



Zoning Examiner

Preliminary Report

January 25, 2024

Rory Juneman

Lazarus & Silvyn, PC

5983 E. Grant Road, Suite 290

Tucson, AZ 85712

SUBJECT: TP ENT 1023 00041 Harvest Tucson 1010 S. Freeway, C-2 (Ward 1)

Public Hearing: January 18, 2024

Dear Mr. Juneman:

Pursuant to the City of Tucson Unified Development Code and the Zoning Examiner's Rules and Procedures (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's summary of findings for special exception case TP-ENT-1023-00041– Harvest Tucson – 1010 S. Freeway, Building A, Suite 130, C-2 (Ward 1).

At the expiration of 14 days of the conclusion of the public hearing, the Zoning Examiner's Report to the Mayor and Council (including background information, public hearing summary, findings of fact, conclusion, recommendation, and public hearing minutes) shall be filed with the City Manager. A copy of that report can be obtained from the Planning and Development Services Department (791-5550) or the City Clerk.

If you or any party believes that the Zoning Examiner's recommendation is based on errors of procedure or fact, a written request to the Zoning Examiner for review and reconsideration may be made within 14 days of the conclusion of the public hearing.

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The public hearing held by the Zoning Examiner shall constitute the public hearing by the Mayor and Council. However, any person may request a new public hearing before the Mayor and Council. A request for a new public hearing must be filed in writing with the City Clerk within 14 days of the close of the Zoning Examiner's public hearing.

BACKGROUND

This is a request by Lazarus & Silvyn, on behalf of the property owner P&P Hospitality, for approval of a Special Exception Land Use to allow a relocation and expansion of a previously approved marijuana dispensary, as permitted in the *Unified Development Code* (UDC). The project site is located at 1010 S. Freeway and within an existing multi-tenant retail building. The Applicant/ currently occupies 1,270 sf of the retail building. This request is to expand and relocate the existing marijuana dispensary from the northwest suite to the southern suite of the building.

The Applicant proposes a dual-license marijuana dispensary to occupy a 3,758 square-foot space as allowed by the UDC. There will be minimal change to the exterior and no additional building height. The site is zoned C-2 (Commercial) and located on the west side of Interstate 10 approximately 600 feet northwest of the intersection of West Starr Pass Boulevard and Interstate 10 (see Case Location Map).

In 2022, the Mayor and Council approved an amendment to the UDC relating to adult use and medical marijuana establishments within C-2 zones as a Special Exception Land Use. Additionally, based on both a relocation and expansion of the previously approved facility, this marijuana dispensary is subject to approval through the Mayor and Council Special Exception Procedure (sections 3.4.4. and 5) and is subject to Sections 4.8.6 and 4.9.9 of the UDC. The Mayor and Council is the final review authority to render a decision to grant the use with or without conditions, or to deny the use.

SUMMARY OF FINDINGS

Background Information

Existing Land Use:

The existing retail space was previously used for motel support space, office space and other uses.

Current Zoning:

C-2: This zone provides for general commercial uses that serve the community and region. Residential and other select agriculture, civic, recreational, and utility uses may also be permitted that provide reasonable compatibility with adjoining residential uses.



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Surrounding Zoning and Land Use:

North: C-2 (*Commercial Zone*); Motel

South: C-2 (*Commercial Zone*); Motel

East: C-2 (*Commercial Zone*); Interstate, Frontage Road

West: C-2 (*Commercial Zone*). Motel

Applicant's Request –The Applicant is interested in both relocating the existing dispensary to a new tenant space within the property and expanding the Dispensary's total square footage to 3,758 square feet. Additionally, the Applicant is concurrently seeking to expand the Dispensary use from a medical use to a dual-license establishment.

Planning Considerations – Land use policy direction for this area is provided by *Plan Tucson*, the *Santa Cruz Area Plan* and the *Kroger Neighborhood Plan*.

Plan Tucson (PT): Plan Tucson Future Growth Scenario Map illustrates different building blocks within the city that have specific policies to promote future growth opportunities. The proposed development lies within the Business Centers building block of the Future Growth Scenario Map. Business centers are major commercial or employment districts that act as major drivers of Tucson's economy. These centers generally contain corporate or multiple-use office, industrial, or retail uses.

Relevant Policies:

LT.28.4.4 Supports a mix of commercial, residential, office, governmental, and other service activities at all major employment centers.

LT.28.4.6 Support environmentally sensitive design that protects the integrity of existing neighborhoods, complements adjacent land uses, and enhances the overall function and visual quality of the street, adjacent properties, and the community.

LT.28.4.8 Protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill, and appropriate nonresidential uses.



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Santa Cruz Area Plan and Kroeger Neighborhood Plan

The subject area is within Key Parcel 8 of the *Santa Cruz Area Plan* which is further guided by the *Kroeger Neighborhood Plan*. The *Kroeger Neighborhood Plan* further identifies the subject area as Commercial land use, which abuts the western edge of the interstate. The land use section of this plan policy describes infill and commercial expansion along the interstate:

“Encourage and direct development of the neighborhood's eastern edge by expanding the freeway-oriented commercial and neighborhood commercial activities to include the area between Mission Lane, I-10, Silverlake and the Julian Wash.”

Project Background

The current dispensary use operates as a legal nonconforming use. This use was legally established in 2013 as a Medical Marijuana use, which at the time was the only permitted dispensary use. The dispensary has operated continuously since opening. In November 2020, Arizona voters passed the Safe and Smart Act legalizing adult personal use of marijuana, and in May 2021, the City adopted Ordinance No. 11828 to permit such use. In December 2022, the City adopted Ordinance No. 11978 that added the SELU process for new dispensaries. It was at this time that the use became legal nonconforming which legally allows the use to continue within the Current Site, subject to limitations for expansion of areas, pursuant to the Unified Development Code (“UDC”) § 9.2.2.

C-2 zone permits marijuana dispensaries as SELUs via the Mayor & Council Special Exception Procedure. The relocation and expansion of the Dispensary within the property requires SELU approval.

Design Considerations

Land Use Compatibility – The proposed land use is a Marijuana Dispensary as defined by Section 4.9.9.E.1 of the UDC. It is permissible in the C-2 Zone subject to review and approval per the Mayor & Council Special Exception Procedure established by Section 3.4.4 of the UDC.

The Preliminary Development Plan includes a 3,758 square feet space within an existing building. The building is one of several structures on the parcel which includes multiple storefronts. The subject property is directly accessible from a driveway along South Farmington Road. The collective area is accessed via Star Pass Boulevard.



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The building sits toward the northern portion of the property, with 16 dedicated parking spaces along the south and east frontage including two ADA compliant parking spaces. Additionally, 4 bicycle parking spaces will also be provided. No other site modifications are proposed in the Preliminary Development Plan.

Use-Specific Standards

The following Use-Specific Standards under Section 4.9.9.E.1 of the UDC are applicable to the proposed Special Exception:

- UDC 4.9.9.E.1.a – The total maximum floor area of a marijuana dispensary shall not exceed 10,000 square feet. The total proposed floor area of the dispensary is 3,758 square feet which is well below the 10,000 square feet threshold.
- UDC 4.9.9.E.1.b – A medical marijuana dispensary shall be located in a permanent building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle, or other motor vehicle. The proposed dispensary will be relocated to a new tenant space within the existing building, which complies with this standard.
- UDC 4.9.9.E.1.c – The permitted hours of operation of a marijuana dispensary are from 7:00 am to 10:00 pm. The proposed hours of operation are 8:00 a.m. to 10:00 p.m. which adheres to the required hours of operation.
- UDC 4.9.9.E.1.d – A marijuana dispensary shall have an interior customer waiting area equal to a minimum of 25% of the sales floor area. The proposed dispensary will have a sales floor that meets the minimum required area. The proposed waiting area is 236 square feet or 38% of the retail area.
- UDC 4.9.9.E.1.e – A marijuana dispensary shall not have outdoor seating areas. The existing property has no outdoor seating areas, and none will be provided for the proposed dispensary.
- UDC 4.9.9.E.1.f – A marijuana dispensary may deliver marijuana, once rules permitting and regulating delivery are approved by the AZDHS and become effective, and shall comply with state law and all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency. No deliveries are offered with this dispensary.

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- UDC 4.9.9.E.1.g – A marijuana dispensary shall be setback a minimum of 2,000 feet from any other marijuana dispensaries, measured in a straight and direct horizontal line between the two closest exterior or applicable interior suite walls of marijuana dispensaries. No marijuana dispensaries are located within 2,000 feet of the subject building. The nearest dispensary is approximately 1 ½ mile east of the project site.
- UDC 4.9.9.E.1.h – a marijuana dispensary shall be setback a minimum of 500-feet from a K-12 public, private, or charter school or a licensed childcare center, measured in a straight and direct horizontal line from the closest exterior or applicable interior suite wall of the marijuana dispensary to the closest property line of a school or childcare center. No K-12 public, private, or charter schools or licensed childcare centers are within 500 feet of the subject building. The nearest school or childcare center is approximately 2,000 feet east of the dispensary and located east of Interstate 10.
- UDC 4.9.9.E.1.i – a marijuana dispensary shall be setback a minimum of 500-feet from a public park listed in Section 6 of the Technical Standards Manual or library, and a minimum of 500-feet from a licensed residential substance abuse diagnostic and treatment facility or other licensed residential drug or alcohol rehabilitation facility, measured in a straight and direct horizontal line from the closest exterior or applicable interior suite wall of the marijuana dispensary, to the closest property line of a library, public park, licensed residential substance abuse diagnostic and treatment facility, or other licensed drug or alcohol rehabitee facility. No libraries or public parks listed in Section 6: Marijuana Dispensary and Dispensary Off-Site Cultivation Uses – Required Setback from Certain Parks are within 500 feet of the subject building. There are also no licensed residential substance abuse diagnostic and treatment facilities or other licensed residential drug or alcohol rehabilitation facilities within 500 feet of the subject building.
- UDC 4.9.9.E.1.j – The expansion of an existing marijuana dispensary shall be setback a minimum of 500 feet from a K-12 public, private, or charter school, measured in a straight and direct horizontal line from the closest exterior or applicable interior suite wall of the marijuana dispensary to the closest property line of a school. No K-12 public, private, or charter schools are within 500 feet of the subject building. The nearest school is approximately 2,000 feet from the dispensary.



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- UDC 4.9.9.E.1.k – A marijuana dispensary shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency. The applicant will comply with all applicable health regulations, including those under the Arizona Department of Health Services and other authorized regulatory agencies.

- UDC 4.9.9.E.1.1 – Odor Mitigation
 1. Odor mitigation devices and techniques shall be incorporated in all marijuana facilities to ensure that odors are mitigated.
 2. An odor mitigation plan shall be submitted demonstrating compliance with odor control requirements.
 3. Upon receipt of a formal complaint through code enforcement related to a marijuana facility's odor, an inspection for compliance with the odor mitigation plan shall be conducted. All marijuana products that arrive at the facility and dispensed from the facility are in sealed, pre-packaged containers. This greatly lowers any odor emitted from the building. In addition, the project will continue to utilize state-of-the-art activated carbon filters on any exhaust from the building to ensure the project is odor free. The specifics of this odor control plan will be submitted for approval by the City prior to construction of the tenant improvements.

Special Exception Findings

Section 3.4.5.A of the UDC requires that Mayor and Council grant a special exception only after finding that the requested special exception:

1. Meets the standard expressly applied by all adopted codes and regulations for that type of land use, or for the land use class applicable to the proposed use. The application materials demonstrate that the Dispensary meets all applicable standards and regulations governing marijuana dispensaries.

2. Does not adversely affect adjacent land uses or the surrounding neighborhood; or that such adverse effects can be substantially mitigated through the use of additional conditions. Use as a marijuana dispensary conforms to and complements adjacent land uses and the surrounding neighborhood because:
 - At this location, Harvest Tucson Dispensary has operated since 2013 and as an experienced operator can ensure no odors emit from the Project; and
 - The Dispensary will continue to be compatible with surrounding commercial properties and will not generate any noise, odor, privacy or viewshed impacts.

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3. Provides adequate and efficient vehicular and pedestrian access and circulation and vehicular parking. The Dispensary will continue to provide paved off-street parking that meets the requirements of the UDC. The parking lot utilizes an existing entrance on Farmington Road. Pedestrian traffic to this dispensary is limited based on its location next to I-10, but there are sidewalks and internal walkways available for any customers that choose to walk to the Dispensary.

4. Can be adequately and efficiently served by public facilities and services, such as water, storm water drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the various public and private agencies. The Dispensary's current operations are adequately served by all public facilities and services, and this will continue once the Dispensary moves to the Project Site. The Dispensary at the current site has water and trash service and receives fire and police protection. The property also has ample stormwater drainage capacity. After the Dispensary's move to the Project Site, it will continue to utilize these public facilities and services, and the increase in size of the Dispensary will have little to no impact on the adequacy of these facilities and services.

5. Complies with the General Plan and any applicable sub-regional, area, or neighborhood plan. - The Dispensary will be a retail establishment, and the property is already zoned C-2 Commercial. Further, the project lies within the Business Centers building block of the Future Growth Scenario Map. Business centers are major commercial or employment districts that act as major drivers of Tucson's economy. These centers generally contain corporate or multiple-use office, industrial, or retail uses. Existing examples in Tucson include the University of Arizona Science and Technology Park, Tucson Mall, and the Tucson International Airport area. Additionally, the proposed Dispensary complies with both the applicable area and neighborhood plans.

Drainage/Grading/Landscape

The site is within an existing development that will remain part of the proposed project; as such, there will be no elevation changes due to grading.

Traffic/Circulation

The site will largely retain the existing traffic circulation and curb cut locations. The site's Marijuana Dispensary use requires a minimum of 13 parking spaces, 16 parking spaces are provided. Additionally, 2 ADA compliant parking spaces and 4 bicycle parking spaces are indicated. Any subsequent submittal must demonstrate compliance with applicable requirements per the UDC.



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January 18, 2024, Zoning Examiner Hearing

The Applicant and the Applicant's representative spoke in support of the requested rezoning at the August 4, 2022, Zoning Examiner hearing. One other person spoke and encouraged the Applicant to engage with the Barrio Kroeger neighborhood. The Applicant stated that it would do so.

As of the date of the Zoning Examiner hearing, there were no (0) written approvals and four (4) written protests.

Conclusion – The proposed special exception is consistent with *Plan Tucson*, and in compliance with performance criteria of UDC Sections 3.4.4, 3.4.5, 4.8.6 and 4.9.9. Subject to compliance with the preliminary conditions proposed by PDSD, approval of the special exception land use in the C-2 zone is appropriate.

Sincerely,

John Iurino

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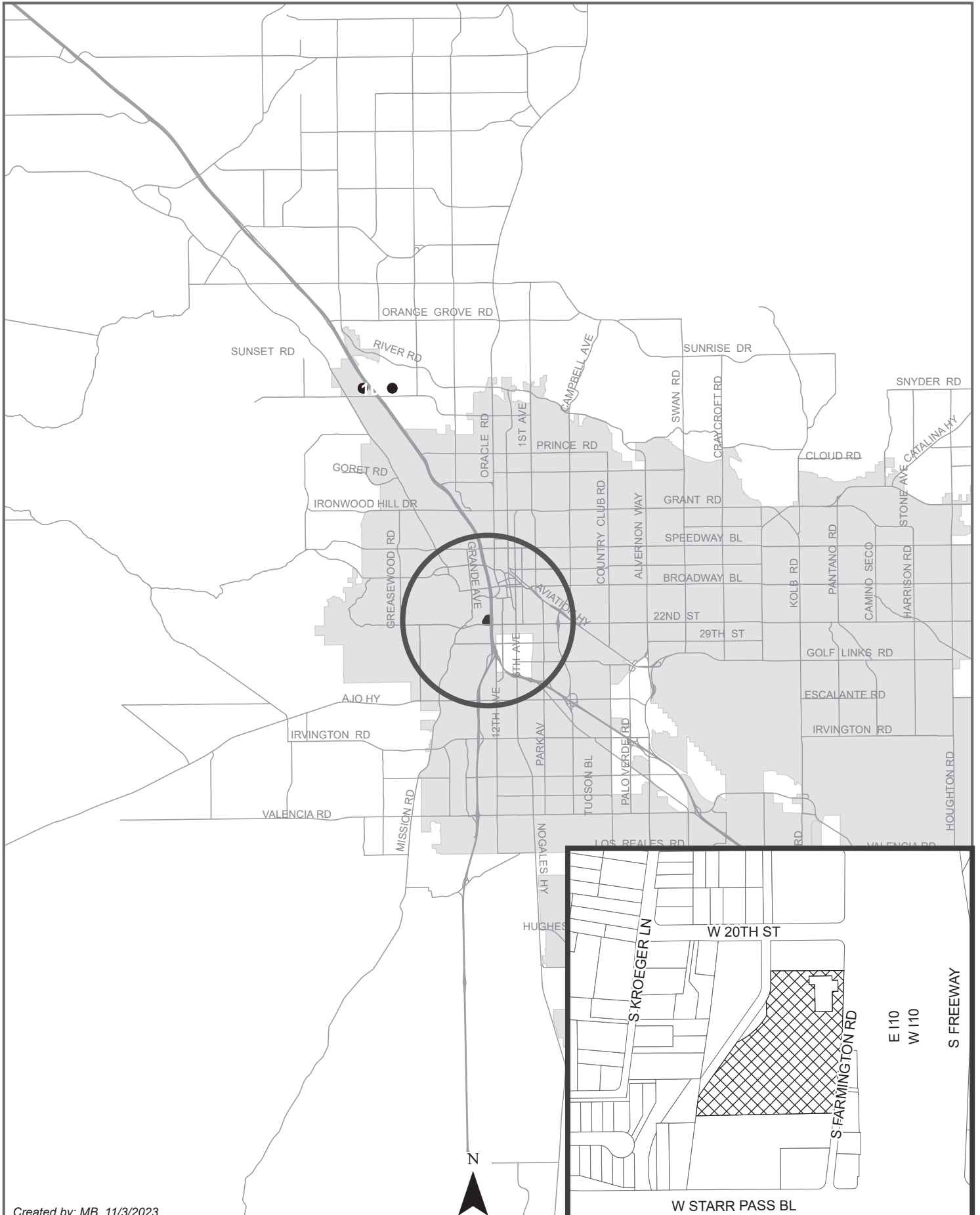
ATTACHMENTS:

Case Location Map

Rezoning Case Map

Cc: Mayor and Council

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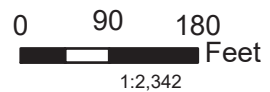


 Area of Special Exception Request

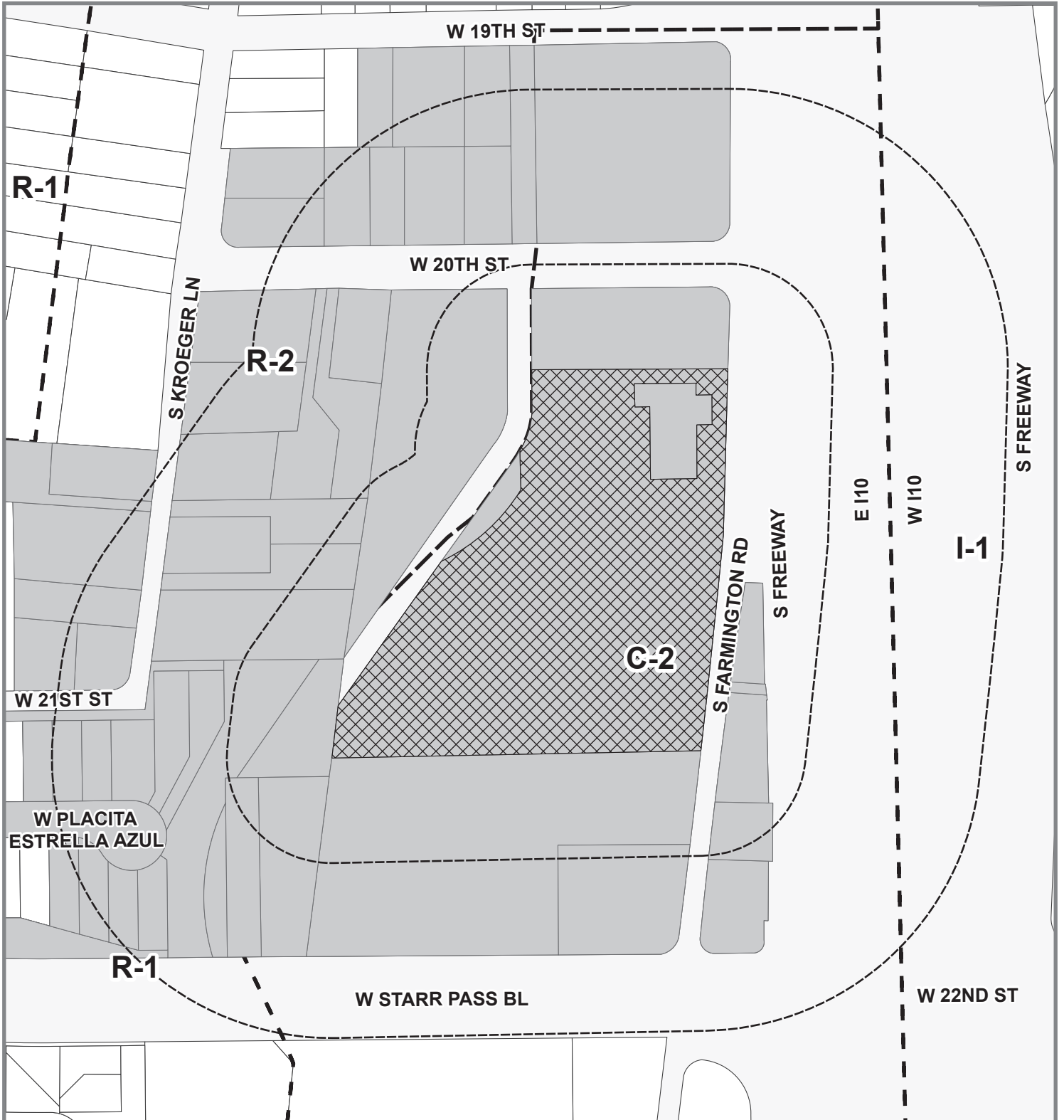
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Base Maps: Twp. 1403 Range 1302 Sec. 14
Ward(s): 1






2020 Aerial

Created by: MB, 11/3/2023



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-  Area of Special Exception Request
-  Properties Notified
-  Zone Boundaries
-  400' Notification Area
-  Protest Area (150 ft. Radius)

Address: 1010 S FREEWAY
 Base Maps: Twp. 1403 Range 1302 Sec. 14
 Ward(s): 1



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