



**PLANNING COMMISSION  
REGULAR MEETING AGENDA**

**ZOOM/ YOUTUBE ONLINE MEETING  
313 Cree Meadows Drive, Ruidoso, NM 88345**

**Tuesday, August 4, 2020 – 2:00 pm**

**Attendance:** In response to the Governor's declaration of a Public Health Emergency and ban on large public gatherings, the Planning Commission meeting on Tuesday, August 4<sup>th</sup> will be held via Zoom video conference.

**Viewing:** Members of the public will have the ability to view the meeting through Zoom and YouTube.

Zoom meeting website: <https://us02web.zoom.us/j/84554018797>

Meeting ID: 845 5401 8797

One tap mobile: +16699006833,,84554018797# US

YouTube at <https://www.youtube.com/channel/UCiI01gVEgmVcl-vZLOxTN0w/featured>. The YouTube channel can be streamed using this address from most smartphones, tablets, or computers.

Public Comment: The Commission will take general public comment and comment on the meeting's specific agenda items in written form via email at: [stephaniewarren@ruidoso-nm.gov](mailto:stephaniewarren@ruidoso-nm.gov) or by mail: 313 Cree Meadows Drive, Ruidoso, NM 88345. These comments will be distributed to all Commissioners for review.

**1. CALL TO ORDER, ROLL CALL, AND DECLARATIONS OF CONFLICT OF INTEREST**

**2. CERTIFICATION OF COMPLIANCE WITH RESOLUTION #2020-01**

**3. APPROVAL OF AGENDA**

**4. APPROVAL OF MINUTES**

**a) Regular Meeting July 7, 2020**

**5. PUBLIC INPUT** (*Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker*) **Public Input must be submitted by email to [StephanieWarren@Ruidoso-NM.gov](mailto:StephanieWarren@Ruidoso-NM.gov) or by fax at 575-258-4367 before August 4<sup>th</sup> at 10:00 AM. In addition, anyone wishing to speak during the meeting can do so by joining the meeting via zoom.**

I certify that notice of the Public Meeting has been given in compliance with Section 10-15-1 through 10-15-4 NMSA 1978 and Resolution 2020-01. Agendas are available at Village of Ruidoso City Hall, 313 Cree Meadows Drive, Ruidoso, NM 88345. If you are an individual who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Village Clerk at Village of Ruidoso City Hall at least one week prior to the meeting or as soon as possible.



**6. QUASI-JUDICIAL PUBLIC HEARING** *(all parties with standing shall have an opportunity for cross-examination.)*

- a) **Conditional Use Approval Case CU 2020-0507-** Dakota Montes is requesting Conditional Use approval to convert an existing building into a mixed use of commercial retail and short term rentals within a C-3 Midtown Commercial District located at Block L, Lots 16 through 20 of the Ruidoso Springs Subdivision; 2637 Sudderth Drive, Ruidoso, New Mexico.
- b) **Variance Approval Request Case PV 2020-0533-** Paul Martin is requesting approval of a variance to encroach 9 feet into the required 10 feet right-side yard setback and 10 feet into the front-yard setback as designated by the C-2 Community Commercial District to construct 2 uncovered decks at Lot 16A, Block A of the Navajo Subdivision located at 2717 Sudderth Dr., Ruidoso, New Mexico.
- c) **Rezone Request Case RZ 2020-0534-** 110 Starlite LLC, is petitioning to rezone their property from a R-1 Single-Family Residential District to a C-1 Neighborhood Commercial District located at 130 Starlite Rd., Tract BB-2 Located in the SE4 Section 22 Township 11S Range 13E, Ruidoso, New Mexico.

**7. COMMUNITY DEVELOPMENT REPORT**

**8. COMMISSIONERS COMMENTS**

**9. ADJOURNMENT**

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**VILLAGE OF RUIDOSO  
PLANNING COMMISSION, REGULAR MEETING  
313 CREE MEADOWS DRIVE  
RUIDOSO, NM 88345  
July 7, 2020**

**DRAFT**

**CALL TO ORDER AND ROLL CALL:**

The regular meeting was called to order by Chairman Mark Flack at 2:01 p.m. Commissioners Flack was recorded present at Village Hall; Commissioners Briley, Kelly, Michelena and Tondino were recorded present via Zoom by roll call. Commissioner Byars was recorded as absent, Village staff present was Samantha J. Mendez, Community Development Director; Timothy Dodge, Village of Ruidoso Manager; Zach Cook, Village Attorney; and Stephanie Warren, Short-Term Rental Administrative Assistant. There were 4 visitors present.

**CERTIFICATION OF COMPLIANCE WITH RESOLUTION 2020-01:**

Stephanie Warren stated the notice of the meeting was properly posted in accordance with Resolution 2020-01 and section 54-40 of the Village Municipal Code.

**APPROVAL OF AGENDA:**

Commissioner Briley moved to approve the agenda as presented. Commissioner Michelena seconded and the motion carried with all ayes.

**APPROVAL OF MINUTES:**

Commissioner Briley moved to approve the February 4, 2020 minutes. Commissioner Kelly seconded and the motion carried with all ayes.

Commissioner Briley moved to approve the May 26, 2020 minutes with the corrections listing denial reasons that were presented to the applicant of the Public Hearing for 525 Resort Drive. Commissioner Michelena seconded and the motion carried with all ayes.

**PUBLIC INPUT:** *(Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker.)*

There was no Public Input.

Chairman Flack inquired if any of the Planning Commission members had or were aware of any conflicts of interest with any of the items on the agenda. The Planning Commission Members stated they did not have any conflict of interest with any of the cases being presented.

Chairman Flack asked that all in attendance who would be speaking at the meeting please stand to be sworn in.

**Quasi-Judicial Public Hearing: Variance Approval Request Case # PV 2020-0373 1712 Sudderth Dr.**

Director Mendez stated Steven Gomez is requesting approval of a variance to encroach 9 feet into the required 10 feet side setback as designated by the C-2 Community Commercial District to construct an outdoor seating patio on Lot 2A of the State National Bank Tracts located at 1712 Sudderth Drive, Ruidoso, New Mexico.

Chairman Flack asked who will be speaking on the case. Mr. Steven Gomez stated Mark Younger, the architect and himself as the owner will be answering questions.

Mr. Younger stated that an effect of the COVID virus affects the customers in the restaurants and people are becoming used to the 6-foot spacing requirements. In prediction of the pandemic, people will continue to want spacing instead of crowded restaurants. 84 seats are available inside, the temporary tent outside seats an additional 36. That is only 45% of the buildings designed occupancy. The restaurant previously provided 185 seats. In efforts to serve the customers and meet the financial needs of Cornerstone Bakery, we are proposing a permanent outdoor seating area between the existing building and the drive-thru of the bank. It will only be accessible from the restaurant. High screening walls will be built on the side closest to the bank. We are asking for approval of the variance to construct on that side.

Chairman Flack asked if there were questions for Mr. Younger.

Mr. Gomez asked if he could have clarification on the staff findings of the case study. He was late in reading the details, but just saw a suggestion to deny the request. Chairman Flack stated there will be clarification provided by the staff.

Commissioner Briley stated he was going to also ask questions about the staff findings.

Mr. Younger stated that one part of findings is of the ordinance statement of the geography of the lot. Because of this being a restaurant and the size and the seating, we are required to provide a certain number of spots. We only have a few options to comply with how the seating goes. One is the existing tent which is not in a safe location, and the other is the proposed location. The special circumstances are particular to this property.

Director Mendez stated that the recommendation for denial was based on the code stating variances may only be granted to hardships related to the physical characteristics of land such as steep lots that

are unbuildable as an example. We feel that the amount of parking does meet the building code requirements. As far as losing parking spaces. The detached outdoor seating that is currently on the location would be a more appropriate location.

Mr. Gomez stated he decided to move from the location due to safety concerns for staff and patrons crossing in front of drive-thru area. The current tent is making it hard for vehicles to turn in from the busy road. We try to mitigate safety concerns because that area is congested, and traffic comes in fast. There have been a few accidents in the last 3 years in that location. Does not want more congestion in that location. The proposed location is dead space and more feasible. Does not want to lose any parking, the parking lot is filled all the time.

Chairman Flack asked if there has been any discussion with or from Compass Bank. Mr. Gomez stated he has not heard any objections.

Director Mendez wanted to touch base on the stated drive up window. She has looked through records and does not see where that was properly permitted and stated that that location would be better suited for the construction proposed. Mr. Gomez stated that the plans submitted included the drive-up window in October of 2017. Director Mendez stated in recommendation number 2, the staff finds that in accordance with section 54-66(a)(2) "Variances" the circumstances or conditions are such that the strict application of the provisions of this article would not deprive the applicants of the reasonable use of the land or building, granting of the variance is not necessary for the reasonable use thereof.

Director Mendez stated, for finding number 3, the staff finds that granting of this variance would or could potentially adversely impact the health, safety, welfare of customers to the neighboring financial institution and is therefore not in accord with section 54-66 and 54-92 of the Village Code. Personal information could be heard by the patio dinners. Mr. Gomez stated that if the bank had concerns, they would have proposed questions when it was first built. Mark and I have a design that will allow the privacy of the customers to the bank. That will be built up with a high wall and music will be played. Mr. Young stated that when they combined lots, the bank was in direct contact and had him measure the building and occupancy loads and to make sure they had correct access to the drive up. They were active during that process previously.

Chairman Flack asked if someone is sitting on the patio, is the wall above head level. Mr. Gomez stated yes, even standing there. Currently people standing there they can look into vehicles and into the financial Institution. Mr. Younger stated the proposed wall is over 5 feet in height. From the drive thru, they may see a dead walk past.

Chairman Flack opened the Public Hearing at 2:25 p.m.

There was no public comment.

Chairman Flack closed the Public Hearing at 2:26 p.m.

Commissioner Briley stated he understands the staff reasoning, it does not meet any of the provisions for a hardship variance. I am trying to understand his reasoning on why he is wanting to put safety as a hardship. I know the tent outside is bad, but you have a restaurant inside. Once the tent is gone, there is not further safety issue. Mr. Gomez stated safety is finding the appropriate location. The hardship is losing parking spots. We cannot resume business as usual; we need to make sure that we make the financial income the bakery needs. Commissioner Briley stated the tents were not there previously, he has created his own safety issue, and does not see how that can be justified. Will the structure be permanently or is it detached? Mr. Younger stated it is attached to the building but is free standing. There will be some load transfer to the existing posts, and the joists will be attached to the current structure. Will need new footings and will be essential a covered deck. Commissioner Briley asked how many seats will be provided on the patio. Mr. Gomez stated it will set 35 dining seats and 15-20 patron waiting spots. Commissioner Briley asked if outdoor seating need to follow the social distancing requirements of the executive order. Mr. Gomez stated it does right now. Commissioner Briley asked about drainage mitigation, as the roof is only 1 foot from the bank property. Mr. Younger stated the drainage will be taken care of by gutters and brining the water to the back of the property. Mr. Gomez stated before they built the restaurant, the 2 buildings were attached. Commissioner Briley stated setbacks are reserved for fire protection and emergency crew access; does this structure have to have sprinklers as a structure or does it need that? Mrs. Mendez stated that the building codes will be discussed with the building officials if the patio is approved. Mr. Young stated that it is not required per the code.

Commissioner Michelena asked if there was another place of the building, he could have added this. Mr. Gomez stated only the temporary location of the tent or the proposed location. They originally wanted a roof top dining, but that is not financially feasible.

Chairman Flack asked Mr. Gomez when the buildings were attached. Mr. Gomez stated it was when the property was all owned by State National Bank. Mr. Younger stated he has pictures of the previous building.

Commissioner Kelly asked if he put the patio on the west side of the building, and had it connected; you are stating that it takes away parking spots? Mr. Gomez stated no, that would be putting in front of the drive through, there would be no way to connect it to the building on that side. Mr. Younger stated they would have to remove large tree and handicapped and regular spaces to route the traffic to the side property line.

Chairman Flack stated that currently it is hard for big trucks to enter the location, and if a structure was built there, it would be even harder.

Chairman Flack entertained a motion to approve or deny this request. Commissioner Briley stated based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **DENY** the

requested variance in Case #PV-2020-0373 with the conditions stated in the case report. The motion to deny was not seconded, that motion failed.

Commissioner Tondino stated he would like more time to weigh this out and find a better situation. Can they come back to the item? This is helping our local business owner survive, maybe we can find something to where they may not encroach so much. Chairman Flack stated the applicant has done much diligence. We are going through much isolations and restrictions; in my opinion they have done all that was asked to do. It may not meet the criteria of hardship in the circumstance of the code, but it does meet it in other circumstances with the pandemic. Chairman Flack entertained a motion to approve the request.

Mr. Gomez stated he is still unclear on the recommendation of denial; time is of the essence.

Commissioner Tondino asked if he can provide something more permanent, adding to the structure. Mr. Gomez stated it was too costly to enclose another dining room space. COVID is making it where we need to make sure we are doing our part of this pandemic. Can a variance hardship be considered to the situation in our country, and not limit to the land? Can we view this as a hardship in this case? This is a huge financial hit on business due to the current pandemic issue and our code does not address this situation.

Commissioner Briley stated that the code does state that special circumstances or conditions, fully described in the findings, are peculiar to the land or building for which the adjustment is sought and does not apply generally to land or buildings and has not resulted from any act of the applicant. Attorney Cook stated that in finding number 2, the circumstances we are facing now does restrict his business. Director Mendez stated that variances are not granted for uses, only for hardships of the land.

Commissioner Tondino stated they he would not need a variance; this is due to the pandemic creating a hardship. Director Mendez stated that variances are not granted for financial hardships. She understands people are preferring outdoor dining, but by the code, this is not proper request for a variance to provide outdoor dining. She does not feel that we are placing unreasonable use of his property.

Chairman Flack stated Samantha goes by the code and the letter of the law, we as the Commission have the right to say we see what that says, but feel in this particular time, we can interpret the code ourselves and apply the code as seen and not abide by the strict application of the code.

Attorney Cook stated that if this was to be appealed from the decision to deny or approve would be by Mr. Gomez or neighbor and they could appeal, and your decision must be arbitrary and capricious. That means you did not weigh in the evidence and just made a decision. The amount of time used to discuss all of the circumstances shows you have followed that.

Commissioner Kelly stated based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **APPROVE** the requested variance in Case #PV-2020-0373 with the conditions stated in the case report. Commissioner Tondino seconded the motion.

Stephanie Warren called roll to record the votes:

Chairman Flack: Aye

Commissioner Briley: Nay

Commissioner Kelly: Aye

Commissioner Tondino: Aye

Motion carried with 1 Nay and 3 Aye votes.

**New Business: Public Hearing: Ordinance Amendments to Chapter 54 section 54-146 Lot Numbering; Recommendations to Amend and Revise Chapter 54-146.**

Director Mendez stated the public hearing to change the 1 paragraph that is not working for the Village to set forth the appropriate guidelines of addressing.

Commissioner Briley asked how has it just recently stopped working? Director Mendez stated the code does not have enough guidance, and it is delaying 911 response times, and does not enforce people to post the proper address. Director Mendez stated these addresses will be placed by the Village with the help of the Fire Department.

Chairman Flack asked if this will only happen downtown. Director Mendez stated it will be Village wide.

Village Manager Dodge asked Director Mendez about even numbers being up and down both sides of the street; are you stating it is not uniform. Director Mendez stated yes, there is a mixture of even and odd numbers down both sides of the streets in parts of the Village.

Commissioner Kelly stated she recently experience this with a cabin of hers, will she keep the address? Director Mendez stated if the lots are addressed appropriately there would be no changes.

Commissioner Briley stated he has been part of addressing, this will pose issues with utilities. Director Mendez stated that the Village has contacts that they will work with to provide corrections. Another issue brought to our attention for 911 response delays is the same street names as neighboring communities. There has been a committee formed that is going through the code and the addresses of the Village. If corrections approved, it will be a public hearing by the Village Council in August. Would like to see clarification of the code and the drawing to clarify that signs will be placed for all addresses.

Chairman Flack asked if it is on a mailbox, will they need the posting too. Director Mendez stated yes, all addresses will be uniform.

Commissioner Briley asked how costly this will be for the Village and property owners for business cards, letterhead, etc. Director Mendez stated she understands the financial impact, but there is no price tag on a person's life and safety. We are focusing on the safety and welfare of the citizens.

Director Mendez stated the signs are reflective white with black numbers. The Village will provide the first plaque. The Village has obtained a grant. The signs will be installed 4 feet in height.

Chairman Flack opened the Public Hearing at 3:05 p.m.

There was no public comment.

Chairman Flack closed the Public Hearing at 3:06 p.m.

Chairman entertained a motion to approve this to Village Council. Commissioner Kelly made a motion to approve the recommended changes to present to the Village Council, seconded by Commissioner Michelena.

Stephanie Warren called roll to record the votes:

Chairman Flack: Aye

Commissioner Briley: Aye

Commissioner Kelly: Aye

Commissioner Michelena: Aye

Motion carried with all ayes.

### **Community Development Report:**

Director Mendez stated she has submitted the CDBG request to DFA for scoring. The project is to improve the water, sewer, roads, and fire hydrants in the Town and Country Subdivision. The grant award is for \$750,000 match and the VOR is leveraging GO Bond dollars.

Work has begun for the metropolitan redevelopment plan. There is a steering committee and Site Southwest is assessing the area and properties from the circle to the "Y". The MRA will allow us to add more tools to our funding toolbox to improve the commercial areas of Sudderth Drive. This will help us to entice businesses to move into the area.

Ruidoso Safe is still going on in midtown where personal protective equipment (mask, gloves, and hand sanitizer) is being offered to everyone on the street every weekend.

**Commissioners Comments:**

none

**ADJOURNMENT:**

With no further information being provided to the Planning Commission, Chairman Flack adjourned the regular meeting at 3:18 pm.

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

**APPROVED:** \_\_\_\_\_  
Mark Flack, Chairman

**ATTEST:** \_\_\_\_\_  
Stephanie Warren, Short-Term Rental Administrative Assistant

**MINUTES ARE DRAFT UNTIL APPROVED AT THE NEXT REGULAR MEETING**



**Planning Commission**

**Zoom at Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345  
Case Report– Variance Request #PV-2020-0533**

**Case #PV- 2020-0533–** Variance Request  
**Subject Property:** 2717 Sudderth Drive  
**Zoning:** C-2 Community Commercial District

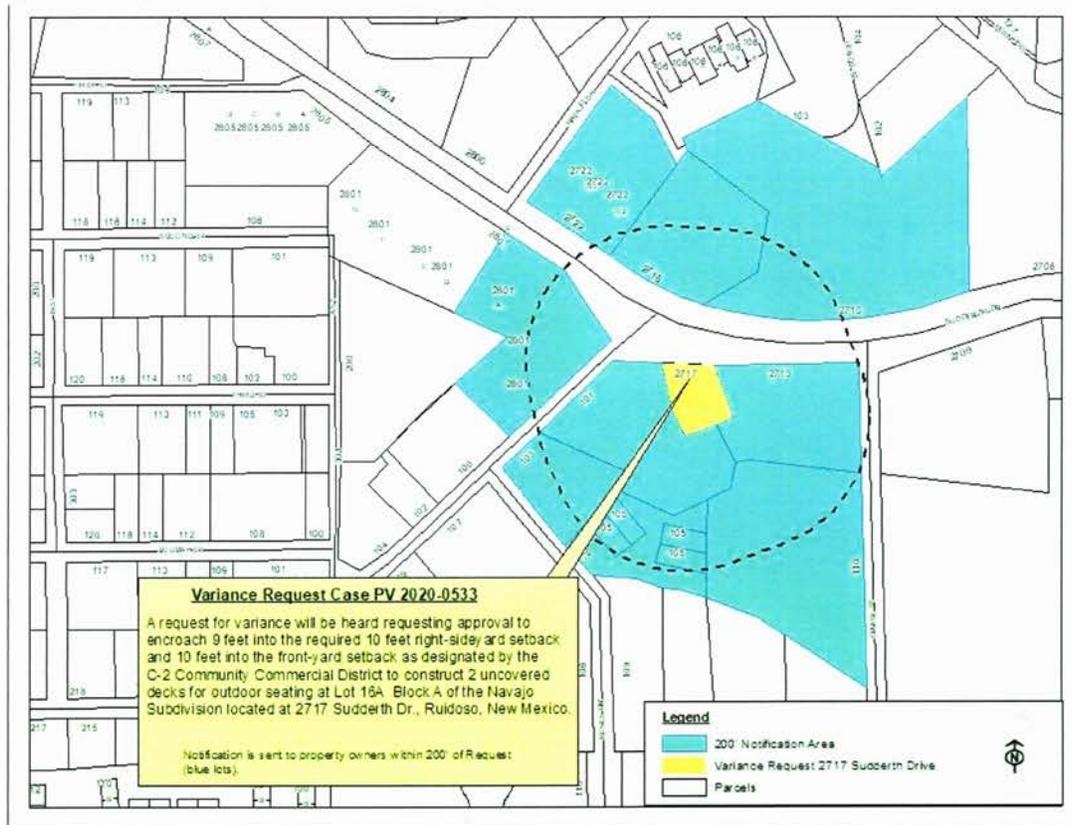
**Subdivision:** Navajo  
**Legal Description:** Block A Lot 16A  
**Applicants/Owners:** Paul Martin  
**Hearing Date:** August 4, 2020 at 2:00 p.m.

**Applicable Sections of Village Code:**

- Sec. 54-100. – C-2 Community Commercial District.
- Sec. 54-140. - Setback and height encroachments, limitations and exceptions.
- Sec. 54-66. Variances.

**REQUEST:** Paul Martin is requesting approval of a variance to encroach 9 feet into the required 10 feet right-sideyard setback to construct a 532 sq ft uncovered deck and 10 feet into the front-yard setback to construct a 306 sq foot uncovered deck as designated by the C-2 Community Commercial District at Lot 16A Block A of the Navajo Subdivision located at 2717 Sudderth Dr., Ruidoso, New Mexico.

**I. NOTIFICATION AREA MAP**



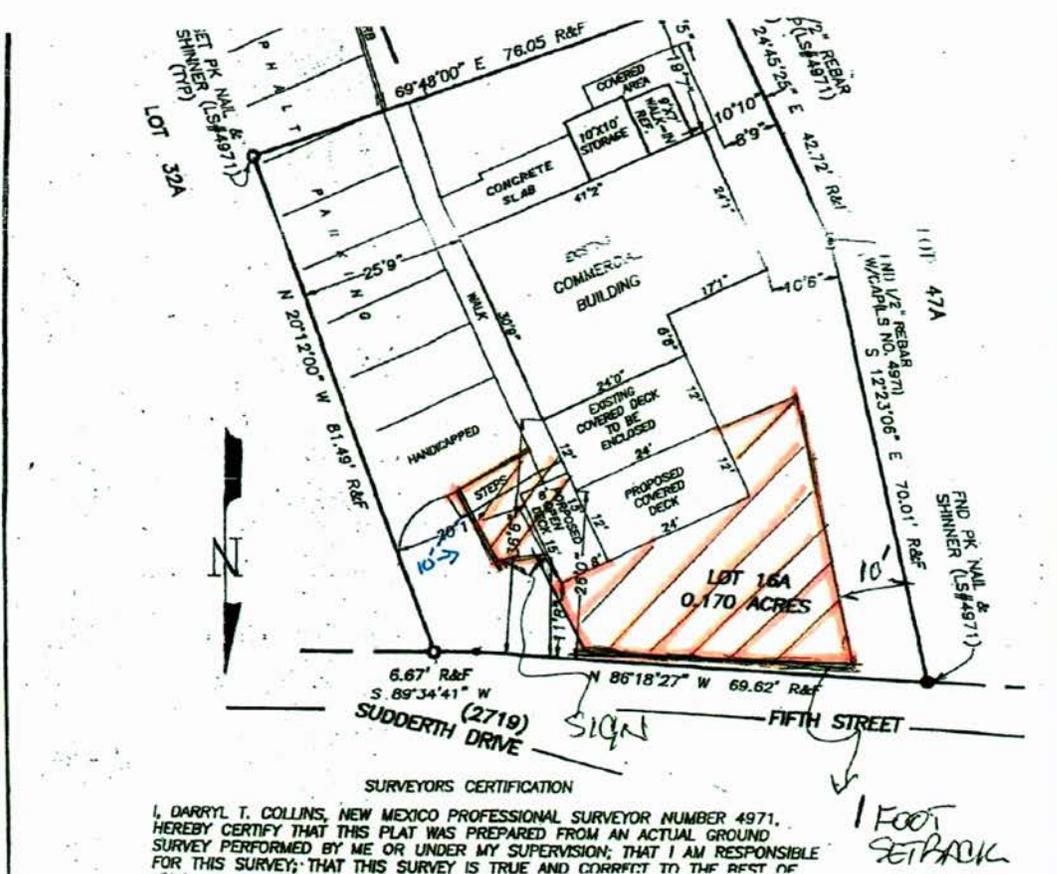
II. SITE DATA

Direction	Zoning	Existing Land Use
North	C-2	Community Commercial District-Retail
East	C-2	Community Commercial District-Bank
South	C-2	Community Commercial District-Hotel
West	C-2	Community Commercial District-Dr. Office

Setbacks:	Per Code:	Proposed:	Variance:
North Side Yard	10'	1'	9'
West Side Yard	10'	20+'	0'
East Front Yard	20'	10'	10'
South Rear Yard	10'	50+'	0'

III. Site Plan.



IV. Current Structure Street View

Aerial View from Google Maps



Street View from Google Maps





## V. ANALYSIS

### Sec. 54-100. - C-2 community commercial district.

- (a) *Purpose.* The purpose of the C-2 community commercial district is to provide for low-intensity retail or service outlets which deal directly with the consumer for whom the goods or services are intended. The uses allowed in this district are to provide goods and services on a community market scale and should be located in areas which are served by arterial street facilities.
- (b) *Principal permitted uses.* Principal permitted uses in the C-2 district are as follows, subject to the provisions of subsection (c) of this section (conditional uses):
- (14) Restaurants or prepared foods, including alcoholic beverages served in conjunction with food service.
- (f) *Setbacks and height.* Setback and height requirements for the C-2 district are as follows:
- (1) *Minimum setback from property lines.* The minimum building setbacks from property lines shall be as follows:
- a. Building setbacks:
    1. Front: 20 feet.
    2. Interior side and rear: 10 feet.
    3. Corner side: 15 feet. Street side(s)
    4. Residential district boundary: Same as the adjoining residential district.
  - b. Parking lots:
    1. Front: 4 feet.
    2. Interior side and rear: 3 feet.
    3. Corner side: 4 feet.
    4. Residential district boundary: 3 feet.
- (2) *Maximum height.* Maximum height of structures shall be 35 feet.

(Code 1985, § 10-4-9; Ord. No. 97-12, § 1, 7-29-97; Ord. No. 99-14, 9-14-99; Ord. No. 2000-02, 3-14-00; Ord. No. 2003-08, 10-14-03; Ord. No. 2011-02, §§ II, III, 1-25-11; Ord. No. 2011-08, 3-29-11; Ord. No. 2011-11, 6-12-11; Ord. No. [2016-03](#), § 2, 2-9-16; Ord. No. [2017-07](#), § 3, 6-13-17; Ord. No. [2019-02](#), 3-12-19)

### Sec. 54-140. - Setback and height encroachments, limitations and exceptions.

The following shall be considered as permitted encroachments on setback and height requirements, except as otherwise provided in this article:

- (2) *Permitted encroachments in side and rear yards.* Balconies eight feet above grade may extend into the yards to within five feet of a lot line, provided the balconies do not extend over nonresidential driveways. Detached outdoor picnic shelters, open arbors and trellises may extend to within five feet of a side or rear lot line, except that no such structures shall exceed 500 square feet. Recreational equipment, picnic tables and apparatus needed for the operation of active and passive solar energy systems are permitted encroachments.



(6) *Covered decks, porches and breezeways in front yards.* Covered decks, porches and breezeways in R-1, R-2, M-1 and M-2 districts may extend into the front yard, but not closer than 15 feet to the front property line, provided that they are not enclosed.

#### **Sec. 54-66. Variances.**

(a) Generally. The planning commission may vary or adjust the strict application of the requirements of this article in the case of, shallow or steep lot or other physical condition applying to a lot or building where strict application of this article would result in practical difficulty or unnecessary hardship that would deprive the owner of reasonable use of the property involved.

Granting of variances shall be done in accord with the requirements and procedures established in this article. Variances may only be granted for hardships related to the physical characteristics of land and should normally be limited to regulations pertaining to height or width of structures or the size of yard and open spaces where a departure from the literal interpretation of this article will not be contrary to the public interest or establish a precedent that would undermine the purpose and intent of this article as described in section 54-32. Use variances shall not be permitted. No variance or adjustment in the strict application of any provisions of an ordinance may be granted unless:

- (1) Special circumstances or conditions, fully described in the Planning Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood and have not resulted from any act of the applicant after the adoption of this article. Substandard lot size shall be considered a special circumstance in accordance with section 54-143(j);
- (2) For reasons fully set forth in the planning commission's findings, the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land or building, the granting of the variance is necessary for the reasonable use thereof and the variance as granted is the minimum adjustment that will accomplish this purpose; and
- (3) The granting of the variance is in harmony with the purpose and intent of this article and will not be harmful to the neighborhood or otherwise detrimental to the public welfare.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.



**Sec. 54-66 (d) Review and decision by planning commission.**

In considering applications for variance, the planning commission shall consider the effect of the proposed variance upon the health, safety and welfare of the community, traffic conditions, light and air, danger of fire, risk to the public safety, and the safety and the effect on values of property in the surrounding area.

The planning commission shall hear oral or written statements from the applicant, the public, village staff or its own members. If the planning commission determines by motion that the special conditions applying to the structure or land in question are peculiar to such property or the immediately surrounding area and do not apply generally to other land or structures in the district in which the land is located, that granting the proposed variance will not in any way impair health, safety or welfare or in any other respect be contrary to the intent of this article and the village comprehensive plan, and that the granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty, the planning commission may grant such variance and impose conditions and safeguards therein.

A variance shall not be approved except upon the affirmative vote of two-thirds of all the members of the planning commission present. The planning commission shall be **required to make findings supporting its decision** based on subsections (a) through (d) of this section.

**The Planning Commission has the following options:**

1. **Approval** of the Variance request, with reasons stated in the motion, granting the requested conditional use.
2. **Require modifications** to the Variance request, and have it returned for Planning Commission review at the next meeting.
3. **Deny** the request of the Variance request with reasons and conditions.

Approval of a conditional use requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.



**If the Planning Commission votes to approve this application, staff recommends that the following conditions of approval be imposed:**

1. Applicant must complete and return necessary Variance Agreement prior to any construction including an improvement survey that notates the variance that was approved on the face of the plat. Failure to complete and record variance agreement within six (6) months from approval will void the approval of Case #PV-2020-0533. Plat must be record in the office of the Lincoln County Clerk.
2. Applicant must obtain necessary permits to begin construction within six (6) months of Planning Commission approval and construction must comply with Village Code and applicable state standards and be completed within one (1) year of the issuance of the building permit.
3. Granting of the variance relief does not confer any authorization for additional variances nor the improvement upon the portion of the dwelling granted relief to encroach within this application. All additional improvements within encroachments would require future variance relief from the Planning Commission.
4. Applicant shall make no substantial changes in plans without Planning Commission approval.
5. By accepting approval of this Variance Agreement, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.



V. STAFF FINDINGS & RECOMMENDATION

Variance requests require findings in 3 parts to determine whether the application meets the criteria necessary to grant the requested relief.

1. First, staff finds that in accordance with §54-66(a)(1) “Variances” **special conditions or circumstances are present that are peculiar to the property.**
2. Additionally, staff finds that in accordance with §54-66(a)(2) “Variances” the circumstances or conditions are such that the **strict application of the provisions of this article would deprive the applicants of the reasonable use of the land or building**, the granting of the variance is necessary for the reasonable use thereof.
3. Finally, staff finds that the granting of this **variance would not adversely impact the health, safety, welfare, property values or neighborhood character** and is therefore in accord with §54-66 and §54-92 of the Village Code. **Staff Finds: That with the slope of the property and size of the right-of-way there is no anticipated visual impacts to be imposed onto vehicular or pedestrian traffic.**
- 4.

As a result of these findings, there is sufficient evidence to recommend that the applicant be granting relief and therefore staff recommends granting approval as requested of a variance in Case #PV-2020-0533 with the conditions attached.

**Suggested Motion:**

“Based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **GRANT** the requested variance in Case #PV-2020-0533 with the conditions stated in the case report.”

Prepared & Submitted by:

Samantha J. Mendez  
Community Development Director

# # #

By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Owner/ Applicant



Village Hall  
313 Cree Meadows Drive  
**Case Report – Rezone Request #RZ-2020-0534**

**Case #PV-2019-0883**– Rezone Request  
**Current Zoning:** R-1 Single-Family District  
**Subdivision:** N/A  
**Applicants:** 110 Starlite LLC

**Subject Property Address:** 130 Starlite Rd  
**Proposed Zoning:** C-1 Neighborhood Commercial District  
**Legal Description:** Tract BB-2 SE4 Section 22; T 11S R13E

**Planning Commission Hearing Date:** August 4, 2020 at 2:00 p.m.

**Applicable Sections of Village Code:**

- §54-65 Rezoning
- §54-92 R-1 Single-Family Residential District
- §54-099 C-1 Neighborhood Commercial District

I. **REQUEST:** 110 Starlite LLC, is petitioning to rezone their property from a R-1 Single-Family Residential District to a C-1 Neighborhood Commercial District located at 130 Starlite Rd., Tract BB-2 Located in the SE4 Section 22 Township 11S Range 13E, Ruidoso, New Mexico.

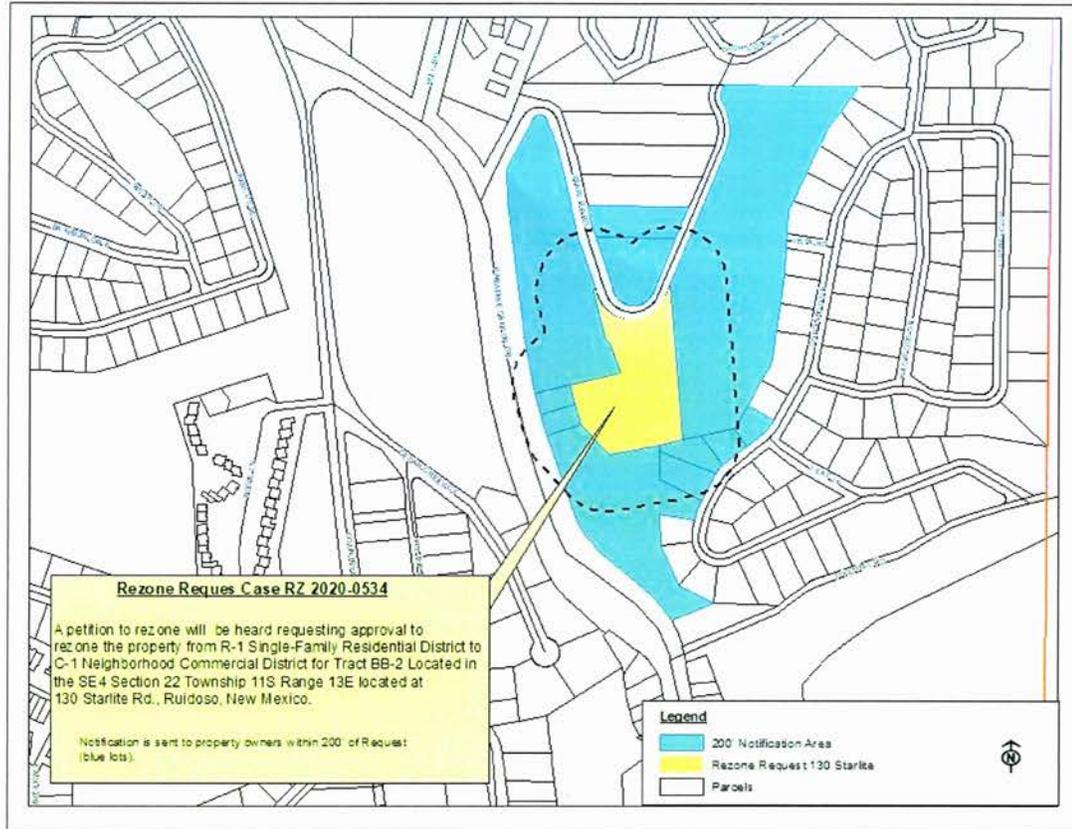
II. **SITE DATA**

Direction	Zoning	Existing Land Use
North	R-1	Single-Family Residential District- Single-Family Home
East	R-1	Single-Family Residential District-Vacant/Undeveloped
South	R-1	Single-Family Residential District- Vacant/Undeveloped
West	C-1	Neighborhood Commercial District-Cree Manor Apartments

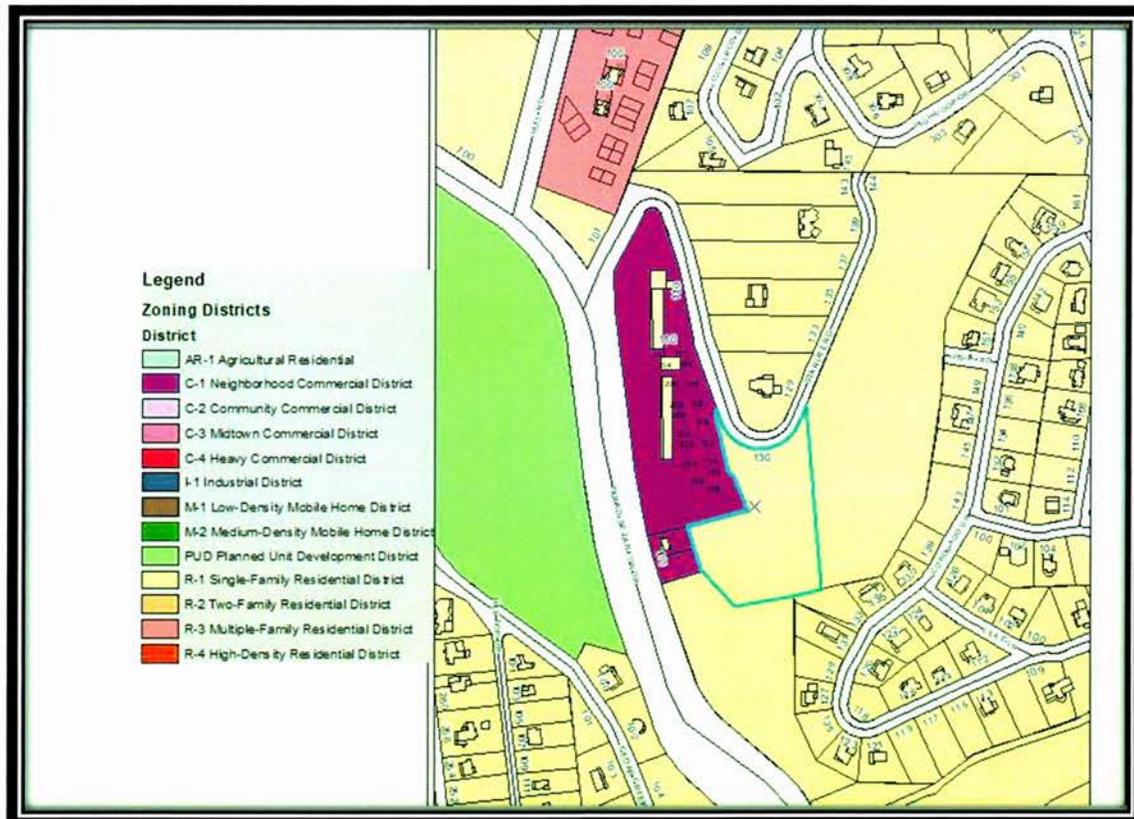
**Comparison of setbacks**

Setbacks*:	R-1 (Current)	C-1 (Proposed)
Front Yard	20'	25'
Side Yards	10'	10'
Rear Yard	20'	20'

### III. NOTIFICATION AREA MAP



### IV. Current Zoning Overlay Map.



V. Overhead view from Google Maps.



VI. ANALYSIS

Sec. 54-65. - Rezoning.

- (a) *Generally; initiation.* In accordance with the provisions of state statutes, the council may from time to time change the zoning of parcels of land within the village. These changes in zoning classification are for the purpose of meeting the land use needs of the residents of the village in conformance with the village comprehensive plan. Re-zonings may be initiated by the council, by the planning commission, or by petition of the person whose property would be affected by the rezoning.
- (c) *Public hearing requirements.*
  - (1) No rezoning may be adopted until public hearings have been held on the matter by the planning commission and by the council.
  - (2) Notice of any public hearing shall be accomplished as set forth in section 54-40.
- (d) *Hearing and recommendation by planning commission.* A rezone not initiated by the planning commission shall be referred to the planning commission for study and public hearing. In its deliberations on the matter, the commission shall consider oral or written statements from the applicant, the public, village staff and its

own members. The application may not be postponed more than two meetings in succession. The planning commission shall notify the council, in writing, of its recommendation.

- (e) *Hearing and decision by council.* The council may, at its next regular meeting after receipt of the report and recommendation of the planning commission, set a date for a public hearing on the rezoning request or, by majority vote of all members of the council, act to deny the planning commission's recommendation for rezoning and thereby retain current zoning. A rezone which has been recommended for denial by the planning commission shall not be reviewed by the council except upon written request by the applicant. During the scheduled public hearing on the matter, the council may approve or disapprove the request for rezoning by ordinance, or postpone the request. The application may not be postponed more than two meetings. If approved, the planning administrator shall revise the official zoning map accordingly. A vote of a majority of all members of the council shall be required to reverse the recommendation of the planning commission.
- (f) *Protests.* If there is a written protest against a change in the zoning classification of a parcel of land, signed by the owners of 20 percent or more of the area of lots included in the proposed change, or of those within a distance of a 100-foot radius, the change shall not be approved except upon the affirmative vote of a majority of all of the members of the council.
- (g) *Resubmittal of application.* Application for a zoning district change which has been rejected by the planning commission and/or village council for a parcel of land shall not be resubmitted or reconsidered for a period of one year after it has been acted upon at a public hearing of the planning commission, except that application may be made for a different zoning district change on the same parcel of land six months after a previous action has been taken; provided that such application for a different zoning district change shall be permitted only on payment of a double fee.

#### Sec. 54-92. - R-1 single-family residential district.

- (a) *Purpose; maximum density .* The purpose of the R-1 single-family residential district is to provide for the development, at a low density, of single-family detached dwellings and directly related complementary uses. The district is intended to be strictly residential in character with a minimum of disturbance due to traffic or overcrowding.
- (b) *Principal permitted uses.* Principal permitted uses in the R-1 district are:
  - (1) Single-family dwellings.
  - (2) Public parks.
- (c) *Conditional uses.* Conditional uses in the R-1 district are:
  - (1) Day care centers. A minimum of 35 square feet per child shall be provided within the day care facility for indoor activity and at least 50 square feet of fenced-in outdoor play space per child shall be provided on site. Fenced-in outdoor play space shall not include driveways, parking areas or land unsuited for children's play space by virtue of the usage or natural features. A state license shall be obtained prior to commencement of operation of a day care facility.
  - (2) Electrical substations, gas regulating stations, water pump stations, water towers and lift stations.
  - (3) Public buildings.
  - (4) Churches.
  - (5) Schools.
  - (6) Radio, television or microwave transmitting towers, except as otherwise allowed herein as accessory uses.

- (7) *Two family dwellings* . Provided the following conditions are met:
- a. One of the dwellings is owner occupied as their primary residence.
    1. When second dwelling is for long term monthly rental.
  - b. The use is for generational housing, long term monthly rental or care provider.
  - c. Parking shall be provided at the rate of one space for the second dwelling, plus two spaces for the resident owner. All parking shall be provided on site and shall be landscaped to maintain residential character of the property.
  - d. Shall comply with section 22-31(a) of the Ruidoso Code for two family dwellings.
- (d) *Permitted accessory uses* . Permitted accessory uses in the R-1 district are: Accessory structure(s) or garage(s) for dwellings shall not occupy more than 25 percent of a rear yard (find the area to the rear of the principal building and measure from the side property lines). See section 54-137.
- (1) Private garages.
  - (2) Greenhouses.
  - (3) Tool houses, play houses, sheds and other similar buildings for domestic use.
  - (4) Private or jointly owned swimming pools and tennis courts for the use and convenience of the residents.
  - (5) Home occupations as provided in division 6 of this article. Use of accessory structures or garages for home occupation purposes is prohibited.
  - (6) Television and radio signal receiving facilities.
  - (7) Amateur radio (HAM) transmitting and receiving facilities that do not exceed the following standards unless technical documentation is submitted justifying the exceedance:
    - a. Maximum height of each antenna: Sixty-five feet as measured from highest ground elevation on lot to top of antenna;
    - b. Antenna shall not be located closer to front property line than primary structure;
    - c. Maximum number of antenna support structures: One;
    - d. Setbacks: setbacks, including guy wires, shall comply with the provisions of subsection (e) below.
    - e. The antenna and any support structure shall be painted a color scheme that blends with the surrounding landscape.
  - (8) Detached living or sleeping structures. Are permitted as accessory structures and shall not be rented or leased separate from the principal building; except by other provisions of this Code.
- (e) *Development requirements*.
- (1) Development requirements for the R-1 district are as follows:
    - a. Subject to subsection aa. below, minimum lot area: 10,000 square feet. See section 54-66 for lots less than 10,000 square feet.
      1. Resubdivision. Resubdivision of previously subdivided or platted land shall be as provided herein. The provisions of this subsection shall apply to any land, regardless of size, identified as a lot, tract or similar term and described by lot or tract number or letter, block number or letter, street address or similar means.
        - a. Reserved.

- b. The planning commission and village council shall consider the size of adjoining lots, the effects of the resubdivision on those adjoining lots, the availability of village utilities and the capacity to provide utility service to the newly created lots, and other pertinent factors in determining the actual sizes of the lots to be allowed. Adjoining lots shall include those lots separated from the subject lots by a street or alley.
- c. The provisions herein shall not apply to:
- d. Tracts of land described only by metes and bounds;
- e. Those cases where all of the land in a previously platted subdivision is owned by a single person and an application for replat of the entire subdivision is submitted pursuant to subsection 54-284(d)(1).
- f. Nothing herein shall be construed to prevent the replatting of smaller lots into larger lots or otherwise replatting contiguous or adjacent lots where there is no increase in the number of lots after the replat as otherwise provided by this Code.

- b. Minimum lot width: 75 feet.
- c. Minimum lot depth: 100 feet.
- d. Minimum front setback: 20 feet.
- e. Minimum side setback: 10 feet.
- f. Minimum corner side setback: 20 feet. Street side(s)
- g. Minimum rear setback: 20 feet.

Exceptions:

- 1. Accessory structures may have a 10 foot rear setback.
- 2. Corner lots minimum set back: 10 feet

- h. Maximum height: 35 feet.

**Sec. 54-99. - C-1 neighborhood commercial district.**

(a) *Purpose.* The purpose of the C-1 neighborhood commercial district is to provide for establishment of local centers for convenient retail outlets which deal directly with the consumer for whom the goods or services are intended. These centers are located in predominately residential areas and are limited to a type of use compatible with the surrounding residential character of the area. Except as specified below, merchandise which is offered for sale in the C-1 district must be housed completely within the building footprint, which includes the roof overhang. Unless a conditional use is granted by the planning commission for outdoor sales, outdoor sales are restricted as follows:

(b) *Principal permitted uses.* Principal permitted uses in the C-1 district, not to exceed 2,000 square feet in area, are:

- (1) Antique stores and arts and craft stores.
- (2) Art studios or galleries.
- (3) Retail bakeries.
- (4) Barbershops.
- (5) Beauty parlors.
- (6) Hotels and motels, and cabin rental, detached or semidetached, not to exceed 50 rental units, and including incidental rental offices, pools, spas and related recreational facilities for use of guests only, and also including recreational equipment rental and sales available primarily for guests, which activity shall be under the same proprietorship.

- (7) Candy and ice cream stores.
- (8) Convenience food stores (no gas sales).
- (9) Branch libraries.
- (10) Drugstores, variety stores, and notion and soft goods stores.
- (11) Professional offices.
- (12) Public buildings.
- (13) Self-service laundries and cleaning pickup stations.
- (14) Restaurants or prepared foods, including alcoholic beverages served in conjunction with food service.

(c) *Conditional uses.* Conditional uses in the C-1 district are:

- (1) Residential uses as follows:
  - a. Single-family and two-family dwellings.
  - b. Multifamily dwellings (townhomes and apartments) not to exceed six units or 135 linear feet, whichever is less.
  - c. Multiple-family structures containing four or more dwelling units.
  - d. Townhouse clusters of at least four units but not more than 170 feet in length.
- (2) Convenience food stores with not more than four gas pumps.
  - a. Pump stands shall be set back not less than 25 feet from any street right-of-way, not less than 40 feet from any non-street property line and not less than 100 feet from any residential district boundary.
  - b. Interior curbs of not less than six inches in height shall be constructed to separate driving surfaces from sidewalks, landscaped areas and street rights-of-way.
- (3) Resident health care facilities, including nursing homes and group homes.
- (4) Hotels and motels, and cabin rentals, detached or semi-detached, in excess of 50 rental units and including incidental rental offices, pools, spas and related recreational facilities for use of guests only.
- (5) Miniwarehouses.
  - a. *Minimum site area.* Minimum site size shall be one acre.
  - b. *On-site circulation, drives and driveways.*
    - 1. Each miniwarehouse shall provide a minimum of two exits.
    - 2. All one-way driveways shall provide for one ten-foot-wide parking lane and one 15-foot-wide travel lane. Traffic direction and parking shall be designated by painting or signs.
    - 3. All two-way driveways shall provide for one ten-foot-wide parking lane and two 12-foot-wide travel lanes.
    - 4. The parking lanes may be eliminated when the driveway does not serve storage cubicles.
    - 5. At least one parking space for each ten storage cubicles, equally distributed throughout the storage area, shall be provided, in addition to those in the parking lanes.
    - 6. All driveways and parking, loading and circulation areas shall be paved with concrete, asphalt or asphaltic concrete.
  - c. *Fencing and screening.*
    - 1. Fencing shall be required around the perimeter of the project at a minimum of six feet in height and constructed of decorative concrete block, as approved by the planning commission.
    - 2. All outdoor storage shall be limited to recreational vehicles and shall be screened from view from surrounding properties.
  - d. *Setbacks.* Any side of a building providing doorways to storage areas shall be set back from the property line with not less than 25-foot side and rear yard setbacks; otherwise, sides of a building not providing doorways to storage areas may have a zero side or rear lot line provided the building is of the same material as the fencing. If not of the same material, the rear yard

setback shall be at least 15 feet.

e. *Trash enclosures.* Masonry trash enclosures shall be installed subject to the approval of the planning commission.

f. *Prohibited uses.* No auctions, commercial sales, garage sales or similar activities shall be conducted on the premises.

(6) Commercial stables and outfitters.

(7) Public parks.

(8) Day care centers. A minimum of 35 square feet per child shall be provided within the day care facility for indoor activity and at least 50 square feet of fenced-in outdoor play space per child shall be provided on site. Fenced-in outdoor play space shall not include driveways, parking areas or land unsuited for children's play space by virtue of the usage or natural features. A state license shall be obtained prior to commencement of operation of a day care facility.

(9) Electrical substations, gas regulating stations, water pump stations, water towers and lift stations.

(10) Churches.

(11) Schools.

(12) Radio, television or microwave transmitting towers, except as otherwise allowed herein as accessory uses.

(d) *Permitted accessory uses.* Permitted accessory uses in the C-1 district are: See section 54-137.

(1) Business signs consistent with division 5 of this article.

(2) Trash enclosures consistent with section 54-144(d).

(3) Parking consistent with section 54-141.

(4) Storage structures.

(5) Accessory structures common to the primary and conditional uses approved for this district.

(e) *Access.*

(1) Access to commercial activities shall be allowed only from arterial or collector streets or a street specifically designed for such development, provided, the planning commission may grant a variance from this provision upon a showing of good cause, if said commercial activity is located on either U.S. Highway 70 or State Highway 48.

(2) Access points shall be located at least 150 feet from any street intersection.

(3) Access points on the same street shall not be spaced closer than 100 feet as measured from the centerlines. Commercial developments of a small scale shall be encouraged to develop common access drives and parking facilities.

(4) Commercial developments which may not be able to meet the requirements of subsections (e)(2) and (3) of this section and which are requesting deviations from such standards shall submit an engineer's report certified by a professional engineer addressing the following site conditions, both present and future:

a. Traffic volumes.

b. Turning movements.

c. Traffic controls.

d. Site design.

e. Site distances.

f. Location and alignment of other access points.

Based upon this data, the planning commission shall determine whether a deviation from the required standards is justified and, if so, what alternative requirements will be necessary.

(f) *Setbacks and height.* Setback and height requirements for the C-1 district are as follows:

(1) *Setback from property lines.* The minimum building setback from property lines shall be as follows:

a. Building setbacks:

1. Front: 25 feet.

2. Interior side and rear: 10 feet.

3. Corner side: 10 feet.

4. Residential district boundary: Same as adjoining residential district.
  - b. Parking lots:
    1. Front: 4 feet.
    2. Interior side and rear: 3 feet.
    3. Corner side: 4 feet.
    4. Residential district boundary: 3 feet.
  - c. Under certain conditions, the planning commission may reduce the required standard yard setbacks and parking requirements as set out in subsection (f)(1)a of this section and section 54-141. It must be shown that, because of shared parking facilities and/or shared access and drives, the standard requirements for yard setbacks and parking would not be necessary or in the best interest of the citizens of the village.
    - (2) *Maximum height.* Maximum height of structures shall be 35 feet.
  - (g) *Lot width and lot area.*
    - (1) The minimum lot width shall be 100 feet.
    - (2) Minimum lot area shall be determined by building area, parking requirements and required setbacks.
    - (h) *Screening.* All principal and accessory uses shall be screened from adjacent residential districts as described in section 54-134.
    - (i) *Landscaping.* All areas not designated for buildings, circulation, parking or storage shall be landscaped as described in section 54-135.
    - (j) *Signs.* Signs are allowed according to division 5 of this article.
    - (k) *Relationship to overlay zones.* Any property located in the C-1 district must comply with the regulations of any overlay zone and satisfy any flood hazard requirements.
    - (l) *Hillside and forest protection.* Property located in the C-1 district shall comply with the hillside protection standards and the forest protection standards set forth in sections 54-132 and 54-133.
- (Code 1985, § 10-4-8; Ord. No. 2000-12, 9-12-00; Ord. No. 2011-02, § I, 1-25-11; Ord. No. 2011-08, 3-29-11; Ord. No. 2011-11, 6-12-11; Ord. No. [2019-02](#), 3-12-19)

**The Planning Commission has the following options:**

1. **Approval** of #RZ-2020-0534, with reasons stated in the motion, recommend to the Village Council to conduct a Public Hearing for decision and approval.
2. **Approval in part and denial in part** of with reasons stated.
3. **Require modifications** to #RZ-2020-0534, and have it returned for Planning Commission review at the next meeting.
4. **Deny** the entire request of #RZ-2020-0534 with reasons and conditions.

**V. STAFF FINDINGS & RECOMMENDATION**

1. Staff finds that in accordance with §54-65(a) “Rezoning” Changes in zoning classification are for the purpose of meeting the land use needs of the residents of the Village in conformance with the Village Comprehensive Plan. The recommendation to the Village Council is necessary for the reasonable use thereof.
  
2. Staff finds that the granting of this **rezone would not adversely impact the health, safety, welfare, property values or neighborhood character** and is therefore in accord with §54-65 of the Village Code.
  
3. Staff finds that the proposed zoning change is continuant and adjacent to the C-1 Neighborhood Commercial District and the R-1 Single-Family Residential District. Applicant owns the C-1 Neighborhood Commercial District property as well.

As a result of these findings, there is sufficient evidence to recommend that the applicant be granting relief and therefore staff recommends granting approval as requested rezoning in Case #RZ-2020-0534 with the conditions attached.

**Suggested Motion:**

“Based upon the foregoing findings of fact per §54-65 of the Village Code, I move to **RECOMMEND** the petitioned rezoning in Case #RZ-2020-0534 to the Village Council in accordance with **Sec. 54-65. – Rezoning (e)** Conduct a Public Hearing.

Prepared & Submitted by:  
Samantha J. Mendez  
Community Development Director

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By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

\_\_\_\_\_ / \_\_\_\_\_  
Owner/ Applicant