

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

DEPARTMENT: City Development Department, Planning Division

AGENDA DATE: Introduction: December 3, 2013
Public Hearing: January 2, 2014

CONTACT PERSON/PHONE: Michael McElroy, 915-541-4238, mcelroyms@elpasotexas.gov

DISTRICT(S) AFFECTED: 7

SUBJECT:

An Ordinance granting Special Permit No. PZST13-00023 to allow for infill development with a reduced rear setback on the property described as a Portion of Tract 4A, N/K/A Tract 4A5, Block 12, Ysleta Grant, City of El Paso, El Paso County, Texas, pursuant to Section 20.10.280 Infill Development of the El Paso City Code. The penalty being as provided for in Chapter 20.24 of the El Paso City Code. Subject Property: 8250 North Loop. Property Owner: OPM Capital Management. PZST13-00023 (**District 7**)

BACKGROUND / DISCUSSION:

A platting waiver request for infill development has been submitted to City Council as the property only meets one of two required criteria.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

CPC Pending

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

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD:

Mathew S. McElroy
Director, City Development Department

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

ORDINANCE NO. _____

AN ORDINANCE GRANTING SPECIAL PERMIT NO. PZST13-00023 TO ALLOW FOR INFILL DEVELOPMENT WITH A REDUCED REAR SETBACK ON THE PROPERTY DESCRIBED AS A PORTION OF TRACT 4A, N/K/A TRACT 4A5, BLOCK 12, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS, PURSUANT TO SECTION 20.10.280 INFILL DEVELOPMENT OF THE EL PASO CITY CODE. THE PENALTY BEING AS PROVIDED FOR IN CHAPTER 20.24 OF THE EL PASO CITY CODE.

WHEREAS, OPM Capital Management has applied for a Special Permit for infill development under Section 20.10.280 of the El Paso City Code for a Portion of Tract 4A, N/K/A Tract 4A5, Block 12, Ysleta Grant, City of El Paso, El Paso County, Texas; and,

WHEREAS, a report was made to the City Plan Commission and a public hearing was held regarding such application; and,

WHEREAS, the City Plan Commission has recommended approval of the subject Special Permit; and,

WHEREAS, the subject Special Permit has been submitted to the City Council of the City of El Paso for review and approval; and,

WHEREAS, the City Council of the City of El Paso finds that the application conforms to all requirements of Sections 20.04.320 of the El Paso City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the property described as follows is in a C-4 (Commercial) Zone District:
Portion of Tract 4A, N/K/A Tract 4A5, Block 12, Ysleta Grant, City of El Paso, El Paso County, Texas and as more particularly described by metes and bounds on the attached Exhibit "A"; and,
2. That the City Council hereby grants a Special Permit under Sections 20.04.320 of the El Paso City Code, to allow an infill development for a reduced rear setback; and,
3. That this Special Permit is issued subject to the development standards in the C-4 (Commercial) District regulations and is subject to the approved Detailed Site Development Plan, signed by the Applicant, the City Manager and the Executive Secretary to the City Plan Commission. A copy of this plan is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes; and,

ORDINANCE NO. _____

PZST13-00023

4. That if at any time the Owners fail to comply with any of the requirements of this Ordinance, Special Permit No. PZST13-00023 shall automatically terminate, and construction shall stop or occupancy shall be discontinued, until any such violation ceases; and,
5. That the Owners shall sign an Agreement incorporating the requirements of this Ordinance. Such Agreement shall be signed and filed with the Zoning Administrator and the Executive Secretary of the City Plan Commission before building permits are issued.

PASSED AND APPROVED this _____ day of _____, 2013.

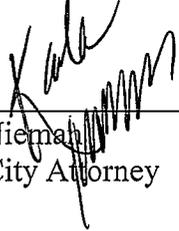
CITY OF EL PASO

ATTEST:

Oscar Leeser
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Karla M. Niemah
Assistant City Attorney

APPROVED AS TO CONTENT:



Mathew S. McElroy, Director
City Development Department

ORDINANCE NO. _____

PZST13-00023

Exhibit "A"

8250 NORTH LOOP ROAD METES AND BOUNDS

Property Description: A portion of Tract 4A, N/K/A Tract 4A5, Block 12, Ysleta Grant, in the City of El Paso, El Paso County, Texas, according to the re-survey of said Ysleta Grant made by El Paso County, Texas for Tax purposes, and being more particularly described by metes and bounds as follows:

Commencing at an existing TXDOT Brass Cap lying at the centerline intersection of North Loop Road (FM Highway No. 76) and Lomaland Drive; Thence, along said centerline of north Loop Road, South $56^{\circ} 00' 00''$ East, a distance of 824.29 feet to a point; Thence, South $34^{\circ} 00' 00''$ West, abandoning said centerline, a distance of 69.24 feet to a point for a property corner lying on the southerly right-of-way of North Loop Road, said point being THE TRUE POINT OF BEGINNING of this description;

THENCE, South $57^{\circ} 09' 51''$ East, along said right-of-way line, a distance of 94.37 feet to a point for a boundary corner;

THENCE, South $59^{\circ} 11' 14''$ East, continuing along said right-of-way line, a distance of 181.14 feet to a point for a boundary corner lying on the common boundary line between Tracts 4A & 4A5, Block 12, Ysleta Grant;

THENCE, South $34^{\circ} 00' 00''$ West, along said boundary line, a distance of 258.68 feet to a point for a boundary corner;

THENCE, North $56^{\circ} 00' 00''$ West, a distance of 295.06 feet to a point for a boundary corner;

THENCE, North $34^{\circ} 00' 00''$ East, a distance of 226.68 feet to a point for a boundary corner and a point for a **curve**;

THENCE, 31.28 feet, along the arc of a curve to the right, having a radius of 20.00 feet, a tangent of 19.86 feet, a central angle of $89^{\circ} 36' 14''$ and a chord which bears North $78^{\circ} 46' 03''$ East, a distance of 28.19 feet back to THE TRUE POINT OF BEGINNING of this description.

Said parcel of land containing 1.6990 acres (74,051 Sq.Ft.) of land, more or less.

A PLAT OF SURVEY OF EVEN DATE ACCOMPANIES THIS METES AND BOUNDS DESCRIPTION.

SLI ENGINEERING, INC.
Consulting Engineers—Land Surveyors

Guillermo Licon
Registered Professional Land Surveyor
Texas License No. 2998

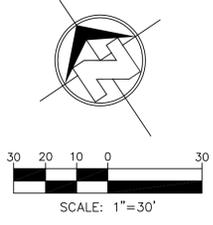
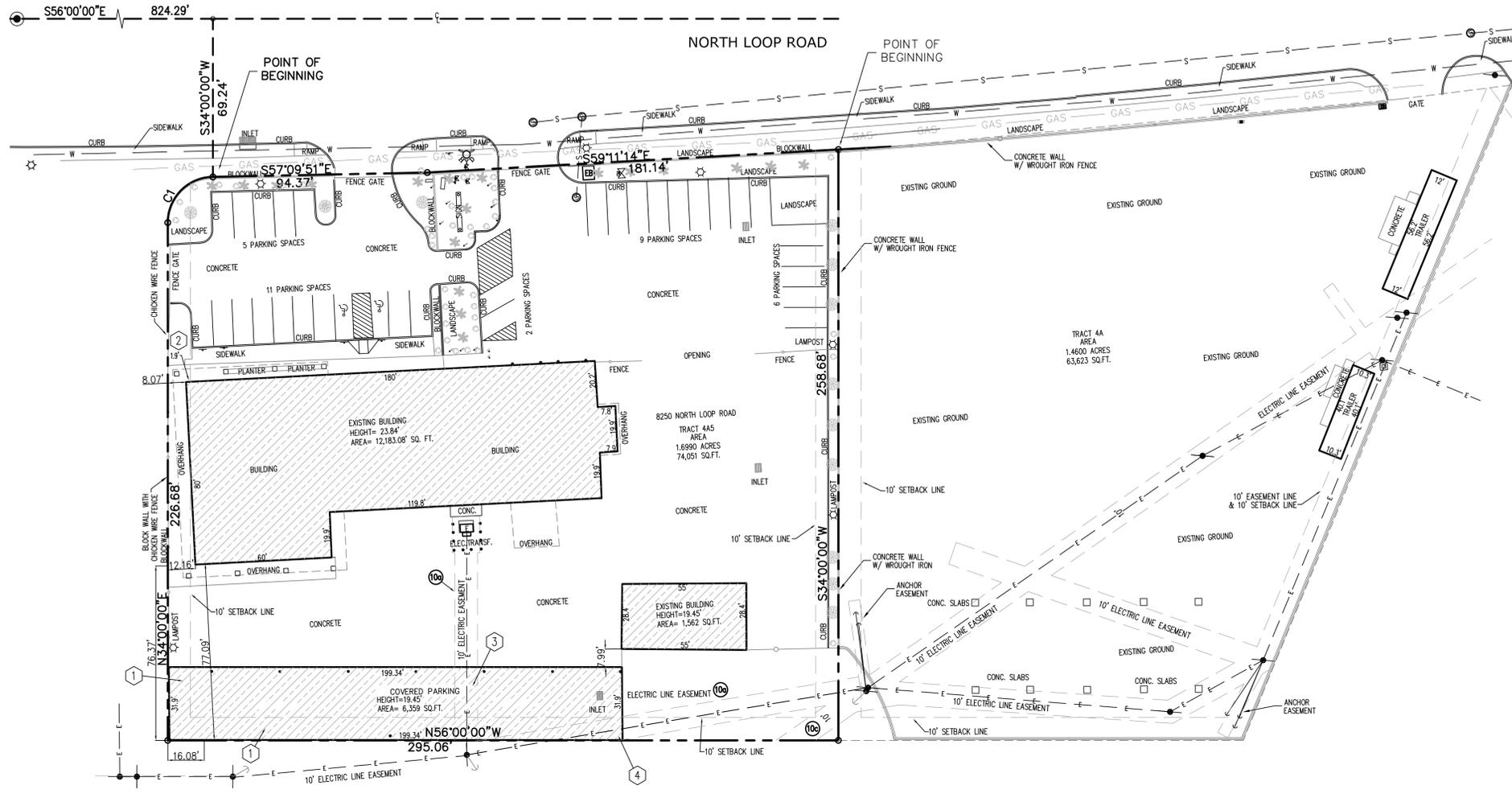




VICINITY MAP
NOT TO SCALE

SYMBOL LEGEND

GAS	— GAS	ELECTRIC	— E
WATER VALVE		BUILDING OVERHANG	—
WATER METER		BUILDING	
FIRE HYDRANT		CANOPY	
UTILITY POLE		GAS METER	
ELECTRIC POLE W/TRANS.		GAS VALVE	
ELECTRIC POLE ANCHOR		BUSH	
ELECTRIC TRANSFORMER		TREE	
ELECTRIC BOX		SIGN	
HANDICAP SYMBOL		SPRINKLER HEAD	
BRASS CAP		LIGHT POLE	



- NOTES:**
- SET 1/2" IRON WITH SLI CAP STAMPED TX2998 ON ALL PROPERTY CORNERS UNLESS OTHERWISE INDICATED.
 - DEED REFERENCE IN VOL. 4483, PG. 1150 INST. No. 20120024046, DEED RECORDS OF EL PASO COUNTY, TEXAS.
 - BASIS OF BEARING: PLAT OF BLOCK 12, YSLETA GRANT, CITY OF EL PASO, EL PASO COUNTY, TEXAS, RESURVEY MADE BY EL PASO COUNTY, TEXAS FOR TAX PURPOSES.
 - TITLE COMMITMENT PROVIDED BY STEWART TITLE GUARANTY COMPANY, FILE No. 01004-1142, WITH AN EFFECTIVE DATE OF JUNE 11, 2013 AND FILE No. 01004-1317, WITH AN EFFECTIVE DATE OF JUNE 24, 2013.

STATEMENT OF ENCROACHMENTS:

- 10' ALONG THE SOUTH SIDE OF THE BUILDING USED FOR GARAGE ONTO THE 10' SETBACK LINE ON THE SOUTH AND WEST BOUNDARY LINES.
- 1.9' ONTO THE 10' SETBACK ON THE WEST BOUNDARY LINE BY AN EXISTING BUILDING.
- BUILDING ENCRANCHING OBER ELECTRIC EASEMENT.
- BUILDING ENCRANCHING OBER ELECTRIC EASEMENT.

8250 NORTH LOOP ROAD METES AND BOUNDS

Property Description: A portion of Tract 4A, N/A Tract 4A5, Block 12, Ysleta Grant, in the City of El Paso, El Paso County, Texas, according to the re-survey of said Ysleta Grant made by El Paso County, Texas for tax purposes, and being more particularly described by metes and bounds as follows:

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Said parcel of land containing 1.6990 acres (74,051 Sq.Ft.) of land, more or less.

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
CT	20.00'	31.28'	19.86'	28.19'	N78°46'03"E	89°36'14"

ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP COMMUNITY-PANEL NUMBER 480214 0045 C, DATED FEBRUARY 02, 2006, THIS PROPERTY LIES IN FLOOD ZONE "X".

ZONE "X", AREAS OF 0.2% ANNUAL CHANCE FLOOD PLAINS. DUE TO INHERENT INACCURACIES OF FEMA OR FLOOD INSURANCE RATE MAPS THIS SURVEYOR DOES NOT CERTIFY TO THE ACCURACY OF LOCATIONS BASED ON SUCH MAPS. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

NOTES CORRESPONDING TO ZONING

CLASSIFICATION: • PROPERTY IS CURRENTLY ZONED _____ C-4

MINIMUM SET BACKS REQUIRED FOR... C-4:

- FRONT YARD.....0'
- REAR YARD.....10'
- CUMULATIVE FRONT & REAR YARD.....N/A
- SIDE YARD10'
- (When abutting residential or apartment district.)
- SIDE STREET10'
- MAXIMUM HEIGHT60'

SURVEYOR'S CERTIFICATION

To: BANCO MERCANTIL DEL NORTE, S.A., INSTITUCION DE BANCA MULTIPLE, GRUPO FINANCIERO BANORTE, STEWART TITLE GUARANTY COMPANY, OPW CAPITAL MANAGEMENT, LLC, JC GENERAL CONTRACTORS, INC.;

This is to certify that this map or plat and the survey on which it is based were made in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys", jointly established and adopted by ALTA, ACSM, and NSPS in 2011, and includes Items 1, 2, 3, 4, 6, 7a, 7b1, 7b2, 7c, 8, 9, 10, and 11b, 16, 17 and 18 of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of this certification, undersigned further certifies that proper field procedures, instrumentation, and adequate survey personnel were employed in order to achieve results comparable to those outlined in the "Minimum Angle, Distance, and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys".

QUILLERMO LICON, R.P.L.S.
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS LICENSE NO. 2998
DATE: 09/01/2013

BY	MN
REVISIONS	UPDATED UTILITIES
DATE	7/23/13
FILE	
SCALE:	1"=30'
JOB NO.:	06-13-3378
FIELD BY:	RS/CM
FIELD BOOK:	0055-S
DRAWN BY:	EK/MN
CHECKED BY:	
DATE:	07/16/2013
ALTA/ACSM LAND TITLE SURVEY	8250 NORTH LOOP ROAD
A PORTION OF TRACT 4A, N/A TRACT 4A5 IN BLOCK 12, YSLETA GRANT, IN THE CITY OF EL PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE RE-SURVEY OF SAID YSLETA GRANT MADE BY EL PASO COUNTY, TEXAS FOR TAX PURPOSES.	
CIVIL ENGINEERS LAND PLANNERS 6600 WESTWIND DRIVE EL PASO, TEXAS (915) 384-1457	SLI ENGINEERING, INC.
Reg. No. F-1902	SURVEYING
Reg. No. 100120-00	SHEET TITLE
ALTA / ACSM	LAND TITLE SURVEY
1 OF 1	

F:\PROJECTS\WFSURV\13-3378-8250-N Loop\DWG\13-3378-8250-N Loop\mm\DWG 10/03/2013 1:17:45 PM A01

MEMORANDUM

DATE: November 21, 2013

TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager

FROM: Michael McElroy, Planner

SUBJECT: PZST13-00023

This case is pending the City Plan Commission's approval or denial recommendation at the scheduled December 5, 2013 hearing.

There have been no communications in support or opposition to this request.

Attachment:
Staff Report



City of El Paso – City Plan Commission Staff Report

Case No: PZST13-00023
Application Type: Special Permit
CPC Hearing Date: December 5, 2013
Staff Planner: Michael McElroy, 915-541-4238, mcelroyms@elpasotexas.gov
Location: 8250 North Loop
Legal Description: A Portion of Tract 4A, N/K/A Tract 4A5, Block 12, Ysleta Grant, City of El Paso, El Paso County, Texas
Acreage: 1.699 acres
Rep District: 7
Current Zoning: C-4/c (Commercial/condition)
C/SC/SP/ZBA/LNC Yes (See attachment 4)
Existing Use: Contractors Yard
Request: Infill Development (Section 20.10.280) / Reduction in rear setback to 0' (20.10.280 C) (Related to PZCR13-00008 to amend conditions on property)
Proposed Use: Contractors Yard
Property Owner: OPM Capital Management
Representative: Georges Halloul

SURROUNDING ZONING AND LAND USE

North: A-O (Apartment-office), C-2/c (Commercial/condition) & C-1 (Commercial) / Apartments & Retail
South: R-3 (Residential) Single family homes
East: R-4 (Residential) / Single family home
West: C-1 (Commercial) & R-4 (Residential) / Retail & Single family homes

Plan El Paso Designation: G3, Postwar (Mission Valley)

Nearest Park: Lomaland Park (3,394 ft.)

Nearest School: Marion Manor Elementary (3,715 ft.)

NEIGHBORHOOD ASSOCIATIONS

Save the Valley 21

NEIGHBORHOOD INPUT

Notice of a Public Hearing was mailed to all property owners within 300 feet of the subject property on November 20, 2013. The Planning Division has not received any letters or phone calls in support or opposition of the condition release request.

APPLICATION DESCRIPTION

The request is for a special permit to allow for a rear setback reduction within 0' of the rear lot line. The property currently consists of a contractor's yard and associated warehousing. An unpermitted 6,359 s.f. covered parking structure was discovered while processing the related condition amendment application. The structure exists over both an east-west and north-south electric easement. The applicant has provided agreements between the property owner and the utility company permitting the encroachment over the easements. Additionally, a waiver request for infill location has been submitted to City Council for their consideration as the property meets only one of two required criteria.

In summary, this application has been submitted so as to legalize unauthorized construction.

ANALYSIS

To grant the special permit to allow for infill development, the applicant must comply with the following standards, per Section 20.10.280, Infill Development:

A. Location Criteria. An infill development may be designated for any property on which at least two of the following factors are present: the property is wholly or partially located within a designated tax increment financing district, or the property is wholly or partially located within a designated state or federal enterprise zone, or the property is wholly or partially located within an empowerment zone, or the property is wholly or partially located within a designated redevelopment area pursuant to Chapter 20.14 of this title, or the property is located within a designated historic district, or the property is within an older neighborhood of the city. An older neighborhood of the city defined as a legally recorded and developed subdivision for at least thirty years. Where an infill development is able to satisfy only one of the preceding factors, an applicant shall be allowed to make a formal request to city council to waive the two factor requirement prior to the submission of a special use permit application for the property. In all instances where a waiver is requested and authorized by city council, at least one location factor shall be met. For purposes of this section, any property with a historic designation shall be subject to the requirements and review provisions of Chapter 20.20 (Historic Designations) of this title, and shall not be waived by any provision of this section.

The applicant meets only one of the two required criteria (resides in a state enterprise zone). A waiver has been requested by the City Council for the criteria requiring a legally recorded and developed subdivision for at least thirty years. While the property has never been platted, it exists in an older part of the city, having been annexed in March 1955.

B. Use Regulations. Unless the ordinance designating the infill development provides otherwise, a proposed infill development may be approved for any use permitted in the base-zoning district in which it is located. However, the ordinance designating an infill development overlay may provide a list of principal uses, accessory uses and prohibited uses pursuant to a specific area plan adopted by the city council.

A contractor's yard is permitted in the C-4 zoning district. The applicant complies with this requirement.

C. Setback Provisions. The side, front and rear setback requirements of the base-zoning district on which it is located may be reduced up to one hundred percent for an infill development as approved by city council. Buildings should be designed to relate to and take advantage of any existing site attributes, and shall be a consideration for reduction of the setback requirements.

Dimension	Need	Propose
Lot Area	N/A	N/A
Lot Width	N/A	N/A
Lot Depth	N/A	N/A
Cumulative	N/A	N/A
Front	0'	88'
Rear	10'	0'
Side	0'	0'
Side-Street	N/A	N/A

E. Design. Unless otherwise approved by city council, any construction permitted pursuant to this section shall be designed to consistently relate to the massing and character of the surrounding properties. Consistency of massing and character shall be determined as shown on the site plan with typical elevations and proposed construction materials, that the proposed construction is compatible with the overall design features and building development of the neighborhood within which the proposed infill development is located. Design features include, but shall not be limited to, building height, architectural style, building materials, landscape and setbacks.

Shallow to zero-foot setbacks are characteristic of the C-4 zoning district. In fact, a zero foot setback is permitted automatically on all sides in the C-4 district except the rear, where only a minimal 10' setback is required. As the subject property is completely surrounded by many acres of vacant C-4 land, the proposed reduction is in keeping with the purposes of the C-4 zoning district and is compatible with the surrounding land use.

CITY DEVELOPMENT DEPARTMENT -PLANNING DIVISION RECOMMENDATION

The Planning Division recommends **approval** of the request as the subject property is surrounded by vacant high intensity C-4 zoned property. Development at the 0' rear lot line increases the usable space of the subject property with no adverse effect on the surrounding area. Furthermore, the property meets the requirements of Section 20.04.320, Special Permit Approvals, and 20.04.150 Detailed Site Development Plan.

Plan El Paso-Future Land Use Map Designation

All applications for rezoning shall demonstrate compliance with the following criteria:

G-3 – Post War: This sector applies to transitional neighborhoods typically developed from the 1950s through the 1980s. Streets were laid out with curvilinear patterns without alleys and shopping centers are located at major intersections behind large parking lots. This sector is generally stable but would benefit from strategic suburban retrofits to supplement the limited housing stock and add missing civic and commercial uses.

The purpose of the C-4 (Regional Commercial) district is to provide commercial uses intended to serve the entire City to permit heavy commercial uses characterized by automotive and light warehousing. Provide a transition from general business areas to industrial and manufacturing uses, and to accommodate major locations of commerce, service and employment activities. Within the Central Business District, more intensive commercial uses are allowed, the predominant of which are retail trade and service uses, providing less restrictive height and area regulations.

COMMENTS:

City Development Department – Planning Division - Transportation

No objections.

Note: All existing / proposed paths of travel (accessible sidewalks, wheelchair access curb ramps and driveways) within public rights-of-way shall be in compliance with current ADA/TAS rules and regulations and the current City of El Paso Design Standards for Construction.

City Development Department - Land Development

No comments.

City Development Department – Building Permits & Inspections

Recommend approval. Any structure that is less than five feet from a property line is required to be fire rated as per table 602 of the international building code.

El Paso Fire Department

Recommend approval.

El Paso Water Utilities

1. EPWU does not object to this request.

EPWU-PSB Comments

Water:

2. There is an existing 12-inch diameter water main along an existing 25 foot utility easement along the northern boundary of the subject property. This water main is located approximately 6 feet south of and northern property line. This main is available for service

3. Previous water pressure readings from fire hydrant #8469 located on the northern property line, have yielded a static pressure of 98 pounds per square inch, a residual pressure of 80 pounds per square inch and a discharge of 1404 gallons per minute.

4. Private water pressure regulating devices will be required within the proposed development. The Developer shall include in the sale of contract documents that the lot/home buyer shall acquire ownership of the above-described water pressure regulating devices to be located at the discharge side of the water meters. The lot/home buyer shall be responsible for the operation and maintenance of the above-described water pressure regulating devices.

5. EPWU records indicate an active 1-inch water meter serving the subject property. The service address for this meter is 8250 North Loop Rd.

Sanitary Sewer:

6. There is an existing 8-inch diameter sanitary sewer main along an existing 25 foot utility easement along the northern boundary of the subject property. This main is available for service.

General:

7. EPWU requires a new service application to initialize design of the on-site water and sanitary sewer main extensions to serve the subject property. New service applications are available at 1154 Hawkins, 3rd Floor. The following items are required at the time of application: (1) hard copy of subdivision plat with street names and addresses; (2) finalized set of street improvement plans, including storm sewer; (3) digital copy of subdivision plat; (4) benchmark check; and (5) construction schedule. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The owner is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

CITY PLAN COMMISSION OPTIONS

The City Plan Commission may consider the following options and additional options that it identifies when reviewing the special permit and detailed site development plan application:

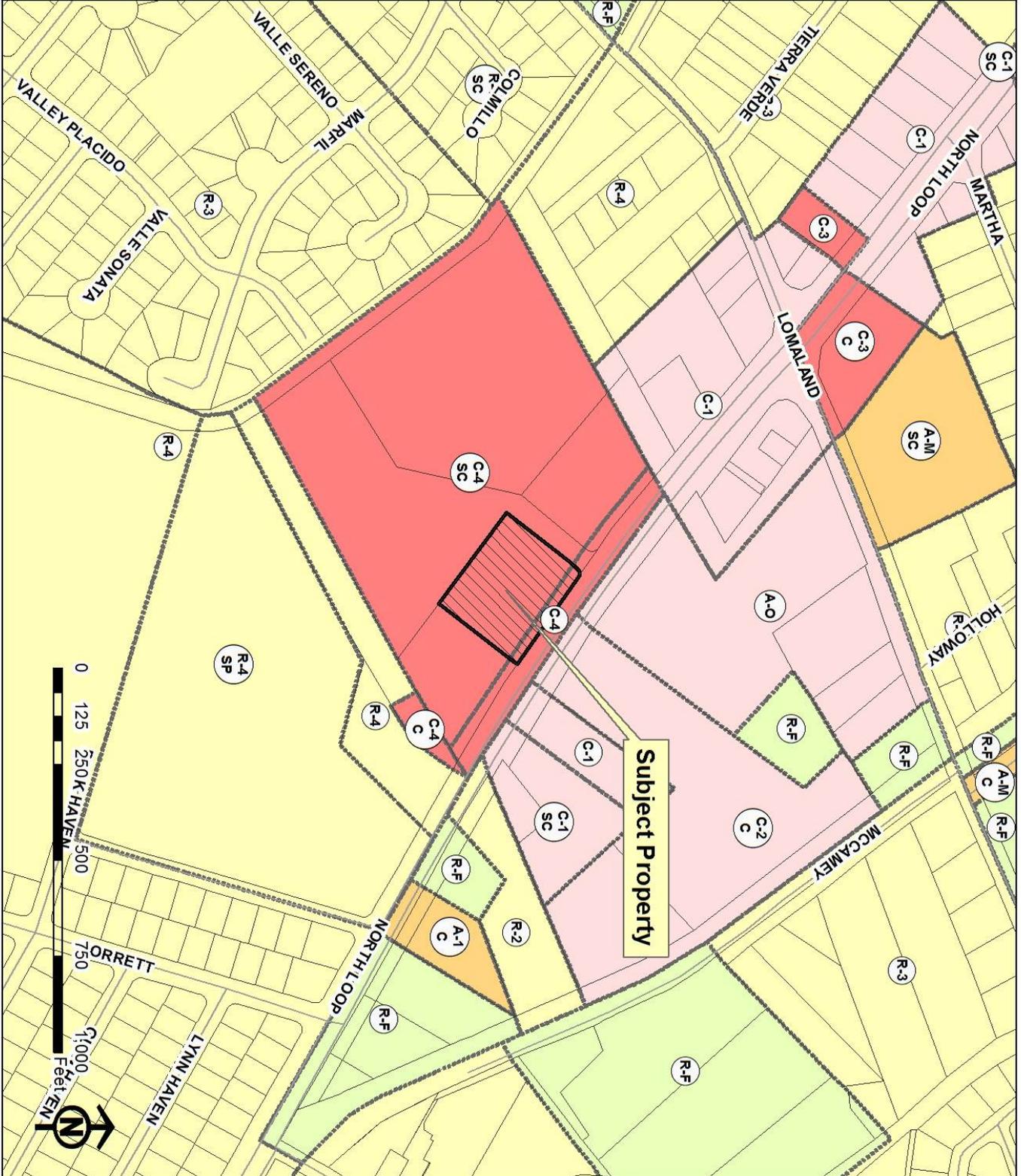
1. Recommend approval of the application finding that the special permit and detailed site development plan is in conformance with the review criteria of Plan El Paso as reflected in CPC report or other criteria that the CPC identifies from the Plan
2. Recommend approval of the application with modifications to bring the special permit and detailed site development plan into conformance with the review criteria in Plan El Paso as reflected in CPC report or other criteria from the Plan as identified by the CPC.
3. Deny the application finding that the special permit and detailed site development plan does not conform to the review criteria in Plan El Paso as reflected in CPC report or other criteria identified from the Plan by the CPC.

Attachments

1. Zoning Map
2. Aerial Map
3. Detailed Site Development Plan
4. Ordinance Timeline
5. Easement Waiver

ATTACHMENT 1: ZONING MAP

PZST13-00023



PZST13-00023



ATTACHMENT 4: ORDINANCE TIMELINE

CONDITIONS CURRENTLY IN EFFECT HIGHLIGHTED IN YELLOW

Original contract dated March 20, 1973, attached to Ordinance No. 5029

1. Property shall only be used as a drive-in motion picture theater
2.
 - a. Prior to building permits, dedication of 20' strip adjacent and parallel to North Loop
 - b. Dedication of 60' wide strip extending from northerly ROW line of Valle Placido Drive

Amendment to contract dated May 20, 1980

1. Amended paragraph 2(b) of the 1973 contract to read "from the northerly right of way line of Valle Placido" to "extending across the northerly right of way line of Valle Placido"

Amendment to contract dated August 19, 1980

1. Amended paragraph 2(a) of the May 20, 1980 contract to include verbiage that the 20' wide dedication be made in accordance with a property description to be approved by the Director of Traffic & Transportation and the City Engineer.

Contract release dated February 1, 1983

This contract notes that the property has been parceled into separate lots, making application of the contract confusing. As such, this instrument releases all conditions, original or amended. In its place, the following new conditions are applied:

1. The property owned by L. R. Dollison included as Exhibit "A" only be used as a drive-in motion picture theater and no other purpose.
2. The property owned by L. R. Dollison included as Exhibit "C" only be used only for a use permissible in the C-2 zoning district.

Amendment to contract dated January 30, 1990

So as to remove the C-2 only restrictions on portions of the property, the following restrictions were imposed:

1. Prior to building permits, a detailed site development plan be approved by the CPC and City Council.
2. That an indoor motion picture theater be built upon the property.
3. That certain uses are prohibited upon the property, to include:
 - a. Hotel, motel or motor lodge;
 - b. Miniature golf course;
 - c. Trailer, mobile home or RV sales, repair or display;
 - d. Trampoline center;
 - e. Temporary non-accessory tents;
 - f. Family home and multi-family dwelling;
 - g. Drum and barrel reconditioning;

Contract release dated April 15, 1997

1. A 17,930 square foot portion of the property was to be acquired for the widening of North Loop Road. In consideration of this, all conditions applying to this portion of land were released.

Amendment to contract dated July 17, 2001

Released condition 2 of the January 30, 1990 contract which required the construction of an indoor motion picture theater. All other conditions remain in effect.

ATTACHMENT 5: EASEMENT WAIVER

**ACKNOWLEDGMENT OF EASEMENT
AND INDEMNITY AGREEMENT**

The undersigned **OPM Capital Management, LLC**, (“Owner”) makes this Acknowledgment Of Easement and Indemnity Agreement for the benefit of **El Paso Electric Company** (“EPEC”) on the terms and for the consideration set forth herein.

RECITALS

Whereas, the Owner has purchased that certain real property in El Paso, El Paso County, Texas described as:

A portion of Tract 4A5, Block 12, Ysleta Grant, and known locally as 8250 N. Loop Drive, El Paso, Texas (the “Property”)

Whereas, the Property is subject to that certain Easement recorded at Volume 4169, Page 1241, as Document #20020006927 (a copy of which is attached hereto as Exhibit A), which encumbers a portion of the Property and is for the benefit of EPEC.

AGREEMENTS

The Owner acknowledges and agrees as follows:

1. The Easement is a validly existing restriction which encumbers a portion of the Property for the benefit of EPEC and its successors and assigns.
2. A covered parking structure currently encroaches upon the Easement at the southern boundary line of the Property.
3. In the event that EPEC requires direct access to any portion of the Easement and such access is prohibited or restricted by the covered parking structure, the Owner, upon written request from EPEC, at its expense, will remove or alter so much of the covered parking structure as is reasonably necessary in order for EPEC to access and maintain the Easement and the utility lines therein.
4. The Owner hereby indemnifies EPEC from and against any cost, expense, or loss caused by or attributable to the encumbrance of the Easement by the covered parking structure on the Property, and further holds EPEC harmless from and against any loss or claim resulting from said encroachment upon the Easement, and further releases EPEC from any claim or liability for damage or destruction to the covered parking facility resulting from EPEC’s reasonable enjoyment and use of the Easement.

ATTACHMENT 5: EASEMENT WAIVER (CONTINUED)

OPM Capital Management, LLC

By: _____
Jodie Bowen Newby
Manager

Accepted by El Paso Electric Company

By: _____
Its: _____

STATE OF TEXAS
COUNTY OF EL PASO

Before me, _____, on this day personally appeared Jodi Bowen Newby, Manager of OPM Capital Management, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2013.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF EL PASO

Before me, _____, on this day personally appeared _____, _____, of the El Paso Electric Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2013.

Notary Public, State of Texas

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