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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 2 Ordinance/Resolution# 10-042 Council District: 5

For Meeting of August 24, 2009
 (Adoption Date)

TITLE: A RESOLUTION TO APPEAL THE DENIAL DECISION OF THE PLANNING AND ZONING COMMISSION ON A REQUEST FOR AN EIGHTEEN (18) FOOT VARIANCE FROM THE MAXIMUM ALLOWED HEIGHT OF TWELVE (12) FEET FOR A FREESTANDING SIGN FOR PROPERTY LOCATED AT 4820 MESA GRANDE AVENUE. SUBMITTED BY PROPERTY OWNER O'REILLY AUTOMOTIVE, INC. (A1694).

PURPOSE(S) OF ACTION: Reversal of a denial decision made by the Planning and Zoning Commission on May 26, 2009 for a variance to permit a taller freestanding sign.

Name of Drafter: Adam Ochoa <i>AO</i>		Department: Community Development		Phone: 528-3204	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>[Signature]</i>	528-3066	Budget	<i>[Signature]</i>	541-2107
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The applicant, O'Reilly Automotive, Inc., is requesting a variance of eighteen (18) feet from the maximum allowed twelve (12) foot tall freestanding sign. The applicant would like to install a thirty (30) foot tall freestanding illuminated sign. The subject property is located at 4820 Mesa Grande Avenue and is zoned C-3C (Commercial High Intensity-Conditional.)

The City of Las Cruces Sign Code, as amended, states that, for the subject zoning district, when the percentage of office, commercial, or industrial zoning equals or exceeds 60 percent of the total street frontage for that street segment, freestanding signs may be the maximum height allowed by Code. When the percentage is less than 60 percent, the maximum allowed height of freestanding signs shall only be twelve (12) feet. A street segment is defined as the length of a roadway located between two intersections. The street segment for the subject property runs along Mesa Grande between Bataan Memorial and Cortez. Currently the entire eastern side of the street segment is zoned commercial while the entire western side of the street segment is zoned residential. This means only +/-50 percent of the street segment of the subject property is zoned either office, commercial, or industrial, which only allows a twelve (12) foot tall freestanding sign for the subject property.

The applicant states that the business will be unable to properly notify the public of their location without the proposed taller sign. The applicant also states that the property has extremely diminished visibility due to the overpass bridge of U.S. Highway 70 at Mesa Grande. The applicant believes that the highway overpass will block any sign shorter than 26 feet in height.

The applicant further states that the 12 foot sign might be prevented from being seen by a transformer box and other structures on the adjacent property to the south. Also, the applicant believes that a shorter sign would be more vulnerable to vandalism due to its relative proximity to the ground and location. The applicant believes that by allowing the additional 18 feet to the sign, the surrounding area will not be adversely impacted. The applicant concludes by stating that the area is a promising area for future commercial businesses and believes that eventually the area will reach the required 60 percent threshold which would then allow the subject property to install the 30 foot sign by right.

On May 26, 2009 the Planning & Zoning Commission (P&Z) denied the variance request for Case A1694 by a vote of 1-4 (two commissioners absent). Staff recommended denial to the Planning & Zoning Commission for the variance request based on the absence of a hardship on the property.

During the public hearing, surrounding property owners opposed the variance request stating that the sign would be too much of a nuisance for the primarily residential area. The surrounding property owners believe that the applicant should have to follow all Code regulations.

The reasons stated by P&Z to deny the request included staff findings of no physical hardship and general discussion at the public hearing. The P&Z stated that the existing signage on the building of the subject property is visible enough for the business to be properly seen. The evaluation criteria utilized by P&Z regarding variances is located within Article II Section. 38-10 J/Criteria for Decisions:

- A physical hardship relative to the property (i.e. topographic constraints or right-of-way takes resulting in reduced development flexibility, etc.) in question.
- The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted.
- Monetary considerations, not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

On June 11, 2009 the applicant filed the appeal of the P&Z decision with the Community Development Department.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Exhibit "A" - Property description
3. Attachment "A" - Basis of appeal & supporting documents
4. Attachment "B" - Staff Report to the Planning and Zoning Commission for Case A1694
5. Attachment "C" - Draft minutes from the May 26, 2009 Planning and Zoning Commission
6. Attachment "D" - Vicinity Map

OPTIONS / ALTERNATIVES:

1. Vote YES to approve the Resolution. This action reverses the Planning and Zoning Commission decision and grants the applicant an eighteen (18) foot variance from the maximum allowed twelve (12) foot tall freestanding sign for the property located at 4820 Mesa Grande Avenue.
2. Vote NO to deny the Resolution. This action upholds the decision made by the Planning and Zoning Commission. The applicant will be required to adhere to the maximum allowed height of twelve (12) feet for a freestanding sign.
3. Modify the Resolution and vote YES to approve the modified Resolution. The Council may modify the Resolution by adding conditions as deemed appropriate. This can be accomplished by staff submitting a substitute Resolution.
4. Table/Postpone the Resolution and direct staff accordingly.

RESOLUTION NO. 10-042

A RESOLUTION TO APPEAL THE DENIAL DECISION OF THE PLANNING AND ZONING COMMISSION ON A REQUEST FOR AN EIGHTEEN (18) FOOT VARIANCE FROM THE MAXIMUM ALLOWED HEIGHT OF TWELVE (12) FEET FOR A FREESTANDING SIGN FOR PROPERTY LOCATED AT 4820 MESA GRANDE AVENUE. SUBMITTED BY PROPERTY OWNER O'REILLY AUTOMOTIVE, INC. (A1694).

The City Council is informed that:

WHEREAS, O'Reilly Automotive, Inc., the property owner of 4820 Mesa Grande Avenue, has submitted the following variance request:

- a) An 18-foot variance from the maximum allowed height of 12-feet for a freestanding sign for property located at 4820 Mesa Grande Avenue; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on May 26, 2009, denied said variance request by a vote of 1-4 (two Commissioners absent).

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

(I)

THAT the denial decision by the Planning and Zoning Commission is hereby reversed.

(II)

THAT granting this variance is in accordance with Section 38-10, Criteria for Decisions, of the Las Cruces 2001 Zoning Code, as amended.

(III)

THAT the property owner is hereby granted the following variance for the property located at 4820 Mesa Grande Avenue: An 18-foot variance from the maximum allowed height of 12-feet to allow a 30-foot freestanding sign for property within the C-3C (Commercial High Intensity-Conditional) zoning district as illustrated on Exhibit "B" attached hereto and made part of this Resolution.

(IV)

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

DONE AND APPROVED this _____ day of _____ 2009.

APPROVED:
(SEAL)

APPROVED:

Mayor

ATTEST:

VOTE:

City Clerk

Mayor Miyagishima _____
Councillor Silva _____
Councillor Connor _____
Councillor Archuleta _____
Councillor Small _____
Councillor Jones _____
Councillor Thomas _____

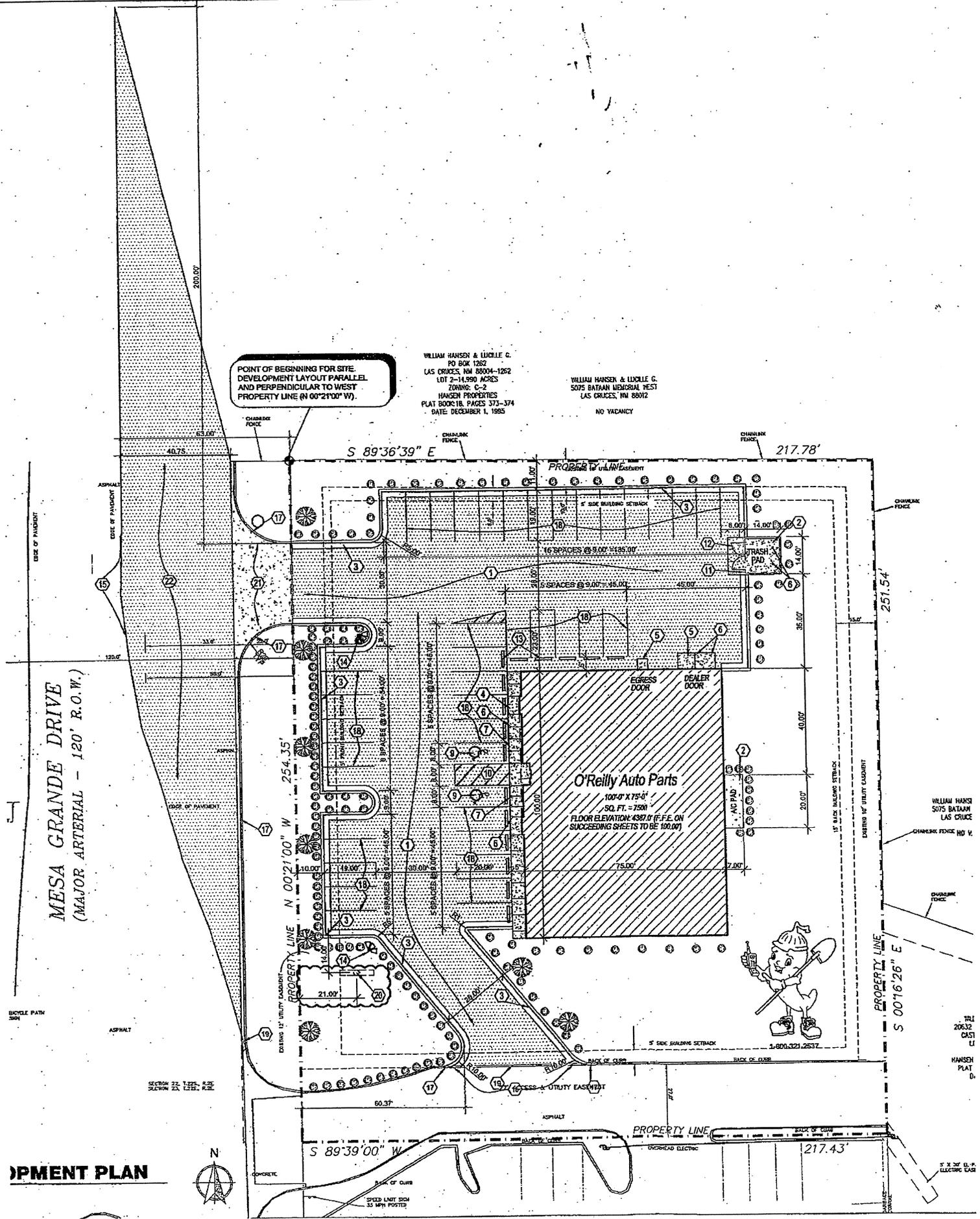
Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney



POINT OF BEGINNING FOR SITE DEVELOPMENT LAYOUT PARALLEL AND PERPENDICULAR TO WEST PROPERTY LINE (N 00°21'00\"/>

WILLIAM HANSEN & LUCILLE G.
 PO BOX 1252
 LAS CRUCES, NM 88004-1252
 LOT 2-14.950 ACRES
 ZONING: C-2
 HANSEN PROPERTIES
 PLAT BOOK 18, PAGES 373-374
 DATE: DECEMBER 1, 1955

WILLIAM HANSEN & LUCILLE G.
 5075 BATAAN MEMORIAL WEST
 LAS CRUCES, NM 88012
 NO VACANCY

MESA GRANDE DRIVE
 (MAJOR ARTERIAL - 120' R.O.W.)

O'Reilly Auto Parts
 100'-0\"/>



DEVELOPMENT PLAN



TRM
 20632
 CAST
 LT
 HANSEN
 PLAT
 D.

6/10/2009

To: The City of Las Cruces NM
575 S. Alameda Boulevard
Las Cruces NM 88004

From: O'Reilly Auto Parts
233 S. Patterson Ave
Springfield MO 65802

RE: Request for Appeal to denial for variance by the Planning and Zoning Board for increased height of a freestanding sign at the O'Reilly Auto Parts 4820 Mesa Grande Boulevard location.

Dear Members of the City Council of Las Cruces,

On May 26, 2009, O'Reilly Auto Parts representatives appeared before the Planning & Zoning Board for the City of Las Cruces regarding a request for a variance from the height restrictions on the proposed freestanding sign at the new O'Reilly location at 4820 Mesa Grande Boulevard. The request for the variance was denied by the Planning & Zoning Board, and O'Reilly would like to appeal this decision.

The members of the board felt that the auto parts business should not be considered an "impulse purchase" business, however, many of the products on our showroom floor are purchased on impulse or as a result of advertising on our reader boards. As this is a part of the business that O'Reilly does, it would put O'Reilly at a disadvantage in this market not to have a freestanding sign that is equal in height to the other business in the area.

O'Reilly respectfully requests that the council review the variance request and allow the O'Reilly representatives to present this case for the council's review. We appreciate your consideration of this appeal.

Sincerely,

O'Reilly Auto Parts

Enclosure
csl



TO: Planning and Zoning Commission

PREPARED BY: *do* Adam Ochoa, Associate Planner *AK*

DATE: May 26, 2009

SUBJECT: A1694

RECOMMENDATION: Denial

Case A1694: A request for a variance from the maximum allowed height of a freestanding sign for a property located at 4820 Mesa Grande Avenue. For properties zoned to allow freestanding signage, when the percentage of office, commercial, or industrial zoning is less than 60 percent of the total street frontage for that street segment, the maximum height of a freestanding sign shall be 12 feet. The applicant is requesting to install a 30 foot tall freestanding sign on a street segment that only allows a 12 foot tall freestanding sign. The subject property is zoned C-3C (Commercial High Intensity-Conditional) and encompasses 1.25 acres +/- . Submitted by property owner O'Reilly Automotive, Inc.

BACKGROUND

The subject property encompasses 1.25 acres +/- and is the location of an automotive supply store. The applicant is requesting the variance to allow the installation of a 30 foot tall illuminated elevated pole sign that will be used for identification purposes.

The applicant has stated that the business will be unable to properly notify the public of their location without the proposed taller sign. The applicant has also stated that the property has extremely diminished visibility due to the overpass bridge of U.S. Highway 70 at Mesa Grande Drive. It is believed by the applicant that the highway overpass will block any sign shorter than 26 feet in height. The applicant also points out that the adjacent property has a sign taller than 12 feet, and that it can be seen easily from all directions. The applicant goes on to add that the 12 foot sign might be prevented from being seen by a transformer box and other structures on the adjacent property to the south. Also, the applicant believes that a shorter sign would be more vulnerable to vandalism due to its relative proximity to the ground and location. The applicant has stated that the proposed 30 foot sign would be located at a location on the property where it can easily be viewed from all directions, and, at the same time, it will meet all setback and easement requirements. The applicant believes that allowing the additional 18 feet to the sign will not adversely affect the surrounding area. The applicant concludes by saying that the area is a promising area for the development of more commercial businesses and believes that eventually the area will reach the required 60% threshold which would then allow the subject property to install the 30 foot sign by right.

The subject property is zoned C-3C (Commercial High Intensity – Conditional). Article 2, Section 36-46 B1 of the Sign Code states that, for the subject zoning district, when the percentage of office, commercial or industrial zoning equals or exceeds 60 percent of the total street frontage for that segment, all criteria governing freestanding signs shall apply. When the percentage is less than 60 percent, the maximum height of freestanding signs shall be 12 feet. Following these standards, staff is recommending denial of this variance request based on the absence of a hardship on the property.

FINDINGS

1. The subject property is zoned C-3C (Commercial High Intensity – Conditional), however, 60 percent or less of the properties fronting along this segment of Mesa Grande Drive are zoned for office, commercial, or industrial uses; accordingly, pursuant to Article 2, Section 36-46 B1 of the Sign Code, the maximum height of freestanding signs shall be 12 feet.

2. Adjacent land use and zoning include:

	<u>Zoning</u>	<u>Land Use</u>
North	C-2	Vacant
South	C-2	Commercial
East	C-2	Vacant
West	R-1a	Residential

3. A letter of opposition has been received from a surrounding property owner for this particular variance.

RECOMMENDATION

Staff has reviewed this variance request and recommends **DENIAL**, based on the preceding findings.

OPTIONS

1. Approve the variance request.
2. Approve the variance request with conditions determined appropriate by the Planning and Zoning Commission.
3. Deny the variance request.

NOTE: Decisions must be based on “findings”. The findings presented in this document can be used to support **APPROVAL** decisions only. Other findings may be based on the Comprehensive Plan, Zoning Code, or other City plans and policies. Findings may also be based on information presented at public hearings, information obtained through site inspections, etc.

The Planning and Zoning Commission has final authority on variance cases unless the variance cases are appealed to the City Council.

ATTACHMENTS

1. Applicant's development and justification statement
2. Site Plan
3. Applicant's narrative and supporting documents
4. Site Photos
5. Case-related Sections of the 2001 Zoning Code, as amended
6. Vicinity/Zoning Map
7. Letter of Opposition

DEVELOPMENT STATEMENT For Variance Applications

Please print legibly or type

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 of Las Cruces responsible for requiring the applicant to abide by the statement. The Planning and Zoning Commission or City Council may condition approval of the proposal at a public hearing where the public will be provided an opportunity to comment.

Applicant Information:

Applicant's Name: O'Reilly Automotive Inc
Contact Phone Number: 417-862-2674 Extension 7402
Contact email address: cletterman@oreillyauto.com*
Website Address (if applicable): _____

Proposal Information:

Location of subject property: 4820 Mesa Grande Avenue
(In addition to description, attach a map. The map should be at least 8 1/2" x 11" in size and clearly show the relation of the subject property to the surrounding area.)

Current zoning of property: C3 Acreage of subject property: 1.25 acres

Type of variance(s) proposed: increased height of freestanding sign

Required standard (for example, 15 foot rear yard setback):
current ordinance allows 12' overall height due to zoning ratio of commercial to residential zones.

Request (for example, 12 foot rear yard setback):
30' overall height. An increase of 18'.

Reason for requesting variance (hardship):
We will not be able to properly notify the public of our location without the increase in height. Our adjacent neighbor has a sign taller than twelve feet. The bridge overpass from the highway will block anything less than 26' in height.

Proposed square footage and height of structures to be built (if applicable): (Use separate sheet if necessary.) 140 square feet of signage on 30' overall height pole directly buried.

Will have New Mexico Engineering.

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

Attachments

Please attach the following: (*indicates optional item)

- location map
- detailed site plan
- *proposed building elevations
- *renderings or architectural or site design features
- *other pertinent information

Variance Fees

Revised through adoption of Resolution 00-360

Process	Fee
Single Family Residential Homeowner	\$75.00
All other Variance Applications	\$175.00
Appeal to City Council	\$200.00

VARIANCE REQUEST JUSTIFICATION STATEMENT

Please provide information on the following issues. This information shall serve as justification for your variance request to the Planning and Zoning Commission. Please note that the Planning and Zoning Commission will thoroughly review the information provided and consider it when making a decision. If the information you provide is unreadable or unclear, it will not be accepted by the Community Development Department (CDD). Additional sheets of paper may be attached.

1. Please explain the nature of your variance request, including the specific numerical request.

See Exhibit A - attached to and made a part of this application for variance.

2. Please explain what physical constraint(s) exists on your property that makes it impossible for you to follow the regulations as written. Attach additional sheet(s) if necessary.

See Exhibit A - attached to and made a part of the application for variance.

The Planning and Zoning Commission is a seven member, City Council appointed, volunteer board whose job entails making decisions on variance requests and staff interpretations on appeal. A variance is a variation in the numerical requirements of the Zoning Code. A staff interpretation appeal occurs when an applicant disagrees with an interpretation of the regulations made by CDD staff. In that case, the applicant may appeal staff's decision to the Planning and Zoning Commission. All decisions of the Planning and Zoning Commission are based on the following criteria:

- a) The general harmony your request has with the intent and purpose of the Zoning Code, which is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community.
- b) The effect of your request to adjoining properties. A variance will not be granted if adjoining properties are adversely affected.
- c) The impact your request will have on the supply of light and air to adjacent properties, the increase of danger of fire, the endangerment to public safety and the impact on established property values. Variances shall not be granted if any of the aforementioned are increased or negatively impacted.

EXHIBIT "A"

Attached to and made a part of the Application to the Planning and Zoning Commission

Applicant respectfully requests the Honorable Commissions consideration of the following criteria:

1. Please explain the nature of your variance request, including the specific numerical request.
 - Section 36-46, subsection b, item 1, regarding freestanding signs calls for an area to be more than 60% commercial to be allowed taller freestanding signs. The current ratio is approximately 50/50 which barely disqualifies our sign height.
 - We request a variance to the zoning ordinance to allow for greater height for our pole sign. The modification we are requesting is for an additional 18' of height for our pole sign making it 30' in overall height.
 - Allowing the additional height would not disrupt the harmony or adversely affect the area since it will be installed on the southwest corner of the lot near McDonalds and will be an appropriate distance from their tall sign.
 - We will maintain all required setbacks and easements as shown on the site plan.
 - Our signs are automatically programmed to shut off one half hour after the closing of our store.

2. Please explain what physical constraint(s) exists on your property that makes it impossible for you to follow the regulations as written.
 - Greatly diminished visibility due to the overpass bridge of US Hwy 70
 - A shorter sign will be hidden by the transformer box on the adjacent property
 - The area is a promising prospect to develop more commercial businesses allowing the ratio of commercial to residential to lean heavier on the commercial side and the height would be allowed at such a time.

The Honorable Commissions favorable review would be greatly appreciated.

Very truly yours,

O'Reilly Automotive, Inc.



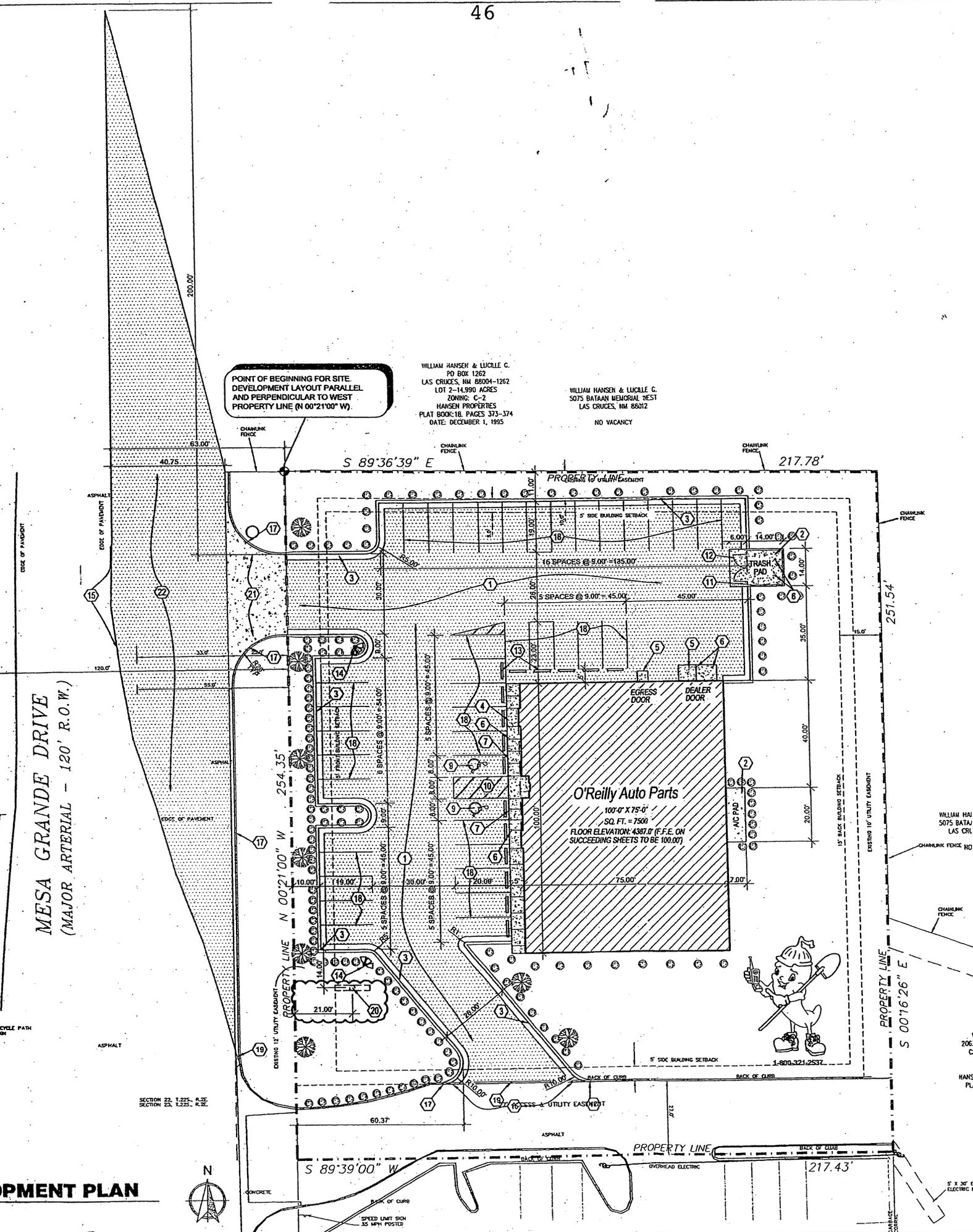
Claudia Ketterman

MESA GRANDE DRIVE
(MAJOR ARTERIAL - 120' R.O.W.)

POINT OF BEGINNING FOR SITE DEVELOPMENT LAYOUT PARALLEL AND PERPENDICULAR TO WEST PROPERTY LINE (N 00°21'00" W).

WILLIAM HANSEN & LUCILLE C.
PO BOX 1262
LAS CRUCES, NM 88004-1262
LOT 2-14.990 ACRES
ZONING: C-2
HANSEN PROPERTIES
PLAT BOOK: 18, PAGES 373-374
DATE: DECEMBER 1, 1995

WILLIAM HANSEN & LUCILLE C.
5075 BATAAN MEMORIAL WEST
LAS CRUCES, NM 88012
NO VACANCY



LAYOUT PLAN

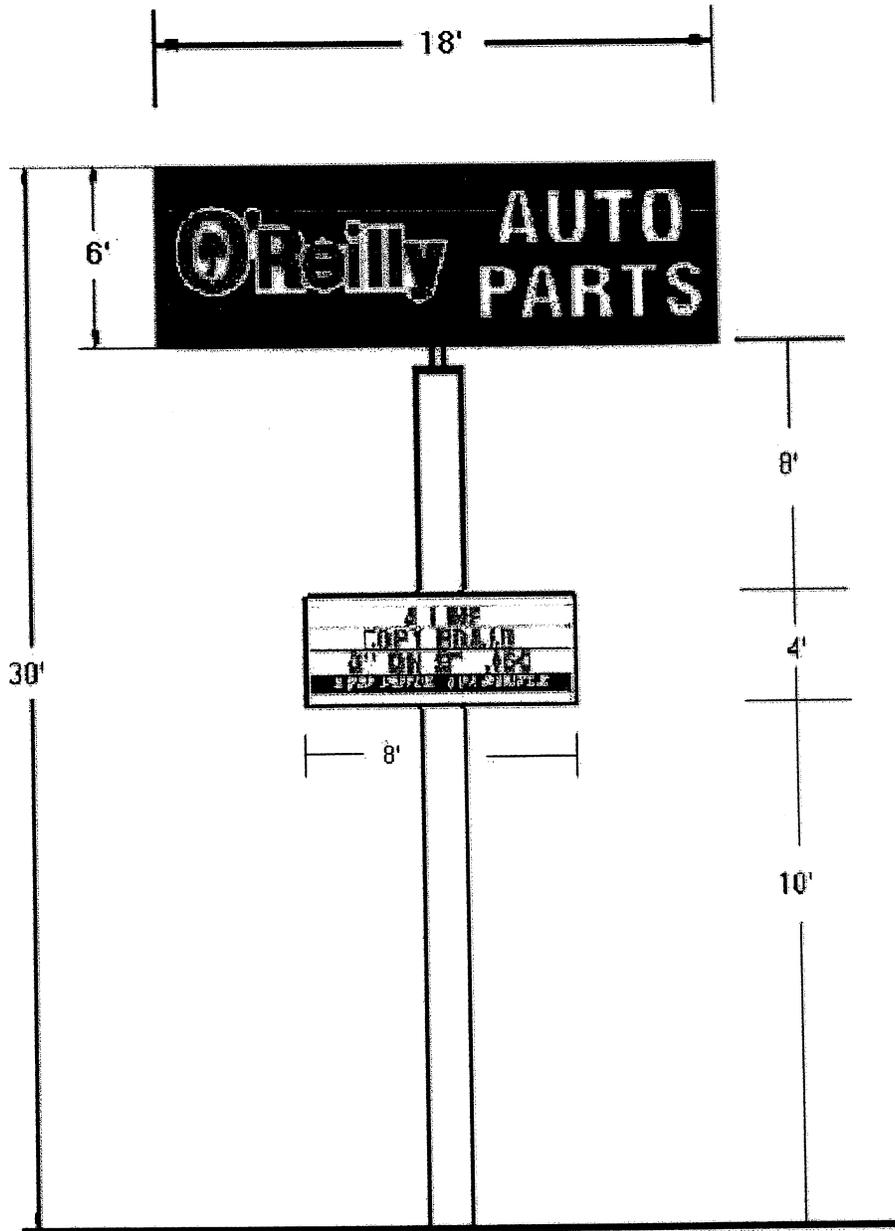


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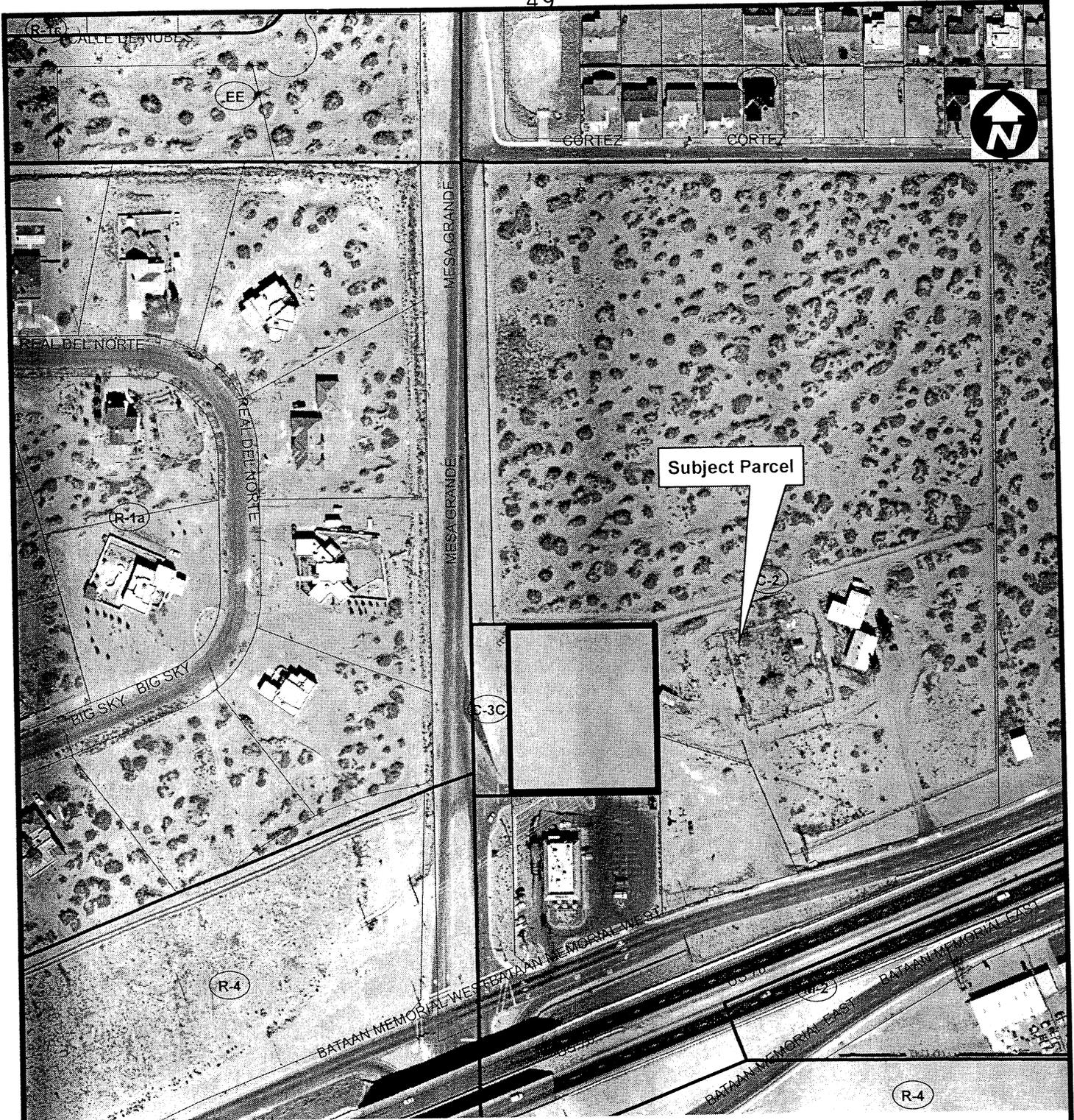


O'Reilly Automotive, Inc.

108 Sq Ft Double-Faced, Double Embossed, Internally Illuminated Pole Sign with
32 Sq Ft Double-Faced, Internally Illuminated Manually Changeable Reader Board
140 Total Sq. Ft



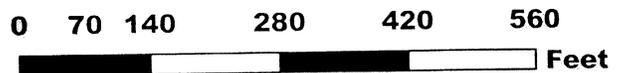
Not to Scale - Illustration Only



AERIAL MAP

CASE NO. A1694
PARCEL #: 02-29071

OWNER: O'REILLY AUTOMOTIVE INC.
ADDRESS: 4820 MESA GRANDE AVE.
ZONING: C-3C



This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.

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

Sec. 36-46. Commercial and Industrial zones C-2, C-3, MTech, M-1M-2, M-3.

(a) *Attached signage.* 1 1/2 square feet of on-premises signage for each linear foot of exterior wall is permitted. The sign shall be placed on the side of the building used to calculate the square footage of the sign. The following are considered attached signs: awning signs, canopy or marquee signs, banners, roof signs, window signs and wall signs. These attached signs are subject to the design standards of all applicable codes.

(b) *Freestanding signage.* These signs must comply with the following conditions:



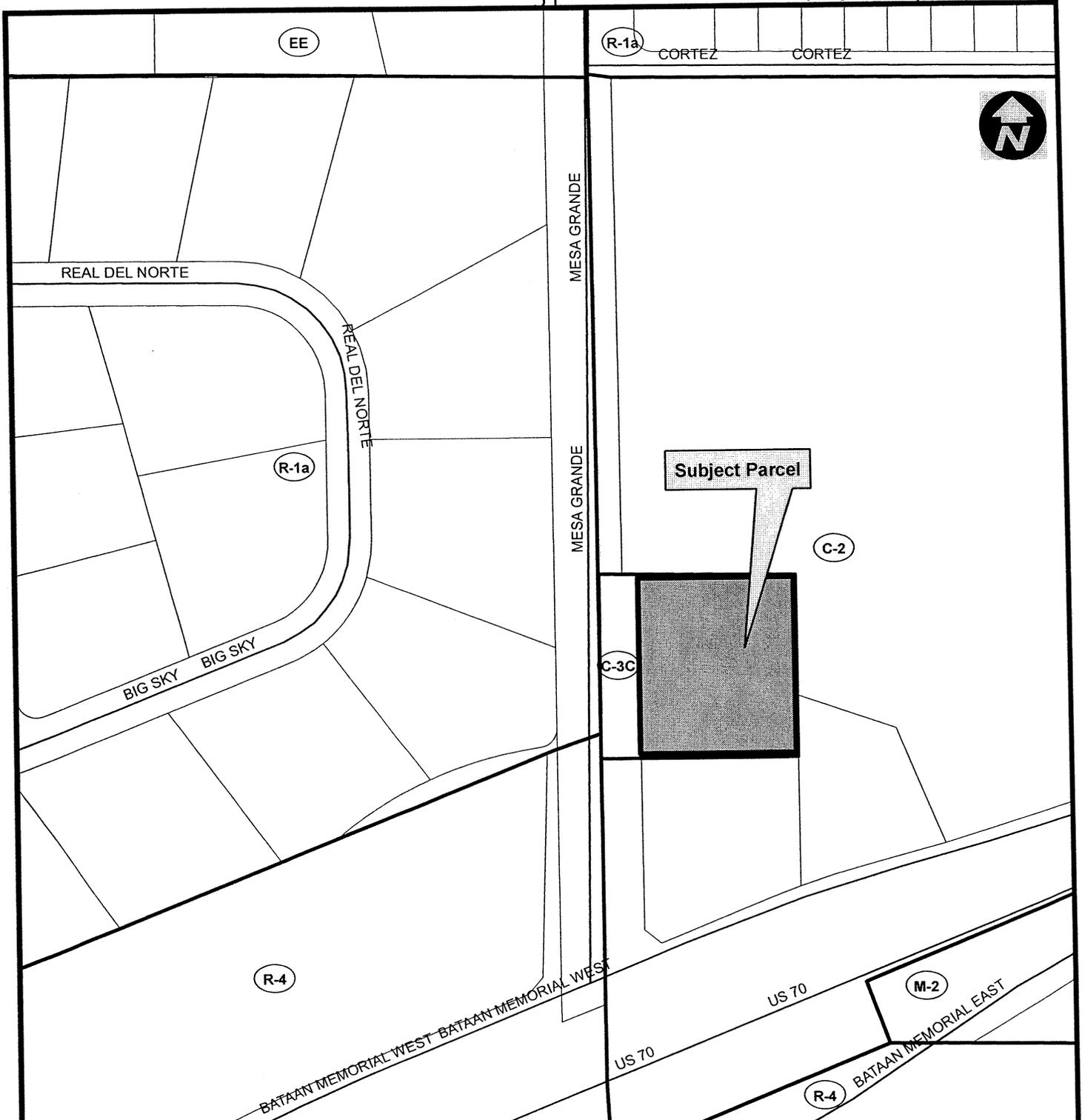
- (1) Locations which permit freestanding signs are determined by zoning districts along specific segments of streets. When the percentage of office, commercial or industrial zoning equals or exceeds 60 percent of the total street frontage for that segment, all criteria governing freestanding signs shall apply. When the percentage is less than 60 percent, the maximum height of freestanding signs shall be 12 feet, unless a more restrictive height limitation is mentioned elsewhere in this chapter, in which case the more restrictive height limitation shall apply.
- (2) The maximum height and minimum setbacks for freestanding signs are determined by street classification. See appendix 1 to this chapter pertaining to development standards.
- (3) Individual freestanding signs shall be limited to those businesses that own direct, unobstructed (on-site) access to the public street.
- (4) Frontage on a controlled access public street, where under normal conditions a driveway permit would not be granted to that business, shall not be included in the calculation for freestanding signage.
- (5) The size of freestanding signs is determined as follows:

Linear Street Frontage (feet)	Size Allowed (square feet)
0-100	100
101-300	150
301-600	200
>600	200

On lots with more than one street frontage, only one street frontage shall be used to calculate the permitted sign size, height and number of signs.

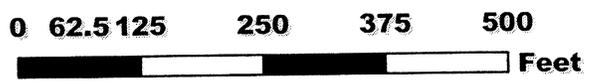
- (6) The number of freestanding signs is limited to one per lot, except where the frontage of the lot exceeds 600 linear feet. For those lots, two freestanding signs are permitted, provided there is a minimum distance of 200 feet between the signs.

(Ord. No. 1128, § C.7, 5-18-90; Ord. No. 1476, 9-3-95)



VICINITY MAP

CASE NO. A1694
PARCEL #: 02-29071
OWNER: O'REILLY AUTOMOTIVE INC.
ADDRESS: 4820 MESA GRANDE AVE.
ZONING: C-3C



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

5695 Real del Norte
Las Cruces, NM 88012
16 May 2009

Las Cruces Planning and Zoning Commission
Las Cruces City Hall
200 N. Church St.
Las Cruces, NM 88004

To the Commission:

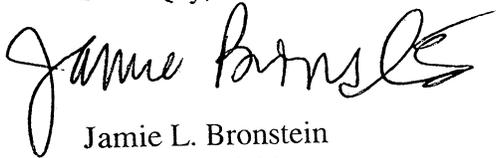
I am writing in reference to Case A1694, to oppose the request by O'Reilly Automotive for a variance to the existing sign rule in order to erect a 30-foot rather than a 12-foot sign.

The reasons for my opposition are as follows:

1. When O'Reilly wanted to build a store where it is now situated, they had to apply for a variance from the original zoning. They received this variance only AFTER all sorts of assurances were made to adjoining property owners regarding noise limits, light restrictions, traffic, etcetera. At the time, there was NO indication that O'Reilly would be asking for a sign variance. As an adjoining property-owner, I tried to be a good neighbor by not opposing the original zoning variance. The request for a sign variance after the building has already been built feels like a dishonest move, calculated as an end-run around the residential neighbors of this property. I certainly hope that the Planning and Zoning Commission will ask O'Reilly about the timing of their request!
2. Although the property in question is now zoned C-3C, all of the neighbors surrounding the property, with the exception of the McDonalds immediately to the south, are residences. McDonalds does have a sign, but it is located on the frontage road itself, not on Mesa Grande, a residential street. A 30-foot commercial sign in the middle of a residential neighborhood would detract from our property values, block our view of the Organ Mountains, and interfere with our quiet enjoyment of our property. I would encourage the Planning and Zoning Commission to consider the potential harm to the *many* here, rather than just the incremental *profit* to the *one*.
3. Due to where O'Reilly Auto Parts is situated—on a residential street off a one-way frontage road, it will receive traffic from customers who are knowingly headed in the direction of the store. It is not the same situation that would obtain on, say, El Paseo Road, where someone seeing a large commercial sign might make an impulse-turn into a commercial parking lot. For this reason, a 30-foot sign rather than a 12-foot sign is unnecessary.

As your constituent, I hope that you will take these objections into serious consideration, and protect the rights of the *residential* property owners, many of whom have lived in the neighborhood adjoining O'Reilly Automotive for many years.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie Bronstein". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

Jamie L. Bronstein
5695 Real del Norte
Las Cruces, NM 88012
575-382-4314

1 don't have a quorum because if two other people don't show up, that are
2 here tonight, then there will only be three people that are eligible to vote.
3 We have that problem as well if we have some no-shows.
4

5 Shipley: We understand.

6
7 Abrams: Just letting you know.
8

9 Scholz: Thank you Jared. I'll talk to you afterwards.

- 10
11 ★ 2. **Case A1694:** A request for a variance from the maximum allowed height of a
12 freestanding sign for a property located at 4820 Mesa Grande Avenue. For
13 properties zoned to allow freestanding signage, when the percentage of
14 office, commercial, or industrial zoning is less than 60 percent of the total
15 street frontage for that street segment, the maximum height of a freestanding
16 sign shall be 12 feet. The applicant is requesting to install a 30-foot tall
17 freestanding sign on a street segment that only allows a 12 foot tall
18 freestanding sign. The subject property is zoned C-3C (Commercial High
19 Intensity-Conditional) and encompasses 1.25 acres +/- . Submitted by
20 property owner O'Reilly Automotive, Inc.
21

22 Scholz: Okay, our next is, Mr. Ochoa. This is ... no, I'm sorry; Mr. White is
23 supposed to be up next isn't he? Am I missing one here? Oh, here we
24 go. This is A1694. Mr. Ochoa.
25

26 Ochoa: Good evening gentlemen. Adam Ochoa from Community Development
27 for the record. Case A1694 is a request for a variance from the maximum
28 allowed height of a free standing sign for a property located at 4820 Mesa
29 Grande. It was submitted by property owner O'Reilly Automotive, Inc.
30 First let's look at the code requirements here, under Article II, section 36-
31 46 B1 it's the regulations for a free standing signage in the C-2, C-3, M-T,
32 and M-1/M-2, and M-3 zoning districts. Basically, states under there that
33 locations which permit free standing signs are determined a zoning district
34 along specific segments of the streets. When the percentage of office,
35 commercial, or industrial zoning equals or exceeds 60% of the total street
36 frontage for that segment, all criteria governing free standing signs will
37 apply. When the percentage is less than 60%, the maximum height of a
38 free standing sign shall be 12-feet, and that's basically what we're going
39 into today.

40 Case specifics, the property is zoned C-3C commercial high
41 intensity conditional. The subject property is a current location of an
42 automotive supply store. The applicant is requesting a variance to allow
43 the installation of an illuminated 30-foot tall elevated pole sign. The
44 subject property is located on a street segment that is only 50% give or
45 take of office, commercial, or industrial zoning, limiting the maximum
46 height of the sign to 12-feet. If the street criteria were met, if the street

1 sign did meet the 60% or more, the 30-foot tall sign would be allowed by
2 right.

3 Some more case specifics, the applicant has stated that the
4 business will be unable to properly notify the public of its location without
5 the taller sign. The applicant goes on to add that the property has
6 extremely diminished visibility due to the overpass of Bataan Memorial or
7 U.S. Highway 70 at Mesa Grande. The applicant believes that the
8 overpass will block any sign shorter than 26-feet in height. The applicant
9 also stated that the 12-foot sign may have problems being seen due to a
10 large transformer box and other structures on the southern adjacent
11 property to the subject property. The applicant also believes that the
12 shorter 12-foot sign would be more vulnerable to vandalism due to its
13 location and lower proximity to the ground. The applicant concluded by
14 saying that the area is a promising area for development for more
15 commercial businesses and believes that eventually the area will reach a
16 60% threshold that would allow the subject property to install a 30-foot tall
17 sign.

18 Here's a vicinity map of the area. That kind of looks purple; square
19 right there is the subject property. The street segment we're looking at
20 right now is on Mesa Grande between Bataan Memorial and Cortez Street
21 on Mesa Grande. As you can see, half of it is commercial, C-2, C-3, C-2,
22 and the opposite end is all residential, so limiting the property to a 12-foot
23 sign. Here's basically what the proposed sign would look like if its allowed
24 tonight, 30-feet tall, about 140 square feet in size. The proposed sign, the
25 applicant has stated that the proposed sign will be programmed to
26 automatically shut off 30 minutes after the closing of the store.

27 Here's a site plan of the location. Here's Mesa Grande to the left
28 and you can kind of see the light blue triangle right down here where my
29 cursor's at, that is the proposed area of the sign. It meets all setbacks and
30 meets all easements, requirements, and all that kind of stuff.

31 Findings, staff has reviewed this variance request and had
32 concluded that no physical hardship exists for the subject property. Staff
33 recommendation tonight is ... recommends denial based on the preceding
34 findings. Your options tonight gentlemen are: to approve the variance
35 request; approve the variance request with conditions determined
36 appropriate by the Commission; and deny the variance request. The
37 representative of the applicant is here to do a presentation. And I stand
38 for questions.

39
40 Scholz: Okay. Questions for Mr. Ochoa. Don't go away. Commissioner Crane.

41
42 Crane: A couple of questions. First, what is the segment? How do you define a
43 segment? Right now for example if you took it to be McDonalds and
44 O'Reilly's, then they're already up to 100% commercial. How far does this
45 segment go?
46

- 1 Ochoa: The segment sir, street segment basically is the street basically and it
2 ends where the intersection of another street basically intersects it if you
3 will. So for the property of this one right here, its frontage is on Mesa
4 Grande and its address is Mesa Grande, so everything ... it's street
5 segment would be the Mesa Grande section between Cortez and Bataan
6 Memorial. The McDonald's you're talking about, their address is actually
7 off of Bataan Memorial, so their segment would be here from Mesa
8 Grande all the way east towards Mesa I believe is the next street over.
9 And everything there is basically commercial or industrial, and they have a
10 30-foot sign, just for your information.
- 11
- 12 Crane: Okay. And the other question was, is this a rotating sign?
- 13
- 14 Ochoa: I defer that question to the applicant. I believe it's not, but I'll defer that to
15 the applicant.
- 16
- 17 Crane: And it seems to face south, north/south?
- 18
- 19 Ochoa: That is correct, from my conversation with the applicant I believe that's
20 what it is.
- 21
- 22 Crane: Thank you.
- 23
- 24 Scholz: You said the McDonald's sign is 30-feet?
- 25
- 26 Ochoa: Yes, sir.
- 27
- 28 Scholz: Okay and why is that?
- 29
- 30 Ochoa: Again, by right they're allowed a 30-foot sign because they're zoned C-2
31 and are located off of a principal arterial street, which basically allows the
32 property to have a 30-foot sign.
- 33
- 34 Scholz: Right, a larger sign.
- 35
- 36 Ochoa: And the segment doesn't affect any ... basically ... what was it? Give you
37 the right wording here. It doesn't affect anything of the sign so every
38 governing criteria for the signage applies, which is basically a 30-foot sign.
- 39
- 40 Scholz: Right. Okay. Thank you. Any other questions for Mr. Ochoa? All right.
41 May we hear from the applicant please?
- 42
- 43 Santillana: Good evening.
- 44
- 45 Scholz: You're doing tag team.
- 46

1 Santillana: We're doing tag team.

2

3 Scholz: Okay.

4

5 Santillana: This is the photographer by the way, so he wanted to come up here and
6 explain his pictures.

7

8 Scholz: You need to identify yourself sir.

9

10 Santillana: Well to begin with, my name is Diego Santillana. I'm the district, or
11 actually now the regional manager for this area, going in from El Paso all
12 the way to Albuquerque, New Mexico.

13

14 Franzoy: I'm Greg Franzoy, the district manager for this location.

15

16 Santillana: First of all, I would like to thank the members of the board for giving us the
17 chance and the opportunity to come before you and plead our case. And
18 the reasons why we are requesting this variance, and pretty much ... I
19 mean it is technicalities and it is certain items that we've looked at and
20 items that we are requesting to put the 30-foot tall sign. We are offset
21 from the freeway and these are things that we will cover in the
22 presentation. But in answer to your question, it is not a rotating sign. It
23 will be facing north to south. It is a darker color red, as you can tell. I
24 don't know if we can pull back that presentation, but I'll probably do that
25 here at the end if Mr. Ochoa will allow us. It is a darker color red, so it's
26 not something that is going to be blaringly bright to any of the neighbors.
27 Like Mr. Ochoa did state in the opening presentation, we are a very cost
28 effective company. We do not allow our lights or AC or anything else like
29 that to be left on for any unreasonable amount of time. They are all
30 controlled by our corporate office; therefore, the lights will be turned down
31 and turned off by 9:30 every night. We close at 9:00, so usually between
32 9:15 and 9:30 the lights will be off which would be you know ample
33 amount of time for any disturbing of the neighbors or any of that nature.

34 In regards to what we had talked about, the 60% mix, as far as
35 what we're looking for, for the commercial, in that street segment, as the
36 esteemed member of the board mentioned, that there is no more
37 businesses there on that segment. As far as the streets that are onto the
38 west side of Mesa Grande, are actually addressed off of the loop on the
39 other side there of that subdivision. There are no other streets or no other
40 businesses or no other homes that are addressed on that segment of
41 Mesa Grande from Bataan to I think it was Cortez Road. If you look at the
42 future and the growth of that street and of that area, you know how long
43 down the road is it going to be to where it is a predominantly commercial
44 area. You know looking at the McDonald's that we're right next door,
45 which their sign from different angles, the transformer, the different
46 shrubbery, it would block our signage. It would block our visibility.

1 We are the new ones there. I guess you could say we're the first
2 ones on Mesa Grande and looking at the future growth of that area, you
3 know you pointed out we're already you know if you're looking at a you
4 know one address on Mesa Grande in that segment, you know that would
5 be 100%. You know if you just want to look at it as a 50% which was on
6 the presentation, just one more business coming in will warrant us to have
7 a 30-foot sign. And at that point we would be penalized here being the
8 first ones on the block but not be able to have the signage that we are
9 requesting. And that's what we're asking for tonight. I mean that's the
10 purpose of us coming in is pleading our case as far as you know what the
11 future growth is going to entail.

12 So, just going forward, this goes back to the site that Mr. Ochoa
13 showed up there, looking at the sign right here, the sign would run right
14 here north to south. Greg, like I said, he will be showing some pictures
15 here that he took of the area and of the homes. The homes that would be
16 directly affected would be the ones that would be here to the north of the
17 building, which actually happen to be the furthest homes from that sign.
18 So we'll be covering that and showing that here in a second. Obviously,
19 the nature of our request is here to request for the 30-foot tall sign. You
20 know more than anything the purpose is to make sure that driving and
21 potential customers would be able to see us. Unfortunately, we are the
22 new guys in town. Not a lot of people know who O'Reilly Auto Parts is.
23 Everybody knows who AutoZone is. We're just looking out there to get out
24 there and be able to compete fairly and show who we are, and for people
25 to be able to see who we are from the freeway, which right now with a 12-
26 foot sign we are dramatically under-seen from the freeway.

27 Also, we talked about the accidental damage to our signs. We do
28 operate in 35 states. We are a growing auto parts company which
29 recently acquired CSK, which is Checker Auto Parks here in town. And in
30 the stores that we have, we have considerably seen on the 12-foot sign or
31 what we call monument signs, where cars do back up into them. That
32 we've had wrecks into them. That we have not seen that considerable
33 amount of damage on the 30-foot signs or the taller signs, the ones that
34 are off the ground. We do see that it is a very costly repair for us when
35 those accidents do happen.

36 Physical constraints, it is like I said greatly diminished our visibility
37 from northbound traffic due to the overpass. If you're coming northbound
38 on Mesa Grande kind of where the high school is, it is totally blocked from
39 the standpoint of the McDonald's being right in front of us. Then again,
40 not to repeat the same thing, but the McDonald's does have a 30-foot sign
41 which we understand, that it is addressed on Bataan Drive, or Bataan
42 Freeway, but they do have a major entrance off of Mesa Grande as do we,
43 and we're just asking for the same thing that they're allowed to have on
44 our property as well. Obviously you know we talked about the
45 landscaping between the McDonald's and our store would obstruct the 12-

1 foot sign and you know greatly diminish our ability to compete. With that,
2 we have a few pictures from Greg here.

3
4 Franzoy: Okay, so this first picture was taken, you notice this is standing where our
5 pole location is and the picture is being taken facing a westerly direction.
6 So from the sign location due west, the nearest residence is 243 yards,
7 which is 729 feet from the sign. Now this is facing due west and our sign
8 is going to be turned the other way. So we're not going ... we'll be facing
9 the reader boards and the actual auto parts will be facing north and south.
10 So these homes would not be affected by it. Panning northward which
11 would be turning to the right, the next nearest residence is 111 yards,
12 which is 333 feet from the site of the sign. Same thing goes with this one;
13 you would not be able to see the side of the signs from these homes here.
14 Again, panning northward to the right, the next nearest house is 93 yards
15 away from where our pole sign site would be, and as you can see in this
16 picture, it's got big huge pine trees in the way. You can't even see into
17 this home except for that one window that they have, and standing at that
18 location at night you can't even hardly see that window of that house when
19 the lights are even on. Still panning more northward, the next residence is
20 174 yards away from our location. This is turning more towards north
21 which would be facing more towards the north side of the sign that we
22 have, but still the distance away that it is, the light that emits from that sign
23 is not going to bother these people. I happen to live about six/tenths of a
24 mile from where this store is and even at nighttime the street lights that
25 emit the light, I mean that could be brighter than what our sign is. And my
26 house is right on the corner and that doesn't even faze me. And I've lived
27 there for 15 years before any of this stuff was here.

28 Now this one, is the furthest distance looking towards Cortez
29 Avenue which is facing due north, which is the side of the sign that would
30 be actually facing these homes here, and as you can see that's 408 yards
31 away which is you know 1,224 feet which is almost a quarter of a mile
32 away. Like we stated before, the lights being turned off at 9:30, it's not
33 going to ... you're not going to notice anything from this location,
34 especially with the trees and the shrubbery that's in front of that fence and
35 that vacant lot that's there. It's not going to do any ... where the people
36 are going to notice that light at nighttime.

37 Going on to the next picture and standing from where our sign
38 location would be facing south, their 30-foot sign is only 96 yards away
39 from where we are, and if you notice the freeway and the way the sign is,
40 if we only had a 12-foot monument sign, there's no way that people from
41 the highway would be able to see us. Also, coming in from the underpass,
42 from the Onate High School, you wouldn't be able to see a 12-foot sign;
43 you'll be able to see that shrubbery in that photo I have later on. If you
44 notice, where these cars are parked, and to the right side, you see the
45 trees and the shrubbery and stuff, the telephone poles, and their light pole,
46 when those cars are parked in that thing, there's no way that you can see

1 a 12-foot monument sign coming northbound on Mesa Grande, or for that
2 matter from the freeway coming either direction.

3 I went up Highway 70 headed east and I turned around at Porter
4 Drive. Now this sign, these guys are not addressed, I do not believe, on
5 Bataan Memorial. They're addressed on Porter Drive. And obviously you
6 can see that that sign is close to 30-feet tall. They're closer to the freeway
7 than what we are and don't have an existing building in front of them that
8 would obstruct their vision. Going westbound on Highway 70, this is the
9 Burger Time sign. There again, they're right on the frontage road. There's
10 no way you can't see them and they've got a sign that's almost 30-feet tall.
11 Again, Shorty's Gas Station which is more west from where the Burger
12 Time is, there again, right on the frontage road, right on the highway,
13 nothing in front of them. Their sign is at least 30-feet tall on that building.

14 Now this picture standing at our site location looking west back
15 towards the freeway, there's a car lot that is right there, and this is where
16 our sign would stand. There's no way you can see a 12-foot sign coming
17 westbound on Highway 70. Now this is from the other angle and that's
18 going west on Highway 70 and if you notice where the arrow is pointing,
19 that's our building. This is about 100 yards in front of the exit off of
20 Highway 70 to Mesa Grande. A 12-foot sign you will never see that we
21 have a location there, from the interstate, and this is just right on the side
22 of the road, I pulled off the highway when I took this picture. Now, this is
23 actually on the exit ramp. As you can see, there is some shrubbery in the
24 way; a 12-foot sign from that point would not be able to be seen, and if
25 you were trying to exit, you're already on the exit before you'd even see
26 where our building's actually. You can't even read the sign on the side of
27 the building from there.

28 This next picture is starting on the overpass before you actually get
29 on top of the overpass. The transformer that we're talking about is this
30 silver pole that's right here that obstructs the view from the other angle.
31 Now this one if you put a 12-foot sign there, we're going to be almost
32 blocked by the building right there on the corner, plus the little McDonald's
33 sign that they've got there on the ground. This next picture is from the top
34 of the interstate, right on the overpass, and if you notice, that tree that's
35 right in the way, 12-foot sign, you wouldn't be able to see it from the top of
36 the interstate. There's no way, it blocks it. There's no way you'd be able
37 to see that sign and you'd just go right past our location.

38 This one is headed eastbound on Highway 70 headed towards the
39 mountains, right at the exit of Mesa Grande, and as you can see the
40 bushes and stuff that are in the way where our sign's going to be right next
41 to that light pole, a 12-foot sign would not be able to be seen from the
42 interstate headed east on Highway 70. So basically you know what we're
43 asking for that sign is to be able ... for us to be able to have the
44 opportunity to pull the people in our location so that we have just as much
45 chance of the business as everybody else in the neighborhood does. And
46 you know according to what we were told in 2007 when we went to buy

1 this property, at that time they were going to allow us a 30-foot sign. Up
2 until November of last year when we started the project to build this
3 building, we were still allowed the 30-foot sign. Then the ordinance
4 changed after that fact. So going into this we were under the impression
5 we were going to be able to put a 30-foot sign up and now the ordinance
6 has changed. So, this is why we're here this evening.
7
8 Scholz: Okay, some questions for these gentlemen?
9
10 Iserman: Yes, I have one question.
11
12 Scholz: Mr. Iserman.
13
14 Iserman: I'm a bit confused. Your subject property there.
15
16 Franzoy: Yes, sir.
17
18 Iserman: Is that on a corner, or is there a lot closer to the freeway than you?
19
20 Franzoy: What that is sir, is that ... the yellow ... right here is where the McDonald's
21 sits. Now this corner right here is the corner of the frontage road and
22 Mesa Grande, right there. Now so, McDonald's actually has two
23 entrances. They have an entrance off of the frontage road and if you go to
24 the street light and turn right you can also enter the McDonald's on the
25 Mesa Grande side.
26
27 Iserman: So McDonald's is actually on the corner and you're next to it?
28
29 Franzoy: McDonald's is actually on the corner. Yes, sir.
30
31 Iserman: And you're just north of McDonald's.
32
33 Franzoy: If I could, I'll go back to the picture.
34
35 Iserman: Yeah, I just got confused there.
36
37 Franzoy: Right here, okay so this is where our building's at. That is facing south
38 and that's the McDonald's right on the corner of the frontage road and
39 Mesa Grande.
40
41 Iserman: Okay.
42
43 Franzoy: We are north of their building.
44
45 Iserman: North.
46

- 1 Franzoy: Exactly. So we're basically behind their building in a sense, if you look at
2 it from the freeway. And with the tall sign that they have, I mean they're
3 visible from the freeway when you're coming down Highway 70 headed
4 west, you see the golden arches. I mean and that sign at nighttime lit up
5 and that thing doesn't turn off until like 11:00 or 12:00. It emits more light
6 than that our signs going to emit, number one, and number two, ours goes
7 off at 9:30.
8
- 9 Scholz: Okay.
- 10
- 11 Iserman: I have another question.
- 12
- 13 Scholz: Yes, go ahead.
- 14
- 15 Iserman: What type of sign is it? Is it one of those new digital things or?
- 16
- 17 Franzoy: No sir, it is basically the same type of design the sign that the McDonald's
18 has. On the very top where it says O'Reilly Auto Parts is a solid piece of
19 plastic with lights on the inside that just light the plastic up and then below
20 that we have a reader board which we put on there the specials of the
21 month or whatever it may be; a three tier reader board that's on there that
22 does emit light. But the sign itself that says O'Reilly Auto Parts is a solid
23 plastic sign, kind of like, I don't know if you guys have drove by the
24 Checker Auto Parts, it's the same type of sign like that is, exactly.
25
- 26 Santillana: Just out of consequence, the reader board that will be sitting there is
27 actually at the height of it is 14-feet, so it's only two-feet above what the
28 monument sign would call for what is being in the ordinance right now.
29
- 30 Scholz: Okay. Commissioner Shipley.
- 31
- 32 Shipley: Could you go back to your ... go farther back in your pictures, toward the
33 end of your presentation.
34
- 35 Franzoy: Okay.
- 36
- 37 Shipley: Right there stop. Back up one. Okay go back to that last one.
38
- 39 Franzoy: Right there?
- 40
- 41 Shipley: Okay. You have two signs on the building. Are those signs lighted?
42
- 43 Franzoy: Yes sir.
- 44
- 45 Shipley: Yes, they are. Okay, so how tall is your building, is it about 28-feet?
46

- 1 Santillana: I don't know the exact height off.
2
- 3 Shipley: Isn't it about 20, 28-feet, about 30-feet?
4
- 5 Santillana: Probably around 25-feet.
6
- 7 Scholz: I was guessing it's over 20-feet.
8
- 9 Shipley: So my bottom line is, first of all you're a destination shopping event, right?
10 People don't just drive down the freeway and say, oops, I think I'll go get a
11 spark plug, or I think I'll go get a fuel filter or whatever. When they've got
12 a problem, they're looking for O'Reilly Auto Parts because they need
13 brake pads, they need oil, they need that, correct? So you're a
14 destination. McDonald's is not a destination. Somebody's driving down
15 the highway and they say, oh I'm hungry, where's the nearest McDonald's.
16 That's different than ... that doesn't happen to you, right?
17
- 18 Santillana: To a very large point you are correct.
19
- 20 Shipley: Okay. So now here's my point. You're talking about this corner down
21 here where the 12-foot sign, a monument sign, you've already got two
22 signs on your building, one on the front and one on the side. Both of
23 those signs are visible if you're coming from the north or if you're coming
24 from the south. If you're coming along 70 up on the top and you look to
25 your left you can see McDonald's, you can see the O'Reilly signs. They
26 are lighted. So you've got two signs already, and you're asking for a 30-
27 foot sign additionally. I mean, to me that's overkill. The reason we have a
28 sign ordinance is because we don't want to see 30-foot signs stuck up like
29 porcupines all over the town. We have a sign ordinance that says we
30 have this sign and that's based upon why our code is set up that way. So,
31 when you say ... you know if I were in marketing like you guys are, when
32 somebody called and say where are you located, I'm on Mesa Grande
33 right next to McDonald's. Look for the golden arches and we're right next
34 door. Everybody will find you in a heartbeat. It's not going to be a
35 problem. And what we're looking at, is you know you're talking about a
36 12-foot sign out on the street and you're overlooking the two other signs
37 that you have on your building that are plainly visible from your own
38 pictures. If you back up and go forward looking either direction I see
39 where your building is right away. I'm not going to have trouble finding
40 your building.
41
- 42 Scholz: Other questions for these gentlemen or comments? All right. Thank you
43 for your presentation. I want to open this to public discussion because
44 we're running late and I know there are some people, I've seen them
45 jumping up and down on their seats already.
46

1 Squire: My name is Cynthia Squire. I live in one of the houses that they took a
2 picture of. Is there any way we could go back on one of their pictures?
3
4 Scholz: I'm sure they can accommodate you.
5
6 Squire: That one. Okay, as you're looking at this picture.
7
8 Scholz: Are you speaking into the microphone ma'am?
9
10 Squire: Can you hear me now?
11
12 Scholz: Yes, you bet.
13
14 Squire: Thank you. My name is Cynthia Squire. I live on Big Sky Drive. As you're
15 looking at this picture, you're looking on the backside of McDonald's. If
16 you... where the mouse is right now, that's my property. That's my
17 backyard. That's my trailer. That's my backyard. And I can ... as you can
18 see it's directly across the street from their auto parts store. And I could
19 tell you at this point in time they leave the lights on in their building all
20 night long, and it does interfere with my house. I see it in my bedroom
21 window. The other picture that they had showed and I'm not going to go
22 back to it where they said, see it's just a little window that you never see
23 light from. That's because that's my children's bathroom. You don't see
24 light from there because they shouldn't be spending all night in the
25 bathroom, they should be in bed, getting ready for school or whatever their
26 other activities are. Mr. Shipley made a lot of great points. I'll make mine
27 relatively short. I jotted some notes during their presentation. They talked
28 about that because they picked this place that they're being under penalty
29 not being able to put their 30-foot sign. But let me point out that when
30 they picked their location, McDonald's was already at its current location.
31 The houses that they took these pictures were already in their current
32 location. Nothing has changed relative to where they built their auto parts
33 store. So it shouldn't be any surprise to them that there are some visibility
34 issues in their point of view from the McDonald's. The McDonald's was
35 there to begin with.
36 They talked about changes in zoning. They are correct. When we
37 first bought this property, one of the reasons we bought this property was
38 because of the covenants in the neighborhood itself, but also because of
39 the zoning in the adjoining neighborhoods. After we had purchased and
40 built this house, this area here where McDonald's and O'Reilly are now
41 located, was not C-2 property. I don't know the exact date when that
42 changed. Maybe my other neighbors know that. But we were here
43 fighting that at that time as well. All's I can say to you guys, honorable
44 board members, is follow what you have in place, obey the law. The law
45 currently says 12-feet. We can't do anything about the fact that they've
46 already built there, but we can ask you to please follow the law. They talk

1 about penalties to their business, well there are penalties to my family's
2 way of life because of the lights that are there, that are not turned off at
3 9:30 at night.

4
5 Scholz: Okay, any questions for this woman?

6
7 Squire: I do have one other point.

8
9 Scholz: Okay.

10
11 Squire: In the state of New Mexico, there is a law called quiet enjoyment and it
12 talks about interference with quiet enjoyment is an actionable offense in a
13 New Mexico court of law. Now I guess that's open to interpretation, what
14 is considered interference with quiet enjoyment. Well for me, interference
15 from parking lot lights and signs interfere with my right to have quiet
16 enjoyment on my property, and anything you could do to help mitigate is
17 greatly appreciated. Thank you.

18
19 Scholz: Thank you very much. Someone else from the public who wants to speak
20 to this who has new information? Yes, sir. Please come up and identify
21 yourself.

22
23 Baur: Yeah, my name is Bob Baur. I live right out there too. Just down the
24 street from them a little ways. I too am a business owner. I also have a
25 sign issue with my store. I had to tell you that we have a very small sign
26 on our store. We opened up at a very difficult time and we made it work.
27 We knew when we moved into our business that the zoning laws required
28 this size of a sign, and we had to abide by those laws. When I moved out
29 to that area out there, I looked into all the zoning laws. I knew that
30 McDonald's could put that store in there. I knew that the whole frontage
31 road was allowed to have 30-foot signs down it, and I also knew that the
32 area behind us, which is my view of the mountains, other than
33 McDonald's, wouldn't be disrupted by that. I think that we should just keep
34 the zoning laws in place that are here now. And I believe, unless the law
35 changed and changed back, that that law was in place when they
36 purchased the land and I think it should be enforced now. Thank you.

37
38 Scholz: Thank you sir. Anyone else from the public want to speak to this? You
39 have different information, new information?

40
41 Gafner: My name's Bruce Gafner. I live next to a couple of these people. I have a
42 two story house with a deck on the top story so I overlook a lot of their
43 houses looking at the mountain. Like Mr. Baur said, I researched that
44 area. I've lived here eight years before I decided to build there. Part of
45 the reason I built where I did was to look at the mountains. My point I
46 guess I'm getting to was the 60% rule. I agree all of our houses are not on

1 that highway, but if all those are residential and the opposite side are
2 commercial, I would see that as only 50%. That road would never have
3 60% commercial on that.

4
5 Scholz: Thank you sir. All right. Yes, some new information sir.

6
7 Northrup: My name is Steve Northrup. I live at 5650 Big Sky, right next to Cindy. I
8 only have ... I'm kind of confused about one thing. The way they've
9 shown their sign here. They're showing it on a east/west direction which is
10 going to basically parallel the freeway and I'm kind of curious how
11 anybody would see that until they cross the overpass. As it is now, as you
12 drive down Highway 70, as you make the corner near Jornada, you can
13 see this place plain as day, particularly at night, it's all lit up. Their parking
14 lot lights do not go out at night. So far that's been a source of
15 consternation to my wife. That faces our bedroom; we have to shut our
16 blinds at night. So I'm a little bit confused and I'm a little bit worried about
17 what's going on. They say they turn their lights off and it hasn't been
18 happening. Thank you.

19
20 Scholz: Okay. Thank you sir. I'm going to close this to public participation and I
21 want some discussion from you gentlemen. What's your ...?

22
23 Crane: Well, I want to congratulate Mr. Shipley on changing my mind. He made a
24 point, distinction which I had been wrestling with but hadn't clarified, that
25 McDonald's is an impulse destination, poor choice of terms. But this is
26 someplace which does need to have a sign which is visible from the
27 freeway. I was surprised to hear that it's got a 30-foot sign. Because
28 when I drove down there today I could barely see the McDonald's sign.
29 But, regards O'Reilly's, yes they are a neighborhood parts store, people
30 will rapidly find out that they're there. People are not going to be driving
31 down the freeway looking for an auto parts store typically. And yes, it's a
32 telling point that the sign faces north/south on Mesa Grande and not so
33 that it can be seen from U.S. 70. I'm inclined to deny the request for
34 variance.

35
36 Scholz: Okay, other comments? Commissioner Beard.

37
38 Beard: I kind of disagree. I think that's an advertising sign. I think that people
39 going down that freeway may want to find an auto parts store and that
40 may be the sign that they find and pull off to use. It also gives the people
41 in the surrounding area that don't use that road, a chance, an opportunity
42 that there is an auto parts store a mile or so away. I mean they do see it
43 from the freeway, where they might not have seen it before. I'm glad that
44 Springfield, Missouri decided to come to Las Cruces. And I think that we
45 should give any business that comes here an opportunity to make it in this
46 town. It's to our benefit that they come here and that they survive and

1 they compete on a level basis with all the other auto parts stores. So I
2 really am for the sign, even though it is a variance. It gives them a little bit
3 fairer advantage and hopefully they will stay here for my duration anyway.
4

5 Scholz: Okay. Commissioner Shipley, one more comment.
6

7 Shipley: I was just going to say that I live over there. I drive to White Sands on 70,
8 and I've seen O'Reilly's store when it was being built and now that it's up.
9 And I can see the signs from the freeway, going up and down 70. The
10 reason I say that is because it has two electric signs already that are 30-
11 feet tall, basically on the side of the building. They might be 28-feet, not
12 30, but they are very visible and it catches your eye because if you look at
13 the ... go back to those pictures, they're almost the length of the building.
14 They're huge signs. And they're a lot bigger than the sign that they're
15 talking about putting up on a pole. To me when you start putting up poles,
16 single poles, I mean if you're going to have a shopping center it ought to
17 be a sign that has all the businesses in there. And if you're going to have
18 strip malls, all you're going to end up with is porcupines going down the
19 street, and that's not a really appealing thing. And that's one of the
20 reasons why we have an ordinance that says 12-foot is the kind of sign for
21 that area. So I think because they already have two 28-foot signs on the
22 building, that's sufficient, more than sufficient.
23

24 Scholz: I'll entertain a motion on this case. Will someone move to accept Case
25 A1694?
26

27 Beard: So moved.
28

29 Scholz: It's been moved. Is there a second?
30

31 Iserman: I'll second it.
32

33 Scholz: Okay, it's been moved and seconded. I'll call the roll. Commissioner
34 Shipley.
35

36 Shipley: I vote aye for the denial.
37

38 Scholz: I'm sorry you'll have to vote no for the denial.
39

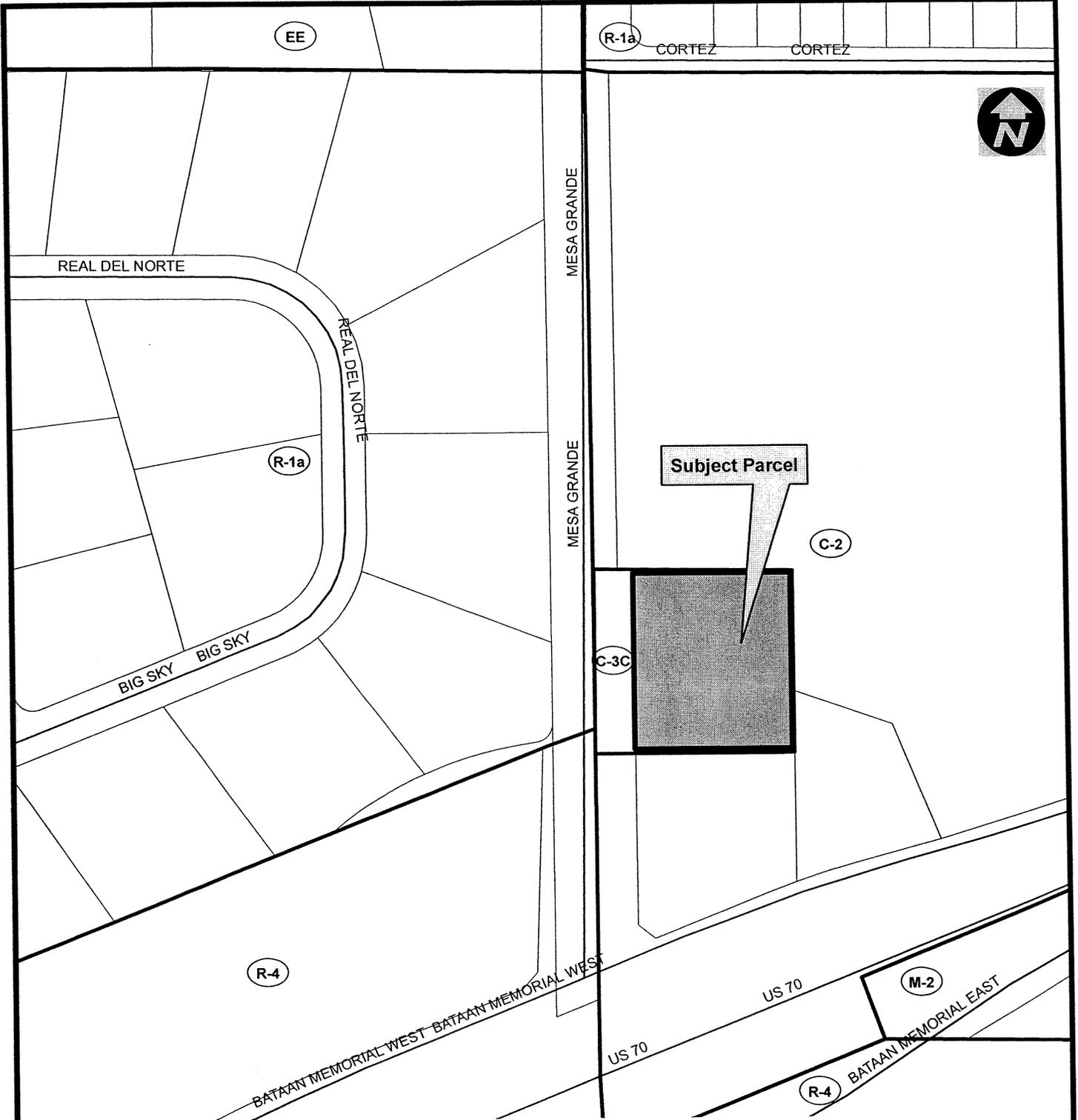
40 Shipley: No, isn't it the recommendation is denial, isn't it?
41

42 Scholz: Oh, I'm sorry the recommendation is denial, right.
43

44 Shipley: Okay and I vote aye for the denial.
45

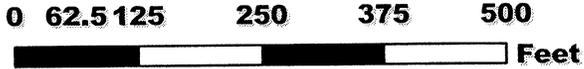
46 Scholz: Okay. Commissioner Crane.

- 1
2 Crane: Votes aye for the denial based on discussion, findings, and site visit.
3
4 Scholz: No, that's backwards gentlemen. We ran into this last month as a matter
5 of fact. Yes. If you're going to vote for denial, you will vote no. Can we try
6 that again?
7
8 Shipley: Okay, I'll ...
9
10 Scholz: I'm going to call the roll. Commissioner Shipley.
11
12 Shipley: Nay, findings, discussion, and site visit.
13
14 Scholz: And you say nay. Okay. Commissioner Crane.
15
16 Crane: I hope I'm not making a mistake here. Vote's nay, findings, discussion,
17 and site visit.
18
19 Scholz: Commissioner Iserman.
20
21 Iserman: I'll vote nay, findings and discussion.
22
23 Scholz: Okay, Commissioner Beard.
24
25 Beard: I vote yes, findings, discussions, and site visit.
26
27 Scholz: And the Chair votes nay for findings, discussion, and site visit. So the
28 recommendation is denial. The variance is denial.
29
30 3. **Case Z2790:** A request for a zone change from M1/M2 (Industrial Standard)
31 to R-4 (Multi-Dwelling High Density & Limited Retail and Office) for 3.4189 +/-
32 acres located at 1089 W. Amador Avenue. The zone change will facilitate a
33 transitional living facility (apartments) for at risk youths. Submitted by
34 Southwest Engineering, Inc. for Resources for Children & Youth, Inc.
35
36 Scholz: Okay, we're to our last case. Thank you for participating. Our last case is
37 Mr. White.
38
39 White: I'll make a very succinct presentation.
40
41 Scholz: Oh, good.
42
43 White: I won't be very long winded this evening. Very briefly, Case Z2790 is a
44 zone change from M-1/M-2 which is industrial standard to R-4 multi-
45 dwelling high density and limited retail and office for 3.41 acres located at
46 1089 W. Amador. Very briefly, even though this property has a physical



VICINITY MAP

CASE NO. A1694
PARCEL #: 02-29071
OWNER: O'REILLY AUTOMOTIVE INC.
ADDRESS: 4820 MESA GRANDE AVE.
ZONING: C-3C



This map was created by Community Development to assist in the administration of local zoning regulations. Neither the City of Las Cruces or the Community Development Department assumes any legal responsibilities for the information contained in this map. Users noting errors or omissions are encouraged to contact the Community Development Department at (505) 528-3043.

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