# **Staff Summary Report**



Hearing Officer Hearing Date: June 1, 2010 Agenda Item Number: 2

> SUBJECT: This is a public hearing for a request by AMADO'S TAKE-OUT RESTAURANT located at

> > 6020 South McClintock Drive for one (1) use permit and (1) variance.

DOCUMENT NAME: 20100601dskko01 PLANNED DEVELOPMENT (0406)

Request by AMADO'S TAKE-OUT RESTAURANT (PL090408) (Philip Reina/GBMA **COMMENTS:** 

Architects LLC, applicant; Adalberto Hernandez, property owner) located at 6020 South

McClintock Drive in the CSS, Commercial Shopping & Services District for:

Use Permit to allow a drive-thru in the CSS, Commercial Shopping and Services ZUP10035

District.

VAR10005 Variance to partially waive the required landscape buffer between the CSS.

Commercial Shopping and Services District and the R1-6, Single Family

Residential District.

PREPARED BY: Kevin O'Melia, Senior Planner (480-350-8432)

Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) **REVIEWED BY:** 

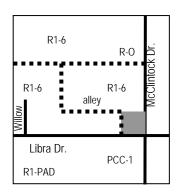
N/A **LEGAL REVIEW BY:** 

**DEPARTMENT REVIEW BY:** N/A

> FISCAL NOTE: N/A

Staff - Approval, subject to conditions RECOMMENDATION:

ADDITIONAL INFO:



The applicant requests a Use Permit for a vehicle drive-through in the Commercial Shopping and Services District and a Variance to partially waive the landscape buffer between the Commercial Shopping and Services district and the adjacent Single Family Residential District to the north and west. The case has been advertised in the newspaper, and neighboring property owners, applicable homeowners associations and neighborhood associations have been notified of the Hearing by mail. The site has been posted, first for the neighborhood meeting and then for the Hearing itself. A presentation of the case and neighborhood meeting was held at the site. One neighbor attended and indicated support for the request. As of the preparation of this report, there has been no other citizen input for the case.

PAGES:

- 1. List of Attachments
- 2-4. Comments / Reasons for Approval
- 5. Conditions of Approval
- 6. History & Facts
- 7. Description / Zoning & Development Code Reference

# **ATTACHMENTS:**

- 1. Location Map
- 2. Aerial Photo
- 3. Letter of Intent, Use Permit & Variance Request
- 4. Site Plan
- 5. Site Plan Keyed Notes
- Floor Plan & Keyed Notes
- 7. Staff Photographs: (top) alley and phone building to northwest of site & (bottom) alley west of site looking south to Libra Drive.
- 8. Staff Photos: (top) site looking east past north of building & (bottom) site looking south past west of building. Both views indicate proposed location of drive-through lane.
- 9. Staff Photos: (top) existing sour orange hedge north of Amado's & (bottom) site looking west past north side of Amado's building. Mature eucalyptus is in northwest site corner. Site gate opens to alley.
- 10. Staff Photos: (top) looking south from southwest corner of Amado's building to Libra Drive & (bottom) looking east from alley northwest of site toward northwest corner of site
- 11. Staff Photos: (top) long view looking east from alley northwest of site toward northwest corner of site, roof ladder is on west side of phone building & (bottom) close view from alley northwest of site to south of adjacent phone building.
- 12. Staff Photos: two views of Libra Drive from alley to west of Amado's. Top view highlights Amado's existing 6'-0" high masonry screen wall and two eucalypts to west of Amado's building which will remain.
- 13. Staff Photos: (top) existing gates and refuse enclosure proposed for removal at southwest corner of Amado's building & (bottom) view southeast from Amado's business entrance to the Libra Drive / McClintock Drive intersection.
- 14. Staff Photos: two views (top looking east & bottom looking west) of the existing Amado's landscape buffer on the north property line to the northeast of the Amado's building.
- 15. Staff Photo: close up view looking west of the existing sour orange hedge on the phone property due north of the Amado's building.

## **COMMENTS:**

# **Analysis**

The site is located on the northwest corner of McClintock Drive and Libra Drive in the CSS, Commercial Shopping and Services District. To the west of the site, beyond an alley, is an R1-6, single family residential district containing residences. To the north and northwest of the site is an R1-6, single family residential district containing an office/warehouse.

The width of the public alley right of way west of the site is 12'-0" but also includes an approximately 4'-0" wide private property strip to allow for maintenance clearance to an existing sewer line in the alley. Accordingly, the west perimeter site wall is 4'-0" east of the west property line. There is no record of an easement granted for public utility access or for any other reason to allow public use of the western 4'-0" strip of the site.

The telephone office/warehouse (QWEST) facility that is located within a residential district exists based on a Use Permit granted to Mountain States Telephone in 1970. This commercial building currently does not conform to the land use provisions of the Zoning and Development Code but is allowed as a legal, non-conforming use. The references for this legal, non-conforming use are the Zoning and Development Code (ZDC) Sections 3-102 and 3-502.

The take-out restaurant on the site is a converted convenience store. Interior dining consisting of fixed tables and booth seating within the building are an unpermitted use and is not supported by available vehicle parking on site. The building permit record also indicates that interior partitions, plumbing and other improvements to the north of the kitchen is an unpermitted construction.

The applicant, on behalf of the owner, requests the addition of a drive-through food pick-up service on the west elevation with a drive aisle adjacent to the north and west edges of the site. The drive-through service is a Use Permit request in accordance with ZDC Section 3-202. In conjunction with the drive-through request, the applicant requests a variance to partially waive the required land use landscape buffer that separates commercial properties from neighboring residential districts. The landscape buffer is required in accordance with ZDC Section 4-706 (D). The partial waiver seeks to allow a reduction of the 6'-0" minimum buffer planting width along parts of the perimeter, the removal of the 20'-0" on center tree spacing requirement in favor of staggered spacing of trees and waiver of the minimum 8'-0" tall masonry perimeter wall in favor of reuse of the shorter existing masonry perimeter walls.

For further processing, the applicant, on behalf of the owner, will be required to request Development Plan Review for building, site and landscape modifications and will be required to obtain building permits for new construction as well as existing construction that has not previously received building permit. As part of this approval, the applicant has worked with staff on a design concept to convert indoor dining areas into an exterior dining patio. The creation of exterior dining and removal of interior dining will allow patrons the option to enjoy their meal on site and at the same time will reconcile parking demand for this use with available parking on site.

# **Public Input:**

A neighborhood meeting was conducted on site by the applicant from 10:00AM to 11:00AM on May 15, 2010 in fulfillment of ZDC Section 6-402. One citizen attended this meeting and indicated support for the request for the addition of a drive-through on the west of the take out restaurant. There was no opposing comment to the Use Permit request for a drive-through or for the Variance request to partially waive the land use buffer at the neighborhood meeting. Since the meeting, the applicant has been in contact with QWEST regarding the proposal and the impact of the drive-through on their property. As of the publication of this report, staff has not received public comment regarding the Use Permit or Variance requests for this case.

# **Use Permit Request**

ZDC Section 3-202 requires a Use Permit for a drive-through in a CSS, Commercial Shopping and Services District. Special site layout standard for allowance of the drive-through with a Use Permit is as described in ZDC Section 3-408 and indicates location of the drive-through away from the business pedestrian entrance and out of view of public streets.

# Section 6-308 E. 2. Approval Criteria for Use Permits

- a. Any significant increase in vehicular or pedestrian traffic. Amado's is an established business. It is estimated that the addition of a drive-through take out feature will not so much increase traffic by patrons as reduce the duration of vehicles on the site. The layout of site and its proximity to McClintock Drive will preclude use of neighborhood streets by business traffic as an alternative to McClintock. The drive-through will not impact the amount of neighborhood pedestrian traffic to and from the site. The site layout lends itself to vehicle and pedestrian traffic patterns with a minimal amount of overlap.
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. It is anticipated that the drive through will contain vehicle queues during peak business hours such as lunch and dinner. Increased landscape will help to offset exhaust from idling vehicles on the north and west of the building. A menu board and food ordering speaker would be located on the north of the building, away from private residences, nevertheless a limit on use of the drive through so it does not disturb neighbors late at night has been made a condition of approval. Overall, the drive through in conjunction with increased site landscape will be a counterweight to the existing traffic noise and odor generated on McClintock Drive.
- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan. The addition of a drive through will help to strengthen and diversify this business and in turn strengthen the vitality of the adjacent neighborhood of which this business is a part.
- d. Compatibility with existing surrounding structures and uses. The existing building is a one-story neighborhood establishment that fits in well with the prevailing residential building character to the west as well as the commercial character of businesses on McClintock Drive to the north and south of this site. The proposed drive-through location conforms to the side and rear yard placement and does not interfere with the primary customer business pedestrian entrance in accordance with ZDC Section & Figure 3-408.
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public. An unused portion of the site will be activated for this use, which prompts the business owner to be more aware of activity in the side and rear yard than at present. A drive-through for food pick up is typically not an invitation for hooliganism. The drive-through hours will be curtailed so there is no late night use. The business owner resides at the residence immediately west of the site where his family will be most directly impacted by the drive-through.

### Variance Request

The Zoning and Development Code requires a Variance to adjust the landscape buffer requirement for a separation between commercial and single family residential districts as prescribed in ZDC Section 4-706 (D). The variance request is three-fold:

- Replace the 6'-0" minimum continuous buffer planting width along the side and rear yard edges with planting areas of varying width and allow the western strip of site beyond the existing masonry screen wall to remain for public sewer access.
- Replace the 20'-0" on center tree spacing requirement on the side and rear yard edges with a staggered tree spacing that would utilize existing trees off site to the north, existing trees on site including one additional mature tree required to remain by condition of approval, and new tree installation on site in the vicinity of the drive-through drive aisle and throughout the site.
- Replace the minimum 8'-0" tall masonry perimeter wall requirement with reuse of shorter existing masonry perimeter walls and existing concrete footings.

# Section 6-309 D. Approval Criteria for Variances

1. Special circumstances are applicable to the property, including its size, shape topography, location or surroundings. The north side yard, although adjacent to a Residential District, is adjacent to a commercial legal, non-conforming use that in part has its own landscape buffer. The west rear yard is reduced in width by approximately 4'-0" due to the adjacency of a public sewer. Use of the 4'-0" strip as part of a landscape buffer is discouraged by COT Public Works/Water Utilities due to maintenance clearance guidelines for the sewer line.

- 2. The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. A landscape buffer similar to that required may be provided with available planting space and with staggered tree spacing installation, reuse of three of the four existing eucalyptus trees west and northwest of the building, use of existing adjacent off site sour orange tree hedge north of the building, a reuse of existing screen walls with foundations of existing width to maximize available planting area and minimize disturbance to existing mature tree root zones.
- 3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located. The adjustment seeks to rectify two disadvantages upon which this property in burdened that do not affect typical commercial properties: a.) Adjacency to a public sewer with attendant reduction of useable land area for landscape purposes and b.) Adjacency to a commercial use that resides in a residential district.
- 4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner. The proximity of the public sewer in the alley which prevents use of the westernmost strip of land for landscape purpose is not a condition imposed by the property owner. The proximity of a legal, non-conforming commercial use in a residential district with the attendant buffering requirement is not a condition imposed by the property owner.

# Conclusion

Staff recommends approval of the Use Permit request for the drive-through. Staff has observed the business operation of this restaurant and believes that the addition of a food take-out drive-through to this site, specifically if hours of use are limited, will not be detrimental to the adjacent residential neighborhood. Staff also recommends approval of the Variance request to partially waive the landscape buffer. Staff has observed that extra-site conditions exist which make the creation of a landscape buffer more difficult than the typical case. Moreover, a landscape buffer will be installed, albeit in a way that does not strictly meet the requirement of the Zoning and Development Code.

# REASONS FOR APPROVAL:

### **Use Permit**

- 1. No apparent nuisance resulting from noise, smoke odor, dust, vibration or glare beyond the ambient site condition.
- 2. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.
- 3. Anticipated vehicle traffic volume generated by this use is not excessive.
- 4. Use appears to be compatible with the building, site and surrounding property.
- 5. Approval of the Use Permit will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or public welfare in general.

# Variance

- 1. A special circumstance is applicable to the property in the form of a public maintenance work area which encroaches on the western strip of the property and forces the perimeter wall approximately 4′-0″ onto the property, rendering the western strip useless for landscape purpose. A second special circumstance is applicable to the property in the form of a commercial, legal non-conforming use on an adjacent residential property that does not need buffering from this commercial use and in fact provides some of its own landscape buffer.
- 2. The strict application of the Zoning and Development Code will deprive this property of privileges enjoyed by other properties of the same classification that are not encumbered with a public utility maintenance zone or a neighboring commercial use that enjoys residential zoning.
- 3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity in the vicinity and zone in which such property is located. To the contrary, the adjustment remedies two disadvantages incurred by this property that are not imposed on typical commercial properties.
- 4. The special circumstances of this site are not self-imposed but are pre-existing features of the site.

# SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

# CONDITIONS OF APPROVAL:

- Development Plan Review approval shall be obtained and construction documents for site development shall be submitted for building permit by June 01, 2011 or the Use Permit and Variance approvals shall be made void. Subsequently, an expiration of the building plan check period or issued building permit will result in expiration of the Use Permit and Variance approvals.
- 2. Drive-through operation shall cease nightly between 10:00 PM and 6:00 AM Sunday through Monday.
- 3. The Use Permit is valid for the drive-through concept demonstrated on the application submittal documents. Preserve trees as indicated on documents and as described by condition of approval.
- 4. The Use Permit is valid for Amado's and may be transferrable to successors in interest through an administrative review with the Development Services Manager, or designee.
- 5. Any intensification or expansion of the drive-through shall require the applicant to return to the appropriate decision-making body for a new Use Permit.
- 6. Noise generated from this facility shall conform to the City of Tempe Noise Ordinance requirements for noise control. Refer to Tempe City Code –Chapter 20.
- 7. Drive-through order speaker shall be located on the north of the building near the northeast corner, away from residences and toward McClintock Drive. There shall be no other speakers outdoors on site, including music speakers on the dining patio.
- 8. If there are any complaints arising from the Use Permit approval that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit.
- 9. Additional landscape throughout site is a part of Use Permit and Variance approval. Details of landscape plan to be worked out during Development Plan Review.
- 10. Convert sit down dining to exterior covered patio space following the Site Plan Review mark-up dated April 28, 2010. Limit extent of outdoor dining patio area to match available vehicle parking quantity on site. Details to be worked out during Development Plan Review.
- 11. Position drive-through "bend" at northwest building corner so mature eucalyptus at northwest site corner is preserved. Utilize the 9'-0" minimum drive aisle road bed width as allowed in ZDC Section 3-408 if necessary to allow the bend to fit in between building corner and tree. Modify elevation of drive aisle road bed and if needed substitute a metal grate for asphaltic concrete in the road bed at the "bend" so major tree roots are preserved. Details to be worked out during Development Plan Review.
- 12. Protect and maintain other existing mature trees throughout site as is indicated on the site plan. Where one of these trees dies or shows probability during document preparation or construction periods, replace with a minimum 48" inch box tree of minimum 4" trunk caliper size. Details of position and species of replacement tree to be worked out during Development Plan Review.
- 13. Maintain all current civil drainage features including existing on-site retention basins with approximately 2200 cubic feet for the 2 year storm event. Coordinate location of civil drainage features and landscape, particularly, coordinate grade and flow changes caused by addition of drive through with respect to preservation of existing tree root systems. Details of civil and landscape coordination to be addressed during Development Plan Review and finalized during construction document refinement for building and engineering permits.

### **HISTORY & FACTS:**

April 20, 1970:

Board of Adjustment approved the request (A-70-4.12) for a Use Permit for Mountain Bell Telephone Company to establish a telephone facility building 790 feet north of the northwest corner of McClintock Drive and Guadalupe Road located at 6000 S. McClintock Drive in the R1-6, One Family Residence District. A warehouse/office building for Mountain Bell was constructed in 1970. A 2,440 square foot addition to the building was constructed in 1978. A flagpole/monopole was approved for site in 1998.

May 09, 1974:

City Council approved the request (Ordinance No. 405.301) for a Zoning Map Amendment for a 0.6 acre parcel from the R1-6, Single Family Residential District to the RCC, Residential convenience Commercial District at 6020 South McClintock Drive. This approval included seven conditions including several that pertain to design review, including the height and finish of the masonry screen wall on the west of the property. There was no separate design review approval. The building that stands on the site today originated with this approval.

November 20, 1995:

Board of Adjustment approved the request (BA950254) by Cotija's for a Use Permit to operate a take-out only food business on the site formerly occupied by Circle K Corporation at 6020 S. McClintock in the CCR, Convenience Commercial Residence District. The report indicates the site was vacant for over one year prior to the application for this request. The period of closure triggered the site upgrades indicated in requests c., d. and e.; these items could not be indicated as "grandfathered" (legal non-conforming) due to the period the building and site were unused. The entire list of activity heard for Cotija's during this hearing included the following:

- a.) Use Permit to operate a take-out only food business in the CCR District was approved.
- b.) Variance to allow a drive through food pick up window in the CCR District was denied.
- c.) Variance to allow existing parking screening in lieu of screen walls was withdrawn by the applicant.
- d.) Variance to allow substandard parking security lighting to remain was withdrawn by the applicant.
- e.) Variance to waive the required 15 gallon and 24" box (alternating) trees at 10'-0" on center along the north property line in lieu of the existing masonry wall and 2'-0" wide landscaping strip was denied. Note: Parking screen walls were installed. Site security lighting that is not full cut-off is in place, trees at 10'-0" on center are in place on the neighboring site immediately north of building.

May 06, 1977:

Hearing Officer approved the request (BA970105) by Armando's (sic) Mexican Food to allow an existing indoor restaurant use to remain located at 6020 S. McClintock Drive in the CCR, Convenience Commercial Residence District. Although the approval makes reference to an "indoor restaurant to remain", this is the approval of the Use Permit for an existing take out restaurant use under new ownership. There is no accompanying request for variance to reduce required parking to reconcile indoor dining with available parking quantity on site.

January 31, 2001:

Development Services Design Review staff approved the request (DRB01042) by Armando's (sic) Mexican Food for a building color modification located at 6022 S. McClintock Drive in the CCR, Convenience Commercial Residence District.

There is evidence of unpermitted construction in the interior of Amado's restaurant. BP961726 is the most recent building permit for the building interior. BP961726 was done based on a "notice to comply" and includes the kitchen, employee restroom and indoor area between the window wall and the kitchen. The unpermitted northern half of the interior includes the two customer restrooms and dining area #2.

May 15, 2010:

The applicant held a required neighborhood meeting on site for the request by Amado's Restaurant for a Use Permit for a food take-out drive through and a variance to partially waive the required landscape buffer between the CSS, Commercial Shopping and Services District and the R1-6, Single Family Residential District.

**DESCRIPTION:** Property and Business Owner – Adalberto Hernandez

Applicant – Philip Reina/GBMA Architects LLC

Existing Zoning – CSS, Commercial Shopping & Services District

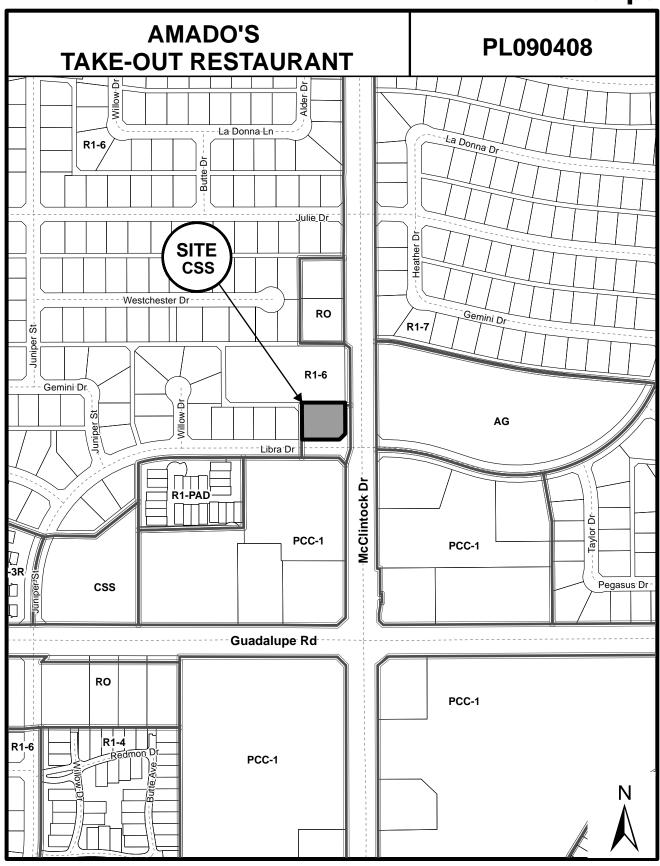
Lot Size -- +/- 0.438 acres

ZONING AND DEVELOPMENT

**CODE REFERENCE**: Part 6, Chapter 3, Section 6-308 Use Permit

Part 6, Chapter 3, Section 6-309 Variances





**Location Map** 



**AMADO'S TAKE-OUT RESTAURANT (PL090408)** 

4700 East Thomas Road Ste. 103

Phoenix, AZ 85018 Fax: (602) 279-3804 Phone: (602) 909-4805

# gbma architecture llc

May 1, 2010

User Permit & Variance Request / Case # PLO90408

RE: Amado's Take-out Restaurant 6020 S. McClintock Drive, Tempe, AZ 85

Dear Neighbor,

The purpose of this letter is to inform you that my client, Mr. Adalberto Hernandez, the proprietor of this restaurant, has asked me to file for both a Use Permit along with a Variance for this existing restaurant site. Let me describe both these issues:

The Use Permit is to allow a drive-thru lane along the north and west side of the existing building. See attached site plan.

The **Variance** is asking to partially waive the required landscape buffer along the north and west side of the building. See attached site plan.

Furthermore: along the north property line, the restaurant and the adjacent phone company sites are commercially zoned sites. The phone company site on the north, already has an existing landscape buffer.

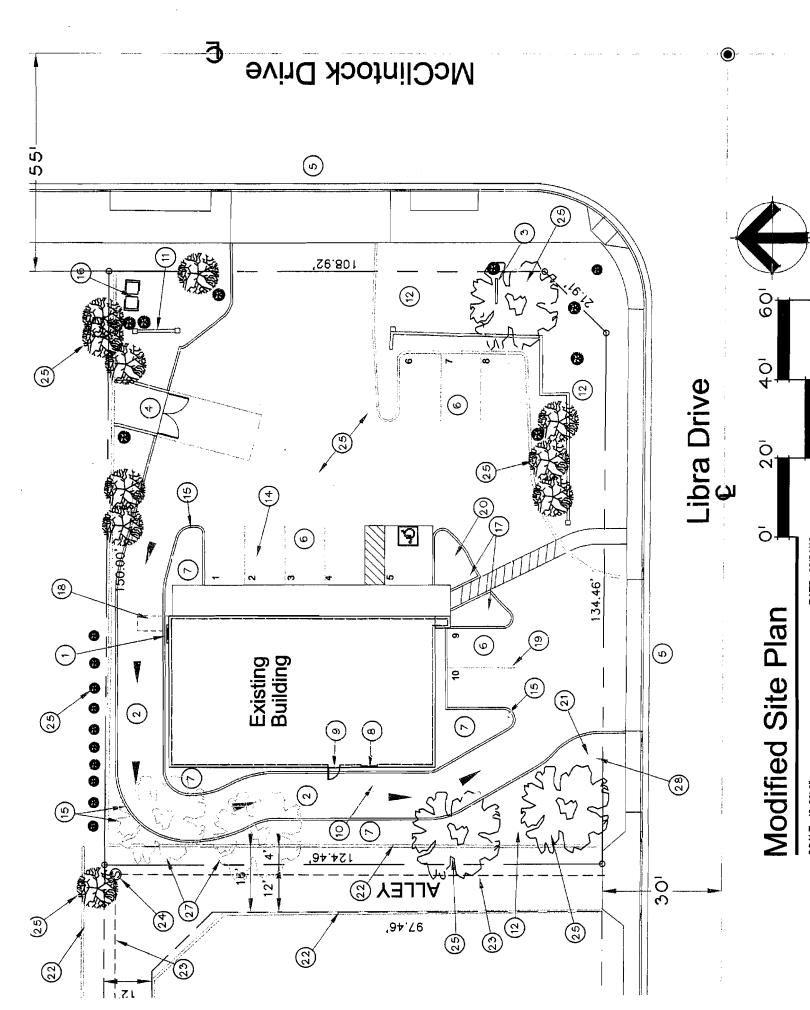
Along the west property line, our client is prevented from providing a full landscape buffer due to the fact that our client was faced with having give up the use of 4 feet of his property in order to allow the required distance from the existing sewer line. The fence wall along the west property line was installed 4 feet inside of his property line in order to allow for adequate space to properly service the sewer line.

The City of Tempe Hearing Officer is holding a public hearing to review both requests on June 1<sup>st</sup>, 2010. The hearing shall be held Tempe City Hall Council Chambers, 31 East 5<sup>th</sup> Street, Tempe, AZ 85281. Please call 480-350-8331 should you have any questions.

We invite you to a neighborhood meeting to discuss the above and/or answer any questions on both the Use Permit or Variance. This meeting shall be held on Saturday, May15th, 2010 at 10:00 AM at the restaurant site.

Please feel free to contact directly at 602-909-4805, should you have any questions. Thank you,

Philip Reina Philip Reina



# KEYEU NUTES:

- (1) NEW WALL MOUNTED MENU BOARD
- (2) NEW 12' WIDE DRIVE THRU LANE
- 3) EXISTING MONU. SIGN
- (4) NEW REFUSE ENCLOSURE
- 5 EXISTING DRIVEWAY
- 6) EXISTING PARKING
- 7) NEW PLANTER
- 8) NEW WINDOW
- (9) EXISTING DOOR
- (10) NEW CANOPY
- (11) EXISTING SCREEN WALL
- (12) EXISTING RETENTION
- (13) EXISTING RAMP
- (14) EXISTING ROOF OVERHANG
- (15) NEW CONCRETE CURBING
- (16) EXISTING ELEC. TRANSFORMERS
- (17) EXISTING PLANTER
- (18) EXISTING MAS, TOWER TO BE REMOVED
- (19) NEW STRIPING
- (20) MAIL BOX
- (21) EXISTING WATER METER
- (22) EXISTING 6' MAS. WALL
- (23) EXISTING SEWER LINE
- (24) EXISTING SEWER MANHOLE
- (25) EXISTING PLANT MATERIAL
- (26) 20' EMERGENCY VEHICLE ACCESS LANE
- (27) EXISTING TREE TO BE REMOVED
- (28) EXISTING BAC. FLOW PREVENTOR

# DS091111/SPR09089

# **ATTACHMENT 5**

