sac.

1 In summary, staff has reviewed and analyzed the project and we feel it
 2 meets the Zoning Code and the Comprehensive Plan Policies and we
 3 recommend conditional approval of the Special Use Permit based on the
 4 findings found in the staff report. Of course, the Planning and Zoning
 5 Commission has final authority regarding Special Use Permits, unless
 6 they are appealed, unless your decision is appealed to City Council. Staff
 7 recommended conditions of approval. We are recommending that the
 8 applicant pay for the installation of the "No Parking" signs for Westgate
 9 Court and on their property as people enter, that there be a big sign, a
 10 very visible sign that warns the patrons not to park on Westgate Court,
 11 and that their vehicles could be towed, can be expected to be towed, at
 12 their own expense.

13 We also suggest condition number 2: that there be no outdoor
 14 special events or entertainment activities on the premises in the parking
 15 lot. We realize that there is a permit for special events and that there is a
 16 City Noise Ordinance, but enforcement of those are based on complaints
 17 and we'd rather that there were no complaints and therefore no outdoor
 18 entertainment. Thirdly, we're recommending as a condition that the
 19 applicant provide the landscaping that's shown on the conceptual site plan
 20 that you have in your packet. Fourth, we also want as a condition that
 21 they provide the rockwall or the opaque fence on Amador Avenue to
 22 screen the site from the street and also to screen headlights from the
 23 parking area to reach the roadway. Lastly, as I mentioned, we would like
 24 to use the bar calculation for parking and that they not exceed that
 25 maximum number.

26 Your options tonight are to vote yes to conditionally approve the
 27 request as recommended by staff; to vote yes to approve the request with
 28 amended or with new conditions of approval; to vote yes to approve the
 29 request without any conditions; to vote no to deny the request; or to vote
 30 to table or postpone the special use permit request. That concludes my
 31 presentation, Mr. Chairman and Commissioners. I'm happy to answer any
 32 questions you may have.

33
 34 Scholz: All right, thank you, Ms. Montana. Any questions for this lady? Yes,
 35 Commissioner Crane.

36
 37 Crane: Ms. Montana, what can you tell us about the signage that will be designed
 38 to identify the building for potential customers?

39
 40 Montana: The applicant has not submitted a building permit or a separate sign
 41 permit. The conceptual site plan that you've seen has a very small sign,
 42 The Bronx, simply The Bronx in addition to our required adult
 43 entertainment warning sign. However, there are other opportunities for
 44 signs permitted by the Zoning Code and the applicant, I would like to defer
 45 to the applicant to answer what they expect to apply for when they submit
 46 their sign permits.

- 1
2 Crane: Thank you.
3
- 4 Scholz: Other questions? I have two, Ms. Montana. What are the, I know we know
5 what the Zoning Code says about the placement of a property like this or
6 an applicant like this; what are the legal requirements for the City? That
7 is, what does the City Code say about adult entertainment properties?
8
- 9 Montana: Well, as I mentioned there are distance requirements and the Zoning
10 Code requirements.
11
- 12 Scholz: Right, yeah I'm familiar with the Zoning Code requirement. No I'm asking
13 do we have an opinion from legal on that?
14
- 15 Montana: Oh, yes. First if I may go back a little bit to answer Commissioner
16 Crane's, when they apply for their sign permit, they are able to apply for
17 one freestanding sign. That freestanding sign may be on the Amador
18 side. If it is it could be as tall as 30 feet above grade. It could be on the
19 Westgate Court side and if so it could be 18 feet tall. Each one, or
20 whatever one they choose, can only be 150 square feet in size. So, and
21 they also are allowed attached signs or wall signs at a size we calculate at
22 1.5 square feet per 1 foot linear feet of the building wall that it is attached
23 to. Now if I may defer to our Deputy City Attorney, Rusty Babington.
24
- 25 Babington: Chairman Scholz and Commissioners and audience here, let me sort of
26 give you a short synopsis of where we stand legally with this particular
27 request for permit. And I'll have to start briefly by saying the Supreme
28 Court has ruled on the constitutionality requirements for zoning as it
29 effects free speech or expression of speech on a number of different
30 occasions, starting back in '76 with the case called O'Brian, a case called
31 Young later on, and then more recently a case called Reton in 1986. And
32 what the Supreme Court basically indicated was, if it's content neutral, in
33 other words; government does not impose or control the content then
34 cities are allowed through zoning, through time, manner, and location to
35 put certain limitations on business establishments.
36 Using this as guidance in 1989 the City of Las Cruces established
37 the forefront of the Ordinance we're looking at now and what it decided at
38 that time was 1,500 feet from any school establishment, 1,000 from any
39 liquor establishment. That lasted for about five years until the City was
40 sued in Federal District Court over a business' ability to meet that
41 requirement or for the City to find some place that met that requirement.
42 We are required to, basically, in order to comply with the constitution and
43 federal law, basically change that to what we have now which is a 1,000
44 feet from schools, parks, and 500 feet from a liquor establishment. Right
45 now the City Ordinance is in compliance with federal law and state law.
46 We have a limited ability to control once again time, manner, and location

1 as long as we remain neutral in content, to wit we can't control the
2 exercise of the speech or the expression.

3 Now having said that, there are certain things that you can control,
4 there are certain state laws that prohibit certain types of activity or limit
5 those activities. Those would be in place. I think Chief Miller could
6 probably address those. But I wanted to indicate to you, Commissioners,
7 that this Ordinance is about as good as we're doing right now. We're in
8 compliance with federal and state law. It's a valid Ordinance and it does
9 allow the City to put once again certain limitations on time, manner, and
10 location of adult entertainment. So that's it in a short synopsis.

11
12 Scholz: Thank you, Mr. Babington. Commissioner Beard, a question.

13
14 Beard: Ms. Montana, I don't have a good road map on my handout. Could we go
15 back to the view graph that shows the cul-de-sac? Could you show me
16 exactly where those signs are going to be posted on those streets?

17
18 Montana: Well, the applicant has not sought a sign permit so they haven't submitted
19 an application, but they would be permitted. They have a 15-foot setback
20 on the Amador side.

21
22 Beard: I'm thinking on the street. The "No Parking" signs on the street.

23
24 Montana: Oh, the "No Parking" signs would be posted here, here, likely. It's up to
25 the Transportation Operations Department, but likely at the entrance and
26 perhaps again here and here.

27
28 Beard: So the road that comes off of Amador, there would be parking?

29
30 Montana: There's ... I don't know if there would be parking here. We could certainly
31 ... if needed we could certainly ...

32
33 Beard: Right now you're not recommending parking signs there?

34
35 Montana: I don't think that it would be needed. The concern was for the big rigs
36 really parking here.

37
38 Beard: What about going further to the west? Okay, right in that area, are you
39 going to put parking signs over there?

40
41 Montana: We hadn't planned on doing that. We thought if there was congestion it
42 would be here. I've heard testimony that some big rigs do park here, but
43 this is a vacant building at the moment and so in the evening it hasn't
44 been a problem. But we certainly ... if there is a problem we'd have the
45 opportunity to mitigate.
46

- 1 Beard: Well, here's my concern, I counted the number of parking lots that are
2 inside the proposed area and there are 48, if I counted it correctly. If you
3 look at inside the building there are seating for patrons of 60, not including
4 the workers. So there are more people working inside the building than
5 there is availability of parking on the outside.
6
- 7 Montana: Well, we based the parking requirements on square footage rather than
8 seating. The requirement is based on square footage. However, if you
9 like the Commission could have as a condition that it be based on seating.
10
- 11 Beard: Well, I'm just thinking that you have reviewed the number of people that
12 could be inside. We've got to provide for parking spots for all of those
13 people inside.
14
- 15 Montana: That's assuming each one brought a vehicle but I think the applicant could
16 tell you better, but I think it's the case that sometime more than one
17 person comes in a vehicle. However, if you like we can base it on seating
18 rather than the square footage. Because it's a special use and you can
19 mitigate with your conditions.
20
- 21 Beard: Okay.
22
- 23 Scholz: Yes, Commissioner Shipley.
24
- 25 Shipley: Ms. Montana, you said the maximum was 55; however, it says here that
26 they propose to have 56, and was your number ...
27
- 28 Beard: I counted 60.
29
- 30 Shipley: Sixty-five.
31
- 32 Beard: I counted 60 chairs inside.
33
- 34 Shipley: Sixty, so there is sufficient room on the parcel to have more than 55 or 56
35 parking spaces, is that correct?
36
- 37 Montana: Yes there is, especially if they move the eastern property line over to
38 include that driveway which is on their property and not part of the project
39 right now and also to lessen the amount of landscaping around the
40 building.
41
- 42 Shipley: Okay. Thank you.
43
- 44 Scholz: All right. Mr. Kyle, did you have a comment, sir?
45
- 46 Kyle: Yeah, Mr. Chairman, staff would like to make one correction: the City

- 1 Zoning Code determines parking based on the square footage range of a
2 particular type land use. We don't tie it to specific number of patrons, etc.
3 I do not believe that the Planning and Zoning Commission has the
4 authority to change the City's parking Standards on the fly. They are
5 established. They fit within the range for the proposed land use and if the
6 Commission wanted to require additional parking to mitigate a potential
7 use, the applicant would have to go through the variance procedure.
8 There was not a variance applied for as part of this request and the
9 Commission cannot unilaterally make that decision tonight. They would
10 have to come back through the variance process if that were in fact the
11 case.
- 12
- 13 Scholz: Thank you. Thank you, Mr. Kyle. Ms. Montana, I had one other question,
14 and that was the problem of what we commonly call public safety. Could
15 we have the police speak to this issue?
16
- 17 Montana: Yes, thank you, Mr. Chair. Deputy Chief Chris Miller is here and he can
18 respond to your inquiries.
19
- 20 Scholz: Okay. Chief Miller.
21
- 22 Miller: Mr. Chairman, we foresee a possible increase in traffic congestion and
23 parking issues in the area, drug and alcohol related incidence such as
24 DWI, assaults, public affray, possible incidence of indecent exposure, and
25 prostitution complaints; but the Police Department is prepared to handle
26 these complaints as they come in. The state has two particular
27 ordinances that deal with adult entertainment industries. The first is
28 indecent dancing which basically covers how these types of
29 establishments have to dress in order to be a liquor establishment, and
30 the other is called indecent waitressing which deals with how they serve
31 the alcohol. The Police Department would respond to those complaints as
32 they come in, and additionally, the Special Investigations Division of the
33 New Mexico Department of Public Safety would do more proactive type
34 investigations into these allegations or complaints.
35
- 36 Scholz: Okay. Questions for this gentleman? All right, Ms. Montana, you
37 completed your presentation?
38
- 39 Montana: Yes I have.
40
- 41 Scholz: Okay, may we hear from the applicant please?
42
- 43 Wootton: Thank you, Mr. Chairman, members of the Commission. My name is
44 Karen Wootton; I'm an attorney with the Carrillo Law Firm. I'm appearing
45 for the applicant. Central Park LLC is the entity that would operate The
46 Bronx on this property. Mariah Hernandez is the sole member of that

1 entity. Her husband Jessie Hernandez is the sole member of Central Park
2 West NY LLC, which is the property owner. I will refer to them together as
3 the applicants. They are participating in the application together. Mr. and
4 Mrs. Hernandez met with City staff prior to purchasing this property
5 attempting to locate a property in Las Cruces that met all the City's
6 requirements for an adult establishment. Their realtor even came with
7 them to one of those meetings and made some additional inquiries with
8 staff for them. So they did a great deal of due diligence trying to find an
9 appropriate property in every way. They found absolutely nothing for sale
10 within the City of Las Cruces that met the requirements for this use. They
11 were eventually able to identify this property as something that had the
12 proper zoning and could meet all of the SUP requirements. They
13 approached the owner and were able to negotiate the purchase of this
14 property. So I want you to understand that they have made every effort to
15 select an appropriate property consistent with the City's Ordinance. Then,
16 they contracted with Studio D to design the development to completely
17 comply in every way with the SUP requirements. You've heard from City
18 staff and seen in the report that Mr. Nims with Studio D has accomplished
19 that.

20 Ms. Montana, I was trying to remember her name, the City planner
21 has indicated that they would talk about the operations. We actually don't
22 plan to talk about the operations today. If you have specific questions we
23 may be able to address them. I really don't understand how operations
24 issues impact your zoning decision. So that's why we didn't prepare to
25 address those. There is some basic information in your packet and we
26 may be able to address particular details, but that was not planned as part
27 of our presentation for that reason. It really doesn't impact the zoning.
28 They did tell me on your one issue in terms of the signage; yes, they
29 haven't put in the application. That's a different step in the process. They
30 have indicated they have no intent of having any sign on Amador. All they
31 want to do is have a sign on the building so that when people arrive they
32 can identify that this is The Bronx, the place that they were looking for.

33 We do take issue with the one staff recommendation on no special
34 events. This is industrial zoned property. Special events, if properly
35 conducted, are allowed even in "R" zoning, which is as you know is a
36 High-Density Residential zoning, in all Office zoning, in all Retail zoning,
37 and in all Industrial zoning. So I really don't see a basis for saying when
38 you look at the distances that this is from all other non-industrial usage,
39 why staff is proposing that particular restriction on this use which, as Mr.
40 Babington has pointed out, has constitutional protections. So before the
41 Commission starts public input, that's what we want to talk about briefly, is
42 the constitutional protections.

43 As Mr. Babington said, the City of Las Cruces just like every other
44 city in the country cannot completely prohibit adult entertainment. That's
45 not allowed. The Supreme Court settled that a long time ago. So I know
46 that this Commission understands that what you're to decide is whether or

1 not the application meets the standards for SUP. Of course the rules of
2 evidence don't apply there. They don't apply here that would apply in
3 court, so I know that this Commission is very custom to sorting through a
4 lot of public input on land use issues much of which is emotional and still
5 applying that narrow legal standard. What seems likely to be a first for this
6 Commission is that tonight your job has constitutional implications.

7 Much of the debate in the media about The Bronx has been
8 focused on opinions about morality and religion as they relate to adult
9 entertainment. I anticipate that you're going to hear a lot of comments
10 about those issues. People have been asked in the media that they
11 intend to talk about morality and religion as why on that basis you should
12 deny this application. The first amendment allows the public debate that's
13 been in the local press, but the first amendment also protects my client's
14 right to offer adult entertainment in Las Cruces, and the rights of
15 individuals to choose that form of entertainment in Las Cruces. I've been
16 pleased to see that many comments from residents in the local media
17 have recognized that. But we are concerned that some individuals are
18 going to ask this Commission to use the zoning process to make their
19 ideas about morality a regulatory hurdle to others that disagree with it.

20 Some members of this Commission may have personal objections
21 to adult entertainment.

22
23 Scholz: Would you stay on the mike, please? You're getting off mike here.

24
25 Wootton: Okay.

26
27 Scholz: Thank you.

28
29 Wootton: And some of you may have concerns about public perceptions in the
30 community, that if you approve this application you are endorsing adult
31 entertainment. Upholding the first amendment requires you to set aside
32 those personal objections and concerns and to act as a fact finder; to look
33 at whether the applicant has met all the requirements for an SUP. City
34 staff has unanimously told you that the application does meet those
35 requirements. So while you listen to the public comments and deliberate
36 about your decision, we're asking you to focus on that. Mr. Nims is here
37 to respond to questions, Mr. and Mrs. Hernandez are here although
38 probably they would discuss them with me or Mr. Nims and provide you
39 with responses about specifics. Otherwise we would like to have an
40 opportunity at the close of public input to make any further responses to
41 issues that come up. If you don't have any questions for me.

42
43 Scholz: Okay. Questions? Commissioner Crane.

44
45 Crane: Ms. Wootton, are your clients related in any way to the Eros business that
46 is currently next door to this lot?

- 1
2 Wootton: No, not to my knowledge. I can double check with them and correct
3 myself if I made a misstatement, but no.
4
- 5 Crane: And perhaps this is not a fair question to you, but what kind of special
6 event could a topless club have outdoors?
7
- 8 Wootton: Well, certainly nothing that would violate the law. So they can have
9 special events that are certainly not topless and that don't violate the law
10 in any other way, but they can have you know what happens all over town,
11 some of the radio stations come and have music and they can have
12 events like anybody else does. They cannot be the same events that they
13 have inside, but that has to be regulated based on the outdoor activity.
14 You can't just take a first amendment protected use and apply special
15 rules that really have, are just presumptuous, that they are going to
16 somehow cause a greater nuisance than any other business that has to
17 comply with the same rules about special events. That's my concern that I
18 don't believe that's constitutionally proper.
19
- 20 Crane: And the special events have to be confined to the property, not go out into
21 the sidewalk, the street?
22
- 23 Wootton: I don't know that there's anything allowed in special events generally that
24 would allow them to go onto the street. I have studied those provisions of
25 the Code. I looked at them very generally. I don't believe that's allowed. I
26 believe Mr. Kyle could probably tell us if that's allowed. If it's allowed
27 generally it should be allowed for them unless there's something special
28 about the event that causes a special problem. Special events restrictions
29 need to be related to the property and what the actual proposed special
30 event is, not related to what goes on inside that's completely legal. That's
31 all I'm talking about is that segregation.
32
- 33 Crane: Thank you.
34
- 35 Wootton: That you can't just make a blanket prohibition.
36
- 37 Crane: Thank you.
38
- 39 Scholz: Okay, any other questions for this lady? Thank you very much, Ms.
40 Wootton.
41
- 42 Wootton: Thank you.
43
- 44 Scholz: Okay, we're going to open this to public discussion now. What I'd like to
45 remind you of is that we want to be respectful of other people's opinions
46 and we want to allow people to speak their piece and then sit down. How

1 many wish to speak to this? Okay, let me take a quick count. Yeah, keep
 2 your hands up please. I do this every day in class, so ... 7, 8, 9, 10, 14, I
 3 get about 30 people. Okay, I'm going to rule that we allow each person 2
 4 minutes to speak and with the following considerations; I want you to
 5 come up to the mike and give us your name and then tell us what your
 6 concern is about this issue. If there are any questions from the
 7 Commissioners, that won't count in your time. Okay? All right. I think the
 8 best thing to do would be to ... Oh, I'm sorry, my colleague, Commissioner
 9 Beard who's the secretary of our Commission is going to keep the time
 10 and I'll tell you he's very good at this. Actually he repairs clocks and things
 11 like that so he has a sharp eye for it. What I would suggest if it's
 12 convenient for you, if you're not handicapped or something, is that we line
 13 up in the center aisle here to speak and that way we can get everyone in
 14 and we'll know what the order is and it shouldn't be a problem. If you're
 15 having trouble standing that long, then I would suggest that someone
 16 gives you a seat on the aisle, you know, scoot over and give somebody
 17 that support. Yes, Commissioner Beard.

18
 19 Beard: When you're talking, when you get to two minutes I will turn on this red
 20 light, the Chair will give you time to finish your sentence. So when the red
 21 light comes on your ending your speech.

22
 23 Scholz: Okay, again when the red light comes on then you should wind it up.
 24 Okay. Ready. You're first, sir. Be sure and stay on the mike.

25
 26 Sutphin: Can you hear me?

27
 28 Scholz: Yes.

29
 30 Sutphin: Commissioners, thank you for the opportunity to speak. My name is
 31 Daniel Sutphin. I am perhaps one of the newest members of the
 32 community, Las Cruces, my family and I having just moved here last
 33 month from San Francisco. I speak to the Commission, I try not to speak
 34 unless I'm qualified to speak about something and I'm actually a plastic
 35 and reconstructive surgeon. I speak tonight because I've seen the fruits of
 36 what establishments such as this bring, constitutional or unconstitutional
 37 as our lawyer friend would like to have us believe, and I'll tell you it's not
 38 pretty in any way personally or professionally. I've dealt with facial
 39 fractures that women who work in these establishments sustained, and
 40 I've dealt with injuries that I can't begin to depict on a public screen to
 41 other portions of their bodies. It doesn't take a legal expert to tell you that
 42 this type of establishment brings no fruit to a community of any good.
 43 Perhaps it'll bring dollars into Mr. and Mrs. Hernandez' pockets and the
 44 people who work there for a time. But I submit to you that none of you
 45 gentlemen, certainly not me and I would say the vast majority of the
 46 people who make up this community wish to see either our daughters

- 1 however young or old they be, our wives, our sisters, or any female that
 2 we know involved in this type of work. Thank you for your considerations
 3 and I hope that and pray that you'll take them to heart. Thank you.
 4
- 5 Scholz: Thank you, sir. I would remind you not to applaud because of if you
 6 applaud every person who speaks we'll probably be here until midnight
 7 and I don't think any of the people who are standing there really want to
 8 see that, do they? Sir, you're up next.
 9
- 10 Hillman: My name is Jim Hillman.
 11
- 12 Scholz: Nice to see you, Jim. Jim is my backyard neighbor by the way.
 13
- 14 Hillman: I'm a retired professional engineer. I've been a resident of Las Cruces for
 15 about 34 years and during that time I've observed that some 30-40
 16 churches in this area have worked hard to help families raise their children
 17 in a nurturing admonition of the Lord. Also, I have observed that our
 18 Councilors in our City have worked very hard and have moral courage
 19 they've exhibited in various cases. The new challenge before us today, I
 20 propose that we look at God's word for our guidance. First Peter 5 reads,
 21 "Be self-controlled and alert. Your enemy the devil roams about seeking
 22 whom he might destroy. And then God through Peter encouraged us by
 23 saying resist the devil by standing firm in the faith". Now we dare not
 24 disregard the devils intensions. By doing that we'd provide a place of evil
 25 in this strip club. Why? Because this increases the opportunity for the
 26 devil to destroy our young men and women as he prowls about. So the
 27 conclusion of such an action of allowing this club to exist is 3 things; it
 28 would destroy the young families of our community; it will degrade the
 29 moral bearing of our cities, it's certainly displeasing to our Lord and
 30 possibly reducing the opportunity for future blessings. The choice is ours
 31 men, whom will we serve. Thank you very kindly for listening and God
 32 bless you as you make your decision.
 33
- 34 Scholz: Thank you. Once again, I would ask you to hold your applause, please,
 35 so we don't drag this proceeding out. Thank you. Yes, sir.
 36
- 37 Powell: I'm John Powell, an officer of the Evangelical ministry fellowship local
 38 chapter of the National Association of Evangelicals. We support over 100
 39 pastors and churches and ministries here in Las Cruces area, some of
 40 whom are here tonight. I have no hesitation to say similar to what the
 41 medical doctor said earlier, that the most traumatic experiences we as
 42 pastors have in giving pastoral care are directly related to both sexual
 43 crimes and "legal sexual promiscuity". The time, relational, and spiritual
 44 power lost as a result of the secondary effects of the adult activities
 45 promoted by a business like The Bronx is staggering. It is difficult to
 46 express this as strongly as I feel it. You as the Planning and Zoning

1 Commissioners have the discretion to deny or approve it on grounds other
 2 than whether they meet the present zoning requirements. So we ask you
 3 to vote no on the basis of the secondary effects of sexually oriented
 4 business. Thank you.

5
 6 Scholz: Thank you, sir. Yes, ma'am.

7
 8 Stanley: My name is Robin Stanley. I'm a resident of Las Cruces since 1978. I
 9 have a four-generation household and I'm speaking for each generation of
 10 female in my household in saying that I'd really pray and hope that you do
 11 not approve this zoning request because Las Cruces is a beautiful family
 12 place. We have parks, we have sports. We have education. We have so
 13 many assets for families. And I've been a foster parent, I've taken care of
 14 the wounded of sexual abuse, taken care of the wounded of broken
 15 families in my own home and I can tell you that the effects of such
 16 behavior that is legal and protected by our constitution. I am the daughter
 17 of a veteran, my son is active duty military, and he would die to protect
 18 that Constitution. But I pray that we use the concerted efforts of those
 19 people who went before us to protect that right, to also give us the right to
 20 have a free and beautiful community without sexual material such as this
 21 being promoted and I pray for the family that is trying to profit from this
 22 type of industry. And I hope that you can find some other way to provide
 23 for your family other than adult entertainment. Thank you.

24
 25 Scholz: Thank you. Yes, sir.

26
 27 Schrader: I'm George Schrader. And I've got a bad voice, but anyway I'm a retired
 28 law enforcement officer, and for 15 years I assisted Las Cruces Police
 29 Department and especially the investigation division in investigating these
 30 types of establishments. And I'm just going to throw out a few questions
 31 and you guys can research them later, but some of these questions that
 32 I'm going to ask, I wonder if they've been carried out. For instance in New
 33 Mexico statutes annotated section 60-38-2 which is the liquor policy for
 34 this state it says "it is the policy of the Liquor Control Act that the sales,
 35 service, and public consumption of alcoholic beverages in the state shall
 36 be licensed, regulated, and controlled as to protect the public health,
 37 safety, and morals of the community".

38 And I'm going to ask you, gentlemen, I don't want an answer, but
 39 have you checked the morals of the community? The Liquor Board is
 40 required to do that and to my knowledge no one has bothered to carry out
 41 that aspect of the law. The other is the administrative powers and it says
 42 that Alcohol and Gaming Division of the Regulation and Licensing
 43 Department shall require criminal history background checks of the
 44 applicants and that background check the law clearly says they shall be
 45 fingerprinted and the background checks made through the FBI, and the
 46 results should come back before you ever make any kind of a decision.

1 My question, and I don't want an answer, have you completed background
2 checks on these individuals? If so, what was the result of the background
3 check? Then further in the law it clearly stipulates that any one requesting
4 a liquor license cannot be, if they are a retailer, they cannot be owners or
5 operators of a wholesale liquor establishment.
6
7 Scholz: All right sir, your two minutes are up, sir.
8
9 Schrader: Okay.
10
11 Scholz: Thank you.
12
13 Schrader: Now the next thing.
14
15 Scholz: Sir.
16
17 Schrader: Yes?
18
19 Scholz: Your two minutes are up. I'm sorry you'll have to ...
20
21 Schrader: My time's up?
22
23 Scholz: Yeah, your time is up.
24
25 Schrader: All right. Thank you.
26
27 Scholz: We don't have a trap door, you know, we decided not to use that.
28
29 O'Donnell: Hello. My name is Michael O'Donnell. I'm an adjacent property owner at
30 2321 Westgate Court. I am strongly opposed to the usage of this property
31 as an adult entertainment in an already established commercial
32 community. We as neighbors already must deal with unwanted
33 commercial traffic, idling trucks, and noise, and I must already pick up
34 trash from condoms, beer bottles, and cans only suspect it will increase
35 with the opening of another X-rated business. My business property value
36 will certainly suffer by no fault of mine and I would like to know who will be
37 the responsible party for that affect. Will it be the City that permitted this
38 operation along with the club? Parking is certainly not adequate when
39 employee parking is taken into consideration; this will certainly create
40 parking on other property owner's lots. I will be needing to establish a
41 fence around my parking to prohibit unwanted parking and unwanted
42 usage of my property for my tenants when they are not present to protect
43 their businesses and their investments. If this approval is [inaudible] ...
44 this operation, this club will certainly have a negative impact on already
45 existing businesses.
46 The other issue I would like to bring, there has been another

1 property that has just recently been completed, owned by Mr. Glen Porter
 2 at 316 Southgate Court which is definitely within the 1,000-foot distance
 3 which is supposed to be operating as a church. That is [inaudible] ... the
 4 address that I could figure here on my own is 316 Southgate Court. I
 5 would hope that someone would be able to check if that usage has been
 6 approved and that would precede the usage that we're requesting tonight.

7 Another issue is that this impact on this property definitely will be
 8 negative for the community and there are other properties that they can go
 9 to but have chosen this because the price point is better for them but not
 10 necessarily for the surrounding neighbors. The property diagonally across
 11 the corner from Eros is vacant. It is available. They have seen the
 12 property but apparently the price was not to their liking so they've gone
 13 somewhere else.

14
 15 Scholz: Okay, your two minutes are up sir. I do have a question though: what is
 16 your business or what is your property that you're referring to?

17
 18 O'Donnell: My property is catty-corner from FedEx. It's the old Dow Tile building on
 19 the corner of Amador and Westgate Court.

20
 21 Scholz: Okay.

22
 23 O'Donnell: It currently has three quality tenants in it now and I'm afraid if this does
 24 come in and my quality tenants leave, then what happens to me.

25
 26 Scholz: Okay. Thank you. Yes, sir.

27
 28 Stevens: My name is Thomas Stevens. I'm the Children's Minister in Bus Ministry
 29 at the Cornerstone Baptist church. The legal counsel representation for
 30 the applicant has suggested that laws and codes and so forth should
 31 supersede those of morality and religion and I think we have enough of
 32 that in America. We ought to take up some care for our children, our
 33 daughters, our sons, our granddaughters, our grandsons, cause who's
 34 going to attend this place of the community of Las Cruces. I grew up in El
 35 Paso and when I came to Las Cruces I saw a community that I believe in,
 36 I could believe in, that I respected, that I wanted to be a part of and as an
 37 employee of the City of Las Cruces I wear a patch on my right shoulder
 38 that says, "Character Counts." And I believe that Las Cruces has
 39 character now. I believe this will be a blight upon the character of this
 40 City, also with that patch it says "Character Counts," it also says
 41 responsibility. It says caring. It says fairness. I think we ought to be
 42 caring enough for our citizenship and have a responsibility to say no. And
 43 whether they fight us legally I believe we the people can finance the fight
 44 against them legally and for a moral and a proper and good reason, a fight
 45 to uphold the good character of our society, our City. Thank you.
 46

1 Scholz: Thank you. Yes, sir.

2
3 Ortega: My name is Ruben Ortega and I'm a lifelong resident of this area and I'm
4 not here to argue with you about the evils of topless bars but simply to ask
5 you not to allow this business into our city. I do have my convictions about
6 this type of business and would love an opportunity to discuss them with
7 you at a more appropriate time. I've been doing my best to stay informed
8 on this proposal. I understand that if you approve the topless Bronx bar
9 that this will be the first allowed in our city. I wonder, if we have functioned
10 fine without one in our city before, why is it that we now are even
11 considering allowing one in? I have three reasons why I strongly oppose
12 The Bronx topless bar proposal; I am a father and grandfather first and by
13 no means do I want my children or grandchildren exposed to the
14 exploitations and activities that these types of establishments impose on
15 our communities.

16 Reason number two, I do business with other businesses in that
17 area and I have to tell you that on occasion I do find myself going to the
18 archery shop that sits across the Eros property and I also find myself
19 going to FedEx to pick up a package. But being in the line of work that I
20 do, I definitely will not be in that neighborhood with this kind of business
21 being there. If this establishment is allowed as I mentioned, I will not be
22 going to those locations and will no longer be doing business with the
23 archery shop or FedEx.

24 Reason number three, I'm a pastor of a local church, and too often I
25 have to personally deal with people from our community who struggle and
26 have been connected to the violence that alcohol and this type of
27 establishment bring with it. And I know without a doubt because of the
28 line of work and I appreciate what the chief said here tonight, that all these
29 things that he mentioned will increase. And we already have issues with
30 substance abuse, domestic violence, financial irresponsibility, and women
31 being objects to be used and abused. I don't see any good coming from
32 allowing The Bronx topless bar to do business in our city. So I ask you
33 Commissioners, I ask you to vote no to this proposal. And I know that you
34 have the ability to vote no on the grounds other than the letter of the
35 zoning law; grounds like community's desire to avoid the secondary
36 effects of adult businesses like The Bronx topless bar.

37
38 Scholz: Okay, your time is up, sir. Thank you.

39
40 Ortega: I just wanted to thank you. Thank you for the time and we'll be praying for
41 you.

42
43 Cowan: Good evening. My name is Doug Cowan. I'm a pastor of the Cornerstone
44 Baptist church here in Las Cruces. And I can tell you on a daily basis I
45 deal with families who are struggling and I am constantly faced with the
46 situation that we're going to see develop out of this type of business and

1 that is the families that are being destroyed by that type of activity. I have
 2 a statement of course out of the scripture, "Righteousness exalted the
 3 nation but sin is a reproach to any people". And I have a question for us,
 4 this establishment is going to have to hire women to work there, I wonder
 5 if those women will be your grandchildren. I wonder if those women will
 6 be our daughters. I wonder if those women will be young college girls who
 7 are struggling to make a payment, a tuition payment, perhaps trying to buy
 8 books, trying to buy supplies to make it on their own for the first time and
 9 are now faced with the dilemma of coming up with enough money so they
 10 fall into the easy trap of going into this type of business. Our society
 11 should be elevating the purity and the beauty of our women. We should
 12 not be going back and going to an age where we degrade them and
 13 belittle them. I see this as nothing more than just a legal pimping
 14 operation to market women. I ask you to pardon my bold speech;
 15 however, this is a very bold subject and if this is allowed to come into our
 16 city it will be a blight. It will be a perpetual blight because once one is
 17 established, a business such as this, they become perpetual, one breeds
 18 two, two breeds four, four breeds and so on.

19
 20 Scholz: Your time is up, sir. Thank you very much.

21
 22 Redlin: My name is Robb Redlin. I'm the pastor of Mountain View Baptist Church
 23 but I do not stand before you just as a pastor but as a father. For over a
 24 year I had a foster daughter up in Gary, Indiana, from the age of 11 to 12.
 25 When she turned 19 she was involved in some things she shouldn't have
 26 been involved in, in order to get money she worked in an establishment
 27 such as this. I do not hate these people. But I do feel for them. She was
 28 both physically and sexually abused and I'm asking you, I implore you to
 29 think about our young women, our children. As a father I would do
 30 anything I could to spare this young lady of what she went through. We
 31 pick up over 10 children in that area less than a mile from there from the
 32 age of 5 to 14. Many of them walk down Amador to go to the Pizza Hut
 33 that is down on the corner at the truck stop. They'll be passing this. Don't
 34 let them see it.

35
 36 Scholz: Thank you.

37
 38 Beeson: My name is Harold Beeson and I am with the Gabriel Ministry at St.
 39 Genevieve's Parish, a ministry where we care about people and young
 40 mothers and make sure that they don't abort their children. This is a
 41 tertiary effect of this, but these women will be sexually abused. They will
 42 become pregnant and we will see abortions. We will see children
 43 martyred because of your decision today. I also come before you as a
 44 father of three children, three girls. We use CSR Garage. My daughters
 45 already feel creepy driving by the Eros bookstore in order to drop their
 46 cars off at CSR. With this establishment there I will not allow my

1 daughters to drop their cars off at CSR. We will drop our cars off
2 elsewhere. This establishment, we talked about morality. I'm wondering,
3 what, if this was a dog fighting establishment where dogs were being used
4 for the entertainment of men in a bar location would it be approved by this
5 committee? But no, this is not dogs, we care more for dogs than we do for
6 the women who will be used and abused in this establishment. I ask you
7 to reconsider this. This is about morality but it's also about our children.
8 It's about my daughter who we lost the battle in Albuquerque. We moved
9 here to raise our kids. My daughter recently was running in Albuquerque
10 and she was accosted while running on a running trail. Did that person
11 that accost her use one of these sites? Maybe, maybe not. But I don't
12 want to take that chance here in Las Cruces. Thank you very much.

13
14 Scholz: Thank you. Yes, ma'am.

15
16 Ortega: Good evening, Commissioners. My name is Gayla Ortega and I have a
17 question for both you as the Commissioners and for the applicants.
18 Personal convictions and moral and biblical issues aside, I simply ask
19 what would be the primary benefit to the preservation of and the overall
20 well-being of our community? And lastly I would ask you individually and
21 cooperatively to please not let fear of legal retaliation sway your decision.
22 Thank you.

23
24 Scholz: Thank you.

25
26 King: My name is Richard King. I come before the Commission today and the
27 issue at hand that is presented to the Commission and to the City as one
28 dealing with money and jobs. My question to the Commission and the
29 City is: at what price do you want to pay to allow this business to come
30 into town? Yes, it will affect families and it will affect marriages. But
31 besides that the location is by two truck stops. Prostitution on Picacho is a
32 known activity and from my perspective, prostitution and the criminal
33 element will move over to Motel Boulevard with the truck stops. I say as
34 far as the criminal activity, three weeks ago in El Paso at one of the local
35 strip joints there was a shooting. City wants to promote an image for
36 families to move here and live. My suggestion to the City and the
37 community development is seek to provide more family oriented
38 businesses to Las Cruces such as Adventure Zone down in El Paso and
39 different businesses like that that will bring families to this community. If
40 this Commission decides to give the nod to the business license here, I
41 will appeal to the City Council and if the City Council appeals, I will do
42 what citizens did 25 years ago with the establishment out on the East
43 Mesa we will raise the financing to take pictures of license plates and post
44 them in the newspaper and let the individuals determine how they're going
45 to tell their wives and children.
46

1 Scholz: Quiet please.
2
3 King: But once again let me encourage you and recommend to you that we
4 don't allow this business permit to go forth. We've talked about morality
5 and various things tonight but the City's conditional approval I would hope
6 that this Commission would hear the voices of those that are being spoken
7 tonight and vote no against this. And once again I think it would be safe to
8 assume that once you allow this type of business to come into Las Cruces
9 you can expect more, and more and more.
10
11 Scholz: Thank you.
12
13 Dehghany: Good evening, gentleman. I thank you for allowing us to speak on behalf
14 of the community. I just wanted to say ...
15
16 Scholz: Your name, sir?
17
18 Dehghany: Oh, excuse me, my names Ardeshier Dehghany.
19
20 Shipley: Please say that again.
21
22 Dehghany: Ardeshier, Dehghany.
23
24 Scholz: And how do you spell your last name sir?
25
26 Dehghany: Dehghany. I could spell the first one if you need me to.
27
28 Scholz: That's okay.
29
30 Dehghany: Okay. And I am 29 years old, single, and I just wanted to speak as a
31 member of the targeted demographic in a manner of speaking. I was born
32 and raised here in Las Cruces. I since have lived in other major cities for
33 school, work, and decided to return home to complete my education and
34 possibly start and raise a family here. Las Cruces is very beautiful, unique
35 place, and appropriate to raise a family but if The Bronx is open for
36 business it will no longer be home. I must also mention that our safety is
37 at risk here considering the undesirable activity that is invited with an
38 establishment like this. We've seen how El Paso has had to deal with
39 problems again like the gentleman before stated with shootings and things
40 of that nature. There are also other constant acts of violence like street
41 fights and with no doubt other illegal activities. That is all.
42
43 Scholz: Thank you. Go ahead.
44
45 Furth: My name is Paul Furth. I attend Crossroads Church here in town. My
46 wife and I moved here 17 years ago with our children. We've talked about

1 signage in and around the building and I was wondering if you know
2 anything about signage on billboards, radios, etc. So the signage could
3 be really quiet around this spot but in our City could be very loud.

4
5 Scholz: Okay, thank you.

6
7 Boyd: Good evening. My name is James Boyd. I'm speaking here in favor of
8 putting the adult entertainment establishment in Cruces. I want to make a
9 few points: number one I defer to the attorney of the Central Park West
10 NY LLC company. This is a zoning issue. This is not subject to the moral
11 majority. Second, I want to throw out a few numbers, according to the
12 department of labor and statistics strip clubs bring an average yield of 3.1
13 billion dollars into the economy. This proposed strip club will add 40-50
14 permanent jobs in Cruces.

15 And number two: and I can tell you how many jobs if we deny this
16 permit for zoning, not based on the moral majority, it will bring zero jobs to
17 the community and that's zero jobs for construction engineers, that is zero
18 jobs for young women. And I know you've heard some testament up here
19 but I seem to notice that there are more men who know what women want
20 than women do themselves who are speaking here today.

21 And number three: I want us to put the apparent facts Las Cruces,
22 the employment again is at 6.5% and that's 2 points below the national
23 average. So let me go through and state that we put the interest of Las
24 Cruces tax revenue, people coming from Hobbs, Carlsbad, and even
25 neighboring El Paso to spend their tax dollars in New Mexico instead of
26 going to the city of El Paso. And we put facts, coherent evidence, the
27 constitution and the right of this business to establish themselves in this
28 fine city ahead of the point of the moral majority. Thank you for your time
29 and have a good evening.

30
31 Scholz: Thank you. Hold your applause, please.

32
33 Swenson: Well, that's a tough act to follow but I'll try. My name is Fredrick Swenson.
34 I am the owner of the Fredrick Bruce Audio Video Integration Company.
35 I'm a student at Dona Ana Community College.

36
37 Scholz: Nice to see you again, Fred.

38
39 Swenson: Oh, yes.

40
41 Scholz: Yes, I had Fred in class. He did very well.

42
43 Swenson: Dr. Scholz was my journalism professor. Let's talk about the First
44 Amendment for a minute because that was mentioned by the young lady
45 and, I apologize for forgetting your name, brought up the issue of the first
46 amendment and I think what we're talking about here is freedom of

1 expression that the right to take off your clothes in front of a crowd of men
2 is freedom of expression. Well, maybe so, but we've got to realize that the
3 constitution guarantees freedom of expression but not an unlimited right to
4 freedom of expression or freedom of speech. The classic example, you
5 can't shout, "Fire," in a crowded movie theater because the likelihood is
6 that there's going to be a stampede and people are going to get injured
7 and maybe even killed. So, the Supreme Court drew some limits around
8 that right. I would encourage the Council to take a very hard look at the
9 possible effects. I mean conduct a very detailed, highly researched study
10 of what can happen, look at some other cities. Personally, I was in the
11 Army. I've been in the red-light districts of Frankfort, Nuremberg. I've
12 seen how women are exploited. I've seen how men are exploited. I've
13 seen the town itself is... well, you don't want to see it. The last person
14 that spoke talked about business and dollars and financial benefits
15 accruing to the application being approved, let's look at the intangibles.
16 Let's look, the folks that have preceded me have done a much better job
17 than I could do right now about talking on the negative.

18
19 Scholz: Your time is up.

20
21 Swenson: Are we done? Okay. Thank you.

22
23 Scholz: Thank you.

24
25 Burke: Okay, what am I supposed to say? Give my name.

26
27 Scholz: Yes, and be sure and speak into the microphone, sir.

28
29 Burke: Okay. Francis Burke is my name and the farm where this adult bookstore
30 is going to be was owned by my family from 1927 to... and then another
31 part of the farm was bought in '41. And I feel real bad about driving by
32 there and seeing this thing on my land that used to be my land and it was
33 because the second person that got the land put this thing on it. So I
34 would advise you to not let the second person, be sure what they're going
35 to put on there, if they're going to put on something like that, tell them no,
36 period.

37
38 Scholz: Thank you.

39
40 Burke: Okay. Okay, now I'm still talking and I'll try to get through. Next thing is: I
41 hear all this talk about how it's going to increase the number of people
42 who are going to get jobs and how it's going to increase ... if you got to
43 get a job that way, forget it. It's not worth it. All this thing about money;
44 it's going to bring money, what about Tampa, Florida where the
45 Republicans met? The whole place has got strip clubs everywhere. This
46 thing has to stop now and I mean stop it.

1
2 Scholz: Thank you. Hold your applause, please.

3
4 Perez: Good evening, Mr. Chairman, Commissioners. My name is Al Perez. As
5 a former member of the Planning and Zoning Commission, I understand
6 your responsibility you have and the request before you. Let me start by
7 saying that if it was only a matter of complying with zoning we would not
8 need the Planning and Zoning Commission. This is before you because
9 you have an obligation to look after the greater good of this peaceful
10 community. There were many times that we voted to deny requests
11 because we were looking out for that greater good. From the City's own
12 website the function of the Planning and Zoning Commission is
13 responsible for reviewing, planning the zoning and platting of the City and
14 investigating any related problems.

15 Well, here are the problems. You don't have to look very far to find
16 an El Paso headlines of prostitution all centered around strip clubs. Just a
17 couple of headlines: two strip club employees charged with prostitution,
18 this is back in July, middle of July at Foxy's strip club. Police arrest three
19 after stabbing at Jaguars Strip Club. Police investigate report of shots
20 fired outside east El Paso strip club. Man beaten, tasered, and arrested
21 outside Dreams Strip Club. Prostitution sting operation results in fifteen
22 arrests. Man charged with meeting underage girls, three arrested for
23 prostitution. Now this is from the El Paso County's Sheriff's website just
24 last month and I quote, "Prostitution continues to be a problem in our
25 community and it is a source of many other crimes such as assaults,
26 robbery, and illegal drug use".

27 Mr. Chairman and Commissioners, is this what we want for our
28 community? You know I say no strip clubs in Las Cruces. Now I humbly
29 urge you to deny this request; at the bare minimum postpone it based on
30 parking, inadequate information to this community that you need to
31 investigate. Thank you.

32
33 Scholz: Thank you.

34
35 Bergsagel: My name is Andre Bergsagel. I'm a graduate student at NMSU. I'd like to
36 respond to a couple of things that were said a little bit earlier by the Legal
37 Department and also by the representative for the applicant. It was
38 mentioned that the Supreme Court allowed that the freedom of expression
39 was the main issue with these types of decisions and a little bit of research
40 on Google shows that that's about half of the cases maybe not numbers-
41 wise, but that's half the issue. The other half you have before you is what
42 they termed, and the legal term is "secondary expressions," "secondary
43 results," secondary" ... I forget the term, the legal term. I'm not a lawyer
44 but basically you can look as those as the Zoning Commission. It appears
45 that the zoning is buttoned up and it's perfect. It may be but I don't want
46 to get lost in details because it's important what the community feels about

1 the intrusion of the strip club. You can do a study and I think a good place
2 to start would be to interview the pastors and people who have spoken
3 here to find out what those secondary effects would be; but as they've
4 been mentioned, I think it's a fact. It's not something that's debatable, that
5 that comes along with this type of business. So I'd just like to bring that to
6 light for the committee's consideration. Thank you.

7
8 Scholz: Thank you. [to people who are applauding] Please sit on your hands.
9 Yes, go ahead, sir.

10
11 Paz: Hello. My name is Jerry Paz. You know all men are dogs. Boys will be
12 boys. You know a city this size, this kind of thing just kind of happens.
13 You know that what happens in a city this size. It's a First Amendment.
14 It's a freedom. All these reasons that people will come up and give and
15 that kind of it's an inevitable thing as long as we meet the checklist on the
16 Zoning Code you get a pass. My family has lived here before New Mexico
17 was a territory. Long time. The City of Las Cruces promotes Vision 2040,
18 livable communities, sustainable communities, our communities, raising
19 families, kids, enjoyable. We've got a lot of parks. This City Hall is
20 beautiful. Downtown Las Cruces is being renovated. We look to the best
21 of Las Cruces when we look for growing our town. We all know this is a
22 seedy establishment. It's the worst of our humanity that comes out in this
23 kind of activity. It's not something that says, "Wow, this is Las Cruces!
24 This is what is good about this town. This is what is best about our
25 community." You have been on the forefront of inspiring us because of
26 your vision, because of the planning that this city does and looking for the
27 growth and looking for it in a very positive manner. That's what the
28 planning and zoning of this town is all about. We are looking at you to
29 inspire us. Fight it. Fight it. Ask your town, your planners to look up and
30 scour every law. Ask your attorneys. You've got an excellent one. He's
31 the smartest one of the two in here. I think you can win this thing. You
32 can take it on. Go down fighting. Do not roll over. Do not assume it's just
33 an automatic because we checked the boxes. This is our town. This is
34 our livable community.

35
36 Scholz: Time is up. Thank you. Folks, I know you're worked up about this. I
37 know you're enthusiastic about some of the people that you're hearing
38 speak. I would appreciate it if you do not applaud, all right? Think about
39 that. You can do that. Self-restraint. All right, that's what we're talking
40 about here. Yes, ma'am.

41
42 Kruis: I'm Diane Kruis. I'm a physician at the campus health center. I just had a
43 woman in my exam room yesterday lamenting the fact that she could not
44 find a job in Las Cruces and I would hate to have her victimized by this
45 kind of establishment. You may say well it's her choice, she's an adult.
46 We have severe poverty on our campus. The social worker has seen so

1 much poverty that she is opening a food pantry next month because we
2 have students who are going hungry. That's not a choice if it's to go
3 hungry or work somewhere like this. I don't think that this is a benefit to
4 our community and it will victimize young women at the university.
5
6 Scholz: Thank you.
7
8 Minaz: My name is Mike Minaz and I've been a resident of Las Cruces for 21
9 years. I'm a family man. I have three boys, Michael, Joseph, and Isaiah.
10 And what I want to say to you now, this is going to be a boil on Las Cruces
11 and it's going to spill out and spread. Don't let this happen cause I do not
12 come here right now in my will but God's will and I'm saying now that don't
13 let this happen. It's going to be dangerous. And there's 3 crosses that
14 stand in our city, don't put a curse on that. Do not do that for a dark cloud
15 will be over Las Cruces if this happens, and acid rain will come down.
16 And I do not want to be any of you right now to make this decision. I
17 would be afraid, but if I vote no, I would not. So I tell you now, brothers
18 and sisters, I tell you now, do not do this. Fear the Lord. Fear him
19 because there's a Kingdom up in Heaven that's much greater than here
20 and this will be a disease. My apology. Sell all that you have and give it
21 to God for he will do well with it. For what is it to gain all the riches of the
22 world and to lose your soul? Don't do this. My two minutes are up. When
23 your guys are up ...
24
25 Scholz: Actually they're not.
26
27 Minaz: I still have a few more words, my friends.
28
29 Scholz: Yes, well you still have a few more seconds.
30
31 Minaz: When your time is up, let it know that you put a blessing in this earth.
32 Here in Las Cruces please, vote now. This is your time not mine, but
33 yours.
34
35 Scholz: Thank you.
36
37 Hooks: Hello, gentleman. My name is Neal Hooks. I'm running for State Senate
38 in District 38.
39
40 Scholz: I'm sorry. No political speeches, sir. That's not what we're here for.
41
42 Hooks: Absolutely.
43
44 Scholz: Your name again?
45
46 Hooks: Pardon?

1
2 Scholz: Your name again?
3
4 Hooks: Neal Hooks.
5
6 Scholz: Thank you very much.
7
8 Hooks: State Senator to 38. I'm sorry. Just a joke. Sorry.
9
10 Scholz: Yeah, I think you've just torpedoed your campaign, sir. Go ahead.
11
12 Hooks: I'm sorry. Any way I flew for the United States Air Force for 24 years, flew
13 fighters and drones defending this country, defending the First
14 Amendment. But this is not a First Amendment issue. If it was then we
15 would, just like the attorney mentioned, just like you asked, sir, we would
16 be able to do this outside if it was a First Amendment issue. It's not.
17 There are limits on the First Amendment like the other gentleman said.
18 Secondly, this is a common sense issue. It's about morality. The
19 founding fathers made it very clear that this Republic would not work
20 unless we had a moral foundation. This is a blatantly, blatantly immoral
21 activity that we cannot tolerate. Morally and constitutionally it does not
22 work.
23 Now let's talk economically. I'm all for economics, I'm all for more
24 jobs. We are depressed in this area, in this state for ... we are the poorest
25 state in the country. But these are bad jobs. There are such things as
26 good jobs and bad jobs. These jobs will not produce anything in this City.
27 They will not produce anything good in this City. They may make a few
28 ACLU folks happy. They may make a few perverts happy. And they may
29 put a few dollars in this lady's pocket but they will not benefit this City. I
30 hope you consider all those things. Thank you. And by the way if there's
31 anything such as a democracy, so far I've heard about 95% to 5% for and
32 against this proposition. So if these hearings are worth anything, I hope
33 you listen to the folks. Thanks.
34
35 Scholz: Thank you.
36
37 Marquez: Hi, my name is Melissa Marquez and sounds like you just threatened his
38 campaign. Anywho, this, it sounds like it's more of a logistical problem as
39 well as taxpayers paying for this to pay for the police to guard our system,
40 for the fire department to respond to all these things which may and will
41 occur if this comes to fruition, God forbid it to happen. But something like
42 this, it's a taxpayer burden and it is something that taxes, that Las Cruces
43 cannot afford any more taxes. And it's a public issue safety as well and
44 kids need something more to do, to aspire to than to have a life of crime.
45 Our society needs to, and it's pronounced Las Cruces, for the misinformed
46 boy that says Las Cruces, the City of the Crosses. So just a little

1 correction for you back there. And so, yes, I think it is a nice town. It sure
2 made it a nice town and please don't threaten our candidates, Mr. Scholz.
3 Thank you.
4

5 Miles: I'm Jerry Miles and I've lived here for 30 years. I first came here in the
6 military in 1958 and we decided we liked it so well we were going to retire
7 here and so we did and in that time there've been a lot of changes in Las
8 Cruces and few in me maybe. But at any rate there's a war on our
9 families. This nation including this City, we've lost our moral compass on
10 which this nation was founded. There's a war on our families, I would've
11 of not ever dreamed of the violence and death we see on children, small
12 children, babies killed by their parents and others and women. They're in
13 a war. Well, you know the English poet John Donne once wrote, "No man
14 is an island entire in itself. Each is part of a continent." And you know we
15 can say that about that area. I may never even see that place but it's part
16 of my City and this is my City and I intend to live here the rest of my life.
17 And I would like to say again what Pastor Cowen said, the Bible says,
18 "Righteousness exalts a nation, but sin is a reproach to any people." And
19 that means a city too. Righteousness exalts a city. Sin is a reproach to it.
20 I consider it kind of like a cancer. You know if you get a melanoma quick
21 you can get rid of it, cut it out. If you leave it very long it permeates your
22 body and finally leads to death. And so what do we want to pass on to our
23 future generations, our children, our grandchildren, our great
24 grandchildren. One that exalted from righteousness or one that is a
25 reproach from sin. So I would ask you please to consider and refuse this
26 petition.
27

28 Scholz: Thank you. Yes ma'am. Be sure and pull that mike down so you can
29 speak directly into it. There you go.
30

31 Fiebert: Hi. Okay. My name's Jude Fiebert. I ran the Jude's Birkenstock store for
32 30 years here and I think a couple of people know me. And I would like to
33 remain neutral. No applause. My first question is to the lady lawyer: are
34 you going to have men strippers? And if so, are they going to be topless
35 or bottomless? No answer? She is not allowed to answer. And I need
36 Mr. Ochoa. A history of, he came back. Can you remember a couple of
37 years back please, help me, when we had a beautification person?
38

39 Scholz: Please stay on the mike, ma'am.
40

41 Fiebert: And we were going to beautify Burn Lake and the City paid \$25,000 to get
42 some ideas and we had meetings and we had posters and talkers and
43 everything, and the person that gave the estimate or whatever, the plan,
44 said, "Oh we're going to make it look just like Central Park in New York."
45 Well, look at Burn Lake. It's a graveyard now. They've done nothing;
46 used \$25,000 on a plan. I just want you to think about that everybody.

1 This project is called The Bronx. I'm from Brooklyn. I traveled for four
2 years to find this town. I lived in a Westfalia Volkswagen and I wore
3 Birkenstocks. When I came here everybody on the street stopped me and
4 you guys, you all made me so grateful because I had the best business in
5 town. We had a coffee shop and I called Starbucks and I wanted to close
6 it and I said, "Hey come on down I've got this ready-made coffee shop.
7 I've got the first espresso machine in town," and if you go to the Double
8 Eagle they bought it from me. It had a big eagle on top. And Starbucks
9 said, "Nobody in New Mexico drinks coffee." And now we have five
10 Starbucks stores here and five in every big city. Just think about it. Thank
11 you.

12
13 Scholz: Thank you. Yes, ma'am.

14
15 Turner: Honorable Planning and Zoning Commissioners. I do ask you to ...

16
17 Scholz: Yeah, your name, please?

18
19 Turner: Oh, Katherine Turner.

20
21 Scholz: Thank you very much.

22
23 Turner: I do ask you to either vote no or table it because I think some measuring
24 needs to be done from the area to Burn Lake. This Legal Department
25 needs to maybe speak on this. What type of, whether it was a meter stick
26 or how did you measure it from the perimeter of the Burn Lake Park to the
27 corner of the land for the people seeking the zoning change? Also, I
28 moved to Las Cruces with my husband in 1972. He became employed at
29 New Mexico State University and then in 1975 we moved right there, close
30 by and we're still there because that's where we thought that location, it
31 was close to ... my husband could come home from the University at
32 lunch and watch the stages of development our children had. I think this
33 is a quality of life issue. I'm a member of Brown Road Protective
34 Association which it's real close by there. And also I think, I'm surprised
35 that engineer Scanlon here isn't up here very concerned for his Villa
36 Amador owners for that PUD. That's very nearby this land because like
37 what I've been hearing, the quality of life won't be good enough there for
38 people to scramble in. My retiree friends that I've met here are also falling
39 in love with New Mexico and Las Cruces, from the east and the west, the
40 north, and even from the south.

41
42 Scholz: Okay, ma'am, your time is up. Thank you.

43
44 Funk: Hi there. My name is Laura Funk. I am a Christian, member of St. James
45 Episcopal Church and a member of this community. First of all I think I
46 probably do speak for a lot of women over generations who have decided

1 to cultivate their minds so that they have something more to offer the
2 world than just their bodies.

3 In addition, you know objectification of women isn't good for
4 anyone, women, men, what it does to men, how men seen women in a
5 community where something like this, some sort of commodification of
6 women happens. It makes us feel a little bit unsafe. But I wanted to bring
7 up something that wasn't discussed, you brought it up in your regulations
8 which had to do with a 500 meter, I guess 500 foot.

9
10 Scholz: 500 foot, yes.

11
12 Funk: Parameter from an establishment that serves alcohol and establishment
13 that has adult entertainment. Now these are both in the same facility so I
14 guess that's okay. Okay, so I don't understand what that law is for if it's all
15 right that they're all in the same spot. And so how does that affect the
16 adult bookstore next door, the liquor versus the adult bookstore thing
17 which I'm guessing has videos and stuff like that in it. That's another
18 thing.

19 And the third thing is, it seems that this whole establishment, all the
20 discussions, parking, stuff like that, has to do with big rigs, 18-wheelers,
21 mostly male I'm guessing, drivers who come from somewhere else, pass
22 through Las Cruces, and go off to somewhere else. Okay, they can't park
23 their big rigs in the parking lot; they're parking on the street. If you have a
24 special event I don't know where they're going to park. But also they are
25 drinking in this establishment, so are we complicit by approving this in
26 sending those big rig drivers back into their big rig to drive wherever they
27 need to go cause they can't take a taxi hom? And my time's up. Thanks.

28
29 Scholz: Okay, your time's up. Thank you.

30
31 Lowe: My name is Dennis Lowe. I come on not only my behalf but, hopefully, for
32 the community. I just wanted to bring to your attention, sir, I was with the
33 82nd back in Ft. Bragg and I just wanted to protect our country. For
34 people that I didn't know Mickey Mouse; and now we've got officers that
35 we pay good money to, to maybe not so good money, but we're putting
36 them in harm's way. And we've got to consider 'cause there's a cause
37 and effect here, you know, with whatever cause that you're doing, there's
38 going to be an effect. You've got to consider the fact: we don't want
39 these people's blood on our hands. When it happens, it's going to happen
40 hard. This is something you're going to have to wrestle with and I hate to
41 be in your position, but thank God, that you're in that position and that I
42 know that you'll see it for what it is, rather than what the code says we can
43 have. And I'm talking to you sincerely, sir, it's not a matter now only of
44 morality which you're going to hear, I understand, and I'm all for that. But
45 the bottom line is the safety of the community. I run a truck stop. I've
46 been running one for over 12 years and I've been in the business for

1 about 18, so I'm right by there. And I'd rather not say where I'm at, but
2 understand I see this day in and day out. We do not need this going
3 forward. Consider the consequences. Thank you.
4

5 Scholz: Thank you.
6

7 Austin: Thank you, Commissioners for the opportunity to speak. My name is Tom
8 Austin. Without making a campaign speech, I'm seeking to represent the
9 people within this community, but I'm not coming to you in that form. I'm
10 coming to you as a citizen and as a father of a 16-year-old daughter. But I
11 was recently asked this question: if elected to represent the people of this
12 county and this community, what will I do to promote a quality workforce
13 and to create jobs? My answer to that question was: it's not my
14 responsibility to do either of those, but what I do as a representative of the
15 people of this community is to create an environment where the private
16 sector creates jobs and a quality workforce.
17 So the question that I have for the Commission, I understand you're
18 appointed, but you're appointed by elected representatives of this
19 community. The question I have: is this the quality workforce that we
20 want within our community? Are these the types of jobs that we want to
21 create? And to the gentleman who came and talked about the money that
22 we want coming from Carlsbad and Roswell instead will go to El Paso,
23 well that's okay, go to El Paso. We don't need the money here. We'll take
24 an establishment there that will provide a quality workforce and create the
25 jobs that we want within our community. The other question is that you
26 have to ask, there are private property rights for the owners that surround
27 this property, even if they're within the 500-foot limit or the 1,000, they do
28 have private property rights and their rights should be maintained and
29 upheld. Thank you for your time.
30

31 Scholz: Thank you. Yes, sir.
32

33 Churchman: Good evening. My name's Joe Churchman. And I have a question, is this
34 truly just a zoning issue? At some point ...
35

36 Scholz: No. Actually, sir, it's what we call a Special Use Permit.
37

38 Churchman: Okay, and I understand you all are appointees, but at some point this is
39 going to our elected officials.
40

41 Scholz: No. The decision is ours. If it's appealed to the City Council, you know,
42 then it'll go to the City Council.
43

44 Churchman: Okay. So I guess I understand, does public opinion play into this at all or
45 is it just ...?
46

- 1 Scholz: Well, I think we've heard an awful lot of it tonight, yes.
2
- 3 Churchman: Okay. Well, New York, great place to visit but I chose to live here. El
4 Paso, same thing, great place to visit, but I chose to live here. I like it
5 here. I'd like to see it the same. I think we've heard a lot of that tonight.
6 Do we allow this place here just because they can? If we do, I'd like to
7 say it's a good location. It's by the sewer plant.
8
- 9 Scholz: I think the sewer plant is more than 2,000 feet away, but that's okay.
- 10 Churchman: It's across the street more or less. You can smell it from there, take my
11 word for it.
12
13
- 14 Scholz: When the wind blows.
15
- 16 Churchman: Okay, if it's just a matter of economic development, why don't we put in a
17 meth lab there? I think the effect would be about the same. It would be
18 destructive and toxic. And in closing I'd like to say with my fellow Las
19 Crucians, this is not who we are. Thank you.
20
- 21 Scholz: Thank you. Be sure and pull the mike down so it's, yeah, it's right by your
22 mouth. There we go.
23
- 24 Savasquez: Hi, I'm Claire Savasquez and I'm from Mesilla Park Community Church.
25 I'm 15 years old. I'm younger than most of you, sorry.
26
- 27 Scholz: Do you have that mike right in front of your mouth? There you go.
28
- 29 Savasquez: Okay. Is that better? I just want to say that and since I'm younger than
30 most of you in here, what kind of influence is this putting on youth like
31 myself. I respect my body, I respect that I'm not going to go out and do
32 that, but also I would like to speak for my generation and the boys. It's
33 offering temptation for them once they get older and that's not what I've
34 been taught. So I'd just like to speak for the youth part here.
35
- 36 Scholz: Okay. Thank you. That was her mom who was clapping by the way, in
37 case you were wondering. Yes sir, go ahead.
38
- 39 Sims: Good evening. My name's Brad Sims. I'm an attorney here in Las Cruces
40 and I represent a property owner in the area. There are a few concerns
41 that this property owner has with regard to the actual zoning itself. I'd like
42 to refer specifically to section 38-33 G, it states, "An adult bookstore/ video
43 store or adult amusement establishment M-1/M-2/M-3, these uses are
44 permitted provided", and we've talked a lot about schools, churches,
45 nursing, daycares, public parks, and residential zoning districts.
46 Number two is that the use will be permitted as long as they're a

1 minimum of 500 feet from the property line of a liquor establishment.
2 Now, the site plan as it exists right now appears to push the Eros store
3 into noncompliance based on the fact that it would be less than 500 feet
4 from a liquor establishment. Now this seems to be the type of concern
5 that either requires a variance or at least takes us out of the special use
6 sort of permit realm.
7
8 Scholz: Sir, do you represent the bookstore?
9
10 Sims: I'm sorry?
11
12 Scholz: Do you represent the bookstore?
13
14 Sims: I'm actually not at liberty to say who I represent, just a concerned property
15 owner in the area.
16
17 Scholz: Okay. So you're posing hypothetical then?
18
19 Sims: I suppose so, yes.
20
21 Scholz: Okay.
22
23 Sims: In addition to that we have the concern which has been spoken to here by
24 a couple of different people with regard to a liquor establishment that is
25 also an adult entertainment establishment within the special use permit of
26 the M-2. That also appears to violate the zoning ordinance on its face and
27 I'm sure Karen can speak to that and I would like to hear what she has to
28 say with regard to that use specifically, you know itself. In addition to that,
29 it appears that the retail uses that are allowed under section 38-33 G do
30 include a bar, pub, or tavern, but the proviso is in the code there that the
31 bar, pub, or tavern not include dancing. Now I am unaware of an opinion
32 that has interpreted these type of adult entertainment activities or the
33 normal dancing that you would see in a bar, pub, or tavern and has made
34 a demarcation between the two, but if there is one, that's another thing
35 that i would like to see the applicant address. With regard to how is it that
36 the type of entertainment or the dancing that is happening within this
37 establishment does not fall underneath the prohibited dancing section.
38
39 Scholz: Thank you. Yes sir.
40
41 Ivey: Good evening. My name is Terrance Ivey. I wasn't even planning on
42 being here at all today, I kind of just showed up. So, I'm basically here
43 just to stand up as somebody who believes in personal rights and the
44 ability for people to choose what they do and how they do it without the
45 interference or pain or causing on somebody else. Now, the people that
46 work in these establishments, you know you can say that it's going to raise

1 prostitution or drug use, but there's already drug use here. There are
 2 already meth houses here, okay. There's no strip clubs here, so you can't
 3 really say that yet. There's already prostitution. So who's to say that that
 4 prostitute isn't going to go into that titty bar and now this person's actually
 5 going to become a more dignified person in society. So based on
 6 everybody's religious feelings, that's irregardless.

7 There's a separation between church and state and people should
 8 have the right to open any kind of establishment that they want to that
 9 stays within the legal rights of any kind of establishment. So this is going
 10 to be basically, it's a fight against whether or not people are, irregardless
 11 of its apparent moral reprehensibility, there are factors that play in that
 12 people should be able to do what they want to do without harming
 13 somebody else. Now, somebody who gets shot, somebody who, you
 14 know there's crime everywhere, it doesn't really matter what establishment
 15 is behind it. Sonic gets robbed, are you going to shut down Sonic
 16 because somebody gets shot. It's ridiculous. Seriously.

17
 18 Scholz: Thank you.

19
 20 Valdespino: I am Emilio Valdespino. The conflict between not opening this
 21 establishment, I would like to see this establishment open. You know it's
 22 not going to change Las Cruces image or anything like that. It's still going
 23 to be a good community no matter what and I'm also a good uncle and I
 24 do have a niece that is going to be two years old. I can't tell you what
 25 she's going to do when she grows up, but you know stuff happens. Also,
 26 there's a lot of ... it doesn't matter, you know you can go into a nightclub,
 27 there are still going to be things that aren't supposed to be there. They're
 28 dancing on there like they are having sex. So it doesn't really matter. Go
 29 stick your head in a nightclub; they dance worse than the strippers do
 30 sometimes. You know, it should just be an option. It doesn't matter. I
 31 mean, I'm still a good person no matter what. No matter what I do I'm still
 32 going to be a good person. Okay. Just because I'm young, everyone's
 33 thinking that my words don't matter. But, you know it's not going to stop
 34 me from going to El Paso and do it, you know. It's not going to break up,
 35 it's not going to break up families, you know, it's a choice. It's a choice.
 36 No one's making these people go there and it is going to need women to
 37 dance or to do whatever, but they're not going to have a slave driver,
 38 some dude cracking a whip saying that you need to go there. It's a
 39 choice. It's their choice. No one's making them do this. No one's making
 40 people go there. It's a choice. Thank you for your time.

41
 42 Scholz: Thank you.

43
 44 Maurer: Good evening. My name is Chris Maurer and I come to you this evening
 45 as a licensed professional counselor here in the community. I've been in
 46 the field for about 20 years, worked with all kinds of different type of

1 clientele from juveniles, mental health, substance abuse, and also sex
2 addicts, sex offenders, juvenile sex offenders. And I know that quite a few
3 people have come here before talking, presenting like a moral aspect to
4 this argument.

5 But I would like to offer a ..[inaudible]... I would like for you guys to
6 consider a mental health, you know a health aspect to it. In that how this
7 would impact our community you know in a mental health such as like
8 when you look at what's going on in our society today with the rise of porn,
9 porn addiction, sex addiction, you know it's on the rise. So when
10 something like this is introduced into our community, I'd like you to
11 consider the type of clientele that would be attending these strip clubs.
12 You know are they predators, are they sex offenders, you know what kind
13 of people are attending these things. So, thank you for your time. And
14 thank you.

15
16 Scholz: Thank you. Yes, ma'am.

17
18 Maurer: Good evening, Commissioners. This is my cheat sheet because I wasn't
19 prepared to come up here. I texted my husband ...

20
21 Scholz: Tell us your name first.

22
23 Maurer: Emily Maurer.

24
25 Scholz: Thank you.

26
27 Maurer: I texted my husband and told him to come talk so he stole my talk. I think
28 a zoo would be great as opposed to a strip club. I'm speaking on behalf of
29 a licensed drug and alcohol counselor and I've been on the other side
30 working with these women, not only the women, but the families. You
31 open up this strip club you're opening up a door for violence, domestic
32 violence, substance abuse, suicide, cutters. These women, when I was in
33 the beauty industry, worked with them, and they made a lot of money. But
34 the flip side of it is, the repercussion is the depression, the broken families
35 so whether it's a choice or not, it's generational. These women have been
36 abused before, not all, but the choices aren't theirs to make. I've never
37 met one of these women that said, I'm going to grow up and be a stripper.
38 So working in the field with probation, parole, it does affect men and
39 women. We're on the border area, gentleman. You're going to open up
40 this to drug cartel, to laundering, like Dennis said, he runs a trucking
41 business. I would propose that you men go home tonight with your
42 daughters, your families, your children and make a good conscious
43 decision for the greater morals of our values, of our community. Thank
44 you.

45
46 Scholz: Thank you. Yes, ma'am.

1
2 Contreras: Okay, my name is Cameo Contreras and I say if it's legal, let's go for it. I
3 mean, yeah, I mean Hitler, I'm sure he was following his legalities. I'm
4 sure that China is being perfectly legal with all their human rights abuses.
5 And hey slavery was legal. So what are our laws based on if not morals?
6 We can't say, don't bring your morals to this meeting because we're
7 surrounded with them. And also, being previously unemployed, it's really
8 sad, and you start getting desperate and you're like, oh what am I'm going
9 to do and I'm going to be broke and I have no money. And it's really nice
10 to know that us women can sell ourselves to men, you know, as opposed
11 again help to go to college or building businesses and creating jobs that
12 actually give women some dignity, make them feel more than like a body
13 bag of body parts for men to look at. I mean we want to ... you know, I
14 mean I want to be an editor, some women want to be nurses. But they
15 can't get those jobs, it's like, oh, well, I'm a woman at least I can sell
16 myself. Thank you.
17
18 Scholz: Thank you. Yes, sir.
19
20 Goodrich: Hello. My name is Daniel Goodrich and I'm just going to keep this brief. I
21 think we all know what needs to be done and that's follow the law.
22 There's already been an opinion rendered and that was by the Supreme
23 Court and I'd just like you to keep that in mind. And thank you.
24
25 Scholz: Thank you.
26
27 Johnson: Good evening. My name is Kit Johnson. Firstly, I'd like to pay tribute to
28 this young lady over here who had the courage to stand up and say what
29 she did at this meeting at a young age. God bless you young lady for
30 doing that. We need more young people that are willing to stand up and
31 issue their opinions. This is a very important matter before you gentlemen
32 this evening.
33 Clearly there are issues to be considered such as safety, those
34 have been spoken about, those have been testified to. There are issues
35 with regard to physical harm. The very first gentleman that spoke, spoke
36 from a professional standpoint of taking care of women that have been
37 harmed physically over what has taken place as a result of being involved
38 in these types of facilities. There's also a concern that you must apply
39 with regard to the other landowners in the area. Clearly their businesses
40 will be adversely affected by this. You've also heard testimony from those
41 landowners, those who have said that and certainly have very real
42 concerns about the possibility of their land being and their values of their
43 property being deteriorated as a result of this.
44 But then lastly, you must consider as what was said with regard to
45 our first amendment right. It's been suggested that you're put in a box.
46 That this business fits well within that box, so therefore you must comply

1 and go right ahead and approve that.
2 Well, I implore you tonight that I see no reason for and I see no
3 reason why moral values should be thrown away with regard to your
4 decision. When did it become wrong to make decisions just on safety, just
5 on property values, just on people's harm, certainly all of those are valid
6 reasons. But when did it become wrong to make decisions based on
7 moral values? When did it become wrong to make decisions based upon
8 what is right and wrong?
9
10 Scholz: Okay, your time is up, sir.
11
12 Johnson: Thank you very much.
13
14 Scholz: Thank you.
15
16 Wagner: Good evening. My name is Fritz Wagner. Las Cruces is a beautiful city.
17 It's a wonderful city, wonderful place to live. I don't see where this
18 establishment is going to add any value to this city. In fact, it's going to
19 have the opposite effect. It serves no good purpose and it only does
20 harm. And if I understand Ms. Montana correctly, you have the authority
21 to say no to this. It's not a ... everybody's saying well you have to do the
22 legal thing. Well you have the legal authority to say no. That can be
23 appealed later on down the road, but you have that authority and I ask and
24 I pray that you take that authority to say no tonight. Thank you.
25
26 Scholz: Thank you.
27
28 Halloran: Hi. My name is Justin Halloran. I'm a junior in high school, 16 years old.
29 And I would like to say as a member of this community that women are
30 individual human beings made by God, beautifully made. Like any other
31 guy you know I'm attracted to girls, but if I took one out I would buy the
32 ticket for the movie, I would open the doors for them. They are individual
33 human beings and I hope this city doesn't stoop so low as to open a place
34 like this. And our country says that we are one nation under God. So,
35 thank you.
36
37 Scholz: Thank you.
38
39 Goldblatt: Good evening. My name is Greg Goldblatt and I don't know if you
40 received a packet of information I had dropped off on Friday for you all
41 here at the, at City Hall.
42
43 Scholz: Yes, we did. Thank you very much.
44
45 Goldblatt: Thank you. I'm married. I have three children. I have a son. My oldest is
46 19 going to be 20 and I have two daughters, a 17-year-old and an 11-

1 year-old. I have three sisters and three sister-in-laws and a mother and
2 many female friends that I care very deeply about.

3 When I found out that this was a possibility of this strip club opening
4 here in Las Cruces, I immediately began to look at some research as to
5 the dangers of such establishments and I came across, with the help of a
6 friend, some several articles, several research papers in regard to this. So
7 this isn't just someone's opinion or what they feel about certain things.
8 This is research that I got from an article by David Maddox. He's currently
9 working on his masters in criminal justice at New Mexico State University.
10 I don't know if he's here tonight. If he is, please come up and talk.
11 Basically what he found in his research is that there's very little difference
12 that exists between the live course of a prostitute and a stripper and
13 stripping is often the gateway into prostitution inside the strip club. He
14 reports that sexual exploitation occurs in strip clubs between the
15 personnel and strippers and between the customers and strippers, most
16 frequently between customers and strippers. Also, he found that human
17 traffickers use strip clubs to coerce and force adult and minor females into
18 sexual acts. These are things that I don't know if the proposed proprietors
19 of the establishment have thought about these things, but once something
20 like this starts happening you can't really control it. These are factual
21 information that occurs, it's occurring throughout the country and in other
22 countries too.

23 And just to clarify a few things, I think, Ms. Montana, in regard to
24 the parking spaces, you mentioned that you know people generally go
25 together. Well, according to another research study by Eric McCord and
26 Richard Tewksbury at University of Louisville they found that patrons
27 typically arrive and leave alone. So if there are a lot of people that want to
28 go there, there's not going to be enough parking. So, there.

29
30 Scholz: Your time is up.

31
32 Goldblatt: Thank you. Thanks.

33
34 Schneider: My name is Dan Schneider. I've read the arguments and listened to the
35 arguments for the proponents of the strip club and they seem to be
36 centered around three main points: first, economic impact. It'll bring forty
37 jobs so called to the community and, sure, the club will bring some money
38 to the out of state corporation at the expense of the exploitation and
39 dignity of a few women and some sex addicts here in our community. But
40 if this is the argument why should we stop at merely topless? If we are
41 only concerned with the community and economic development, why not
42 legalize prostitution or gambling, certainly two vices that will bring in more
43 tax revenues than mere stripping can do. What also must be considered
44 is the social, moral, and civic impact. It's not as simple as a cut and dry
45 legal issue. The moral impact, the civic impact, and the social impact of
46 the adult entertainment industry, studies have shown and you've heard

1 tonight from many experts, increase in crime, drug abuse, prostitution,
2 sexual assault, and property damage follow clubs like this proposed club.

3 The second, the First Amendment right to the freedom of speech:
4 yes, our City Attorney has briefed us on how these people are protected
5 by the courts, by our beloved First Amendment, but the people of this
6 community have rights also and so do the property owners adjacent in the
7 neighborhood. Freedom is not to be confused with license nor can
8 government committees such as this forget that when it no longer
9 considers the common good. We exhibit that what Chesterton called the
10 morbid habit of consciously sacrificing the normal to the abnormal, which
11 is what we have in this proposition.

12 Thirdly, the argument if you don't want to go there, don't go there.
13 This is probably their most compelling argument. But to that I answer, if
14 there is no social responsibility, if there is no communal aspect of living in
15 a community, then why are there high fences, why are the extra
16 landscaping, why are there no windows on this property? Why the added
17 security? Or more to the point: if what is happening inside places like this
18 proposed business is okay, then would any father in this room or
19 otherwise in his right mind not allow his daughter to work in a club like this,
20 but allow his daughter to go on a date with a gentleman so called who had
21 just spent the last hour getting lap dances and drooling over a young lady
22 in this so called gentleman's club? The answer is definitively no. We
23 thank you.

24
25 Scholz: Time. Thanks.

26
27 Lederman: Good evening. My name is Decon Paul Lederman. I serve at Holy Cross
28 Catholic Church and I just want to be in solidarity with my brother pastors
29 that are here in opposition to this club. It can bring no good. I just want to
30 add, also echo the social service professionals, people come to me with
31 issues of pornography addiction, sex addiction; these things absolutely
32 and do wreck families. This is a very poor community. We don't have the
33 counseling staff in this area to service all these people and we end up with
34 getting counseling from people who really aren't as trained as they could
35 be. This will simply overwhelm all these facilities. Please vote no.

36
37 Scholz: Thank you.

38
39 Brunette: Good evening. My name is Barbara Brunette and I consider myself a New
40 Mexican. I grew up in this state, in the northern part. I moved down, went
41 to New Mexico State University and then my husband, who also
42 graduated from New Mexico State University, joined the Navy. I've lived
43 all over the country and outside of the country and we chose Las Cruces
44 to come back to because it is something special. You don't find people
45 like this. You don't find a town like this. Our girls, we have three
46 daughters, grew up here; well, from about junior high on, we have one that

1 grew up all the way through school. They have gone on to make great
2 lives for themselves. One is still in college.

3 My problem is, one of my daughters had a friend who had a very
4 hard upbringing. Her mother was an alcoholic. She had very little
5 guidance. She needed money. She was in a town that had a strip club
6 and you can figure out the rest. It was so sad. And there's nothing
7 somebody can do when things like this are available. What I'm thinking
8 about is right now you have a chance to be the Jimmy Stewart in It's a
9 Wonderful Life. You can either make the difference or turn Las Cruces
10 into Pottersville. It's your decision. You will make a difference. Thank
11 you.

12
13 Scholz: Thank you. Lots of Jimmy Stewart fans obviously in the audience. I tend
14 to watch that at every Christmas. I think it's a wonderful Christmas
15 movie. Yes, go ahead, sir.

16
17 Lassiter: Good evening. I'm Logan Lassiter. I'm 20 years old and I'm about to turn
18 21; so right around that age where this becomes really relevant. I wasn't
19 going to come up here until the young gentleman came up here talking
20 about how this establishment would affect our economy. I would like to
21 address that.

22 But first, while I was in the line another gentleman came up here
23 and said that this establishment would not wreck lives. I would encourage
24 him to do a little bit more research before making that statement. It
25 definitely does ruin some lives and due to the economy, the economy that
26 this will bring, this establishment will bring to this city, I would just like to
27 say ... I just have a question, just a rhetorical question and that is: if this
28 establishment ruins one life is that worth all the gold on the earth? Thank
29 you.

30
31 Scholz: Thank you. Yes, sir.

32
33 Kruis: My name is Ed Kruis and I'm a mental health counselor and it's been my
34 experience that many women who are participating as strippers and
35 working in topless bars have often been sexually abused. And one reason
36 they continue to go to these establishments is to repeat and try to find out
37 what this means for them and why and try to get some understanding of
38 what they went through. And this is a continuation of the exploitation of
39 women from a young, a very very young age through their adulthood and
40 often ends in tragic drug and alcohol addiction and they often lose their
41 lives that way. In addition to that, there are the men that have sexual
42 addictions and, you know, people are right: they can go someplace else
43 and get it, and they will. They'll go to El Paso; they've been doing it for
44 years. They can go to the internet and they will. And I guess what I'm
45 asking you is to say, we're not going to be a part of this. We're not going
46 to allow our community to be a part of this. We are not going to contribute

- 1 to the exploitation of men and women for the sake of money. Thank you.
2
- 3 Scholz: Thank you.
- 4
- 5 Carabotta: Robert Carabotta. I commend you, the members of the Commission, for
6 your comportment and manner of respect that show to all that speak here.
7 I believe that the community has pretty much spoken here. As a pastor I
8 am sure that I speak on behalf of other pastors and families when I say
9 that we pastors and families have to labor deeply and with great difficulty
10 to bring reform and healing to those that have either been violated or done
11 regretful things as an end result of repeated voyeuristic and exhibitionist
12 activity like what both Eros is promoting and what The Bronx would
13 promote. These children, men, and women seek personal reformation.
14 Sometime the effects are so deep and vast that only a little change is
15 experienced despite the efforts of both counselors, pastors, and families
16 because those effected find the pain or shame of recalling those
17 experiences is too much for them to handle and they leave the difficult
18 road of healing. We do not want to be a people that can be bought to do
19 or permit wrong. We know that not everyone is religious, but we hope that
20 everybody cares about the emotional and social well-being of their family
21 members, friends, and neighbors. With engagement and exhibitionists
22 and voyeuristic activity already an intrinsic area has been transgressed.
23 Without morality leaders, government leaders, parents, judges cannot
24 make any decisions. And journalism by the way would cease. Thank you.
25
- 26 Scholz: Thank you. I'm sorry, one of my Commissioners just told me that people
27 are pushing on the light switches, please don't do that. That's the reason.
28 Okay. There are seats, by the way, if you want to sit down. Yes, sir, go
29 ahead.
30
- 31 Miranda: My name is Pastor Jorge Miranda. I come from the community of
32 Chaparral, New Mexico. As a pastor of ministers in Juarez and I see
33 various or I should say more than enough issues with the whole strip bar
34 dilemma. As I go into Juarez I've never met a stripper or an employee of
35 a strip bar who lives a happy life. They may start off in bartending. Before
36 I know it they're stripping and next thing I know they're prostituting
37 themselves for drugs, alcohol, or any other things. I advise you not to
38 allow this. We're trying to minister out to the country into Mexico where
39 people stop doing these things. Our own nation is allowing these things to
40 happen. If you look at divorce rates when a strip club comes in, it's
41 incredible. The women get demoralized completely. This is not a matter
42 not only of morality but also of family communion. Families coming
43 together and only a strip bar would separate all these things. Women are
44 becoming more independent in the way of, "Well, if you don't like the way I
45 do things I could just go and strip," and then we cause or we allow things
46 to come in as divorces, again drug abuse, alcoholism. This will only

1 impact in a hugely negative way Las Cruces. Thank you.
2
3 Scholz: Thank you. Yes, ma'am.
4
5 Eiceman: Hello. My name is Mary Eiceman and I'm a 32 year resident of Las
6 Cruces. And let me preface my remarks by saying I love the Constitution.
7 I am an immigrant from Canada, a first generation American citizen and I
8 fell in love with the U.S. Constitution, so I am not here to try and discuss
9 the Constitution for you or to try to make you make a decision that would
10 be contrary to the Constitution.
11 Actually, I'm here to encourage you to take your place to make a
12 decision where the Constitution allows you to protect the community that
13 you represent. And have listened to the remarks of the law enforcement
14 representative here who said that implicitly the law enforcement
15 community of Las Cruces understands that there will be an increased risk
16 of violence, of abuse, of prostitution, of drug activity, and other illegal
17 activity, and they are well prepared and ready to increase their
18 enforcement and their diligence looking out for us there. But why? Why
19 would we force that upon our law enforcement community who takes such
20 good care of us as it is to have to increase the stress on their jobs and
21 their goal to protect us? So I'd like you to consider that in your decision,
22 that if they implicitly understand what the results of this strip establishment
23 may be. Then we can side with them by denying the permit for this place.
24 Thank you.
25
26 Scholz: Okay. Thank you.
27
28 Esquivel: Good evening.. My name is Veronica Esquivel and I am a woman and I
29 think as a woman I think I speak for most of these women here and I think
30 it's ... this strip club will be bad for Las Cruces. Thank you.
31
32 Scholz: Thank you.
33
34 Austin: Good evening. I'm Terri Austin. I'm a schoolteacher. I've taught for 19
35 years and daily we work extremely hard to teach our children good
36 character. Now we have the seven habits that we're working on. Our first
37 habit is proactive. And we are teaching kindergarteners, 5 year olds, to be
38 proactive. To choose the mood that you'll choose for that day or attitude.
39 We're teaching our children one thing and then I see something else
40 coming around. Our teenagers, our middle schoolers are being taught the
41 DARE program which is to stay away from drugs and alcohol. We spend
42 a lot of money on these programs and it seems like we're telling our
43 children this is what you need to do, but you know we might be doing
44 something else over here. So for the public schools or at least for me I
45 hope this doesn't happen.
46 I'd also like to encourage businesses to come into Las Cruces. We

1 once owned the Putt Putt Golf. It had bumper cars, go-carts, all kinds of
2 fun things for people to go do. Maybe the business owners could, if this
3 doesn't work out for them which I hope it doesn't, maybe they could open
4 a Wet 'N Wild for us in Las Cruces so we don't have to drive down there to
5 Bobo's and Adventure Zone and everything else. I would like to
6 encourage them to invest their money in Las Cruces but let's put in a
7 business that all of Las Cruces can enjoy. Thank you.

8
9 Scholz: Thank you.

10
11 Burke: Hi, my name's Esther Burke and I've been a long time resident here. I'm
12 thinking of the oppositions which would be the people that want the strip
13 club there, what their arguments are and I think they have some good
14 arguments. They have every right to be there, there's personal freedom.
15 They are the minority perhaps represented here. Why shouldn't we allow
16 them the freedoms that everybody else has? But I think what's at risk is,
17 and I think this makes sense to you: virtue. And that's what we need to
18 fight for is virtue which is not a personal opinion, I believe. People that
19 say that virtue is personal opinion are overlooking the obvious, like
20 someone mentioned the abnormal instead of the normal. I think that's
21 what's at risk here and I'd like you to please stand up for virtue and fight
22 for that. Thank you.

23
24 Scholz: Thank you.

25
26 May: Good evening. My name is Heidi May. I would like to go ahead and start
27 off by saying I am a single mother of three kids, of three girls. I am here
28 all the way from El Paso to tell you: don't do this. The reason behind this,
29 you're exposing yourself to more violence, prostitution, alcoholism, and
30 DWIs. I mean what happens to that person that leaves that bar after it
31 closes down. They're exposing other people to DWIs. Many people are
32 going to be exposed to dying even though they had nothing to do with the
33 club.

34 Second of all, like the pastor mentioned, I've never seen a stripper
35 or someone who works as a stripper happy. They are not a happy person.
36 Like I said, I am a single mother of three girls and I would rather my 16
37 year old daughter fight to get a scholarship or to be able to attend school
38 for herself or for something that she's doing instead of saying, you know
39 what, I'm going to go make \$500 tonight and I don't have to serve tables
40 for \$2.35 an hour. Thank you.

41
42 Scholz: Thank you.

43
44 McDaniel: I'm Loren McDaniel. I come to you not in support of this club, but as a
45 business owner. It is the right of any individual to open a business and do
46 what they want as long as it is allowed by the law. If the community truly

1 does not want this to happen, the business will fail. That will be the end
 2 result of whether or not this community wants this establishment. Not
 3 whether or not it's moral or immoral or choices that people have to make,
 4 it is by the way each individuals' choice to not take the easy road. Life is
 5 not easy. I've been in business since 2002. I took over for my father. I'm
 6 third generation in construction. I've worked hard my whole life. And my
 7 only complaint is, this person has a right to open a business. It might not
 8 be a very popular one. But it is his right to be able to open it. He is
 9 following the letter of the law and it should be allowed. I don't agree with
 10 it, but it should still be allowed. Thank you

11
 12 Scholz: Thank you.

13
 14 Hollingshead: Jack Hollingshead. I'm going to make two statements. I was dead once.
 15 I'm a Christian. I am not religious. I left home because my dad was an
 16 alcoholic. I hitchhiked to California; didn't have a dime. God said I'll
 17 supply your needs. I paid cash for my last two houses. I married my wife.
 18 I take her a box of chocolates home and some roses and when you've had
 19 the best, you don't need the rest and I've been married for 56 years.

20
 21 Baca: My name is Benny Baca and I'm proud to be a citizen of Las Cruces. I
 22 was born here and I'll probably die here. And I just want to say that Las
 23 Cruces has an image to protect. It has a beautiful image, a proud image,
 24 a sunshine image. And a business like this would forever mar this kind of
 25 image. Thank you.

26
 27 Scholz: Thank you.

28
 29 Baca: And I would like to also stand here on behalf of this lady here who is going
 30 to speak in Spanish and I'll be interpreting.

31
 32 MS. MARTINEZ ONLY SPOKE SPANISH, WHICH WAS TRANSLATED BY MR. BACA.

33
 34 Martinez: My name is Juanita Martinez.

35
 36 Scholz: That's funny. That sounded an awful lot like Spanish rather than English,
 37 sir. I don't speak Spanish.

38
 39 Martinez: My name is Juanita Martinez.

40
 41 Scholz: Yes, I got that much.

42
 43 Martinez: I also have two kids who have special needs and I really don't like what's
 44 going to happen here. I am a widow. I'm also a pastor and I represent the
 45 church here in Las Cruces. I am a pastor here at Temple Bethel and it is
 46 one of the first few churches that was established here from over 50

1 years. I think the city needs some education, art, and culture and sports.
 2 I'm a pastor of this church and ... we are very involved in government in
 3 the city and we work hand in hand with this community. We've invested
 4 many hundreds of dollars and a lot of effort and counseling and to
 5 promote moral values, and personal value, and rehabilitation of children,
 6 young people, and families. In this city, has taken a lot of (inaudible) from
 7 the first family, even now, has fame of being a peaceful city.

8
 9 Scholz: Okay, can we wind it up? You're out of time.

10
 11 Martinez: Thank you.

12
 13 Scholz: Thank you very much. Okay, I see two more speakers here. That's all
 14 we're going to allow tonight and then we're going to take a break. Oh, I'm
 15 sorry, wheelchair, I didn't see you, sir. Yeah, you'll be the third. Go
 16 ahead, sir.

17
 18 Hulbert: My name is Mike Hulbert. I own CSR Garage. People have talked before
 19 me and have said they do have a right to do business in this town and I
 20 don't disagree with that. What I do disagree with is the consequences that
 21 I've had to take care of because they have come into my community
 22 meaning the adult bookstore. I would ask their attorney that pretty much
 23 told you that you do not have a choice because of the First Amendment.
 24 It's what I understood her to say. I would ask her and the people filing to
 25 do this, to please come, not every day, not every night, but come stand at
 26 my shop and go out and tell people that are parked in front of it, "Can I
 27 help you? It's 10:30 at night, why are you here?" "I'm waiting for a friend."
 28 Or maybe walk around my parking lot and pick up the black goody bags
 29 that come from the adult store that blow in my lot. Or to help me pick up
 30 the broken beer bottles that have been in my cul-de-sac that fill the
 31 entrance to my business; or to pick them up out in my landscaping; or, to
 32 quote a guy three weeks ago when I came in late at night, "What are you
 33 doing over there?" Guy says, "Is this your business?" I said, "Absolutely."
 34 He says, "Well, I was going to take a piss until you drove up." That's just
 35 some of the things I've got to put up with over there.

36 They're right: they have a right to do business. But what gives them
 37 the right to come in to destroy my property, my business, and to dictate to
 38 you and the city what you have to do for them because of their
 39 constitutional right? Do they have the right to degrade my business, my
 40 property? You've heard from four or five of my customers tonight that
 41 have come in and protested against this. Now the only thing I ask you is:
 42 will they allow this to go in their front yard because it is going in my front
 43 yard? I do have customers that walk around when their car is getting
 44 worked on. Just ask them. They want to come over and help me scoop
 45 the beer bottles. Did I forget to mention, I have picked up used condoms
 46 in front of my business before too? They do have the right to go in

1 business there, they do have the right to make money, but they do not
 2 have the right for me to get on their boat to lose money because of their
 3 constitutional rights. Thank you for your time.
 4

5 Scholz: Thank you.
 6

7 DeLeon: Hi. My name is Valenzia DeLeon and I'm here and I want to speak for my
 8 generation. I'm a freshman at NMSU and throughout my high school
 9 career I've heard a lot of my peers say it's boring here you know and
 10 there's really nothing to do here and all they're influenced with is alcohol
 11 and drugs and sex. And I would like to ask you guys: would you rather put
 12 up a strip club for their entertainment when they get older or would you
 13 rather put up like a Bobo's here or Adventure Zone here for a better
 14 influence and a happier entertainment? Thank you.
 15

16 Scholz: Thank you. Okay.
 17

18 Smith: My name is Jim Smith. I'm a 68-year-old father, grandfather, and great
 19 grandfather. I have a 42-year-old daughter who worked in a place like this
 20 when she was 19-20 years old, claimed to be 21. Within two years she
 21 had chlamydia which took away all of her female organs. She couldn't
 22 have children. She wanted them, but she couldn't have them because of
 23 an establishment like these people want to put in. Now I just moved to
 24 Las Cruces in November, but I've grown to love this city because it is a
 25 good clean town. And I think you're making a mistake if you allow
 26 something like this to come because I know personally what it does to
 27 people. Thank you.
 28

29 Scholz: Thank you. You're on.
 30

31 Millen: I'm Gary Millen. Well, let's see. Well, it's a fact that any business is good
 32 for economic growth, revenue, and jobs. That's a fact. The business
 33 shouldn't ... I noticed that it was one of the stipulations that the business
 34 has to pay for the no parking signs. That doesn't seem right that they
 35 have to pay for no parking signs when there are four other businesses on
 36 that street. I think that ought to be shared, personally.
 37 Secondly the free market will determine if the business stays or not,
 38 like the gentleman earlier was saying. Businesses aren't going to stay if
 39 they're not prosperous. If it's a prosperous business then it'll stay. If it's
 40 prosperous then that's because the people in general enjoy being there
 41 and they utilize the business. If they're not profitable then they'll leave and
 42 then other people who don't like the business, their wishes will come true.
 43 I've met lots of dancers from other cities that had dance clubs and never
 44 met one that was forced into their chosen line of work or hated their job as
 45 some of these people are claiming here tonight. And the people who are
 46 afraid that their lives are going to get changed or what not from it,

1 nobody's forcing these people to go to the club and no one's forcing them
2 to even drive by the club, so if they don't drive by it and they don't go to it,
3 then it's kind of out of sight out of mind because there's really not that
4 much over there.

5 I was in the military and one of the things that I stood for in the
6 military was to defend the freedoms of Americans and it is every
7 American's right to own a business and prosper and pursue happiness
8 and liberty, and I think that that's what the council here should consider
9 and just allow the business a chance to try. And like I said, if they fail,
10 they fail, if they succeed, they succeed. And we have to ignore the moral
11 righteousness that was an awful lot of in here tonight and it's your job to
12 keep it a simple regulation based and emotion free decision as to whether
13 or not the business can be allowed to operate or not. Thank you.

14
15 Scholz: Thank you. All right, I'm going to take a ... we're going to have a ten
16 minute recess here so everybody can get up and stretch and I can drink a
17 little water and clear my throat, and then we will have discussion by the
18 Commission and we'll make a decision. Okay, we'll be back in ten
19 minutes. Thank you.

20
21 COMMISSION MEETING BREAK OF 10 MINUTES.

22
23 Scholz: Folks, if you'll find your seats, please, we'll resume. Please take your
24 seats. Okay, now the Commissioners will discuss and, Commissioner
25 Shipley, you've been taking careful notes. I've been taking notes. I noticed
26 Commissioner Beard scribbling here and there so I think we're well
27 prepared. The other Commissioner just had his knife out, I'm not sure
28 that's a good sign. I hope he was trimming his nails or something. All
29 right, Commissioner Shipley, kick it off.

30
31 Shipley: First of all I'd like to say to everybody that came tonight, this was handled
32 very appropriately. This is the way it should be done. We certainly
33 appreciate your opinion, your input, that's why we hold public meetings.
34 This is the whole purpose for doing this. So I say personally thank you all
35 for coming and handling yourselves very business-like and very
36 professionally. Thank you.

37 Obviously there are lots of issues that came up. There was a
38 question about the church at 316 Southgate Court. Now, my question
39 would be, is there ... within the City a church has to register, has to buy a
40 business license to operate, is there such a business at 316 South Court?

41
42 Montana: Mr. Chair, Commissioner, there is not. I've been to that site, I looked at it.
43 It's a warehouse. It's permitted as a warehouse. I looked at the business
44 license for that property and there is not a business license for any
45 occupant at that property at this time.

- 1 Shipley: Okay. Thank you. The second question I had was again about the ruling.
2 There was a question about a bar and a club at the same location. It is
3 permitted to have both a liquor license and dancing at an establishment, is
4 that correct?
5
- 6 Montana: There are two different zoning use classifications. One is a bar with
7 dancing and one is a bar without dancing. The dancing refers to, I
8 believe, patrons dancing rather than entertainment by employees. That is
9 my understanding.
- 10
11 Shipley: So when they refer to second 38-33 G, retail land uses, that's where that's
12 coming from, I think.
13
- 14 Montana: Yes, there's one section for a bar with dancing and one ...
- 15
16 Shipley: But this falls under 38-54 I believe, is that correct?
17
- 18 Montana: Adult entertainment.
- 19
20 Shipley: Yes.
21
- 22 Montana: That's a particular use; but there's also a particular use for the bar.
23
- 24 Shipley: Okay.
25
- 26 Montana: And they both could be allowed.
- 27
28 Shipley: Okay, the other question was: does this place the Eros business in conflict
29 because it is located? That's preexisting conditions, so is it allowable to
30 place something that close to that facility?
31
- 32 Montana: The Eros has a Special Use Permit. If this new adult entertainment
33 Special Use Permit with the liquor license is permitted next door, it is
34 within 500 feet and that would place the Eros establishment as a legal
35 nonconforming use.
36
- 37 Shipley: But the key is it would be a legal nonconforming use.
- 38
39 Montana: That is correct, it is my understanding.
- 40
41 Shipley: Okay, thank you. I have no further questions at this time. I'll defer till
42 later.
43
- 44 Scholz: Sure. Commissioner Crane.
- 45
46 Crane: Well, I'm going to think out loud here.

1
2 Scholz: Yes, go ahead.

3
4 Crane: It's going to start really soon. I believe I'm going on my fifth year as a
5 Commissioner for District 4 which happens to be where this enterprise is
6 going, expected to be situated. I think this is probably the most difficult
7 decision that's come before the Commission, in my view. I usually come
8 in here expecting to weigh conflicting rights; the rights of a person to set
9 up his yard as he wants versus the right of the City to set standards for a
10 house, for example, and much of that has come up, and are among more
11 difficult decisions and we have a conflict here.

12 My few forays into commercial sex during my life which did include
13 a couple of years in the military, but that was on a post which had 3,500
14 men and 3,500 women and I'm not going to tell you where it is, but there is
15 a museum there now and so commercial sex is not much of an issue for
16 us then. But I have found it to be as somebody said, a sad pathetic
17 business which degrades everybody associated with it including the
18 people that run it. I don't think there's anything good to be said about it. It
19 does not elevate in any way the quality of life of anyone.

20 But to look at it technically from the point of view of a Planning and
21 Zoning Commissioner, a great deal has to be said to take a narrow view
22 and saying that this enterprise is legal and it meets all of the requirements
23 of the City. And the decision as to whether it's appropriate to have an
24 enterprise like that in the City belongs to our elected representatives, that
25 would be the Councilors and we, of course, are not the City Council.

26 But people have spoken with great eloquence here about taking a
27 broader view of the issues and I know that we've done it several times
28 before when we have approved or disapproved something, sometimes
29 against the recommendation of staff because we took a wider view and
30 tried to look at the issue from the viewpoint of the health of the whole City
31 rather than whether the applicant was within his rights to ask for what he
32 asked for.

33 And I think this is one of the situations in which I'm going to have to
34 regard this as a quality of life issue, Mr. Chairman, and while recognizing
35 that in a narrow view this application should be approved, to take a
36 broader view of the health of the community I think I will not vote for it. If
37 we had a strip club in this town already as we have the Eros place, I
38 wouldn't worry about it greatly. It's a pathetic enterprise. But the fact that
39 we don't have one is a rather different situation and I don't feel that I'd
40 have a clear conscious, frankly, if I went ahead and approved this
41 enterprise. That's my view as of the moment. Thank you.

42
43 Scholz: Commissioner Beard.

44
45 Beard: That was well said. Thank you very much. I agree with you totally. I'd
46 like to ask legal a question. Seeing how this is a Special Use Permit, what

- 1 like to ask legal a question. Seeing how this is a Special Use Permit, what
2 kinds of conditions would have to occur in order to revoke this special
3 permit?
4
- 5 Babington: Commissioner let me ask you a question, see if I can understand your
6 question correctly. I think it's premised on if the establishment is given a
7 Special Use Permit and then later on they do something, what would
8 cause them to lose it?
9
- 10 Beard: That's correct.
11
- 12 Babington: Yes, sir. And so what happens is, when you look at the Special Use
13 Permit it basically sets certain things and the last one is it has to be legally
14 in compliance with the law. So, for example; if prostitution was promoted
15 by the business, for example, and what I mean promoted, they became
16 actively involved in the act of prostitution and doing that kind of thing. It
17 could be declared a nuisance and the City could then take action against
18 this particular establishment under our nuisance provisions. So it's really
19 based on what happens to the business and the involvement of the
20 business owners whether or not they could ever lose their Special Use
21 Permit. So, conceptually, you could do it. You become involved in some
22 type of criminal activity, you become a nuisance, and the City would be in
23 a position to take action. We'd have to take action against that particular
24 business.
25
- 26 Beard: Thank you.
27
- 28 Babington: Yes, sir.
29
- 30 Scholz: Okay, other questions?
31
- 32 Beard: One of my concerns is when we approve daycare centers, for instance,
33 we look at the neighborhood and how we are impacting the neighborhood.
34 If we're impacting the neighborhood adversely, then we vote it down. If
35 the traffic is worse or dangerous or we think it's going to be dangerous, we
36 vote it down. I had the same concern here in that the other property
37 owners are going to be adversely effected, I believe. Weighing that
38 against a business' right to start a business, is a hard decision. So I really
39 do share my concerns with the property owners around there and I don't
40 know how to address it, to tell you the truth.
41
- 42 Scholz: All right. I have a couple of questions: there were a couple of points
43 raised. One of them was about the distance from Burn Lake to the
44 property. Do you recall how that was measured? We probably have slide
45 on that, don't we?
46

- 1 Montana: Yes. The City has a geographic information system, GIS system, that
2 inputs the database, inputs the daycares, the churches, the schools, and
3 the parks and park facilities.
4
- 5 Scholz: Okay.
- 6
- 7 Montana: So I used that and they have, the GIS has a measuring device.
8
- 9 Scholz: Yes.
- 10
- 11 Montana: So I used, as the crow flies.
12
- 13 Scholz: Okay.
- 14
- 15 Montana: So I used that measuring device to measure the distance from the site, the
16 property line, the closest property line to the closest property line of the
17 target.
18
- 19 Scholz: Okay, good. So it is 1,531 feet. I see that.
20
- 21 Montana: Yes, property line, closest property line.
22
- 23 Scholz: Okay. Well, one of the people was concerned about that. The other
24 question, or the other issue that was raised that I recall from my notes was
25 about the liquor laws and there was a gentleman who was very concerned
26 about, you know, are the liquor laws being effectively enforced? I don't
27 believe that's our purview. Does the City enforce state liquor laws?
28
- 29 Montana: No, we do not.
30
- 31 Scholz: Okay.
32
- 33 Montana: We make sure that if they need a liquor license they register with us, the
34 business registration for the liquor license, and I'm going to look to ...
35 yeah.
36
- 37 Scholz: Yes, Mr. Babington.
38
- 39 Babington: Yes sir, what happens is an applicant would apply to the state for a liquor
40 license. They would do the background checks and that kind of thing. It
41 then comes to City Council for approval. We would either deny it or
42 approve it and then it goes back to the state process. So we're involved in
43 it and City Council reviews all liquor applications for the City of Las
44 Cruces.
45
- 46 Scholz: But the idea is that the state does background checks and things like that?

1
2 Babington: Yes sir.
3
4 Scholz: Okay. I think that was a concern that was also raised. Okay. That was
5 two items I had. I had another one about ... I don't know if we discussed
6 the hours of this, what are the hours that this business is to be open?
7
8 Montana: On the application they state they will be open from 9 AM to 2 AM.
9
10 Scholz: Okay, I see the attorney is shaking her head there. 11 AM to 2 PM.
11
12 Montana: 2 AM.
13
14 Scholz: To 2 AM, yes, right.
15
16 Montana: I've got it here somewhere.
17
18 Scholz: Okay, I wanted to get that straight. All right, gentleman. Other
19 discussion? Go ahead.
20
21 Beard: I'd like to propose changes to the recommended conditions of approval.
22 First of all I think there was a good point made that number 2: there shall
23 be no outdoor special events or outdoor entertainment activities permitted
24 on the premises in order to mitigate potential noise impacts. I don't know
25 why that person's being held to that standard and nobody else is, so I
26 recommend that that be struck out.
27
28 Scholz: Okay. We can make that as an amendment.
29
30 Beard: I'd like to make another one.
31
32 Scholz: Okay, go ahead.
33
34 Beard: I would recommend that the applicant shall ensure that all property 200
35 feet from the applicant's property shall remain clear of trash on a daily
36 basis.
37
38 Scholz: Okay, so you're asking the potential occupant to be a trash policeman, a
39 garbage man or something like that?
40
41 Beard: Yes, I am.
42
43 Scholz: Okay, yeah we can insert those. Commissioner Shipley.
44
45 Shipley: The other thing is when I went out to do my site visit to this site. I looked
46 at the site but I also looked at the Eros site and they have the ... this is a

- 1 something about a board fence which is what the fence is that Eros has
2 and it's terrible, dilapidated, etc. I would think a rockwall would be the only
3 acceptable thing here for a couple of reasons: number 1, it would preclude
4 anybody from taking a pair of sheers and cutting their way through it to go
5 in the back way or whatever. And I think a rockwall is a lot ... handles the
6 noise, keeps the noise in if there were any noise. So I thought that ought
7 to be added to the conditions as well, as opposed to saying a rockwall or
8 opaque fence, just say a rockwall will be the only acceptable. That's
9 number 4.
- 10
11 Scholz: All right.
- 12
13 Shipley: And the other thing, in the discussion of the building you said there's only
14 two access points, but there are actually five, there are two emergency.
15
- 16 Montana: Emergency, yes.
- 17
18 Shipley: And those ought to be controlled somehow so that no one can prop open
19 a door and let someone come in a side entrance. That is what happened
20 with the theater up in Aurora, is they propped the side door open and
21 came in. And you know that is an absolute non-starter for me I think that's
22 a lesson we learned the hard way and I don't ever want to have to do that
23 again.
- 24
25 Scholz: I want to ask legal a question here. We can, as I recall from our
26 instructions, we can add conditions, is that right?
- 27
28 Babington: Sir, could you repeat your question.
- 29
30 Scholz: I said we can add conditions to this application, is that right?
- 31
32 Babington: I would be reluctant to say you can add conditions. I mean they really
33 have to be tied to the property and to persons and their safety. So if it's
34 related to that with a special use permit you may be able to do that.
- 35
36 Scholz: Okay. All right, well we'll have to consider that then. Okay, any other
37 discussion, any other questions? Yes, Ms. Montana, I'm sorry you had
38 your hand up and ...
- 39
40 Montana: Well, I wanted to ask for clarification Mr. Chairman from Commissioner
41 Shipley that you're aware that the applicant is suggesting to build the
42 screen wall only on the Amador frontage and not the entire perimeter? So
43 it would just be on the Amador street frontage of the property, is what
44 they're proposing.
- 45
46 Scholz: Go ahead, Commissioner Shipley.

- 1 Scholz: Go ahead, Commissioner Shipley.
2
- 3 Shipley: No, I think it has to be on the sides as well because that's number 1 is you
4 don't want someone going over into the other property, adjacent
5 properties. It doesn't work. And the fence, you know, the screen wire
6 going from Eros onto that lot is just, it's insufficient. So it needs to be a
7 wall around that property.
8
- 9 Scholz: Commissioner Crane, your light is on. You had another comment or
10 question?
11
- 12 Crane: Yes, I do have a couple of points. Could you please put up on the screen
13 the choices before the Commission? I don't see them quite clearly in the
14 information we have. Okay. Number 2 says vote yes to approve the
15 request with amended and/or new conditions. So it appears, Mr.
16 Babington, that we are allowed to amend or add conditions.
17
- 18 Babington: Yes sir, if they're related to safety and property. I mean the conditions on
19 a Special Use Permit are pretty well set out. So when the Commission
20 decides to add additional conditions, if you will, they're really supposed to
21 be related to property and safety of the property or individuals there.
22
- 23 Crane: So, in other words, there'd be something like the ones that the staff has
24 already given us on page 9: findings for approval, pardon me,
25 recommended conditions of approval.
26
- 27 Babington: Yes sir. I mean the first one there would be the signs. Basically we're
28 saying, "Hey, we want to prevent rigs from going there."
29
- 30 Crane: Right.
31
- 32 Babington: Okay. The noise abatement is related, if you will, to safety with respect to
33 outdoor events, at least that was justification at that time.
34
- 35 Crane: Okay, all right. I understand. So it's no parking would be permitted on
36 Westgate Court and I have the impression that the City has in mind
37 Westgate Court, the east side of it from Westgate Street over to the site of
38 the club, right?
39
- 40 Montana: Mr. Chair, Commissioner, for the whole cul-de-sac so there would be no
41 parking for the entire cul-de-sac on the east side.
42
- 43 Crane: So the idea is to discourage on-street parking of big rigs among other
44 things.
45
- 46 Montana: Yes. All vehicles.

- 1 Crane: All right. Now I would suggest that that same prohibition be put on the
2 opposite side, the west side cul-de-sac because it's not going to be much
3 of an effort for somebody to park there and walk across the street. And
4 also, I'm concerned about the prospect of a 30-foot tall sign saying strip
5 club: Bronx Strip Club. Maybe if it just says "The Bronx" is okay; but I
6 would like to see the size of that sign no higher than roof, the ridgeline of
7 the roof of the building that would be visible from Amador.
8
- 9 Scholz: Mr. Babington, you have a point.
- 10
11 Babington: Yes sir. The applicant has basically indicated that they would probably be
12 willing to make certain concessions with respect to, I believe, the rockwall
13 and also the clean-up. Perhaps Ms. Wootton could just briefly address the
14 Commission about those particular stipulations.
15
- 16 Scholz: Okay. Ms. Wootton.
- 17
18 Wootton: Mr. Chairman, Commissioners. Yes ...
19
- 20 Scholz: Stay on the mike please.
21
- 22 Wootton: My client has no problem with putting a rockwall all around the property.
23 That's actually their intent. It's not what they were required to do by staff
24 in terms of the application, but they are willing to stipulate to that. They
25 also have no problem with cleaning up, clearly just the fronts of the
26 business that are accessible to the extent that those owners want that.
27 We could have issues with trespass so that's the only question there.
28 Also, they have no problem with, they have no intention of putting any sign
29 except on the building itself and not on the Amador side. That's their
30 intention anyway. Also, the emergency access; they have every intention
31 of securing that with an alarm. So all of those issues there are fine with
32 stipulating to those conditions.
33
- 34 Scholz: Okay. Any other questions from Ms. Wootton?
- 35
36 Wootton: Thank you.
- 37
38 Scholz: Thank you very much. So, Commissioner Beard, did you want to place
39 those conditions in or are we going to ...?
40
- 41 Beard: We can vote on it.
- 42
43 Scholz: Okay. Why don't you read your amendment then?
44
- 45 Beard: I'm going to try to incorporate all of them.
46

1
2 Scholz: Well, it might be simpler to do them one at a time.
3
4 Crane: Can you ... were you planning to incorporate the ones I made, I
5 suggested?
6
7 Beard: Yours was?
8
9 Crane: That the parking be extended ... parking prohibition to the other side.
10
11 Beard: Yes. Definitely.
12
13 Crane: And no tall sign. Okay.
14
15 Beard: Okay. The applicant shall ... you want me to read them out?
16
17 Scholz: Yes, please.
18
19 Beard: The applicant shall pay the cost to the City for installing no parking signs
20 along Westgate Court and that would include both the east and west cul-
21 de-sacs. The signs would be approved by the City of Las Cruces and in
22 accordance with the City of Las Cruces Design Standards. The signs
23 would be installed prior to operation of the club. The applicants shall post
24 a large visible warning sign at the entrance of the club advertising,
25 advising drivers that parking is prohibited along Westgate Court and
26 vehicles parked there will be towed at owner's expense and shall urge
27 patrons not to park on Westgate Court.
28
29 Scholz: So you're just installing your language in that first condition.
30
31 Beard: Yes.
32
33 Scholz: Okay.
34
35 Beard: Also, that we strike number 2 condition, there shall be no ...
36
37 Scholz: I do want to vote on these separately.
38
39 Beard: Oh, you want to?
40
41 Scholz: Yes I do. Okay, you've heard the first one. Is there a motion to approve it,
42 to incorporate it into the first condition?
43
44 Crane: I move that Commissioner Beard's additional condition be approved.
45
46 Scholz: Okay, is there a second?

1
2 Shipley: I move it as ... or I second it.
3
4 Scholz: Second it. Okay. All those in favor say aye.
5
6 All: Aye.
7
8 Scholz: Okay, it carries. All right, your second one was ...?
9
10 Beard: Strike number 2. There shall be no outdoor special events or outdoor
11 entertainment activities permitted on the premises in order to mitigate
12 potential noise impacts.
13
14 Scholz: Okay, and your reasoning, as I recall, was that this is allowed to other
15 enterprises and we're being you know ...
16
17 Beard: Yeah, I think it was too selective to this one particular applicant.
18
19 Scholz: Okay. I'll entertain a motion to strike number 2 as a condition.
20
21 Shipley: So moved.
22
23 Scholz: Okay, is there a second?
24
25 Crane: Second it.
26
27 Scholz: Okay. It's moved and seconded. All those in favor of striking number 2
28 say aye.
29
30 Shipley: Aye.
31
32 Beard: Aye.
33
34 Crane: Nay.
35
36 Scholz: And I'm also going to vote nay so that item stays. Okay. Yeah, in the
37 case of a tie the motion fails. Sorry. All right, what was the third item,
38 Commissioner Beard?
39
40 Beard: You want to go through all of these even though we don't make changes.
41
42 Scholz: No.
43
44 Beard: Okay.
45
46 Scholz: No. The conditions are already stated, we're just working on ...

- 1
2 Beard: Okay, number 4: a rockwall as proposed by the applicant, and what we're
3 doing is striking out the opaque fence, by the applicant, and in compliance
4 with the City of Las Cruces Zoning and Building Regulations shall be built
5 along the Amador Avenue frontage to screen the site from Amador
6 Avenue and any adjacent or effected properties, which would mean
7 surrounding the place.
8
- 9 Scholz: All right, is that ... let me ask Legal for a clarification on that. Does that
10 make sense?
11
- 12 Babington: Yes, sir. As indicated by the applicant's counsel and then your discussion
13 here, the intent of the Commission is to have a rockwall entirely
14 surrounding the property as I understand it.
15
- 16 Scholz: Okay. Thank you.
17
- 18 Babington: By taking out opaque, you're doing that.
19
- 20 Scholz: Yeah, there we go. Okay. So I'll entertain a motion.
21
- 22 Shipley: Move to approve.
23
- 24 Scholz: Move to approve.
25
- 26 Shipley: Move to approve the motion.
27
- 28 Scholz: Is there a second?
29
- 30 Crane: Seconded.
31
- 32 Scholz: Okay all those in favor say aye.
33
- 34 All Aye.
35
- 36 Scholz: Okay. It's approved. Thank you. Any other, you wanted to enter one
37 more condition, as I recall. What was it?
38
- 39 Beard: Yes. Right. It would be number 6: the applicant shall ensure that all
40 property 200 feet from the applicant's property shall remain clean of trash
41 on a daily basis. And I don't think that that would include Amador Avenue.
42
- 43 Scholz: Okay. Is there a motion to accept?
44
- 45 Crane: I move that additional condition be installed in the ...
46

- 1 Scholz: Yeah, you just move it. That's fine. Okay, is there a second?
2
- 3 Shipley: Second.
4
- 5 Scholz: Okay, all those in favor of including this as number 6 of the conditions.
6 Mr. Kyle has a question or a comment on that.
7
- 8 Kyle: Mr. Chairman, point of clarification. I just want it clear so that we don't
9 have any misconception. As Ms. Wootton indicated her clients have
10 stipulated that particular condition, but I would like it clarified that it's the
11 property owners within 200 feet that grant them permission, in fact, to do
12 that so we don't have trespassing issues or other ... I wouldn't want
13 somebody to say, "No you can't do that," then they'd be in violation of a
14 condition you put on the SUP and it could potentially be confusion.
15
- 16 Scholz: All right. So you suggesting that we insert the language, "With the
17 permission of the property owners?"
18
- 19 Kyle: Correct.
20
- 21 Scholz: Okay. With the permission of the adjacent property owners. Yeah, I think
22 that's good. Okay, does that satisfy you, Commissioner Crane?
23
- 24 Crane: Yes sir.
25
- 26 Scholz: Okay.
27
- 28 Shipley: Move to approve the condition as read.
29
- 30 Scholz: As amended, yes. Is there a second?
31
- 32 Crane: Seconded.
33
- 34 Scholz: Okay, it's been moved and seconded. All those in favor then of this
35 condition as amended.
36
- 37 All: Aye.
38
- 39 Scholz: Okay. All right anything else before we vote on the issue itself, the case
40 itself? All right, I'll entertain a motion to approve Case No. SUP-12-03.
41
- 42 Shipley: So moved.
43
- 44 Scholz: Okay, it's been moved. Is there a second?
45
- 46 Beard: Second.

1
 2 Scholz: Okay, I'll call the role. Commissioner Shipley.
 3
 4 Shipley: Nay, findings, discussion, and site visit.
 5
 6 Scholz: Commissioner Crane.
 7
 8 Crane: Nay, findings, discussion, and site visit.
 9
 10 Scholz: Commissioner Beard.
 11
 12 Beard: Nay, findings, discussions, and site visit.
 13
 14 Scholz: Okay, and the Chair votes aye for findings, discussion, and site visit. So
 15 the motion failed 3:1. Thank you. Thank you, folks.
 16

17 **VIII. OTHER BUSINESS - NONE**

18
 19 Scholz: Mr. Kyle, is there any other business before the Commission?
 20
 21 Kyle: Mr. Chairman, no.
 22

23 **IX. PUBLIC PARTICIPATION**

24
 25
 26 **X. STAFF ANNOUNCEMENTS**

27
 28 Scholz: Any staff announcements? Nothing.
 29

30 **XI. ADJOURNMENT**

31
 32 Scholz: Okay. We are adjourned at 9:32. Thank you.
 33

34 *Approved as amended*
 35
 36 *Charm B Selby 10/23/12*
 37 _____
 Chairperson
 38



Planning & Zoning
Commission
Staff Report

Meeting Date: September 25, 2012
Drafted by: Susana Montana, Planner

CASE NO.: SUP-12-03 **PROJECT NAME:** 2221 Westgate Ct.
Adult Entertainment

**APPLICANT/
REPRESENTATIVE:** Mariah Hernandez,
for Central Park
West, LLC **PROPERTY
OWNER:** Jessie and Mariah
Hernandez for Central
Park West, LLC

LOCATION: 2221 Westgate Ct.;
Parcel No. 02-
18451 **COUNCIL
DISTRICT:** 4 (Nathan Small)

SIZE: 4,000 square foot
building on a 0.91-
acre lot **EXISTING
ZONING/
OVERLAY:** None
M2-Industrial
Standard

**REQUEST/
APPLICATION TYPE:** Special Use Permit to allow operation of an adult entertainment
venue ("Gentlemen's Club") called "The Bronx"

EXISTING USE(S): Vacant

PROPOSED USE(S): An adult entertainment venue consisting of a bar and topless
dancing to take place within a newly constructed 4,000 square foot
structure.

**STAFF
RECOMMENDATION:** Conditional approval based on proposed findings and with
conditions imposed to mitigate potential truck parking congestion,
outdoor noise and visual impacts

TABLE 1: CASE CHRONOLOGY

Date	Action
8/06/2012	Application submitted to Development Services
8/08/2012	Application deemed complete and sent to all reviewing departments for review
8/15/2012	All comments returned by all reviewing departments
8/20/2012	Public notice letter mailed to neighboring property owners
9/02/2012 and 9/09/2012	Newspaper advertisement
9/05/2012	Sign posted on property
9/11/2012	Staff reviews and recommends conditional approval of the special use permit
9/25/2012	Planning and Zoning Commission public hearing

SECTION 1: SYNOPSIS OF PROPOSAL

The Applicant, Mariah Hernandez, manager of Central Park LLC, proposes to construct a 4,000 square foot building for the operation of "The Bronx," an adult entertainment venue (topless dancing) and a bar. The Applicant leased the subject property located at 2221 Westgate Court after conducting what she describes as an extensive search for a suitable site in Las Cruces to open a "Gentlemen's Club" based on the 2001 Zoning Code's criteria for the location of an adult entertainment establishment.

The Applicant feels that the proposed Site is suitable for the following reasons:

1. It is located further distant than 1,000 feet from any school, church, day care or nursery, public park or recreational facility or a residential zoning district;
2. It is further distant than 500 feet from any establishment with a liquor license; and
3. It is a vacant lot that can accommodate a new building and adequate parking lot for employees and patrons; both of which can be designed and constructed to provide adequate security, safety and a comfortable venue for entertainment.

Design, Buffering

The Applicant states that the proposed size of the building can accommodate the anticipated customer demand for the foreseeable future. The parking lot was also sized in accordance with the requirements of the 2001 Zoning Code to accommodate employee and patron parking demand for the foreseeable future.

The metal building would be designed to match its industrial neighbors. There would be landscaping along the perimeter of the Site as well as next to the building. A rock wall or opaque fence would be built along the Amador Avenue frontage to screen the Site from that street. This screen wall would also prevent headlight glare from disturbing motorists along Amador Avenue.

Security

One patron entrance and exit to the building closely monitored by security and management personnel is proposed. Additionally, only one vehicular entrance to the parking lot from Westgate Court is proposed. Employees would have a separate, secure parking area in the rear of the building and would enter through a code-controlled security door at the rear of the building. The rear interior of the building was designed for the comfort and security of the employees by providing lockers, a dressing room, showers and a waiting area.

Operations

The entertainment venue was designed as a theater space with a stage and seating oriented toward the stage where employee dancing to pre-recorded music played by a Disc Jockey would take place. There would be a bar at the back of the theater space along with male and female restrooms.

There would be no food service at the establishment. Some special events are proposed by the Applicant in the future. The club would be open from 11 AM to 2 AM Monday through Saturday with the entertainment beginning around 4 PM. The club would be closed Sundays.

As required by the Zoning Code, the Applicant would affix a sign to the exterior wall next to the primary entrance to the structure. The signs would be 36" x 18", would have red lettering (letters shall be 2" in width and 3" in height) on a white background and would state:

**WARNING:
ADULT AMUSEMENT ESTABLISHMENT.
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.**

TABLE 2: DEVELOPMENT STANDARDS & SITE CHARACTERISTICS

Standard	Existing	Proposed	Zoning Code Req.
Max # of DU/parcel	none	none	N/A
Max Density (DU/ac.)	N/A	N/A	none permitted
Minimum lot area	0.91 acre/ 39,640 sf	0.91 acre/ 39,640 sf	15,000 sf
Minimum lot width	172' (average)	172'	60'
Minimum lot depth	257' (average)	257'	70'
Maximum structure height	N/A	20'	60'
Setbacks			
Front	N/A	15'	15'
Side	N/A	20'	20'
Side	N/A	20'	15'
Rear	N/A	15'	15'
Accessory Structure	N/A	N/A	15'
Parking (minimum required/ maximum allowed)			
Vehicular	N/A	56, including 4 ADA	32 min/ 53 max (using the bar use calculation)
Bicycle	N/A	3	2 required
Loading	N/A	would be provided on-site	1
ROW Dedication	N/A	N/A	N/A
Landscaping			
% of total (less building pad & screened storage)	N/A	would meet or exceed code	15%
Total square feet of landscaping	N/A	would meet or exceed code	to be decided
Buffering			
Buffer yard	N/A	none	not required
Screen Type	N/A	opaque fence along Amador frontage; street trees and landscaping along lot perimeter	not required
Open Space, Trails, Parks, Recreation			
Acreage	N/A	none	not required
Type	N/A	none	not required
Other		would meet or exceed outdoor lighting code	Chapter 39 outdoor lighting requirements

TABLE 3: SPECIAL CHARACTERISTICS

Characteristic	Applies to Project?	Explanation
EBID Facilities	No	None in area
Medians/ Parkways Landscaping	Yes	There are two medians adjacent to the property on W. Amador Avenue; they are not landscaped. The Applicant would be required to landscape and irrigate ½ of the median and parkway located adjacent to her property pursuant to City Ordinance 2479.
Other: Limited Access	Yes	Access to the property would be from Westgate Court, not Amador Avenue. This would prevent additional vehicle conflict points (curb cuts) along Amador Avenue, a principal arterial roadway.

TABLE 4: ADJACENT ZONING AND LAND USE INFORMATION

Location	Existing Use	Overlay District	Zoning Designation
Subject Property	Vacant	None	M-2, Industrial*
North	Auto repair	None	M-2, Industrial*
South	Construction supply	None	M-2, Industrial*
East	Construction services	None	M-2, Industrial*
West	Adult-oriented video store [EROS]	None	M-2, Industrial *

*Please note that the M-2 designation for the Site and M1 and M2 designations for properties in the vicinity, were so designated in July 2004 by Ordinance No. 2110 (Case No. Z-2550). The current Zoning Designation is referred to as the M1/M2 Industrial Standard District.

TABLE 5: PARCEL HISTORY

Number	Status
Permit	This is a vacant lot; there has been no prior permit activity.
Ordinance	2004 Ordinance No. 2115 changed the zoning for the Site and area from the 1981 Zoning Code designation of M1 to M2.
Resolution	1986 Westgate Business Park Unit 1 Subdivision.

SECTION 2: REVIEWING DEPARTMENT/AGENCY RECOMMENDATIONS

For specific comments and/or conditions, see attached

Department Name	Approval (Yes/ No)	Conditions (Yes/No)
CLC Development Services	Yes	Yes, see Section 4.C. below
CLC Long-Range Planning	Yes	No
Metropolitan Planning Organization (MPO)	Yes	No
CLC CD Engineering Services	Yes	No
CLC Traffic	Yes	No
CLC Surveyor	Yes	No
CLC Land Management	Yes	No
CLC Parks	Yes	No
CLC Fire & Emergency Services	Yes	No
CLC Police	Yes	No
CLC Utilities	Yes	No

SECTION 3: STAFF ANALYSIS AND CONCLUSIONS

APPLICABLE COMPREHENSIVE PLAN ELEMENTS & POLICIES

Land Use Element

Objective 8: *Encourage the development of vacant land within the urban area of the City.*

Policy 8.2: *Infill development shall be compatible with the existing architecture, landscaping, and character of the surrounding neighborhood.*

Growth Management Element

Objective 1: *Establish an integrated and coordinated approach to meet all established and proposed development-related policy.*

Policy 1.3: *All development shall adhere to quality design that facilitates the coordination and compatibility between citizens, services and infrastructure.*

Policy 7: *The City shall encourage infill development that supports the utilization of property within the urbanized core of the City.*

The proposed development would take place on vacant land within an industrial (M-2) zoning district and an industrial subdivision (Westgate Business Park, Unit 1, Block 1, Lot 2). The Applicant states that the metal building design is intended to blend in with the neighboring industrial buildings and industrial character. Landscaping around the perimeter of the Site and along the sides of the building is intended to enhance the character of the Westgate Business Park.

Economic Development Element

Goal 1: *To provide strong development policies that allow for the retention, expansion, and attraction of existing and new businesses and industries in and to Las Cruces.*

The Applicant states that the proposed development would provide from 40 to 50 new jobs to the City. The Applicant intends to recruit employees from the local, trained labor force who now commute to El Paso for work in similar venues.

Environment Element

Objective 7: Decrease noise pollution and any existing and future light pollution associated with all types of land uses.

The proposed entertainment activity would take place to pre-recorded music which would be played by a staff disc jockey (DJ). The Applicant proposes to design the building to have minimal openings and additional insulation in the building walls to dampen any exterior noise from the recorded music. Additionally, most of the industrial neighbors in the vicinity start their work day early in the morning and start to close their shops around the time that the music would begin to play (4 PM). The closest non-industrial neighbor immediately to the west of the Site is an adult bookstore and video shop; its business hours are from 9 AM to 2 AM. There is an auto repair business located across Westgate Court whose hours of operation are 8 AM to 6 PM Monday through Thursday and 8 AM to 5 PM on Friday. It is not anticipated that noise from the business would be detected at the auto repair shop.

The Applicant states that she does not propose any special events during the first months of operation. Proposed outdoor special events held in the parking lot area may increase the noise (music and patrons) emanating from the parking lot. If and when special events are offered inside the club, the Applicant states that staff security would insure that excessive noise from patrons in the parking lot is avoided. Although the Site lies within an industrial district and the closest residential use is over 3,000 feet from the Site, it is recommended by staff that the following condition of approval be placed on the use permit: *No outdoor special events or activities shall be permitted on the premises.* This condition would ensure potential noise impacts associated with special events are avoided.

The rear of the property faces W. Amador Avenue, a major arterial roadway. The Applicant would install a 6 foot tall privacy fence on the W. Amador Avenue property line which would screen the use and potential headlight glare from Amador Avenue.

Lastly, smoking would not be permitted in the club interior space. Areas adjacent to the building would be available for smoking breaks; smoke from these areas would not be discernible off premises to disturb neighboring business employees or clients.

Transportation Element

"Objective 2: Establish standard designs for all streets where cars, trucks, and other vehicles operate. (b): For Major Arterial roads, Access shall be limited and shared according to the amount of property frontage maximizing and protecting through-traffic-flow; the frequency and size of access points should also be determined by adjacent land use and zoning. No on-street parking permitted, unless part of an officially adopted plan and by specific City Council Action."

West Amador Avenue is classified as a *principal arterial* City street (major arterial per the Comprehensive Plan) with a median turn lane abutting the subject property. As a principle and practice, driveways and curb cuts should be minimized along principal arterial roadways. Access to the Site is via Westgate Court, a minor local cul-de-sac, paved and built as part of the Westgate business park subdivision. The Applicant would be required to provide curbs, gutters and sidewalk along her property frontage on Westgate Court and would be required to landscape the parkway (dirt berm area) and paved median located on West Amador Avenue adjacent to her property.

As noted below, there is concern that the proximity of two "big rig" truck stops located at West Amador Avenue and Motel Boulevard would result in patrons with these large trucks parking on Westgate Court, a cul-de-sac. There is evidence of large trucks turning around in the cul-de-sac and driving over the existing curbs and sidewalks and damaging some utility covers and sidewalk concrete. Staff recommends a condition of approval for the Special Use Permit that would require the Applicant to pay the costs of the City installing no parking signs along Westgate Court. The Police Department would

enforce this prohibition of on-street parking of all types of vehicles during the day as a matter of course for the motorcycle unit and at night with patrol units, on a complaint basis. Staff recommends that the Applicant post a large and visible sign at the entrance to the club stating that there is no parking on Westgate Court and that vehicles would be towed at the owner's expense. This condition is intended to mitigate parking congestion by big rigs on Westgate Court and the associated damage to curbs and sidewalks as those large trucks maneuver to exit the cul-de-sac.

PUBLIC COMMENT

In addition to the various public notices required by the 2001 Zoning Code, as amended, for Special Use Permits, staff also conducted door-to-door outreach to tenants of properties surrounding the Site by (1) handing out copies of the application and drawings to neighboring business operators; (2) explaining the project review and public hearing process and schedule; and (3) soliciting comments and answered questions about the project. One neighboring business operator and property owner, CRS Garage, responded with a letter outlining their concerns about the proposed project. Their comments are attached and are summarized below:

- With the proximity of the two truck stops at Motel Boulevard and the propensity of the truck drivers to drive their "big rigs" to the EROS video store, it is anticipated that additional truckers would drive and park their large trucks at the proposed project and Westgate Court is not designed to accommodate such large vehicle parking. It would be better if access to the property was from Amador Avenue;
- Traffic associated with the new business would conflict with traffic associated with the EROS video store next door;
- The proposed activity would attract illegal activities such as drug use, alcohol abuse and prostitution and it is uncertain whether the Police Department has the service capacity to handle this extra workload; and
- Concentration of adult entertainment activity in this area would change the character of the business community which would be inconsistent with the existing business community with the exception of the EROS store.

CONCLUSION

The proposed project Site meets all of the location criteria of the 2001 Zoning Code Sections 38-33G and 38-54B in that it is zoned M-2, is more than 1,000 feet away from any school, church, day care/nursery, public park, park facility or residentially-zoned district and is located more than 500 feet from any establishment with a liquor license. The closest school is more than a mile away: the closest church is more than 4,000 feet away with the exception of a small, unlicensed religious organization located in a warehouse approximately 1,780 feet northeast of the Site (as the crow flies): the closest day care operation is about 4,500 feet southeast of the Site (see Attachment 4): the closest park is Burn Lake located over 1,500 feet south of the Site: the closest residential zoning districts lie over 3,000 feet to the northwest, northeast and southeast of the Site (see Attachment 5): and the closest business with a liquor license is believed to be Los Mariachis restaurant at Hadley Avenue and Motel Blvd., located approximately 2,800 feet away (as the crow flies).

The proposed Site lies within an industrial district which is characterized by business services, warehousing, distribution/shipping services, printing, cement manufacturing, auto sales and repair, towing services, bail bonding services, building service and supply operations, detention facilities (Doña

Ana County Detention Center), and an adult book/video store. Sharing Westgate Court with the subject property are a Federal Express courier service warehouse and distribution center, the CRS Garage, a vehicle repair business, the Burn Construction Company office and construction equipment storage yard, and EROS, an adult retail store. EROS is located immediately west of the Site and sells adult-oriented, sexually-explicit videos/CDs, magazines and sex toys and accessories. EROS is open from 9 AM to 2 AM daily.

The CSR Garage, an auto repair shop, is located at the end of the Westgate Court cul-de-sac. The owner/operators, Mr. and Mrs. Hulbert, stated truckers from the nearby Pilot and TA truck stops on Motel Blvd. patronize the EROS video store and park their "big rigs" along Westgate Court, as outlined in the "Public Comment" section above. As the "big rigs" turn around in the cul-de-sac to leave, they drive up onto the curb and sidewalks and damage concrete and paving and have damaged water meter covers and a fire hydrant. The Hulberts are concerned that the new adult entertainment club would attract more truck drivers who would park their large trucks on Westgate which would disrupt traffic flow to their business location. The manager of the EROS store confirms that a single truck driver would occasionally park his large truck on Westgate Court next to their store frontage for a few minutes while he runs in to purchase a magazine or movie. They state that when this occurs, it occurs in late afternoon or around 10 to 11 PM. If the new venue attracts numerous truck drivers who bring their "big rigs" to the Site, congestion of Westgate Court would occur. Staff recommends that the City post signs at the entrance to Westgate Court which prohibits on-street parking along with the warning that violators would be towed at the expense of the owner of the vehicle. The installation of the no parking signs should be paid for by the Applicant. Businesses along the cul-de-sac have off-street parking for their customers and are not expected to be hampered by this on-street prohibition of parking. In response to the concerns of the neighbors, Staff recommends, and the Applicant has agreed to, a condition of approval requiring a large, visible notice at the entrance of the club warning patrons that they cannot park their vehicles on Westgate Court or it would be towed at their own expense.

Staff met with the City of Las Cruces Police Department (LCPD) administration to discuss the potential for additional police service for the proposed project. Police Department staff indicated that during the day the Department's motorcycle division would be able to patrol Westgate Court to enforce the prohibition of parking thereon: at night the Department's patrol division would enforce the prohibition on a complaint basis only. LCPD staff stated that the service calls that could be expected for the new establishment would be the same as that for any bar: Driving under the influence of alcohol or for fighting, either of which the Department could respond to without stressing police coverage of other areas of the City. The LCPD does not expect any service calls for prostitution at or near the establishment. In 2011, there were three service calls for prostitution in the entire City. The LCPD also noted that the City has a policy that no Police Officer may work in any security-related off-duty employment, so no off-duty City Police Officers may work at the establishment as was anticipated by the Applicant.

The proposed project, with the recommended conditions of approval to address concerns about noise and on-street parking congestion on Westgate Court, can be supported by relevant policies of the City of Las Cruces Comprehensive Plan.

SECTION 4: STAFF RECOMMENDATION

Staff recommends **CONDITIONAL APPROVAL** of the project based on the following findings and conditions listed below:

FINDINGS FOR APPROVAL

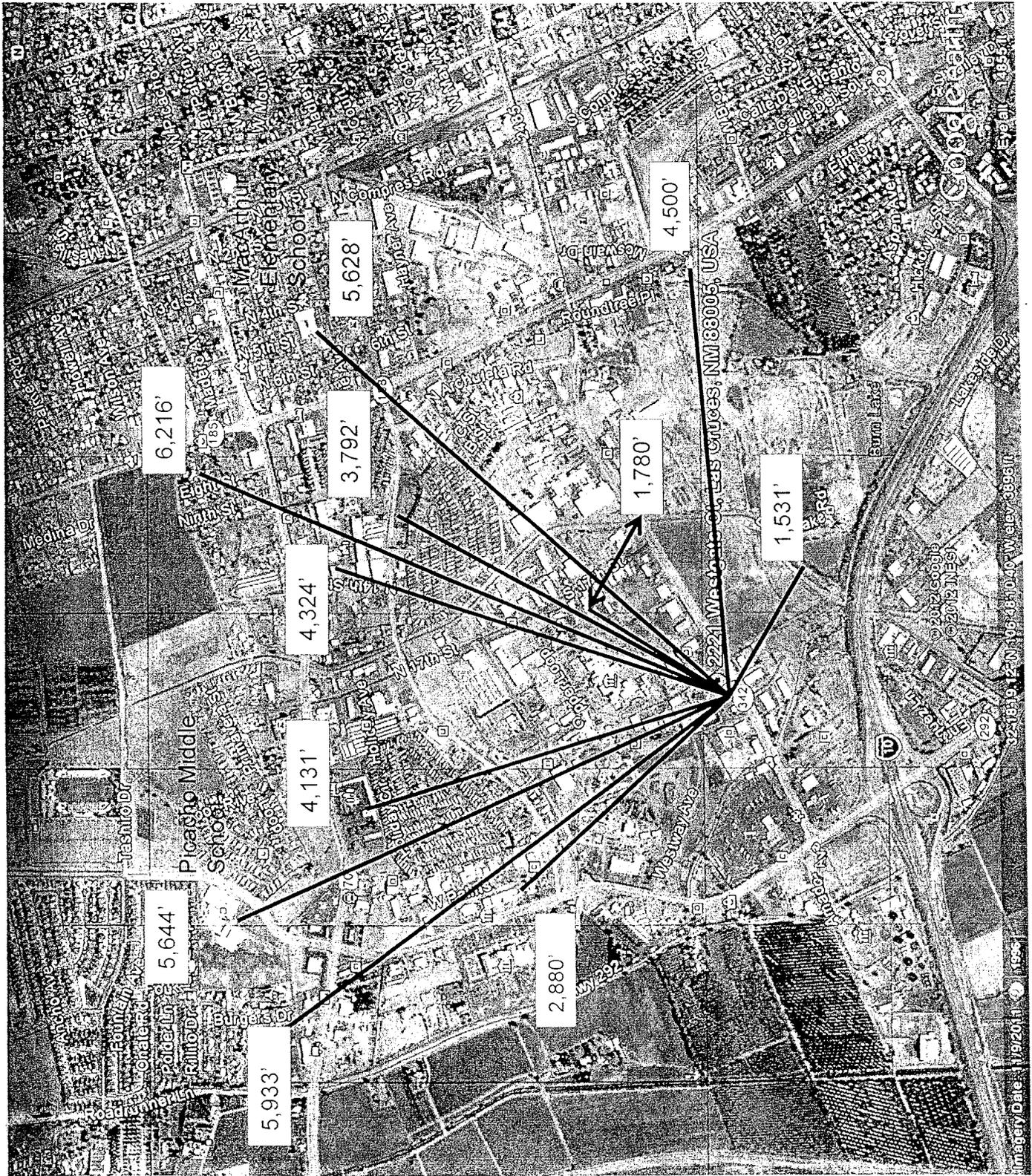
1. The proposed adult entertainment use (the club) is located in an industrial area and the location meets all the distance requirements of Sections 38-54B and 38-33G of the 2001 Las Cruces Zoning Code, as amended;
2. The proposed Site design screening and landscaping and the proposed building design provide a compatible appearance with their industrial neighbors;
3. The proposed Site design and interior and exterior building design incorporate security measures and the Applicant proposes a full-time security staff for both the interior and exterior spaces;
4. City agencies have reviewed the proposed development and have recommended approval; and
5. Potential truck parking impacts can be mitigated if the City prohibits parking on Westgate Court and if the Club manager verbally warns and posts sign at the club entrance notifying patrons that they may not park on Westgate Court or the vehicle would be towed.

RECOMMENDED CONDITIONS OF APPROVAL

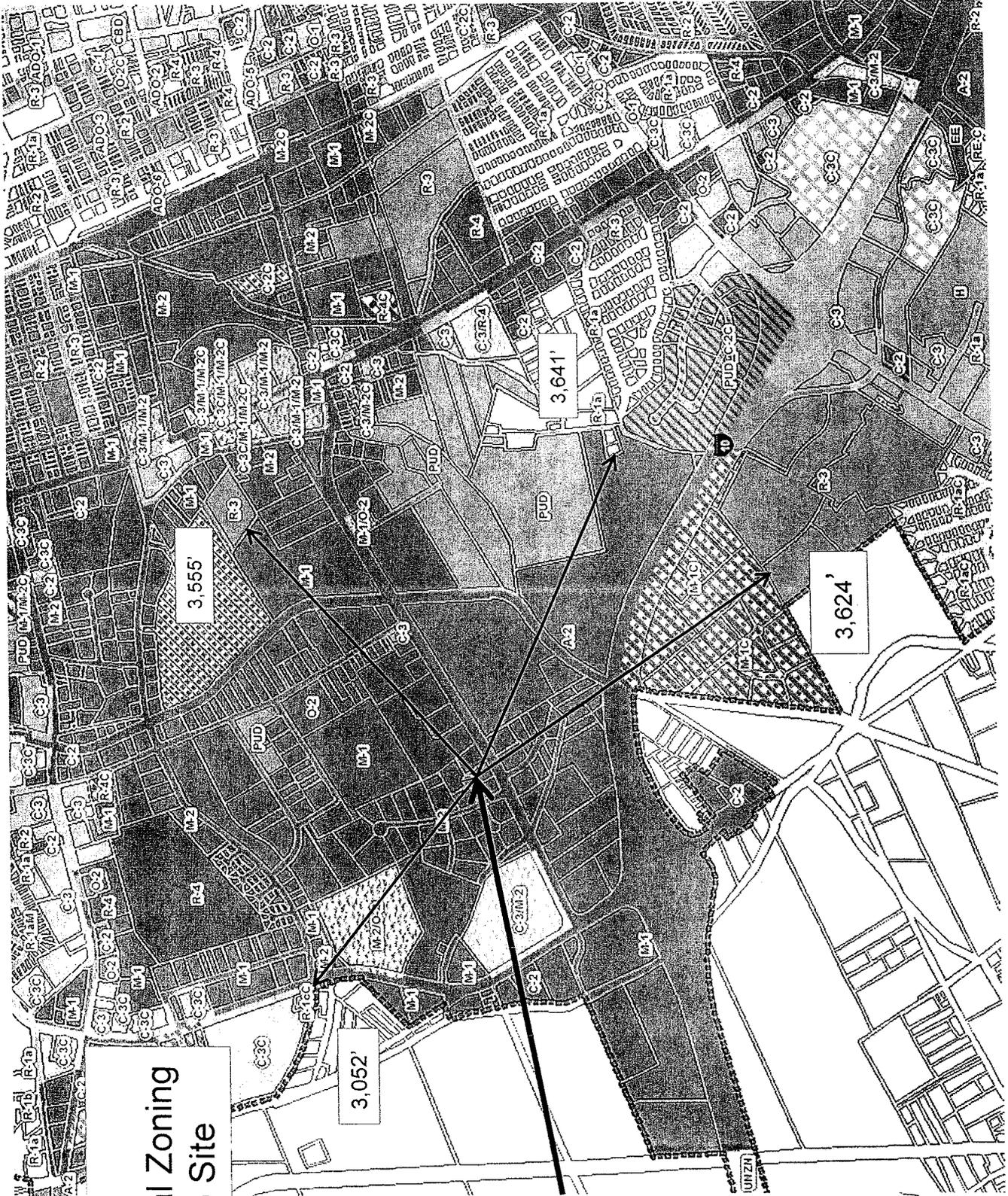
1. The Applicant shall pay the costs to the City for installing no-parking signs along Westgate Court; the signs would be approved by the City of Las Cruces, and in accordance with the City of Las Cruces Design Standards. The signs would be installed prior to operation of the club. The Applicant shall post a large, visible warning sign at the entrance of the club advising drivers that parking is prohibited along Westgate Court and vehicles parked there will be towed at the owner's expense and shall urge patrons not to park on Westgate Court.
2. There shall be no outdoor special events or outdoor entertainment activities permitted on the premises in order to mitigate potential noise impacts.
3. Landscaping, as proposed by the Applicant, approved by the City of Las Cruces, and in accordance with the City of Las Cruces Design Standards, shall be provided along the perimeter of the Site as well as next to the proposed building.
4. A rock wall or opaque fence, as proposed by the Applicant and in compliance with City of Las Cruces Zoning and Building Regulations, shall be built along the Amador Avenue frontage to screen the Site from Amador Avenue and any adjacent or effected properties.
5. Off-street parking shall not exceed the maximum number allowed using the bar land use calculation.

ATTACHMENTS

1. Aerial Vicinity Map
2. Location Map
3. Zoning Map
4. Distance to schools, churches, parks and day care map
5. Distance to residential zoning districts map
6. Site Plans
7. Application & Development Statement
8. Reviewing Department Comments
9. Public Input

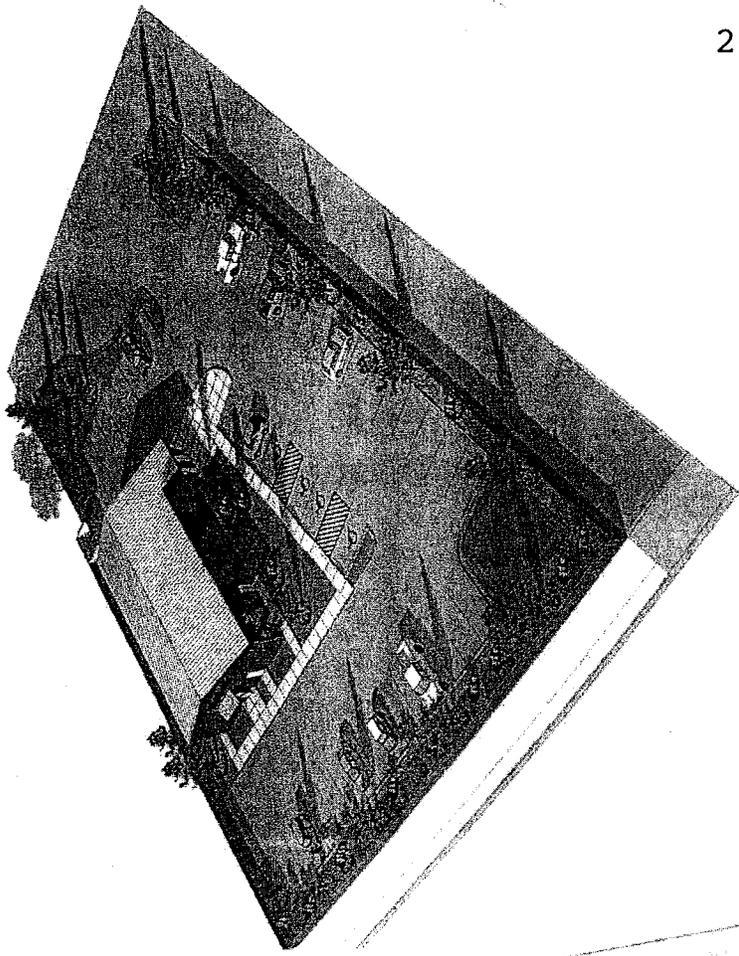


Closest
schools
churches
day care
park
facilities &
liquor lic.
to Site

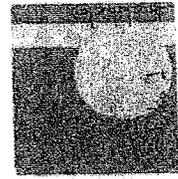


Closest Residential Zoning Districts to Site

Site

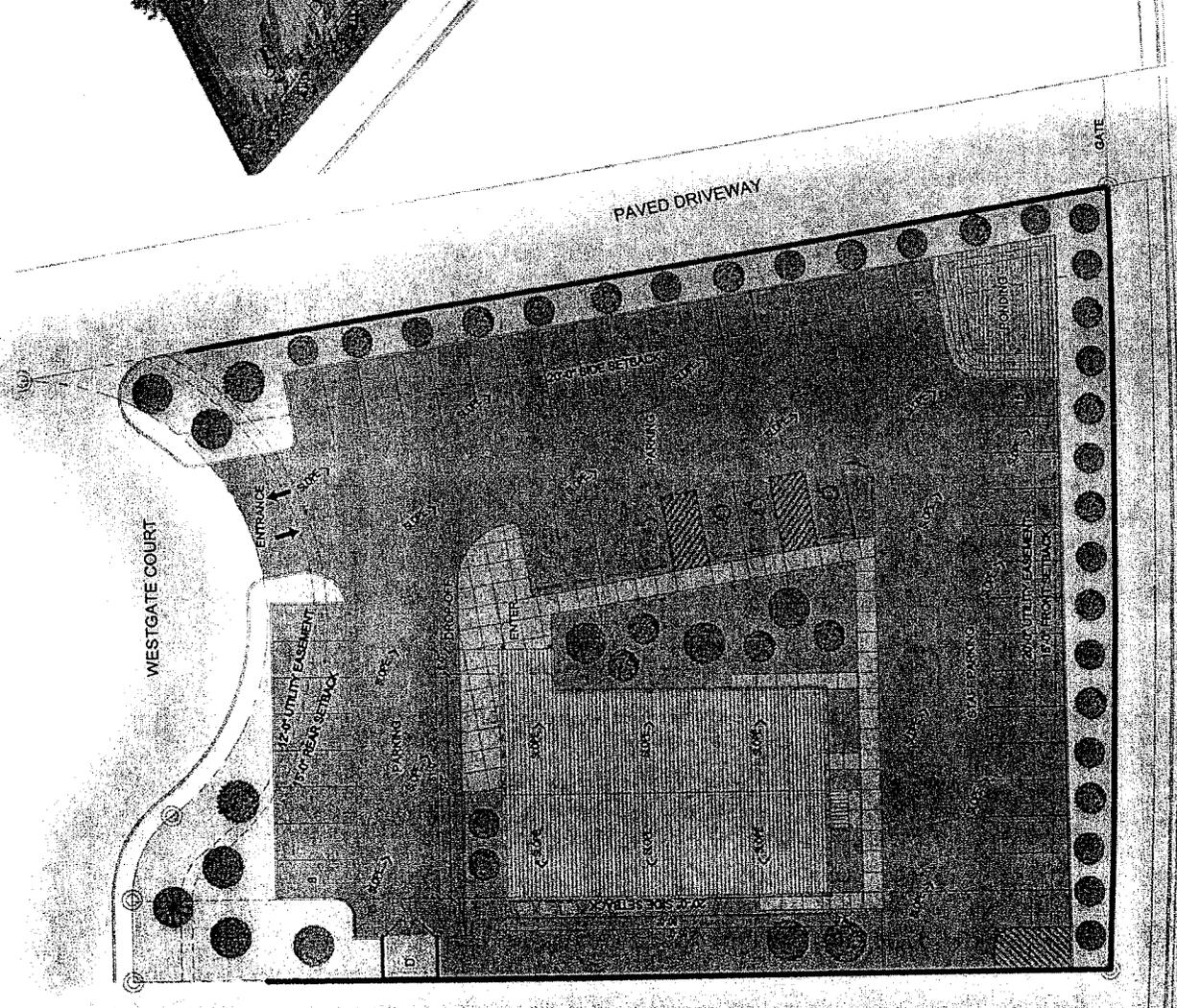


LOT 2, BLOCK 2
WESTGATE BUSINESS PARK
0.912 ACRES
VACANT LAND
PARCEL NO. 02-18451



The Bronx
Studio d Architects

100
50
0
0 20 50 100
WEST AMADOR AVENUE



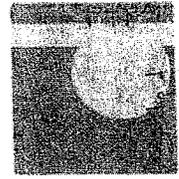
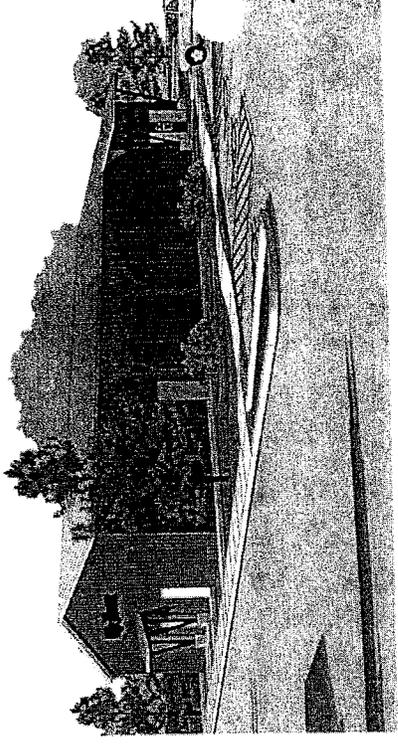
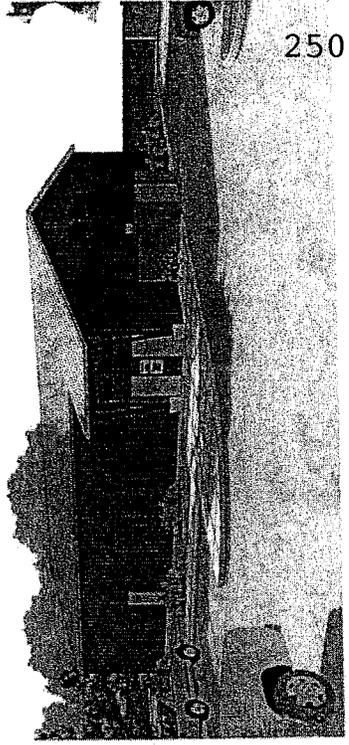
48 PARKING SPACES
4 HANDICAP SPACES
3 BIKE SPACES

PLAN
SITE PLAN
1" = 20'-0"



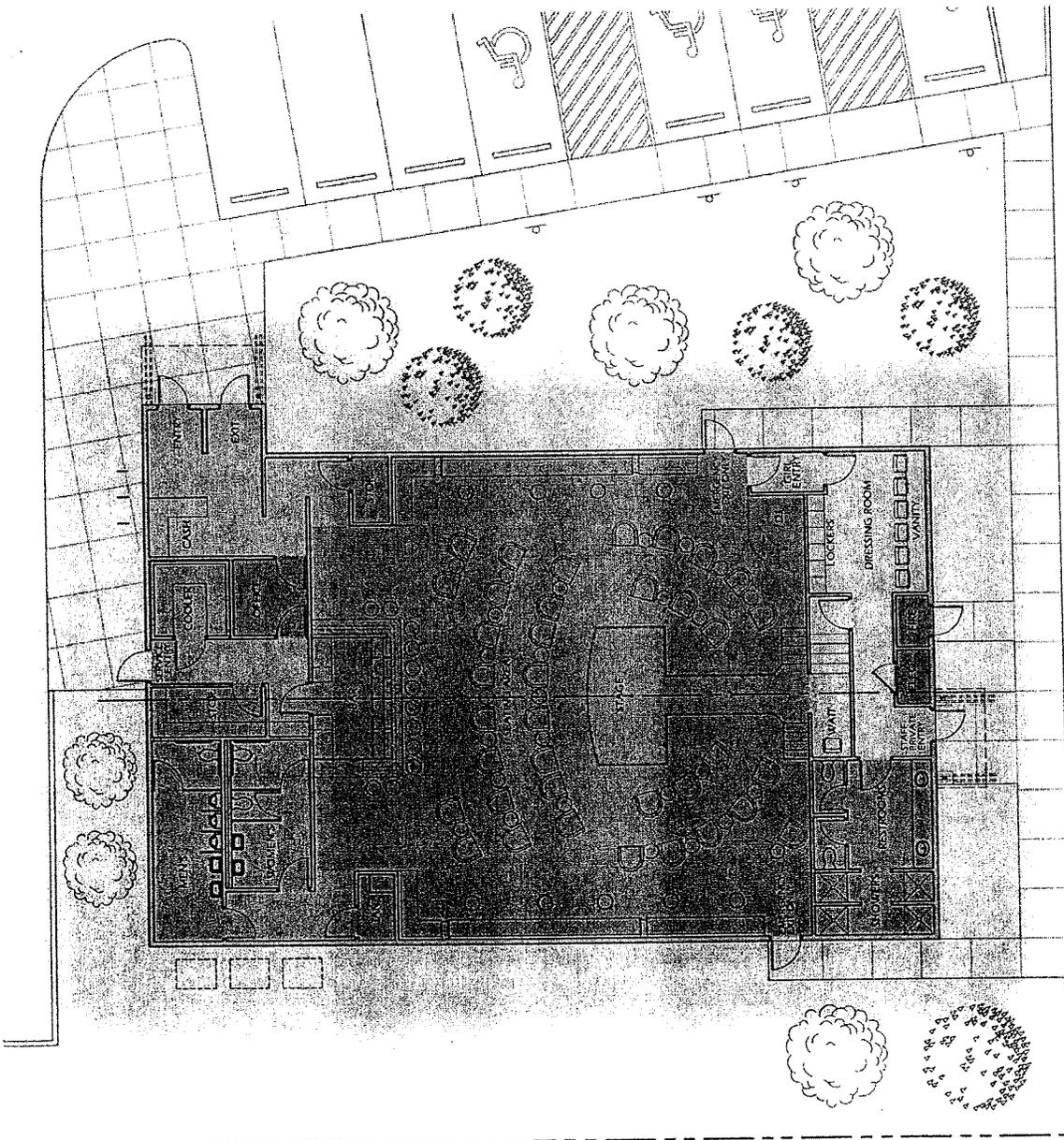
Central Park West NY LLC

EROS VIDEO



The Bronx
Studio d Architects

AUGUST 8, 2012
200 E. Main Street
Los Osos, CA 95051
Tel: 831.237.1379



 NORTH
FLOOR PLAN
1/8" = 1'-0"
4,094 SQ. FT.
81 SEATS
Central Park West NY LLC



CITY OF LAS CRUCES DEVELOPMENT APPLICATION

700 N. Main Street, Suite 1100 or PO Box 20000, Las Cruces, New Mexico 88004
 (575) 528-3043 (Voice) (575) 528-3155 (FAX) 1-800-659-8331 (TTY)

A preapplication meeting is required prior to the filing of an application at which the subdivider shall submit a concept plan of the proposed development to the community development staff for review.
Community Development staff will not accept incomplete applications.

The City of Las Cruces does not discriminate on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability in the provision of services. The City of Las Cruces will make reasonable accommodation for a qualified individual who wishes to attend this meeting. Please notify the City Community Development Department at least 48 hours before the meeting by calling (575) 528-3043 (voice) or 1-800-659-8331 (TTY) if accommodation is necessary. This document can be made available in alternative formats by calling the same numbers listed above.

(Case # SUP-17-03)

SUBJECT PROPERTY ADDRESS: 2221 Westgate Court, Las Cruces, NM, 88005

PROPERTY TAX ID# 4-005-136-405-075 PARCEL ID# 02-18451

PROPERTY OWNER(S) of record: Central Park West NY LLC

Address: 913 Summer Place City Las Cruces State NM Zip 88001

Phone: Home (575) 647-1115 Work () Mobile (915) 256-4639 Fax ()

APPLICANT/CONTACT PERSON: If different from owner, additional space provided on the back.

Name: Mariah J Hernandez Title/Company: Manager / Central Park LLC

Address: 913 Summer Place City Las Cruces State NM Zip 88001

Phone: Home (575) 647-1115 Work () Mobile (575) 635-0610 Fax ()

email address: _____

Check and complete all boxes that apply:

PLANNING AND ZONING COMMISSION			
<input type="checkbox"/>	Zoning	From _____ to _____	Master Plan
<input type="checkbox"/>	Variance	From _____ to _____	Preliminary Plat
<input checked="" type="checkbox"/>	Special Use Permit (SUP)		Final Plat
<input type="checkbox"/>	New	Renewal/Time Ext.	Amendment
<input type="checkbox"/>	Planned Unit Development (PUD)		Replat
<input type="checkbox"/>	1- Concept Approval		Alternate Summary
<input type="checkbox"/>	2- Final Site Plan Approval		Infill Sub-Conceptual Plan
<input type="checkbox"/>	3- Amendment		Vacation Subdivision
<input type="checkbox"/>	4- Renewal/ Time Extension		Annexation Petition/Plat/Initial Zoning Req.
<input type="checkbox"/>	West Mesa Ind. Park		University District
<input type="checkbox"/>	Infill Development Requests(S)		South Mesquite
APPEAL TO:	<input type="checkbox"/>	PLANNING & ZONING COMMISSION	CITY COUNCIL

SIGNATURE(S): By signing the application, you hereby acknowledge ²⁵³ ALL the information submitted on and with this application is true and correct to the best of your knowledge. No application will be accepted without the original signature of the owner(s) of record of the described property. If more than one owner, ALL owners must sign the application.

Owner(s):

Would the property owner like to receive a copy of all correspondence sent to the applicant?

Property Owner Please Initial: Yes _____ No ✓

Hernandez _____ Date _____

Property Owner 1 _____ Date _____

Property Owner 2 Mariah J Hernandez _____ Date 7-27-12

Applicant/Representatives(s), if different from owner:

NOTE: The Owner, Applicant or legal representative must attend all public hearings.

ADDITIONAL APPLICANTS / CONTACT PERSONS, if different from owner:

Property Owner 1:
 Name: Jesse Hernandez Title/Company: Owner/Central Park West NY LLC
 Address: 913 Summer Place City Las Cruces State NM Zip 88001
 Phone-Home (575) 647-1115 Work() Mobile (915) 256-4639 Fax()

Property Owner 2:
 Name: _____ Title/Company: _____
 Address: _____ City _____ State _____ Zip _____
 Phone-Home () Work() Mobile() Fax()

Applicant/Representative:
 Name: Mariah J Hernandez Title/Company: Manager/Central Park LLC
 Address: 913 Summer Place City Las Cruces State NM Zip 88001
 Phone-Home (575) 647-1115 Work() Mobile (575) 635-0660 Fax()

*****STAFF USE ONLY*****

Accepted by:	<u>AV</u>	Fee Paid:	<u>\$ 1000.-</u>	Date Fee Paid	<u>8/10/12</u>
Receipt No.	<u>#3444001</u>	Check Number	<u># 331</u>	Case Number	<u>SUP-R-03</u>
Submittal Date	<u>8/10</u>	Submittal Complete		Assigned to:	<u>SM</u>

Detailed Description of Intended Use of Property

The intent use of this location is to build and operate a adult entertainment business in the form of a gentlemen's club. This location was selected using the guidelines the City of Las Cruces Planning and Zoning Commission provided. It is also adjacent to another established adult entertainment business. The goal is to bring adult entertainment in the form of topless dancing along with the sale of alcoholic beverages in an enclosed environment. Generally if someone wants to visit an establishment of this kind they have to travel over fifty miles into El Paso, Texas. The development of this property will consist of a 4,000 square foot metal building to match its industrial surroundings. Landscaping and fencing will be added. The entrance will be thru Westgate Court. All construction will be new, the property is currently vacant. The building design has been attached. The operation of the business will be as follows:

hours and days of operation Monday- Saturday from 11:00am-2:00am closed Sundays. These days and times may change as business settles in. All rules and guidelines of the Alcohol and Gaming Division and any city ordinances will be followed. Security will be provided inside and outside within the property lines. The business will have between 30-50 employees, which will add to the economic growth of Las Cruces by providing jobs and paying taxes from sales.

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: Central Park LLC.

Contact Person: Mariah J Hernandez

Contact Phone Number: 575-635-0610

Contact e-mail Address: jar-white-storm@yahoo.com

Web site address (if applicable): centralparkeastmeadowllc@gmail.com

Proposal Information

Name of Proposal: _____

Type of Proposal (single-family subdivision, townhouse, apartments, commercial/industrial)

Location of Subject Property 2221 Westgate Court, Las Cruces, NM, 88005

(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: .91

Detailed description of **current** use of property. Include type and number of buildings:

Vacant Land

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

See Attached

Zoning of Subject Property: M-1/M-2 (Industrial Standard)

Proposed Zoning (if applicable): _____

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

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

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

4000 Sq. Ft / Eve Ht. 16'-0", 20' H @ Top of Gabel

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

Mon - Sat 11:00AM - 2:00AM

Anticipated traffic generation _____ trips per day.

Anticipated development schedule: work will commence on or about _____

and will take 4 Months to complete.

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

On-Lot ponding per city of Las Cruces Standards

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). A Rock or Wood Fence with

Landscaping that will Buffer the Building from

Amador. All Exterior lighting will meet all Las Cruces &

State Night Sky Requirements

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? NO

Are there existing buffers on the property? Yes, West Property has

Fence & Landscaping

Is there existing parking on the property? Yes ___ No X

If yes, is it paved? Yes ___ No ___

How many spaces? 0 How many accessible? 0

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



City of Las Cruces®

PEOPLE HELPING PEOPLE

SPECIAL USE PERMIT Police Department Case Review Sheet

Date: August 8, 2012

TO: ~~CLO Police Department~~

FROM: Susana Montana, Planner, 528-3207, smontana@las-cruces.org

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx".

Application Date: August 8, 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

This Special Use Permit application will go before the Planning and Zoning Commission in August or September 2012. The club operator will be a local resident. There will be security features inside the club to protect the dancers and patrons. There will be security outside on the premises to protect patrons and employees. The owner/operators would prefer to hire off-duty City Police Officers as their security employees. Do you have any comments on the operation of the "Gentlemen's' Club" that you would like to share with the Commission? Please feel free to contact me or the Applicants if you have any questions about the operation of this establishment.

Please review and return to the Community Development Department no later than Wednesday, August 15, 2012.

Please make comments on this proposal in relation to the impacts it may have on the City from the standpoint of your City function, activity, service or other resource(s). Please use the attached review sheet to record your comments. If you need more information, please contact me at 528-3207 or smontana@las-cruces.org. Thank you.

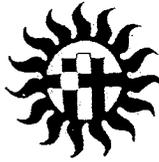
Approved AS IS: Yes No

Approved with conditions (as stated below in Comments): Yes
Comments:

Date: 08/22/12

Reviewer: CHAD MILLER

Reviewer contact no. 528-4289



City of Las Cruces®

PEOPLE HELPING PEOPLE

SPECIAL USE PERMIT

Engineering Services Case Review Sheet

Date: August 8, 2012

TO: CLC Engineering Services -Drainage Division

FROM: Susana Montana, Planner, 528-3207, smontana@las-cruces.org

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx"

Application Date: August 8, 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

Note: On Sheet 2—the Site Plan, the arrows marked "slope" show the direction of the stormwater drainage.

Please review and return to the Community Development Department no later than Wednesday, August 15, 2012.

Please make comments on this proposal in relation to the impacts it may have on the City from the standpoint of your City function, activity, service or other resource(s). Please use the attached review sheet to record your comments. If you need more information, please contact me at 528-3207 or smontana@las-cruces.org. Thank you.

Approved AS IS: Yes No

Approved with conditions (as stated in Comments on page 2): Yes

Date: 8/17/12

Reviewer: Rocio Dominguez

Reviewer contact no. 528-3071

City of Las Cruces
Engineering Services Case Review Sheet

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment venue; Review No. 1

FLOOD ZONE DESIGNATION*:

- Zone A (Flood elevation needed) _____
- Zone AE (Flood elevation known) _____
- Zone AH (Flood 1' - 3' ponding) _____
- Zone AO (Flood 1' - 3' - steep slopes) _____
- Zone A99 (100-year flood) _____
- Zone X _____
- Zone X(500) (500 Yr. flood zone) _____
- Zone D (Unknown flood determination) _____

DEVELOPMENT IMPROVEMENTS*:

- Drainage Calculation needed YES NO _____ N/A _____
- Drainage Study needed YES _____ NO N/A _____
- Other drainage Impr. needed YES NO _____
- Sidewalk extension needed YES NO _____
- Curb & gutter extension needed YES NO _____
- Paving extension needed YES _____ NO

**Any new improvements, at either the time of subdivision or building permit, will require conformance with City of Las Cruces Flood Zone Ordinance 1933 and City of Las Cruces Design Standards.*

DEPARTMENTAL COMMENTS:

****PLEASE PROVIDE ALL REDLINES FROM THE PREVIOUS REVIEW****

City of Las Cruces Fire Prevention & Emergency Services

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

ACCESSIBILITY ISSUES: *

CONCERN

	Low	Medium	High
Building Accessibility	<u>X</u>	___	___
Secondary Site/Lot Accessibility	<u>X</u>	___	___
Fireflow/Hydrant Accessibility	<u>X</u>	___	___

Type of Building Occupancy: A-2

Nearest Fire Station: ~~Station 6~~ Distance: approx. 1.5 mile

Address: Station 3

Adequate capacity to accommodate development? X Yes ___ No

**Any new improvements, at either the time of subdivision or building permit, will require conformance with City of Las Cruces Design Standards, Subdivision Code, Building Code, and/or Fire Code.*

DEPARTMENTAL COMMENTS:

will be classified as A-2 in IFC

****PLEASE PROVIDE ALL REDLINES FROM THE PREVIOUS REVIEW****

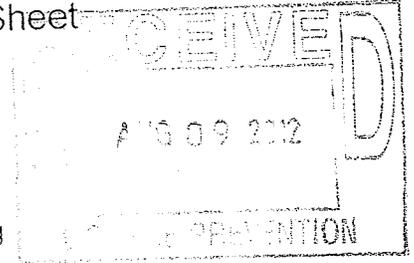


City of Las Cruces®

PEOPLE HELPING PEOPLE

SPECIAL USE PERMIT

Fire & Emergency Services Case Review Sheet



Date: August 8, 2012

TO: Mark Dubbin, CLC Fire & Emergency Services

FROM: Susana Montana, Planner, 528-3207, smontana@las-cruces.org

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx"

Application Date: August 8, 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

Please review and return to the Community Development Department no later than Wednesday, **August 15, 2012.**

Please make comments on this proposal in relation to the impacts it may have on the City from the standpoint of your City function, activity, service or other resource(s). Please use the attached review sheet to record your comments. If you need more information, please contact me at 528-3207 or smontana@las-cruces.org. Thank you.

Approved AS IS: Yes No *mt*

Approved with conditions (as stated in Comments on page 2): Yes

Date: 8/10/12

Reviewer: *[Signature]*

Reviewer contact no. 24150

261
CITY OF LAS CRUCES DEVELOPMENT SERVICES
UTILITIES CASE REVIEW SHEET

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

WATER AVAILABILITY & CAPACITY*

Water Provider

CLC

Other _____

CLC Water System capable of handling increased usage

Yes

No _____

Comment: _____

WASTEWATER AVAILABILITY & CAPACITY*

Wastewater service type

CLC Sewer

On-lot Septic _____

CLC Wastewater System capable of handling increased usage

Yes

No _____

Comment: _____

NATURAL GAS AVAILABILITY & CAPACITY*

Natural Gas Provider

City of Las Cruces

Other _____

CLC Gas System capable of handling increased usage:

Yes

No _____

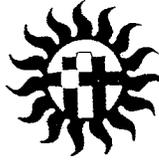
Comment: _____

** To receive City utility service to this property, the property owner/applicant/subdivider is responsible for (1) the acquisition of all necessary water, sewer, and gas easements, (2) the construction of all necessary utility lines, and (3) compliance with all applicable City of Las Cruces requirements.*

Comments: _____

Robert Paul
08/15/12

PLEASE PROVIDE ALL REDLINES FROM THE PREVIOUS REVIEW



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SPECIAL USE PERMIT

Utilities Division Case Review Sheet

Date: August 8, 2012

TO: CLC Engineering Services - Utilities Division

FROM: Susana Montana, Planner, 528-3207, smontana@las-cruces.org

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx"

Application Date: August 8 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

Please review and return to the Community Development Department no later than Wednesday, **August 15, 2012.**

Please make comments on this proposal in relation to the impacts it may have on the City from the standpoint of your City function, activity, service or other resource(s). Please use the attached review sheet to record your comments. If you need more information, please contact me at 528-3207 or smontana@las-cruces.org. Thank you.

Approved AS IS: Yes No

Approved with conditions (as stated in comments on page 2): Yes

Date: 08/15/12

Reviewer: *[Signature]*

Reviewer contact no. 528-3635

we relinquish our first right of refusal; pro water rights issues - E.O. 8/9/12

****PLEASE PROVIDE ALL REDLINES FROM THE PREVIOUS REVIEW****

SPECIAL USE PERMIT

DATE: August 16, 2012

REVIEW: #1
CASE NO.: SUP-12-03

TO: CURRENT PLANNING
 ENGINEERING SERVICES
 LAND MANAGEMENT
 SURVEYOR (Rec'd 8/10/12)
 CITY UTILITIES
 MPO

COUNTY PLANNING
 COUNTY ENGINEERING
 COUNTY FLOOD COMMISSION
 COUNTY FIRE
 NM ENVIRONMENTAL
 EBID
 OTHER (GIS)

FROM: Susana Montana, Planner

SUBJECT: Special Use Permit
2221 Westgate Ct.

Please review and return to the Community Development Department no later than August 15, 2012

APPROVED AS IS:

APPROVED WITH CONDITIONS: YES, *SEE CONDITIONS AS STATED IN COMMENT SECTION*

DATE: 8/16/2012

REVIEWER NAME: ^{DC} Darryl Coster, PS / ^{SF} Scott Farnham, PE. PS
REVIEWER CONTACT NO. 528-3162 / 528-3121

COMMENTS:

As per City of Las Cruces requirements:

1. Revise the Block Number of the property description.
2. Revise the Subdivision Name to match the recorded Plat.
3. Submit a copy of the recorded plat and legal description.

August 14, 2012

SUP-12-03
2221 Westgate Court
(C. McCall)

Comments:

This is a request for a special use permit to open an adult entertainment venue in and M1/M2 zoning district. This zoning is the only designation that allows such a venue. The Comprehensive Plan does not address adult entertainment venues in policy form, so a detailed review of this proposal from a comprehensive planning perspective is not possible. Regarding special use permits, I found one policy, below, which may be of use. It appears as though the applicant has met requirements stated in the 2001 Zoning Code as amended and all other applicable codes so I see no problem with the proposal.

However, given the City's efforts to reduce parking lot facing the street, my only suggestion would be that the applicant consider moving the metal building closer to the street and relocating the parking spaces along Amador to the east or north of the building.

Transportation Element

GOAL 7: Growth Management: Enhance the development of Las Cruces using the Transportation System as a guiding factor.

Objective 1: Coordinate concepts contained in the Transportation Element so that they may be used by the City as tools to manage growth.

Policy 7.1.18 The City shall have the option to condition zone change and special use permit requests to meet the provisions of this section. This may include but not be limited to requirements for coordination with bike, public transportation, or pedestrian facilities, additional right-of-way, and coordination with other developers.



City of Las Cruces®

PEOPLE HELPING PEOPLE

SPECIAL USE PERMIT

Land Management & Right-of-Way Division Case Review Sheet

Date: August 8, 2012

TO: Bill Hamm, CLC Land Management and Right-of-Way Division

FROM: Susana Montana, Planner, 528-3207, smontana@las-cruces.org

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1
DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx".
Application Date: August 8, 2012
PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075
Address: 2221 Westgate Court

Please review and return to the Community Development Department no later than Wednesday, **August 15, 2012.**

Please make comments on this proposal in relation to the impacts it may have on the City from the standpoint of your City function, activity, service or other resource(s). Please use the attached review sheet to record your comments. If you need more information, please contact me at 528-3207 or smontana@las-cruces.org. Thank you.

Approved AS IS: Yes No

Approved with conditions (as stated in comments): Yes

Date: 8-14-12

Reviewer: B.R. HAMM

Reviewer contact no. 528-3410

Comments:

RECEIVED

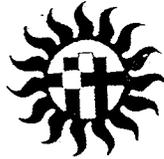
AUG 09 2012

CITY OF LAS CRUCES
LAND MANAGEMENT

RECEIVED

AUG 09 2012

TRAFFIC



City of Las Cruces®

PEOPLE HELPING PEOPLE

SPECIAL USE PERMIT

Traffic Engineering Division Case Review Sheet

Date: August 8, 2012
TO: CLC Engineering Services –Traffic Division
FROM: Susana Montana, Planner, 528-3207, smontana@las-cruces.org

Case No.: SUP-12-03, 2221 Westgate Ct. Adult Entertainment Venue; Review No. 1

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx".

Application Date: August 8, 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

Please review and return to the Community Development Department no later than Wednesday, **August 15, 2012.**

Please make comments on this proposal in relation to the impacts it may have on the City from the standpoint of your City function, activity, service or other resource(s). Please use the attached review sheet to record your comments. If you need more information, please contact me at 528-3207 or smontana@las-cruces.org. Thank you.

Approved AS IS: Yes No

Approved with conditions (as stated in Comments on page 2): Yes

Date: 8/10/12

Reviewer: Susana

Reviewer contact no. 2595

****PLEASE PROVIDE ALL REDLINES FROM THE PREVIOUS REVIEW****

CITY SPECIAL USE PERMIT AGENCY REVIEW

DATE: August 8, 2012

REVIEW: #1
CASE NO.: SUP-12-03

TO:

- PARKS
- LAND MANAGEMENT
- SURVEYOR
- ADDRESSING
- COMCAST

- CONTRACT ADMINISTRATION
- M.P.O.
- CURRENT PLANNING
- QWEST/CENTURY LINK
- EPEC

FROM: Susana Montana, Planner 528-3207, smontana@las-cruces.org

SUBJECT: CASE NO.: SUP-12-03

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx"

Application Date: August 8, 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

Please review and return to the Community Development Department no later than Wednesday, August 15, 2012.

APPROVED AS IS: YES NO

APPROVED WITH CONDITIONS: SEE CONDITIONS AS STATED IN COMMENT SECTION

DATE: 8/13/12 REVIEWER NAME: Andrew Wray

REVIEWER CONTACT NO. 3070

COMMENTS:

No Comments

CITY SPECIAL USE PERMIT AGENCY REVIEW

DATE: August 8, 2012

REVIEW: #1
CASE NO.: SUP-12-03

TO:

- PARKS
- LAND MANAGEMENT
- SURVEYOR
- ADDRESSING
- COMCAST

- CONTRACT ADMINISTRATION
- M.P.O.
- CURRENT PLANNING
- QWEST/CENTURY LINK
- EPEC

FROM: Susana Montana, Planner 528-3207, smontana@las-cruces.org

SUBJECT: CASE NO.: SUP-12-03

DEVELOPMENT NAME: 2221 Westgate Ct. Adult Entertainment Venue called "The Bronx"

Application Date: August 8, 2012

PARCEL ID No. 02-18451 TAX ID No. 4-005-136-405-075

Address: 2221 Westgate Court

This site is NOT located within 1,000 feet of any park or recreation facility; see Sheet 1.
Please review and return to the Community Development Department no later than Wednesday, August 15, 2012.

APPROVED AS IS: YES NO

APPROVED WITH CONDITIONS: *SEE CONDITIONS AS STATED IN COMMENT SECTION*

DATE: 8/9/12

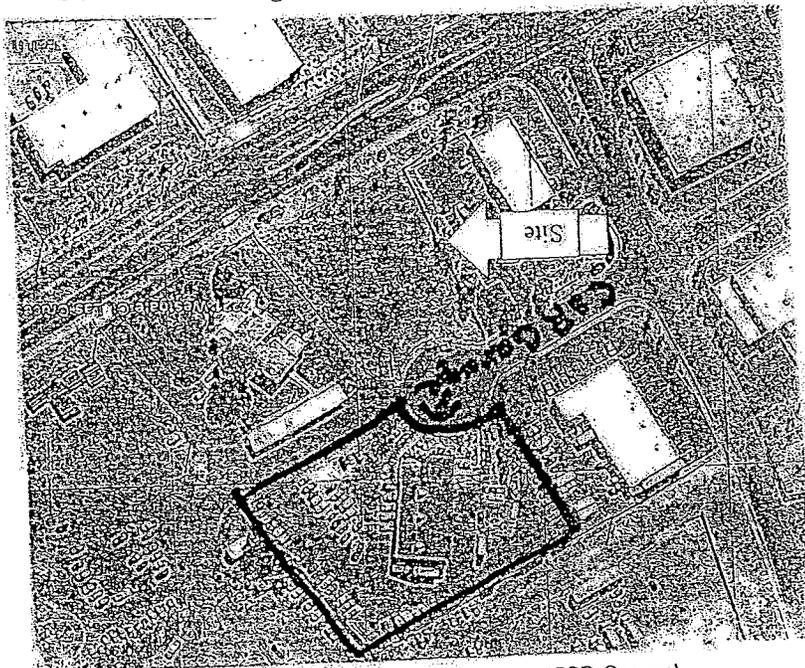
REVIEWER NAME: Mark Johnson

REVIEWER CONTACT NO. 2550

COMMENTS:

CSR GARAGE (Neighbor) COMMENTS

Date: August 14, 2012
 Case No: SUP-12-03
 Development Name: 2221 Westgate Ct. Adult Entertainment
 (Gentlemen's Club called "The Bronx")
 Application Date: August 8, 2012 (deemed complete)
 Parcel ID # 02-18451 Tax ID # 4-005-136-405-075
 Address: 2221 Westgate Court
 E-mail to: smontana@las-cruces.org.



Commenter's Name: Mike and Kathy Hulbert (CSR Garage)
 Commenters Address: 2181 Westgate Ct
 Las Cruces, NM 88005

We own the property diagonal to the proposed project, and enter off of the cul-de-sac located on Westgate Ct., as high lighted above.

Based on the information that is currently available it appears that there is inadequate parking, assuming an excess of fifty eight (58), potential patrons and fifteen (15) employees.

Based on the current use of the adjacent property "Eros Book Store" it does not appear that any provisions were made for the number of truckers with semi's that will be frequenting the business. Given it's proximity to "Trucks Stop of America", "Pilot" and the interstate, truckers will be frequenting the business and will need parking for big rigs.

The current proposed entrance off of Westgate Ct. would compete with and complicate traffic flow problems associated with the existing adjacent business "Eros Book Store" and would be in excess of any anticipated and designed for traffic of the existing road.

As proposed the entrance off of Westgate Ct., would encourage unregulated, ancillary activities, which accompany this type of operation including drug use, alcohol abuse and prostitution.

Based on the information currently available it is unclear whether the existing law enforcement has the capacity and abilities to deal with ancillary activities which will foreseeable be attracted to this location.

The City, County and State has already incurred additional burdens and expenses in attempting to control and curtail, inappropriate activities including prostitution, and drug use, caused by the attraction to "Eros Book Store" and concentrating of this kind of activity in a small area would over burden law enforcements resources.

Unplanned concentration of adult entertainment activity would result in a rippling effect, changing the nature and character of the existing business and is inconsistent with the predominate nature of existing business (Eros being the exception).

Thank you for sharing your thoughts with us.

I will be very interested in learning what leeway we have in denying permits to such establishments, and by way of copying City Manager Garza in this e-mail, I will be asking for information on what prohibitions exist or would be permissible to be passed into ordinance regarding the imposition of community standards on a business of this kind.

Given that this business is being proposed next to an existing adult bookstore in an area where there is not much in the way of residential property, there may be little in place to stop them from moving forward with their plans, but I would like to learn more.

Regards,
Greg Smith

Gregory Z. Smith
Councillor for District 2
The Gateway District

On Sep 6, 2012, at 8:47 PM, "Gwenda Leyendecker" <gwegerley@yahoo.com> wrote:

Dear City Council Members,

I am writing to express my opposition to a Stripper Bar opening and operating in Las Cruces. This type of business promotes drinking and drug use and is complete demeaning to both women and men. I also believe this could take money out of families' incomes and further lower the moral values of our community. I think the revenues the city would receive in taxes are not worth the trade-out in keeping our city a great place to live. I plan to show up to the council meeting on the 29th and if the measure passes...I will be one of the citizens taking pictures of license plates outside of the place of business.

Sincerely,
Gwenda Gerber Leyendecker
1070 Crossley Lane
Las Cruces, NM 88005
gwegerley@yahoo.com
575-640-5613

August 27, 2012

e-mail: smontana@las-cruces.org

Susan Montana, Planner

City of Las Cruces Community Development Department

Building & Development Services Division

Physical Location: City Hall

700 North Main Street, Suite 1100

Mailing Address: P.O. Box 20000

Las Cruces, NM 88004-9002

Re: "The Bronx" The Gentleman's Club

Dear Ms. Montana:

An off sight big rig parking that was close enough and big enough to be convenient would be helpful, however, as a practical matter the truck stops are already within walking distance and therefore location and convenience would be a huge factor.

Obviously the other concerns would not be addressed and there would still be traffic flow problems associated with the entrance off the cul-de-sac next to the existing Eros Book Store.

One possibility for anticipating an appropriate solution might be to spend a night with CSR Garage owners in order to see what is going on in and around the location.

- CSR Garage

Susana Montana

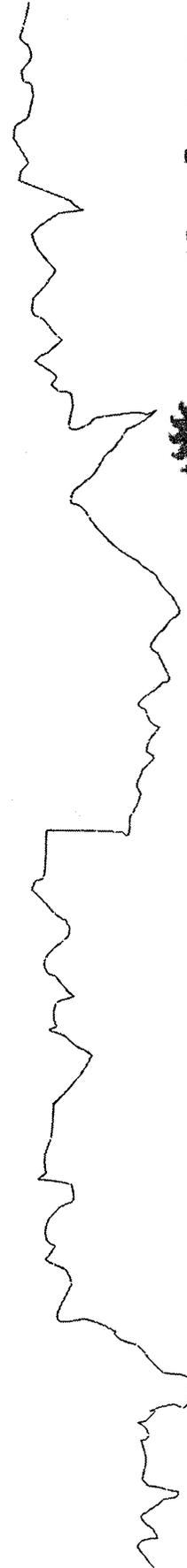
From: Sergio Guerrero <brendakd10@hotmail.com>
Sent: Wednesday, September 12, 2012 12:25 PM
To: Development Services
Subject: The new strip club

Yes many of my friends around my age late 20"s and early 40"s were talking about this we are terrified on what's this will do to our community. Most of us being mothers my self a very young mom would not like raise our children around this. From now on my children and I would not be able to drive through motel blvd so wont have to explain want tye of business that's is. That exploits young woman like myself. College kids missing class's or and creating problems. Revenue is not worth our community loosing our family values.

Sent from my iPad

SUP-12-03

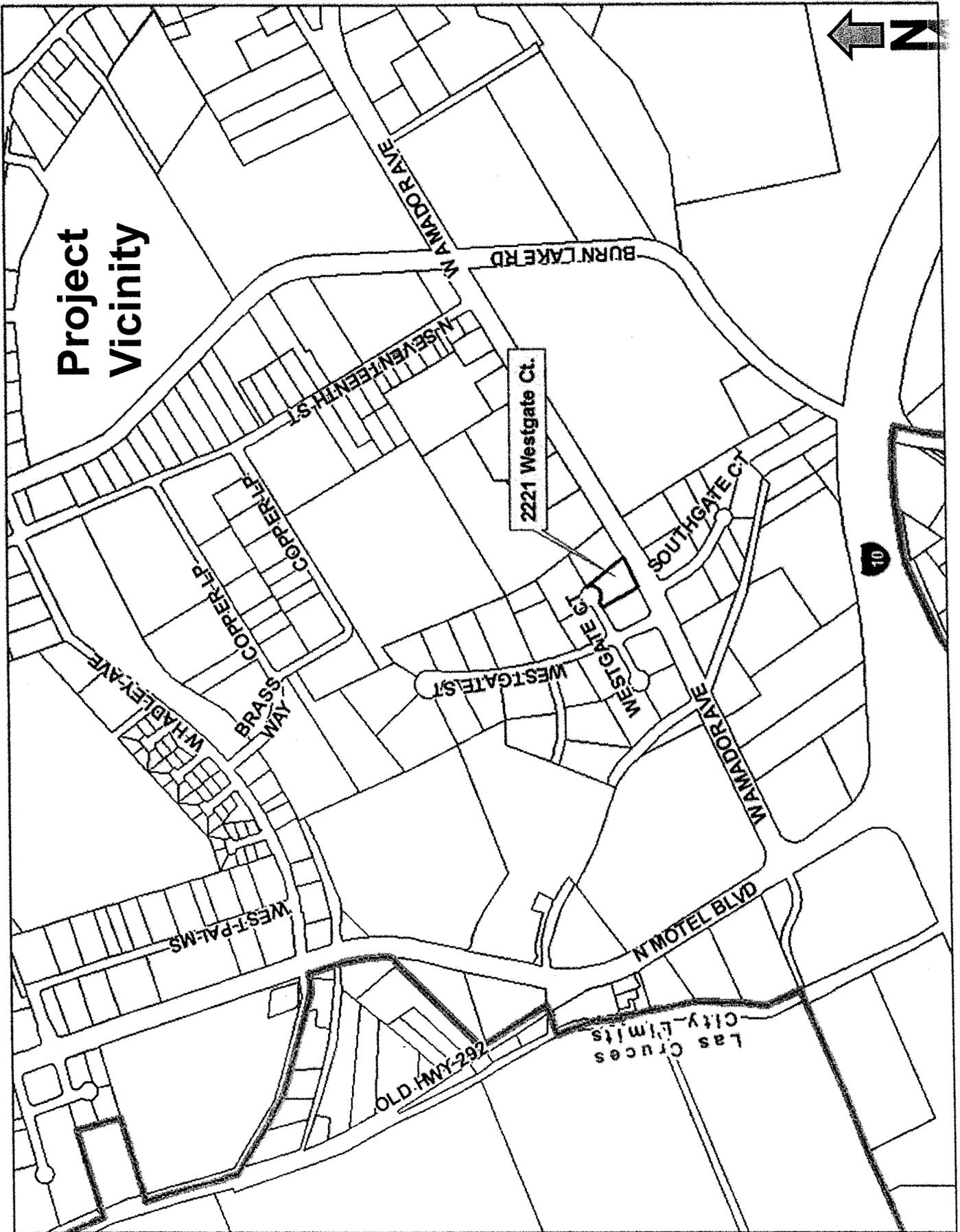
**The Bronx
Adult Entertainment
2221 Westgate Court**



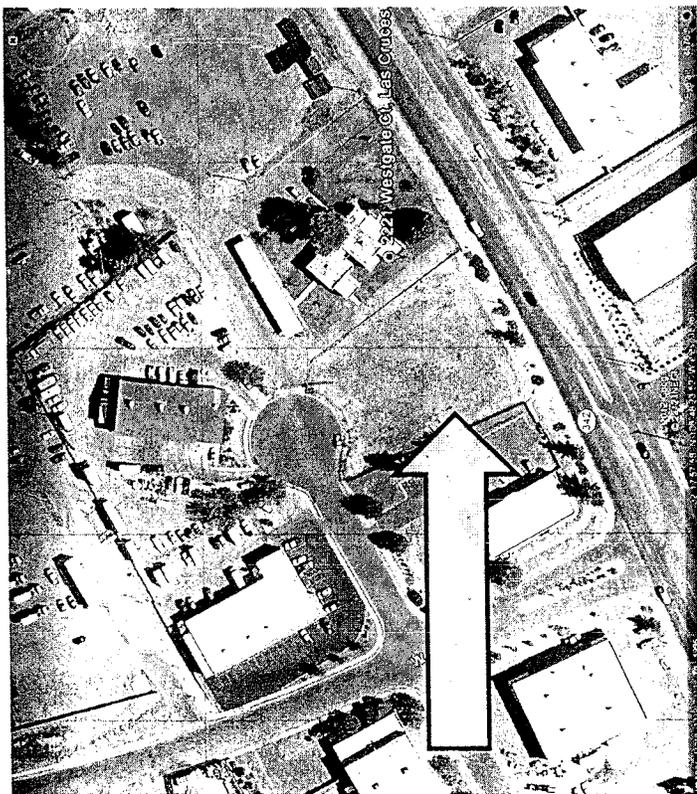
Project Description

- Adult entertainment (topless dancing) and bar
- New construction on a 0.91 acre vacant lot in M2 Industrial District
- 4,000 sf metal building with parking, landscaping and outdoor lighting
- Required signage
- Sound proofing insulation in building
- Screen wall or fence along Amador frontage
- Bar open 11 AM to 2 AM; dancing entertainment begins around 4 PM to 2 AM

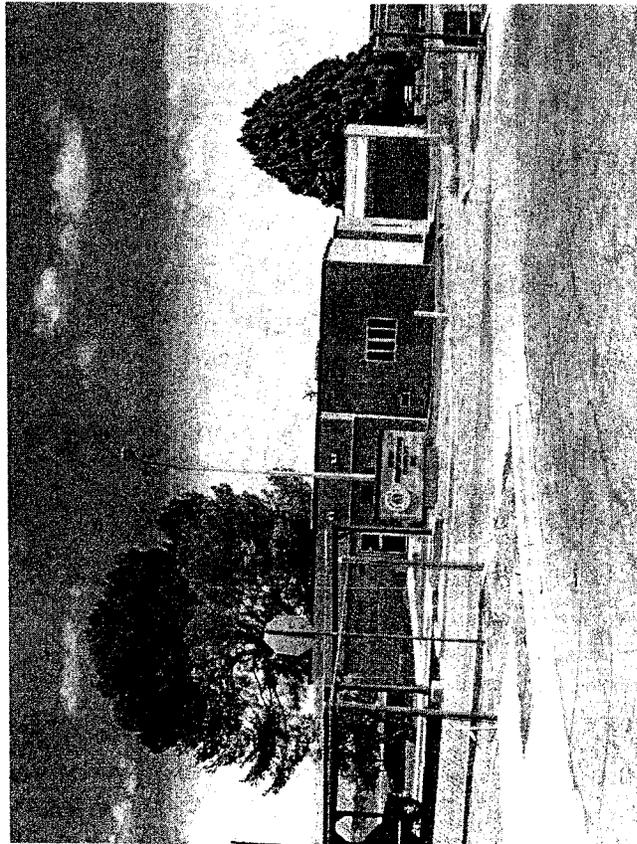




Project Site 2221 Westgate Court

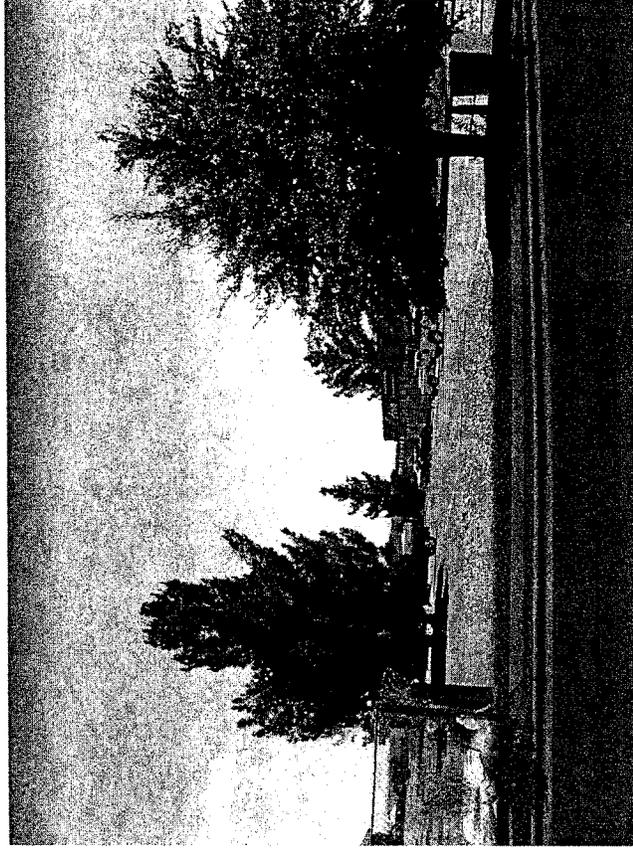


Site Vicinity—East & West Neighbors

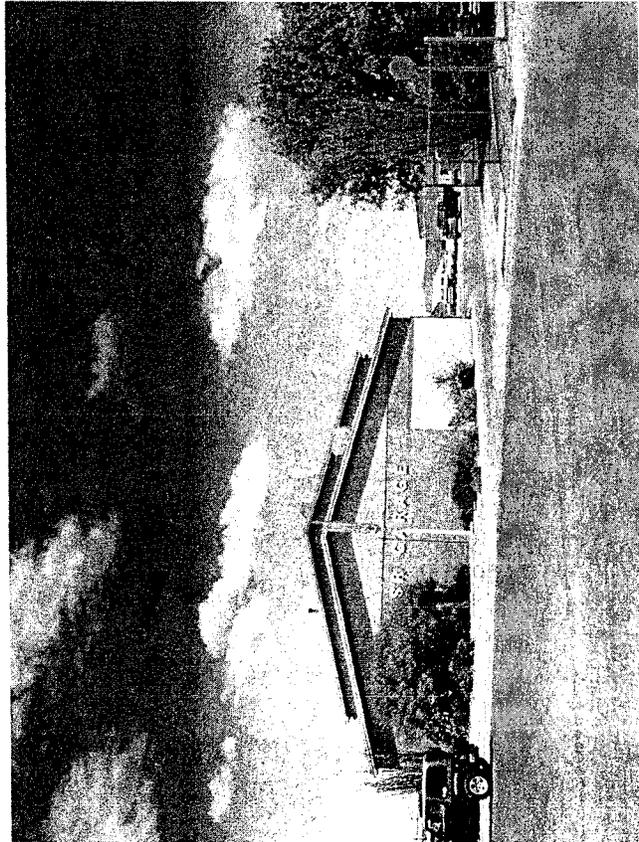


Burn Construction Co.

EROS Video Store

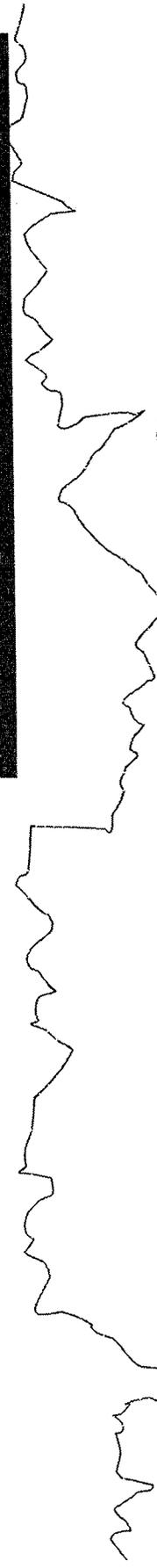
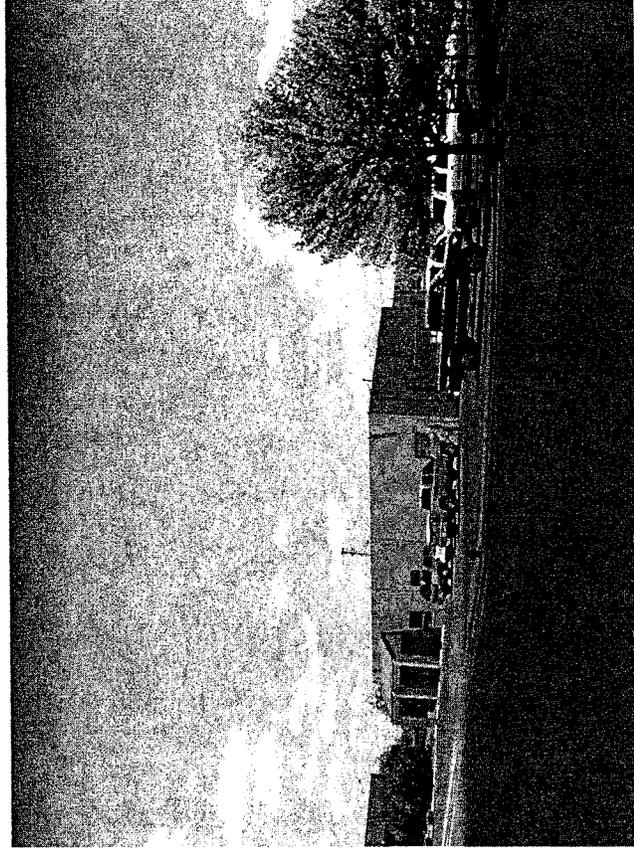


Site Vicinity—Northern neighbors



CSR Garage

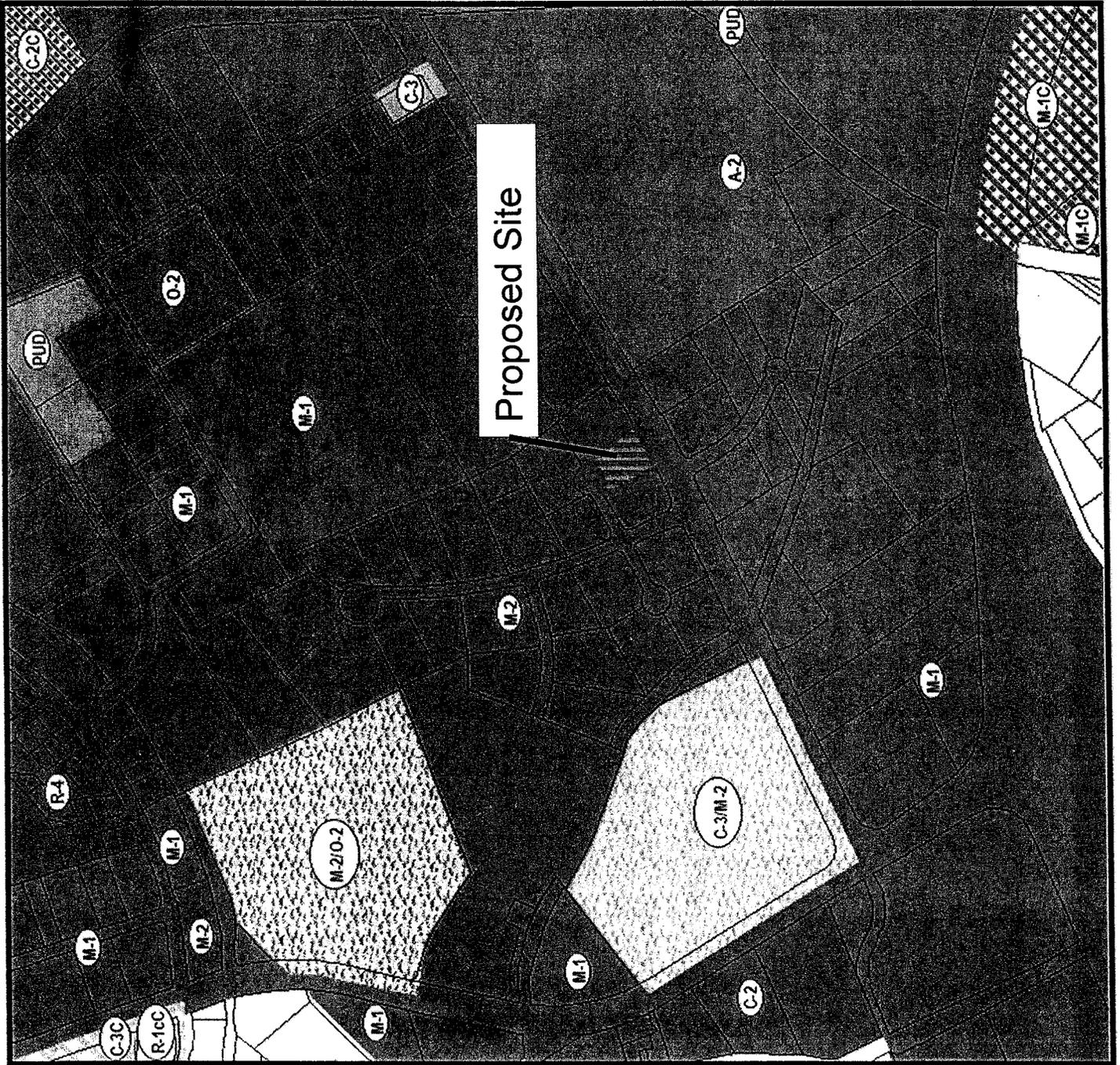
Fed EX



Zoning Code Criteria for an Adult Establishment (Section 38-32.G):

- Required Zoning District
 - Industrial (M1/M2 and M3) Zoning Districts with Special Use Permit (SUP)
- Criteria of SUP
 - Located a minimum of 1,000 feet from a property line of a School, Church, Nursery/Day Care, public Park or Recreational Facility and Residential zoning district;
 - Located a minimum of 500 feet from the property line of a liquor establishment; and
 - The operator shall affix a sign to the exterior wall nearest the primary entrance (36” by 18” with red letters on a white background) to state:

“WARNING: ADULT ESTABLISHMENT
THE BUSINESS WITHIN IS SEXUALLY ORIENTED.”



No schools,
churches,
day care,
nurseries,
or residential
zones within
1,000 feet of
Site

No liquor
license
within 500
feet
of Site



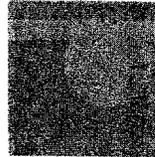
OVERALL SITE PLAN

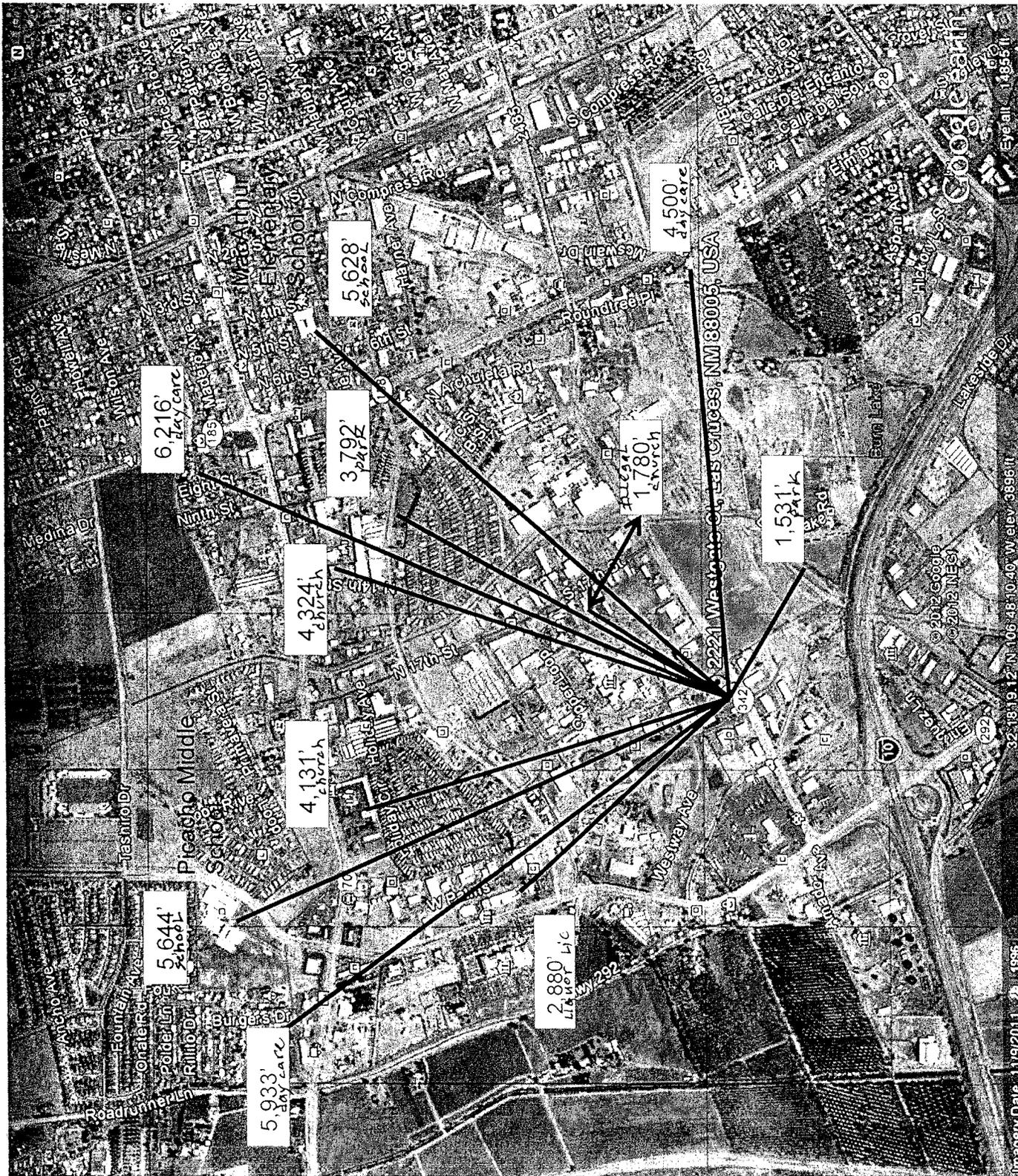
- 48 PARKING SPACES
- 4 HANDICAP SPACES
- 3 BIKE SPACES

Central Park West NY LLC

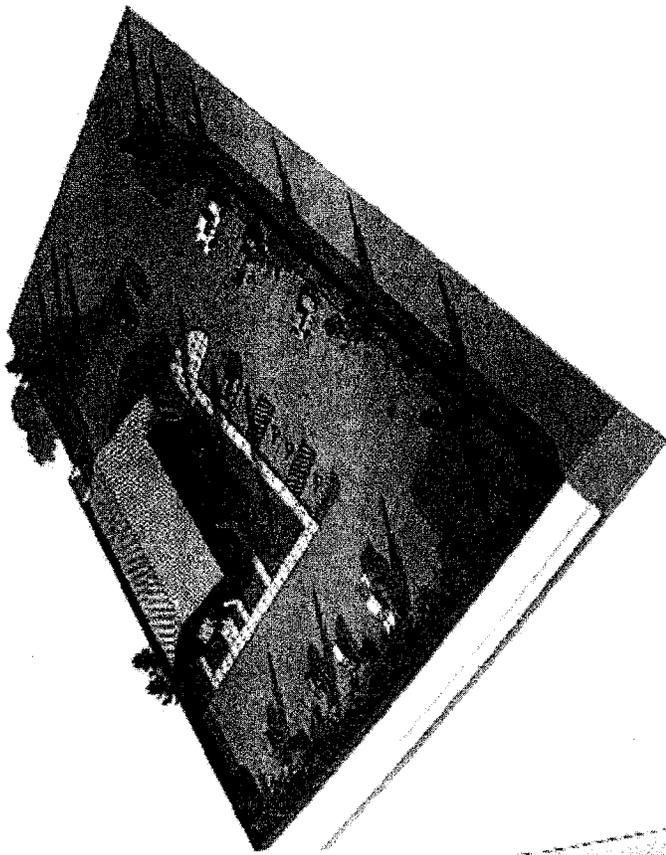
The Bronx

Studio d Architects





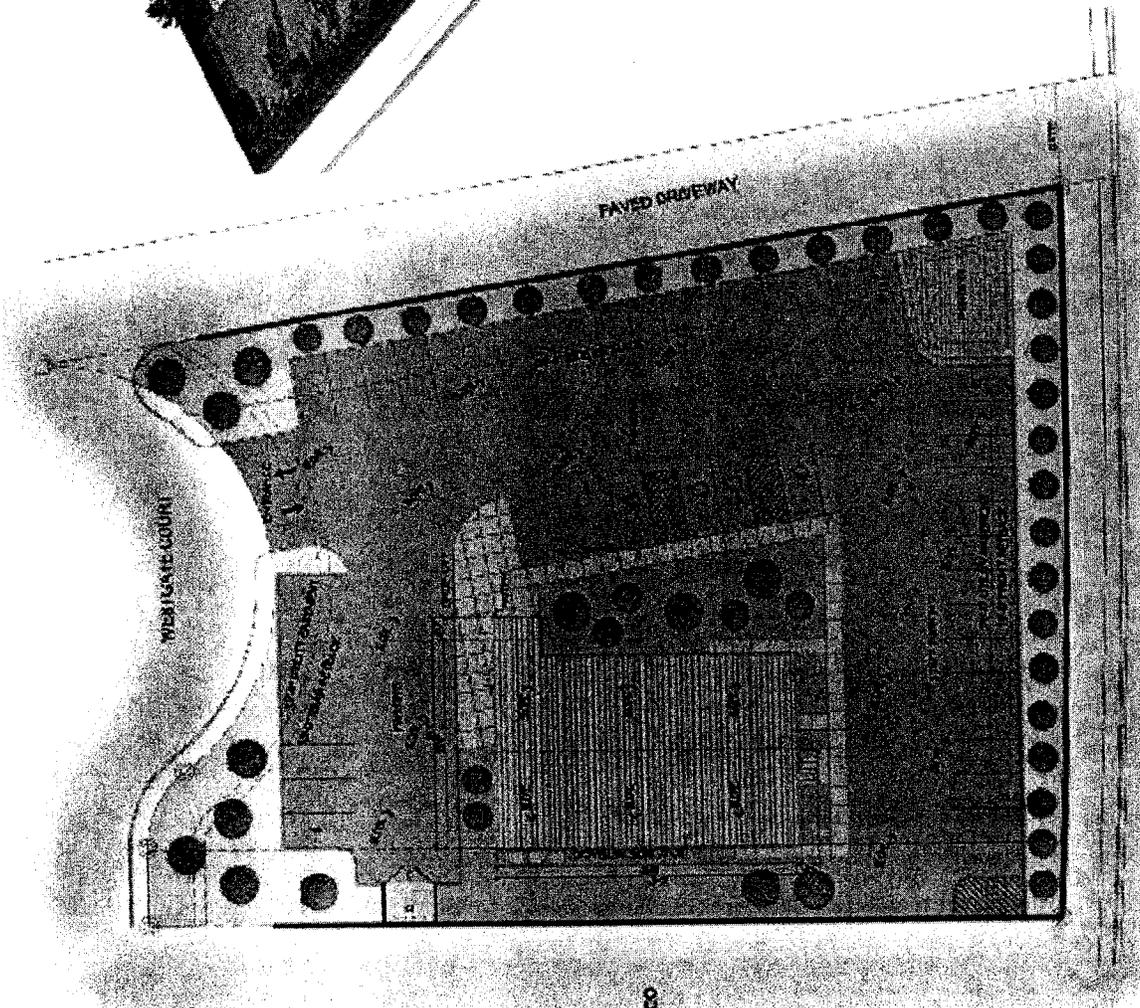
Closest schools churches day care park facilities & liquor lic. to Site



LOT 2, BLOCK 2
 WESTGATE BUSINESS PARK
 0.912 ACRES
 VACANT LAND
 PARCEL NO. 02-18461



The Bronx
 Studio of Architects



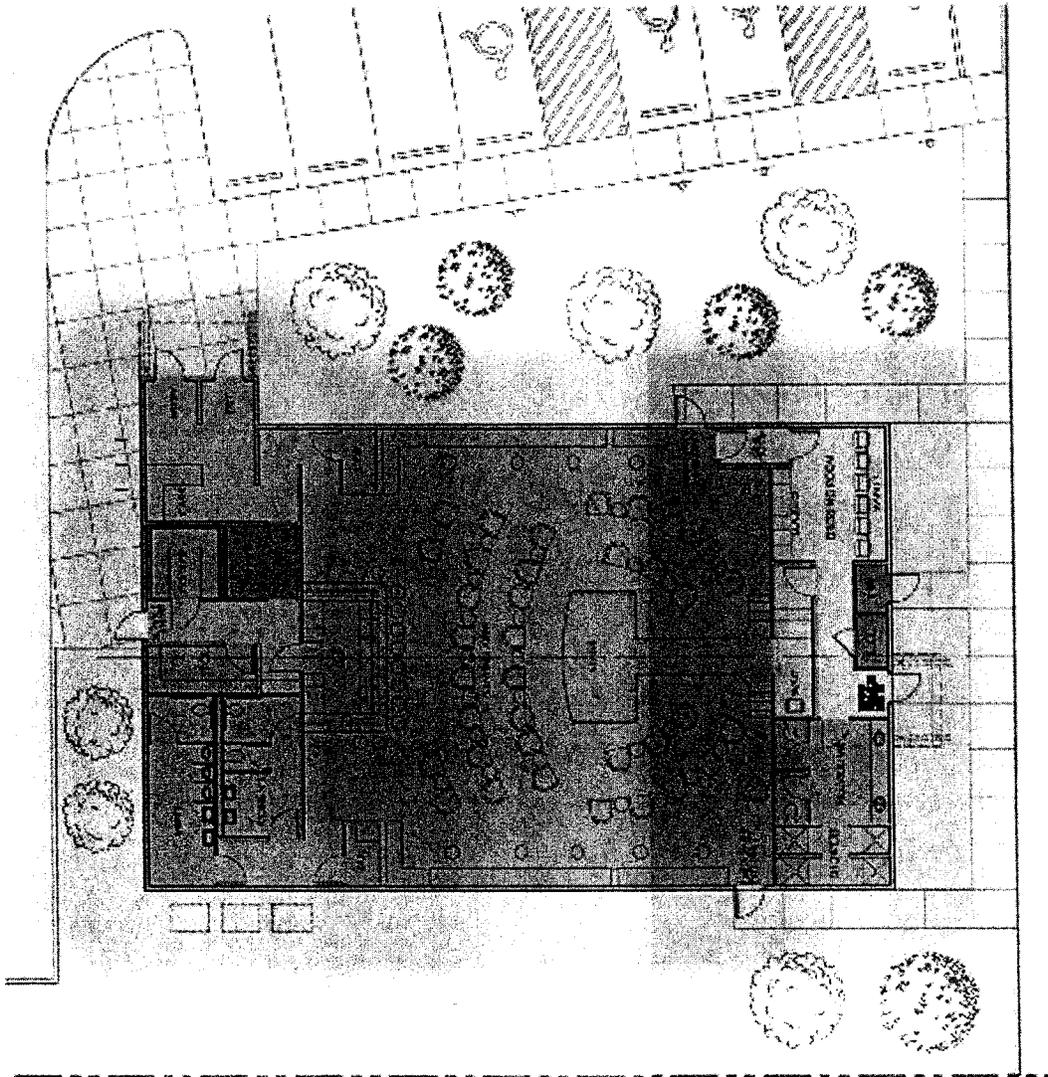
EROS VIDEO



4 SPADAS FENCES
 1 HANDCOP SPACES
 3 SEE FENCE

SITE PLAN
 NORTH

Central Park West NY LLC



The Bronx
 ARCHITECTS
 STUDIO OF ARCHITECTS

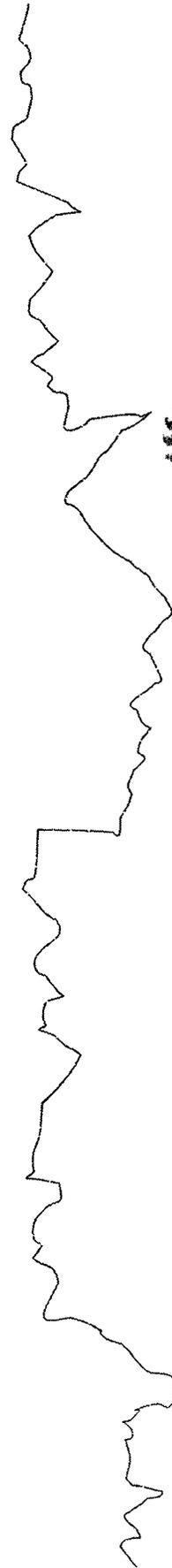
FLOOR PLAN
 15'-0" x 15'-0"
 40' x 10' 0" (12.19m x 3.05m)
 NORTH
 Central Park West NY LLC

Staff Evaluation

- Proposal meets all Zoning Code SUP “distance” requirements
- Evaluation of possible off-site impacts
 - Industrial neighborhood. No proximity to sensitive land uses.
 - Outdoor activity may create an “attractive nuisance” causing noise and parking congestion on Westgate Court.
 - Hours of operation related to noise and traffic impacts: except for any lunch traffic by nearby industrial workers, most traffic would be “off-peak” hours. There is a potential concern about “big rig” parking along Westgate Ct. during normal business hours of adjacent businesses.
 - Parking location and amount: staff recommends that amount be calculated at most-intense “bar” use (1:75 sf max.) rather than the adult entertainment calculation (1:250 sf).
 - Security design and operation elements: good design & implementation mitigates potential impacts to neighbors.
 - City prohibition of parking on Westgate Court could mitigate potential congestion during neighbor’s business hours.

Staff has reviewed and analyzed this request and recommends **CONDITIONAL APPROVAL** of the Special Use Permit based on the findings presented in the staff report.

The Planning and Zoning Commission has final authority regarding Special Use Permit requests barring an appeal to City Council.



Staff Recommended Conditions of Approval

1. Applicant to pay for installation of no parking signs on Westgate Court and will post large, visible warning signs shall be posted at the entrance of the club advising driving patrons that they cannot park their vehicles on Westgate Court or it will be towed at their own expense.
2. There shall be no outdoor special events or entertainment activities taking place on the premises.
3. Landscaping, as proposed by the Applicant, shall be provided along the perimeter of the Site and along the building.
4. A rock wall or opaque fence, as proposed by the Applicant, shall be built along the Amador Avenue frontage to screen the Site from the street and any adjacent or affected properties.
5. Off-street parking shall not exceed the maximum number allowed using the "bar" land use calculations.

Commission Options

1. VOTE "YES" to conditionally-approve the request as recommended by staff ;
2. VOTE "YES" to approve the request with amended and/or new conditions;
3. VOTE "YES" to approve the request without conditions;
4. VOTE "NO" to deny the request; or
5. VOTE to Table/Postpone the request.

