



Planning and Zoning Commission Agenda

The following agenda will be considered by the Planning and Zoning Commission of the City of Las Cruces, New Mexico, at a public hearing held on October 24, 2023, beginning at 6:00 p.m. in Council Chambers at City Hall, 700 N. Main Street, Las Cruces, New Mexico.

1. Call To Order
2. Conflict Of Interest
3. Approval Of Minutes

Documents:

[09-26-23 PZ MINUTES.PDF](#)

4. Postponements
5. Acceptance Of The Agenda
6. Public Participation
7. Consent Agenda
- 7.1. Case No. 22CS0500158
A request to approve a master plan known as Organ Mountain Plaza. The proposed subdivision encompasses 9.525 ± acres, zoned M-1/M-2/C-3 (Industrial Standard/Commercial High Intensity) and located at 4299 Bataan Memorial West. The master plan proposes to develop 20-30 lots that will follow M-1/M-2/C-3 development standards. Submitted by KT Homes, representative. Council District 5.
- 7.2. Case No. 23ZO0500124
A zone change request from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity) for a property located at 6281 Reynolds Drive encompassing .812 acres in size. Submitted by Martha Ortiz, property owner. Council District 6.
8. Old Business
9. New Business
- 9.1. Case No. 23ZO1000091
A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business. The subject property is located at 1760 W. Hadley Avenue, encompassing 1.02 ± acres and is zoned M-1/M-2 (Industrial Standard).

Submitted by Martin Camarena, representative. Council District 4.

9.2. Case No. 23ZO1000109

A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business and single-family residential zoning district. The subject property is located at 750 S. Solano Drive, zoned C-2 (Commercial Medium Intensity), and encompasses 1.41 ± acres. Submitted by Alter Ego Holdings, LLC, representative. Council District 3.

9.3. Case No. 23ZO1000118

A request to approve a Special Use Permit (SUP) to allow a cannabis related business less than the required 300-foot buffer distance from another cannabis related business. The subject property is located at 725 S. Solano Drive, zoned C-2 (Commercial Medium Intensity), and encompasses 0.225 ± acres. Submitted by Jordan Andrew Barber, representative. Council District 3.

9.4. Case No. 23ZO5000105

An Infill Development Process request to allow for site deviations for the redevelopment of a commercial property located at 1325 El Paseo Road. The subject property is zoned C-2 (Commercial Medium Intensity) and encompasses 0.60 ± acres. Submitted by Express Trade LLC, property owner. Council District 3.

9.5. Case No. 23ZO0500085

A zone change request from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial High Intensity). The subject property is encompassing 1.436 ± acres and located at 2460 Missouri Avenue. The request will bring the property into compliance with the 2001 Zoning Code, as amended for future development. Submitted by Oscar Luevano, representative. Council District 2.

10. Discussion

11. Staff Announcements

12. Adjournment

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Posted 10/6/2023



CITY OF LAS CRUCES

**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
September 26, 2023 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

- Scott Kaiser, Chair
- Enrico Smith, Vice-Chair
- James Bennett, Secretary
- Vanessa Vega, Member
- Joaquin Acosta, Member
- Connor Murray, Member

BOARD MEMBERS ABSENT:

- Vanessa Porter, Member

STAFF PRESENT:

- Tim Pitts, Deputy Director Building Development
- Adam Ochoa, Senior Planner/Building Inspection Supervisor
- Vincent Banegas, Interim Planner
- Brad Douglas, Deputy City Attorney
- Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-

1 plus for myself, and certainly longer for others. And we wish you all the best
2 and hope to see you around town.

3
4 Vega: You will, on my bike.

5
6 Kaiser: Sounds great. All right.

7
8 **2. CONFLICT OF INTEREST**

9
10 Kaiser: So with that we will go ahead. Are there any conflicts of interest from the
11 Commission tonight? All right. Seeing none.

12
13 **3. APPROVAL OF MINUTES – July 25, 2023**

14
15 Kaiser: We'll go to the approval of minutes. Before we do that were there any
16 corrections or edits that folks would like to make? I just have a couple just
17 to clarify on the attendance. It should be Commissioner Bennett listed as
18 the Secretary and Commissioner Smith listed as the Vice-Chair. So we can
19 make those corrections and then looking for a motion to approve.

20
21 Bennett: I make a motion to approve the minutes.

22
23 Smith: I second.

24
25 Baum: Board Member Acosta.

26
27 Acosta: Yes.

28
29 Baum: Board Member Smith.

30
31 Smith: Yes.

32
33 Baum: Board Member Vega.

34
35 Vega: I abstain. I was not here.

36
37 Baum: Board Member Bennett.

38
39 Bennett: Yes.

40
41 Baum: Board Member Murray.

42
43 Murray: Yes.

44
45 Baum: Chair Kaiser.

46

1 Kaiser: I abstain as I was absent.

2

3 Baum: Thank you. Passes.

4

5 **4. POSTPONEMENTS**

6

7 Kaiser: All right. Moving onto the acceptance of the agenda, or I actually should
8 clarify there are no postponements tonight; is that correct?

9

10 Ochoa: Nothing tonight, sir. No.

11

12 **5. ACCEPTANCE OF THE AGENDA**

13

14 Kaiser: So go ahead and looking for a motion approve tonight's agenda?

15

16 Ochoa: I make a motion to approve tonight's agenda.

17

18 Murray: I second.

19

20 Baum: Board Member Acosta.

21

22 Acosta: Yes.

23

24 Baum: Board Member Smith.

25

26 Smith: Yes.

27

28 Baum: Board Member Vega.

29

30 Vega: Yes.

31

32 Baum: Board Member Bennett.

33

34 Bennett: Yes.

35

36 Baum: Board Member Murray.

37

38 Murray: Yes.

39

40 Baum: Chair Kaiser.

41

42 Kaiser: Yes.

43

44 Baum: Passes.

45

46 **6. PUBLIC PARTICIPATION**

1
2 Kaiser: All right. Moving onto public participation. Is there anybody in the audience
3 who wishes to speak on an item that is not on tonight's agenda? Please
4 raise your hand. Okay. Seeing none.
5

6 **7. CONSENT AGENDA**
7

8 Kaiser: We will move onto the consent agenda in which we have three, yes, three
9 items on the consent agenda. Can I get a motion to approve tonight's
10 consent agenda?
11

12 Vega: I make a motion to approve the consent agenda.
13

14 Smith: I second.
15

16 Baum: Board Member Acosta.
17

18 Acosta: Yes.
19

20 Baum: Board Member Smith.
21

22 Smith: Yes.
23

24 Baum: Board Member Vega.
25

26 Vega: Yes.
27

28 Baum: Board Member Bennett.
29

30 Bennett: Yes.
31

32 Baum: Board Member Murray.
33

34 Murray: Yes.
35

36 Baum: Chair Kaiser.
37

38 Kaiser: Yes.
39

40 Baum: Passes.
41

42 **8. OLD BUSINESS**
43

44 Kaiser: Okay. Moving on. We do not have any old business tonight.
45

46 **9. NEW BUSINESS**

1
2 **9.1 Case No. 22ZO0500085:** A zone change request from R-4 (Multi-Dwelling
3 High Density and Limited Retail and Office) to C-3 (Commercial High
4 Intensity) for a property located at 3250 Northrise Drive and encompassing
5 2.5 acres in size. Submitted by Mark Heck, property owner. Council District
6 6.
7

8 Kaiser: So we'll move onto new business and begin with item 9.1, A zone change
9 request from R-4 to C-3 located at 3250 Northrise Drive. Staff, please take
10 it away.
11

12 Banegas: Good evening, Commissioners. Vincent Banegas, Interim Planner for the
13 record, presenting tonight's case involving 3250 Northrise Drive. It is a zone
14 change request seeking zone change from R-4 to C-3. It is Case
15 22ZO0500085.
16

17 Current conditions on the case at hand, the zoning is R-4 which is our multi
18 dwelling, high density and limited retail and office zone. Limited retail and
19 office in the sense that there are perhaps more office uses than retail and
20 retail home occupation that type of thing is allowed. But otherwise, it's well
21 suited for the multi dwelling component of our land use spectrum. It is
22 roughly 2.5 acres in size and it was rezoned from A-2 to R-4 back in 2014.
23

24 The property is currently vacant and from a grading or elevation perspective
25 it does sit lower than some of the properties around it. In fact to that end,
26 there's some fill dirt being requested to help elevate the site so that it is
27 more developable, easier to develop in that regard.
28

29 It is one of several of 2.5 acre lots that were annexed back in the day with
30 the East Mesa U.S. 70 annexation that took place in 1986. The A-2 zone
31 was used quite extensively during that time. And for many of these parcels
32 as a placeholder, if you will, in that future consideration, future development
33 was going to be thought through and then a rezoning would be brought forth
34 at that time. So there's still several that are A-2 in nature and that's what
35 prompted the rezoning back in 2014 for this particular parcel.
36

37 Many of the properties in question around the subject property and including
38 the subject property were platted with access easements serving as a legal
39 method to gain access to the property. But from a broader perspective
40 doesn't provide any great surety in completing or providing for a suitable
41 road network further south of Northrise.
42

43 The property in question has approximately 35 feet of Northrise Drive
44 frontage, barely enough to comply with the ingress/egress requirements of
45 the code or design standards. The transportation issue going back to that
46 because there is a general lack of roadway system south of Northrise, a

1 blueprint to address those type of issues is currently underway. In fact, the
2 City has hired a consultant to aid in that effort and they are holding a
3 meeting I believe tomorrow if I'm not mistaken. And the expected
4 completion date is approximately four months from now, so end of year.
5

6 The property currently sits in the suburban neighborhood place type and as
7 we now know that supports low to moderate residential densities and allows
8 pockets of commercial development. The property is directly south and
9 west of the regional commercial neighborhood place type. In fact, the
10 majority of that place type sits north of Northrise Drive and then does wrap
11 around on the southwest corner of Rinconada Boulevard and Northrise.
12

13 The current R-4 zoning helps address some of the housing related issues
14 that we are well aware of through the planning efforts of late. Specifically,
15 the missing middle housing that we are trying to fill the gap for, and also
16 housing affordability. So those are a couple of the housing related issues
17 that play a role in this current request.
18

19 The surrounding neighborhood is multifamily residential both west and
20 southwest, office and commercial, north, northeast and east and southeast,
21 and vacant to the south of the subject property. The supporting zoning for
22 those uses is an alphabet soup, as you can see there's PUD, R-4, EE, A-2,
23 and so on. There's no immediate plans to develop the property. Certainly,
24 none that were mentioned to staff.
25

26 So here's a zoning map that shows the location of the subject parcel here.
27 Northrise Drive sits here. And the property as shown is currently R-4. You
28 do have EE which is our equestrian estates and agriculture zoning district
29 allowing up to one dwelling unit on a minimum of a one-acre lot size. The
30 other A-2 zone parcels kind of speak to that zoning effort back in the '80s
31 and based on what I know from the efforts back then those are the
32 placeholders.
33

34 You do have some plethora of other uses up in here. Some vacant, some
35 are developing right now but you have some office and commercial uses
36 further west of the property along Roadrunner. And of course, you do have
37 significant commercial uses beginning further east of the property along
38 Northrise out towards Rinconada with Walmart, etc., taking place in that
39 region.
40

41 The aerial view of the subject property. You do have this area here which
42 is not currently serviced, that's the area that is being referenced when I
43 speak of lack of road network. Connectivity for any roadway from Northrise
44 down to Calle Jitas intersection with Sonoma Ranch for instance once you
45 get past that it's kind of no man's land. There is the school further south of
46 subject property, an arroyo that separates some of the land in question.

1
2 A lot of these parcels, these 2.5-acre parcels are individually owned and
3 some have a grouping in terms of ownership. We refer to one as the tetras
4 parcel which has a shape of a tetra's game piece and has multiple 2.5-acre
5 lots assembled under a single ownership.
6

7 So the proposal given is R-4 to C-3 speculative in nature. Speculative in
8 the sense that that's a necessary step to get to market the property and
9 ultimately develop the property. Staff is aware of that but the applicant has
10 indicated that there's a need to change the zoning to commercial to help
11 offset some of the costs that are associated with grading and making the
12 parcel marketable and developable.
13

14 This is a plat showing the parcel in question. It's a little hard to read but you
15 see that small amount of frontage right along Northrise Drive which runs at
16 this location here. And you do see some of the easements, road easement,
17 in this case it looks to be a 33-foot road and utility easement here. A lot of
18 those parcels have very similar easements identified.
19

20 Some of the photos taken out on site. Here's the sign that's seeking clean
21 fill to help elevate the parcel. There is a fairly significant drop depending
22 where you stand from the top of surface here adjacent to Northrise Drive on
23 down to the subject parcel. Another shot. And then looking at either
24 direction both west and east along Northrise Drive and that's what these
25 photos represent. A lot of vacant land or underdeveloped land.
26

27 So in terms of analysis, there's no health, safety, or welfare issues that are
28 identified by staff through the review process. However, we do consider the
29 fact that the proposed zoning maybe compatible to some of the properties
30 east of the subject location. What I'm referring to are some of the
31 commercial properties there but again the regional commercial place type
32 that starts looping down along Rinconada lends credence to that
33 compatibility.
34

35 Staff feels that allowing further intrusion, if you will, of the regional
36 commercial or commercial uses I should say in an area that's already
37 identified as a suburban place type kind of minimizes the importance of that
38 suburban placed type and may provide added pressure for additional
39 property owners to seek rezoning to a commercial designation. So staff
40 feels that the areas north of Northrise Drive and east, south at the southwest
41 corner of Rinconada and Northrise Drive already allow commercial and so
42 limiting commercial to those areas is prudent.
43

44 So the property is within that suburban place type. We do encourage a
45 variety of residential development at low to moderate densities with areas
46 of commercial as we have identified in previous cases. I've also stipulated

1 that the deficient road network is a concern and the planning effort
2 underway at the present time will hopefully shed some light on how we can
3 handle that for future development.

4
5 The proposed zoning that is being requested in terms of the C-3 does allow
6 residential densities. I don't want to lead you to believe that it will not. It
7 does allow a minimum of 10 dwelling units per acre and up to 40 dwellings
8 units per acre as well. So that can be done. The question is will it be done
9 or will we see additional commercial development? Again, based on the
10 grading issues and the information provide, staff would suspect that
11 commercial would probably be a likely development scenario for that lot.

12
13 In terms of public notice and input, notice was sent in accordance with the
14 2001 Zoning Code as amended. And we really did not receive any feedback
15 from property ownership within the 500 feet of the subject property.

16
17 Staff recommendation and findings. This is going to be a little different than
18 most cases that you hear. Staff is recommending denial based on the
19 following findings. Property south of the subject property do not have
20 adequate road network to service those properties. Many of the properties
21 are platted with access easements which provide legal access but no surety
22 of developing right-of-way and efficient connectivity.

23
24 The CLC consultant is currently studying developing the blueprint in an area
25 concentrating on transportation issues and needs. And that hasn't come to
26 fruition yet so we feel rezoning is a little premature at this point given that.
27 The property is in the suburban neighborhood place type. Again, low to
28 moderate residential densities with supporting commercial.

29
30 The regional commercial place type primarily takes place north of Northrise
31 Drive, directly north of the subject property wrapping around to Rinconada
32 and Northrise. And so commercial areas and opportunities for development
33 already exist. The further introduction of commercial in this suburban
34 neighborhood place type kind of minimizes its purpose, that's kind of how
35 we feel. There's an ongoing need for apartments which the R-4 can satisfy
36 addressing the missing middle and housing affordability.

37
38 And so, we feel that the proposal is not substantially supported by Elevate
39 Las Cruces Comprehensive Plan in that it doesn't meet the purpose and
40 intent of the 2001 Las Cruces Zoning Code. The subject property is
41 surrounded largely by commercial, office, multifamily, and vacant property,
42 and zoned a variety of zoning designations. So a little different here in terms
43 of options. Staff would recommend you vote in affirmative like you would
44 any other case. But in this case if you vote yes, you're voting to approve
45 the zone change to C-3 in which case the findings that I've already identified
46 in the presentation you need to know do not support the request so you'd

1 have to identify findings of fact that are different from those I've just
2 presented. If you vote no, then you deny the request and you can also vote
3 yes amend with conditions, or you vote to table. And that concludes that
4 presentations. And I stand for question. And I know the property owner's
5 in attendance might want to say a few words regarding his request.
6

7 Kaiser: All right. Well, before we come to the Commission, would the applicant,
8 property owner wish to make a presentation or provide statements? Before
9 you start can you state your name for the record so I can swear you in?

10
11 Heck: Full name is John Mark Heck.

12
13 Kaiser: And do you swear or affirm that the testimony you're about to give is the
14 truth and nothing but the truth under penalty of law?

15
16 Heck: Yes.

17
18 Kaiser: Okay. Please go ahead, sir.

19
20 Heck: Good afternoon. Good evening. He failed to mention that that is a massive
21 sewer line across the, what I would call the southwest portion of the
22 property. It's already in existence. It's probably an 18-inch sewer line. It
23 serves Walmart and all the commercial area on upstream.

24
25 There's also an easement on what I would call the northeast side which is
26 a utility easement with an existing powerline. It's the only property in that
27 entire area that fronts Northrise. And it's also one of the deepest points
28 along Northrise elevation and topographical, so it needs to be filled in, and
29 you're talking approximately 35 to 40 feet of fill on 2.5 acres, that is a
30 considerable amount of fill. That's going to be incredibly expensive in most
31 cases.

32
33 Also, he did not mention that there is an existing arroyo that often flows that
34 goes around what I would call the west point of the property. That's going
35 to have to be addressed. I do not think that residential property can be built
36 on that area that would overcome those expenses that's why we need to go
37 commercial in that property. And I do have a prospective restaurant that
38 has looked at it and were thinking about it, but we don't know what the
39 zoning is going to be and we don't know whether they would qualify or not.

40
41 It seems like that's all I can think of that needs to be addressed. Other than
42 there's nothing but commercial property on both sides of it except for the
43 south portion and across the road it's all commercial in that area. I don't
44 understand why it has to be residential when you have so much other
45 property there and when they address the access needs that that could not
46 be developed more efficiently and at a lower cost. Thank you.

1
2 Kaiser: Thank you. All right. Coming to the Commission, are there any questions
3 or comments?
4
5 Acosta: I've got one. So looking at the, a statement you said Vincent about it being
6 perhaps too premature. In terms of the steps that would need to be making
7 it appropriate for rezoning could you clarify that for me?
8
9 Banegas: Certainly. Mr. Chairman, Commissioner Acosta. The statement of being
10 premature is referring to the planning effort for the blueprint in terms of
11 identifying how to provide for transportation networks, road networks in that
12 southern area. It could be that as Mr. Heck indicated that the property in
13 question that has perhaps the only access at least for some of those A-2
14 zoned and EE zoned parcels that's the only one that has the frontage could
15 be impacted in some form or fashion in terms of the provision for access.
16
17 So we don't know what's going to come from the planning effort. We truly
18 don't. We would like to wait and see and see what they come up with policy
19 wise, idea wise in terms of road network.
20
21 Acosta: And so just to clarify that, it comes from the City of Las Cruces before a
22 property owner could do what he needs to do as far as developing that? Or
23 can property owner, or if he sells it somebody come in there and do the
24 blueprints or propositions?
25
26 Banegas: The City of Las Cruces in working with the consultant have made contact to
27 the various property owners in the vicinity trying to assemble them, trying to
28 setup a meeting. In fact, that meeting as I recall talking with Sara about,
29 will take place tomorrow. And so the purpose is to convey what is being
30 proposed and start assembling some of the ideas and the thoughts of those
31 property owners in terms of making this a reality, making the road network
32 a reality for this region.
33
34 Acosta: Okay. Thank you.
35
36 Kaiser: Yes. Go ahead, Commissioner Smith.
37
38 Smith: I have a question or concern. I did a site on this area and it is highly
39 commercial and now looking at the zoning map, seeing that this one parcel
40 that's zoned residential. What is the likelihood that that area would be
41 developed for residential? I know of course the property owner would have
42 to sell it and then someone would have to purchase it and decide to build
43 residences there but what is that likelihood because of the highly
44 commercial and the fact that it's zoned EE and also A-2 that that would
45 happen sooner than say zoning it for commercial and having another
46 business there?

1
2 Banegas: Mr. Chairman, Commissioner Smith. That's a difficult question and the only
3 thing I can point to is some areas that have previously undergone master
4 planning that have identified multifamily as a use on property as part of the
5 master plan. Staff has received in the past immense pressure to convert
6 those parcels that were identified as multifamily over to a commercial
7 designation from a use perspective and then change the zoning to support
8 that. Staff has resisted that in the past and it took a while but we finally got
9 apartments exactly where the master plan intended them to be. And this
10 was an area along Sonoma Ranch.
11
12 In this case, it's likely. I can't indicate that some of these areas that are
13 south of the subject property will not ever be multifamily in nature. Keep in
14 mind that the suburban neighborhood place type encourages residential
15 with pockets of commercial. So commercial isn't outright banned. It's
16 allowed but we want to see, from our perspective residential is often,
17 especially multifamily is often the stepchild of master plans. Those tend to
18 come last.
19
20 Smith: All right. Thank you.
21
22 Kaiser: I just want to go back to Commissioner Acosta's question. So as it stands
23 right now R-4 is the current zoning. So if they wanted to move ahead with
24 a residential project is it staff's position that at this time due to the circulation
25 constraint concerns that it would also be premature to develop that type of
26 project now as well?
27
28 Banegas: Mr. Chairman. Based on the fact that the existing zoning is in place, staff
29 would encourage them to hold on but we wouldn't restrict them from
30 proceeding with development plans.
31
32 Kaiser: Okay. Thank you. And if you could go back to the slide that showed the
33 easement.
34
35 Banegas: If I could find it. Let's see. There.
36
37 Kaiser: That one, yes. So if I'm reading this correctly, the easements I guess would
38 be the eastern edge of the parcel, correct?
39
40 Banegas: That's correct.
41
42 Kaiser: So I'm just trying to think because that would be if they were to develop say
43 a residential project right now. Would that presumably be the access point?
44 I mean because they would have access, I'm assuming through that
45 easement back to Northrise.
46

1 Banegas: Mr. Chairman, Commissioners. You might also reference this little detail.
2 Based on that detail, I'd have to assume that their intent for primary access
3 to this property will be right at that frontage. The detail kind of illustrates a
4 driveway detail that is being at least proposed per this plat. I don't know if
5 that's going to change in terms of their development proposal, they would
6 ultimately submit but.
7

8 Kaiser: Okay. Thank you. Yes. This seems like a headache to be honest given
9 the lack of circulation there. I do want to kind of touch on the point that
10 Commissioner Smith kind of alluded to. And part of my concern is that, and
11 staff I think you've made this point in your presentation that we only ever
12 see these zone changes from residential to commercial on our multifamily
13 parcels. And I'm really concerned about that because we don't have a lot
14 of that to begin with. And every single time we do these, one instance. It's
15 always one instance. Well soon we're at 1,000 instances and we've lost a
16 tremendous amount of opportunity to develop multifamily and the missing
17 middle types of housing that the comprehensive plan is wanting to see.
18

19 We never see the opposite. We never see commercial being proposed to
20 be rezoned for multifamily residential, and we sure as heck do not see
21 single-family being rezoned either to commercial or multifamily. So I am
22 very concerned that by us giving this away it's another two acres. I mean
23 back in July I think we had another zone change off of multifamily residential
24 to commercial in urban core. It's just another example of this maybe one,
25 2.5-acre parcel but you do that 25 times, 30 times, 40 times suddenly we're
26 left with nothing else.
27

28 And so, I'm just very concerned. I'm also concerned that I mean I think
29 you've got to do some sort of master plan here. It sounds like the blueprint
30 may address some of it but I just think there's got to be some bigger vision
31 aside from just one, 2.5-acre parcels. So that's just my perspective there.
32 Any other questions or comments from, yes, Commissioner Smith?
33

34 Smith: Would you once again just clarify how we're to vote on this proposal?
35

36 Banegas: Yes.
37

38 Smith: Thank you.
39

40 Banegas: If I could before I leave this slide, Mr. Chairman, Commissioner Smith. I just
41 wanted to point out that this EE is the tetras piece that I mentioned. They're
42 knocking. Okay, they've already come and they're aware of the planning
43 effort but they're holding off until that goes through. Okay..
44

45 So going back to Commissioner Smith's question. The report that you've
46 read and my presentation are recommending denial. Staff would like for

1 you to vote. Make a motion in the affirmative and if you do so the findings
2 that I presented are based on a denial position. So you'd have to come up
3 with findings of fact that would support approval. Now, I do have some
4 standard ones that are in our com plan that could support that if you feel it's
5 warranted. But otherwise, if you vote no, you're siding with the packet,
6 you're siding with this presentation and you're denying the request. Okay.
7 Is that clear, because it is a little convoluted.

8
9 So if you want to approve it, these are some of the elements in our
10 comprehensive plan that speak to commercial development growth,
11 development of not necessarily older areas but vacant areas infill
12 development generating employment opportunities. Those are some of the
13 ones that we've used in the past. So I offer them up but staff recommends
14 denial.

15
16 Kaiser: Okay. I'm going to go to the public now. Are there anyone in the audience
17 who wishes to speak on this item? Please raise your hand. All right. Seeing
18 none. We'll come back to the Commission. Any final questions or
19 comments? All right. Looking for a motion to approve.

20
21 Bennett: I make a motion to approve 9.1.

22
23 Vega: I second.

24
25 Baum: Board Member Acosta.

26
27 Acosta: I vote yes to approve based on some of the findings that he had given us
28 there, balanced growth I would say, and I think infill development as well
29 would support my vote.

30
31 Baum: Board Member Smith.

32
33 Smith: I vote no based on staff recommendation. I feel that this needs to be more
34 of a master plan for this entire zoning area.

35
36 Baum: Board Member Vega.

37
38 Vega: I vote no based on staff recommendation.

39
40 Baum: Board Member Bennett.

41
42 Bennett: I vote no based on staff recommendation.

43
44 Baum: Board Member Murray.

45
46 Murray: No based on staff recommendation.

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Baum: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion fails.

9.2 Case No. 23ZO0500006: A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for one parcel located at 780 Stern Drive and encompassing 1.78 acres in size. Submitted by Ted Scanlon, Borderland Engineers and Surveyors on behalf of Michael Clute, Hacienda RV LLC. Council District 4.

Kaiser: Okay, moving onto item 9.2. This is a zone change request from EE to C-3 located at 780 Stern Drive and I'll turn it over to staff.

Banegas: Once again, Mr. Chairman, Commissioners. Vincent Banegas for the record, Interim Planner presenting tonight's case involving 780 Stern Drive. The property is currently zoned EE and they are seeking the designation to C-3. And you may draw some I guess the proper term would be corollaries from what we just heard to this case. And if you have any questions, I think I can answer them as to why one is denial and this one is approval.

But this case has the following current conditions. It's located along Stern Road between Boutz Road to the south and the Avenida de Mesilla to the north. It's 1.78-acre parcel and it's our equestrian estate and agricultural district. Again, allowing one dwelling unit for a minimum of one acre lot size. It's within the suburban neighborhood place type per the Elevate Las Cruces Comprehensive Plan and immediately adjacent on the north side of this property is our commercial place type, literally just due north.

The applicant's request in this case at least early discussions with them are speculative in nature. But like the last case, we do recognize it's a necessary step in the marketing, sale, and development of property. The existing EE as indicated can be developed residentially, in fact that's what it calls for. But given the minimum lot sizes, you're going to see one lot based on the current acreage of this property developed unless they were to seek a variance to allow additional homes on the property.

The area has limited commercial office uses that exist between Avenida de Mesilla and Boutz. The commercial uses are largely coming from the RV sales right off of Avenida de Mesilla. Office uses, you have the Department of Agriculture not too far from this subject property. And you do have other I think it's a spec building on the east side of Stern. I didn't see any signs and couldn't come up with a specific use but it looks to be a spec building at this point in time, perhaps also for an office.

1
2 Stern Drive and Avenida de Mesilla are both minor arterials. Boutz Road is
3 a major collector. So you have adequate road infrastructure in this case to
4 support the commercial zoning that is immediately northwest of the subject
5 property. In fact, the zoning here is C-3C and you have additional C-3 not
6 too far off of Stern.
7

8 Now, in here you have what some of you may recall Banmore Estates, a
9 residential subdivision that was approved by you all, single-family detached
10 homes. You have an existing neighborhood in here. All this is R-1aC in
11 terms of zoning. Some of the existing older properties in the area, you have
12 fairly large R-1a tract here. I think some of that was used for agricultural
13 purposes as well. You have an A-2 sliver right up against Boutz Road and
14 right along the south boundary of the EE existing parcel in question. So you
15 do have much of that is underutilized property at the present time. So again,
16 even though you have C-3 zoning a lot of that is office and/or service
17 related.
18

19 Here is an aerial view of the subject property. You can see Banmore
20 Estates is well on its way. The Department of Ag building, RV park which
21 is residential in nature but nonetheless an RV park, RV sales further down
22 the road there. This is that spec building that I couldn't identify as to what it
23 is.
24

25 Staff is of the understanding that U-Haul seeks to develop here on this
26 portion, this lot. To my knowledge, we haven't seen any plans submitted
27 yet but that's what we hear is coming. So the proposal is to rezone to C-3.
28 Again, staff has not been informed of any specific development proposal for
29 this lot in question. The staff feels that this proposed zoning is in
30 accordance with Elevate Las Cruces. The early notification efforts that staff
31 requested of the applicant's representative were undertaken and to the best
32 of my knowledge staff did not receive any input from the neighborhood as
33 a result of that effort. And as I recall the representative indicated they had
34 received none as well.
35

36 A couple of photos. This was right off of Stern looking west. A vacant
37 property right now. This is part of that A-2 strip on the south side of the
38 property line. You can kind of tell what's going on there. Looking down
39 Stern Drive due north, the Department of Ag building. And looking south
40 there's Banmore Estates going in right here, right at the corner of Boutz and
41 Stern.
42

43 So staff did not identify any health, safety, or welfare issues related to this
44 proposal. We do find that the zoning district that is being proposed provides
45 some compatibility with existing uses in the surrounding neighborhood. It
46 is within the suburban place type and would offer the commercial

1 component that is allowed as per the suburban place type, and as such it is
2 found to be consistent with Elevate.

3
4 As we know it's low to moderate density residential development with
5 intermixed commercial uses. There are some buffers that will have to be
6 maintained if this property goes to a C-3 designation and those are
7 anywhere adjacent to lower density or less intense parcels. For instance,
8 those residential parcels on the southside. So regardless of the zone
9 change if it goes through that is an element of protection that can be
10 maintained pursuant to code for those residential single-family or lesser
11 zoned properties.

12
13 Public input notice was carried out as indicated. Early notification efforts
14 were conducted. Staff's efforts, we sent out letters pursuant to code. We
15 did not receive any inquiry as of this meeting date. So staff's
16 recommendation and finding is approval based on the following findings.
17 The property is 1.78 acres in size and has limited development potential for
18 providing a significant buffer, if you will, between the regional commercial
19 place type and the suburban place type. So since it's immediately adjacent,
20 we felt that impacts would be rather limited.

21
22 The applicant has no imminent plans for development. And if approved the
23 supporting road network, Stern Drive, etc., Boutz Road and Avenida de
24 Mesilla could easily provide for access to the property. And we all know
25 suburban supports that. Several goals, policies, and actions from Elevate
26 are identified for support of the proposed request as well as the 2001 Las
27 Cruces Zoning Code in terms of its purpose and intent.

28
29 And your options this evening with this one is to vote "yes" and approve,
30 vote "no" and deny, in which case you'd have to come up with your own
31 findings of fact, you could vote "yes" with conditions, or vote to table. And
32 that concludes staff's that presentation. And I believe the owner and/or
33 representative are in attendance if they'd like to speak to their case.

34
35 Kaiser: All right. Thank you very much. Would the owner/applicant wish to speak
36 before we turn this over for Q&A? If you could just state your name for the
37 record.

38
39 Scanlon: My name is Ted Scanlon. Address 2990 North Main Street.

40
41 Kaiser: And do you swear or affirm that the testimony you're about to give is the
42 truth and nothing but the truth under penalty of law?

43
44 Scanlon: I do.

45
46 Kaiser: Go ahead.

1
2 Scanlon: Okay. I don't have a whole lot to add to Vince's very concise and thorough
3 presentation here but it was -- one thing I wanted to bring up is the fact that
4 we subdivided this property and created that lot to go back a certain
5 distance from Stern Drive and leave a big buffer for ponding area and
6 landscaping adjacent to the existing houses along there. And we're only
7 asking for rezoning on that lot that was created and not on the area that's
8 adjacent to the existing residential development. That will stay undeveloped
9 with no buildings or anything on it for certain.
10
11 I believe the property was originally zoned equestrian estates because
12 there's a gentleman that owns a property right on Boutz Road. His name is
13 Ken Mills and he kept horses back there. And he would graze those horses
14 on our property. And for the record, I'm one of the owners of this property
15 besides being the applicant and the representative. But we allowed him to
16 graze horses back there forever.
17
18 But now, we've sold the RV park. We've sold the parcel to U-Haul. We sold
19 the parcel to USDA and this is the last piece of property on that area that
20 we still own that we need to dispose of, to sell and have developed as a
21 commercial site. I don't know if I have anything more to add to that or not,
22 but I would appreciate an affirmative vote. Thank you.
23
24 Kaiser: Thank you very much. All right. Any questions or comments from the
25 Commission? All right. Seeing none. We'll turn to the public now. Is there
26 anybody in the audience who wishes to speak on this item? Please raise
27 your hand. All right. Seeing none. We'll come back to the Commission and
28 looking for a motion.
29
30 Vega: I'll make a motion to approve item 9.2.
31
32 Murray: I'll second.
33
34 Baum: Board Member Acosta.
35
36 Acosta: I vote yes based on staff recommendation.
37
38 Baum: Board Member Smith.
39
40 Smith: I'll vote yes based on site visit and staff recommendation.
41
42 Baum: Board Member Vega.
43
44 Vega: I vote yes based on staff recommendation and Elevate Las Cruces.
45
46 Baum: Board Member Bennett.

1
2 Bennett: I vote to approve based on staff recommendation. This meets the
3 neighborhood character and compatibility Elevate Las Cruces and purpose
4 and intent of the code.
5
6 Baum: Board Member Murray.
7
8 Murray: I vote yes based on staff recommendation.
9
10 Baum: Chair Kaiser.
11
12 Kaiser: Yes. Based on staff recommendation and consistency with Elevate Las
13 Cruces.
14
15 Baum: Motion passes.
16
17 **9.3 Case No. 23VO0500101:** A variance request to deviate twenty-four (24)
18 feet from the required twenty-five (25) foot front yard setback for a carport
19 addition to a home located at 4093 Winters Street. The property is
20 approximately 0.12 + acres in size and zoned R-1bC (Single-Family High
21 Density- Conditional). Submitted by Catherine Silva, property owner.
22 Council District 1.
23
24 Kaiser: Okay, moving onto item 9.3. This is a variance request to deviate from the
25 front yard setback at 4093 Winters Street. Staff, all yours.
26
27 Gonzales: Good evening, Commission. Sara Gonzales, Senior Planner, City of Las
28 Cruces. This is for a variance request for 4093 Winters Street. Currently,
29 the property is about 649 feet north of its intersection with Holly Drive and
30 Winters Street. It is approximately 0.12 acres in size. The property was
31 rezoned to R-1bC back in 2006, which is single-family high density
32 conditional. At that time, there was six acres left and the developer wanted
33 to reduce the lot sizes in order to fit in 35 more single-family homes.
34
35 As stated, this does have a single-family residence on the property. Here's
36 an aerial map of the subject property. These are the properties that went
37 into essentially a higher density as opposed to the surrounding neighbors.
38 They are probably about a third to half an acre in size and then we move
39 into a mobile home park that's located on the west side.
40
41 Here's a zoning map of the surrounding area. As you can see, it is primarily
42 single-family residential. We do have a few nodes of multifamily on the
43 south side. However, those are also developed with single-family
44 residences.
45

1 Per chapter 38 of the 2001 Zoning Code, setbacks for an R-1b zoning
2 designation for a garage or carport is to be at 25 feet. The applicant is
3 seeking to retain the carport addition to the existing dwelling that was placed
4 in the front yard of the property. The variance would allow the applicant to
5 maintain a one-foot setback from the property line. Here's a site plan of the
6 property. As you can see within this area, this designation here shows that
7 this is 25 feet back already originally for the original garage. So with that,
8 with the 25 foot setback, you essentially take up that entire space covered
9 with a carport structure leaving one foot. One of the concerns, and I'm only
10 bringing it up now and I'll reiterate it later is that there is a 12-foot utility
11 easement that runs along the front of the property. Structures, buildings are
12 not permitted to be within those utility easements as you have line
13 connections, El Paso Electric. Anything that has to be done there would
14 have to be modified. So as part of our recommendation, I will provide those
15 findings and to elaborate later.

16
17 Here are the site photos of the property. As you can see it is extended out.
18 This would be where we measure from whenever we actually measure
19 carports. It's never to the edge of it, it is to the actual overhang because
20 that is the part that is actually extending up to the furthest point of the
21 property line. The posts are pushed back. However, we do only have about
22 one foot to that property line.

23
24 The applicant did provide a letter that was provided within your staff packets
25 that she was unaware that the codes and regulations were going to require
26 the building permit or the status of that application or to them to be permitted
27 to be put into place. There are medical reasons in which she has requested
28 that carport to be maintained and it also protects vehicles from weather
29 damage.

30
31 As identified, staff did not see any health, safety, or welfare issues. Our
32 only identification was that the utility easement is in place and that
33 structures are not to be within a utility easement. However, we also
34 analyzed that the 24-foot variance to the minimum required 25-foot setback
35 does not meet the criteria for a variance. Whenever you look at variances,
36 we are looking at topographic constraints on a property. We are looking at
37 does it spur economic development? Is there a monetary hardship on a
38 property in which you would be forced to do something that's going to cost
39 you more than what you would need as far as putting it in a different
40 location?

41
42 So with that staff is recommending denial as it does not meet the criteria
43 outlined in the 2001 Zoning Code to meet 25-foot setback. We are also
44 saying that it does not follow the standards for criteria to approve the
45 variance based on the three criteria listed: topographic constraints, spur

1 economic development, and then monetary hardship. And the carport was
2 constructed unfortunately without a building permit.

3
4 Notice was sent to the surrounding properties. The only phone call that I
5 ever received as far as the carports being in placed is if this one were to be
6 approved does everybody in the neighborhood now get one? The response
7 I did provide to the person who contacted me via phone was that every
8 variance case is a case-by-case basis. We are looking at every request
9 that comes in here as a single case. The adjacent property owners do not
10 set precedence. We are not looking for those to move forward. Variances
11 stay with the land and it's based on the justification provided by the
12 applicant.

13
14 If the P&Z Commission decides to approve the case, staff is recommending
15 that these conditions be placed upon it. Both of the sides of the structure
16 remain open just for visibility whenever you back up into the oncoming
17 traffic. The structure does need to be attached to the residence as you are
18 not permitted to have accessory structures located within your front yard.
19 Making it attached makes it now an addition to your structure. They must
20 obtain a building permit and require all inspections, and we are requesting
21 that it be built or cut down to meet the 12-foot setback out of that utility
22 easement.

23
24 With that your options are to vote "yes" and approve, if you choose to vote
25 and approve, please provide new findings of fact as everything presented
26 to you this evening has been in denial. You can vote "no" and deny, you
27 can vote "yes" with conditions, or you can vote to table. The applicant is
28 here as well. And then I do believe there is public to speak on behalf. And
29 if you have any questions, I stand for those as well.

30
31 Kaiser: Thank you very much. Any questions or comments from the Commission?

32
33 Bennett: How much of that needs to be cut off for the utility easement? Just a
34 ballpark.

35
36 Gonzales: Mr. Chair, Commissioner Bennett. That would be 11 feet just because we
37 only have ...

38
39 Bennett: Thank you.

40
41 Gonzales: That one foot. So to get out of that 12 feet, we have that 11 foot deviation.

42
43 Murray: And then are these underground utilities or above ground?
44

1 Gonzales: Mr. Chair, Commissioner Murray. These are going to be underground
2 utilities. A lot of times in the 12-foot utilities what we find are El Paso
3 Electric, Comcast, Quest, Lumen, your phone, your electrics.
4

5 Kaiser: All right. Thank you. Any other questions or comments? Commissioner
6 Smith.
7

8 Smith: Could you go back to the photo of the vehicles underneath the carport?
9 Thank you.
10

11 Kaiser: All right. If the applicant wishes to speak, you're welcome to come forward
12 before we get a public comment. You're not obligated to. And before you
13 begin can you please state your name?
14

15 Silva: Catherine G. Silva.
16

17 Kaiser: And do you swear or affirm that the testimony you're about to give is the
18 truth and nothing but the truth under penalty of law?
19

20 Silva: I do.
21

22 Kaiser: Please go ahead.
23

24 Silva: Well, the reason I did it it's because for my daughter's protection. She's on
25 medication. She can't be under the sun because of her medication. It's
26 medical reasons. And when it's raining, we can't be running into our vehicle
27 and slip and fall besides myself too. I'm injured too. So that's why I got it
28 done and it's expensive. And to remove it, it's another expense for myself
29 and I'm a single parent. So hopefully, I get it approved and it's for her
30 protection.
31

32 And I don't have no shade for her and I can't keep her inside the house all
33 the time. And that's the only place I take her outside. She loves to color so
34 I take her outside on a chair and she colors out there. And that's all I have
35 to say.
36

37 Kaiser: Okay. Thank you very much.
38

39 Silva: Okay.
40

41 Kaiser: All right. Is there anybody in the audience who wishes to speak? Please
42 raise your hand. Okay. Yes, ma'am. Please come forward. I'll give you
43 three minutes. We have a timer here. It will count down but I've been told
44 the beeper sound doesn't work so if you hear this gentleman here beep
45 that's your time. Before you begin can you please state your name for the
46 record?

1
2 Chavez: My name is Bertha Chavez.
3
4 Kaiser: And do you swear or affirm that the testimony you're about to give is the
5 truth and nothing but the truth under penalty of law?
6
7 Chavez: I do.
8
9 Kaiser: Go ahead.
10
11 Chavez: What I wanted to add as they need just a caregiver for Ms. Silva's daughter.
12 And I do take her outside. She loves to color. She loves to be outside for
13 a while but due to her medical condition I can only keep her out for a while.
14 So this was serving a purpose and a need for her daughter and also Ms.
15 Silva. That's all I have to say. Thank you.
16
17 Kaiser: Thank you very much. All right. Anybody else in the audience who wishes
18 to speak on this item? Okay. Seeing none. We'll come back to the
19 Commission. Any final comments? Commissioner Smith.
20
21 Smith: I just have a question for the applicant. Did you hire a commercial contractor
22 to build this? Was this something that was done by a family member who
23 is capable of building it?
24
25 Silva: It was done from a family member's friend. That was it. It wasn't a
26 contractor or nobody.
27
28 Smith: So this person is not a contractor themselves?
29
30 Silva: No.
31
32 Smith: Okay. Thank you.
33
34 Silva: But he did a good job. It's welded.
35
36 Smith: The reason I ask that question is that I mean any type of structure that's
37 being built like this requires a permit and is something that any contractor
38 would definitely know and should inform you of. And even if it's a family
39 member if they're capable of building something like this, they should know
40 that a permit is ...
41
42 Silva: Well, we didn't know. I didn't know I had to get ...
43
44 Smith: Required. All right. Thank you, ma'am.
45
46 Silva: I didn't know I had to get a permit.

1
2 Kaiser: All right. Any other comments or questions from the Commission? We're
3 looking for a motion to approve.
4
5 Bennett: I make a motion to approve 9.3.
6
7 Vega: I second.
8
9 Baum: Board Member Acosta.
10
11 Acosta: I vote no to deny based on staff recommendation.
12
13 Baum: Board Member Smith.
14
15 Smith: Sorry. I vote no to deny based on staff recommendation.
16
17 Baum: Board Member Vega.
18
19 Vega: I vote no based on staff recommendation.
20
21 Baum: Board Member Bennett.
22
23 Bennett: I vote to approve based on monetary hardship and medical reasons.
24
25 Baum: Board Member Murray.
26
27 Murray: I vote is to approve based on medical reasons and monetary hardship.
28
29 Baum: Board Member Kaiser.
30
31 Kaiser: No, based on staff recommendation.
32
33 Baum: Motion denied.
34
35 **9.4 Case No. 23VO0500106:** A variance request to deviate twenty (20) feet
36 from the required twenty-five (25) foot front yard setback for a carport
37 addition to a home located at 4053 Winters Street. The property is
38 approximately 0.108 + acres in size and zoned R-1bC (Single-Family High
39 Density- Conditional). Submitted by Tracie Stevenson, property owner.
40 Council District 1.
41
42 Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front
43 yard setback. This time 4053 Winters Street. Back to you staff.
44
45 Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance
46 request for 4053 Winters Street. The property is approximately 200 feet

1 north of its intersection of Holly Drive and Winters Street. The property is
2 0.108 acres in size. Once again, is zone R-1bC which is single-family, high
3 density conditional and there is currently a single-family residence on the
4 property.
5

6 Here's an aerial map of the subject property. As you can see the carport is
7 highlighted essentially in white as to its location. Surrounding neighborhood
8 is residential in nature as all the adjacent properties are either single-family,
9 mobile home, or multifamily to the south.
10

11 Per code, Chapter 38, 2001 Zoning Code, the property is required to meet
12 the 25-foot yard setback for a garage or carport. And the applicant is
13 seeking to retain the carport addition that was put up into the front of the
14 property for the existing dwelling. The variance would allow the applicant
15 to maintain a five-foot setback from the property line. Here is a site plan of
16 the subject property. You can see we do have the 12-foot utility easement
17 that also runs along the front of Winters continuously through the
18 subdivision. The building or the structure is a 20 x 20 so that's why you
19 have a five-foot deviation as far as it coming from that 25-foot setback. So
20 all garages in this area were built at a 25-foot setback leaving no additional
21 room for any of these carports to be placed onto the property.
22

23 Here is an image of the property, as far as you can see here is the structure.
24 It is pushed back a little bit further. As you can tell there is a five-foot
25 setback from this property boundary. The applicant has provided the
26 justification in the letter that was provided within your staff report. It was an
27 anniversary gift to the applicant as part of the, for their anniversary to protect
28 their vehicles from weather damage. Once the structure did go up, it did
29 provide some type of safety as far as the applicant was concerned once it
30 was in place.
31

32 Staff did not identify any health, safety, or welfare issues. Once again, there
33 is that condition of where we see the 12-foot utility easement in which
34 structures are not to be constructed upon. We did see that the 20-foot
35 variance does not meet the criteria that is outlined within a variance. There
36 are no topographic constraints. We do not see any spur of economic
37 development, and the monetary hardship would be essentially from not
38 receiving a building permit prior to where they would be notified that the
39 monetary value would be essential.
40

41 Monetary hardship is definitely determined by if you had to do something
42 outside or make it impossible to reconstruct or build something on a
43 property then that is considered a monetary hardship. We had a previous
44 case to where it is, in order to construct a home, you had to move the well,
45 that is a monetary hardship constraint.
46

1 So with this staff is recommending denial based on the carport does not
2 meet the requirement of the 25-foot setback with any residential zoning
3 district. We also are saying that it does not meet the essential guidelines to
4 permit a variance request for the three identified as topographic, monetary,
5 or for a spur of economic development, and it was constructed without a
6 building permit.

7
8 Public notice was sent out. The same phone call was in direction to both
9 as these neighborhoods are very close to one another. Notification was
10 sent to everybody essentially twice. And so, it gave two opportunities for
11 everyone to be notified within the neighborhood.

12
13 Once again if Commission decides to approve this case, please be aware
14 to add the conditions as to the structure must remain open. The structure
15 needs to be attached to the home as it is not considered accessory
16 structure. It needs to be added. Must obtain a building permit and all
17 required inspections and be removed up until the 12-foot utility easement.

18
19 Your options are to vote "yes" and approve. If you choose to vote to
20 approve you do need to find new facts of finding not found within your staff
21 report. Vote "no" and deny, vote "yes" with conditions, or vote to table. The
22 applicant is here as well and I stand for any additional questions.

23
24 Kaiser: All right. Thank you. Coming to the Commission. Any questions?

25
26 Smith: Once again would you please go back to the photo of the, thank you. I have
27 a question for the applicant. Was this carport constructed by the same
28 people, person, because they look almost identical?

29
30 T. Stevenson: No, they are. They do ...

31
32 Kaiser: Before you answer that question, ma'am. Can you please state your name
33 for the record?

34
35 T. Stevenson: My name is Tracie Stevenson.

36
37 Kaiser: And do you swear or affirm that the testimony you're about to give is the
38 truth and nothing but the truth under penalty of law?

39
40 T. Stevenson: Yes, I do.

41
42 Kaiser: Go ahead.

43
44 T. Stevenson: This isn't, we don't have the same person who built, mine went up first in
45 our neighborhood. And actually, the way this all came about was back in
46 January my husband wanted to give, we were going to plan something for

1 our 43rd wedding anniversary. And I told him I'm putting this on you
2 because I plan them all and he said he'll do it.

3
4 And then didn't hear anything. February comes rolling around. I don't see
5 anything happening. Like he hasn't made any plans. And we had an
6 automotive business here in town and he was a very, very busy man. March
7 comes rolling around and March 3rd is a Friday and we were having
8 breakfast and he was getting ready for work, and he comes back in and he
9 has a massive heart attack right in front of me. And all my attempts to try
10 to save him were gone.

11
12 And you go through all the motions of a funeral and all and then I did. April
13 comes running around. My anniversary was April 12th. April comes
14 around, the first week of April and I get somebody rang my doorbell. I go to
15 the door and it was a grandfather, a father, and a son, and they said that
16 they were here to put up an awning for me. Well you can imagine how
17 excited I was because this was something we always wanted, both of us.
18 And I know Roger. Roger always liked to do things correct. He never, if he
19 knew he was supposed to have a permit, I know he would have looked into
20 that because he was very adamant about that kind of a thing.

21
22 And so, you can imagine how excited I was. I said yes, please put it up. I
23 was thrilled. A permit never even crossed my mind. It was just, I literally
24 got weak at the knees. Well next morning comes, I was there. They came
25 and put it up and I watched them. They did the first two poles there; I saw
26 them dig the holes. It's three feet down into the ground with, they put a lot
27 of cement. It's bolted towards the end of the garage very securely. I mean
28 it's not going anywhere. It's structurally sound.

29
30 And so, I was thrilled and then of course I was, codes comes probably about
31 three days later. I guess he said he was going through the neighborhood
32 and saw it. And he put a notice on my door. And so, then I right away called
33 here and said what do I need to do to get a permit for this? And he sent me
34 through all the motions and I did them all because I want to keep it. It's the
35 last gift I'll ever receive from my late husband and he was like my best friend.
36 And I just really feel, I just really don't want to see it dismantled and taken
37 away. It's that special.

38
39 Now, she said it didn't provide any safety features. Now, this does provide
40 safety features. Last winter, I actually slipped outside while we were
41 clearing off our windshields. And it does provide elements from the
42 weather. I mean it's a 20 x 20 and it's structurally, has beautiful curb appeal.
43 And I also presented some letters from my surrounding neighbors that it did
44 not even propose a threat to them. They were absolutely thrilled about it
45 and didn't give me any heartache about it whatsoever. I was just, I didn't
46 know.

1
2 So I just thought I would come here today and just kind of give you a little
3 bit of insight how special it really is to me. And I hope I'm able to keep it
4 and I hope you all can find it in your hearts to allow me to have it and maybe
5 purchase a permit and be able to keep it. We all don't know how long we're
6 going to be here. I mean everything we have can be gone just like that.
7 And I just want to present my case and see if that's obtainable.

8
9 Now it's not attached but I did get a contractor to come over and look at it.
10 And he said that is attachable. He said it's just so close and he said that he
11 would do that for me. So I'm willing to do what I have to do to keep it and
12 enjoy it for as long as I can. I don't plan on selling my home. I plan on living
13 in it. And now that I'm alone, it does provide some safety for me. I stand
14 up here literally broken going through all this. And I just have to let you
15 know that if you would allow me to obtain a permit, I would be forever
16 grateful respectfully. Thank you.

17
18 Kaiser: Thank you. Any other questions? Commissioners Smith.

19
20 Smith: Ma'am I just wanted to offer my deepest condolences to you and your family
21 for the loss of your husband. And I know that this carport means a lot to
22 you. It's difficult for us as a Commission here. We get many cases where
23 carports are built in the City without permission and it's a challenging job for
24 codes because they're doing their job. And although this has special
25 meaning to you, the carport is no different than the previous applicant as far
26 as the amount of the variance that you're requesting.

27
28 And so, our hearts are with you and your family. We have a decision that
29 we'll have to make and so it will be a difficult one but we'll make the best
30 decision that this Commission can make based on the information we've
31 been provided.

32
33 Vega: I also want to say that regardless of what decision we come to you can
34 always appeal to the City Council; is that correct? So that's just something
35 else to share with you as well.

36
37 Kaiser: I also extend my condolences as somebody who unexpectedly lost a family
38 member within the last year. I certainly understand what you've been going
39 through. I think the difficulty here is there's rules in place and it's the
40 responsibility of all of us to be aware. I know this seems like something you
41 probably would never think of but the reality is these types of home projects
42 they are regulated.

43
44 And honestly hearing you explain what they did to put the posts in the
45 ground, I'm just very thankful nobody hit something they would regret hitting

1 especially if they were not aware. So call before you dig. But I think this is
2 just kind of unfortunate but there are rules in place. So that's all I'll say.

3
4 Is there anybody in the audience who wishes to speak on this item? Yes,
5 ma'am. Please come forward and please state your name for the record.

6
7 Vulco: Sarah Vulco.

8
9 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
10 and nothing but the truth under penalty of law?

11
12 Vulco: Yes, sir.

13
14 Kaiser: I'll give you three minutes.

15
16 Vulco: Okay. So when Tracie called me and asked me to look at the scenario that
17 had been presented to her from the City, I was of course wanted to help in
18 any way that I could. My background is that I am a general contractor and
19 I'm also a civil engineer. I work for the City at one point in the Public Works
20 Department. And then at this point, I'm a Regional Project Manager for the
21 State of New Mexico.

22
23 Based on my background what I wanted to present respectfully is that in the
24 case of building \$30 to \$50 million structures for the State of New Mexico,
25 there are situations where User Department buys a plat of land and there is
26 a utility easement right down the middle of the property. And so, at that
27 point we're coming together and collaborating with the design professional
28 saying, my gosh, how do we build anything on this plat of land?

29
30 And so, we try to take a more ethical approach. And what we do is often
31 times we'll build a building maybe with an outdoor courtyard that's over that
32 easement. And what we tell the User Department at that time is that we will
33 build the structure but they will have to resume the cost of remove and
34 replacement in the case that the utility easement, a project comes through
35 that requires them to access the utility easement.

36
37 And so, a lot of times we construct these buildings like I said with the
38 courtyard in the middle and that's the portion that's over the easement so
39 that it's predominantly flat work which is sidewalks things like that. So the
40 User Department would then tear that up and remove and replace it. And
41 so, there's an addendum to the contract when we do something like that.

42
43 My request is that if Tracie would be willing to sign some sort of an
44 addendum or some sort of paperwork that would say in the case of these
45 utilities needing to be accessed that she would remove and resume the cost
46 of removing the carport at that time. This isn't saying that she keeps the

1 carport for 20 years. It's not saying that she keeps the carport forever. It's
2 saying during this time when emotions are raw and there's newly broken
3 hearts that they would be able to keep the carport. And that's my request.
4 Thank you for your time and consideration.
5

6 Kaiser: Thank you. Anybody else in the audience that wishes to speak? Yes,
7 ma'am. Please come forward. Please state your name for the record.
8

9 Morgan: My name is Vicki Morgan.
10

11 Kaiser: And do you swear or affirm that the testimony you're about to give is the
12 truth and nothing but the truth under penalty of law?
13

14 Morgan: Yes.
15

16 Kaiser: You have three minutes. Please go ahead.
17

18 Morgan: I am writing this letter on behalf of Tracie, my dear friend since grade school,
19 to attest to her impeccable character and extraordinary circumstances
20 surrounding the awning in question.
21

22 Throughout our years of friendship, Tracie has consistently shown herself
23 to be an individual of outstanding character. She possesses a rare
24 combination of qualities that can only be described as extraordinary. She
25 is caring, always placing the needs and concerns of others above her own.
26 She exudes positivity even when faced with challenges that would
27 overwhelm many. Her resilience, her generosity and her kindness are
28 qualities I have witnessed firsthand for many years.
29

30 The awning which stands at the heart of dispute represents more than just
31 a mere structure to her. It was one of the last gifts given to her by her late
32 husband before his untimely passing. Every time she looks at it, she is
33 reminded of the love they shared and the memories they created together.
34 It's a testament to their bond and an emblem of the life they built. While
35 some may view it as just an awning, for Tracie it holds profound sentimental
36 value.
37

38 Furthermore, beyond the emotional significance, the financial burden of
39 removing the awning would be undue and harsh especially given the
40 heartache she has already endured. I kindly request that you consider the
41 exceptional circumstances of this case. Removing the awning would not
42 only be financially expensive for Tracie but would also mean erasing a
43 tangible reminder of her husband. I sincerely hope that a compassionate
44 resolution can be reached in this matter taking into account both the
45 character of my dear friend and the significant emotional implications of

1 removing such a treasured memento. Thank you for your time and
2 consideration.

3

4 Kaiser: Thank you very much. Anybody else that wishes to speak? Yes, ma'am.
5 Please come forward. State your name for the record.

6

7 Gennings: Hi. My name is Lindsey Ray Gennings.

8

9 Kaiser: And do you swear or affirm that the testimony you're about to give is the
10 truth and nothing but the truth under penalty of law?

11

12 Gennings: Yes, I do.

13

14 Kaiser: Please go ahead.

15

16 Gennings: All right. So everybody has kind of hit upon the emotional aspect of Tracie
17 losing her husband which was very sad. But I would like to provide a
18 different perspective on the structure.

19

20 So I work for Wet Dog Mobile Grooming Services. And I am out there
21 probably at least once a month for the last seven years to groom her dogs,
22 make sure they're nice and clean. And I've never seen a weed in her yard.
23 Her house is always kept up really nice. That structure is really nicely built.
24 I complimented her on it the first time I came out and saw it. I was like this
25 is really nice.

26

27 It doesn't really block anybody's view. And it's so hot in Las Cruces that
28 Tracie likes to put out water for the stray cats in the neighborhood. And it's
29 very nice for me to see someone taking initiative to prevent unneeded
30 cruelty to the cats, where Las Cruces takes them and spays them, neuters
31 them and then places them back where they found them. We don't need to
32 be cruel to the cats so it's nice to see.

33

34 I've been out there several times. I get to see the cats getting a nice cool
35 drink of water. It provides shade for her car so the paint doesn't get eaten.
36 And it seems to me that if the utilities are underground already, they're going
37 to have to go under the concrete slab so I don't think that it's a problem
38 having the carport there. And I'm sure that if it is for the utilities in the future
39 that she would be willing to remove it or replace it or whatnot.

40

41 And I'm sure that she didn't know about a permit because of her husband
42 being the last gift that she was given from him. So I would like to see Tracie
43 be able to keep the carport. That's it.

44

45 Kaiser: Thank you. Anybody else? Please state your name for the record.

46

1 Allen: My name is James Allen.
2
3 Kaiser: And do you swear or affirm that the testimony you're about to give is the
4 truth and nothing but the truth under penalty of law?
5
6 Allen: I do.
7
8 Kaiser: Go ahead.
9
10 Allen: So I do not know Ms. Tracie by any means or length measure. I did listen
11 to her testimony and narrative. There were some things that were brought
12 up to me knowing now she was in her emotional state after having recently
13 lost her husband. She was presented by three gentlemen. I know that in
14 Las Cruces having had family members who are small business
15 contractors, she was presented as that this was something that was
16 arranged for her.
17
18 She has stated that she is willing to retain a permit and take care of any
19 fees that were unnecessarily missed with this. But I do question, she was
20 presented with three individuals who were stated that they were contracted
21 to do this job. So with her emotional state at the time and with her
22 knowledge, I mean most people in town do not know building code but it
23 seems that she may have been led to believe that this was a permitted job
24 at the time. And she later found out that she did not have proper contractors
25 so I believe that is something to be taken into consideration in this case.
26
27 Kaiser: Thank you. Okay. Is there anybody else who wishes to speak? Yes, sir.
28 And before you come up can I just see hands so we just have an idea of,
29 okay. So this gentleman is going to be the last one. Please come forward.
30 Please state your name for the record.
31
32 B. Stevenson: Hi. My name is Brent Stevenson.
33
34 Kaiser: And do you swear or affirm that the testimony you're about to give is the
35 truth and nothing but the truth under penalty of law?
36
37 B. Stevenson: Yes.
38
39 Kaiser: Go ahead.
40
41 B. Stevenson: Yes. Well, I'm up here just to kind of talk. This is my mother and I do know
42 that my father after hearing or seeing that she did fall in the driveway. I
43 mean I know you took it upon himself to make sure that it will never happen
44 again. And I'm sure that's the reason why he did purchase this awning.
45

1 As her son and the rest of her family, we're concerned about her, about her
2 safety of course. And now that she does live alone, we are concerned that
3 we just want her to be safe. And I think that if you're able to grant this
4 variance I mean I know that she'll be more than grateful. We'll all be grateful
5 and we'll do whatever it takes to conform with your policies and everything
6 if that were possible. It does protect the driveway from its elements, from
7 snow, from rain, from the heat. I just see more positives with this and I just
8 wanted to talk about that. Thank you.
9

10 Kaiser: Thank you. Okay. Coming back to the Commission. Commissioner Smith.
11

12 Smith: I just have one more question for staff. Did you state that there was also a
13 12-foot easement with this property also, or it was just the previous
14 proposal?
15

16 Gonzales: Mr. Chair, Commissioner Smith. There is a 12-foot utility easement that
17 runs along every property within this subdivision in the front of those
18 property boundaries. A lot of times what we see in newer subdivisions is
19 that is essentially where all the utilities are being placed. There used to be
20 in the old part of town where we would get utility easements in the back, on
21 the side of the properties. Now everything is generally ran through the front
22 of the properties and it's 12 feet wide as generally the distance we see.
23

24 Smith: Okay. Thank you.
25

26 Kaiser: All right. Any other questions, comments? All right. Looking for a motion
27 to approve.
28

29 Vega: I make a motion to approve item 9.4.
30

31 Smith: I second.
32

33 Baum: Board Member Acosta.
34

35 Acosta: I vote yes to approve with the conditions that the City staff had outlined.
36

37 Kaiser: You need to provide a ...
38

39 Acosta: Sorry, can I go back to that page if that's the case? So I guess it would just
40 be all four lines of that. Should I read that out?
41

42 Kaiser: No. I was just looking for there, based on what was your rationale for voting
43 to approve with the conditions.
44

45 Acosta: I'm sorry about that. Okay. So just based on the emotional impact and the
46 willingness to work with City staff to keep the structure alive in whatever

1 compliant capacity and willingness to pay for that. So I think if they'd be
2 willing to work under that condition then they need to perhaps preserve a
3 structure that had that much more sentimental value.
4

5 Baum: Board Member Smith.

6
7 Smith: I vote yes to approve. I know that this case is very similar to the previous
8 applicant. There are some extraordinary circumstances I think in this
9 particular case based on the fact that the homeowner was not aware that
10 she was even going to be receiving the carport. And that the people who
11 presented it, who arrived to construct it may not have told her that whether
12 they were actually contractors or not. And there is room for compassion,
13 there is room for just the circumstances under which this particular carport
14 was constructed as opposed to the previous one. And so, that is why I'm
15 voting yes to approve.
16

17 Baum: Board Member Vega.

18
19 Vega: I echo Commissioner Smith's comments. I also vote yes to approve based
20 not only on the financial hardship. Also, the suggestion for easement. I
21 have an easement in my backyard, it's totally different but always something
22 to consider. Thanks.
23

24 Vega: Board Member Bennett.

25
26 Bennett: I vote to deny based on staff recommendation.
27

28 Vega: Board Member Murray.

29
30 Murray: I vote to deny based on staff recommendation.
31

32 Vega: Chair Kaiser.

33
34 Kaiser: No, based on staff recommendation.
35

36 Baum: Motion denies due to a tie.
37

38 **9.5 Case No. 23VO0500107:** A variance request to deviate one (1)
39 freestanding sign to the maximum permitted two (2) freestanding signs and
40 a to deviate seven (7) feet to the minimum required fifteen (15) foot
41 freestanding sign front yard setback for a property located at 1300 El
42 Paseo. The property is 5.50 + acres in size and zoned C-3 (Commercial
43 High Intensity). Submitted by Burke Sign Company, LLC., representative.
44 Council District 3.
45

1 Kaiser: All right. Our final item this evening is item 9.5. A variance to request to
2 deviate from the maximum permitted signs. This is at 1300 El Paseo. And
3 do we have staff to make a presentation?
4

5 Ochoa: Sorry for the delay. Adam Ochoa, Senior Planner, Community
6 Development Department for the record. The last case we have tonight for
7 you folks is case number 23VO0500107. It is a request for a variance for a
8 property located at 1300 El Paseo Road.
9

10 A little case specifics of the subject property. It is located on the southwest
11 corner of El Paseo Road and Idaho Avenue. Currently zoned C-3
12 commercial, high intensity encompasses roughly 5.5 acres in size. There
13 is an existing business/shopping center on the property. And just a
14 reference are two existing previously permitted freestanding signs on the
15 property.
16

17 Here's showing the property on the zoning map here. A large parcel here
18 is zoned C-3 and in what is just a sea of commercial zoning, so definitely
19 one of our major commercial hubs in the City of Las Cruces with a lot of
20 traffic going off El Paseo and Idaho Avenue.
21

22 Showing here on the aerial map the shopping center, if you will, kind of L-
23 shapes along the back with parking along the front. The two existing
24 freestanding signs that were permitted previously, a number of years ago
25 of course, is one located right on the corner of Idaho and El Paseo and
26 another one essentially right around here in the entry along El Paseo.
27

28 The third sign which we'll be discussing here today is located off of Idaho.
29 Here are the pictures of the two distant signs as they currently exist. And I
30 just wanted to bring up the fact as well that what is the Planet Fitness sign
31 itself does conform with current requirements for a freestanding sign. The
32 larger sign to the left of all the different tabs in it, that's a nonconforming
33 sign, so just a little bit of reference for you all.
34

35 So what we're looking at today is in Chapter 36, the Las Cruces sign code.
36 We're looking at two different sections because this is essentially two
37 different variances under this case. One is Article 2, Section 36-46 (b) (6).
38 This is essentially dictating the number of freestanding signs allowed for
39 what are C-2, C-3 in our industrial zoning designations where essentially it
40 states in the City of Las Cruces each commercial property is allowed to have
41 one freestanding sign with the exception with lots that exceed a frontage of
42 600 linear feet which this property does. In those cases, those properties
43 are allowed up to two freestanding signs. That is the absolute max that is
44 permitted by code.
45

1 The other that we're looking at here is under Appendix 1, Table 2, also of
2 the Las Cruces sign code. There is a minimum of 15-foot front yard setback
3 required for all freestanding signs located along what are collector roadways
4 and arterial roadways which are El Paseo and Idaho Avenue.
5

6 Here's a picture of that sign that has been constructed that third
7 freestanding sign. So again, so the variance would be a variance of one
8 freestanding sign to allow for three freestanding signs on the subject
9 property and a variance of eight feet to allow the sign to stay where it is
10 existing at its current location which is roughly about seven feet from the
11 front property line there on Idaho Avenue.
12

13 A little bit of analysis, a little bit of what happened essentially here is
14 essentially the sign was permitted and issued by error by staff, some
15 misinterpretations, some misinformation unfortunately was provided and
16 the sign permit application was essentially approved by staff and it was
17 issued. The sign permit application was missing some information. It did
18 not show the existing two freestanding signs on the site plan nor did it show
19 setbacks on there. Something staff should have taken the consideration
20 but like I said it was issued by error.
21

22 The applicant was unaware of these requirements, essentially of the
23 requirements as stated. And after he was made aware of the issuing of the
24 permit, he was made aware of the error of the sign being the third sign and
25 its setback, was made aware after we issued the permit and he already
26 installed the sign.
27

28 So additional analysis. So the way you approve a variance under the 2001
29 Zoning Code on Article 2, Section 38-K. Staff kind of went back and forth
30 on this one. Where we could see both ways how this variance could
31 potentially be denied or approved. First, of course, I want to touch base on
32 your physical hardship which is relative to the property. The first thing that
33 staff looked at and we saw there's no real topographical constraints, any
34 right-of-way takes or anything that would impinge on them having to meet
35 code. But we also saw the potential of a, if we go back here, how the layout
36 of this existing shopping center exists. How this back row kind of lies along
37 the back instead of closer to the street. We could potentially see that the
38 business is located in that further back portion from the street of El Paseo
39 could potentially benefit. And so that's kind of a physical hardship being
40 located further back away from the street. So we saw that as a potential
41 physical hardship so just keep that in mind.
42

43 Second, the spurring of additional economic development. This may not
44 considering the shopping center is existing. It's fully built out, that's what
45 staff saw essentially. But the potential for now those businesses in the back
46 which as a person who reviews all business permits that come in from a

1 building standpoint, we get a number of them, a lot of turnaround in the back
2 portion of this shopping center so it potentially for business opportunities or
3 economic opportunities for those in those suites located in the back portion
4 of the property.

5
6 And third, of course, for monetary hardship. There is the cost of the already
7 built and erected sign that was located on the property due to error
8 unfortunately.

9
10 With that note, staff does still recommend kind of a soft denial for this case.
11 That being said, staff does not see any significant safety, health, or welfare
12 issues associated or identified for the proposed variance. Findings stated
13 here in you find in your staff report, essentially the two code requirements,
14 maximum two freestanding signs, required setback. And of course staff in
15 the end after much deliberation came with a soft denial because we feel it
16 does not meet the Section 38-10J of the 2001 Zoning Code.

17
18 I did want to mention, staff did also send out a public notification to the
19 surrounding property owners. We received nothing until yesterday morning.
20 We did get a phone call from; they didn't want to state who they were or
21 what business they were but they're a business in that shopping center.
22 They have their name on that sign and they find to get a little more flow into
23 their business now. So they appreciate the sign as they stated. Again, no
24 name, no business unfortunately.

25
26 But with that the Commission's options tonight, one to vote "yes" and
27 approve the proposed variance. Again, new findings will be required if you
28 do vote to approve. Two, to vote "no" and deny as recommended by staff.
29 Three, to vote "yes" with conditions. And four, table or postpone and direct
30 staff and the applicant accordingly. The applicant and I believe her
31 representative who erected the sign are here if you have any questions for
32 them. I stand for questions as well.

33
34 Kaiser: All right. Thank you. Any questions, comments from the Commission?

35
36 Smith: I just have a comment. I'm very familiar with this shopping area. I live very
37 close to El Paseo and Idaho. And the other businesses are setback from
38 El Paseo. Of course, the Planet Fitness has their own sign. It is also a sign
39 that they share with some of the other businesses there. It's kind of a unique
40 shopping plaza or property because you have a business that's on the
41 corner. You have a gym that's very prominent. And as far as accessing the
42 other businesses there, I mean you have several entrances but not of them
43 are very easy to see the other businesses. So it was just a comment I
44 wanted to make just based on the signing where it's located and also the
45 fact that they have the other businesses listed there.

1 Kaiser: Soft denial. It's a new one.
2
3 Ochoa: I didn't want to be too harsh.
4
5 Kaiser: I'm just trying to understand here. So basically, the order of events were
6 the applicant submitted an application for a permit to install this third sign.
7 And during the course of staff's review, it was not caught that they were
8 already at their maximum. And it was also not noticed that they're missing
9 specific information related to the placement of the sign. So staff approved
10 it. The applicant went and built it. And now, six months later staff is saying
11 you need to come back for a variance and we're recommending the soft
12 denial. Is that ...
13
14 Ochoa: Mr. Chair. That kind of sums it all up. That is correct.
15
16 Kaiser: Okay. So my next question is ...
17
18 Ochoa: I would say yes, but ...
19
20 Kaiser: Did the applicant, did they pay any fees for this variance application?
21
22 Ochoa: Mr. Chair. Yes, they did pay all required application fees as well as public
23 notification fees which includes notice letters, signage, and advertisement
24 in Sun News as well as all associated sign permit fees as well.
25
26 Kaiser: Okay. So they paid for a variance application. If it's to be denied tonight
27 then the result would be removal of the sign, correct? Which would cost
28 additional money out of their pocket?
29
30 Ochoa: Mr. Chair. That is correct. And then they would also, they'll have the option
31 to appeal the denial to City Council which would be further costs. Not only
32 the fee, advertisement requirements as well, sir.
33
34 Kaiser: Okay. So basically, they have a situation where staff messed up and the
35 applicant's bearing all the cost?
36
37 Ochoa: I believe that's fair to say. Yes, sir.
38
39 Kaiser: I have a problem with that.
40
41 Ochoa: Definitely don't disagree with you with that on that, sir. And staff did, I guess
42 supervisory staff did discuss this issue with staff so, yes, sir, understood.
43
44 Kaiser: Okay. I mean based on that I think it's; I mean we just got done talking
45 about sort of homeowners doing their due diligence on whether or not they
46 need a building permit for a carport. And now we have sort of the opposite.

1 The City didn't do their due diligence and now the applicant is paying the
2 price for all of that. I personally think that this is one that we've got to own.
3 And I think in my opinion the applicant should be able to retain that sign and
4 I think I'm going to vote to approve this variance so those are just my
5 thoughts. Please go ahead.
6

7 Pitts: Tim Pitts, Deputy Director for Community Development. I think that's a
8 reasonable compromise. And I think a condition that says the extra sign
9 goes away when one of them comes down. That way the business isn't
10 harmed by the thing but we will gain compliance at some point in the future.
11

12 Kaiser: So in other words, what you're saying is if the business that's there now with
13 the sign on this new sign goes away that the new business doesn't get to
14 put a new sign up?
15

16 Pitts: No, the third sign goes away. So if over the time they decide they wish to
17 take one down for whatever reason, until that time, we're not talking about
18 the faces on the sign, we're talking about the sign itself. That when that
19 sign gets approved for redevelopment purposes, they come in and they
20 want to do something and a sign comes down, we wouldn't allow it to go
21 back up. But if all they do is replace the face of the sign which is the name
22 of the businesses, I think it would be a fair thing because I think the business
23 did everything they thought they needed to. And if that's the will of the
24 Commission I think that staff did make a mistake. And it's tough to want to
25 punish a business for staff's mistake.
26

27 Kaiser: Okay. Yes, I understood. So do you have any recommendation for
28 language in that condition?
29

30 Ochoa: Yes. Mr. Chair. If I could? You could always vote to approve with the
31 conditions that at any time in the future if any one of the three freestanding
32 signs voluntarily gets removed, they will only be allowed to have the two
33 freestanding or a total of two freestanding signs on the property.
34

35 Kaiser: Okay. Thank you.
36

37 Ochoa: Apologies, Chair. I did talk to the property owner and their representative
38 and they are amenable to that condition, just to clarify.
39

40 Kaiser: Okay. Thank you. I think that's fair from our perspective. Before we go to
41 the public, Commissioner Smith do you have a comment?
42

43 Smith: Just a clarification as far as our options. We can still vote yes to approve or
44 we can vote yes with the conditions, either one of those. They're still on the
45 table, correct?
46

1 Ochoa: Mr. Chair, Commissioner Smith. That is correct. You can just vote yes or
2 when you do your motions, whoever does the motion, they could do, that's
3 where it needs to start. When you do your motion, whoever is going to do
4 the initial motion will have to do a motion with conditions and state that
5 condition. The second will be, and then you'll take the vote with that. If not,
6 whoever wants to make a motion just to approve, they could just make a
7 motion to approve, second it, and so on and so forth.
8
9 Kaiser: Okay. I'm going to go to public comment now. Is there anybody in the
10 audience who wishes to speak on this item? Okay. Seeing none. We'll
11 come back unless there's any additional comments we'll go ahead and
12 make a motion to approve.
13
14 Bennett: I'm just going to make a motion to approve 9.5.
15
16 Vega: I second.
17
18 Baum: Board Member Acosta.
19
20 Acosta: I vote yes to approve based on monetary hardship and the potential to spur
21 economic business.
22
23 Baum: Board Member Smith.
24
25 Smith: I vote yes to approve based on frequent site visits. Also based on the
26 hardship because of the error. And also, having driven down Idaho many
27 times that that is actually a well-placed sign to help promote those
28 businesses that are located within that plaza.
29
30 Baum: Board Member Vega.
31
32 Vega: I vote yes to approve based on the financial hardship and the staffing errors.
33
34 Baum: Board Member Bennett.
35
36 Bennett: I vote to approve based on physical and monetary hardship.
37
38 Baum: Board Member Murray.
39
40 Murray: I vote to approve based on monetary hardship and staff error.
41
42 Baum: Chair Kaiser
43
44 Kaiser: Yes, based on monetary hardship and staff error.
45
46 Baum: Motion passes.

1
2 Kaiser: Okay. Thanks for all the presentations tonight.

3
4 **10. DISCUSSION**

5
6 Kaiser: Is there any discussion or staff announcements?

7
8 Ochoa: Any discussion with the Commission you need to bring up? Is no.

9
10 **11. STAFF ANNOUNCEMENTS**

11
12 Ochoa: Okay, so staff announcements. It is almost that time of year. It's still hot
13 but the holidays are coming around. So staff did want to bring up the
14 November Planning and Zoning Commission meeting and the December
15 Planning and Zoning Commission meeting. As of now, we still have them
16 scheduled for the fourth Tuesday of the month which would essentially be
17 November 28th which would be the Tuesday after Thanksgiving. And then
18 in December, it would be on December 26th which that's definitely going to
19 be an issue because staff will not be here.

20
21 So I guess if we could come to a decision tonight if we wanted to move one,
22 both then to the third Tuesday or potentially even moving the November one
23 to the fifth Tuesday of the month that's a possibility as well. So we leave
24 that up to the Commission with what they would like to do.

25
26 Kaiser: So I think the 28th works. It's after the Thanksgiving holiday. I think that's
27 more than fine. Yes, okay. So we'll keep the 28th. And then yes definitely
28 would agree with the 26th. I think probably move it to before so that would
29 be the 19th. I think that's obviously fair for staff and certainly the public. I
30 think that's amenable as well.

31
32 Ochoa: Sounds good. We'll go ahead and make those changes, sir. And so you
33 all will be getting either packets and everything either earlier or later than
34 usual on those two months so just keep an eye on them those for them.

35
36 Also, I just wanted to update. We are finalizing you all's flash drives. So
37 those flash drives should be delivered probably with your next P&Z packets
38 for the next meeting. So they're pretty cool. Economic Development bot us
39 these really nice wooden ones so they're not junky. They look pretty cool.
40 So sorry Commissioner Vega, but thank you so much for being here though.
41 Thank you ma'am. Appreciate your time here.

42
43 Vega: I didn't expect to cry at my last Planning and Zoning meeting but thank you
44 for the opportunity to serve and work with all of you. It's been a pleasure. I
45 really appreciate it. And however, I can help in finding a replacement I
46 certainly will.

1
2 Kaiser: Awesome. Well, once again best of luck and we'll see you out on the
3 bicycle.
4

5 **12. ADJOURNMENT (7:52)**
6

7 Kaiser: All right. Go ahead and need a motion to adjournment tonight.
8

9 Murray: I make a motion to adjourn tonight's meeting.
10

11 Smith: I second.
12

13 Kaiser: All in favor?
14

15 MOTION PASSES UNANIMOUSLY.
16

17 Kaiser: Thank you all for coming out tonight.
18
19
20
21

22 _____
23 Chairperson