



Zoning Examiner

ZONING EXAMINER DECISION

February 8, 2024

Robert Longaker
The WLB Group
4444 E. Broadway Blvd.
Tucson, AZ 85711

SUBJECT: TP-ENT-0923-00036– 3237 E. Fort Lowell Road, O-3, Non-conforming Substitution (Ward 3)

Public Hearing: February 1, 2024

Dear Mr. Longaker:

SPECIAL EXCEPTION LAND USE REQUEST

Pursuant to the City of Tucson’s Unified Development Code (UDC) and the Zoning Examiner’s Rules of Procedure (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner’s findings and decision for the special exception case TP-ENT-0923-00036 – 3237 E. Fort Lowell Road, O-3, Non-conforming Substitution.

BACKGROUND

This is a request by WLB Group, on behalf of the property owner 3237 Ft Lowell LLC, for approval of a Special Exception Land Use to allow a substitution of a non-conforming Construction Service use to a non-conforming use of Wholesale/retail plumbing supply business with outside storage, as permitted in the *Unified Development Code* (UDC). The project site is located at 3237 E. Fort Lowell and is comprised of two parcels totaling 2.47 acres. The property is currently occupied by a contractor equipment yard, a use which requires C-2 zoning, resulting in establishment of the non-conforming use.

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The Applicant proposes a Plumbing Suppliers, a wholesale/retail plumbing supply business with outside storage. Per the Unified Development Code, this use is classified as Business Supply and Equipment Wholesaling which also requires C-2 zoning. The site including the existing structure will remain largely as it exists currently. The existing perimeter screen walls will be retained and will continue to screen the use from the adjacent neighborhoods. There will be minimal change to the exterior and no additional building height. The site is currently zoned O-3 (Office) and located at the northwest corner of East Fort Lowell Road and North Edith Boulevard, about 1,000 feet from Country Club Road (see Case Location Map).

Due to the nonconforming use as established by the existing Construction Service Land Use, the most restrictive zoning which allows Construction service by right is C-2 zoning. Business Supply and Equipment Wholesaling use are also permitted in C-2 with specific standards. Per the *Unified Development Code*, a new non-conforming use may substitute an existing non-conforming use through the Zoning Examiner Special Exception Procedure. The non-conforming use status was established in 1988 and reaffirmed in 2023 by the current Zoning Administrator.

February 1, 2024, Zoning Examiner Hearing

The Applicant spoke in support of the requested rezoning at the Zoning Examiner hearing. No other person spoke.

As of the date of the Zoning Examiner hearing, there were two (2) written approvals and one (1) written protest.

FINDINGS

Background Information

Existing Land Use:

The existing parcels were utilized as Construction Service Land Use and other uses.

Current Zoning:

O-3: This zone provides for mid-rise, medical, civic, and select other uses, such as urban agriculture and renewable energy generation, that provide reasonable compatibility with adjoining residential uses.

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Surrounding Zoning and Land Use:

North: R-3 (*Residential Zone*); Apartments

South: C-1 (*Commercial Zone*); Apartments, Office Park

East: R-3 (*Residential Zone*); Townhouses

West: R-3 (*Residential Zone*). Apartments

Applicant's Request – The Applicant is requesting to substitute a nonconforming Construction Service use to a nonconforming Business Equipment Supply and Wholesaling use with minimal site improvements.

Planning Considerations – Land use policy direction for this area is provided by *Plan Tucson* and the *Northside Area Plan*.

Plan Tucson (PT): Plan policy is provided by *Plan Tucson*, which identifies the site in the “Existing Neighborhoods” and contains the following policies related to the proposed non-conforming use substitution use from a different land use class:

- **LT28.1.7** Preserve and strengthen the distinctive physical character and identity of individual neighborhoods and commercial districts in the community.
- **LT28.1.18** Support the development and management of healthy and attractive urban vegetation.
- **LT28.2.12** 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.

Development Review for Existing Neighborhoods:

- **LT28.2.4** Support community commercial and office uses located at the intersections of arterial streets, taking into consideration traffic safety and congestion issues.
- **LT28.2.13** Support infill and redevelopment projects that reflect sensitivity to site and neighborhood conditions and adhere to relevant site and architectural design guidelines.
- **LT28.2.14** Protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate nonresidential uses.

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Development Review for Mixed-use Centers:

- **LT28.5.8** Support infill and redevelopment projects that reflect sensitivity to site and neighborhood conditions and adhere to relevant site and architectural design guidelines.
- **LT28.5.9** Protect established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate nonresidential uses.

Northside Area Plan: The subject site is within the *Northside Area Plan*, within Subarea 5. The purpose of the Plan is to guide future development while protecting and enhancing existing uses while mitigating any negative effects. The applicable goals of the Plan, which are designed to be used with the Plan's *General Design and Buffering Guidelines* are:

- Encourage a mix of residential and nonresidential land uses at appropriate locations, while protecting the integrity of existing neighborhoods.
- Protect existing and future residential neighborhoods from non-local traffic and roadway improvements, while providing for development of key city-wide transportation corridors.

The Plan's goals are supported by the following applicable subgoals and policies:

Nonresidential Subgoal Provide for nonresidential uses in the Northside area that are designed in harmony with adjacent development.

Policy 5 –Ensure well-designed nonresidential development by:

- a. Minimizing the number of vehicular access points.
- b. Providing common access points and parking, integrated vehicular and pedestrian circulation systems, and other amenities in common with adjacent nonresidential developments.
- c. Promoting consolidation of abutting parcels for new, nonresidential uses to allow for adequate buffering of adjacent residential development.
- d. Requiring appropriate design elements and buffering techniques during the rezoning and associated development review processes to ensure the sensitive design of nonresidential developments on established neighborhoods. These elements must be shown on rezoning concept plans and development plans (see General Design and Buffering Policies)



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The subject site is within Sub Area 5 of the Northside Area Plan which covers the historic Binghampton neighborhood. Sub Area 5 Land Use policies allow a continuation of the long existing mixed-use land-use pattern in the Binghampton neighborhood and identify a Core Residential Area. The subject site is outside of the Core Residential Area, therefore both residential and nonresidential uses are permitted subject to the Northside Area Plan General Design and Buffering policies. The General Design and Buffering policies help ensure that infill projects are designed in a manner that is sensitive to existing northside development.

Project Background

The property is currently zoned Office O-3 and is occupied by Diversified Design and Construction, a construction service business with a contractor's equipment yard, a use that requires a minimum of C- 2 zoning. This nonconforming use was legally established under prior regulations.

The nonconforming use status of this property was established in 1988 and reaffirmed by the current Zoning Administrator in 2023 via a Nonconforming Use Status Letter.

Substitution Criteria

Section 9.2.4.A of the UDC allows the Substitution of a Nonconforming Use provided the following criteria are met as determined by City Planning Staff and the Zoning Examiner:

A. The substitute use is a use permitted in the most restrictive zoning classification in which the existing nonconforming use is permitted as of right; The proposed wholesale/retail plumbing supply business with outside storage is permitted in the

- a. C-2 zone which is the most restrictive zoning classification in which the existing construction service use is permitted as of right.

B. The substitute use does not generate additional traffic or noise, have longer hours of operation, have additional outside lighting, or cause other negative impacts on adjoining properties greater than those associated with the existing nonconforming use;

- i. Traffic: The proposed wholesale/retail plumbing supply business will generate approximately 25 to 30 customers on-site each day. This is approximately the same number of vehicle trips that were generated by the existing construction service business. Visitors to the site will continue to utilize the access points on Fort Lowell Road used by the construction service business.

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- ii.Noise: The noise generated by the proposed wholesale/retail plumbing supply business is anticipated to be similar or less than that generated by the construction service business. The construction service business would test equipment on occasion in the outdoor yard and there was some noise when loading vehicles and equipment. The proposed wholesale/retail plumbing supply business will not test equipment. A forklift will be used to unload delivery trucks and it is no louder than the contractor's trucks that will be at the property.
- iii.Hours of Operation: The construction service business operated from 7:30 AM to 5 PM and summer hours were from 5 AM to 5 PM. The proposed wholesale/retail plumbing supply business hours of operation will be similar and will be Monday to Friday from 6 AM to 5 PM, Saturday from 6:30 AM to 12 PM and closed on Sundays.
- iv.Lighting: The proposed wholesale/retail plumbing supply business is not anticipating needing additional outdoor lighting.
- v.Other: The existing perimeter screen walls will be retained and will continue to screen on-site activities from surrounding properties.
- vi.Overall, the reuse of the existing buildings and storage areas will have no greater impact than the existing nonconforming construction service use.

C. The substitute use provides parking as required by the Unified Development Code (UDC). The proposal includes 31 vehicle parking spaces, 20 of these spaces are located along Fort Lowell Road. Based on estimates of existing conditions, the existing 31 parking spaces exceed the parking required by the Unified Development Code.

D. The substitute use does not propose an extension or enlargement of the structure or of the areas occupied by the nonconforming use. The proposal does not include any extension or enlargement of the existing buildings. The proposed use will operate in the existing structures and storage areas. No new buildings or building expansions are proposed.



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Engineering/Drainage/Grading/Landscape

The site is developed and will remain part of the proposed project; as such, there will be no elevation changes due to grading. No new landscaping is proposed.

Traffic/Circulation/Accessibility

The site will largely retain the existing traffic circulation and curb cut locations. Additional comments from the Department of Transportation and Mobility provide guidance for required improvements and technical standards as required. Furthermore, the sidewalks along the frontage of Fort Lowell will have to demonstrate ADA slope and design compatibility and any reconstruction of sidewalks along Fort Lowell must be 6' wide.

Conclusion – The proposed substitution of a nonconforming Construction Service use to a Wholesale/Retail plumbing supply business with outside storage use is consistent with *Plan Tucson* and the *Northside Area Plan*, and in compliance with performance criteria of UDC Sections 9.2.4.A-D. Subject to compliance with the attached preliminary conditions, approval of the nonconforming substitution special exception in the O-3 zone is appropriate.

APPEAL

The Zoning Examiner's decision may be appealed to the Mayor and Council pursuant to UDC Section 3.4.3.I. A notice of intent to appeal the Zoning Examiner's decision must be filed with the City Clerk, 255 West Alameda, Tucson, Arizona 85701 by a party of record in accordance with UDC Section 3.9.2 within fourteen days of the effective date of the Zoning Examiner's decision, with a copy delivered to PDSD.

The complete application materials must be filed with the City Clerk within 30 days of the effective date of this decision letter.

A copy of this decision letter can be obtained from either the Planning and Development Services Department (791-5550) or the City Clerk.

DECISION

The Zoning Examiner's decision is approval of the special exception request subject to the conditions proposed by PDSD, attached to this decision letter.

Sincerely,

TP-ENT-0923-00036–3237 E. Fort Lowell Road, O-3, Non-conforming Substitution (Ward 3)



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A handwritten signature in black ink, appearing to read "John Iurino".

John Iurino

Zoning Examiner

ATTACHMENTS:

Case Location Map

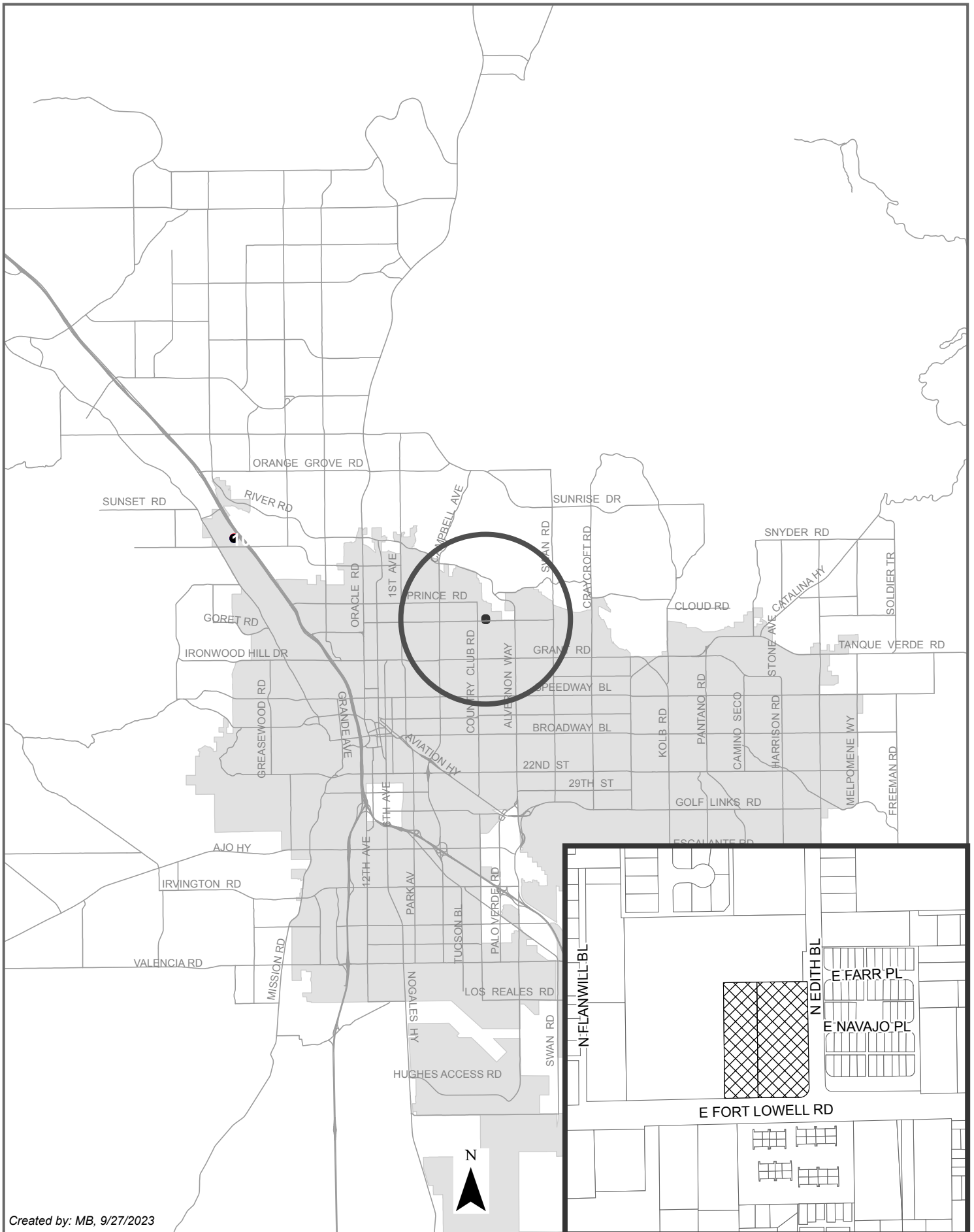
Rezoning Case Map

PDSO Preliminary Conditions

Cc: Mayor and Council

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TP-ENT-0923-00036 - Ft. Lowell LLC - Ft. Lowell and Edith



TP-ENT-0923-00036 - Ft. Lowell LLC - Ft. Lowell and Edith



Area of Special Exception Request

Address: 3237 E FORT LOWELL RD
Base Maps: Twp. 1303 Range 1402 Sec. 28
Ward(s): 3

2020 Aerial

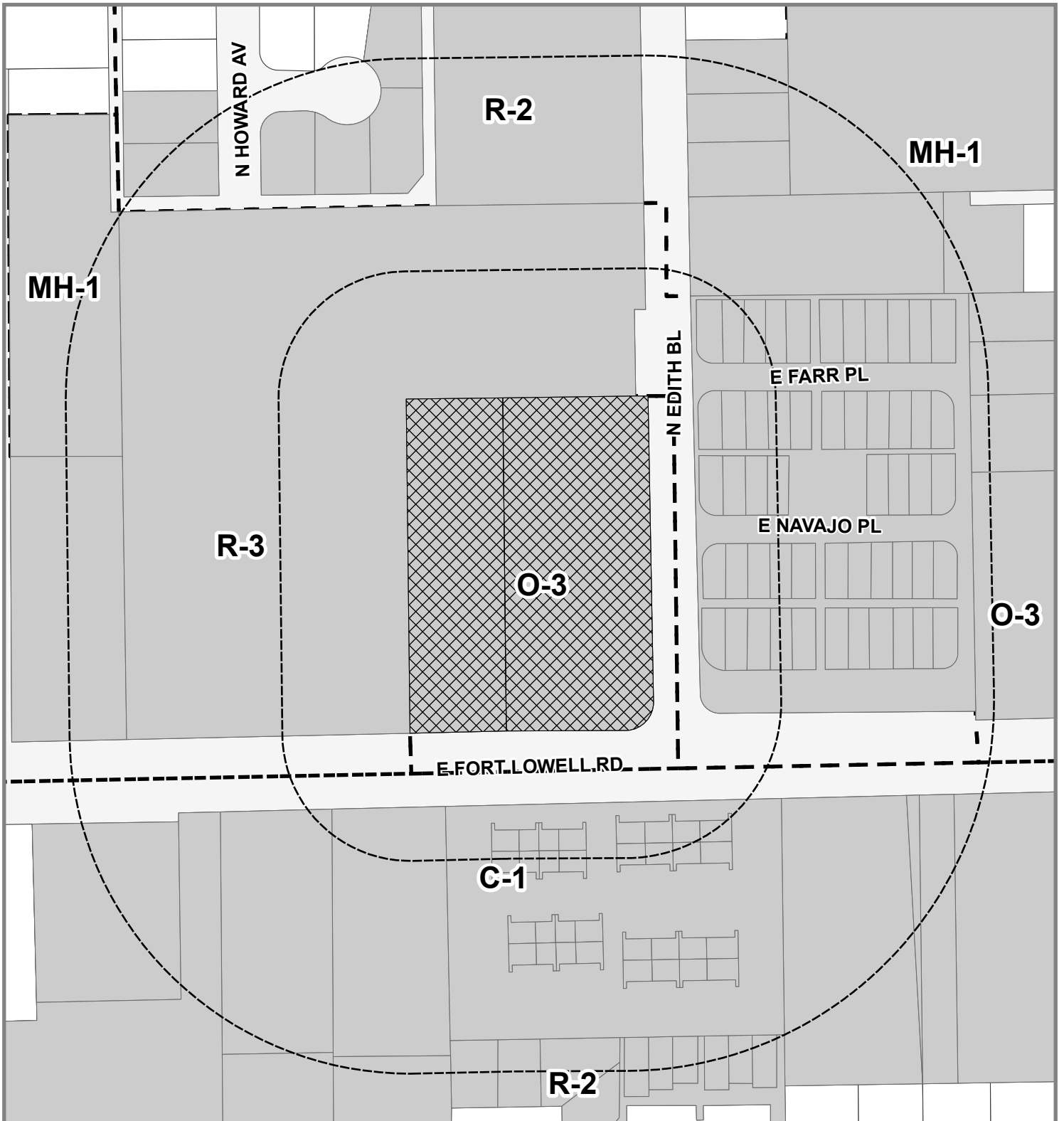
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

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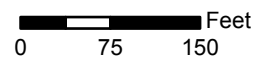


TP-ENT-0923-00036 - Ft. Lowell LLC - Ft. Lowell and Edith



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

Address: 3237 E FORT LOWELL RD
Base Maps: Twp. 1303 Range 1402 Sec. 28
Ward(s): 3



1:1,925

Preliminary Conditions

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PROCEDURAL

1. A development package in substantial compliance with the preliminary development plan dated January 12, 2024, and required reports, are to be submitted and approved in accordance with the *Administrative Manual*, Section 2-06.
2. The property owner shall execute a waiver of potential claims under A.R.S. Sec. 12-1134 for this zoning amendment as permitted by A.R.S. Sec. 12-1134 (I) in the form approved by the City Attorney and titled “Agreement to Waive Any Claims Against the City for Zoning Amendment”.
3. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Historic Preservation Officer. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director of Arizona State Museum.
4. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
5. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of rezoning/special exception.

SITE ENGINEERING

6. All new uses of land or structures require sidewalks (regulated by TSM 10-01.0.0).
7. Within 60 days of the Zoning Examiner decision, a Right of Way permit shall be applied for by the applicant and submitted to DTM and PDSO for sidewalk improvements. Sidewalk along Ft. Lowell Rd must be shown to have a cross slope of 2% or less where it is crossed by driveways or be reconstructed (TSM 10-01.4.1) A pedestrian easement will be required if the sidewalk crosses onto private property. SDG 3-14 Where sidewalks cross driveways, the sidewalk should be dominant, maintaining the level, slope, and material of the sidewalk. If the sidewalk along Ft. Lowell Rd is being reconstructed, it should be built to 6' wide (TSM 10-01.4.1.A.1.a).