

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Development Services Department-Planning Division

AGENDA DATE: Introduction 09-16-08; Public Hearing 09-23-08

CONTACT PERSON/PHONE: Mirian Spencer, Planner, (915) 541-4192, spencermd2@elpasotexas.gov

DISTRICT(S) AFFECTED: 8

SUBJECT:

An Ordinance granting a Special Privilege to the Hotel Don Quixote, LTD. Permitting an aerial and subsurface encroachment of two air ducts, an interceptor, sampling well, and the related connecting pipes, within a portion of public right-of-way in the alley adjacent to Lots 37-40, Lots 42-46, and a portion of Lot 41, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas commonly known as 113 West Missouri Street. Applicant: Hotel Don Quixote, LTD. SPL08-00011, District 8

BACKGROUND / DISCUSSION:

See attached information.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

On August 13, 2008 the Development Coordinating Committee recommended approval.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Victor D. Torres 9/8/08

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

CITY CLERK DEPT.
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ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO THE HOTEL DON QUIXOTE LTD. PERMITTING AN AERIAL AND SUBSURFACE ENCROACHMENT OF TWO AIR DUCTS, AN INTERCEPTOR, SAMPLING WELL, AND THE RELATED CONNECTING PIPES, WITHIN A PORTION OF PUBLIC RIGHT-OF-WAY IN THE ALLEY ADJACENT TO LOTS 37-40, LOTS 42-46, AND A PORTION OF LOT 41, BLOCK 1, SATTERTHWAITE ADDITION, CITY OF EL PASO, EL PASO COUNTY, TEXAS, COMMONLY KNOWN AS 113 WEST MISSOURI STREET

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to the HOTEL DON QUIXOTE LTD. (hereinafter referred to as "Owner"), for the property located on Lots 37-40, Lots 42-46, and a portion of Lot 41, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas commonly described as 113 West Missouri Street (hereinafter referred to as "Property").

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A."
2. The Special Privilege is to permit Owner of Property located on a portion of Lots 37-40, Lots 42-46, and a portion of Lot 41, and the South 19.5 feet of Lot 41, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas to encroach into a portion of City right-of-way (the alley) with two air ducts, an interceptor, a sampling well, and the related connecting pipes, and as more particularly shown in the attached and incorporated Exhibits "B".
3. As consideration for this Special Privilege, Owners, shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A," subject to the terms and conditions of this ordinance and Special Privilege; and
4. This Special Privilege shall be for a term of five, (5) years from the date of execution of this ordinance.

PASSED AND APPROVED this _____ day of _____, 2008.

ATTEST:

THE CITY OF EL PASO

Richarda Duffy Momsen
City Clerk

John F. Cook
Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

Mathew S. McElroy, Deputy Director
Development Services Department

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THE STATE OF TEXAS)
COUNTY OF EL PASO)

EXHIBIT "A"
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE, made and entered into this ___ day of _____ 2008, by and between the **CITY OF EL PASO**, hereinafter called "City," and **HOTEL DON QUIXOTE LTD.**, hereinafter called "Grantee," of property located on Lots 37-40, Lots 42-46, and a portion of Lot 41, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas.

WITNESSETH:

WHEREAS, Grantee is requesting the use of a portion of City public right-of-way located on a portion of public right-of-way above and beneath the alley adjacent to "the Property" as per attached Exhibit "C".

WHEREAS, the Grantee has requested permission from the City to encroach with two air ducts an interceptor, a sampling well, and the related connecting pipes onto a portion of public right-of-way, and which is hereinafter referred to as "Structure."

WHEREAS, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION**. The City hereby grants a Special Privilege to Grantee to encroach twenty feet (20) by eleven feet (11') with two air ducts, an' interceptor, a sampling well, and the related connecting pipes onto a portion of public right-of-way, as more particularly shown in the attached and incorporated Exhibit "B", attached hereto and made a part hereof for all purposes, and which are hereinafter referred to as "Premises."

2. **TERM**. The term of this Special Privilege shall be for ten years (10) from the date of execution of this agreement with the option to renew for two (2) additional ten (10) years. If the Grantee wishes to renew this Special Privilege for an additional ten (10) years, Grantee shall submit a request in writing to the City Development Services Department-Planning Division no later than three (3) months prior to the expiration date of this Special Privilege.

This Special Privilege shall expire without notice at the end of such expiration period unless an application for renewal is submitted in writing to the City by the Grantee as herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege.

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3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City Five Hundred Fifty and No/100 Dollars (\$550.00) for the two air ducts, plus One Thousand One Hundred and No/100 Dollars (\$1,100.00) flat rate plus Two Hundred Twenty and No/100 Dollars (\$220.00) for each pipeline and Three Hundred Thirty and No/100 Dollars (\$330.00) for the grease interceptor and sampling well. The total sum for the first year shall be Two Thousand Four Hundred Twenty and No/100 Dollars (\$2,420.00); and One Thousand Three Hundred Twenty and No/100 Dollars (\$1,320.00) for every subsequent year.

Payment shall be paid in advance and payable to "The City of El Paso" and delivered to the Development Services Department-Planning Division. If the Special Privilege is disapproved, by the El Paso City Council a full refund of the advance payment shall be made by the Office of the City Comptroller within fifteen (15) days of the denial action.

Each year, no later than the tenth day of the month in which the Special Privilege was approved by the City Council, the grantee shall remit to the City payment in full of all annual fees. Failure to remit such payment will be cause for termination.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120.D. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which could result from a re-computation or assessment of fees pursuant to enactment of future code amendments. This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with all the encroachments on public rights-of-way as well as all costs for the restoration of the Premises.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment of two air ducts, an interceptor, a sampling well, and the related connecting pipes above and beneath a portion of public right-of-way in the alley adjacent to the "Property" as per attached Exhibit "B".

As an express condition of this Special Privilege, and not as a mere covenant, Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein. Grantee shall coordinate all design and construction plans with the Director of the Development Services Department or his designee. Grantee shall not commence construction under this Special Privilege until the City Development Services Department have approved all plans for the construction of the Structures as appropriate under the applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in

interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance, or repair.

5. **IMPROPER USE.** This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

6. **REPAIRS.** Grantee shall keep the property, Structure, and Premises in good condition and repair and in a clean, orderly, and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. **INDEMNITY.** As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. **LIABILITY INSURANCE.** Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantees, his officers, agents, servants, or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured's to the full amount of the policy limits.

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No special privilege license shall be granted by El Paso City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Development Services Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

9. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which any of the encroachments are situated are needed for public use, the City may, upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty (30) days prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee ceases to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fails to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, all encroachments shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

10. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. ASSIGNMENT. Grantee shall not assign this Special Privilege without the prior written consent of the El Paso City Manager.

12. MISCELLANEOUS.

- a. **SIGNS:** This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein. Permission to erect signage must be obtained by Grantee pursuant to applicable City Code and ordinance

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provisions and subject to the restrictions and requirements contained therein.

- b. RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.
- c. LAWS AND ORDINANCES: Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the Structure, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structures without first having obtained any required building permits from the Development Services Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.
- d. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns. This Special Privilege is a restriction, condition, and covenant running with the property known as Lots 37-40, Lots 42-46, and a portion of Lot 41, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas and a charge and servitude thereon, and shall bind the Grantee and their successors in title. Any further lease or conveyance of said property known, as a portion of Lots 37-40, Lots 42-46, and a portion of Lot 41, Block 1, Satterthwaite Addition, City of El Paso, El Paso County, Texas, shall contain said restriction, condition, and covenant and shall embody this Special Privilege by express reference.
- e. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

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with copy to: City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196

and: HOTEL DON QUIXOTE LTD.
109 N. Oregon
El Paso, Texas 79901

or to such other address as the parties may designate to each other in writing from time to time.

- f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.
- g. SEVERABILITY: Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.
- h. LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.
- i. The Director of Development Services or his designee is the principal City official responsible for the administration of this Special Privilege and Grantee recognizes that questions regarding the interpretation or application of this ordinance shall be referred to the Director of Development Services or his designee.

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13. RESTRICTIONS AND RESERVATIONS. This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. EFFECTIVE DATE. This Special Privilege shall not take effect unless Grantee files his written acceptance with the City Development Services Department prior to its passage and approval by the El Paso City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee

warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy
Mathew S. McElroy, Deputy Director
Development Services Department

(Signatures continue on following page)

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ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this 14th day of July, 2008.

**GRANTEE:
HOTEL DON QUIXOTE LTD.**

By: Elma Carreto
ELMA CARRETO
(Printed Name and Title)

ACKNOWLEDGEMENT

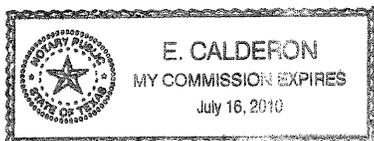
THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 14th day of JULY
day _____, 2008, by ELMA CARRETO
on behalf of **HOTEL DON QUIXOTE LTD.**, as Grantee.

E. Calderon
Notary Public, State of Texas

E. CALDERON
Notary's Printed or Typed Name:

7/16/10
My Commission Expires:



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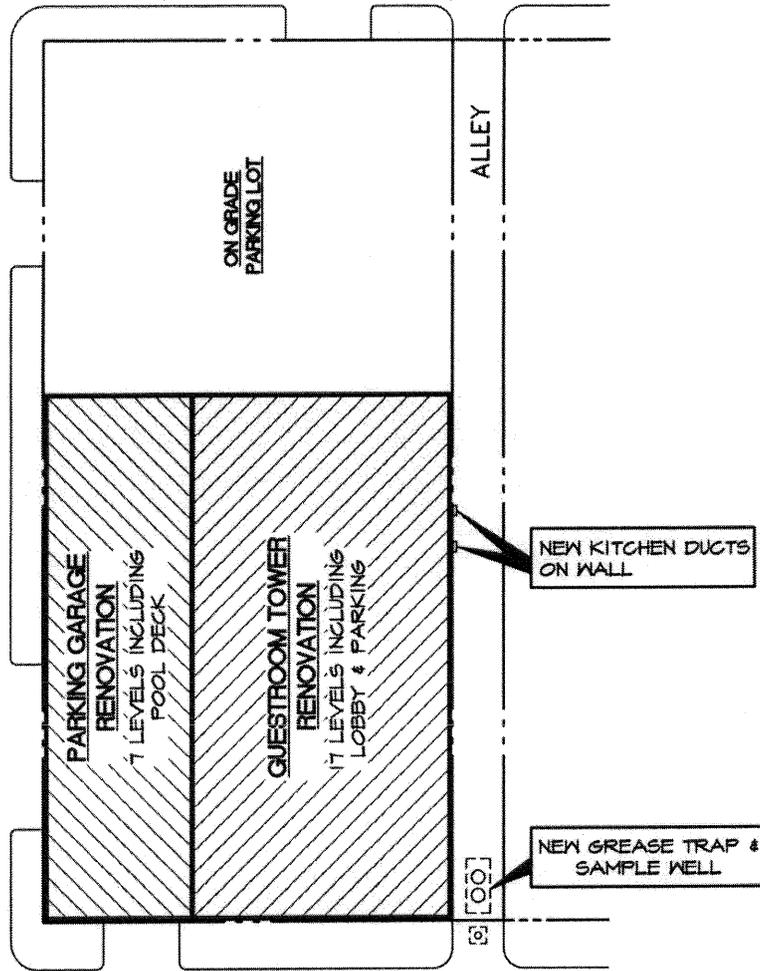


SITE PLAN
1" = 40'



WYOMING AVENUE

EL PASO STREET

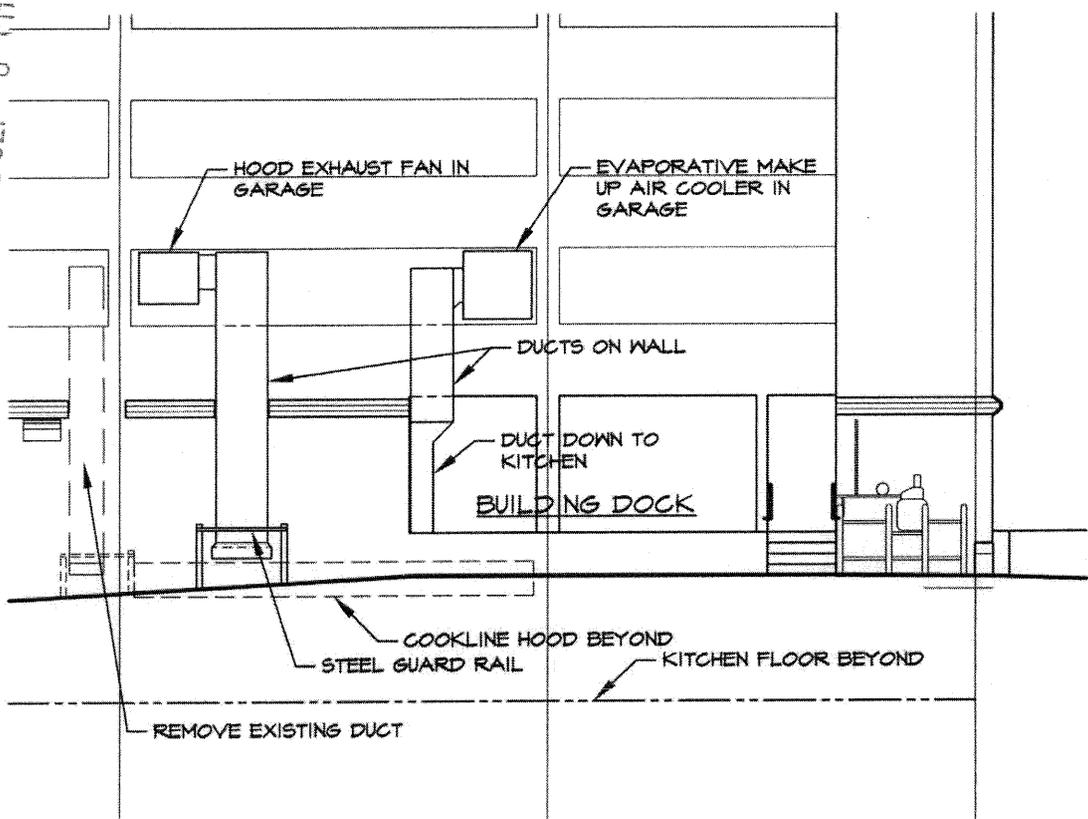


MISSOURI AVENUE

PROJECT:	DOUBLETREE HOTEL/EL PASO	ATTACHMENT
PROJECT NO.:	0619	A
ISSUE:	----	
DATE:	JULY 16, 2008	

Exhibit "B"
1 OF 3

CITY CLERK DEPT.
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PARTIAL ALLEY ELEVATION
1/8" = 1'-0"

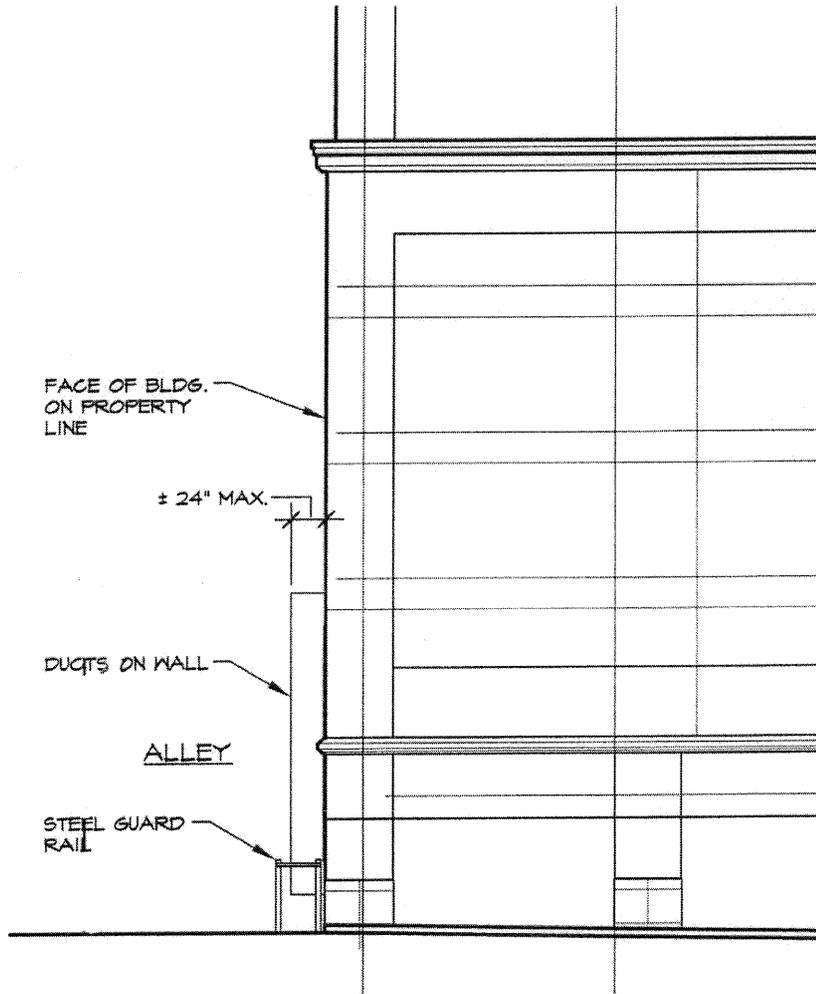


PROJECT:	DOUBLETREE HOTEL/EL PASO	B
PROJECT NO.:	0619	
ISSUE:	-----	
DATE:	JULY 16, 2008	

EXHIBIT "B"
PG. 2 OF 3

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PARTIAL NORTH ELEVATION

1/8" = 1'-0"



PROJECT:	DOUBLETREE HOTEL/EL PASO	ATTACHMENT
PROJECT NO.:	0619	C
ISSUE:	----	
DATE:	JULY 16, 2008	

EXHIBIT "B"
PG. 3 of 3

GENERAL INFORMATION:

SUBJECT: Special Privilege SPL08-00011

The Special Privilege will permit the installation of two air ducts above the alley and a grease interceptor, sampling well, and the connecting pipes beneath the alley adjacent to 113 W. Missouri Street. The applicants are requesting the special privilege in order to comply with the building and health code requirements for a grease interceptor.

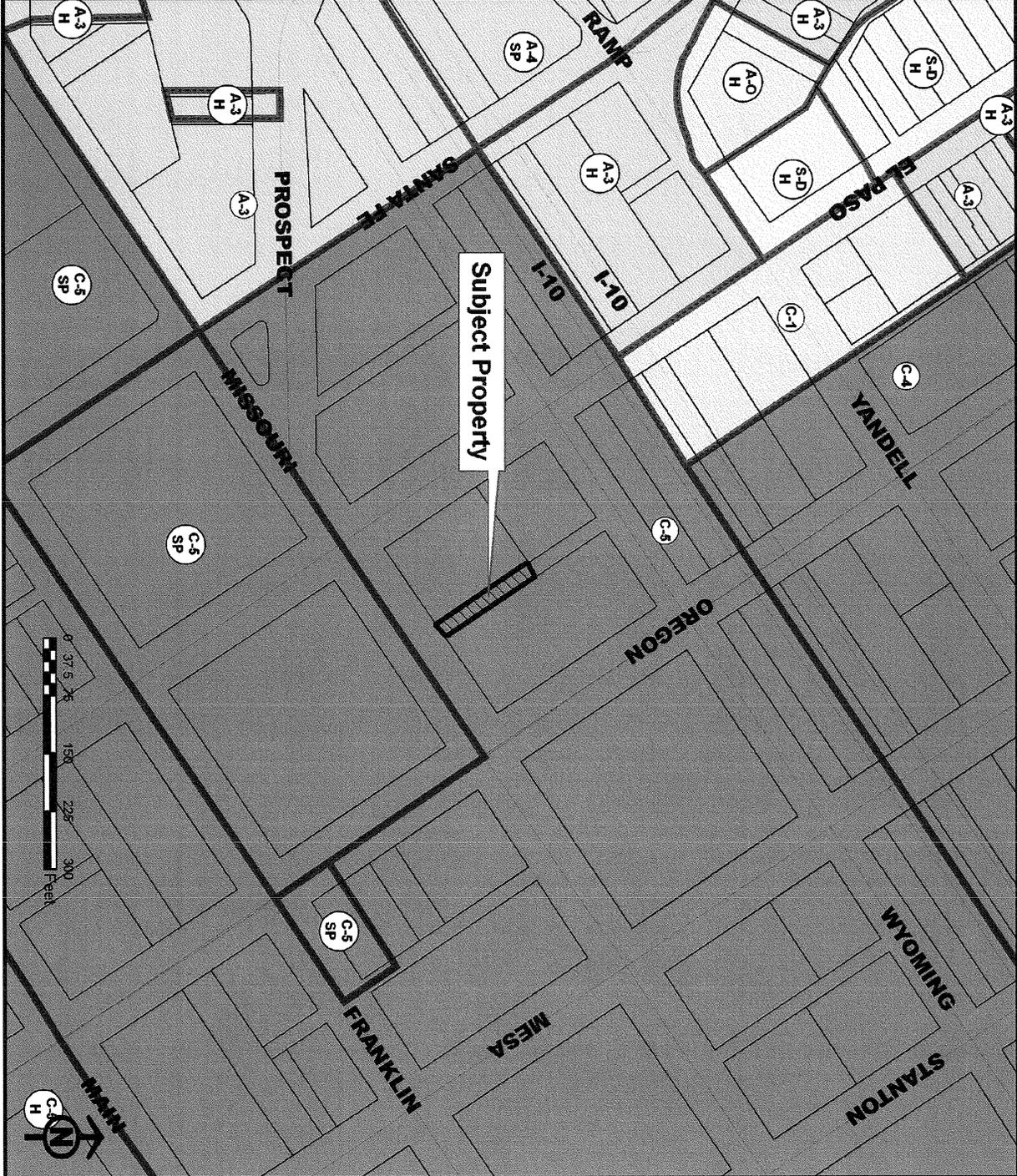
The Development Coordinating Committee recommends approval based on and subject to the following:

- EPWU requires vehicular access for routine inspections, maintenance, and repair of the existing six inch diameter sanitary sewer main located within the centerline of the alley.
- Grantee is responsible for restoration of the premises to its original state upon removal of any of the encroachments;
- Grantee is responsible for all maintenance and any damages due to a failure to maintain;
- A ten (10) year term with the City having the option to renew for two (2) additional ten (10) year terms upon the request of the Grantee;
- Consideration in the amount of \$550.00 for the air ducts, \$1,100.00 plus \$220.00 per pipeline, and \$330.00 for the grease interceptor and sampling well. The first year consideration is \$2,420.00 and the subsequent years will be \$1,320.00.
- The City may, upon thirty (30) days written notice, cancel the Special Privilege at no cost to the City and may take possession of the public right-of-way;
- Grantee may cancel the Special Privilege, for any reason, upon thirty (30) days prior written notice to the city, and all rights of the Grantee shall be terminated; and
- Providing liability insurance throughout the term of the license agreement.

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Location Map

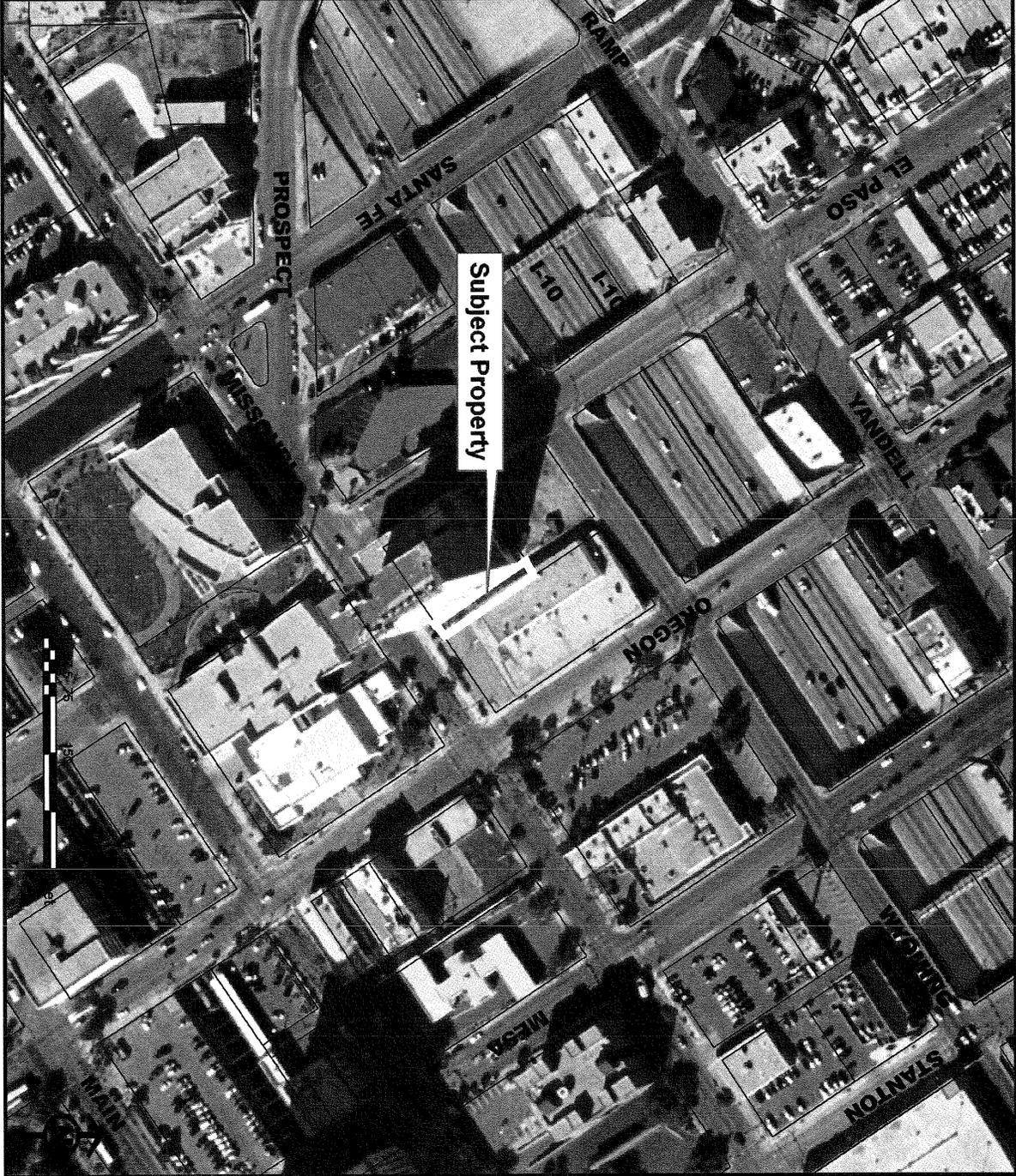
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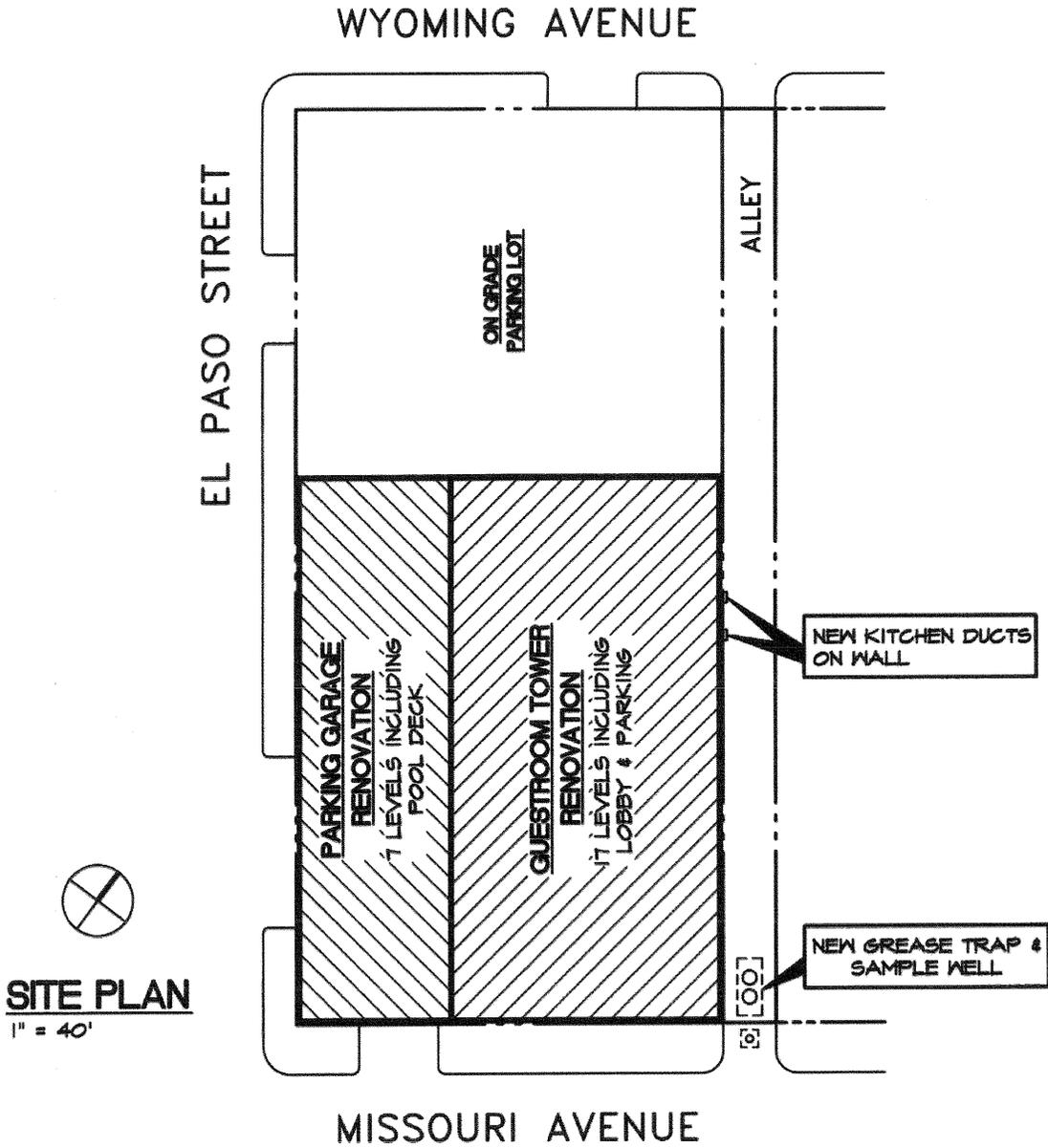
Aerial

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Site Plan

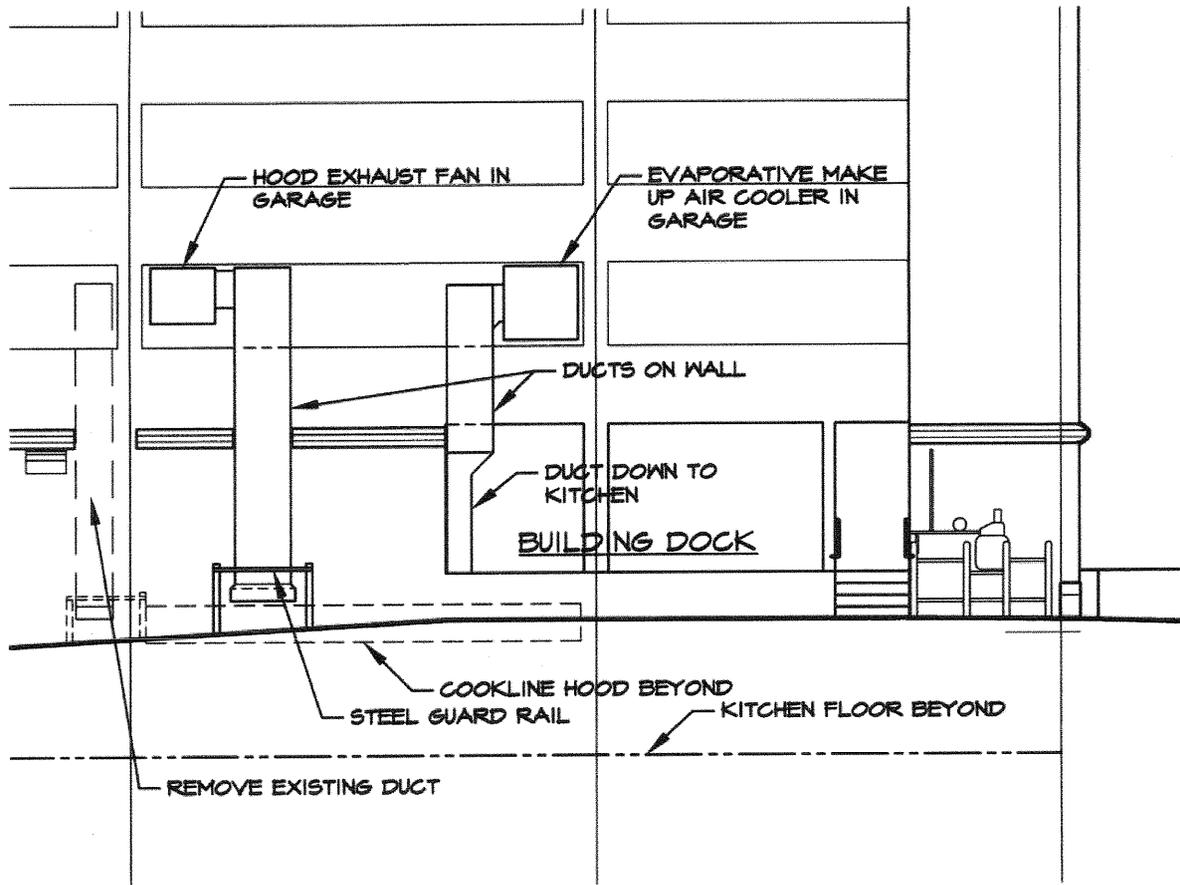



SITE PLAN
 1" = 40'



PROJECT:	DOUBLETREE HOTEL/EL PASO	ATTACHMENT
PROJECT NO.:	0619	A
ISSUE:	-----	
DATE:	JULY 16, 2008	

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PARTIAL ALLEY ELEVATION

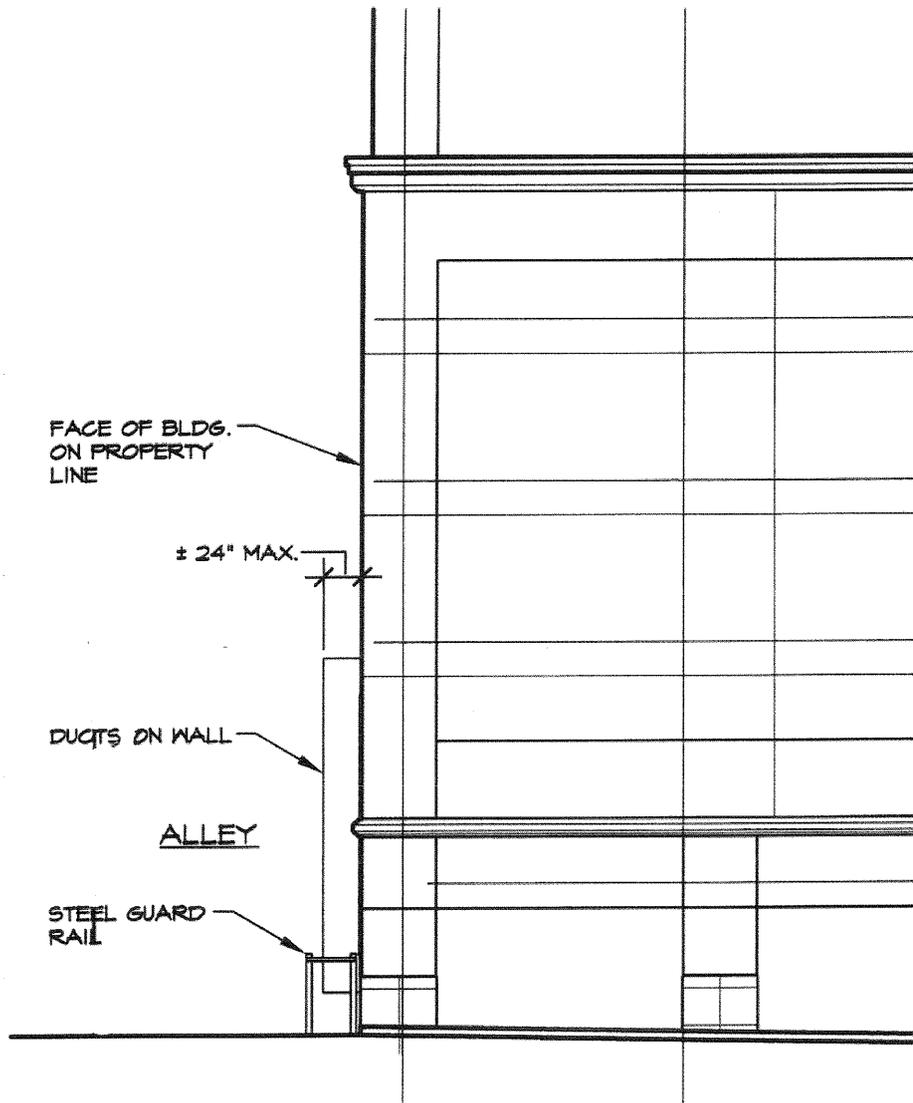
1/8" = 1'-0"



PROJECT:	DOUBLETREE HOTEL/EL PASO	ATTACHMENT
PROJECT NO.:	0619	B
ISSUE:	----	
DATE:	JULY 16, 2008	

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CITY CLERK DEPT.



PARTIAL NORTH ELEVATION

1/8" = 1'-0"



PROJECT:	DOUBLETREE HOTEL/EL PASO	ATTACHMENT
PROJECT NO.:	0619	C
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