

ATTACHMENT B



City of Phoenix

Staff Report: PHO-1-24--Z-37-07-2
July 12, 2024

APPLICATION #: PHO-1-24--Z-37-07-2

LOCATION: Approximately 480 feet south of the southwest corner of Scottsdale Road and Sweetwater Avenue

EXISTING ZONING: R-O

ACREAGE: 1.17

REQUEST:

- 1) Request to modify Stipulation 1 regarding general conformance to the site plan date stamped February 9, 2009.
- 2) Request to delete Stipulation 4 regarding cross access and parking agreements.
- 3) Request to delete Stipulation 5 regarding Scottsdale Road improvements.
- 4) Request to modify Stipulation 7 regarding building height.
- 5) Request to modify Stipulation 8 regarding rear building setbacks.
- 6) Request to delete Stipulation 10 regarding street improvements.
- 7) Request to delete Stipulation 11 regarding archaeological assessment.
- 8) Request to modify Stipulation 12 regarding a requirement to obtain final site plan approval.
- 9) Request to delete Stipulation 13 regarding walls along the rear property line.
- 10) Technical corrections to Stipulations 2, 3, 6, 9 and 15.

APPLICANT: David E. Richert

OWNER: Steven R. Bund
Linda Cohn, Beldar Properties Arizona, LLC

REPRESENTATIVE: David E. Richert

STAFF RECOMMENDATION

Denial as filed and approval with modifications and an additional stipulation, as recommended by the Planning Hearing Officer (PHO).

PLANNING HEARING OFFICER RECOMMENDATION

On April 17, 2024, the Planning Hearing Officer took the case under advisement. On May 21, 2024, the Planning Hearing Officer took the case out from under advisement and recommended denial as filed and approval with modifications and an additional stipulation.

VILLAGE PLANNING COMMITTEE RECOMMENDATION

The Paradise Valley Village Planning Committee (VPC) chose not to hear this case.

BACKGROUND/ANALYSIS

The subject site consists of 1.17 acres located approximately 480 feet south of the southwest corner of Scottsdale Road and Sweetwater Avenue and is zoned R-O (Residential Office - Restricted Commercial). The PHO request includes Lots 4 and 5, which received citations from the Neighborhood Services Department for not meeting rezoning stipulations. The applicant requested the following:

- Request to modify Stipulation 1 regarding general conformance to the site plan date stamped February 9, 2009.
- Request to delete Stipulation 4 regarding cross access and parking agreements.
- Request to delete Stipulation 5 regarding Scottsdale Road improvements.
- Request to modify Stipulation 7 regarding building height.
- Request to modify Stipulation 8 regarding rear building setbacks.
- Request to delete Stipulation 10 regarding street improvements.
- Request to delete Stipulation 11 regarding archaeological assessment.
- Request to modify Stipulation 12 regarding a requirement to obtain final site plan approval.
- Request to delete Stipulation 13 regarding walls along the rear property line.
- Technical corrections to Stipulations 2, 3, 6, 9 and 15.

The applicant's narrative (Exhibit B) states the building on Lot 5 was lawfully permitted during the rezoning process per a letter from Alan Stephenson in February 5, 2010 (Exhibit L). The applicant's narrative (Exhibit B) also states that Scottsdale Road is fully improved and does not need to provide a bus pad, sidewalk, curb ramps, and other improvements per the City of Phoenix and the City of Scottsdale. The narrative (Exhibit B) also states the existing walls on the site are intact, range from 5 feet 10 inches to 6 feet 8 inches in height, and have been in reasonably good condition for 17 years.

The applicant appealed the PHO recommendation arguing that the eight foot wall stipulation, public street, sidewalk, and bus stop construction are not warranted.

PREVIOUS HISTORY

On July 1, 2009, the Phoenix City Council adopted an ordinance for Rezoning Case No. Z-37-02-2, a request to rezone approximately 3.68 acres located at the southwest corner of Scottsdale Road and Sweetwater Avenue (Exhibit E). The proposed development was intended for limited office while maintaining the residential character.

The rezoning site was previously zoned RE-24 (Residential Estate District - One-Family Residence) and consisted of five lots total (Exhibit H). The Planning Commission recommended approval, per the recommendation of the Paradise Valley Village Planning Committee (Exhibit K). Neighbors were concerned about the more intense use of the properties (office use), including increased traffic, the potential expansion of R-O zoning and quality of life for the neighborhood. The applicant for the original rezoning case worked closely with neighbors and city staff to create stipulations that would mitigate traffic and negative impacts away from the surrounding homes, including cross access and parking agreements, street improvements and minimum landscape setbacks.

This PHO request only includes two of the original five lots included in the rezoning request, Lots 4 and 5.

GENERAL PLAN LAND USE MAP DESIGNATION

Residential 1 to 2 dwelling units / acre

CHARACTER OF SURROUNDING LAND USE

	Zoning	Land Use
On-site:	R-O	Residential-Office (Whiten Up Today Laser Teeth Whitening & Intensive Stain Removal) Residential-Office (The Well Med Spa)
North:	R-O	Residential-Office (SKM Entertainment Event Productions)
East:	City of Scottsdale	Place of Worship (Ina Levine Jewish Community Campus)

South:	RE-24	Vacant land
West:	RE-24	Single-Family Residential

PLANNING HEARING OFFICER FINDINGS:

- 1) The request to modify Stipulation 1 regarding general conformance to the site plan is recommended to be approved with a modification. This modification is to provide more standardized general conformance stipulation language and combine both lots into one general conformance stipulation.

The original rezoning case (Z-37-07-2) stipulated general conformance to the site plan date stamped February 9, 2009 with specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers.

Lot 5 received approval for a detached garage in the rear yard prior to the City Council approval of the original rezoning case. The intent of the garage, as explained in a letter written by prior Principal Planner/Planning Hearing Officer Alan Stephenson on February 5, 2010, was for the client to continue utilization of the property as a single-family residence with a detached garage for their personal use. The letter from Mr. Stephenson also noted that the current owner of Lot 5 may not utilize the detached garage for a Residential Office (R-O) use unless a PHO modification of Stipulation 1 regarding general conformance to the site plan is approved. The applicant did not complete this step as directed and has been using the site for R-O uses for several years and is now asking for the necessary modification.

- 2) The request to delete Stipulation 4 regarding cross access and parking agreements is recommended to be approved. In the original rezoning case, it was envisioned that Lots 3 and 4 would develop concurrently as a combined phase and with a shared parking design. This did not come to pass and Lots 3 and 4 were converted to office uses separately. Lot 3 is also not a party to this case. The two property owners are not working together on a shared design. Further, this recommendation is consistent with the recommendation for modification in Stipulation 1 in which Lot 4 is depicted as a standalone site. This recommendation will allow Lot 4 to move forward with its proposed site plan and not be dependent on redevelopment of Lot 3.
- 3) The request to delete Stipulation 5 regarding Scottsdale Road improvements is recommended to be denied. The existing southbound bus stop north of Sweetwater Avenue is not in compliance with City of Phoenix standards for bus stop placement and spacing. Bus stops are to be located on the far side of intersections and spaced approximately 1,320 feet (1/4 mile) from one another. The existing bus stop at the intersection of Scottsdale Road and Dreyfus Avenue is too close to the stop to the north and too far from the stop to the south.

- 4) The request to modify Stipulation 7 regarding building height is recommended to be approved with a modification. References to the maximum number of building stories are recommended to be removed as building height is the appropriate standard to control building massing and impact. There is no proposal to modify the maximum building height of Lot 4 and the existing stipulated height of 13 feet is recommended to be retained. The detached garage in the rear portion of Lot 5 is setback at a minimum of 18 feet from the centerline of the alley and one extra foot of building height beyond the original stipulated 14-foot maximum height will not negatively impact surrounding properties. The modified stipulation is also more restrictive than the maximum 30 feet in height otherwise permitted by the R-O zoning.
- 5) The request to modify Stipulation 8 regarding minimum rear setbacks is recommended to be approved with a modification. The modification is to remove reference to Lot 5 entirely. The original stipulation (i.e., 111-foot setback) was based on the existing setback of the original primary home at the time of the rezoning action. However, during processing of the rezoning case, there was also a garage constructed at a minimum setback of 10-feet from the rear property line (18 feet to the centerline of the alley). For further context regarding this garage, please see Finding 1 regarding Stipulation 1. The R-O zoning district requires a minimum 25-foot setback measured to the centerline of the alley. The existing garage would not meet this condition. However, as it was legally permitted and constructed per residential standards, it would be allowed to remain. However, if this garage is expanded or redeveloped in the future, a variance would be required. Therefore, it is sensible to remove the reference to Lot 5 entirely as the existing conditions do not meet the requirement and a public hearing would be required for any future expansion.
- 6) The request to delete Stipulation 10 regarding street improvements is recommended to be denied. The City of Scottsdale holds authority over the west side of Scottsdale Road, extending solely to the back of the curb. Given that sidewalks are constructed behind the curb within the jurisdiction of the City of Phoenix, the City of Scottsdale lacked the capacity to construct sidewalks within the City of Phoenix right-of-way during the improvement of Scottsdale Road. Additionally, both Stipulation 10 and the proposed additional stipulation (see Finding #10) by the Street Transportation Department align with the provisions outlined in Phoenix City Code Section 31-91.a. This section of City Code necessitates enhancements to the right-of-way by the adjacent property owner before the issuance of building permits. The section also ensures compliance with the standards designated for each right-of-way as depicted in the "Minimum Right-of-Way Standards Map".
- 7) The request to delete Stipulation 11 regarding archaeological assessment is recommended to be denied. This stipulation is standard language and will only

be enforced during site plan review if new ground is being disturbed and therefore should be retained.

- 8) The request to modify Stipulation 12 regarding a requirement to obtain final site plan approval is recommended to be approved with a modification. The modification is to delete the stipulation in its entirety. The zoning was vested with the City Council's adoption of Ordinance No. G-5383 and subsequent development is subject to plan review and approval by existing policy.
- 9) The request to delete Stipulation 13 regarding walls along the rear property line is recommended to be denied. During processing of the original rezoning case, this stipulation was added during the City Council hearing in response to public comments in opposition. The intent of the stipulation was to mitigate the impacts of potential noise and activity on adjacent residential properties. The concern remains. Additionally, this stipulation is compatible with the current Ordinance requirement for provision of an 8-foot wall along common property lines between non-residential property lines and residentially zoned properties. Further, the remaining three lots in the original rezoning case area remain stipulated to this requirement. The fact that the property owners did not immediately comply with this requirement upon approval of the original rezoning action does not mitigate the original and continued concern.
- 10) The Street Transportation Department recommended addition of a new stipulation regarding provision of a detached sidewalk and landscape strip along the west side of Scottsdale Road. This stipulation is recommended for inclusion as the new Stipulation 9. In the event the property is redeveloped, this stipulation establishes the streetscape standard for inclusion of a sidewalk in this location. This stipulation aligns with the provisions outlined in Phoenix City Code Section 31-91.a. This section of City Code necessitates enhancements to the right-of-way by the adjacent property owner before the issuance of building permits. The section also ensures compliance with the standards designated for each right-of-way as depicted in the "Minimum Right-of-Way Standards Map". Provision of detached sidewalks is a commonplace stipulated requirement and appropriate for this location in which no current pedestrian infrastructure exists.

PLANNING HEARING OFFICER STIPULATIONS:

1.	LOTS 4 AND 5 That development shall be in general conformance to the site plans, date stamped FEBRUARY 23, 2024, February 9, 2009, with specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers as approved AS MODIFIED BY THE FOLLOWING STIPULATIONS AND AS APPROVED by the PLANNING AND Development Services Department.
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2.	That A minimum 10-foot-wide landscape setback along the entire west property line of all lots shall be provided with the corresponding phase. Required landscape materials planted in this landscape buffer shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the PLANNING AND Development Services Department.
3.	That A minimum six-foot wide landscape setback shall be provided along the north property line of Lot 1. Required landscape materials shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the PLANNING AND Development Services Department.
4.	That cross access and parking agreements for Lots 3 and 4 shall be created and recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department.
5. 4.	That Right-of-way shall be dedicated to the city along Scottsdale Road south of Sweetwater Avenue and a transit pad installed according to City of Phoenix Detail P1261 as approved by the Public Transit Department.
6. 5.	That The property owner of Lot 5 shall file for and pursue abandonment of the alley, south of Lot 5 prior to the issuance of a Certificate of Occupancy for the residential office use on Lot 5. In the event the abandonment is not granted, a one foot (1') vehicular non-access easement (VNAE) shall be recorded along the southern property line of Lot 5 as approved by the PLANNING AND Development Services Department.
7. 6.	That building height shall be limited to one (1) story and 13 feet with the exception of Lot 5 to be limited to one (1) story and 14 feet. THE MAXIMUM BUILDING HEIGHT OF LOT 4 SHALL BE 13 FEET. THE MAXIMUM BUILDING HEIGHT OF LOT 5 SHALL BE 15 FEET.
8. 7.	That The rear building setbacks (west side) shall be limited to the following existing setbacks: Lot 1 - 77 feet; Lot 2 - 78 feet; Lot 3 - 97 feet; Lot 4 - 103 feet, and Lot 5—111 feet as measured from the centerline of the existing 16-foot alley.
9. 8.	That A one foot (1') vehicular non-access easement (VNAE) along the entire west property line shall be recorded prior to preliminary site plan approval for the corresponding phase as approved by the PLANNING AND Development Services Department.

9.	A MINIMUM 6-FOOT-WIDE DETACHED SIDEWALK SEPARATED BY A MINIMUM 10-FOOT-WIDE LANDSCAPE AREA SHALL BE CONSTRUCTED ON THE WEST SIDE OF SCOTTSDALE ROAD, ADJACENT TO THE DEVELOPMENT.
10.	That The developer shall construct sidewalk, curb ramps, and other incidentals as per plans approved by the PLANNING AND Development Services Department. All improvements shall comply with all ADA accessibility standards.
11.	That In the event archaeological materials are encountered during construction, the developer shall immediately cease all ground disturbing activities within a 33-foot radius of the discovery, notify the City Archaeologist, and allow time for the Archaeology Office to properly assess the materials.
12.	That each individual property owner shall obtain final site plan approval within 24 months of council action.
13. 12.	That An eight-foot wall shall be constructed along the rear property line with the corresponding phase as approved by the PLANNING AND Development Services Department.
14. 13.	That The Street Transportation Department shall study cut-through traffic before and after all five businesses have been established to determine if traffic mitigation is warranted. If warranted, the applicant shall pay their rough proportionality of the costs of mitigation, not to exceed 12 percent.
15. 14.	That Notice shall be provided to all property owners within the 85254 zip code who submitted speaker cards at the City Council hearing of changes to the site plan through either the PLANNING AND Development Services Department site plan review process or the Planning Hearing Officer hearing process.

Exhibits:

- A- Appeal Document (3 pages)
- B- Applicant's Narrative date stamped March 14, 2024 (3 pages)
- C- Aerial Map (1 page)
- D- Zoning Map (1 Page)
- E- Recorded Ordinance for Rezoning Case No. Z-37-07-2 (7 pages)
- F- Sketch Map from Rezoning Case No. Z-37-07-2 (1 page)
- G- PHO Summary for PHO-1-24—Z-37-07-2 from April 17, 2024 (10 pages)
- H- Stipulated Site Plan dated stamped February 9, 2009
- I- Proposed Site Plan for Lot 4 date stamped February 23, 2024
- J- Proposed Site Plan for Lot 4 date stamped February 23, 2024
- K- Planning Commission Minutes from April 7, 2009 (11 pages)
- L- Letter from Alan Stephenson dated February 5, 2010 (2 pages)

EXHIBIT A



CITY OF PHOENIX

City of Phoenix
PLANNING & DEVELOPMENT DEPARTMENT

MAY 23 2024

Planning & Development
Department

The PLANNING HEARING OFFICER agenda for April 17, 2024 is attached.

The City Council May Ratify the Recommendation of the Planning Hearing Officer on September 4, 2024 Without Further Hearing Unless:

- A REQUEST FOR A HEARING BY THE PLANNING COMMISSION is filed by 5:00 p.m. on May 28, 2024. (There is a \$630 fee for hearings requested by the applicant.)

Any member of the public may, within seven (7) days after the Planning Hearing Officer's action, request a hearing by the Planning Commission on any application. If you wish to request a hearing, fill out and sign the form below and return it to the Planning and Development Department by 5:00 p.m. on May 28, 2024.

APPEAL FORM

I HEREBY REQUEST THAT THE PLANNING COMMISSION HOLD A PUBLIC HEARING ON:

PHD-1-24-37-07-2
APPLICATION NO.

S of the SW of Superstition + Scottsdale Rd
LOCATION OF APPLICATION PROPERTY

DAVID E. RICHART
NAME (PLEASE PRINT)

9019 E. Tinkside View
STREET ADDRESS:

Scottsdale, AZ 85055
CITY, STATE AND ZIP CODE

☐ OPPOSITION ☒ APPLICANT

EMAIL: david.richart@hotmail.com

402-908-2647
TELEPHONE NO

BY MY SIGNATURE BELOW, I ACKNOWLEDGE THE SCHEDULED HEARING DATE AS FOLLOWS:

APPEALED FROM April 17, 2024 PHO HEARING TO August 1, 2024 PC HEARING
DATE DATE

SIGNATURE: David E. Richart DATE: 5/23/2024

REASON FOR APPEAL:

8' Wall stipulation + public street, sidewalk;
and low step construction not warranted.

APPEALS MUST BE FILED IN PERSON AT THE 2ND FLOOR ZONING COUNTER, 200 W. WASHINGTON STREET, 602-262-7131, Option 6

PLANNER TAKING APPEAL: SL

Copies to:

Case File

PHO Planner – Teresa Garcia

PHO Secretary – Ruth Somoza



City of Phoenix

PLANNING & DEVELOPMENT DEPARTMENT

APPLICATION FOR PLANNING HEARING OFFICER ACTION

APPLICATION NO: APZ-19-24

Council District:

Request For: Appeal to a Planning Hearing Officer Decision for PHO-1-24--Z-37-07-2

Reason for Request: See appeal form

Contact Information

Name	Relationship Type	Address	Phone	Fax	Email
David Richert	Applicant	9219 East Trailside View			david.richert@hotmail.com

Property Location: Approximately 480 feet south of the southwest corner of Scottsdale Road and Sweetwater Avenue

Acreage:

Village: Paradise Valley

An applicant may receive a clarification from the city of its interpretation or application of a statute, ordinance, code or authorized substantive policy statement. To request clarification or to obtain further information on the application process and applicable review time frames, please call 602-262-7131 (option 6), email zoning@phoenix.gov or visit our website at <https://www.phoenix.gov/pdd/licensing-time-frames>

A Filing Fee had been paid to the City Treasurer to cover the cost of processing this application. The fee will be retained to cover the cost whether or not the request is granted

I declare that all information submitted is true and correct to the best of my knowledge and belief. I acknowledge that any error in my application may be cause for changing its normal scheduling.

Signature:  DATE: 5/23/2024

Fee Information

Fee	Fee Waived	Fee Date	Purpose
\$630.00	\$0.00		Planning and Zoning Appeal Fee



To find out about Phoenix construction code adoption
news and to research your permits or projects, please
visit <http://www.phoenix.gov/PDD>

City Of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT
200 W. Washington St
Phoenix, Arizona 85003

Your payment was successful.

Order Status	Successful
Applied Payment	\$630.00
Contact	
Operator	Savanna Navarro
Process Date	5/23/2024 12:28 PM
Receipt Number	R-0189446
Payment	Credit Card - PDD
Amount	\$630.00
Credit Remaining	\$0.00

Fee Payments

Related to	Fee Type	Total	Outstanding	Amount
APZ-19-24	Planning and Zoning Appeal Fee	\$630.00	\$0.00	\$630.00

City's Right to Audit and Adjust Impact Fees

The development impact fees assessed to this permit have been adopted pursuant to Arizona Revised Statute §9-463.05. To ensure compliance with Arizona law, the City may audit the development impact fees for this permit; which could result in additional charges. The City reserves the right to withhold Certificate of Occupancy until adjusted balances pursuant to applicable City and State laws are paid in full.

Thank you for your transaction. We appreciate your business and look forward to serving you in the future.

EXHIBIT B

1. That development shall be in general conformance to the site plan date stamped February 9, 2009, **ACCEPT FOR THE SITE PLANS FOR LOT 4 AND 5 (DATED 02/23/2024)** specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers as approved by the Development Services Department. **RATIONALE: THERE ARE TWO EXCEPTIONS THAT WILL REFERENCE THE EXISTING PARKING BUILDING ON LOT 5. THE EXISTING BUILDING ON LOT 5 WAS LAWFULLY PERMITTED DURING THE REZONING PROCESS AND ACKNOWLEDGED BY MR. STEPHENSON LETTER DATED JULY 15, 2009.**
 2. That a minimum 10-foot wide landscape setback along the entire west property of all lots shall be provided with the corresponding phase. Required landscape materials planted in this landscape buffer shall include a mix of minimum 2 and 3-inch caliper trees 20 feet on center or equivalent groupings as approved Development Services. **NO CHANGE.**
 3. That a minimum 6-foot wide landscape setback shall be provided along the north property line of Lot I. Required landscape materials shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the Development Services Department. **NO CHANGE**
 4. ~~That cross access and parking agreements for Lots 3 and 4 shall be created and recorded prior preliminary site plan approval for the corresponding phase approved by the Development Services Department.~~ **DELETE. RATIONALE: PARCEL 3 WAS APPROVED IN THE ORIGINAL TIME LIMIT AND ELIMINATED THE NEED FOR THE AGREEMENT WITH A NEW DRIVEWAY TO SCOTTSDALE RD.**
 5. ~~That right of way shall be dedicated to the city along Scottsdale Road south of Sweetwater Avenue and a transit pad installed according to City of Phoenix Detail P1261 as approved by the Public Transit Department.~~ **DELETE. RATIONALE: SCOTTSDALE RD. IS FULLY IMPROVED WITH NO NEED FOR A BUS IN THE AREA.**
 6. That the property owner of Lot 5 shall file for and pursue abandonment of the alley, south of Lot 5 prior to the issuance certificate of occupancy for the residential office use on Lot 5. In the event the abandonment is not granted a one-foot (1') vehicular non-access easement (VNAE) shall be recorded along the southern property line of Lot 5 as approved by the Development Services
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Department. NO CHANGE: RATIONALE: THE ABANDONMENT WAS FILED FOR AND REJECTED. THE PROPERTY OWNER HAS DEDICATED THE EASEMENT ALONG THE SOUTH PROPERTY LINE AND IS WILLING TO COMPLY WITH STIPULATION 9.

7. That building height shall be limited to one story and 13 feet with the exception of Lot 5 to be limited to one (1) story and ~~14~~ 15 feet. LIMIT LOT 5 TO 15'. RATIONALE: ONE STORY IS GENERALLY CONSIDER 15 AND THE STRUCTURE AS PERMITTED IS BETWEEN 14'-15'.

8. That the rear building (west side) shall be limited to the following existing setbacks: 1 - 77 feet; Lot 2 — 78 feet; Lot 3-97 feet; Lot 4-103, feet, and Lot 5-~~111~~ 10-25 feet as measured from the centerline of the existing 16-foot alley. CHANGE LOT 5 TO ACTUAL BUILDING FOOTPRINT AS SHOWN ON ATTACHED SITE PLAN DATED 02/23/2024. RATIONALE: SAME AS STIPULATION RATIONAL FOR STIPULATION 1.

9. That a (1') vehicular non-access easement (VNAE) along the entire west property line shall recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department. NO CHANGE

~~10. That the developer construct sidewalk, curb ramps, and other incidentals as per plans approved by time Development Services Department. All improvement5 shall comply with all ADA accessibility standards. DELETE. RATIONALE: CITY OF PHOENIX AND CITY OF SCOTTSDALE DIDN'T SEE T HE NECESSARY TO PROVIDE THESE IMPROVMENTS WHEN THE STREET WAS FULLY IMPROVED.~~

~~11. That in the event archaeological materials are encountered during construction, the developer shall immediately cease all ground disturbing activities within a 33-foot radius of the discovery, notify city archaeologist and allow time for the archaeology office to properly assess the materials. DELETE. RATIONALE: NO LOT DISTURBENCE IS ANTICIPATED.~~

12. That each individual property owner shall obtain final site plan approval within 24 months of council action. REFLECT THE FINAL ACTION OF THIS PHO REQUEST BY CITY COUNCIL WITH A NEW DATE. RATIONALE: EXTENDING THE COMPLIANCE DATE IS THE ONLY WAY FOR LOTS 2,4 AND 5 CAN COMPLY. WITH STPULATIONS.

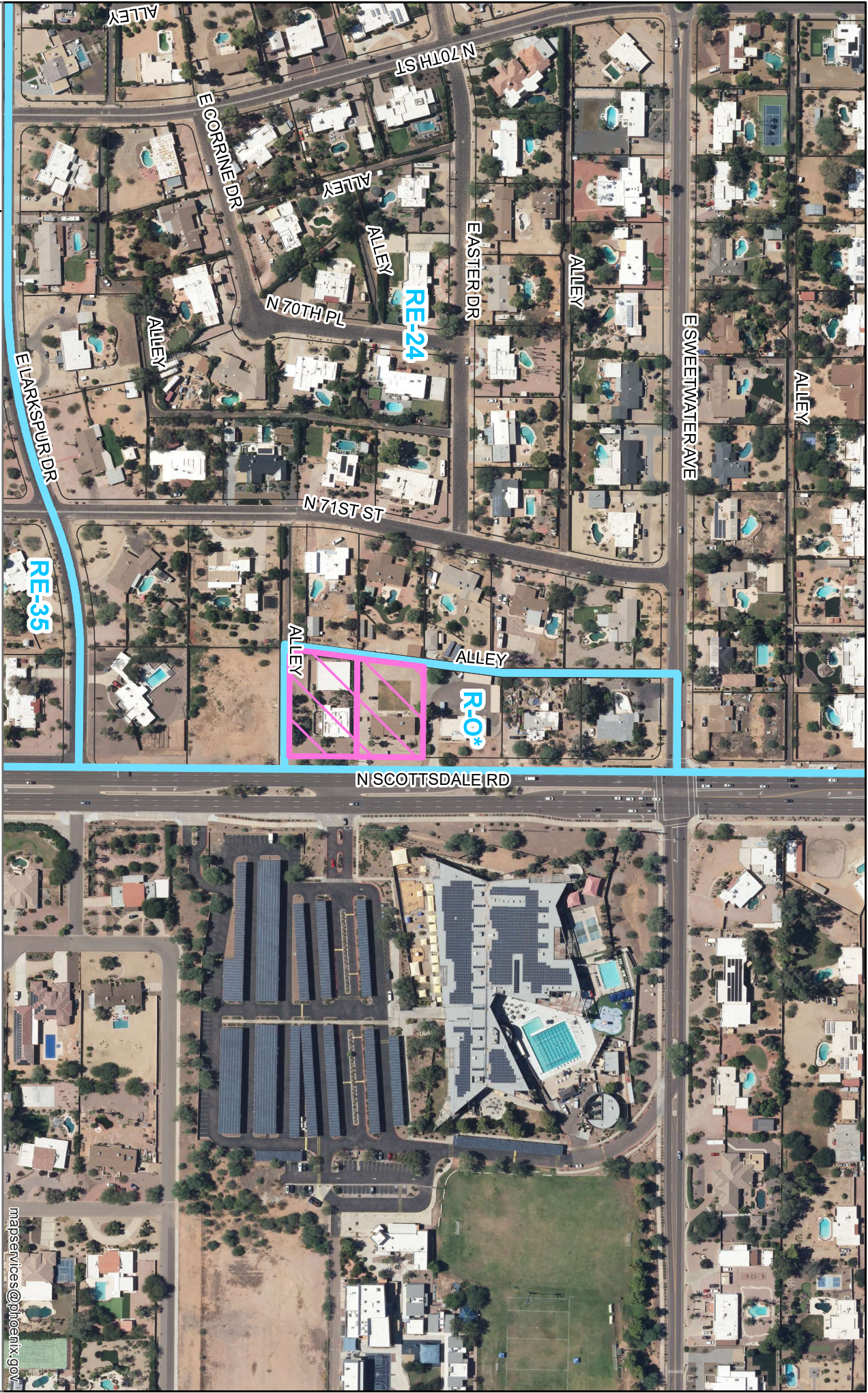
~~13. That an eight foot wall shall be constructed along the rear property line with corresponding phase as approved by the Development Services Department. DELETE. RATIONALE: THE EXISTING WALLS ON THE LOTS ARE IN TACK AND RANGE FROM 5'10"TO 6' 8" AND THEY HAVE EXISTED THIS WAY~~

FOR 17 YEARS IN REASONABLY GOOD CONDITION. ALSO, LOTS 1 AND 3 ARE APPROVED WITHOUT THE WALLS BEING RAISED.

14, That the Street Transportation shall study cut-through traffic before and] after all five businesses have been established to determine if traffic mitigation is warranted. If warranted, the applicant shall pay their rough proportionality of the costs of mitigation. not to exceed 12 percent. NO CHANGE

15. That notice shall be provided to all property owners within the 85254 zip code who submitted speaker cards at the City Council hearing changes to the site plan through either the Development Services Department site . plan review process or the Planning Hearing Officer hearing process. NO CHANGE

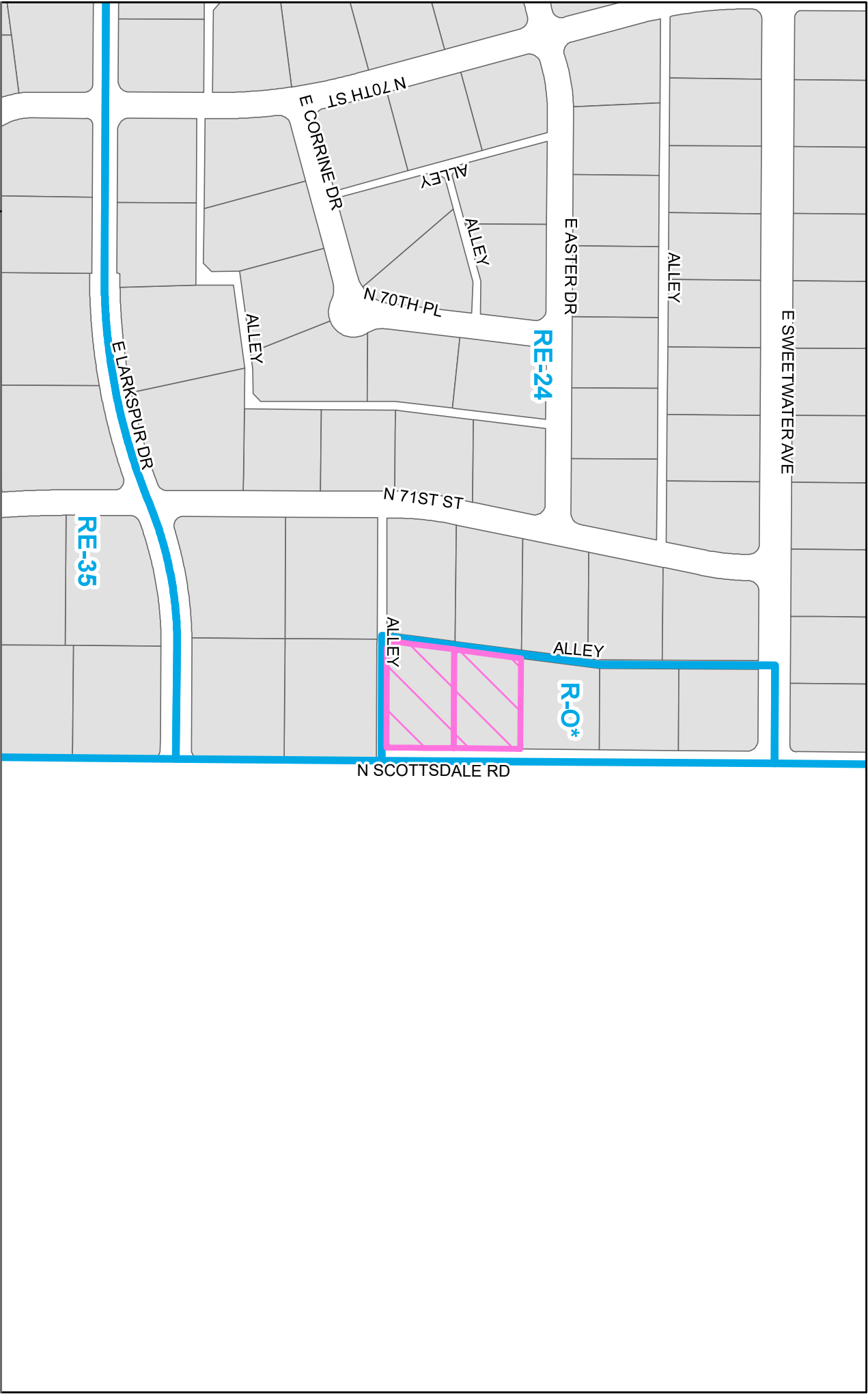
EXHIBIT C



PHO-1-24--Z-37-07-2

Property Location: Approximately 480 feet south of the southwest corner of Scottsdale Road and Sweetwater Avenue

EXHIBIT D



PHO-1-24--Z-37-07-2

Property Location: Approximately 480 feet south of the southwest corner of Scottsdale Road and Sweetwater Avenue



City of Phoenix
PLANNING AND DEVELOPMENT DEPARTMENT
Planning & Development Department

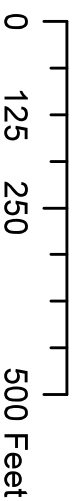


EXHIBIT E

ORDINANCE G-5383

AN ORDINANCE AMENDING THE CODE OF THE CITY OF PHOENIX, ARIZONA, PART II, CHAPTER 41, THE ZONING ORDINANCE OF THE CITY OF PHOENIX, BY AMENDING SECTION 601, THE ZONING MAP OF THE CITY OF PHOENIX, CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE PARCEL DESCRIBED HEREIN (CASE Z-37-07-2) FROM RE-24 (ONE-FAMILY RESIDENCE) TO R-O (RESIDENTIAL OFFICE).

WHEREAS, on March 28, 2007, the City of Phoenix Planning Department received, in compliance with the requirements of the City of Phoenix Zoning Ordinance, Section 506, a written request for rezoning from Jason Morris of Withey Morris PLC, having authorization to represent the owners AFT, LLC, Judy Bund, Lyle and Linda Gail, Thomas Moebius; James and Deborah Mannari of an approximately 3.68 acre property located at the southwest corner of Scottsdale Road and Sweetwater Avenue in a portion of Section 15, Township 3 North, Range 4 East, as described more specifically in Attachment "A", attached hereto and incorporated herein by this reference; and,

WHEREAS, pursuant to A.R.S. § 9-462.04, the Planning Commission, held a public hearing on April 7, 2009, and at this hearing recommended that the City Council approve this rezoning request with the recommended staff conditions, as modified; and,

WHEREAS, the City Council, at their regularly scheduled meeting held on July 1, 2009, has determined that, in accordance with A.R.S. § 9-462.01.F, this rezoning request, with the appropriate site specific requirements provided in Section 2, is consistent with and conforms to the General Plan, will conserve and promote the public health, safety and general welfare, and should be approved, subject to the conditions herein.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX, as follows:

SECTION 1: The zoning of an approximately 3.68 acre property located at the southwest corner of Scottsdale Road and Sweetwater Avenue in a portion of Section 15, Township 3 North, Range 4 East, as described more specifically in Attachment "A", is hereby changed from "RE-24" (One-Family Residence) to "R-O" (Residential Office) and that the Planning Director is instructed to modify The Zoning Map of the City of Phoenix to reflect this use district classification change as shown in Attachment "B".

SECTION 2: The specific nature of the subject property and of the rezoning request is more particularly described in case file Z-37-07-2, on file with the Planning Department. Due to the site's specific physical conditions and the use district applied for by the applicant, this rezoning is subject to the following stipulations, violation of which shall be treated in the same manner as a violation of the City of Phoenix Zoning Ordinance:

Mod

1.

That development shall be in general conformance to the site plan date stamped February 9, 2009, with specific regard to the existing building footprints, maintenance of the existing west property line walls and the

addition of enclosed/covered trash containers as approved by the Development Services Department.

2. That a minimum 10-foot wide landscape setback along the entire west property line of all lots shall be provided with the corresponding phase. Required landscape materials planted in this landscape buffer shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the Development Services Department.
3. That a minimum six-foot wide landscape setback shall be provided along the north property line of Lot 1. Required landscape materials shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the Development Services Department.

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4. That cross access and parking agreements for Lots 3 and 4 shall be created and recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department.

Del

5. That right-of-way shall be dedicated to the city along Scottsdale Road south of Sweetwater Avenue and a transit pad installed according to city of Phoenix Detail P1261 as approved by the Public Transit Department.

6. That the property owner of Lot 5 shall file for and pursue abandonment of the alley, south of Lot 5 prior to the issuance of a certificate of occupancy for the residential office use on Lot 5. In the event the abandonment is not granted, a one-foot (1') vehicular non-access easement (VNAE) shall be recorded along the southern property line of Lot 5 as approved by the Development Services Department.

Mod

7. That building height shall be limited to one (1) story and 13 feet with the exception of Lot 5 to be limited to one (1) story and 14 feet.

Mod

8. That the rear building setbacks (west side) shall be limited to the following existing setbacks: Lot 1 – 77 feet; Lot 2 – 78 feet; Lot 3 – 97 feet; Lot 4 – 103 feet, and Lot 5 – 111 feet as measured from the centerline of the existing 16-foot alley.

9. That a one-foot (1') vehicular non-access easement (VNAE) along the entire west property line shall be recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department.

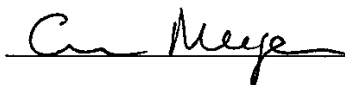
- Del 10. That the developer shall construct sidewalk, curb ramps, and other incidentals as per plans approved by the Development Services Department. All improvements shall comply with all ADA accessibility standards.
- Del 11. That in the event archaeological materials are encountered during construction, the developer shall immediately cease all ground disturbing activities within a 33-foot radius of the discovery, notify the city archaeologist, and allow time for the archaeology office to properly assess the materials.
- Mod 12. That each individual property owner shall obtain final site plan approval within 24 months of council action.
- Del 13. That an eight-foot wall shall be constructed along the rear property line with the corresponding phase as approved by the Development Services Department.
14. That the Street Transportation Department shall study cut-through traffic before and after all five businesses have been established to determine if traffic mitigation is warranted. If warranted, the applicant shall pay their rough proportionality of the costs of mitigation, not to exceed 12 percent.
15. That notice shall be provided to all property owners within the 85254 zip code who submitted speaker cards at the City Council hearing of changes to the site plan through either the Development Services Department site plan review process or the Planning Hearing Officer hearing process.

SECTION 3: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED by the Council of the City of Phoenix this 1st day of July, 2009.


MAYOR

ATTEST:



ACTING
City Clerk



APPROVED AS TO FORM:

William Beck Acting City Attorney MLW

REVIEWED BY: Frank Rouben City Manager

MLW:tml:811262v1: (CM89)(Item 1) 7/1/09

Attachments:

- A - Legal Description (1 Page)
- B – Ordinance Location Map (1 Page)

ATTACHMENT A

LEGAL DESCRIPTION FOR Z-37-07-2

Being a portion of the Southeast quarter of Section 15, Township 3 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County Arizona, being more particularly described as follows:

Lots One (1) through Five (5), inclusive, of FOOTHILLS RANCHOS, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 133 of Maps, page 27, also described as:

Beginning at the Northwest corner of said Lot 1;

THENCE South 89 degrees 37 minutes 38 seconds East, along the North line of said Lot 1 a distance of 140.00 feet to a point marking the beginning of a tangent curve to the right having a radius of 19.96 feet;

THENCE along the arc of said curve through a central angle of 90 degrees 07 minutes 00 seconds an arc distance of 31.39 feet to the East line of Lot 1;

THENCE South 00 degrees 29 minutes 22 seconds West, along the East line of said Lots 1 through 5 a distance of 710.33 feet to the Southeast corner of said Lot 5;

THENCE North 89 degrees 28 minutes 56 seconds West, along said South line 195.00 feet;

THENCE North 41 degrees 04 minutes 37 seconds West 19.92 feet to the Westerly line of said Lot 5;

THENCE North 07 degrees 19 minutes 42 seconds East, along the Westerly line of said Lots 5, 4 and 3 a distance of 404.89 feet to the Southwest corner of said Lot 2;

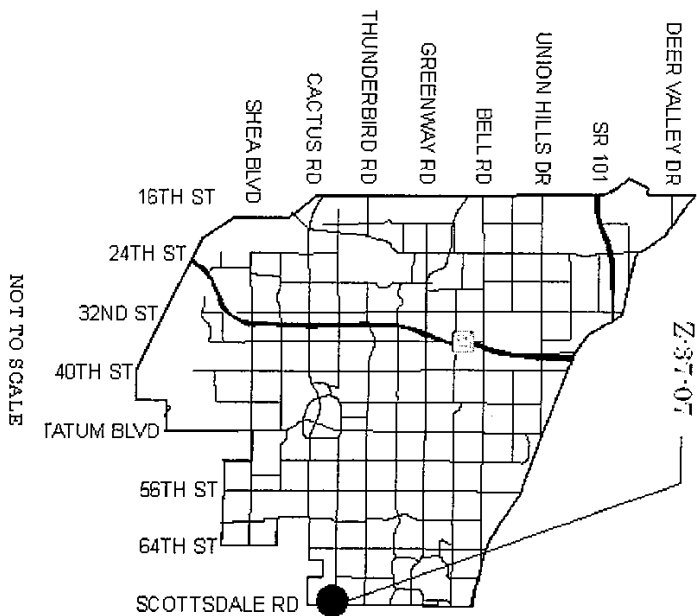
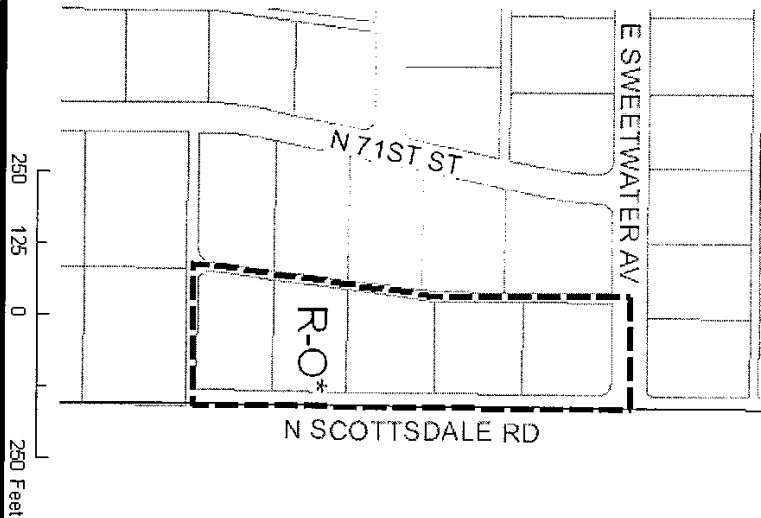
THENCE North 00 degrees 29 minutes 22 seconds East, along the West line of said Lots 2 and 1 a distance of 312.99 feet to the Point of Beginning.

ORDINANCE LOCATION MAP

ATTACHMENT B

ZONING SUBJECT TO STIPULATIONS: *
SUBJECT AREA: - - - - -

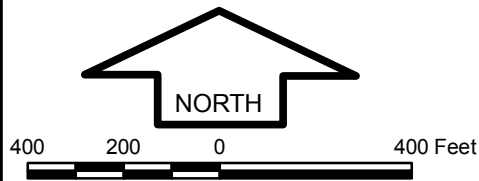
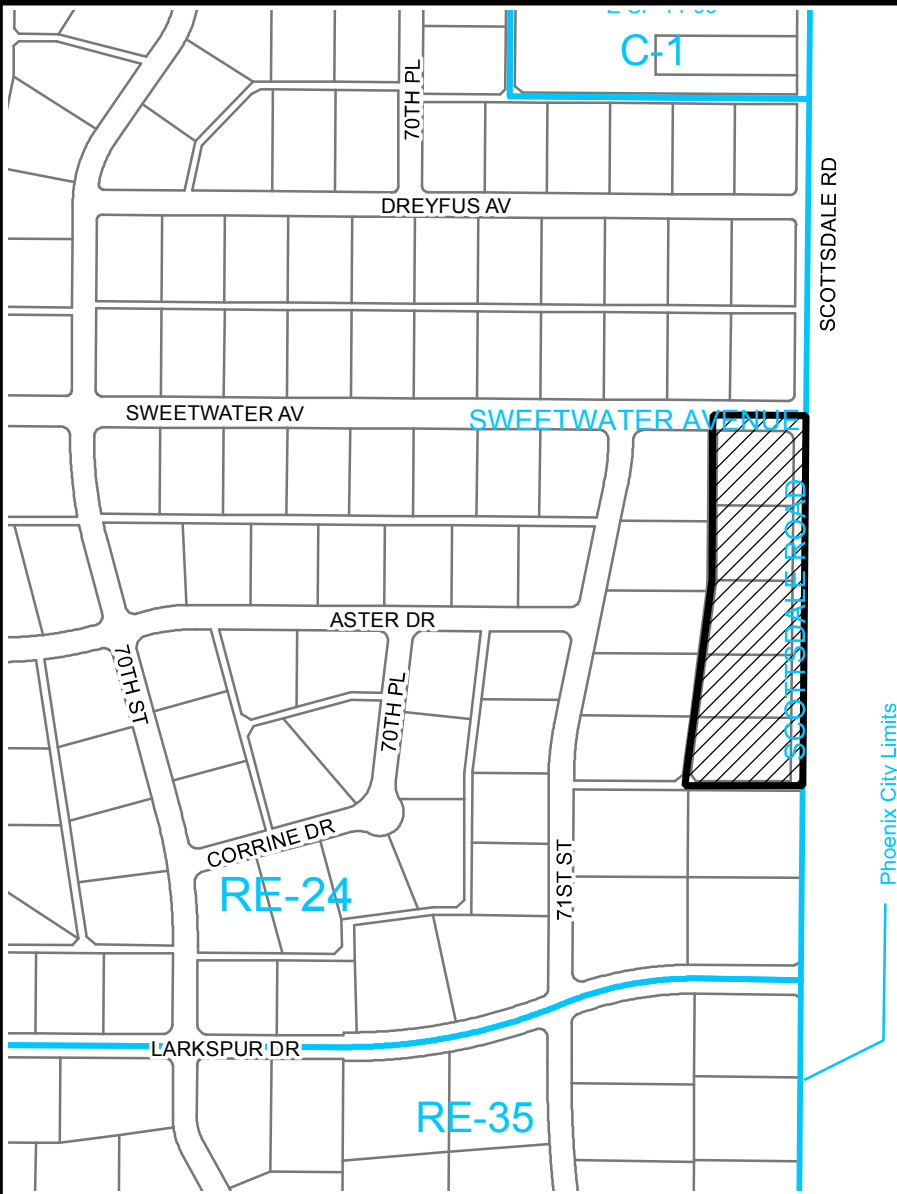
Zoning Case Number: Z-37-07-2
Zoning Overlay: N/A
Planning Village: PARADISE VALLEY



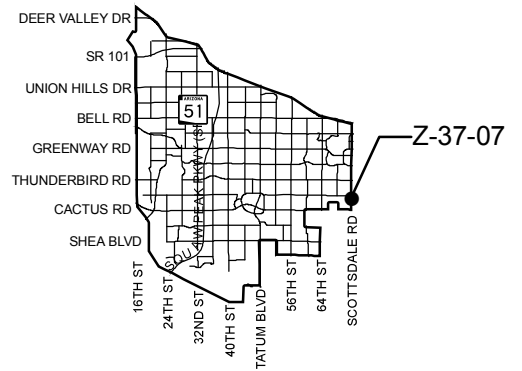
Drawn Date: 04/06/09

Map Document: N\PDF_Maps\Ordinance_Map2009

EXHIBIT F



CITY OF PHOENIX PLANNING DEPARTMENT
PARADISE VALLEY VILLAGE
 CITY COUNCIL DISTRICT: 2



APPLICANT'S NAME: <div style="border: 1px solid black; padding: 2px; text-align: center;">KEVIN KIRKWOOD</div>		REQUESTED CHANGE: <div style="border: 1px solid black; padding: 2px;"> FROM: RE-24, (3.68 ac) TO: R-O, (3.68 ac) </div>										
APPLICATION NO. <div style="border: 1px solid black; padding: 2px; text-align: center;">Z-37-07</div>	DATE: 04-03-2007 REVISION DATES:	<div style="border: 1px solid black; padding: 2px;"> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align: center;">AERIAL PHOTO & QUARTER SEC. NO.</td> <td style="width:50%; text-align: center;">ZONING MAP</td> </tr> <tr> <td style="text-align: center; font-size: 1.2em;">Q31-44</td> <td style="text-align: center; font-size: 1.2em;">K12</td> </tr> </table> </div>		AERIAL PHOTO & QUARTER SEC. NO.	ZONING MAP	Q31-44	K12					
AERIAL PHOTO & QUARTER SEC. NO.	ZONING MAP											
Q31-44	K12											
<small>GROSS AREA INCLUDING 1/2 STREET AND ALLEY DEDICATION IS APPROX.</small> <div style="border: 1px solid black; padding: 2px; text-align: center; font-size: 1.2em;">3.68 Acres</div>		<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; text-align: center;">MULTIPLES PERMITTED</td> <td style="width:33%; text-align: center;">CONVENTIONAL OPTION</td> <td style="width:33%; text-align: center;">* UNITS P.R.D. OPTION</td> </tr> <tr> <td style="text-align: center;">RE-24</td> <td style="text-align: center;">5</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td style="text-align: center;">R-O</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> </tr> </table>		MULTIPLES PERMITTED	CONVENTIONAL OPTION	* UNITS P.R.D. OPTION	RE-24	5	N/A	R-O	N/A	N/A
MULTIPLES PERMITTED	CONVENTIONAL OPTION	* UNITS P.R.D. OPTION										
RE-24	5	N/A										
R-O	N/A	N/A										

* Maximum Units Allowed with P.R.D. Bonus

EXHIBIT G

REPORT OF PLANNING HEARING OFFICER ACTION
Byron Easton, Planner III, Hearing Officer
Teresa Garcia, Planner I, Assisting

April 17, 2024

ITEM NO: 1	
	DISTRICT NO. 2
SUBJECT:	
Application #:	PHO-1-24--Z-37-07-2
Location:	Approximately 480 feet south of the southwest corner of Scottsdale Road and Sweetwater Avenue
Zoning:	R-O
Acreage:	1.17
Request:	<ol style="list-style-type: none">1) Request to modify Stipulation 1 regarding general conformance to the site plan date stamped February 9, 2009.2) Request to delete Stipulation 4 regarding cross access and parking agreements.3) Request to delete Stipulation 5 regarding Scottsdale Road improvements.4) Request to modify Stipulation 7 regarding building height.5) Request to modify Stipulation 8 regarding rear building setbacks.6) Request to delete Stipulation 10 regarding street improvements.7) Request to delete Stipulation 11 regarding archaeological assessment.8) Request to modify Stipulation 12 regarding a requirement to obtain final site plan approval.9) Request to delete Stipulation 13 regarding walls along the rear property line.10) Technical corrections to Stipulations 2, 3, 6, 9 and 15.
Applicant:	David E. Richert
Owner:	Linda Cohn, Beldar Properties Arizona, LLC; Steven R. Bund
Representative:	David E. Richert

ACTIONS:

Planning Hearing Officer Recommendation: The Planning Hearing Officer took the case under advisement. On May 21, 2024, the Planning Hearing Officer took the case out from under advisement and recommended denial as filed and approval with modifications and an additional stipulation.

Village Planning Committee (VPC) Recommendation: The Paradise Valley Village Planning Committee chose not to review the application.

DISCUSSION:

David Richert, 9219 East Trailside View, Scottsdale, Arizona 85258, asked if there were any members of the public in the hearing in opposition for the case.

Byron Easton, Planning Hearing Officer, confirmed there were members in opposition.

Mr. Richert stated the only people they have had discussions with regarding the case were in support and he was surprised there was opposition. He gave an overview of the site and the history of the properties. He stated that some of the proposed stipulations are difficult to meet as the 5 properties on the lots are not working in unison. He stated that during the time of rezoning, building permits were issued for Lot 5. He stated a letter from 2009 from the former Planning and Development Department Director, Alan Stephenson, was in the file; indicating lawful permits were issued and the detached garage was permitted as an accessory to the home as established under residential zoning regulations. He stated he thought the property owner for Lot 3 went through the building permit process and obtained a Certificate of Occupancy but may have to go through the process. He stated that staff has not been able to produce any site plan approval for an operating daycare or for the business on Lot 3. He stated the original property owner who initiated the rezoning no longer has any ability to do anything.

Mr. Easton asked Mr. Richert to describe the purpose of this PHO case.

Mr. Richert stated the reason for the PHO was 1) there was a 24-month time limit placed on applying for building permits and 2) the individual businesses have operated without this knowledge and are trying to comply so they can obtain their Certificate of Occupancy.

Mr. Easton asked what the specific land use of Lot 5 was and how long has it been in business.

Mr. Richert answered that a spa business has been operating for approximately 10 to 12 years. He stated that the owners of Lots 3, 4 and 5 were amazed there was anything other than what was on their properties when they closed their sales. He stated he submitted two site plans for the properties on Lots 4 and 5. He stated the residential garage on Lot 5 was permitted and given a Certificate of Occupancy. He stated that Mr. Stephenson's letter indicated the structure can be on Lot 5, which is shown on the site plan, and it makes sense to do a dedication of a 1 foot vehicular non-access easement along the alley for the property. He stated deleting Stipulation 4 made sense because there is driveway access to

Scottsdale Road and the road has been fully improved for years. He stated a dedicated public transit stop creates a problem because no one is sure exactly where it should go and who manages it.

He stated the rationale from the Public Transit Department used for dedicating a public transit stop was because the existing one north of Sweetwater Avenue is not in the correct location. He argues that this could've been changed when the public improvements to Scottsdale Road occurred. He stated Stipulation 7 needs modification because the building on Lot 5 is close to 15 feet in height when the stipulated maximum height is 14 feet.

He requested to modify Stipulation 8 to accommodate the alleyway along Lot 5. Regarding Stipulation 10, Mr. Richert asked why the improvements stipulated were not completed when the improvements along Scottsdale Road were made. He stated there are no sidewalks in the immediate area and most people utilize automobiles instead of the transit systems. He argues the Transit Department should be the one to build the transit pad because it is a city-wide desire to have the improvements. He argued Stipulation 11 should be deleted because no one will be digging in the area. He stated Stipulation 12 reflects the final action of the PHO request by granting a new date of approval and asked if Mr. Easton can recommend a 24-month approval time frame because it will allow the other property owners to comply with the stipulations.

He recommended Stipulation 13 be deleted because the stipulation recognizes that all the properties are individual and have different wall heights. He argued that the office space use is low impact and building the 8-foot wall in 5 different segments does not make any sense.

He stated the 24-month time extension would give the property owners time to comply with the stipulations. He stated the 10-foot landscape setback cannot be done on Lot 5 because it was approved during the time of permitting and rezoning, but he does not want the same to happen to Lots 1 through 4 as it will not provide adequate landscape buffering for the neighbors. He stated the business owners are still utilizing the trash cans in the alleys for their trash. He reiterated keeping the landscape setback is important to keep the developers from building more on the properties and bringing in more employees. He stated the 8-foot wall is important for safety measures.

He stated they intend on complying with the landscape setback for Lot 5 and do not intend to change it for the remaining lots. He stated previous projects have been over-stipulated to provide public improvements in the public right-of-way when the city can only require one lane along Scottsdale Road. He stated the owners of Lots 4 and 5 are willing to use trash cans on their properties instead of the alley. He stated the employees and customers of the businesses are to use Scottsdale Road as their access point, not the alleyways.

Michael Howell, nearby neighbor, asked if there is some rationale for the agreement for the 8-foot wall. He stated he lives behind Lot 5 and there are mature trees along the southernmost portion of the lot. He stated he was told by the City that that area would not be relinquished because it is a drainage area and the individuals who own the property are responsible for it. He stated he has not been able to fill in his drainage area but the property behind him has and he wants to ensure he will not be held responsible for it.

Mr. Richert stated people wanted the wall for noise prevention and view protection. He stated the intention of the wall was to separate the activity on the five lots and there would be no access to the lots once the properties were converted to offices. He stated Mr. Easton can probably add a stipulation requiring the R-O properties to have their own trash receptacles instead of utilizing the trash cans in the alley. He asked Mr. Easton if he can add language regarding the floodplain issue Mr. Howell mentioned.

Kelly Howell, nearby neighbor, stated the fence goes past the wash area. She stated the property owners are good at dumping their trash, however landscapers for Lot 5 have dumped bulk trash in the alley. She stated that blocking off alley access from Scottsdale Road would prevent traffic along the neighboring properties.

Mr. Easton asked Mr. Richert to clarify what the parameters of the request were. He asked if this request was only for Lots 4 and 5.

Mr. Richert stated it was only for Lots 4 and 5.

Mr. Easton clarified that he will only talk about Lots 4 and 5 and a separate PHO request would need to be submitted for Lots 1, 2 and 3 if the property owners were interested in going through the same process. He stated this is the first time the details of the proposal have been presented since the narrative did not explain it thoroughly. He stated that the letter from Mr. Stephenson does address the building on Lot 5 and indicates there cannot be any buildings within 111 feet from the alleyway, however the building permit for the garage has already been approved. He reiterated the letter said the garage was permitted for residential use and the client may not use the building for a residential-office use unless a Planning Hearing Officer modification of Stipulation 1 regarding general conformance to a site plan is approved. He stated they did not comply and asked Mr. Richert when the use of the property was converted from residential to office.

Mr. Richert stated he was not aware at the time and the property owner was planning on building the garage as a residential building and that is how it was permitted. He stated since this is an R-O property, it may not meet the building code for commercial use. He stated if the property owner wanted to use the garage as an R-O use, she would need to go through the PHO process again to

get the allowance and submit plans that shows the building complies as commercial use.

Mr. Easton stated that he needs more information and is taking the case under advisement.

FINDINGS:

- 1) The request to modify Stipulation 1 regarding general conformance to the site plan is recommended to be approved with a modification. This modification is to provide more standardized general conformance stipulation language and combine both lots into one general conformance Stipulation.

The original rezoning case (Z-37-07-2) stipulated general conformance to the site plan date stamped February 9, 2009 with specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers.

Lot 5 received approval for a detached garage in the rear yard prior to the City Council approval of the original rezoning case. The intent of the garage, as explained in a letter written by prior Principal Planner/Planning Hearing Officer Alan Stephenson on February 5, 2010, was for the client to continue utilization of the property as a single-family residence with a detached garage for their personal use. The letter from Mr. Stephenson also noted that the current owner of Lot 5 may not utilize the detached garage for a Residential Office (R-O) use unless a PHO modification of Stipulation 1 regarding general conformance to the site plan is approved. The applicant did not complete this step as directed and has been using the site for R-O uses for several years and is now asking for the necessary modification.

- 2) The request to delete Stipulation 4 regarding cross access and parking agreements is recommended to be approved. In the original rezoning case, it was envisioned that Lots 3 and 4 would develop concurrently as a combined phase and with a shared parking design. This did not come to pass and Lots 3 and 4 were converted to office uses separately. Lot 3 is also not a party to this case. The two property owners are not working together on a shared design. Further, this recommendation is consistent with the recommendation for modification in Stipulation 1 in which Lot 4 is depicted as a standalone site. This recommendation will allow Lot 4 to move forward with its proposed site plan and not be dependent on redevelopment of Lot 3.
- 3) The request to delete Stipulation 5 regarding Scottsdale Road improvements is recommended to be denied. The existing southbound

bus stop north of Sweetwater Avenue is not in compliance with City of Phoenix standards for bus stop placement and spacing. Bus stops are to be located on the far side of intersections and spaced approximately 1,320 feet (1/4 mile) from one another. The existing bus stop at the intersection of Scottsdale Rd & Dreyfus Ave is too close to the stop to the north and too far from the stop to the south.

- 4) The request to modify Stipulation 7 regarding building height is recommended to be approved with a modification. References to the maximum number of building stories are recommended to be removed as building height is the appropriate standard to control building massing and impact. There is no proposal to modify the maximum building height of Lot 4 and the existing stipulated height of 13 feet is recommended to be retained. The detached garage in the rear portion of Lot 5 is setback at a minimum of 18 feet from the centerline of the alley and one extra foot of building height beyond the original stipulated 14-foot maximum height will not negatively impact surrounding properties. The modified stipulation is also more restrictive than the maximum 30 feet in height otherwise permitted by the R-O zoning.
- 5) The request to modify Stipulation 8 regarding minimum rear setbacks is recommended to be approved with a modification. The modification is to remove reference to Lot 5 entirely. The original stipulation (i.e., 111-foot setback) was based on the existing setback of the original primary home at the time of the rezoning action. However, during processing of the rezoning case, there was also a garage constructed at a minimum setback of 10-feet from the rear property line (18 feet to the centerline of the alley). For further context regarding this garage, please see Finding 1 regarding Stipulation 1. The R-O zoning district requires a minimum 25-foot setback measured to the centerline of the alley. The existing garage would not meet this condition. However, as it was legally permitted and constructed per residential standards, it would be allowed to remain. However, if this garage is expanded or redeveloped in the future, a variance would be required. Therefore, it is sensible to remove the reference to Lot 5 entirely as the existing conditions do not meet the requirement and a public hearing would be required for any future expansion.
- 6) The request to delete Stipulation 10 regarding street improvements is recommended to be denied. The City of Scottsdale holds authority over the west side of Scottsdale Road, extending solely to the back of the curb. Given that sidewalks are constructed behind the curb within the jurisdiction of the City of Phoenix, the City of Scottsdale lacked the capacity to construct sidewalks within the City of Phoenix right-of-way during the improvement of Scottsdale Road. Additionally, both Stipulation 10 and the proposed additional stipulation (see Finding #10) by the Street Transportation Department align with the provisions outlined in Phoenix

- City Code Section 31-91.a. This section of City Code necessitates enhancements to the right-of-way by the adjacent property owner before the issuance of building permits. The section also ensures compliance with the standards designated for each right-of-way as depicted in the "Minimum Right-of-Way Standards Map".
- 7) The request to delete Stipulation 11 regarding archaeological assessment is recommended to be denied. This stipulation is standard language and will only be enforced during site plan review if new ground is being disturbed and therefore should be retained.
 - 8) The request to modify Stipulation 12 regarding a requirement to obtain final site plan approval is recommended to be approved with a modification. The modification is to delete the stipulation in its entirety. The zoning was vested with the City Council's adoption of Ordinance No. G-5383 and subsequent development is subject to plan review and approval by existing policy.
 - 9) The request to delete Stipulation 13 regarding walls along the rear property line is recommended to be denied. During processing of the original rezoning case, this stipulation was added during the City Council hearing in response to public comments in opposition. The intent of the stipulation was to mitigate the impacts of potential noise and activity on adjacent residential properties. The concern remains. Additionally, this stipulation is compatible with the current Ordinance requirement for provision of an 8-foot wall along common property lines between non-residential property lines and residentially zoned properties. Further, the remaining 3 lots in the original rezoning case area remain stipulated to this requirement. The fact that the property owners did not immediately comply with this requirement upon approval of the original rezoning action does not mitigate the original and continued concern.
 - 10) The Street Transportation Department recommended addition of a new stipulation regarding provision of a detached sidewalk and landscape strip along the west side of Scottsdale Road. This stipulation is recommended for inclusion as the new Stipulation 9. In the event the property is redeveloped, this stipulation establishes the streetscape standard for inclusion of a sidewalk in this location. This stipulation aligns with the provisions outlined in Phoenix City Code Section 31-91.a. This section of City Code necessitates enhancements to the right-of-way by the adjacent property owner before the issuance of building permits. The section also ensures compliance with the standards designated for each right-of-way as depicted in the "Minimum Right-of-Way Standards Map". Provision of detached sidewalks is a commonplace stipulated requirement and appropriate for this location in which no current pedestrian infrastructure exists.

STIPULATIONS:

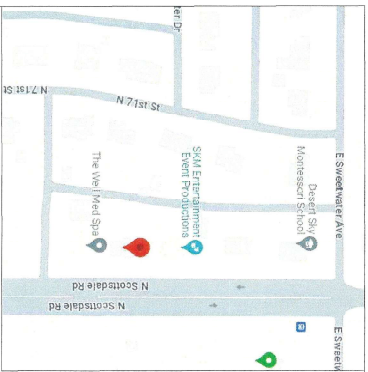
1.	LOTS 4 AND 5 That development shall be in general conformance to the site plan date stamped FEBRUARY 23, 2024, February 9, 2009, with specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers as approved AS MODIFIED BY THE FOLLOWING STIPULATIONS AND AS APPROVED by the PLANNING AND Development Services Department.
2.	That A minimum 10-foot-wide landscape setback along the entire west property line of all lots shall be provided with the corresponding phase. Required landscape materials planted in this landscape buffer shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the PLANNING AND Development Services Department.
3.	That A minimum six-foot wide landscape setback shall be provided along the north property line of Lot 1. Required landscape materials shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the PLANNING AND DEVLEOPMENT Development Services Department.
4.	That cross access and parking agreements for Lots 3 and 4 shall be created and recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department.
4. 5.	That Right-of-way shall be dedicated to the city along Scottsdale Road south of Sweetwater Avenue and a transit pad installed according to City of Phoenix Detail P1261 as approved by the Public Transit Department.
5. 6.	That The property owner of Lot 5 shall file for and pursue abandonment of the alley, south of Lot 5 prior to the issuance of a Certificate of Occupancy for the residential office use on Lot 5. In the event the abandonment is not granted, a one foot (1') vehicular non-access easement (VNAE) shall be recorded along the southern property line of Lot 5 as approved by the PLANNING AND Development Services Department.
6. 7.	That building height shall be limited to one (1) story and 13 feet with the exception of Lot 5 to be limited to one (1) story and 14 feet. THE MAXIMUM BUILDING HEIGHT OF LOT 4 SHALL BE 13 FEET. THE MAXIMUM BUILDING HEIGHT OF LOT 5 SHALL BE 15 FEET.

7. 8.	That The rear building setbacks (west side) shall be limited to the following existing setbacks: Lot 1 - 77 feet; Lot 2 - 78 feet; Lot 3 - 97 feet; Lot 4 - 103 feet, and Lot 5 - 111 feet as measured from the centerline of the existing 16-foot alley.
8. 9.	That A one foot (1') vehicular non-access easement (VNAE) along the entire west property line shall be recorded prior to preliminary site plan approval for the corresponding phase as approved by the PLANNING AND Development Services Department.
9.	A MINIMUM 6-FOOT-WIDE DETACHED SIDEWALK SEPARATED BY A MINIMUM 10-FOOT-WIDE LANDSCAPE AREA SHALL BE CONSTRUCTED ON THE WEST SIDE OF SCOTTSDALE ROAD, ADJACENT TO THE DEVELOPMENT.
10.	That The developer shall construct sidewalk, curb ramps, and other incidentals as per plans approved by the PLANNING AND Development Services Department. All improvements shall comply with all ADA accessibility standards.
11.	That In the event archaeological materials are encountered during construction, the developer shall immediately cease all ground disturbing activities within a 33-foot radius of the discovery, notify the City Archaeologist, and allow time for the Archaeology Office to properly assess the materials.
12.	That each individual property owner shall obtain final site plan approval within 24 months of council action.
12. 13.	That An eight-foot wall shall be constructed along the rear property line with the corresponding phase as approved by the PLANNING AND Development Services Department.
13. 14.	That The Street Transportation Department shall study cut-through traffic before and after all five businesses have been established to determine if traffic mitigation is warranted. If warranted, the applicant shall pay their rough proportionality of the costs of mitigation, not to exceed 12 percent.
14. 15.	That Notice shall be provided to all property owners within the 85254-zip code who submitted speaker cards at the City Council hearing of changes to the site plan through either the PLANNING AND Development Services Department site plan review process or the Planning Hearing Officer hearing process.

Upon request, this publication will be made available within a reasonable length of time through appropriate auxiliary aids or services to accommodate an individual with a disability. This publication may be made available through the following auxiliary aids or services: large print, Braille, audiotape or computer diskette. To request a reasonable accommodation, please contact Teleia Galaviz at teleia.galaviz@phoenix.gov or (602) 291-2559 or TTY: 7-1-1.

EXHIBIT H

EXHIBIT I



Vicinity Map

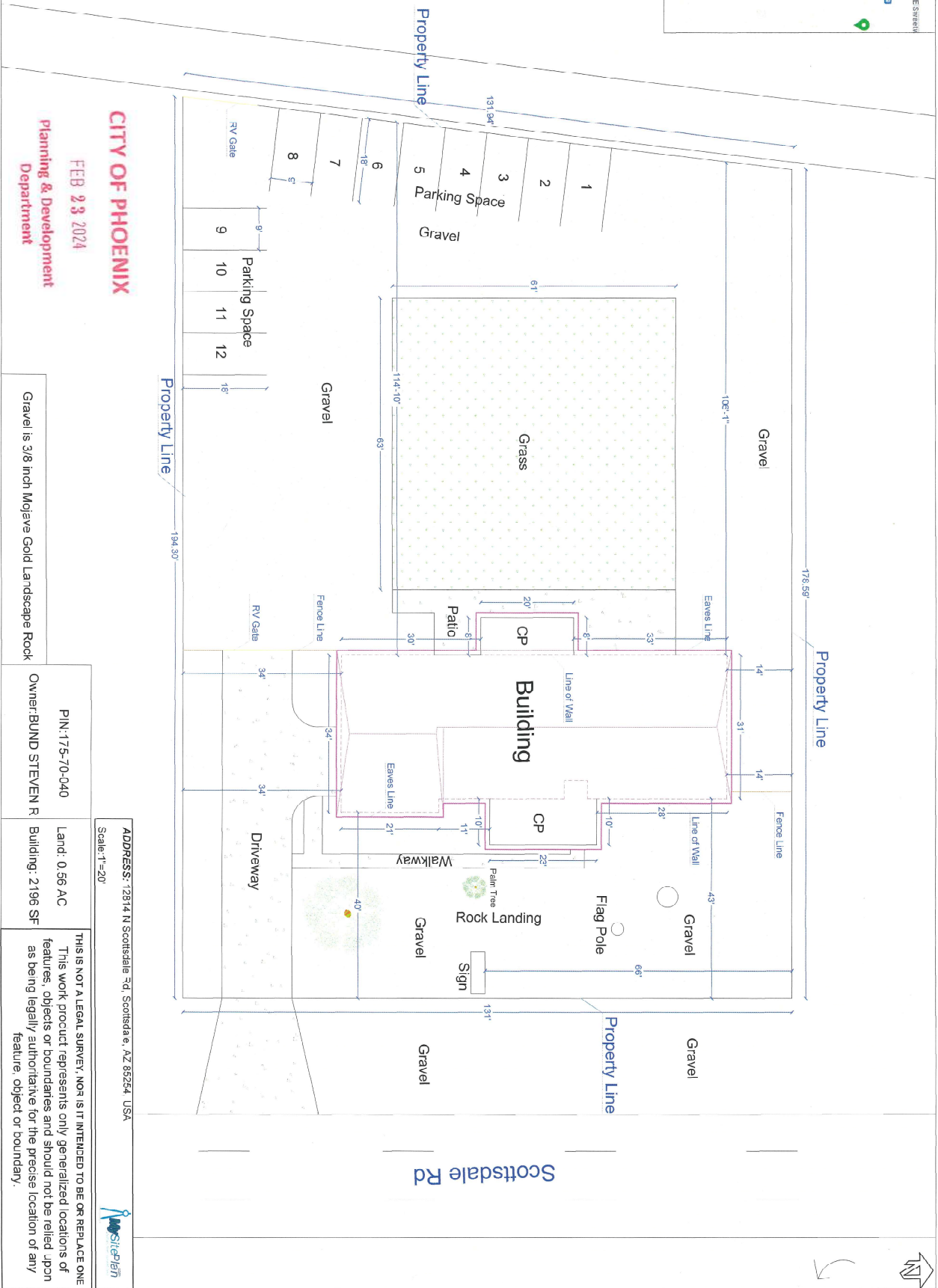


EXHIBIT J

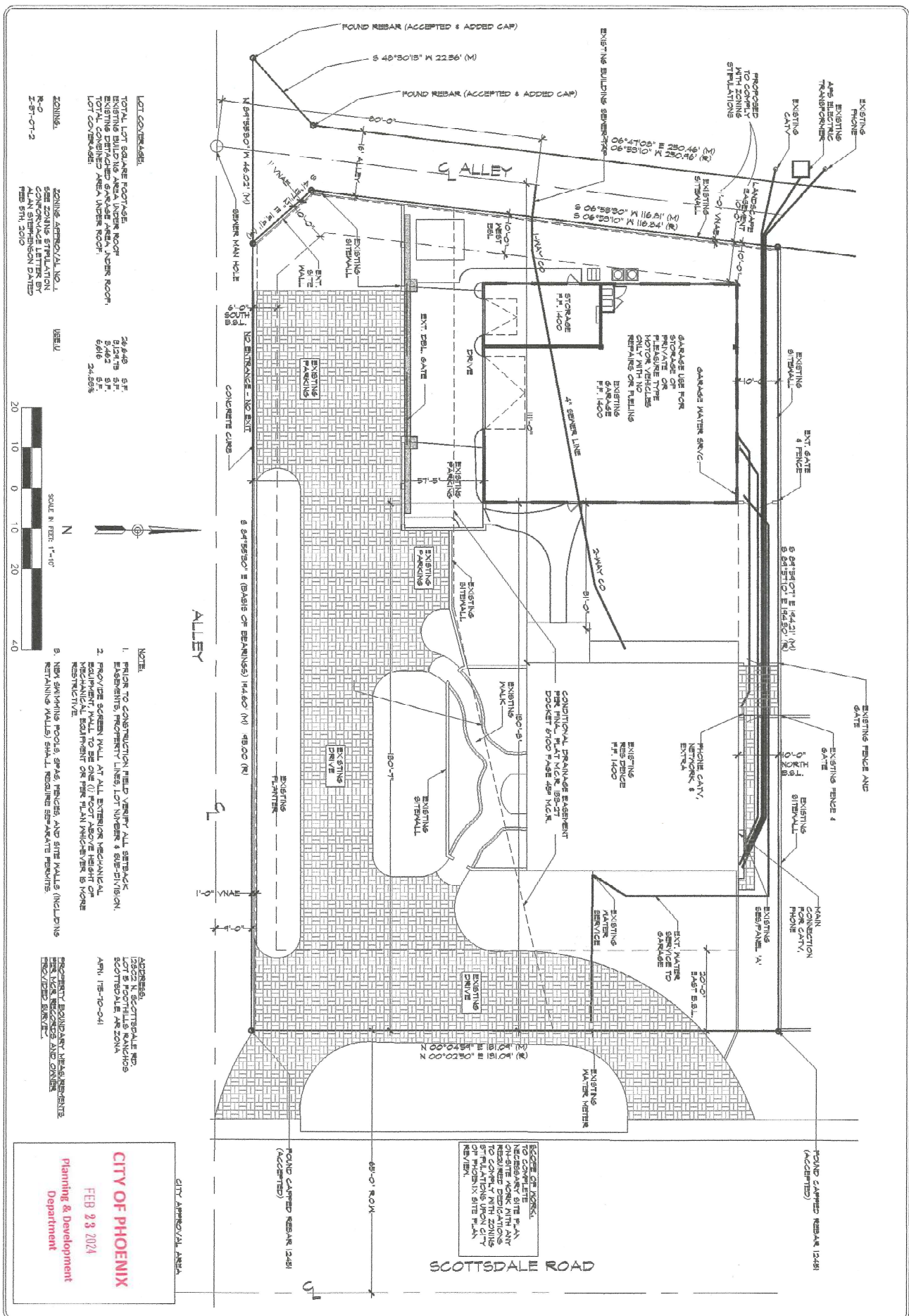


EXHIBIT K

REZONING CASES

Item #:	6
Application #:	Z-37-07-2
From:	RE-24
To:	R-O
Acreage:	3.68
Location:	Southwest corner of Scottsdale Road and Sweetwater Avenue
Proposal:	Residential office
Applicant:	Jason Morris - Withey Morris P.L.C.
Owner:	Judy A. Bund
Representative:	Jason Morris - Withey Morris P.L.C.

Mr. Alan Stephenson presented Z-37-07-2, a rezoning request from RE-24 to R-O for an approximately 3.68 acre parcel located on the southwest corner of Scottsdale Road and Sweetwater Avenue. Staff recommends approval subject to the stipulations in Addendum B of the staff report. The Paradise Valley Village Planning Committee voted to approve the request 10-2 subject to staff stipulations with a modification to stipulation 10 which would read as follows:

10. That the developer shall construct sidewalk, curb ramps, and other incidentals as per plans approved by the Development Services Department. All improvements shall comply with all ADA accessibility standards.

This case was referred back to the Paradise Valley Village Planning Committee by City Council.

Mr. Jason Morris, 2525 E. Arizona Biltmore Circle, presented five homes on Scottsdale Road and Sweetwater Avenue. It is directly across the street from the Jewish Community Center which is a 40 acre facility with schools and community amenities. Just south of this center is a shopping plaza with some residential homes in between. Also in that area is the Scottsdale Airport with other commercial ventures. The underlined zoning of the Jewish Community Center is RE-35. Just looking at the size of the parking lot for this facility gives a sense of the types of programming that occurs. Some of the uses are a Kindergarten through 8th grade school, a high school, and summer programs. There is a senior facility where holiday and teen programs take place, a full fitness center, two pools, and a tennis court. An aerial slide of the area from 1979 was shown where the site was plotted 10 years prior and originally developed in 1969 through 1970. This made sense as a model complex 40 years ago because whatever traffic existed was not a detriment.

The next aerial slide shows a completely different context for Scottsdale Road, not only for adjacent property uses, but Scottsdale Road itself has changed in character, traffic and in overall capacity. The 2007 aerial shows not only additional lanes of traffic within Scottsdale Road, but a completely different median system and a signalized intersection at Sweetwater Avenue which then becomes an east-west collector at that location.

As the sizes of the lots are examined, it can be seen that they do not have the same depth as some of the homes immediately adjacent and within that community. This case was before the Planning Commission approximately 1 year ago with a different site plan involved. One of the things done was to reallocate the parking access points on the site plan. Also looked at where the buffers between these properties and anything to the west within the neighborhood. As a result, the site plan is updated and shows several changes. There is an increased set back along the west property line. There is also an agreement in the stipulation to create a 1 foot non-vehicular access easement meaning, there will be no connection from these properties to the alley way to the west; so there is no contiguous traffic. There is no loop road that would bring traffic along the back portion of these properties. They have also agreed to the same type of non-vehicular access easement for the south side. The building height has been limited to 13 feet on 4 homes and 14 feet on the fifth home which reflects the existing condition.

A traffic study has been conducted which was not available the last time this case was before the Planning Commission. This is a transitional area, the text and the ordinance itself calls for precisely the situation these 5 homes present. It explains why as time goes by, forty years in this instance, a need for a buffer is evident and the residential office category provides that buffer. It refers to the edges of residential areas and location on an aerial street, all of which are occurring. It talks about keeping development at a residential scale or as in this case, conversion of residential structures for professional offices. It also permits continuation of residential uses, should that be desired. What is specifically prohibited is just as important; neighbors are concerned about the creep of this use into the neighborhood. The specifics of the ordinance prohibit R-O use on anything but a collector or arterial street, which means it cannot migrate into the neighborhood nor would staff approve it. It would also have to go before this Planning Commission and the City Council. Also presented were examples of how R-O zoning looks when it is done successfully, both on Missouri Avenue and 44th Street and also on 32nd Street. These are homes that have been converted to another use because of their undesirable nature as a single family residence and the propensities for these to turn into rental properties that are not maintained. By investing into these buildings in both landscaping and exterior, there are successful buffers. It has had no deleterious impact on the homes immediately adjacent to them or to the interior of the neighborhood. No additional R-O zoning has been requested for that neighborhood.

Mr. Morris also presented areas when R-O zoning is not granted or requested. A home on Cactus Road, another near the Biltmore Fashion Square, Chaparral Road and Scottsdale Road that have not seen any reinvestment. There is no desire to address Scottsdale Road because of it's intensity at that location.

Since the opening of the Loop 101 a dramatic drop in traffic occurred along Scottsdale Road between 2002 and 2005; from 59,000 to 38,000 vehicles on the road. Although the numbers are now creeping back up, both Scottsdale Road and Sweetwater Avenue have less traffic today than it had in 2002. The access to this site is right in, right out, which means it is purely southbound access. The number of driveways that currently exist will be limited. There is no benefit to drive through the neighborhood to access these homes, in fact, it is impossible.

The traffic study also shows that only 5 additional U-turns will occur at the intersection on Scottsdale Road and Sweetwater Avenue during the a.m. peak and that again, equates to no additional traffic, it will have no adverse effect. These are the only five homes with direct access driveways to Scottsdale Road; from the Tempe boundary all the way to Carefree Highway. Other residential uses adjacent to Scottsdale Road are those with side on frontage road, and rear lot conditions. There will also be a Development Services Department requirement that will provide ADA access along Scottsdale Road which will lead to the bus stop that is on the south side of the intersection at Sweetwater Avenue adjacent to the side on residential conditions.

Commissioner Amery asked if any of the homes are currently in violation with neighborhood services.

Mr. Morris responded yes, at least one of the homes is under violation.

Commissioner Amery also asked if there is anyone currently operating incorrectly in the uses of the properties.

Mr. Morris stated that this was also asked at the Paradise Valley Village Planning Committee meeting and continues to be an issue. There are several businesses that are registered at the Corporate Commission that have their LLC or their partnerships in these neighborhoods and in this subdivision in particular. That in itself is not a violation but is indicative of the number of businesses that are home based in this area.

The following submitted cards in favor but did not wish to speak.

Penny Warring, 4626 E. Janice Way, Phoenix
Jim Mannar, 12850 N. Scottsdale Road
Deborah Mannar, 12850 N. Scottsdale Road
Kathy Migdal, 13410 W. 82nd Street, Scottsdale
Harvey Migdal, 13410 N. 82nd Street, Scottsdale

Talor Migday, 13410 N. 82nd Street, Scottsdale
Kristin Dixon, 10847 W. Olive #2070, Peoria
M.F. Kay, 4635 E. Michelle Drive
Geri Huffman, 1720 N. 74th Place, Scottsdale
Harry Huffman, 1720 N. 74th Place, Scottsdale
Linda Huffman, 4527 E. Sandra Terrace, Phoenix
Tom Moebius, 12838 N. Scottsdale Road
Rylee Gallun, 11748 E. De La O Rd, Scottsdale
Holli Gallun, 11748 E. De La O Rd, Scottsdale
Ashley Gallun, 4150 E. Cactus Road, Phoenix
Raegan Gall, 6725 E. Cholla Street
Linda Gall, 6725 E. Cholla Street
Lyle Gall, 12826 N. Scottsdale Road
Mike Ferrara, 4150 E. Cactus Road, Phoenix
Tyler Breitag, 6725 E. Cholla, Scottsdale
Travis Gall, 4075 E. Sleepy Ranch Road
Raye Gall, 4075 E. Sleepy Ranch Road
Margie and John Mahlum, 5328 E Greenway Land
Matt Kelly, 12615 N. 67th Street
Brad Gallun, 11748 E. De La O Rd, Scottsdale Road
Deidra Harling, Phoenix
Falan Alpert, 8389 58th Place
Hillary Alpert, 8389 58th Place
Robert Alpert, 12802 N. Scottsdale Road
Daniel Alpert, 325 E Broadway Rd, Tempe
Graenie Warring, 4626 E. Janice Way, Phoenix
Hunter Warring, 4626 E. Janice Way, Phoenix
Riley Warring, 4626 E. Janice Way, Phoenix
Jeff Feher, 329 E Broadway Rd, Tempe
Toni Biggins 3507 N., Scottsdale

Denise Finell, 6951 E. Bloomfield Rd, stated she is two blocks west of Scottsdale Road. She was concerned with what was going to happen to these properties because of their inappropriateness for residential use. This seems to be an ideal buffer for a residential site. She has seen businesses grow in this area and did not want to see a strip mall. She feels this will lend some stability in the area; it is logical, safe and well maintained. She understands that the welfare of the whole neighborhood is being looked at, but also as the zoning becomes more realistic for the use of this property, the tax revenues will go up. Basically she cannot see a disadvantage; the driveways open out to Scottsdale Road, not the neighborhood.

Conde Rogers, 7220 E. Sweetwater Avenue, stated her property is on the northeast corner of Scottsdale Road and Sweetwater Avenue, the closest to the five homes. She and her husband attended the last meeting where they were in support, but did understand some of the concerns of the neighbors. They are

now enthusiastic supporters because of the future plans for the properties. Those involved have gone to great lengths to accommodate each of the concerns that have been raised by the opposition. She feels this is a great use for these properties and she is the most affected of anyone else here this evening. Those living in the properties have been outstanding neighbors.

The following submitted cards in opposition but did not wish to speak.

Jeff Snedden, 6841 E. Presidio Road, Scottsdale
Sue Snedden, 6841 E Presidio Road, Scottsdale
Paul Barnes, 5518 East Mariposa
Diane Huffmaster, 12835 N. 71st Street
Craig Anderson, 12835 N. 71st Street, Scottsdale
Mark and Paula Gert, 10821 E. Presidio Road
Lisa Nissenbaum, 6827 E. Corrine Drive, Scottsdale
Pollie Colter, 7015 E. Sweetwater Avenue
Imogene Eide, 7015 E. Sweetwater Avenue
Jon Altmann, 5305 E. Sweetwater Avenue
Liz Slater, 7074 E. Aster Drive
Diana Baumann, 12229 N. 71st Street, Scottsdale
Leo Baumann, 12229 N. 71st Street, Scottsdale
Bruce Foster, 12828 N. 71st Street
Amy Foster, 12828 N. 71st Street

John Crookham, 7043 E. Carol Way, Scottsdale, stated that the residents of the neighborhoods are nearly unanimously opposed to this rezoning. At the last Planning Commission hearing the applicant was instructed to make very specific changes by the Mayor because the plans were not adequate; there has not been any significant change. The parking places have been switched around, a couple of plants have been moved, and the access points onto Scottsdale Road have actually increased as opposed to being decreased. Mr. Crookham presented an aerial view of the neighborhood and of the homes to show the impact that the changes would make in this area. The 4 homes, south along Scottsdale Road, are completely surrounded by residential as also to the west and north. The Jewish Community Center is similar to living next to a YMCA or a grade school and it is also surrounded by residential area. The applicant is trying to spot zone in the area of the 5 properties.

What were not shown by the applicant were the 5 homes that the rezoning is being requested for. These are very nice, well maintained homes on very large $\frac{3}{4}$ acre lots. Currently there are businesses operating illegally in some of these homes. At least two of the lots have illegally erected commercial type parking structures in the back yard. They have 60 foot set backs with very large front and back yards; there are no sidewalks. This is an up and coming neighborhood that is very unique in this city.

The City Council stated it would be impossible to drive through the neighborhoods; the properties can only be accessed driving southbound on Scottsdale Road. If there are businesses there, any customers or employees heading northbound on Scottsdale Road will have to go to Sweetwater Avenue and try to make a very dangerous U-Turn; there is no left turn arrow there. They would then take a left, drive into the neighborhood and find a driveway to turn around on. If not, they will go to Sweetwater Avenue, go to Larkspur Drive and funnel right into the neighborhood through 71st Street to Sweetwater Avenue and back so they can make a right turn to get into these properties, or access the properties by taking a left turn on Cactus Road through 71st Street and make the right hand turn to get to these properties. The increase in traffic coming through the neighborhood is going to be substantial.

The properties are going to be vacant at night; this is a potential safety risk with crime unnecessarily being drawn to the area. One of the homes shown by the applicant, at the corner of Scottsdale Road and Cactus Road, is owned by a speculator that the neighborhood has been dealing with for the past 2 years. There is a lack of care with absentee owners. The homes owned by actual homeowners are very nice

Mr. Crookham presented photos of other R-O zoned businesses in Phoenix. For example; a palm reader business, an insurance agency with the building painted lime green, a vacant boarded up R-O office, a rental car facility, a dental office, and massage parlor. Some of the businesses shown had signage painted on the windows. If R-O zoning were controllable, lime green insurance agencies would not exist. The staff report stated that they are in need of small scale office space. The Grubb and Ellis report stated that there are over 7.2 million square feet of office space in the north Scottsdale and airpark areas. That is more than any other area of this city. They are overwhelmed with commercial office space around them, and there is no need to insert that into this neighborhood,

Traffic statistics for southbound Scottsdale Road has about 15,500 vehicles on the road each day and westbound Cactus Road has 15,000 vehicles. There are 13 homes with driveways facing Cactus Road that are subjected to the same traffic stressors as the five properties. That is what happens when a home is on an arterial street. There are homes that are buffered and have mitigated the uses with landscaping and walls. The applicant has never done that, they choose not to. There have been other rezoning requests for R-O in their area and staff has consistently rejected them because the properties have been viable for residential use. There is adequate commercial zoning in the area, R-O zoning is incompatible with the residential area, as it is in their neighborhood, and it would set precedence for similar requests.

Keirland Commons is one to two minutes away with shopping and nightlife, which is the image that has been established for this area of town, it brings in tourist, high end businesses, and sporting events. This is what they sell Scottsdale

Road for; R-O will do nothing but tarnish that image. Currently there is not a single R-O on Scottsdale Road. Mr. Crookham read a portion of the Missouri Avenue Land Use Study and the Arcadia Camelback Study where they both favored residential over R-O. The staff reports states that these are compatibly with the General Plan. People relied and invested their life savings on the General Plan that said this is a residential area. The staff report does not address any of the impacts for this neighborhood.

Commissioner Amery asked about the traffic impact in regards to the school on Scottsdale Road and Sweetwater Avenue.

Mr. Crookham stated that the traffic from the school is a problem on Sweetwater Avenue, it backs up to some extent; any more traffic would compound the problem.

Pat Humphrey, 12401 N. 65th Place, stated she has an objection to this hearing; it was originally remanded back to the Paradise Valley Village Planning Committee to deal with the traffic issues. The applicants were supposed to work with the City of Scottsdale, which was not done; instead they went back to the Village Planning Committee with a new site plan. One of the biggest issues along Larkspur Drive was the traffic. As neighbors, they requested a traffic study. The Engineering Department divided Larkspur Drive into two sections. The sections closest to the applicants' property were eligible for the \$100 traffic humps. In her area of the neighborhood that would not be practical for slowing down the traffic because they do not have sidewalks. They felt that vehicles would drive on their front yards or around other traffic calming devices. Street lighting is very limited and students must walk on the street while going to and from the bus stops for school. She also corresponded with the Paradise Valley School District. The school buses make 3 runs in the morning and 3 in the afternoon for each of the three schools in the area.

Mr. Alan Stephenson read the minutes of the motion that was made by the City Council in regards to this application. Councilman Johnson made the motion to remand this case back to the Village Planning Committee. He requested for staff to review all of the new information and take another look at the overall facts. He also stated that the case be heard again by the Village Planning Committee and the Planning Commission so the community could have input during the process. Councilman Simplot seconded the motion and concurred with Councilman Johnson. The remand is valid to go through the full process of the Village Planning Committee and Planning Commission. Staff has taken a look at the additional facts and supports the case per the stipulations.

Mr. Morris stated that the homeowners are not going to allow their homes to become run down for the sake of an R-O application. The fact that the homes have been well kept should not be held against the applicant. They are not, however, adequate places to raise a family. Many of the homes shown in the

neighborhood and those on Scottsdale Road have a frontage road. The five properties do not; and they are not 60 feet from the property line. The planning staff has been diligent in going by the guidelines as to what makes an appropriate R-O project, just because there is a desire or speculation that there is more value in a home as an office than as a residential does not lead professional planning staff to recommend approval as they have with this case. The applicant did speak with the City of Scottsdale and there are no absentee owners or speculators. The main issue with the neighborhood is the traffic, inside and outside of the neighborhood.

Commissioner Amery asked if in the stipulations the height of the homes will remain the same.

Mr. Morris responded because there can be no other uses for these five homes; they have agreed not to change the concept, scale, or overall design. Which means, what is seen today, other than the improvements that will be made by the Development Services Department and the landscape situation, is what will be seen in the long term. This zoning district does not include massage parlors, but a residential office that cannot be higher in height nor larger in scale than currently exists.

Commissioner Amery stated that normally these applications are presented as individual sites; with this application multiply sites will be bundled. He can stand behind this request.

Mr. Morris stated from the outset, the neighbors have feared three things, traffic, the creep of other R-O zoning, and the change of quality of life. They do not want additional R-O cases occurring along Scottsdale Road that they would subsequently have to fight. As a result of that and the five property owners working together, this is a complete package, rather than for instance, two of the homes becoming rezoned one year and three coming later, or one by one. The owners of these properties recognize that they are all ultimately in the same position. Instead they have worked with the city to create a traffic pattern so that there will not be the same number of driveways at the end of this conversion as there is today. For instant, some homes have more than one driveway onto Scottsdale Road, there are six or seven with these homes that can be condensed down to a cross access easement parking and pedestrian situation so that the homes are self contained and there is no justification for making it more intense or coming back to ask for additional uses. Instead they can operate as professional offices without relying on other properties.

Chairman Keuth asked if there were any concerns with the stipulations.

Mr. Morris stated the original case was overwhelmingly denied by the Paradise Valley Village Planning Committee. This illustrates the work that the applicant has done since it was remanded by the City Council. The site plan was entirely

changed, given that they could not change the five homes, they did change the site plan surrounding the homes. And as a result, they gained the support of the village by a vote of 10-2 in favor. They are in agreement with the stipulations suggested by staff.

Chairman Keuth commented for clarification that the Planning Commission is made up of seven full time appointees, of the other two, one represents as chair or vice-chair of one of the Villages and the other as a neighborhood representative. It is not uncommon for those on the board to hear some cases twice. The Planning Commission is an advisory body for the City Council. Over the years there had been some concerns about potential conflict, this has been cleared through the City of Phoenix Law Department. The board members are fully capable of participating in this debate as well as the debate they participated in at the Village Planning Committee.

Commissioner Awai expressed that he understands the concerns of the opposition. He believes that the homes are not viable for residential use and this is exactly what this zoning issue was designed to address.

Commissioner Awai made a MOTION to approve Z-37-07-2 per the Paradise Valley Village Planning Committee recommendation and stipulations.

Commissioner Ellis SECONDED.

Commissioner Amery stated he usually is not in favor with R-O requests, however, the bundling of these lots as one application makes for a more palatable R-O arrangement.

Chairman Keuth stated that the last time this case was heard he voted in opposition. He is now satisfied with the changes of the site plan.

There being no further discussion, Chairman Keuth called for a vote and the MOTION PASSED 6-0 (Davis, Katsenes, Gullett, absent).

* * * *

Stipulation:

1. That development shall be in general conformance to the site plan date stamped February 9, 2009 with specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers as approved by the Development Services Department.

2. That a minimum 10-foot wide landscape setback along the entire west property line of all lots shall be provided with the corresponding phase. Required landscape materials planted in this landscape buffer shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the Development Services Department.
3. That a minimum 6-foot wide landscape setback shall be provided along the north property line of lot 1. Required landscape materials shall include a mix of minimum 2 and 3-inch caliper trees placed 20 feet on center or equivalent groupings as approved by the Development Services Department.
4. That cross access and parking agreements for lots 3 and 4 shall be created and recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department.
5. That right-of-way shall be dedicated to the city along Scottsdale Road south of Sweetwater Avenue and a transit pad installed according to City of Phoenix Detail p1261 as approved by the Public Transit Department.
6. That the property owner of lot 5 shall file for and pursue abandonment of the alley, south of lot 5 prior to the issuance of a certificate of occupancy for the residential office use on lot 5. In the event the abandonment is not granted, a one (1) foot vehicular non-access easement (VNAE) shall be recorded along the southern property line of lot 5 as approved by the Development Services Department.
7. That building height shall be limited to one (1) story and 13 feet with the exception of lot 5 to be limited to one (1) story and 14 feet.
8. That the rear building setbacks (west side) shall be limited to the following existing setbacks: lot 1 – 77 feet; lot 2 – 78 feet; lot 3 – 97 feet; lot 4 – 103 feet and lot 5 – 111 feet as measured from the centerline of the existing 16-foot alley.
9. That a one (1) foot vehicular non-access easement (VNAE) along the entire west property line shall be recorded prior to preliminary site plan approval for the corresponding phase as approved by the Development Services Department.
10. That the developer shall construct ~~improve all streets adjacent to the development with paving, curb, gutter, sidewalk, curb ramps, streetlights, landscaping~~ and other incidentals as per plans approved by the Development Services Department. All improvements shall comply with all ADA accessibility standards.

11. That in the event archaeological materials are encountered during construction, the developer shall immediately cease all ground disturbing activities within a 33-foot radius of the discovery, notify the city archaeologist, and allow time for the archaeology office to properly assess the materials.

EXHIBIT L



City of Phoenix
PLANNING DEPARTMENT

Mr. Jason Morris
Withey Morris PLC
2525 E. Arizona Biltmore Circle, Suite A-212
Phoenix, AZ 85016

February 5, 2010

RE: Zoning Stipulation Conformance for Z-37-07-2; Southwest corner of Scottsdale Road and Sweetwater Avenue.

Dear Mr. Morris,

Thank you for your inquiry regarding the zoning stipulation conformance for rezoning application Z-37-07-2, located on the southwest corner of Sweetwater Avenue and Scottsdale Road. Specifically, stipulations relating to alley abandonment and general conformance to the site plan. Your client, Mr. Alpert owns Lot 5 (12802 N. Scottsdale Road) that was included in the above mentioned zoning application. This rezoning application was approved by the City Council on July 1, 2009 with the adoption of G-Ordinance G-5383.

Stipulation number one requires general conformance to the site plan date stamped February 9, 2009, with specific regard to the existing building footprints, maintenance of the existing west property line walls and the addition of enclosed/covered trash containers as approved by the Development Services Department. The lot 5 parcel has a building permit (RPRL #09049) for a detached garage in the rear yard that had met all the City requirements and was complete and ready for pick-up on April 10, 2009, prior to the City Council approval of the rezoning application. The intent of the detached garage is to allow for your client to continue utilization of the property as a single-family residence, with a detached garage for their personal use. The City is obligated to honor approved building permits, even if the zoning is changed subsequent to that approval, so long as it is within 180 days of building permit approval, or as specified on the permit. Your client submitted a revised plan to only change the detached garage building material type from a solid block construction to a wood frame and stucco construction method on September 30, 2009 (RPRL #09365). This submittal was within the 180 day window for the building permit approved on April 10, 2009. Therefore, issuance of a new building permit that only reflects a change in building material does not trigger the general conformance site plan review requirement envisioned in

stipulation one because the original building permit was issued prior to City Council adoption of the R-O zoning.

Please note that your client may not utilize this building for a Residential Office use unless a Planning Hearing Officer (PHO) modification of stipulation one regarding general conformance to the site plan is approved. This is necessary because any R-O use of the building must comply with the approved site plan from Z-37-07-2, which does not show a detached garage in the rear yard for office uses.

Stipulation number six requires the property owner to file for and pursue abandonment of the alley right-of-way. The City can only require that it be filed and pursued and cannot guarantee an outcome on a separate public hearing process. In this case, your client filed for and pursued the abandonment through the Development Services Department and was told via attached correspondence that the City would not support abandonment of the alley. An existing water main runs down the center of the alley and the Water Services Department requires public access to maintain this required infrastructure. In addition, there is a 50-foot drainage easement on the south side of the property and the original land did not come from the Foothills Ranchos subdivision. It would be sold back to the property within the Trails End subdivision to the south of the rezoning request (and lot 5) because they made the original dedication of the alley right-of-way. The attached documentation substantiates that stipulation has been fulfilled so long as the owner dedicates the required one-foot (1') vehicular non-access easement along the south property line.

In conclusion, a new building permit for a detached garage to service the existing single-family residential use does not trigger the review requirement for general conformance to the stipulated Z-37-07-2 site plan because a building permit was approved for pick-up prior to City Council approval of the rezoning request. Stipulation six has been met because the alley abandonment was filed for and pursued; so long as the owner dedicates the required one-foot vehicular non-access easement along the south property line.

If you desire any additional information on this request please contact me at alan.stephenson@phoenix.gov or (602) 262-4870.

Sincerely,



Alan Stephenson
Principal Planner/Planning Hearing Officer

C:
Z-37-07-2 Case File
Aubrey Anaya, Paradise Valley Village Planner
Ian Munro, Development Services Department