City of Carson City
Agenda Report

Date Submitted: November 22, 2013

Agenda Date Requested: December 5, 2013
Time Requested: One Hour

To: Mayor and Board of Supervisors

From: Community Development - Planning Division

Subject Title: For Possible Action: To consider an appeal of certain conditions in the Planning Commission's approval to amend a previously approved Special Use Permit for Rob Lauder (property owners: Bernard/Bernard, Cuccaro, LLC and William F. and D. Horne et. al.) for permanent outdoor display of merchandise, on property zoned Retail Commercial (RC), located at 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson Street, APNs 002-091-03, -04, and -06. (SUP-09-055A) (Susan Dorr Pansky)

Staff Summary: The amended Special Use Permit (SUP-09-055A) for permanent outdoor display of merchandise for sale at the Carson Shopping Center was reviewed and conditionally approved by the Planning Commission on September 25, 2013, based on the required findings for approval. At the Planning Commission meeting, the applicant expressed disagreement with proposed Conditions 8, 9 and 10 related to the locations and sizes of the outdoor display areas. Decisions of the Planning Commission may be appealed to the Board of Supervisors. An appeal of the Planning Commission's approval of SUP-09-055A was properly filed pursuant to the submittal requirements of the Carson City Municipal Code, Section 18.02.060 (Appeals). The Board of Supervisors may uphold, modify or reverse the Planning Commission's decision.

Type of Action Requested:

- ☐ Resolution
- ☒ Formal Action/Motion
- ☐ Ordinance-Second Reading
- ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ( ) Yes (X) No

Planning Commission Action: Approved the amended Special Use Permit on September 25, 2013, by a vote of 3 ayes, 1 nay, 1 abstained and 2 absent.

Recommended Board Action: I move to uphold the Planning Commission's decision to approve the amended Special Use Permit, SUP-09-055A, for permanent outdoor display of merchandise on property zoned Retail Commercial, located at 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson Street, APNs 002-091-03, -04, and -06 based on the required findings and subject to all of the conditions of approval as approved by the Planning Commission, with the following modification to Condition No. 9:

9. Nothing in the northwest corner of Display Area No. 3, measured at a 45 degree angle 20 feet from the eastern edge of the display, shall exceed 36 inches in height at any time.

Explanation for Recommended Board Action: Please see the attached staff memo and Planning Commission staff report for explanation of the proposed action.

Applicable Statute, Code, Policy, Rule or Regulation: CCMC 18.02.060 (Appeals), 18.02.080 (Special Use Permits)

Fiscal Impact: N/A
Explanation of Impact: N/A

Funding Source: N/A

Alternatives:

The Board of Supervisors may consider the following alternative actions in deciding the appeal of three conditions of the Planning Commission's approval of SUP-09-055A to amend the Special Use Permit for permanent outdoor display of merchandise on property zoned Retail Commercial located at 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson Street, APNs 002-091-03, -04, and -06, based on the specific staff findings in the staff report.

1) The Board of Supervisors may approve the appeal of three of the conditions of approval of SUP-09-055A as follows;

   - Condition 8 is modified and will now state: "Display Area No. 2 shall be limited to maintain 12 foot drive aisles on the west and the north sides of the display area. If the display from Display Area No. 3 is relocated to Display Area No. 2, the relocated display area shall be subject to the same minimum drive aisle requirements as that of Display Area No. 2 and shall be limited to the three spaces adjacent to Display Area No. 2 as shown on the site plan.

   - Condition 9 is modified and will now state: "Display Area No. 3 shall be permitted so long as the display height requirements are in conformity with Carson City Development Standards, Div. 12.11.2 (4).

   - Condition 10 is modified and will now state: "The under eave display areas shall be permitted in all areas requested so long as a 48" aisle width is maintained at all times."

2) The Board of Supervisors may approve modified conditions of approval other than those proposed by the appellant, approved by the Planning Commission, or proposed by staff.

3) If additional information is submitted to the Board of Supervisors that the Board believes warrants further review and consideration of the application by the Planning Commission, with the concurrence of the appellant, the Board may refer the matter back to the Planning Commission.

4) If the Board of Supervisors finds that the Planning Commission erred in approving the Special Use Permit amendment, the Board may reverse the Planning Commission's decision and DENY SUP-09-055A, citing the finding(s) for denial. Exercise of this option would result in denial of the amended Special Use Permit, but would leave the original Special Use Permit intact. Under this circumstance, the applicant would be required to reduce the expanded outdoor display areas that currently exist to what was approved with the original Special Use Permit.

Supporting Material:

1) Staff Memo to the Board of Supervisors
2) Appellant's Letter of Appeal and Justification
3) Planning Commission Draft Minutes
4) Planning Commission Case Record
5) Late Information Submitted on behalf of Applicant prior to and at Planning Commission Meeting
6) Late Information Submitted by Staff at the Planning Commission Meeting
6) Planning Commission Packet

Prepared By: Susan Dorr Pansky, Planning Manager

Reviewed By: _____ Date: 11-25-13
(Community Development Director)

_____ Date: 11/25/13
(City Manager)

_____ Date: 11/25/13
(Deputy City Manager)

_____ Date: 11/25/13
(District Attorney's Office)

_____ Date: 11/25/13
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

_____
(Vote Recorded By)

Carson City Planning Division

108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180
www.carson.org
www.carson.org/planning

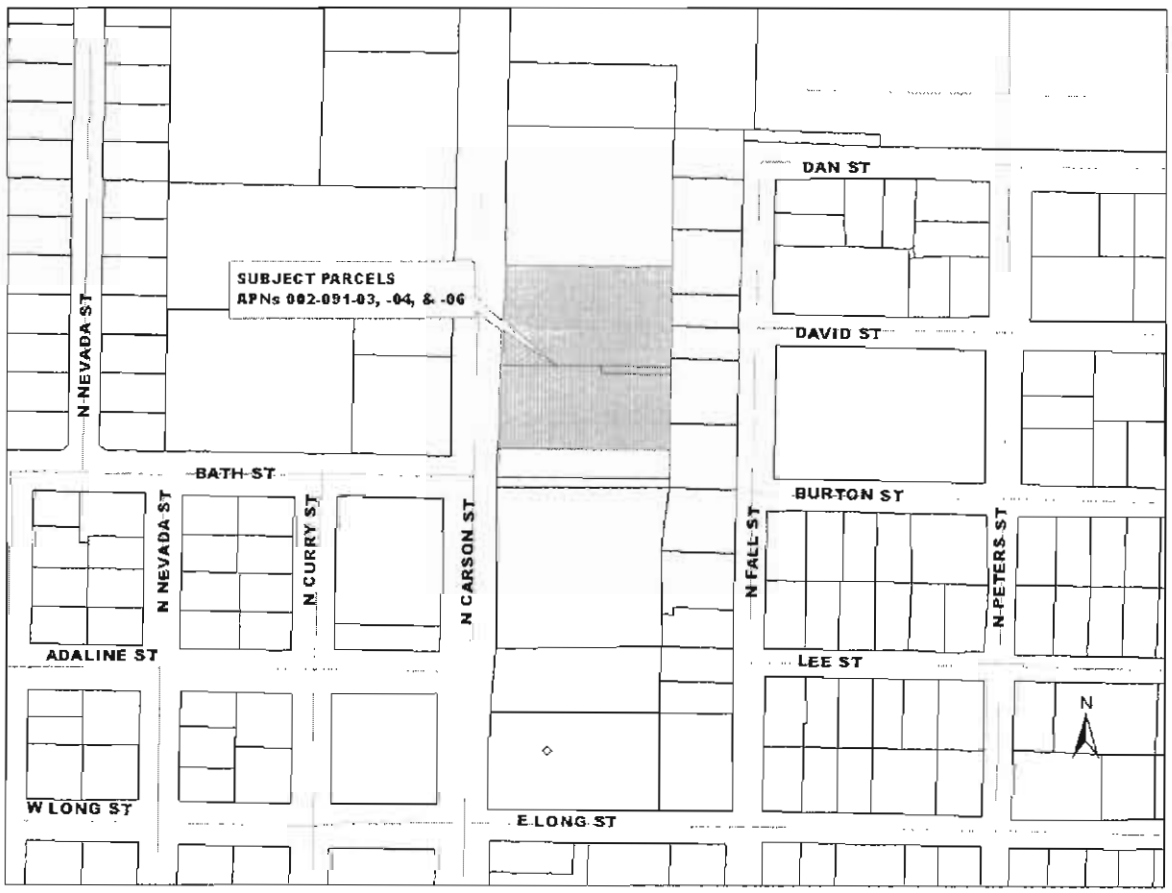
MEMORANDUM

TO: Mayor and Board of Supervisors

FROM: Susan Dorr Pansky, Planning Manager

DATE: December 5, 2013

SUBJECT: MISC-13-135 (SUP-09-055A) – Appeal of certain conditions in the Planning Commission's approval to amend a previously approved Special Use Permit for permanent outdoor display of merchandise on property zoned Retail Commercial (RC), located at 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson Street, APNs 002-091-03, -04, and -06, based on the specific staff findings in the staff report.



BACKGROUND:

- On September 25, 2013, the Planning Commission conditionally approved the amended Special Use Permit by a vote of 3-1, with two absent and one abstention.

The subject property is known as the Carson Shopping Center and has an active Special Use Permit for permanent outdoor display areas as outlined in the included staff report. The applicant requested to amend the existing Special Use Permit to increase the size of approved outdoor display areas in response to being notified by the Planning Division that the outdoor display areas had expanded beyond the limits of the previously approved Special Use Permit. Staff recommended approval of the amended Special Use Permit with 22 conditions of approval that included previously approved conditions, amended conditions and new conditions based on the applicant's proposal.

DISCUSSION:

The application noted above was reviewed and conditionally approved by the Planning Commission based on the required findings for approval. At the September 25, 2013 meeting, testimony was given by the applicant, Rob Lauder, an additional representative of the application, Michael Suglia, the property owner, and several members of the public both in favor and opposed to the project. Both Mr. Lauder and Mr. Suglia acknowledged and agreed with the recommendation for approval from staff, but disagreed with three conditions set forth in the staff report.

Please refer to the attached staff report presented to the Planning Commission on September 25, 2013, late information provided by staff and Mr. Suglia, draft minutes of the meeting, and the meeting case record for additional information on the proposed Special Use Permit amendment and the findings for approval made by the Planning Commission.

The basis for appeal is pursuant to the submittal requirements of the Carson City Municipal Code, Section 18.08.160 (Appeals). The appellant's letter of appeal is attached. The following are the appellant's statements of justification for appealing each condition with staff responses to the appellant's basis for appeal.

1. *Condition #8 involves the display area closest to Carson Street. The front plant display area was approved in a 2009 special use application which also involved the outdoor display. Mr. Munnings' engineer, Rob Lauder, submitted a plan for a defined front display area that expanded the front display previously approved in 2009. The front display area is used by Mr. Munnings from May until September to show and to provide adequate sun for the annual bedding flowers and vegetables. Once the cold weather sets in, this display is removed. The Planning Staff submitted a map to the Planning Commission that reduced the front area of display and a copy of that map is attached.*

   There are three reasons to modify the display area in the front and to allow the display as submitted by Mr. Lauder. The first two reasons are based on common sense. Mr. Munnings has used a front display for annual plants since the 2009 permit, without a single incident concerning pedestrian safety. The new one-way traffic flow design in front of A to Zen and Rob Lauder's striped safety zone will ensure, as much as anyone can, the continued safety of the customers.

   The third reason is the most compelling and it is based upon the City's own engineering analysis. Rory Hogen, from the Carson City engineering division, reviewed the application and concluded that: "The request is not in conflict with pedestrian or traffic movements. The request is made to improve traffic and pedestrian access." Mr. Hogen

indicated that a 12 foot wide access in front of A to Zen must be maintained as a minimum. This is exactly what is being proposed with an additional striped walk zone in front for added safety measure.

All we request from the Board of Supervisors is that if the City engineer asks for a 12 foot wide minimum access, the City imposes a 12 foot wide minimum access, and not a 25 foot access that is not based on any code or regulation or review. Codes and regulations should be evenly and uniformly imposed. A decision to impose a greater restriction has the appearance of being an arbitrary decision and one without a legal basis.

Staff Response:

As a part of the amendment to the Special Use Permit, the applicant has proposed to reconfigure the parking lot through striping to accommodate the expanded display areas. This proposal includes directing traffic for the entire parking lot one way with the main entrance being where Display Area No. 2 is proposed to be located. Staff acknowledges the appellant's claim that there has never been an incident concerning pedestrian safety. Staff has not verified whether this is an accurate statement but notes that making the entrance nearest proposed Display Area No. 2 the main entrance significantly changes the traffic flow of the parking lot. The majority of vehicles will now access the parking lot next to Display Area No. 2, whereas before they were able to access the parking lot from the north side as well. To encourage pedestrians to place themselves in harm's way while looking at merchandise near the main entrance to the parking lot is not acceptable to staff.

Staff selected 25 feet as a recommended minimum width of the drive aisles around Display Area No. 2 as a result of the drive aisle width adjacent to Display Area No. 3 proposed by the applicant. Staff determined that the 25 feet proposed by the applicant was acceptable adjacent to Display Area No. 3 and, therefore, should be acceptable adjacent to Display Area No. 2.

Staff would also like to address the statement made by Development Engineering that is referenced by the appellant. Staff has since discussed this statement with Development Engineering and it has been clarified that the potential conflict that would be created between shoppers and vehicles in the parking lot was not considered when stating that the request was "not in conflict with vehicle or pedestrian movements." Development Engineering considered the 12 foot width of the drive aisle related to traffic circulation only, and only the public/private sidewalks and normal pedestrian movements across a parking lot when considering pedestrian movements.

Per Carson City Municipal Code, a Special Use Permit is defined as a specific discretionary approval for a use which has been determined to have unique circumstances, be more intense or to have a potentially greater impact than a permitted use within the same zoning district.

A discretionary decision is defined in *A Planner's Dictionary* provided as *Planning Advisory Service Report No. 521/522* through the American Planning Association as follows:

> *A decision requiring the exercise of judgment, deliberation or decision on the part of the decision-making authority in the process of approving or disapproving a particular activity, as distinguished from situations where the decision-making authority merely has to determine whether there has been conformity with applicable*

statutes, ordinances, or regulations.

Carson City does not have a specific Development Standard to address potential pedestrian and vehicle conflict related to a permanent outdoor display area in a parking lot; nor does staff need to reference one when considering a discretionary permit such as a Special Use Permit and recommending conditions of approval to the Planning Commission.

Additionally, this portion of the display area is the most visible from Carson Street, and reducing the appearance of outside merchandise "clutter" is also a valid, discretionary consideration that the Planning Commission may consider in imposing conditions of approval.

Staff used its professional judgment and the precedent already set by the applicant with the drive aisle width proposed adjacent to Display Area No. 3 as the basis for the recommended condition.

2. *Condition #9 states that: "Display Area No. 3 shall be cut off at a 45 degree angle on the northwest corner, a distance of 20 feet from the eastern edge of the display area, to ensure that a vehicle parking in the space directly north will have visibility when backing out."*

In the interest of full disclosure, the condition to delete some of the display was recommended by the Engineering Division to allow "some sight distance for cars exiting the parking space just to the north." If imposed, this condition requires the deletion of about 40 square feet of plant display. This creates an economic burden and a logistical burden on Mr. Munnings to reconstruct his perimeter which is designed to help decrease theft.

There are two compelling reasons for the Board of Supervisors to modify this condition. The first reason is that the Carson City Development Standards for clear vision when driving do not require a complete deletion of the display. The second reason is that during the September 25, 2013 Planning Commission meeting, Planning Manager Susan Pansky told the Commissioners that staff would now agree to allow this area to be a display area, if the height were reduced to 36".

In discussions with the Planning Staff, after the staff report was issued, the staff utilized Carson City Development Standards Div. 12 (5) as the authority for this recommendation. Currently, in the northwest corner, there is a cinderblock and wood railing system that is 42" tall. Below that is a plant display table that holds plants with very small stems. The Carson City Development Standards prohibit visual obstructions that area "higher than three feet (3')."

The undisputed facts are that Development Standards do not support the original recommendation of the Planning Manager that no display may be shown in the triangle and the Planning Manager reconsidered her earlier recommendation during the Planning Commission Meeting.

Carson City officials spent enormous amounts of time and energy to create design guidelines to enhance the beauty and safety of this City. We should utilize those and apply those equally to all the projects presented for review and not impose standards on Mr. Munnings, or any other business, that are not supported by the City's own standards.

Mr. Munnings should be allowed to have a display in the northwest corner that does not exceed three feet and is consistent with the Carson City Development Standards 12(5).

Staff Response:

The proposed revision to this condition is acceptable to staff and this was conveyed during the Planning Commission at the September 25, 2013 meeting. Staff does not agree with the suggested language for this condition modification and has recommended alternate language as outlined in the Staff Recommendation section of this memo.

Staff would like to clarify, however, that the intent of this condition was to decrease the display area depth to match the depth of the adjacent parking space for increased safety of vehicles exiting that space. The reference to the Development Standards provided by the appellant is incorrect and should state Development Standard 12.11.2 (4). While the Development Standard the appellant intended to reference does indicate a 36 inch maximum height for sight distance at intersections, staff would like to point out that this particular example does not meet the definition of an intersection as defined in Carson City Municipal Code, Section 10.04.290, and as further discussed in Carson City Development Standards, Section 12.11.2 (4) regarding intersection sight distance. The appellant's proposal is relatively unique and it is staff's opinion that this type of situation was not specifically contemplated when the cited Development Standard was created. To state that staff did not apply the standards equally to this project is not accurate, and staff refers back to the definitions of a Special Use Permit and a discretionary decision as outlined in its response to the appeal of Condition 8.

3. *Condition #10 states that: "The under eave display areas shall be limited to those areas that do not have adjacent parking lot display areas."*

The 2009 Special Use Permit permitted a display under the eaves and adjacent to the parking lot along the existing sidewalk. For the past four years, Mr. Munnings used the area near his front door under the eaves for outdoor display. The Board of Supervisors needs to be aware that during the Planning Commission meeting, the owner of a nearby gun shop and his friends felt that at times the front display impeded access and they voiced their complaints. At the time of the 2013 application there were some sidewalk areas that varied from 32 inches of access to 48 inches of access. The present application is offering 48" of aisle access that will be permanently established and maintained. This will exceed the code requirements.

In 2009, there were no concerns by the Fire Department, or any City Department, that the plant displays created any potential life, safety or exiting hazards. After the granting of the 2009 permit, in the event of an emergency, a person could exit Evergreen Gene's store out the front door and walk west to the parking lot. In an emergency, a person would also have the option of exiting the front door, and turning right or left, walk past the displays on both sides, and then exit into the parking lot. Under the existing 2013 proposed plan with the larger Display Area 3, in the event of an emergency a person could exit the front door of Evergreen Gene's store and walk west through the Display Area 3 and be in the parking lot, even though the parking lot now has plants in it. There is no difference exiting straight out the front doors in 2013 than there was in 2009. A person walking out the front doors of Evergreen Gene's and turning right would actually be able to exit to the parking lot quicker than under the old design because the only display permitted is under the eaves and not adjacent to the parking lot.

We concede that in the event of an emergency, a person who chooses to turn left to exit would have a slightly longer route to the parking lot. However the Fire Prevention

Captain, Dave Ruben, makes a statement that is not entirely accurate. He states that: "The parking lot display area directly in front of 1811 N. Carson limits the egress from the store fronts by adding additional travel distance to the public way for anyone exiting these stores." As is stated above, the parking lot display (Display 3) has a wide path that leads directly to the west, and in no way inhibits a person from making an exit. It does not increase the travel distance for a person exiting out the front doors and heading west because that person would be out of the building in the same amount of time whether there was plant display or not.

The Fire Captain makes absolutely not reference to any specific International Fire Code requirements when making his recommendations. Condition 13 of the Staff Report, which is not being appealed, does state that "outside display areas shall comply with the International Fire Code aisle requirements for mercantile occupancies." After discussion with Ms. Pansky and checking with the Building Department, the consensus was that 48" of unimpeded access should be provided under the eaves (based on the dimensions provided on the original and revised application plans). The Fire Code refers back to chapter 11 of the Building Code, which refers to ANSI Standard A117.1, which requires a minimum width of 36".

No one can make any credible argument that safety should ever be compromised and the current plan will not compromise the best practices outlined by the Fire Code. In fact, it will exceed the code requirements. Once again, we should use codes and apply the codes equally to all businesses. The Fire Department never provided code support for their written recommendations and if they had, they would have recommended a minimum of 36" for the aisle width. We are asking for consent to use the display under the eaves and are agreeable to providing an aisle width of 48".

Staff Response:

The appellant's statement that an aisle width of 48 inches will exceed code requirements is misleading and not necessarily accurate. The existing buildings of the Carson Shopping Center were constructed with aisle widths of approximately 72 inches between the CMU columns and the exterior walls. The aisle ways of the Carson Shopping Center were intended for use by the general public and all tenant spaces not just the immediately adjacent tenant spaces. The aisle ways are required to be maintained as designed for all that use them.

Carson City Municipal Code, Section 15.05.020 (102.6) (Existing Structures) states, "The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code, the International Property Maintenance Code or the International Fire Code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public."

2012 International Building Code Section 1027.5 (Access to a Public Way) states, "The exit discharge shall provide a direct and unobstructed access to a public way." The expansion of Display Area No. 3 in combination with the under eave displays alters the access significantly and no longer provides direct and unobstructed access to the parking lot. The appellant mentions that there is a path through Display Area No. 3 that would allow for direct access from the building. Staff is aware that this pathway exists today, however, that is not what is shown on the plans submitted for the Special Use Permit amendment. Regardless, this one pathway as a replacement for the clear space in the parking lot that used to exist before Display Area No. 3 is not acceptable for direct and unobstructed access.

Staff would also like to point out that the appellant has not maintained the 48 inch minimum width of clear space at the exit discharge specified in the 2009 approval of the Special Use Permit, and this continues to occur as was confirmed by a site visit on November 21, 2013. This creates a potential safety hazard.

2012 International Property Maintenance Code Section 702.1 (General) states, "A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code."

2012 International Property Maintenance Code Section 302.1 (Sidewalks and Driveways) states, "All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions."

The appellant implies that Ms. Pansky and the Building Department agreed after discussion that 48 inches of unimpeded access should be provided under the eaves. This is a misrepresentation of staff's comments, as what Ms. Pansky and the Building Department said was that under the original Special Use Permit, a width of 48 inches is acceptable. Ms. Pansky and the Building Department have never stated that 48 inches is an acceptable width as it relates to the expansion of the parking lot display areas.

The appellant refers to Chapter 11 of the International Building Code when making the argument that 36 inches is the minimum width required, therefore 48 inches exceeds code requirements. This is the Accessibility Chapter which references ICC/ANSI A117.1-2009. The 36 inch width that was noted by the Fire Department in the staff report was in reference to aisle widths for mercantile occupancies, not the aisle width of an exterior sidewalk that was originally intended to serve the entire shopping center. The Fire Department was specifically referring to aisle widths within Display Area No. 3, as it was observed during site visits leading up to the September 25, 2013 Planning Commission meeting that this minimum was not being maintained inside Display Area No. 3. This was further clarified with the late information submitted by staff at the Planning Commission meeting.

Staff would like to again point out the definitions of a Special Use Permit and a discretionary decision as outlined in the previous responses. Staff may exercise its professional judgment when considering and recommending conditions for a Special Use Permit, and is not required to reference specific code under each circumstance. The conditions that necessitate a Special Use Permit are often unique, and code does not always specifically address these unique situations. This amended Special Use Permit is a perfect example of conditions not distinctly addressed in the code, requiring staff to use professional judgment to ensure the continued well being and safety of the general public.

STAFF RECOMMENDATION:

Per the Carson City Municipal Code Section 18.02.060(2), the Board of Supervisors may affirm, modify or reverse the decision of the Planning Commission. Staff recommends that the Board of Supervisors uphold the Planning Commission's decision to approve the amended Special Use Permit, SUP-09-055A, for permanent outdoor display of merchandise on property zoned Retail Commercial, located at 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson Street, APNs 002-091-03, -04, and -06 based on the required findings and subject to all of the conditions of approval as approved by the Planning Commission, with the following modification to Condition

No. 9:

9. Nothing in the northwest corner of Display Area No. 3, measured at a 45 degree angle 20 feet from the eastern edge of the display, shall exceed 36 inches in height at any time.

ALTERNATIVES

The Board of Supervisors may consider the following alternative actions in deciding the appeal of three conditions of the Planning Commission's approval of SUP-09-055A to amend the Special Use Permit for permanent outdoor display of merchandise on property zoned Retail Commercial located at 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson Street, APNs 002-091-03, -04, and -06, based on the specific staff findings in the staff report.

1. The Board of Supervisors may approve the appeal of three of the conditions of approval of SUP-09-055A as follows;

    - Condition 8 is modified and will now state: "Display Area No. 2 shall be limited to maintain 12 foot drive aisles on the west and the north sides of the display area. If the display from Display Area No. 3 is relocated to Display Area No. 2, the relocated display area shall be subject to the same minimum drive aisle requirements as that of Display Area No. 2 and shall be limited to the three spaces adjacent to Display Area No. 2 as shown on the site plan.

    - Condition 9 is modified and will now state: "Display Area No. 3 shall be permitted so long as the display height requirements are in conformity with Carson City Development Standards, Div. 12.11.2 (4).

    - Condition 10 is modified and will now state: "The under eave display areas shall be permitted in all areas requested so long as a 48" aisle width is maintained at all times."

2. The Board of Supervisors may approve modified conditions of approval other than those proposed by the appellant, approved by the Planning Commission, or proposed by staff.

3. If additional information is submitted to the Board of Supervisors that the Board believes warrants further review and consideration of the application by the Planning Commission, with the concurrence of the appellant, the Board may refer the matter back to the Planning Commission.

4. If the Board of Supervisors finds that the Planning Commission erred in approving the Special Use Permit amendment, the Board may reverse the Planning Commission's decision and DENY SUP-09-055A, citing the finding(s) for denial. Exercise of this option would result in denial of the amended Special Use Permit, but would leave the original Special Use Permit intact. Under this circumstance, the applicant would be required to reduce the expanded outdoor display areas that currently exist to what was approved with the original Special Use Permit.

MISC-13-135
Appeal of SUP-09-055

RECEIVED (A)
OCT 07 2013
CARSON CITY
PLANNING DIVISION

MICHAEL SUGLIA, LTD.
ATTORNEY AT LAW
1950 COLLEGE PARKWAY, SUITE 102-A
CARSON CITY, NV 89706-7983
PHONE (775) 882-5554 FAX (775) 883-6592 E-MAIL Suglia@SugliaLaw.com

October 7, 2013

Lee Plemel, Director
Planning Division
108 E. Proctor Street
Carson City, NV 89701

Re: Appeal of three of the 22 conditions imposed when the Planning Commission approved the Special Use Permit on September 25, 2013 in the matter of File No.: SUP-09-055(A).

Dear Mr. Plemel,

Pursuant to CCMC 18.02.060, and the Carson City Planning Division Procedures for Filing an Appeal, this correspondence is the Notice of Appeal of three out of the 22 conditions imposed when the Planning Commission approved the Special Use Permit on September 25, 2013 in the matter of File No.: SUP-09-055(A).

a. **Standing for Filing an Appeal:** (including the mailing address and daytime phone number.): This Appeal is made on behalf of the applicant Rob Lauder of RL Engineering, 675 Fairview Dr., #223, Carson City, NV 89701, phone: 884-3205; the Owner Bernard-Bernard-Cuccaro LLC and William F. and D. Horne et. al., 1805 N. Carson St., Carson City, NV 89701, phone: 884-4748; and the real party in interest, Gene Munnings of Evergreen Gene's, 1811 N. Carson St., Carson City, NV 89701, phone: 530-0946.

   The appeal is being made by Michael Suglia whose contact information is contained on the letterhead, above.

b. **Fees:** Attached to this Appeal is a check for $250.00. Pursuant to a phone conversation on September 27, 2013 with the Planning Department, the costs of providing notice will be billed separately.

c. **Project and Actions being appealed:** This is an Appeal of three specific conditions placed on Applicant as part of the approval of the Special Use Permit. The final decision of the Planning Commission occurred on September 25, 2013. The specific project is SUP-09-055 (A), a Special Use Permit application submitted in order to increase the size of the outdoor display of Evergreen Genes plant nursery.

d. Aspects of the decision which are being appealed (No other aspect will be heard):

Condition 8. "Display Area No. 2 shall be limited to maintain 25 foot drive aisles on the west and the north sides of the display area. If the display from Display Area No. 3 is relocated to Display area No. 2, the relocated display area shall be subject to the same minimum drive aisle requirements as that of Display Area No. 2 and shall be limited to the three spaces adjacent to Display Area No. 2 as shown on the site plan."

Condition 9. "Display Area No. 3 shall be cut off at a 45 degree angle on the northwest corner a distance of 20 feet from the eastern edge of the display area to ensure that a vehicle parking in the space directly north will have visibility when backing out."

Condition 10. "The under eave display areas shall be limited to those areas that do not have adjacent parking lot display areas."

e. Facts supporting the appellant's contention that an error was made by the Planning Division staff and/or the Planning Commission are as follows:

INTRODUCTION:

In 2009 the Planning Commission approved a Special Use Permit at the same location. The 2013 Special Use Permit application sought an expansion of the original application. This is an appeal of three of the 22 conditions imposed during the approval of a Special Use Permit for an outdoor display authorized by the Planning Commission on September 25, 2013.

The application for the Special Use Permit does not mention Gene Munnings, or Evergreen Gene's plant nursery business, but he is the person who paid for the application and hired an engineer and an attorney in order to submit the application to the Planning Commission. Gene Munnings is the person who should be considered the real party in interest, and he is the person aggrieved by the imposition of three of the conditions of approval. Mr. Bill Horne, one of the owners of the Carson Shopping Center, consented to the Special Use Permit application and he also consents to the appeal of three of the conditions of approval.

On September 25, 2013 the Carson City Planning Commission approved the Special Use Permit with the imposition of 22 conditions contained in the staff report. The Approval of the application was the correct decision because Carson City, as a community, places a high value on allowing small businesses to thrive. We all agree small businesses provide the essential structure for our City's economic health and well-being.

During the Planning Commission hearing, there was considerable support from the citizens of Carson City that Evergreen Gene's is a unique and creative business that provides a beautiful floral display to those passing by on Carson Street, offers a gift shop of seasonal items featuring American-made products, and is owned by a person who willingly gives back to his community through volunteering his time, his products and money.

THE APPEAL:

The three conditions being appealed are 8, 9 and 10 and the purpose of the Appeal is to request that the Board of Supervisors modify conditions 8, 9 and 10.

Condition #8 involves the display area closest to Carson Street. The front plant display area was approved in a 2009 special use application which also involved the outdoor display. Mr. Munnings' engineer, Rob Lauder, submitted a plan for a defined front display area that expanded the front display previously approved in 2009. The front display area is used by Mr. Munnings from May until September to show and to provide adequate sun for the annual bedding flowers and vegetables. Once the cold weather sets in, this display is removed. The Planning Staff submitted a map to the Planning Commission that reduced the front area of display and a copy of that map is attached.

There are three reasons to modify the display area in the front and to allow the display as submitted by Mr. Lauder. The first two reasons are based on common sense. Mr. Munnings has used a front display for annual plants since the 2009 permit, without a single incident concerning pedestrian safety. The new one-way traffic flow design in front of A to Zen and Rob Lauder's striped safety zone will ensure, as much as anyone can, the continued safety of the customers.

The third reason is most the compelling and it is based upon the City's own engineering analysis. Rory Hogan, from the Carson City engineering division, reviewed the application and concluded that: "The request is not in conflict with pedestrian or traffic movements. The request is made to improve traffic and pedestrian access." Mr. Hogan indicated that a 12 foot wide access in front of A to Zen must be maintained as a minimum. This is exactly what is being proposed with an additional striped walk zone in front for an added safety measure.

All we request from the Board of Supervisors is that if the City engineer asks for a 12 foot wide minimum access, the City imposes a 12 foot wide minimum access, and not a 25 foot access that is not based on any code or regulation or review. Codes and regulations should be evenly and uniformly imposed. A decision to impose a greater restriction has the appearance of being an arbitrary decision and one without a legal basis.

Condition #9 states that: "Display Area No. 3 shall be cut off at a 45 degree angle on the northwest corner, a distance of 20 feet from the eastern edge of the display area, to ensure that a vehicle parking in the space directly north will have visibility when backing out."

In the interest of full disclosure, the condition to delete some of the display was recommended by the Engineering Division to allow "some sight distance for cars exiting the parking space just to the north." If imposed, this condition requires the deletion of about 40 square feet of plant display. This creates an economic burden and a logistical burden on Mr. Munnings to reconstruct his perimeter which is designed to help decrease theft.

There are two compelling reasons for the Board of Supervisors to modify this condition. The first reason is that the Carson City development standards for clear vision when driving do not require a complete deletion of the display. The second reason is that during the September 25, 2013 Planning Commission meeting, Planning Manager Susan Pansky told the Commissioners that staff would now agree to allow this area to be a display area, if the height were reduced to 36".

In discussions with the Planning Staff, after the staff report was issued, the staff utilized Carson City Development Standards Div. 12 (5) as the authority for this recommendation. Currently, in the northwest corner, there is a cinderblock and wood railing system that is 42" tall. Below that is a plant display table that holds plants with very small stems. The Carson City Development Standards prohibit visual obstructions that are "higher than three feet (3')."

The undisputed facts are that Development Standards do not support the original recommendation of the Planning Manager that no display may be shown in the triangle area and the Planning Manager reconsidered her earlier recommendation during the Planning Commission Meeting.

Carson City officials spent enormous amounts of time and energy to create design guidelines to enhance the beauty and safety of this City. We should utilize those and apply those equally to all the projects presented for review and not impose standards on Mr. Munnings, or any other business, that are not supported by the City's own standards.

Mr. Munnings should be allowed to have a display in the northwest corner that does not exceed three feet and is consistent with the Carson City Development standards 12(5).

Condition #10 states that: "The under eave display areas shall be limited to those areas that do not have adjacent parking lot display areas."

The 2009 Special Use Permit permitted a display under the eaves and adjacent to the parking lot along the existing sidewalk. For the past four years, Mr. Munnings used the area near his front door under the eaves for outdoor display. The Board of Supervisors needs to be aware that during the Planning Commission meeting, the owner of the nearby gun shop and his friends felt that at times the front display impeded access and they voiced their complaints. At the time of the 2013 application there were some sidewalk areas that varied from 32 inches of access to 48 inches feet of access. The present application is offering 48" of aisle access that will be permanently established and maintained. This will exceed the code requirements.

In 2009, there were no concerns by the Fire Department, or any City Department, that the plant displays created any potential life, safety or exiting hazards. After the granting of the 2009 permit, in the event of an emergency, a person could exit Evergreen Gene's store out the front door and walk west to the parking lot. In an emergency, a person would also have the option of exiting the front door, and turning right or left, walk past displays on both sides, and then exit into the parking lot.

Under the existing 2013 proposed plan with the larger Display Area 3, in the event of an emergency, a person could exit the front door of Evergreen Gene's store and walk west through the Display Area 3 and be in the parking lot, even though the parking lot now has plants in it. There is no difference exiting straight out the front doors in 2013 than there was in 2009. A person walking out the front doors of Evergreen Gene's and turning right would actually be able to exit to the parking lot quicker than under the old design because the only display permitted is under the eaves and not adjacent to the parking lot.

We concede that in the event of an emergency, a person who chooses to turn left to exit would have a slightly longer route to the parking lot. However the Fire Prevention Captain, Dave Ruben, makes a statement that is not entirely accurate. He states that: "The parking lot display area directly in front of 1811 N. Carson limits the egress from the store fronts by adding additional travel distance to the public way for anyone exiting these stores." As is stated above, the parking lot display (Display 3) has a wide path that leads directly to the west, and in no way inhibits a person from making an exit. It does not increase the travel distance for a person exiting out the front doors and heading west because that person would be out of the building in the same amount of time whether there was a plant display or not.

The Fire Captain makes absolutely no reference to any specific International Fire Code requirements when making his recommendations. Condition 13 of the Staff Report, which is not being appealed, does state that "outside display areas shall comply with the International Fire Code aisle requirements for mercantile occupancies." After discussion with Ms. Pansky and checking with the Building Department, the consensus was that 48" of unimpeded access should be provided under the eaves (based on dimensions provided on the original and revised application plans). The Fire Code refers back to chapter 11 of the Building Code, which refers to ANSI Standard A117.1, which requires a minimum width of 36".

No one can make any credible argument that safety should ever be compromised and the current plan will not compromise the best practices outlined by the Fire Code. In fact, it will exceed the code requirements. Once again, we should use codes and apply the codes equally to all businesses. The Fire Department never provided code support for their written recommendations and if they had, they would have recommended a minimum of 36" for the aisle width. We are asking for consent to use the display under the eaves and are agreeable to providing an aisle width of 48".

RELIEF REQUESTED:

This Appeal seeks the following relief in the form of a Motion by the Board of Supervisors. A recommended Motion, which supports this Appeal, could be as follows:

I move to approve the Appeal of three of the conditions of approval of SUP-09-055(A) as follows:

Condition 8 is modified and will now state: "Display Area No. 2 shall be limited to maintain 12 foot drive aisles on the west and the north sides of the display area. If the display from Display Area No. 3 is relocated to Display Area No. 2, the relocated display area shall be subject to the same minimum drive aisle requirements as that of Display Area No. 2 and shall be limited to the three spaces adjacent to Display Area No. 2 as shown on the site plan."

Condition 9 is modified and will now state: "Display Area No. 3 shall be permitted so long as the display height requirements are in conformity with Carson City Development Standards Div. 12 (5).

Condition 10 is modified and will now state: "The under eave display areas shall be permitted in all areas requested so long as a 48" aisle width is maintained at all times.

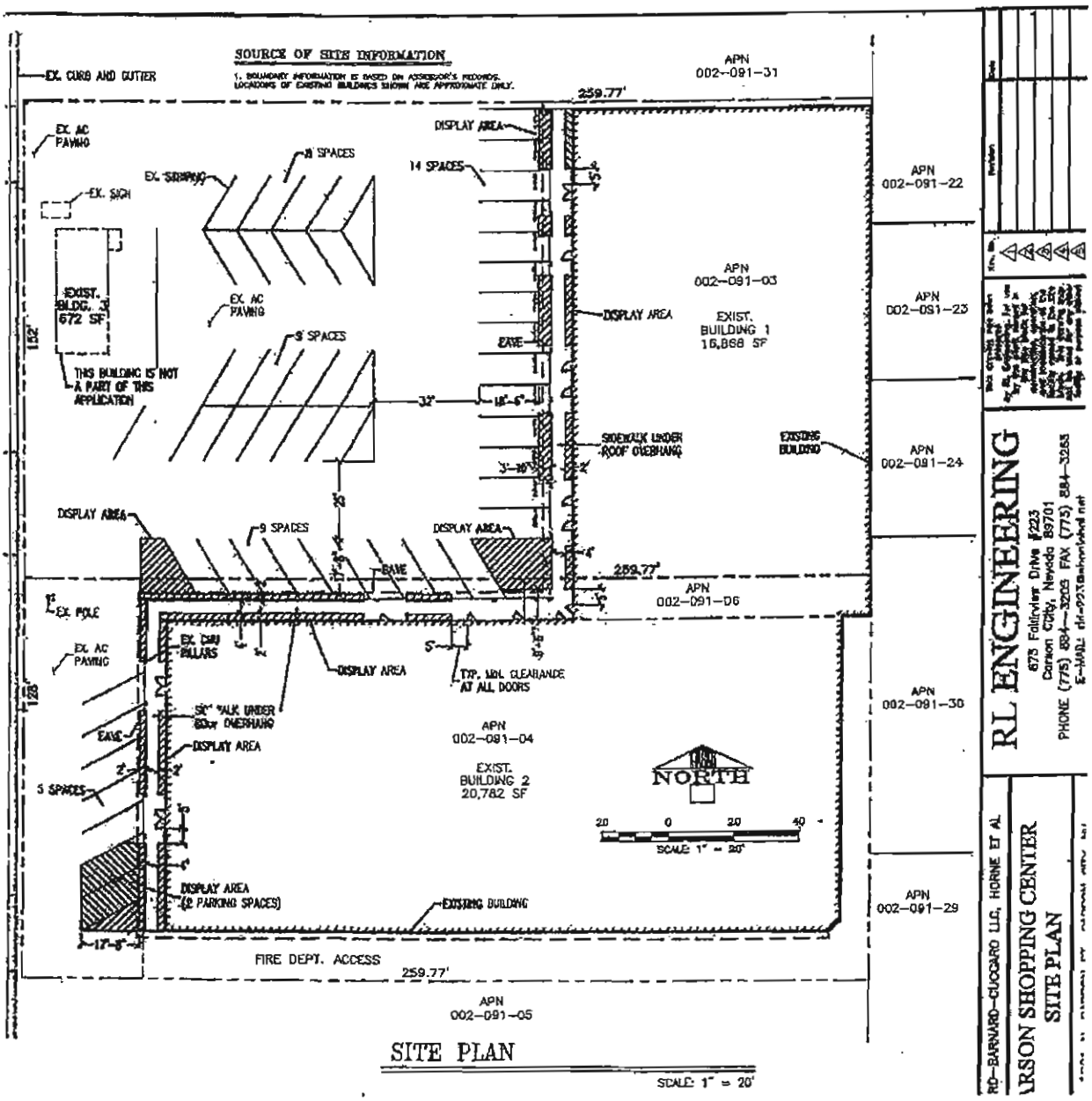
Sincerely,

Michael T. Suglia, Esq.

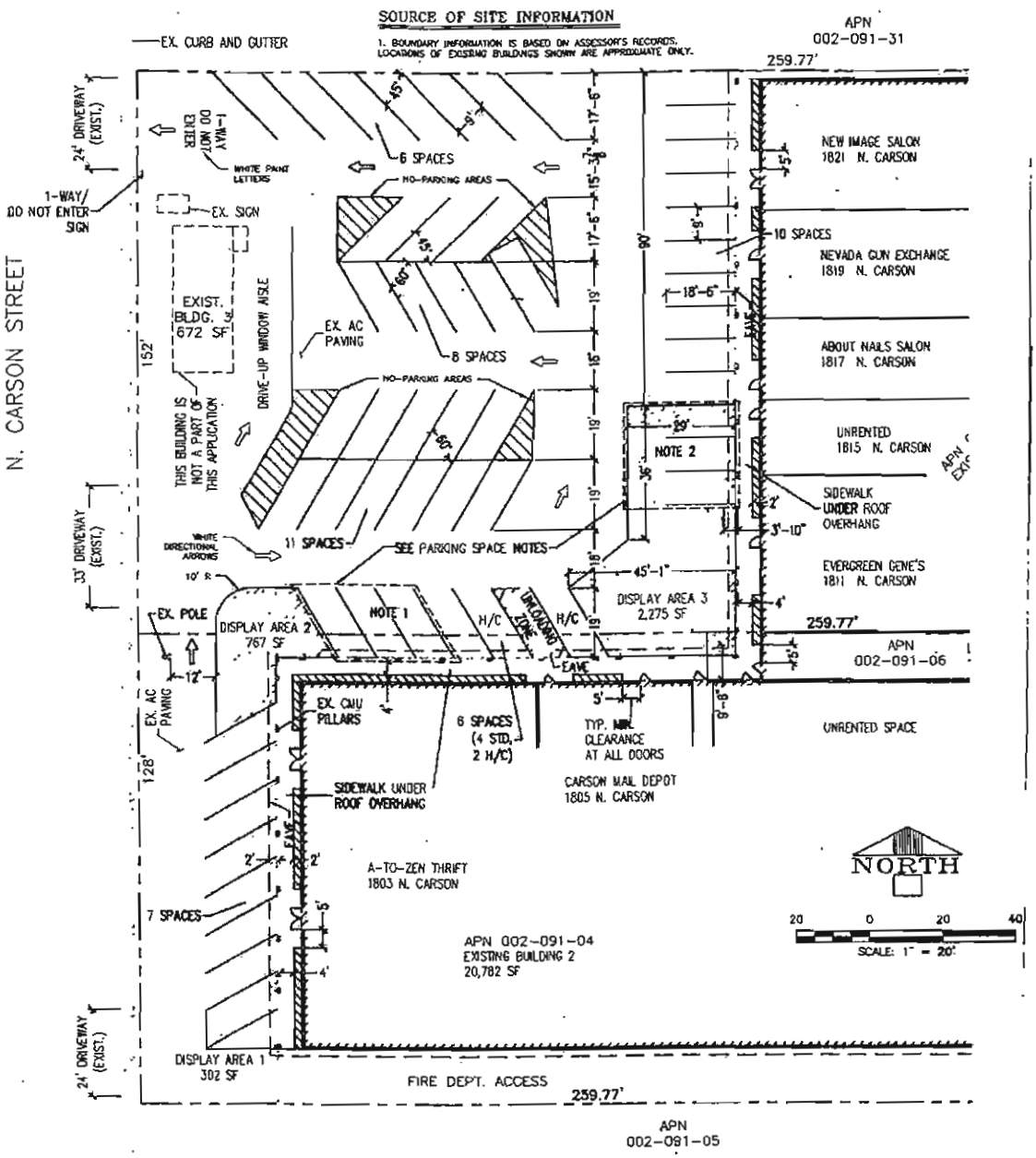
MS:dk

Condition #8 Exhibits

Approved Permanent Outdoor Display and Sales Areas Per SUP-09-055



2009 DISPLAY PLAN



NEW STRIPING AND DISPLAY PLAN

SCALE: 1" = 20'

NEW PROJECT STATISTICS:

APN:	LAND AREA:	BUILDING AREA:
002-091-03	0.91 AC	18,668 SF
002-091-04	0.72 AC.	20,782 SF
002-091-08	0.03 AC.	1,248 SF
TOTAL	1.66 AC.	30,698 SF

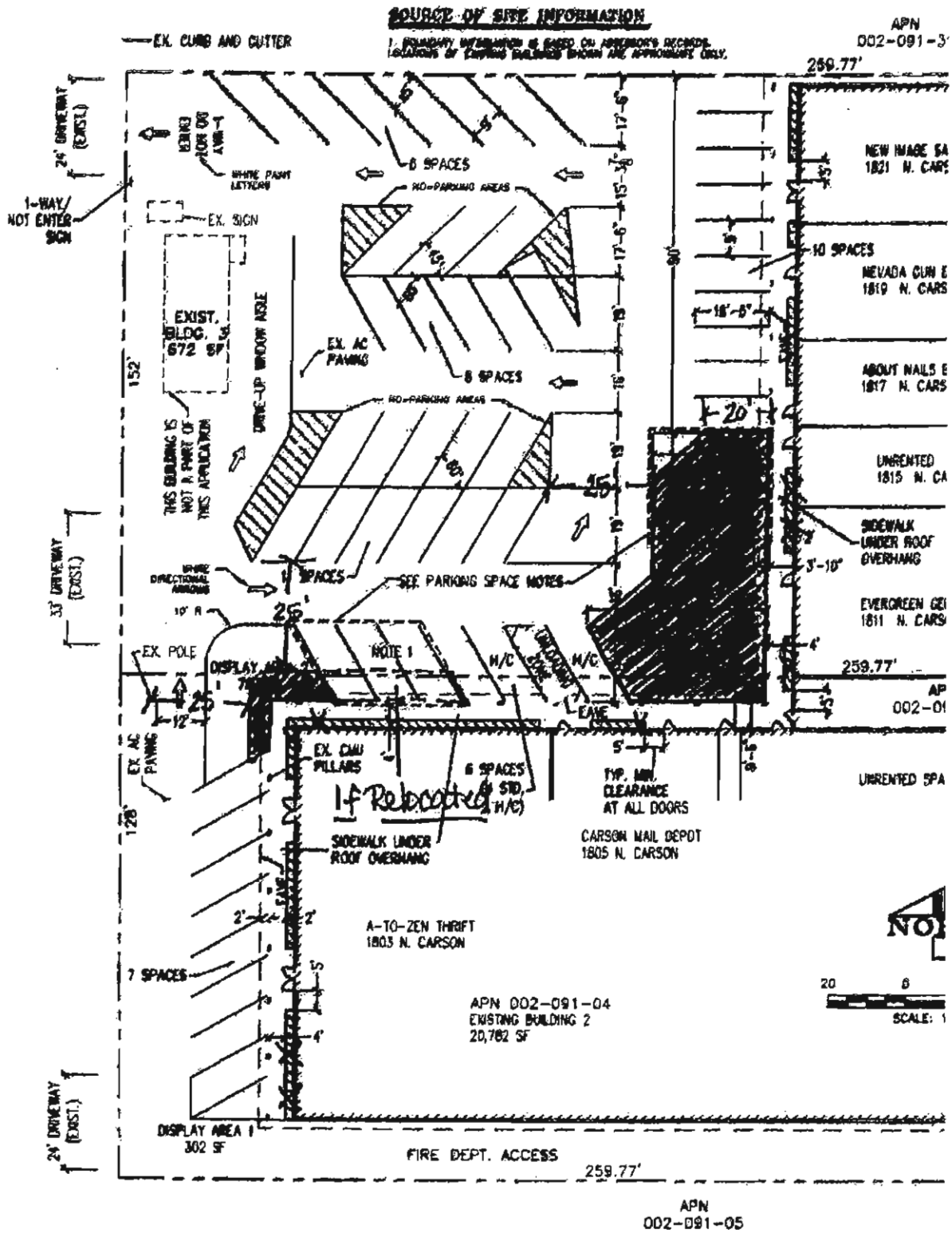
PARKING SPACES: 57 EXISTING PLUS NEW
-8 FOR DISPLAY
-1 UNLOADING ZONE
NET: 48 SPACES

DISPLAY AREA PROPOSED: 3,344 SF (IN PARKING LOT)
434 SF (UNDER EAVES)
3,778 SF TOTAL

PARKING SPACE NOTES:

1. THESE 3 SPACES ON THE NORTH SIDE OF A-TO-ZEN THRIFT (MARKED "NOTE 1") WILL BE AVAILABLE FOR PARKING UNLESS 1815 N. CARSON (THE TENANT SPACE NORTH OF EVERGREEN GENE'S) BECOMES OCCUPIED. SEE NOTE 2.
2. THESE 3 SPACES IN FRONT OF 1815 N. CARSON ST. (MARKED "NOTE 2") WILL REMAIN AVAILABLE FOR DISPLAY UNTIL 1815 N. CARSON IS OCCUPIED. AT THAT TIME THESE 3 SPACES WILL BE VACATED AND THE DISPLAY IN THOSE SPACES WILL BE MOVED TO THE 3 SPACES ON THE NORTH SIDE OF A-TO-ZEN THRIFT (SEE SPACES MARKED "NOTE 1").

2013 DISPLAY PLAN



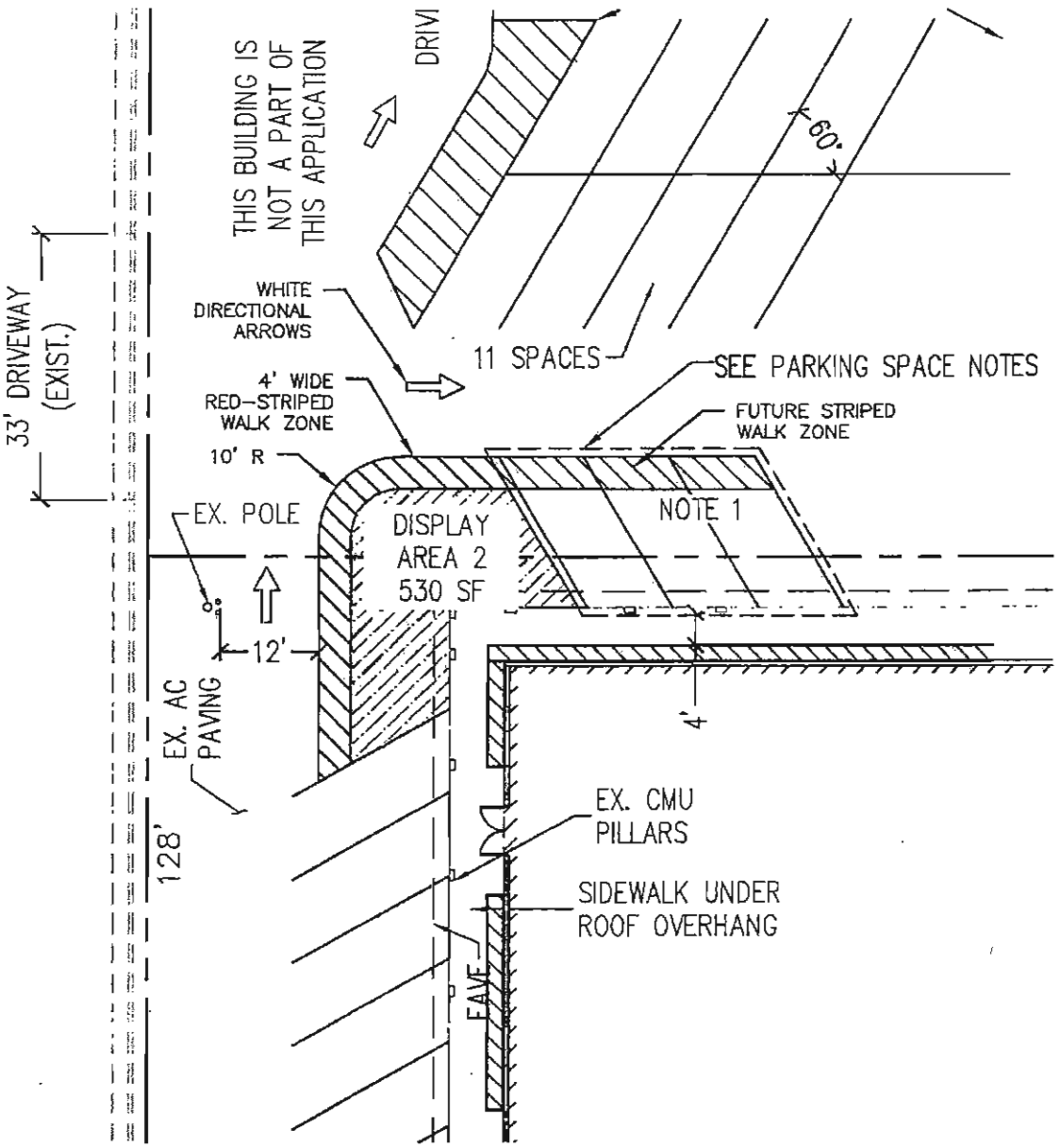
NEW STRIPING AND DISPLAY PLA

SCALE: 1" = 20'

NTS

STAFF MODIFICATIONS

EXHIBIT "J"



JOB # 130723	CARSON SHOPPING CENTER	RL ENGINEERING	SHEET NO.
DESIGN BY: RFL	PARTIAL STRIPING PLAN ALTERNATE "A"	675 Fairview Drive #223, Carson City, Nevada 89701 PHONE (775) 884-3205 FAX (775) 884-3265 EMAIL Rob.Lauder@RL-ENGR.COM	S1
DRAWN BY: RFL			
CHECKED BY: RFL			
SCALE: AS SHOWN			
DATE: 9-24-13	CARSON CITY, NV		

REVISED FRONT DISPLAY

Engineering Division
Planning Commission Report
File Number SUP 09-055 Revision

TO: Planning Commission

FROM Rory Hogen, E.I.

DATE: August 20, 2013 **MEETING DATE:** August 28, 2013

SUBJECT TITLE:

Action to consider the revision of SUP 09-055 to change parking areas and display areas at 1803 through 1821 N. Carson St.

RECOMMENDATION:

The Engineering Division has no preference or objection to the special use request.

DISCUSSION:

The Engineering Division has reviewed the conditions of approval within our areas of purview relative to adopted standards and practices and to the provisions of CCMC 18.02.080, Conditional Uses.

CCMC 18.02.080 (2a) - Adequate Plans
The plans are adequate for this review with the following conditions:

1) Please show directional arrows with the change in direction next to the street frontage. This is in front of A to Zen.
2) The driveway just north of Carson Coffee must have both a one way do not enter sign and an arrow and do not enter painted on the pavement.
3) The 12 foot wide access between the new display area number 2 and the pole and bollards in front of A to Zen must be maintained as a minimum.
4) It is recommended that the northwest corner of display area 3 be cut off at a 45 degree angle to allow some sight distance for cars exiting the parking space just to the north.

CCMC 18.02.080 (5a) - Master Plan
The request is not in conflict with any Engineering Master Plans for streets or storm drainage.

CCMC 18.02.080 (5c) - Traffic/Pedestrians

The request is not in conflict with pedestrian or traffic movements. This request is being made to improve traffic and pedestrian access.

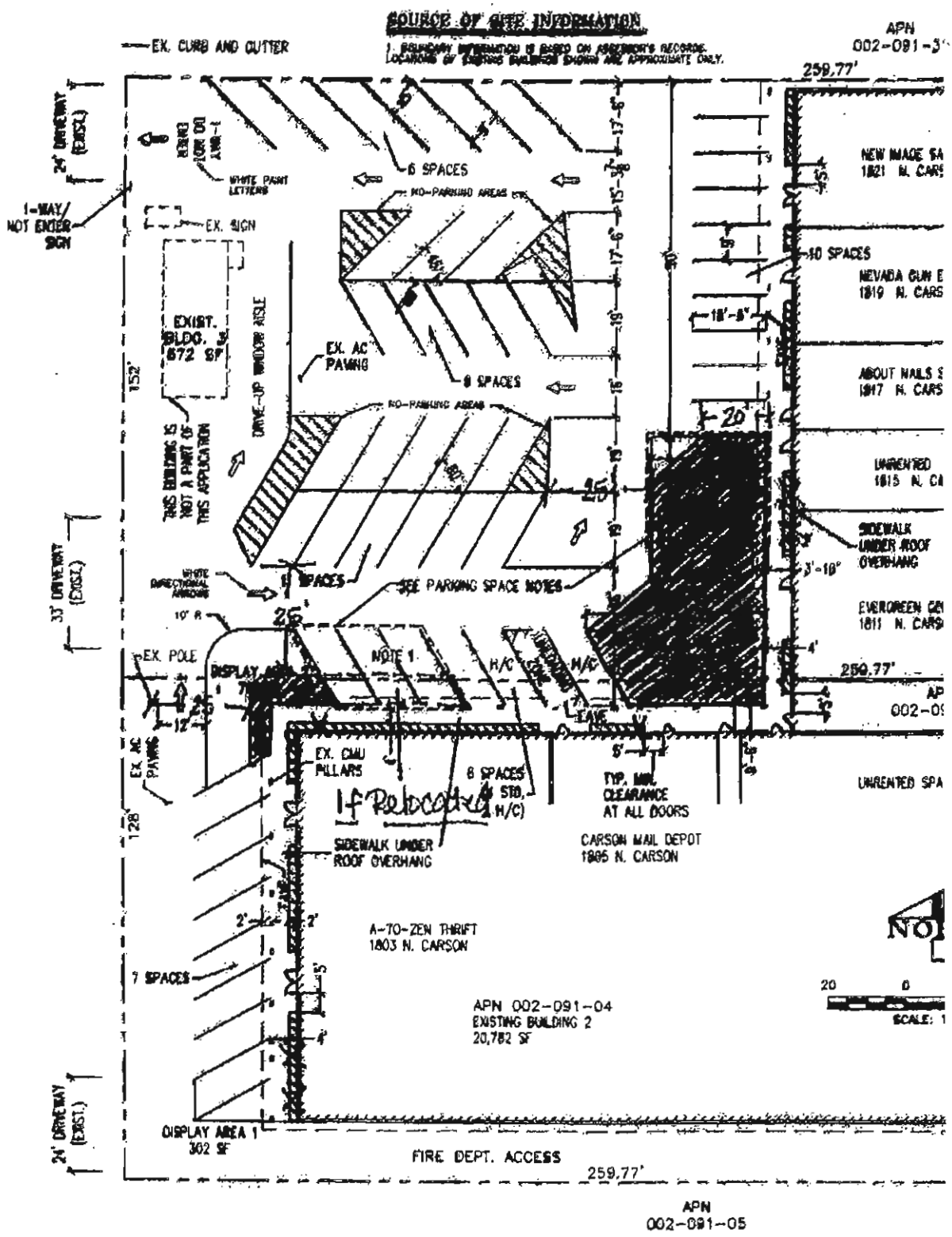
CCMC 18.02.080 (5d) - Public Services

No new City water, sewer or access services will be needed for this project.

Condition #9 Exhibits

4. Intersection sight distance (a clear vision triangle) will be maintained at each corner created by the intersection of two (2) streets, or the intersection of a driveway with a street. When designing a new project, the engineer will ensure that no embankments, hills, buildings, fences, walls, signs, foliage, or other visual obstructions encroach higher than three feet (3'), or lower than eight feet (8') into the clear vision triangle as measured from the top of curb, or as measured from the edge of pavement where no curb exists. If there are sight distance restrictions, the engineer will mitigate these restrictions by reconfiguring the roadway geometrics, moving the proposed intersection location, or eliminating the obstruction. The owner will also provide for protection of the clear vision triangle from future obstacles by creating corner easements or dedicating additional corner right-of-way. The clear vision triangle area is defined in Table 12.2.

5. Objects narrower than four inches (4") in diameter, such as sign posts, are exempt from the clear vision area requirements. Where there are existing topographical features, buildings, or other fixed objects that cannot be removed to meet the minimum intersection sight distance requirements shown in Table 12.2, the City may allow the minimum stopping sight distance requirements shown in Table 12.3 to control as an absolute minimum provided there are no other intersection locations where greater sight distance can be obtained.



NEW STRIPING AND DISPLAY PLA

SCALE: 1" = 20'

NTS

STAFF MODIFICATIONS

EXHIBIT "J"

Engineering Division
Planning Commission Report
File Number SUP 09-055 Revision

TO: Planning Commission

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The plans are adequate for this review with the following conditions:

1) Please show directional arrows with the change in direction next to the street frontage. This is in front of A to Zen.
2) The driveway just north of Carson Coffee must have both a one way do not enter sign and an arrow and do not enter painted on the pavement.
3) The 12 foot wide access between the new display area number 2 and the pole and bollards in front of A to Zen must be maintained as a minimum.
4) It is recommended that the northwest corner of display area 3 be cut off at a 45 degree angle to allow some sight distance for cars exiting the parking space just to the north.

CCMC 18.02.080 (5a) - Master Plan
The request is not in conflict with any Engineering Master Plans for streets or storm drainage.

CCMC 18.02.080 (5c) - Traffic/Pedestrians
The request is not in conflict with pedestrian or traffic movements. This request is being made to improve traffic and pedestrian access.

CCMC 18.02.080 (5d) - Public Services
No new City water, sewer or access services will be needed for this project.

Condition #10 Exhibits

Susan Dorr Pansky

From: Dave Ruben
Sent: Tuesday, September 24, 2013 6:05 PM
To: Susan Dorr Pansky
Cc: Kevin Gattis; Vann Clegg
Subject: RE: Evergreen Gene - Mercantile Aisle Widths

Susan,

My comments regarding aisle width are from the Fire Code, section 1014.4.1, which requires 36" aisles in Group M occupancies. The comments were specifically for within the parking lot display area.

You asked about the business inspection we conducted at 1811 N. Carson Street in August. Carson City FD conducted an annual life safety inspection of all businesses in the Carson City Shopping Center in August of 2013. We conducted a life safety inspection of 1811 N. Carson on 8-12-13. At the time of the inspection I verbally informed Gene Munnings that because of the pending actions of the Carson City Planning Department issuing him an Order to Comply with his special use permit, that we would only be inspecting the interior of his store. Carson City FD felt that it would be confusing to Mr. Munnings to inspect and possibly order corrective action on items that overlapped an area that was already under review and legal action by another City department. I informed Mr. Munnings that we would come back to look at the outdoor area once the problems surrounding his special use permit were resolved. I did speak to him about a CMU block "gate" area he constructed on the sidewalk just north of his store. The "gate" had decreased the walkway to about 30". I told him that the SUP required 48" and he needed to make the opening wider in the "gate".

In my comments to you dated 8-20-13, I recommended that no merchandise be allowed in the walkways or exit paths. The walkways under the storefront roof overhangs were designed as part of the building and are part of the means of egress system. The applicant wishes to modify the building design and use the walkway area for merchandise storage and display. The building was designed with open access to the public way directly into the parking lot. The parking lot display area directly in front of 1811 N. Carson limits the egress from the store fronts by adding additional travel distance to the public way for anyone exiting those stores. Since the exit travel distance is increased, my recommendation is that no merchandise or displays are allowed in the walkways or exit paths since we can expect a higher than designed number of occupants in the means of egress. If the parking lot display area was removed, display areas on the walkway could be considered.

Please let me know if you have any other questions.

Dave Ruben
Captain – Fire Prevention
Carson City Fire Department
777 S. Stewart Street
Carson City, NV 89701

Direct 775-283-7153
Main 775-887-2210
FAX 775-887-2209

A regular meeting of the Carson City Planning Commission was scheduled for 5:00 p.m. on Wednesday, September 25, 2013 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson George Wendell
Vice Chairperson Paul Esswein
Commissioner Malkiat Dhami
Commissioner Walt Owens
Commissioner Mark Sattler

STAFF: Lee Plemel, Community Development Department Director
Susan Dorr Pansky, Planning Manager
Joseph Ward, Senior Deputy District Attorney
Kathleen King, Deputy Clerk / Recording Secretary

NOTE: A recording of these proceedings, the commission's agenda materials, and any written comments or documentation provided to the recording secretary, during the meeting, are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours.

A. CALL TO ORDER, DETERMINATION OF A QUORUM, AND PLEDGE OF ALLEGIANCE (5:00:11) - Chairperson Wendell called the meeting to order at 5:00 p.m. Roll was called; a quorum was present. Commissioners Kimbrough and Steele were absent. At Chairperson Wendell's request, Vice Chairperson Esswein led the pledge of allegiance.

B. PUBLIC COMMENTS (5:01:17) - Chairperson Wendell entertained public comment; however, none was forthcoming.

C. POSSIBLE ACTION ON APPROVAL OF MINUTES - July 31, 2013 (5:03:37) - Commissioner Sattler moved to approve the minutes, as presented. Commissioner Owens seconded the motion. Motion carried 5-0.

D. MODIFICATION OF AGENDA (5:04:17) - Chairperson Wendell entertained modifications to the agenda; however, none were forthcoming.

E. DISCLOSURES (5:04:30) - Chairperson Wendell entertained disclosures of the commissioners. Vice Chairperson Esswein advised that his wife is an associate of, and that he has a social relationship with, Attorney Michael Suglia and that he would recuse himself from participating in discussion and action of item G-1. Commissioner Sattler disclosed that his wife is an employee of the Greenhouse Garden Center. In response to a question, Mr. Ward advised that Commissioner Sattler would not personally benefit from participating in discussion and action of item G-1, and did not see any reason for Commissioner Sattler to recuse himself. In response to a further question, he expressed the opinion that Vice Chairperson Esswein's recusal was appropriate.

F. CONSENT AGENDA (5:06:17) - None.

G. PUBLIC HEARING MATTERS

G-1. SUP-09-055(A) POSSIBLE ACTION TO CONSIDER A REQUEST TO AMEND A PREVIOUSLY APPROVED SPECIAL USE PERMIT FROM ROB LAUDER (PROPERTY OWNERS: BERNARD / BERNARD, CUCCARO, LLC AND WILLIAM F. AND D. HORNE, ET

AL.) FOR PERMANENT OUTDOOR DISPLAY OF MERCHANDISE, ON PROPERTY ZONED RETAIL COMMERCIAL (RC), LOCATED AT 1803, -05, -07, -09, -11, -15, -17, -19, AND -21 NORTH CARSON STREET, APNs 002-091-03, -04, AND -06 (5:07:47) - Vice Chairperson Esswein stepped from the dais and took a seat in the meeting room. Chairperson Wendell introduced this item, and Ms. Dorr Pansky reviewed the September 25, 2013 memorandum which was distributed to the commissioners and staff prior to the start of the meeting. She reviewed the agenda materials in conjunction with displayed slides, noting staff's recommendation of approval with the conditions outlined in the staff report. She responded to corresponding questions of clarification.

Chairperson Wendell invited the applicant or his representative to the podium. (5:30:59) Robert Lauder, of RL Engineering, introduced himself for the record. He acknowledged having reviewed the conditions of approval and of having been made aware of staff's recommendation of approval. He expressed disagreement "with certain of the recommendations." In response to a previous question, he advised of one space available for lease at the subject shopping center. In conjunction with displayed photographs, he reviewed the "old layout." He discussed objections to conditions of approval 10, 9, and 8, and responded to corresponding questions of clarification. Discussion followed.

Chairperson Wendell invited the applicant's representative to the podium. (5:51:22) Attorney Mike Suglia advised that he had been retained by Applicant Gene Munnings. In conjunction with displayed slides, he discussed the benefits of Evergreen Gene's store to the community and Mr. Munnings' community involvement. Mr. Suglia acknowledged "an expansion of the prior permit;" that "it should have come before the commission." He explained, "it wasn't done out of arrogance or out of defiance. It was done out of fear; fear that there'd be so many conditions imposed, conditions that cost a business, conditions that would hurt the business." Mr. Suglia expressed apology and assured the commission "with approval of this application, it will stay strictly within the guidelines; whatever this commission recommends." He further clarified objections to conditions of approval 10, 9, and 8. He expressed agreement with staff's recommendation of approval, noting that the proposed amendment "meets all the requirements of the master plan. It's good for Carson City." He requested the commission's approval of the proposed amendment, and responded to corresponding questions of clarification.

In response to a comment, Mr. Suglia referred to page 6 of the staff report and reiterated apology, on behalf of Mr. Munnings, for the encroachment. He advised of having been informed by Mr. Munnings that, in 2009, "one of the commissioners wanted him to have a grease trap even though he doesn't water the plants so the water runs on the ground. He puts them in trays so the water doesn't run on the ground. He also has a license from the State of Nevada to operate a nursery. And so, it was more out of fear. It was not out of defiance or trying to get away with something. He's right out in the open." In response to a further question, Mr. Suglia noted the condition of approval requiring review of the proposed amendment in one year. At Chairperson Wendell's request, Mr. Suglia summarized his comments relative to disagreement with conditions of approval 10, 9, and 8.

Chairperson Wendell entertained public comment. (6:14:53) Chester Parks, owner of Nevada Gun Exchange, expressed the opinion that Mr. Munnings "does do what he feels like and he expanded so much that he's hurt most of the parking in there." He discussed issues associated with insufficient parking, expressed support for Mr. Munnings' business, and the preference that he would "move those plants back a little bit and give us all some room and a little more parking. He says he's got seven parking spaces tied up. He's got ten. He's got a truck and a trailer and a car, plus his seven spots so that doesn't leave much for anybody."

(6:16:31) Debbie Dean described the location of her residence "roughly a block behind [Mr. Munnings'] business." She advised that she walks to the Grocery Outlet to do her shopping, and estimated she is "through that area at least five times a week." She expressed the opinion that "[Mr. Munnings] is the best thing that has happened there since 1998 when [she] moved in." She described the care Mr. Munnings takes of his store and its surroundings, and expressed appreciation for his business.

(6:18:10) Donald Shiffer advised that he assists Mr. Parks at Nevada Gun Exchange. He acknowledged opposition to the proposed amendment, and discussed concerns associated with parking lot ingress and egress.

(6:20:23) Carley Hornberger expressed support for Mr. Munnings' business in consideration of the current economy. She expressed appreciation for Mr. Munnings' customer service.

(6:22:05) Nolan Prater, a "friend and customer of the Nevada Gun Exchange," referred to a photograph at page 15 of the late material and discussed vehicles parked in the parking lot. He further discussed concerns associated with insufficient visibility at the entrance / exit to the parking lot. He discussed additional concerns associated with temporary signage blocking the entrance to the parking lot.

(6:25:06) Pamela Bass advised of having frequently visited Mr. Munnings' store "as long as he's been there." She expressed appreciation for the business, and advised of never having had a problem with parking or oncoming traffic.

(6:26:18) Mary Randall expressed support for Mr. Munnings' store, and advised of never having "had a problem."

(6:27:53) DeeDee Foremaster advised that she is "a disability specialist," and has "one of the grants that provides disability information for this City." She further advised of having been "in [Mr. Munnings'] place of business and, when you're a person with a disability, the first thing you're very, very, very careful about is to always stay away from the doors that are going to open. So if you are in an electric wheelchair, you're going to basically stay away from the area where the doors are going to open. So you're going to have a tendency to stay to the outside of the sidewalk to begin with. Thirty-six inches is a required handicapped distance. Forty-eight inches is wonderful." Ms. Foremaster advised of having seen "no problem with accessibility." She suggested requiring "an extra handicapped spot near that end of the shopping center." She expressed appreciation for the method by which Mr. Munnings has "beautified this area in a dilapidated shopping center." She reiterated the suggestion to require an additional handicapped parking space near the gun shop. She displayed a photograph of "the garden next to [her] homeless center," and described the irrigation system installed by Mr. Munnings at his own expense.

(6:37:57) Marcia Truesdale advised that she works next door to the Do Drop In Center, and confirmed "the improvement to the side yard in our business community." She expressed appreciation for the "service that [Mr. Munnings] has offered in this community, not just with his business and the plants but with the church and with the Senior Follies. He is an active, supportive member in the church and in the community." She expressed appreciation for the "passion ... and the knowledge that [Mr. Munnings] has for his plants and his materials."

(6:40:02) Carson Shopping Center Manager Bill Horne expressed support for the proposed amendment, and thanked Community Development Department staff. He expressed agreement with Mr. Suglia "and what we're trying to do," and apology for allowing deviation "from the original permit." He advised that

his "goal, as a landlord, is to try [his] best in operating the center to promote the businesses and allow them to be successful." He expressed the belief that Mr. Munnings' "encroachments were done to promote his business." He acknowledged "we were in the wrong. [He] allowed it to happen because [he] believed it necessary for [Mr. Munnings] to survive." He expressed unhappiness over "two tenants that are unhappy with each other," and the belief that the plan will address a lot of the concerns of Mr. Parks. He expressed apology to Mr. Parks for "the way they have been treated." He expressed the belief that Nevada Gun Exchange "is very necessary," and concern that "business has been down for them ..." He discussed improvements to the shopping center since the opening of Mr. Munnings' business, and provided background information on the prior condition of the shopping center. He acknowledged "a parking issue," and advised that it is in the process of being addressed with a new plan. In conjunction with displayed slides, he discussed the proposed new parking and circulation plan.

In response to a question, Mr. Horne discussed steps taken to mitigate the issues between the tenants. In response to a question, he advised of not having reviewed the conditions of approval. "... but I've listened to the comments on the ... conditions that the tenant is not happy with." He requested the commission's consideration to "adjust" conditions of approval 10, 9, and 8, as suggested by Mr. Lauder and Mr. Suglia.

Chairperson Wendell entertained additional questions of the commissioners. In response to a question, Mr. Horne advised that Mr. Munnings has leased one unit. Commissioner Owens suggested that Mr. Munnings has "created an outdoor business with a small indoor spot." Mr. Horne acknowledged the accuracy of the statement, but stated, "we are in a depression." Commissioner Owens acknowledged the understanding that "everything is evolving and changing because of ... the position that we're in as a community." Mr. Horne reiterated the desire to help ensure the success of his tenants. He further reiterated that "this particular tenant brings beauty to the center, brings beauty to Carson City, could be a destination almost ..." He expressed the belief that "the plan is good for the center and is good for the City and it's good for [Mr. Munnings]." Mr. Horne acknowledged that Mr. Munnings is also currently utilizing the unrented unit, #1850.

Chairperson Wendell called again for public comment. (6:57:10) Sandra Davis advised of having patronized the shopping center since approximately 2000. She advised of never having experienced any problem with parking or pedestrians. She expressed support for Mr. Munnings' business, and advised that she patronizes his shop.

(6:58:28) At Chairperson Wendell's request, Mr. Parks stepped to the podium. Mr. Parks acknowledged having listened to the testimony provided during the meeting. In response to a further question, he advised he had not reviewed the conditions of approval or the proposed plans. He further advised that he has no personal problem with Mr. Munnings. "He just seems to have grown out in the middle of everything and we just can't get any decent parking." In response to a question, he advised that most of his questions had been answered. He reiterated the concern over pedestrian safety.

Chairperson Wendell provided the applicant or any of his representatives the opportunity to provide additional comment. At Chairperson Wendell's request, Mr. Munnings identified himself from the audience. (7:00:27) Rob Lauder acknowledged that Mr. Munnings' business has "encroached on the parking." "The end result that we're presenting actually increases the parking." In response to a comment, Mr. Lauder disagreed with providing additional handicapped parking for Nevada Gun Exchange. He explained that "in a normal design process of a parking lot, there are codified ratios of the minimum number of handicapped spaces to the total spaces in the parking lot. Along with that, it's also codified that there be unloading zones. Almost by definition, when you add a parking space, you have to add an

unloading zone and that basically takes a parking space away. So by adding handicapped parking, we will decrease the available parking."

Chairperson Wendell called again for public comment. (7:03:23) DeeDee Foremaster suggested specifically designating parking for Nevada Gun Exchange.

At Chairperson Wendell's request, William Horne stepped to the podium. (7:04:22) Mr. Horne acknowledged having heard Ms. Foremaster's suggestion. In response to a further question, he advised of never having considered the suggestion. Ms. Dorr Pansky advised that staff would not support a condition of approval for specifically designated parking. In response to a comment, Mr. Plemel acknowledged the property manager and the tenants could work out the details. He reiterated that staff would not support including the suggestion as a condition of approval. Mr. Horne discussed difficulties associated with designating parking places, specifically enforcement. (7:08:17) In response to a question, Mr. Parks reiterated the need for additional parking. Commissioner Owens suggested addressing the issue of Mr. Munnings parking his truck and trailer in one of the "prime [parking] spots." Mr. Horne agreed to request Mr. Munnings to park in a different place, but clarified he would not pursue legal enforcement.

Chairperson Wendell called again for public comment. (7:10:20) Spencer Bass advised of having assisted Mr. Munnings for "a few years." He discussed difficulties associated with an appropriate parking place for the truck and trailer. He advised that he has never experienced problems with parking or pedestrians, and that the chain complained of by Mr. Parks is "never up during business hours."

Chairperson Wendell called again for public comment and, when none was forthcoming, entertained questions or comments of the commissioners. In reference to condition of approval 22, at page 4 of the staff report, Ms. Dorr Pansky advised that a recommendation to revoke would be pertinent to the entire special use permit. She acknowledged that Mr. Munnings would have the right to appeal any revocation to the Board of Supervisors and, ultimately, to the District Court. Mr. Plemel advised that the commission's decision would be final, unless the applicant chooses to appeal. He reviewed the appeal process for the record, and responded to additional questions of clarification.

In response to a question, Ms. Dorr Pansky advised that staff would agree with "the recommendation to leave the corner as is but with a three-foot maximum height, not a 40-inch maximum height. All the other conditions, staff would like to stand as is." Mr. Plemel offered additional clarification. In response to a question, Mr. Lauder advised that the display area is 40 square feet.

Chairperson Wendell entertained additional questions or comments of the commissioners. Mr. Plemel acknowledged that the outdoor display would remain permanent, if approved by the commission. In response to a question, Mr. Lauder expressed a preference for a approval of the proposed amendments, with the previously stated conditions. He clarified he would "rather have approval with [staff's] conditions than no approval."

Chairperson Wendell discussed concerns with regard to any sort of pedestrian impediment. Chairperson Wendell entertained additional commissioner questions or comments and, when none were forthcoming, a motion. In response to a question, Mr. Ward advised that Chairperson Wendell could offer a motion. **Chairperson Wendell moved to approve SUP-09-055(A), an amendment to a previously approved special use permit from Rob Lauder (property owners: Bernard - Bernard - Cuccaro, LLC, and William F. and D. Horne, et al.), for permanent outdoor display of merchandise, on property zoned retail commercial, located at 1803, -05, -07, -09, -11, -15, -17, and -21 North Carson Street, APNs 002-**

091-03, -04, and -06, based on the findings and subject to the conditions of approval outlined in the staff report. Commissioner Dhami seconded the motion. Motion failed 2-2.

In consideration of the tie vote and the reduced number of commissioners, Mr. Ward advised of the need for three affirmative votes to pass the motion. He suggested considering the action as a denial or that the chairperson entertain another motion. Following discussion with staff, Mr. Ward further suggested that action could be deferred until such time as the full commission could be present.

Following discussion, Chairperson Wendell advised that he would offer another motion. **Chairperson Wendell moved to approve SUP-09-055(A), an amendment to a previously-approved special use permit from Rob Lauder (property owners Bernard - Bernard - Cuccaro, LLC and William F. and D. Horne, et al.) for permanent outdoor display of merchandise, on property zoned retail commercial, located at 1803, -05, -07, -09, -11, -15, -17, and -21 North Carson Street, APNs 002-091-03, -04, and -06, based on the findings and subject to the conditions of approval outlined in the staff report. Commissioner Owens seconded the motion. Motion carried 3-1.** Mr. Plemel repeated the appeal process. Vice Chairperson Esswein returned to the dais.

G-2. POSSIBLE ACTION TO ADOPT RESOLUTION 2013-PC-2, COMMENDING WILLIAM VANCE FOR NINE YEARS' SERVICE ON THE PLANNING COMMISSION (7:33:25) - Chairperson Wendell introduced this item, and Mr. Plemel reviewed the agenda materials. Chairperson Wendell entertained a motion. **Commissioner Sattler moved to adopt Resolution No. 2013-PC-R-2, and present the same to Mr. Vance at the next commission meeting. Commissioner Dhami seconded the motion. Motion carried 5-0.**

H. STAFF REPORTS

H-1. DIRECTOR'S REPORT TO THE PLANNING COMMISSION AND FUTURE AGENDA ITEMS (7:35:18) - Mr. Plemel reported that the Board of Supervisors recently approved the Planning Commission's recommendation to adopt the revised commission bylaws. He further reported on the status of the Planning Division fee ordinance. He advised of the possibility that the October commission meeting would be cancelled.

H-2. COMMISSIONER REPORTS / COMMENTS (7:37:20) - Commissioner Dhami advised he would be absent from the December commission meeting. Commissioner Sattler expressed appreciation for the recent revision to the commission's bylaws.

I. PUBLIC COMMENTS (7:37:58) - Chairperson Wendell entertained public comments; however, none were forthcoming.

J. ACTION ON ADJOURNMENT (7:38:37) - Commissioner Sattler moved to adjourn the meeting at 7:38 p.m. Vice Chairperson Esswein seconded the motion. Motion carried 5-0.

The Minutes of the September 25, 2013 Carson City Planning Commission meeting are so approved this _____ day of November, 2013.

GEORGE D. WENDELL, Chair

CARSON CITY PLANNING COMMISSION

CASE RECORD

MEETING DATE: September 25, 2013 **AGENDA ITEM NO.: G-1**

APPLICANT(s) NAME: Rob Lauder **FILE NO. SUP-09-055(A)***
PROPERTY OWNER(s): Bernard/Bernard, Cuccaro, LLC and William F. and D Horne et al

ASSESSOR PARCEL NO(s): 002-091-03, -04, and -06
ADDRESS: 1803, -05, -07, -09, -11, -15, -17, -19, and -21 N. Carson St.

APPLICANT'S REQUEST: For Possible Action: To consider a request to amend a previously approved Special Use Permit for permanent outdoor display of merchandise on property zoned Retail Commercial (RC).

COMMISSIONERS PRESENT: [ ] KIMBROUGH [X] ESSWEIN [X] SATTLER
[X] DHAMI [ ] STEELE [X] OWEN [X] WENDELL

STAFF REPORT PRESENTED BY: Susan Dorr Pansky [X] REPORT ATTACHED
STAFF RECOMMENDATION: [X] CONDITIONAL APPROVAL
APPLICANT REPRESENTED BY: Rob Lauder and Mike Suglia

_X_ APPLICANT/AGENT WAS PRESENT AND SPOKE

APPLICANT/AGENT INDICATED THAT HE HAS READ THE STAFF REPORT, AGREES AND UNDERSTANDS THE FINDINGS, RECOMMENDATIONS, AND CONDITIONS, AND AGREES TO CONFORM TO THE REQUIREMENTS THEREOF.

_9_ PERSONS SPOKE IN FAVOR OF THE PROPOSAL _3_ PERSONS SPOKE IN OPPOSITION OF THE PROPOSAL

DISCUSSION, NOTES, COMMENTS FOR THE RECORD:

Rob Lauder-objections to conditions of approval 8, 9, and 10.
Exceeding of standards for egress.

- Display allowed under eaves with original SUP. Think that 4 feet is adequate for the pathways since it was okay before.
- Fire conditions state "minimum egress" is 36 inches (not true)
- Would like to propose a 4 foot walk path around the display area #2 as an alternative.
- Doesn't think that a vision triangle is necessary as proposed because it isn't a solid obstruction with plants in that area. Limit height to 42 inches? 36 inches?

Mike Suglia

- The sidewalk is 6 feet with no display.
- This permit is about Gene and his interest.
- The center was underutilized before Gene.
- Display in front of store is important to Gene's business. We would like 4 feet width between the under eave display. With no under eave display it is 6 feet.
- Never had a problem with parking or cars compared to busy street at Walmart and people walking in. Never had a problem with existing layout.
- Compliance checks

Satter- concerned about complaints investigated by the City
Dhami- looks good in the picture

Public Comment

Chester Parks-owns Gun Exhange at 1819 N. Carson St. Only is issue is that Gene has expanded as he pleases. Expansion of business hurts parking for shopping center. Not enough parking. Puts chair across his display and he can't get through. Fenced in display prohibits others from using sidewalks. Opposed to expansion.

Debbie Dean- Gene is the best thing that has happened since 1997. She frequents the center often. Has sealed cracks in the parking lot on his own and keeps it clean. Blessed to have Gene in the area.

Don Shiffer- Assists Mr. Parks at the gun store. Hard to navigate walkways as handicap and he himself has struggled walking through. Thinks 45 degree cutout is a good idea. Opposed to expansion.

Carly Hornburger- Support Mr. Munnings. Wants him to keep his area of greenery. He's only in front of his own door and not hurting anyone.

Nolan Prater- Friend and customer of NV Gun. Truck in parking spaces taking up 2-3 spaces, Gene's minivan is in a no parking area. Forty inches is not enough height for parking on the north side of #3. A-frame sign blocks traffic visibility.

Pamela Bass-Goes to Evergreen Gene's 3-4 times a week. Glad for bustling business. Never had a problem with parking, oncoming traffic or finding space.

Mary Randall- Supports Gene. Loves his store, been in during busy times and never had a problem with parking or stumbling around the store. Brought a lot of beauty to the shopping center.

Dee Dee Foremaster- from Rural Center for Independent Living. Disability specialist. Has a contract with the City about disability. Thirty-six inches is a required handicap distance, 48 inches is wonderful, didn't see a problem with accessibility. Suggests another handicap space on the north side of the parking lot since several of the other people speaking had disabilities. Suggest that the outside parking spaces be for employees, not the close spaces. Evergreen Gene's has improved the appearance of the center.

Marsha Trusdell- Has gone to Gene's on lunch break and hasn't had any problem parking. Thinks Gene is a wonderful addition.

Bill Horne- Shopping center manager, supports the plan. Agrees with Gene's attorney in what they are trying to do. Believes Gene's encroachment was done to benefit his business and Gene sometimes does things single mindedly and doesn't communicate with others. Gene has improved the center. Thinks the 25 feet for the clear space is overkill.

Sandra Davis- Has shopped at the complex since 2000/2001 and has never seen a problem with parking or pedestrians. Here to support Gene.

Rob Lauder- The end result increases the parking. Disagree about adding a handicap space because if he adds it he'll have to add an unloading zone.

Dee Dee Foremaster- Idea that the parking could be specifically assigned to individual tenants.

Spencer Bass Has been helping Gene. Has tried to park the truck at Grocery Outlet but they wouldn't let them. Not sure why there's a problem with a chain across the sidewalk because it's not up during business hours.

MOTION WAS MADE TO APPROVE WITH THE FINDINGS AND CONDITIONS AS ENUMERATED ON THE STAFF REPORT

1st								
MOVED:	**Wendell**	**SECOND:**	**Dhami**	**PASSED:**	**2/AYE**	**2/NO**	**1/ABSTAIN Esswein**	**2/ABSENT**
2nd								
MOVED:	**Wendell**	**SECOND:**	**Owens**	**PASSED:**	**3/AYE**	**1/NO Sattler**	**1/ABSTAIN**	**2/ABSENT**

MICHAEL SUGLIA, LTD.
ATTORNEY AT LAW
1950 COLLEGE PARKWAY, SUITE 102-A
CARSON CITY, NV 89706-7983
PHONE (775) 882-5554 FAX (775) 883-6592 E-MAIL Suglia@SugliaLaw.com

September 25, 2013

HAND DELIVERED

Susan Dorr Pansky, Manager
Planning Division
108 E. Proctor Street
Carson City, NV 89701

Re: Special Use Permit SUP-09-055(A)
Evergreen Gene's at 1811 N. Carson Street, Carson City, NV

Dear Ms. Pansky,

Enclosed please find seven more letters in support of the above referenced application. Because these were not received in my office until 2:00 p.m. today, my office staff made the individual copies for distribution to the Planning Commission members at the meeting.

Sincerely,

Michael T. Suglia, Esq.

MS:dk
w/ enclosures

TO WHOM IT MAY CONCERN:

RE: Evergreen Gene's, Inc.
1815 N. Carson St.
Carson, City, NV

I personally feel that Evergreen Gene's, Inc. is an asset to Carson City & the community. Not only can we buy our gardening supplies locally, we can also find unusual gift items and not have to make that trip to Reno. I have to note that Evergreen Gene's is frequently doing something for the community like fundraisers for the needy, breast cancer awareness, supporting our local arts; always something that will benefit (our) community. I personally love doing business with a locally own store that has the best interest of (our) community at heart!

Thank you,

Betty Franklin
963 Topsy Lane Ste#306/375
Carson City, NV 89705

I was sorry to hear about the trouble between the two businesses. I have shopped at Evergreen Gene's on many occasions, and though the lot is always busy, I have never had difficulty finding parking.

I appreciate the variety of products that Evergreen Gene's carries, as well as the quality of the plants in his nursery. Gene and Rowena are always helpful and friendly, and I am glad that they chose their current location to do business from.

Sincerely, Mark Sardari

Gene is a honest and hard working guy. We have known Gene for many years and he does the yard chores that we are unable to do anymore.

His shop is amazing. It has things there that are not available in other stores in Carson. Small businesses like Genes should get support from the community and government to stay in business.

I do hope those trying to hurt Gene business know he does many good things for for many organizations.

Shame on them for trying to ruin his business.

MARILYN AND JOHN MCWHORTER

I would like to comment on Evergreen Gene's Nursery. I have been shopping for my nursery products for the past several years and appreciate the fact that Gene goes out of his way to find plants for me that no one else in the Carson Area carries. I also appreciate the friendly service he and his wife provide their customers.

If the other occupants think he is overstepping his bounds, perhaps those businesses need to find a new space. Obviously the owner of the center does not think the nursery is a problem or it would not be allowed to use the space.

I look forward to many more years of purchasing Gene's nursery products.

Sincerely,

Sharon Donaldson

I could not be at the hearing today so am writing this on behalf of Gene and Rowena who own Evergreen Genes. They are an asset to the community. I enjoy going into their business whenever I am in that end of Carson. They both are hard working people. I love the outside plants and yard art they have. They have some great things. Seeing their business from the street drew me in.

It would be ashamed if they are no longer there. They only use a few parking spaces for their plants and things. And I for one love seeing the plants from the street.

When I come up to Evergreen Gene's I also visit some of the other businesses in the complex.

They do a lot of great functions during the year and that draws people into the shopping center. I have nothing but high admiration for Gene and Rowena, they are great people.

Vicki Cramer

1222 South Deer Run Road
Carson City, NV 89701

23 September 2013

To Whom It May Concern:

I have been a loyal and frequent customer of Evergreen Gene's in three locations in Carson City since I moved here from Michigan in 2005. Gene and his family offer many local products at a very fair price, as well as giving excellent customer service. I really like the current location as they have lots of room to display the products inside and outside. I love that the garden products are outside; it is like have a pretty landscaped area in the strip mall setting. Something green to enjoy , even while just driving by!! I support this family in theirstruggle to stay open at their current location. Thank-you.

Virginia DaSilva

testament from Danielle Cook

The large, shared parking lot is frequently used for Charity Car Washes, which take up much more than 5 spaces.

Evergreen Gene's, Inc. is a great little shop that offers unique gift items, in addition to being a great place to find seasonal, hearty plants that are

adapted to our climate and not just available in bulk and look pretty. If you need a gift that has more personality than a bathmat, you can't go wrong

here.

I got my windchime made of flatware there (THAT I LOVE), and christmas stuff, and tea and chocolate. Picked up some seed packets. It hosts

fairs and fund-raisers. I like that place.

Danielle Cook

MICHAEL SUGLIA, LTD.
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CARSON CITY, NV 89706-7983
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September 19, 2013

HAND DELIVERED

Susan Dorr Pansky, Manager
Planning Division
108 E. Proctor Street
Carson City, NV 89701

Re: Special Use Permit SUP-09-055(A)
Evergreen Gene's at 1811 N. Carson Street, Carson City, NV

Dear Ms. Pansky,

Attached are two emails and a letter in support of the above referenced application. I ask that this information be provided to the Planning Commission members at the meeting. I appreciate your anticipated cooperation.

Sincerely,

Michael T. Suglia, Esq.

MS:dk
w/ enclosures

To whom it may concern:
In my opinion," Evergreen Gene's" is a wholesome,attractive, and positive environment. It is a place I enjoy visiting very much in Carson City, and I find everyone involved in and around the business to be completely professional, supportive of the community, and of exemplary character. This is the kind of warm, caring small business that any town could be proud of.
Yours Truly, Lacy J. Dalton

The owners of Evergreen Gene's Inc. should be praised, not condemned, for creating such a unique store and lovely nursery. They carry "Made In America" items, and the healthy plants and flowers are like a personal garden to wander around in.

I know that the owners of this gift store and nursery are also community minded and help others who are in need.

And I am very proud to say I shop here frequently.

Caroline Smith

The Evergreen Gene's Inc. store is just what Carson City needs - a gift shop and nursery combined.

It is a great store, a great business, with great owners who are always helpful in making sure you find the perfect item or get the information needed about a plant.

Shantell Davis

Carson City Planning Division

108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180 – Hearing Impaired: 711
planning@carson.org
www.carson.org/planning

MEMORANDUM

Planning Commission Meeting of September 25, 2013

TO: Planning Commission **Item G-1**

FROM: Susan Dorr Pansky, Planning Manager

DATE: September 25, 2013

SUBJECT: **SUP-09-055(A) - Carson Shopping Center Special Use Permit Amendment LATE INFORMATION and STAFF REPORT CORRECTION**

Staff is issuing this Late Information and Staff Report Correction memo for SUP-09-055(A) to provide the following information to the Commission:

1. Three letters in support of the proposed amendment received from Michael Suglia on September 19, 2013. Please find the letters attached to this memo.

2. Copies of the six complaints received regarding the expanded outdoor display area on the subject property. These are the written complaints that are outlined in the staff report and have been redacted to remove the complainants' names and personal information. Please find the complaints attached.

3. Staff received a phone call from Mr. Nick Galakatos, property owner of Evergreen Plaza across the street from the subject property, on September 24, 2013, stating that he has no problem with the Special Use Permit as it is currently proposed, but does not think the permit should be permanent because it is unknown what businesses might occupy the center in the future and use the outdoor display areas.

4. Staff received photos of the Carson Shopping Center from Michael Suglia on September 24, 2013 showing what the center looked like before occupancy by Evergreen Gene's and after. Please find the photos attached.

5. Staff received an exhibit from Rob Lauder on September 24, 2013 with an alternative option to use some of the originally proposed Display Area #2 space for a four foot wide dedicated pedestrian walkway area. Please find the exhibit attached.

6. Staff received follow up clarification from the Fire Department on September 24, 2013 regarding minimum mercantile aisle widths, the Fire Department's August inspection of the property and the basis behind the Fire Department's recommendation to limit display in the under eave pathways. Please find the email from the Fire Department attached.

7. Staff incorrectly did not list and strike out the following condition from the 2009 Special Use Permit to indicate that staff proposes to delete this condition as a part of the new approval:

   ~~[The Special Use Permit will be reviewed by the Planning Commission in five years. The next review will be at the Planning Commission meeting in July of 2014.]~~

Thank you for your consideration of these additional items.

Attachments

MICHAEL SUGLIA, LTD.
ATTORNEY AT LAW
1950 COLLEGE PARKWAY, SUITE 102-A
CARSON CITY, NV 89706-7983
PHONE (775) 882-5554 FAX (775) 883-6592 E-MAIL Suglia@SugliaLaw.com

September 19, 2013

HAND DELIVERED

Susan Dorr Pansky, Manager
Planning Division
108 E. Proctor Street
Carson City, NV 89701

Re: Special Use Permit SUP-09-055(A)
Evergreen Gene's at 1811 N. Carson Street, Carson City, NV

Dear Ms. Pansky,

Attached are two emails and a letter in support of the above referenced application. I ask that this information be provided to the Planning Commission members at the meeting. I appreciate your anticipated cooperation.

Sincerely,

Michael T. Suglia, Esq.

MS:dk
w/ enclosures

To whom it may concern:
In my opinion," Evergreen Gene's" is a wholesome,attractive, and positive environment. It is a place I enjoy visiting very much in Carson City, and I find everyone involved in and around the business to be completely professional, supportive of the community, and of exemplary character. This is the kind of warm, caring small business that any town could be proud of.
Yours Truly, Lacy J. Dalton

The owners of Evergreen Gene's Inc. should be praised, not condemned, for creating such a unique store and lovely nursery. They carry "Made In America" items, and the healthy plants and flowers are like a personal garden to wander around in.

I know that the owners of this gift store and nursery are also community minded and help others who are in need.

And I am very proud to say I shop here frequently.

Caroline Smith

The Evergreen Gene's Inc. store is just what Carson City needs - a gift shop and nursery combined.

It is a great store, a great business, with great owners who are always helpful in making sure you find the perfect item or get the information needed about a plant.

Shantell Davis

CODE ENFORCEMENT – MISDEMEANOR COMPLAINT FORM

Carson City Code Enforcement Division
108 E. Proctor Street
Carson City, NV 89701
(775) 887-2599; Fax: (775) 887-2278; Hearing Impaired: 711
Email: codeenforcement@carson.org

[redacted]

SUBJECT PROPERTY/LOCATION OF COMPLAINT

Name or Business: EVERGREEN GENE Phone (if available): _____

Address: 1815 N. CARSON ST. CARSON CITY NV APN: _____

COMPLAINT: This is A Flower SHOP that Has Expanded Out into the Parking Lot — Has Taken up More than 30% of the Parking — in the WAYS. He Has DONE this CARSON Fire Trucks Can not get in where they Are Suppose To I Have GONE TO Other Stores in the Center And Can not Find Parking in the Center. — He Has Also Had CRAFT FAIRS ON Week ENDS AND IT Has made it Difficult To Find Parking And I Am Sure He did Not (OVER)

Have you contacted any other Carson City official or department regarding this complaint? ☐ Yes ☒ No

If yes, what were the results? _____

By signing below, I acknowledge that it is unlawful to report a misdemeanor violation knowing such report to be false, and that by doing so a person is guilty of a misdemeanor pursuant to Nevada Revised Statute (NRS) 207.280.

If a citation is issued as a result of this complaint, will you be willing to testify in court against the alleged violator?
☒ Yes ☐ No

[redacted]

Action Taken: _____

Date Closed: _____

HAVE ANY PERMITS TO do this – Also there is A Covered walk way in front of the Stores And He HAS it Blocked of where the Customers of the Stores HAVE TO WALK out into the PARKING lot TO get AROUND His Store. He HAS LIGHTING UP FOR His PLANTS AT Duck And they HAVE NOT BEEN Installed CORRECTLY – All EXTENSION CORDS

(FROM WHAT I HAVE BEEN TOLD, He HAS OR HAD A PERMIT TO TAKE up 4 SPACES – And He KEEPS EXPANDING

CODE ENFORCEMENT – MISDEMEANOR COMPLAINT FORM

Carson City Code Enforcement Division
108 E. Proctor Street
Carson City, NV 89701
(775) 887-2599; Fax (775) 887-2278; Hearing Impaired: 711
Email: codeenforcement@carson.org

[redacted]

SUBJECT PROPERTY/LOCATION OF COMPLAINT

Name or Business: EVER GREEN GENE NURSERY Phone (if available): _____

Address: 1815 N CARSON ST APN: _____

COMPLAINT: USURPED PARKING SO IT IS IMPOSSIBLE FOR CUSTOMERS TO GET IN OTHER STORES
TEMPORARY LIGHTS ILLEGALY USED PERMANTLY
BUILDING SIDEWALK BLOCKED
FIRE EXIT ON SOUTH OF BUILDING BLOCKED

Have you contacted any other Carson City official or department regarding this complaint? ☐ Yes ☒ No

If yes, what were the results? _____

By signing below, I acknowledge that it is unlawful to report a misdemeanor violation knowing such report to be false, and that by doing so a person is guilty of a misdemeanor pursuant to Nevada Revised Statute (NRS) 207.280.

If a citation is issued as a result of this complaint, will you be willing to testify in court against the alleged violator?

[redacted]

Action Taken: _____

Date Closed: _____

ZM

CODE ENFORCEMENT – MISDEMEANOR COMPLAINT FORM

Carson City Code Enforcement Division
108 E. Proctor Street
Carson City, NV 89701
(775) 887-2599; Fax: (775) 887-2278; Hearing impaired: 711
Email: codeenforcement@carson.org

[redacted]

Name or Business: EVERGREEN GENES Phone (if available): _____

Address: 1815 N CARSON ST CC NV 89701 APN: _____

COMPLAINT: EVERGREEN GENES IS A NURSERY THAT WITH THE BUILDINGS OWNERS CONSENT HAS TAKEN OVER AT LEAST 13 PARKING SPACES AND BLOCKED THE BREEZEWAY SO THAT WHEELCHAIR BOUND PERSONS AND BLIND PERSONS ARE FORCED TO NAVIGATE THE PARKING LOT AT THEIR OWN PERIL. ALSO BY DOING SO THEY HAVE REDUCED THE PARKING LOT CAPACITY SO THAT MANY FOLKS HAVE TO PARK ALONGER DISTANCE AWAY AGAIN PUTTING HANDICAP PEOPLE AT FURTHER RISK.

Have you contacted any other Carson City official or department regarding this complaint? ☐ Yes ☒ No

If yes, what were the results? _____

By signing below, I acknowledge that it is unlawful to report a misdemeanor violation knowing such report to be false, and that by doing so a person is guilty of a misdemeanor pursuant to Nevada Revised Statute (NRS) 207.280.

If a citation is issued as a result of this complaint, will you be willing to testify in court against the alleg[redacted]

[redacted]

Investigation Date: _____

Action Taken: _____

Date Closed: _____

3rd

CODE ENFORCEMENT – MISDEMEANOR COMPLAINT FORM

Carson City Code Enforcement Division
108 E. Proctor Street
Carson City, NV 89701
(775) 887-2599; Fax: (775) 887-2278; Hearing Impaired: 711
Email: codeenforcement@carson.org

[redacted]

SUBJECT PROPERTY/LOCATION OF COMPLAINT

Name or Business: CARSON MAIL DEPOT Phone (if available): _____

Address: 1805 N. CARSON ST CC NV 89701 APN: _____

COMPLAINT: THE OWNER of CARSON MAIL DEPOT ALSO OWNS 1815 N. CARSON ST A NURSERY THAT HAS BLOCKED THE BREEZEWAY SO THAT HANDICAP PEOPLE ARE FORCED TO NAVIGATE THE PARKING LOT. IN ADDITION THE OWNER HAS ALLOWED THE NURSERY TO TAKE OVER MULTIPLE PARKING SPACES, AGAIN FORCING HANDICAP PERSON TO PARK GREAT DISTANCES FROM OTHER STORES. THE OWNER ALSO DOES NOT PROVIDE ANY ACCESS FOR HANDICAP PEOPLE TO GET FROM THE PARKING LOT TO THE BREEZEWAY. WHEELCHAIR & BLIND FOLKS ARE DEFFINATELY AT RISK.

Have you contacted any other Carson City official or department regarding this complaint? ☐ Yes ☒ No

If yes, what were the results? _____

By signing below, I acknowledge that it is unlawful to report a misdemeanor violation knowing such report to be false, and that by doing so a person is guilty of a misdemeanor pursuant to Nevada Revised Statute (NRS) 207.280.

If a citation is issued as a result of this complaint, will you be willing to testify in court against the alleged [redacted]

[redacted]

Investigation Date: _____

Action Taken: _____

Date Closed: _____

CODE ENFORCEMENT – MISDEMEANOR COMPLAINT FORM

Carson City Code Enforcement Division
108 E. Proctor Street
Carson City, NV 89701
(775) 887-2599; Fax: (775) 887-2278; Hearing Impaired: 711
Email: codeenforcement@carson.org

[redacted]

Name or Business: NONE Phone (if available): —

Address: EVERGREEN GENE APN:

COMPLAINT: CAN'T PARK AT THE BEAUTY SHOP TO GET MY HAIR DONE. THE GARDEN SHOP TAKES UP WAY TOO MUCH PARKING SPACE.

Have you contacted any other Carson City official or department regarding this complaint? ☐ Yes ☑ No

If yes, what were the results?

By signing below, I acknowledge that it is unlawful to report a misdemeanor violation knowing such report to be false, and that by doing so a person is guilty of a misdemeanor pursuant to Nevada Revised Statute (NRS) 207.280.

If a citation is issued as a result of this complaint, will you be willing to testify in court against the alleged violator?
☑ Yes ☐ No

[redacted]

Action Taken:

Date Closed:

CODE ENFORCEMENT – MISDEMEANOR COMPLAINT FORM

Carson City Code Enforcement Division
108 E. Proctor Street
Carson City, NV 89701
(775) 887-2599; Fax: (775) 887-2278; Hearing impaired: 711
Email: codeenforcement@carson.org

[redacted]

SUBJECT PROPERTY

Name or Business: NONE Phone (if available): _____

Address: EVERGREEN GENE APN: _____

COMPLAINT: CAN'T PARK AT THE GUN SHOP OR THE STORES, MARKET. HE ALSO PARKS HIS CAR & TRUCKS IN THE NO PARKING AREAS.

Have you contacted any other Carson City official or department regarding this complaint? ☐ Yes ☒ No

If yes, what were the results? _____

By signing below, I acknowledge that it is unlawful to report a misdemeanor violation knowing such report to be false, and that by doing so a person is guilty of a misdemeanor pursuant to Nevada Revised Statute (NRS) 207.280.

If a citation is issued as a result of this complaint, will you be willing to testify in court against the alleged violator?

[redacted]

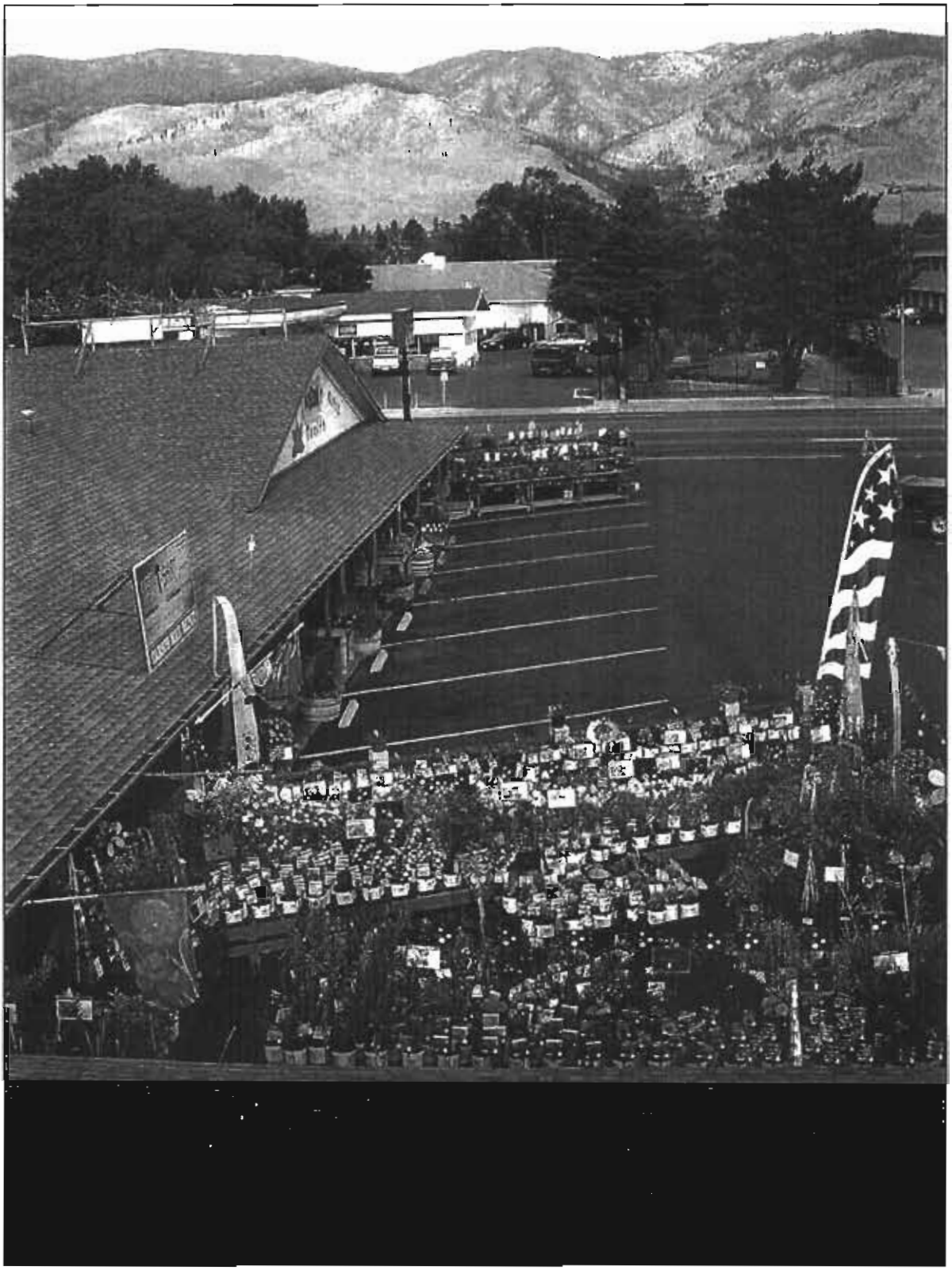
Action Taken: _____

Date Closed: _____

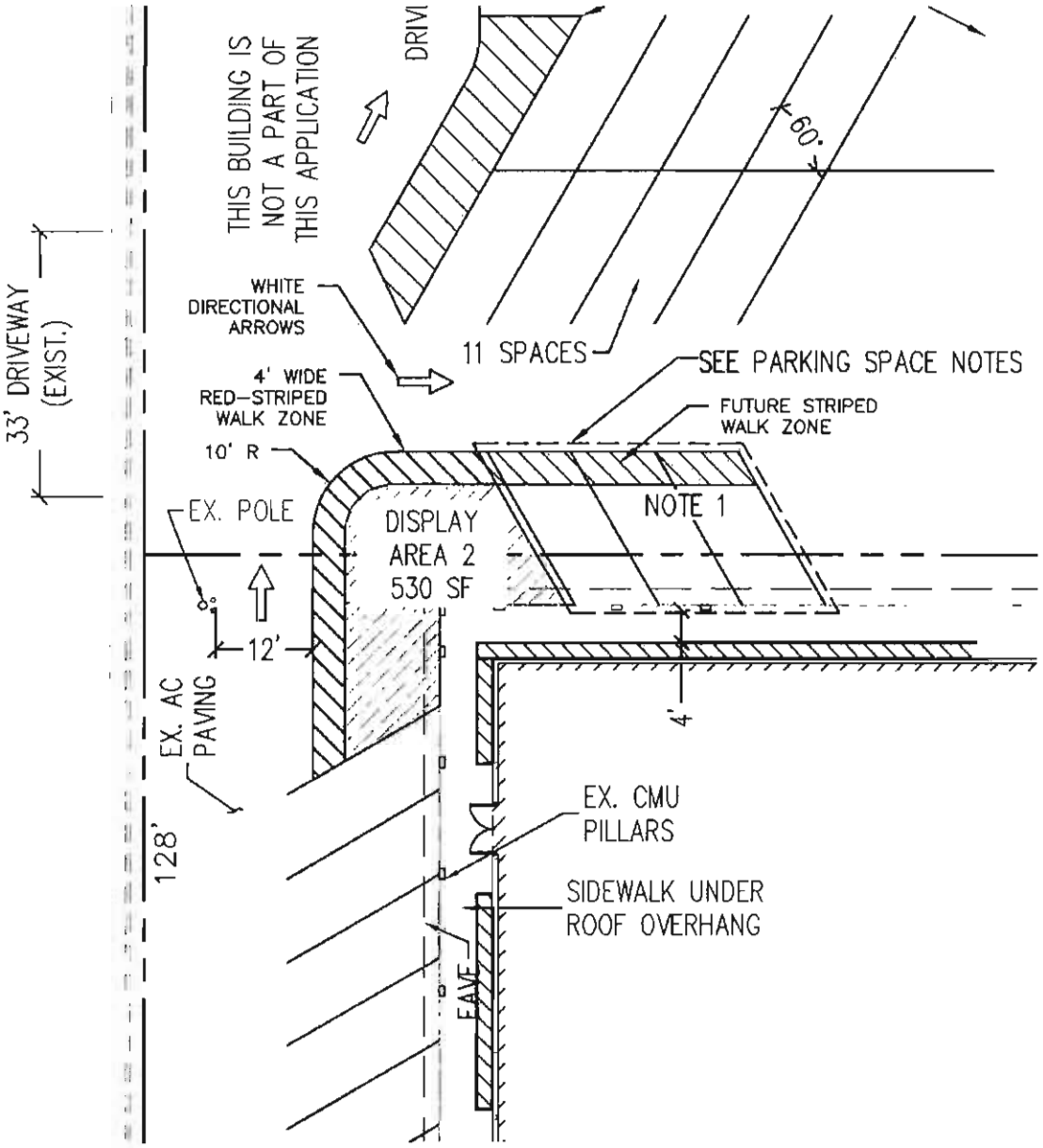
6th


FOR LEASE
884-6748


GROCERY
OUTLET



Photos Submitted by Michael Suglia on September 24, 2013 - 3 of 3



NORTH

20 0 20 40

SCALE: 1" = 20'

JOB # 130723	CARSON SHOPPING CENTER	RL ENGINEERING	SHEET NO.
DESIGN BY: RFL	PARTIAL STRIPING PLAN ALTERNATE "A"	675 Fairview Drive #223, Carson City, Nevada 89701	S1
DRAWN BY: RFL		PHONE (775) 884-3205	
CHECKED BY: RFL		FAX (775) 884-3265	
SCALE: AS SHOWN	CARSON CITY, NV	EMAIL Rob.Lauder@RL-ENGR.COM	
DATE: 9-24-13			

Susan Dorr Pansky

From: Dave Ruben
Sent: Tuesday, September 24, 2013 6:05 PM
To: Susan Dorr Pansky
Cc: Kevin Gattis; Vann Clegg
Subject: RE: Evergreen Gene - Mercantile Aisle Widths

Susan,

My comments regarding aisle width are from the Fire Code, section 1014.4.1, which requires 36" aisles in Group M occupancies. The comments were specifically for within the parking lot display area.

You asked about the business inspection we conducted at 1811 N. Carson Street in August. Carson City FD conducted an annual life safety inspection of all businesses in the Carson City Shopping Center in August of 2013. We conducted a life safety inspection of 1811 N. Carson on 8-12-13. At the time of the inspection I verbally informed Gene Munnings that because of the pending actions of the Carson City Planning Department issuing him an Order to Comply with his special use permit, that we would only be inspecting the interior of his store. Carson City FD felt that it would be confusing to Mr. Munnings to inspect and possibly order corrective action on items that overlapped an area that was already under review and legal action by another City department. I informed Mr. Munnings that we would come back to look at the outdoor area once the problems surrounding his special use permit were resolved. I did speak to him about a CMU block "gate" area he constructed on the sidewalk just north of his store. The "gate" had decreased the walkway to about 30". I told him that the SUP required 48" and he needed to make the opening wider in the "gate".

In my comments to you dated 8-20-13, I recommended that no merchandise be allowed in the walkways or exit paths. The walkways under the storefront roof overhangs were designed as part of the building and are part of the means of egress system. The applicant wishes to modify the building design and use the walkway area for merchandise storage and display. The building was designed with open access to the public way directly into the parking lot. The parking lot display area directly in front of 1811 N. Carson limits the egress from the store fronts by adding additional travel distance to the public way for anyone exiting those stores. Since the exit travel distance is increased, my recommendation is that no merchandise or displays are allowed in the walkways or exit paths since we can expect a higher than designed number of occupants in the means of egress. If the parking lot display area was removed, display areas on the walkway could be considered.

Please let me know if you have any other questions.

Dave Ruben
Captain – Fire Prevention
Carson City Fire Department
777 S. Stewart Street
Carson City, NV 89701

Direct 775-283-7153
Main 775-887-2210
FAX 775-887-2209

From: Susan Dorr Pansky
Sent: Tuesday, September 24, 2013 2:54 PM
To: Dave Ruben
Subject: Evergreen Gene - Mercantile Aisle Widths

Hi Dave - can you tell me what the minimum aisle width is for mercantile operations (what you were referencing in the comments for Evergreen Gene)? Was it your intention for this to apply to the walkways under the overhang as well if the Commission approves them to stay?

Susan Dorr Pansky
Planning Manager
Carson City Community Development, Planning Division
108 E. Proctor Street
Carson City, NV 89701
Phone: 775.283.7076
Fax: 775.887.2278
spansky@carson.org
www.carson.org/planning

STAFF REPORT FOR PLANNING COMMISSION MEETING OF SEPTEMBER 25, 2013

FILE NO: SUP-09-055(A) **AGENDA ITEM: G-1**

STAFF AUTHOR: Susan Dorr Pansky, Planning Manager

REQUEST: Amend a previously approved Special Use Permit for permanent outdoor display of merchandise on property zoned Retail Commercial (RC).

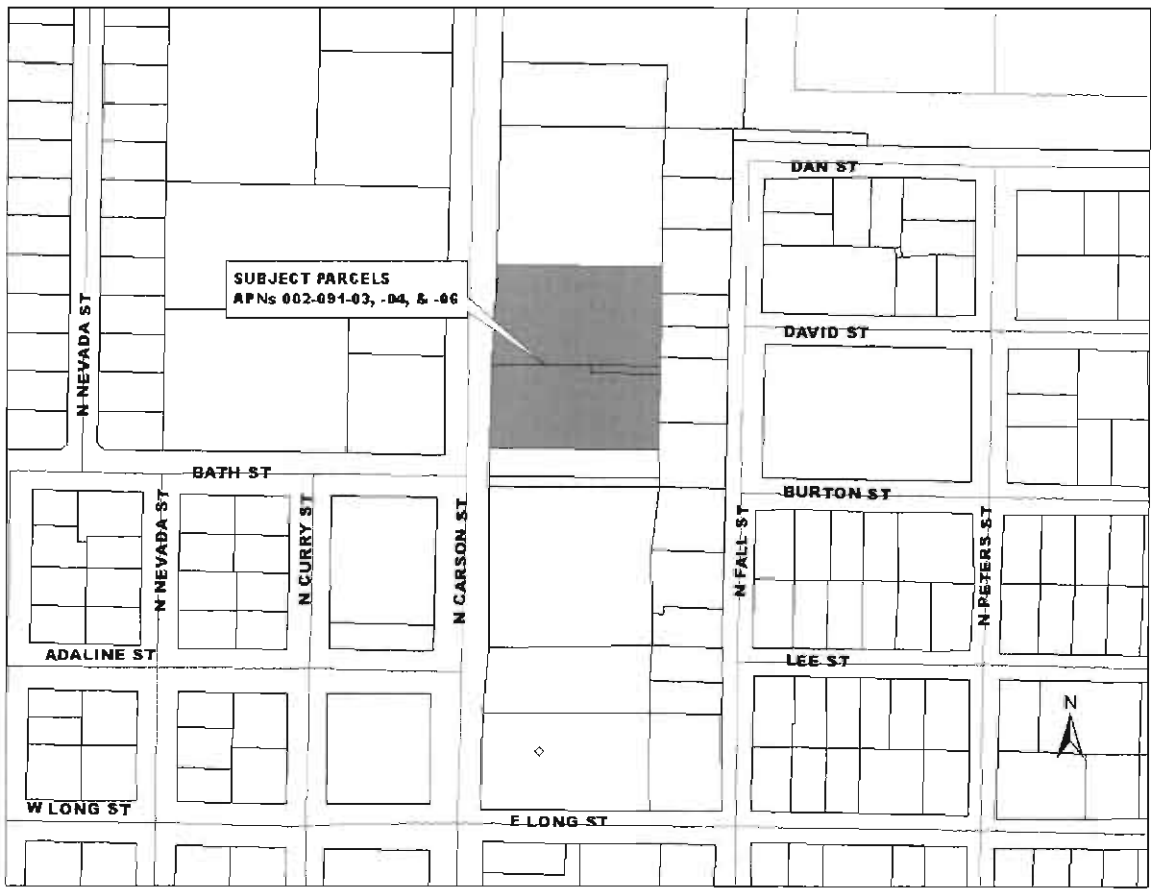
APPLICANT: Rob Lauder/RL Engineering

OWNER: Bernard-Bernard-Cuccaro LLC and William F. and D. Horne et. al.

LOCATION: 1803, -05, -07, -09, -11, -15, -17 and -21 North Carson Street

APN: 002-091-03, -04 and -06

RECOMMENDED MOTION: "I move to approve SUP-09-055(A), an amendment to a previously approved Special Use Permit from Rob Lauder (property owners: Bernard-Bernard-Cuccaro LLC and William F. and D. Horne et. al.) for permanent outdoor display of merchandise on property zoned Retail Commercial, located at 1803, -05, -07, -09, -11, -15, -17 and -21 North Carson Street, APNs 002-091-03, -04 and 06 based on the findings and subject to the conditions of approval outlined in the staff report."



RECOMMENDED CONDITIONS OF APPROVAL:

The following conditions include previously approved conditions of approval for SUP-09-055 as well as new and/or revised conditions associated with the amendment request. **Bold, underlined** text is added, [~~stricken~~] text is deleted. The original conditions of approval that remain a part of this recommendation are not necessarily in the same order as in the original staff report or Notice of Decision, and change in order is not identified with bold, underlined and stricken text.

The following shall be completed prior to commencement of the use:

1. The applicant must sign and return the Notice of Decision for conditions of approval within 10 days of receipt of notification. If the Notice of Decision is not signed and returned within 10 days, the item may be rescheduled for the next Planning Commission meeting for further consideration.

2. The applicant shall meet all of the conditions of approval and commence the use for which this permit is granted within twelve months of the date of final approval. A single, one-year extension of time may be granted if requested in writing to the Planning [~~and Community Development Department~~] **Division** thirty days prior to the one year expiration date. Should this permit not be initiated within one year and no extension granted, the permit shall become null and void.

3. The applicant shall obtain a building permit from the Carson City Building [~~and Safety Department~~] **Division** for any proposed construction. Contact the Building [~~Department~~] **Division** for approximate fees, design criteria, number of plans to submit and general assistance in the City's Building Permit process.

4. If the merchandise being displayed is either a windmill or photovoltaic panel connected for the production of electricity, and is connected to electrical utilization equipment, then an electrical permit will be required, since this is not an item exempted from the permit process. *(CCMC 15.05.010 Section 105.2)*

5. If the merchandise being displayed is a solar panel used to provide either conditioned air or heated water for human consumption, then a plumbing permit will be required, since this is not an item exempted from the permit process. *(CCMC 15.05.010 Section 105.2)*

The following shall be incorporated into the proposed development plan:

6. All development shall be substantially in accordance with the development plans approved with this application, except as otherwise modified by these conditions of approval.

7. All on and off-site improvements, **including lighting and electrical improvements**, shall conform to City standards and requirements.

8. **Display Area No. 2 shall be limited to maintain 25 foot drive aisles on the west and the north sides of the display area. If the display from Display Area No. 3 is relocated to Display Area No. 2, the relocated display area shall be subject to the same minimum drive aisle requirements as that of Display Area No. 2 and shall be limited to the three spaces adjacent to Display Area No. 2 as shown on the site plan.**

9. **Display Area No. 3 shall be cut off at a 45 degree angle on the northwest corner a distance of 20 feet from the eastern edge of the display area to ensure that a vehicle parking in the space directly north will have visibility when backing out.**

10. **The under eave display areas shall be limited to those areas that do not have adjacent parking lot display areas.**

11. **The outside of Display Areas 2 and 3 shall be designated a "fire lane - no parking" area. It may be marked with signage per the International Fire Code or, at a minimum, a red stripe at least six inches wide with the words "Fire Lane - No Parking" painted in a contrasting color on the stripe shall be painted on the pavement outlining the outer edge of the display areas. The wordage shall be at a minimum of every 10 feet.**

12. **All curb stops shall be removed from the display areas. For display areas subject to relocation per the site plan, curb stops shall be replaced in areas not being used for display, and removed in new display areas where applicable.**

13. **Outside display areas shall comply with the International Fire Code aisle requirements for mercantile occupancies.**

14. **Show a directional arrow with the change in direction next to the street frontage in front of Building 2.**

15. **The driveway just north of Building 3 must have both a one way do not enter sign and an arrow and do not enter painted on the pavement.**

The following shall be submitted with any Building Permit application:

16. The applicant shall submit a copy of the Notice of Decision and conditions of approval, signed by the applicant and owner, with any Building Permit application.

The following conditions are applicable throughout the life of the project:

17. The permanent outdoor display and sales areas are strictly limited to the areas shown on the submitted site plan[~~;~~]**,** [~~in front of the buildings and the parking islands and two parking spaces.~~] **and as modified by these conditions of approval.** Within the approved display areas, the business or property owners [~~must~~] **shall** regulate and decide which businesses will utilize which display areas.

18. Trash and debris generated at the areas of the outdoor display and sales areas must be collected by the businesses and placed in an appropriate trash container on the site.

19. Advertising of product or services is limited to the promotion of an existing permanently licensed primary business activity within the addresses which are included in this review.

20. Display areas cannot impede, restrict or block any aisle, doorway, pathway or pedestrian access from the parking lot or street**,** or to or from buildings for either customers or employees.

21. **Parking in any area designated no parking area by either signage or striping is prohibited.**

22. **The amended Special Use Permit shall be subject to a one year review by the Planning Commission to ensure compliance with the conditions of approval by both the owners and the owners' tenants. The one year review will take place at the September 2014 Planning Commission meeting. Failure to comply with the amended Special Use Permit conditions of approval at any time during the one year period prior to review may result in immediate citation and recommendation from staff to revoke the Special Use Permit at the next Planning Commission meeting.**

LEGAL REQUIREMENTS: CCMC 18.02.050 (Review); 18.02.080 (Special Use Permits); 18.02.115.8 (Outdoor Sales and Activities); 18.04.130.3 (Retail Commercial District Conditional Uses)

MASTER PLAN DESIGNATION: Community/Regional Commercial

ZONING DISTRICT: Retail Commercial (RC)

KEY ISSUES: Will the proposed expansion of the existing permanent outdoor displays be consistent with the standards of the Carson City Municipal Code? Is the location appropriate for expanded outdoor display areas?

SURROUNDING ZONING AND LAND USE INFORMATION:
NORTH: Retail Commercial/Retail
SOUTH: Retail Commercial/Office
EAST: Multi-Family Apartment/Apartments
WEST: Retail Commercial/Retail

ENVIRONMENTAL INFORMATION:
- FLOOD ZONE: Zone B
- SLOPE/DRAINAGE: Flat
- EARTHQUAKE: Zone II, beyond 500 feet

SITE DEVELOPMENT INFORMATION:
- PARCEL AREA: Three lots combined for a total of 1.66 acres
- EXISTING LAND USE: Retail and Commercial Uses
- STRUCTURES: No proposed changes to existing structures
- APPROVED PARKING: 47 spaces, two used by previously approved permanent outdoor display area for a total of 45 usable spaces for parking purposes
- PARKING PROPOSED: 48 spaces with parking lot reconfiguration and restriping to accommodate additional proposed outdoor display area, including two handicap parking spaces
- VARIANCES REQUESTED: None

SITE HISTORY:
- A Special Use Permit for permanent outdoor display areas was approved on July 29, 2009.

BACKGROUND:

On July 29, 2009, the Planning Commission conditionally approved Special Use Permit SUP-09-055 to allow the permanent outdoor display of merchandise on property commonly known as the Carson Shopping Center. This permit provides tenants with the ability to display merchandise outside the limits of their stores in an effort to encourage customer interest from vehicles passing the property on North Carson Street. The total display area approved was 2,030 square feet including the utilization of two parking spaces, which took the total parking space count from 47 spaces to 45 spaces. The Special Use Permit includes 13 conditions of approval that are outlined in the Notice of Decision signed by the property owners on August 12, 2008. The Notice of Decision and approved site plan are included with this staff report as Exhibit "A".

On or about July 3, 2013, Code Enforcement staff received a written complaint that Evergreen Gene's garden shop had taken up "more than 30% of the parking" at the Carson Shopping Center. The specific complaint is stated below:

> *"This is a flower shop that has expanded out into the parking lot. Has taken up more than 30% of the parking. In the ways he has done this Carson fire trucks cannot get in where there are supposed to. I have gone to other stores in the center and cannot find parking in the center. He has also had craft fairs on weekends and it has made it difficult to find parking and I am sure he did not have any permits to do this. Also there is a covered walk way in the front of the stores and he has it blocked off where the customers of the stores have to walk out into the parking lot to get around his store. He has lighting up for his plants at dusk and they have not been installed correctly – all extension cords. From what I have been told, he has or had a permit to take up four spaces, and he keeps expanding."*

In response to this complaint, staff visited the site to verify the reported conditions and reviewed the approved Special Use Permit for compliance. Staff determined that outdoor display areas being utilized by Evergreen Gene's did not comply with the approved Special Use Permit, and issued a letter on July 12, 2013 to Mr. Gene Munnings ordering the reduction of the outdoor display areas to those allowed in the Special Use Permit. The photos taken during the site visit are included in this staff report as Exhibit "B" and the July 12, 2013 letter issued by staff is included as Exhibit "C".

Subsequent written complaints were received by Code Enforcement staff between July 15, 2013 and August 14, 2013 as follows:

> *"Usurped parking so it is impossible for customers to get in other stores. Temporary lights illegally used permanently. Building sidewalk blocked. Fire exit on south of building blocked."*
>
> *"Evergreen Genes is a nursery that with the building owners consent has taken over at least 13 parking spaces and blocked the breezeway so that wheelchair bound persons and blind persons are forced to navigate the parking lot at their own peril. Also by doing so they have reduced the parking lot capacity so that many folks have to park a longer distance away again putting handicap people at further risk."*
>
> *"The owner of Carson Mail Depot also owns 1815 N. Carson St. A nursery that has blocked the breezeway so that handicap people are forced to navigate the parking lot. In addition the owner has allowed the nursery to take over multiple parking spaces,*

again forcing handicap persons to park great distances from other stores. The owner also does not provide any access for handicap people to get from the parking lot to the breezeway. Wheelchair and blind folk are definitely at risk."

"Can't park at the gun shop or the stores, market. He also parks his cars and trucks in the no parking areas."

"Can't park at the beauty shop to get my hair done. Garden shop takes up way too much parking space."

In total, six written complaints have been received by Code Enforcement staff.

On July 18, 2013, the Community Development Director (Director) received a letter from Mr. Rob Lauder, PE of RL Engineering on behalf of his client, Mr. Munnings, proposing resolutions to the various Special Use Permit violations, which included submitting a new Special Use Permit Application by August 15, 2013. This letter is attached to the staff report as Exhibit "D".

On July 22, 2013, the Director responded via email to Mr. Lauder's letter stating that the outdoor displays cannot continue outside the areas originally approved by the Special Use Permit pending submittal of a new application due to complaints received, and directed Mr. Lauder to have his client remove the materials outside the approved display areas, as well as correct any building and fire code violations. This email is attached to the staff report as Exhibit "E".

On July 24, 2013, the Director received an email from Mr. Munnings explaining the reason why his product placement exceeds the display areas approved with the Special Use Permit, addressing the code violation complaints and requesting that his product be allowed to remain pending a new permit being heard by the Planning Commission because he was allowed to leave his product in place pending Special Use Permit approval during the original permit process four years ago. This email is attached to the staff report as Exhibit "F".

On July 30, 3013, the Planning Division received a letter from Mr. Michael Suglia, Esq. stating that he was retained to represent Mr. Munnings regarding the Special Use Permit. Mr. Suglia requested time to review the previously approved Special Use Permit and present a mutually agreeable resolution by the week of August 19, 2013. This letter is attached to the staff report as Exhibit "G".

On August 7, 2013, staff issued a Notice of Violation/Final Order to Comply to the property owners subject to SUP-09-055, ordering compliance with the approved Special Use Permit by August 19, 2013 or a citation would be issued. This Notice acknowledged the letter submitted by Mr. Lauder, the email submitted by Mr. Munnings and the letter submitted by Mr. Suglia; and stated that allowing the outdoor display areas to remain out of compliance until the permit may be modified is not an acceptable option, as the unauthorized expansion is causing harm to other businesses and patrons within the Carson Shopping Center. This Notice is attached to the staff report as Exhibit "H".

On August 15, 2013, a revised Special Use Permit application was submitted by Mr. Lauder on behalf of the applicant. This application including a revised site plan is included as Exhibit "I".

On August 16, 2013, staff was directed by the City Manager not to issue a citation for non-compliance pending the amended Special Use Permit application being heard by the Planning Commission on September 25, 2013. Staff concurred that this approach is consistent with how similar situations involving Special Use Permits have been handled in the past.

DISCUSSION:
Per Carson City Municipal Code (CCMC), Section 18.04.130.3, Conditional Uses in a Retail Commercial zoning district, Permanent Outdoor Sales are allowed as a conditional use subject to the provisions of Section 18.02.115.8 (Outdoor Sales and Activities).

The applicant is requesting to amend SUP-09-055 to expand the currently approved outdoor display area at the Carson Shopping Center from approximately 2,030 square feet including two parking spaces to approximately 3,798 square feet including eight parking spaces to accommodate the nursery operation of Evergreen Gene's as well as provide outdoor display areas for the other tenants in the Carson Shopping Center.

The outdoor display area proposed consists of three display areas in the parking lot as shown on the revised site plan, and multiple display areas under the eaves of the pedestrian walkways. The display areas are broken down as follows:

Description	Size
Display Area No. 1	302 sf
Display Area No. 2	767 sf
Display Area No. 3	2,275 sf
Under Eave Display Area	454 sf
Total	**3,798 sf**

Approval of this request will accommodate outdoor display areas that have already been expanded beyond the limits of the previously approved Special Use Permit, particularly Display Areas No. 2 and 3. Based on Code Enforcement staff's site visit, the display areas have been expanded to include a total of nine parking spaces, bringing the total current parking spaces to 38. Staff is unable to determine precisely when the expansion of these display areas occurred.

The requested Special Use Permit amendment includes the addition of outdoor lighting in Display Area No. 3 and the restriping of the existing parking lot to accommodate the display area expansion. The applicant proposes to completely restripe the parking lot accomplish the following:

- Replace the additional parking spaces lost with the expansion and bring the number of spaces to 48, which is three more that what is approved under the current Special Use Permit. This will be achieved by reconfiguring the parking spaces within standard design requirements and adding parking on the north side of the parking lot.

- Move parking spaces away from Outdoor Display Area No. 3 to provide better vehicle and pedestrian circulation and provide adequate space for fire truck access.

- Provide two handicap parking spaces with an unloading zone between them. Handicap spaces do not currently exist anywhere on the site.

- Provide better directional striping and signage in the parking for the parking lot.

The applicant recognizes that the tenant space to the north of Evergreen Gene's is currently vacant and has proposed that, in the event the space is rented, a portion of the outdoor display area in Display Area No. 3 be relocated to be adjacent to Display Area No. 2, as discussed in the Parking Space Notes on the revised site plan.

Staff notes that the proposed parking lot revisions meet minimum design requirements. This shopping center has been in existence since the late 1950s and doesn't meet current retail parking requirements, and is not required to because the retail commercial use of the property is preexisting. Staff has determined that the proposed revisions to the parking lot are acceptable to restore parking to the 45 spaces allowed under the original Special Use Permit, to improve private and emergency vehicle and pedestrian access in the parking lot, to provide handicap parking and to provide better vehicle circulation through striping and directional signage.

Due to the fact that the proposed expansion of the permanent outdoor display areas is a more intense use and has a greater impact than what is permitted in the Retail Commercial zoning district, staff believes that additional restrictions beyond the minimum code requirements are appropriate to address vehicle and pedestrian safety, future permit compliance and tenant visibility in the Carson Shopping Center. With that said, staff makes the following recommendations with regard to the proposed Special Use Permit amendment:

- Display Area No. 1: No change proposed.

- Display Area No. 2: Limit display area to maintain 25 foot drive aisles on the west and the north sides of the display area, consistent with the narrowest width proposed between the parking spaces and Display Area No. 3, to ensure that adequate vehicle and pedestrian access may be achieved with minimal conflict between the two. The proposed minimum width of 12 feet on the west side and 16 feet on the north side is not adequate to accommodate the combination of vehicles navigating for parking and customers navigating around the display area to view products. This limit will also ensure that visibility into the center from Carson Street is not further impaired. The visibility space between Carson Coffee and A to Zen is already limited and a smaller display area will help other tenants of the center maintain their visibility.

- Display Area No. 3: Cut the display area off at a 45 degree angle on the northwest corner a distance of 20 feet from the eastern edge of the display area to ensure that a vehicle parking in the space directly north will have visibility when backing out.

- Under Eave Display Areas: Limit under eave displays to those areas that do not have an adjacent parking lot display areas to ensure that pedestrian access between the parking lot display areas and the building is maintained.

- Relocatable Display Area from No. 3 to No. 2: If relocated, this display area would be subject to the same minimum drive aisle requirements as that of Display Area No. 2, and would be limited to the three spaces adjacent to Display Area No. 2 as shown on the revised site plan to ensure that some parking will continue to exist on the north side of Building 2.

- The amended Special Use Permit shall be subject to a one year review by the Planning Commission to ensure compliance with the conditions of approval by both the owners and the owners' tenants. The one year review will take place at the September 2014 Planning Commission meeting. Failure to comply with the amended Special Use Permit conditions of approval at any time during the one year period prior to review may result in immediate citation and recommendation from staff to revoke the Special Use Permit at the next Planning Commission meeting. This proposed condition will help to ensure that compliance with the Special Use Permit conditions will be maintained in the future.

Staff's proposed changes to the display areas are further depicted on the site plan attached to this staff report as Exhibit "J".

In reviewing the information provided by the applicant and the required findings as identified below, the findings to grant approval of this Special Use Permit can be made with the recommended conditions of approval. It is recommended that the Planning Commission approve the amended Special Use Permit application with the conditions outlined by staff.

In the event that the Planning Commission determines the required findings cannot be met for the amended Special Use Permit, the Planning Commission may deny the requested amendment. Denial of the amendment request would allow the Special Use Permit to continue as it is currently approved with existing conditions of approval, and the applicant would be required to reduce all outdoor display areas to those outlined in Exhibit "A" within a reasonable timeframe not to exceed 30 days following the Planning Commission meeting. An alternate motion for denial has been included at the end of this staff report.

PUBLIC COMMENTS:
Public notices were mailed on September 6, 2013 to 174 adjacent property owners within 300 feet of the subject site pursuant to the provisions of NRS and CCMC. As of the date this report was completed, the following comments have been received by the Planning Division:

- Mr. Chester Parks, owner of Nevada Gun Exchange and Mr. Nowland Parker, customer of Nevada Gun Exchange came to the Planning Division offices and provided the comments below:
    - Evergreen Gene's takes up seven spaces for the outdoor display, plus two or three spaces in the parking lot for a flatbed truck and unlicensed trailer plus a car that consistently parks in the no parking area of the parking lot.
    - There is not enough parking for customers because Evergreen Gene's is taking up spaces with display area and with permanent parking for commercial vehicles associated with the business.
    - There is a sandwich board for Evergreen Gene's right at the entrance of the parking lot that blocks visibility for cars trying to enter Carson Street. This board remains in this location constantly and is not taken down during non-business hours.
    - Why is the display area permitted in front of an unrented tenant space?
    - People cannot walk down the covered overhang walkway due to Evergreen Gene's outdoor displays narrowing and/or blocking the walkway. Especially difficult for handicap people (Gun Exchange owner is functionally blind and has handicap customers).
    - Walkway near display area is sometimes wet and could be unsafe and water pools in the parking lot near the nursery display area. Why is a nursery allowed on paved areas?
    - Product displays expand beyond designated display areas on a regular basis.

Any comments that are received after this report is complete will be submitted prior to or at the Planning Commission meeting, depending on their submittal date to the Planning Division.

OTHER CITY DEPARTMENT OR OUTSIDE AGENCY COMMENTS:
The following comments were received from various city departments. Recommendations have been incorporated into the recommended conditions of approval, where applicable.

Building Division Comments:

The current tenant at the subject location has created possible life/safety hazards since opening the business by placing items in the required exit paths/walkways beyond what was approved and adding on to the existing electrical system without the required permits and inspection. I would recommend that no display or sales items be allowed in the exit paths/walkways and no cord and plugged display lighting be allowed.

Engineering Division Comments:

1. Please show directional arrows with the change in direction next to the street frontage. This is in front of A to Zen.

2. The driveway just north of Carson Coffee must have both a one way do not enter sign and an arrow and do not enter painted on the pavement.

3. The 12 foot wide access between the new display area number 2 and the pole and bollards in front of A to Zen must be maintained as a minimum.

4. It is recommended that the northwest corner of display area 3 be cut off at a 45 degree angle to allow some sight distance for cars exiting the parking space just to the north.

Fire Department Comments:

1. The current tenant has created possible life safety and exiting hazards by the display of merchandise on the walkways in front of the store and the parking lot beyond what was approved by the original SUP. We recommend that no merchandise or display items be allowed in the exit paths or walkways.

2. The outside of display areas 2 and 3 shall be designated a "fire lane-no parking" area. It may be marked with signage per the IFC or, at a minimum, a red stripe at least six inches wide with the words "Fire Lane-No Parking" painted in a contrasting color on the stripe shall be painted on the pavement outlining the outer edge of the display area. The wordage shall be at a minimum every 10 feet.

3. Remove all curb stops in the display areas.

4. Outside display areas shall comply with the International Fire Code aisle requirements for mercantile occupancies.

Public Works, Environmental Control Comments:

No comments.

FINDINGS: Staff recommends approval of the Special Use Permit based on the findings outlined below, pursuant to CCMC 18.02.080 (Special Use Permits), subject to the recommended conditions of approval.

1. **The use will be consistent with the objectives of the Master Plan elements.**

The proposed expansion of the outdoor display area is consistent with the following applicable goals of the Master Plan in accordance with the seven findings (in bold) required for approval of a Special Use Permit:

Goal 1.2 – Promote Infill and Redevelopment in Targeted Areas

Goal 2.1 – Provide Opportunities for a Range of Retail Services

The expanded outdoor display areas will provide existing tenants of the Carson Shopping Center with additional means to market their product and to drive business to the center through visibility of product from passing vehicles on Carson Street.

2. **The proposed use will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood; and will cause no noise, vibrations, fumes, odors, dust, glare or physical activity.**

The proposed expansion of the outdoor display areas will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood if approved with staff's recommended conditions of approval that limit the display areas and further improve vehicle circulation, pedestrian walkability and safety throughout the center. The expansion is not anticipated to cause noise, vibrations, fumes, odors, dust, glare or unusual physical activity not associated with normal retail commercial operations.

3. **The project will have little or no detrimental effect on vehicular or pedestrian traffic.**

With the amended site plan and conditions of approval recommended by staff, the proposed outdoor display area expansion will have little detrimental effect on vehicular or pedestrian traffic in the Carson Shopping Center as the parking lot will be reconfigured to better accommodate pedestrian and vehicle circulation, and to provide additional parking for the center.

4. **The project will not overburden existing public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public improvements.**

Businesses are established at this location, with no enlargement of the existing buildings or uses other than the expanded outdoor display areas proposed. No additional public services will be used as a result of the proposed outdoor display area expansion.

5. **The project meets the definition and specific standards set forth elsewhere in this Title 18 for such particular use and meets the purpose statement of that district.**

A permanent outdoor display area is a conditional use in the Retail Commercial zoning district. Upon approval of the amended Special Use Permit with the recommended conditions of approval, the proposed project will be in conformance with the requirements of the Carson City Municipal Code.

6. **The project will not be detrimental to the public health, safety, convenience and welfare.**

   The proposed expansion will not be detrimental to the public health, safety, convenience and welfare provided that the amended Special Use Permit is approved with the proposed site plan amendments and conditions of approval recommended by staff because the changes and conditions proposed will ensure that pedestrians and vehicles will have adequate room to navigate the parking lot and walkway areas. The reconfigured parking lot will help to maintain a higher level of health, safety, convenience and welfare through the addition of standard and handicap parking spaces and clearer directional signage and striping for vehicles.

7. **The project will not result in material damage or prejudice to other property in the vicinity.**

   The expanded outdoor display areas at the Carson Shopping Center is not anticipated to result in material damage or prejudice to other property in the vicinity. The existing businesses are permitted uses in the Retail Commercial zoning district and the outdoor display areas will generally only affect tenants within the center.

ALTERNATIVE MOTION FOR DENIAL: **"I move to deny SUP-09-055(A), an amendment to a previously approved Special Use Permit from Rob Lauder (property owners: Bernard-Bernard-Cuccaro LLC and William F. and D. Horne et. al.) for permanent outdoor display of merchandise on property zoned Retail Commercial, located at 1803, -05, -07, -09, -11, -15, -17 and -21 North Carson Street, APNs 002-091-03, -04 and 06 based on the inability to make the required findings as noted in the staff report."**

ALTERNATIVE FINDINGS FOR DENIAL: If the Planning Commission votes to **deny** the application based upon the inability to meet all of the findings as required by Carson City Municipal Code (CCMC) Sections 18.02.080 (Special Use Permits), staff recommends the following findings for denial.

1. *The proposed amended Special Use Permit will have detrimental effect on vehicular or pedestrian traffic because adequate space for vehicles and pedestrians to navigate the parking lot and outdoor display areas simultaneously does not exist.*

2. *The proposed amended Special Use Permit will be detrimental to the public health, safety and welfare as it reduces size of a parking lot that is already underparked by current code requirements, and impairs both vehicle/pedestrian capabilities in the parking lot and on the covered walkways.*

Attachments:
- Exhibit "A" – SUP-09-055 Notice of Decision and Approved Site Plan
- Exhibit "B" – Site Photos
- Exhibit "C" – July 12, 2013 Compliance Letter from Staff
- Exhibit "D" – July 18, 2013 Letter from Rob Lauder, Consultant for Evergreen Gene's/Carson Shopping Center
- Exhibit "E" – July 22, 2013 Email from Lee Plemel, Community Development Director
- Exhibit "F" – July 24, 2013 Email from Gene Munnings, Owner of Evergreen Gene's
- Exhibit "G" – July 30, 2013 Letter from Michael Suglia, Attorney for Gene Munnings
- Exhibit "H" – August 7, 2013 Notice of Violation/Final Order to Comply
- Exhibit "I" – SUP-09-055(A) Revised Special Use Permit Application and Reduced Revised Site Plan
- Exhibit "J" – Staff Recommended Site Plan Revisions
- City Comments
- Full Size Revised Site Plan (Continuation of Exhibit "I")

CARSON CITY, NEVADA

CONSOLIDATED MUNICIPALITY AND STATE CAPITAL
DEVELOPMENT SERVICES

★ CLERK ★
FILED
Time 1:52p
AUG - 5 2009
By K. Vian Deputy
Carson City, Nevada

PLANNING COMMISSION
JULY 29, 2009

NOTICE OF DECISION

A request to review a Special Use Permit, SUP-09-055, was received from, Rob Lauder of RL Engineering (property owner: Bernard-Barnard-Cuccaro, LLC, William F. and D. Horne et al) for a permanent outdoor display of merchandise, on property zoned Retail Commercial (RC), located at 1803,1805, 1807, 1809, 1811, 1815, 1817, 1819, and 1821 N. Carson Street, APN(s) 002-091-03, -04, and -06, pursuant to the requirements of the Carson City Municipal Code.

The Planning Commission conducted a public hearing on July 29, 2009, in conformance with City and State legal requirements, and approved SUP-09-055 for a permanent outdoor display of merchandise, based on the findings contained in the staff report and subject to the following conditions of approval:

CONDITIONS OF APPROVAL:

The following shall be completed prior to commencement of the use:

1. The applicant must sign and return the Notice of Decision for conditions for approval within 10 days of receipt of notification. If the Notice of Decision is not signed and returned within 10 days, then the item will be rescheduled for the next Planning Commission meeting for further consideration.

2. All development shall be substantially in accordance with the development plans approved with this application, except as otherwise modified by these conditions of approval.

3. All on- and off-site improvements shall conform to City standards and requirements.

4. The applicant shall obtain a building permit from the Carson City Building and Safety Department for any proposed construction. Contact the Building Department for approximate fees, design criteria, number of plans to submit and general assistance in the City's Building Permit process.

5. The applicant shall meet all the conditions of approval and commence the use for which this permit is granted within twelve months of the date of final approval. A single, one year extension of time may be granted if requested in writing to the Planning and Community Development Department thirty days prior to the one year expiration date. Should this permit not be initiated within one year and no extension granted, the permit shall become null and void.

The following shall be submitted with any building permit application:

6. The applicant shall submit a copy of the Notice of Decision and conditions of approval, signed by the applicant and owner, with any building permit application.

The following applies to the site throughout the life of the project:

7. The permanent outdoor display and sales area is strictly limited to the areas shown on the submitted site plan; in front of the buildings and the parking islands and two parking spaces. Within the approved display areas, the business or property owners must regulate and decide which businesses will utilize which display areas.

8. Trash and debris generated at the areas of the outdoor display and sales must be collected by the businesses and placed in an appropriate trash container on the site.

9. Advertising of a product or service is limited to promote an existing permanently licensed primary business activity within the addresses which are included in this review.

10. Display cannot impede, restrict or block any aisle, doorway, pathway or pedestrian access from parking lot or street or to or from buildings for either customers or employees.

11. If the merchandise being displayed is either a windmill or photovoltaic panel connected for the production of electricity, and is connected to electrical utilization equipment, then an electrical permit will be required, since this is not an item exempted from the permit process. *(CCMC 15.05.010 Section 105.2)*

12. If the merchandise being display is a solar panel used to provide either conditioned air or heated water for human consumption, then a plumbing permit will be required, since this is not an item exempted from the permit process. *(CCMC 15.05.010 Section 105.2)*

13. The Special Use Permit will be reviewed by the Planning Commission in five years. The next review will be at the Planning Commission meeting in July of 2014.

This decision was made on a vote of 6 ayes, 0 nays, and 1 absent.

Jennifer Pruitt, AICP, LEED AP
Principal Planner

JP:jmb

Mailed by: PMT By: Aug 10, 2009

PLEASE SIGN AND RETURN THIS NOTICE OF DECISION WITHIN TEN DAYS OF RECEIPT

This is to acknowledge that I have read and will comply with the Conditions of Approval as approved by the Carson City Planning Commission.

William F. Horne
OWNER/APPLICANT SIGNATURE

8-12-09
DATE

WILLIAM F. HORNE
PLEASE PRINT YOUR NAME HERE

RETURN TO:

Planning Division
2621 Northgate Lane, Suite 62, Carson City, NV 89706

Enclosures: 1. Planning Commission Notice of Decision (2 copies)-Please sign and return only one. The second one is for your records.

2. Self-addressed stamped envelope

Approved Permanent Outdoor Display and Sales Areas
Per SUP-09-055

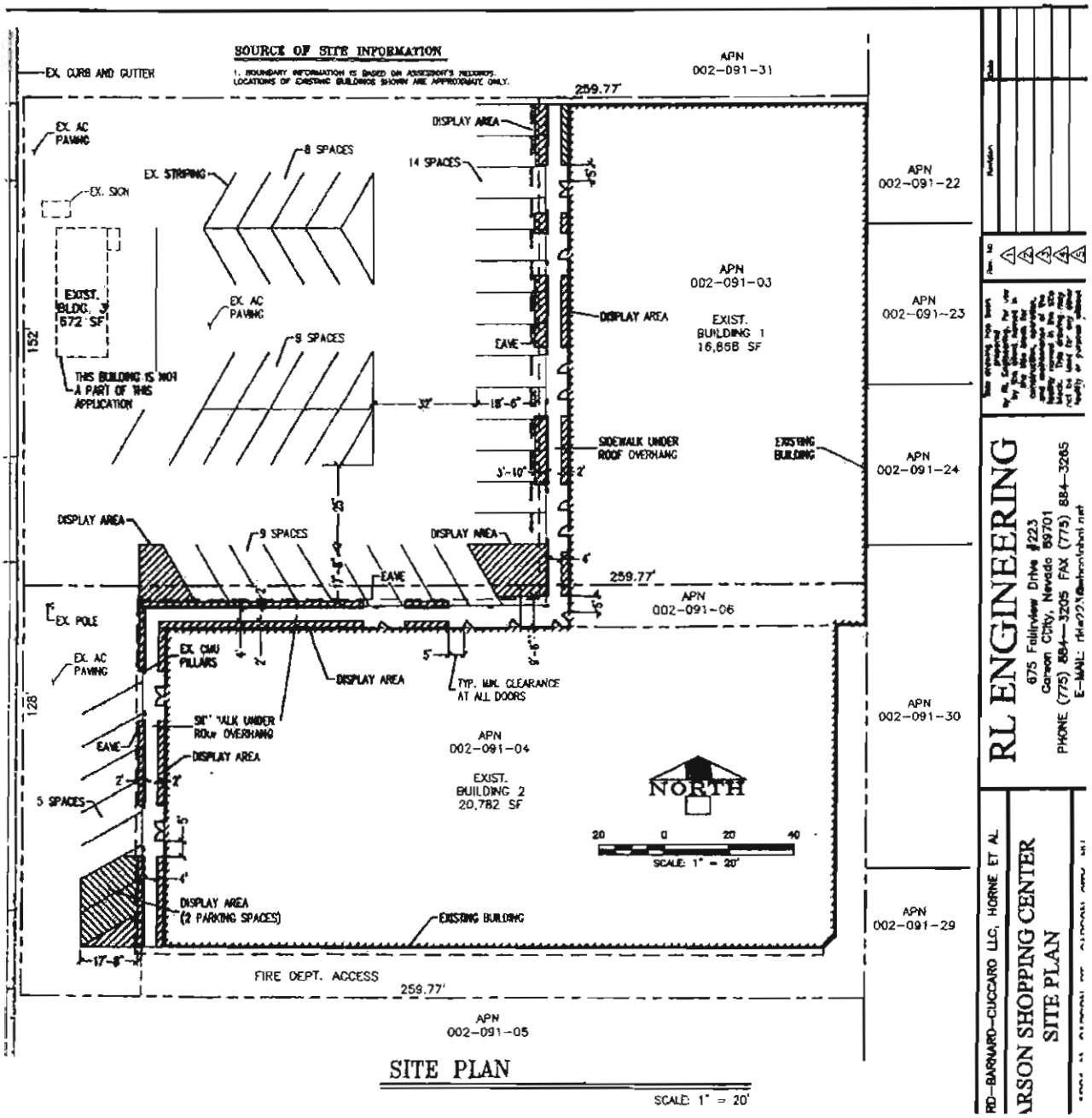
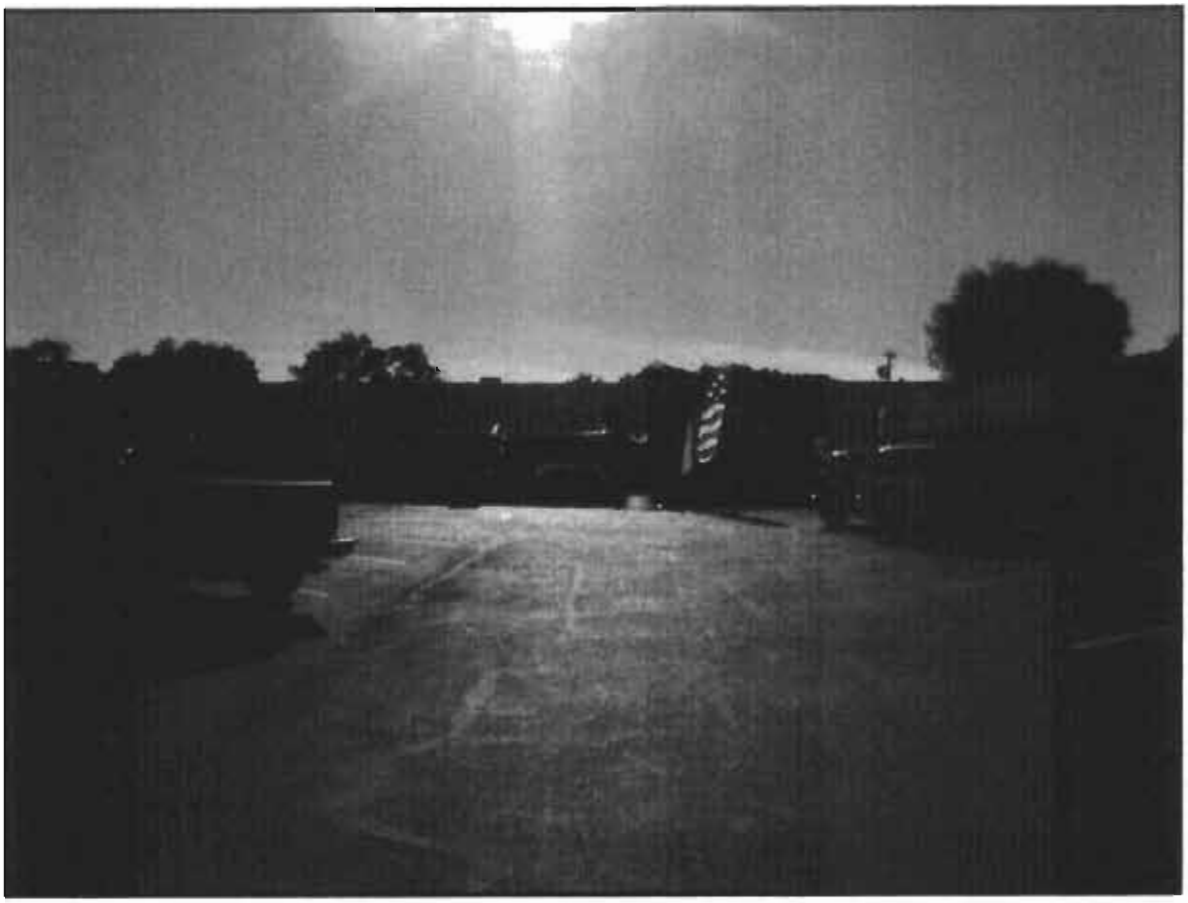
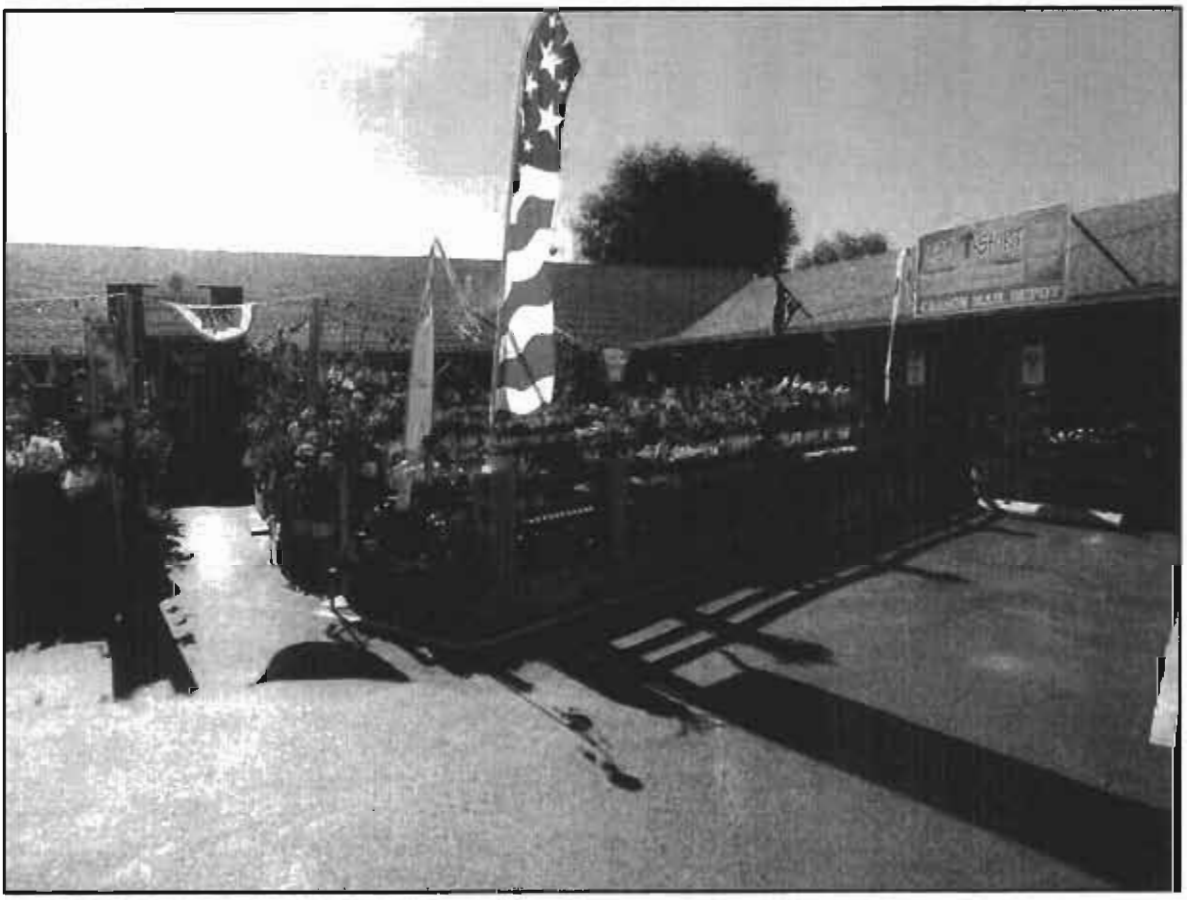
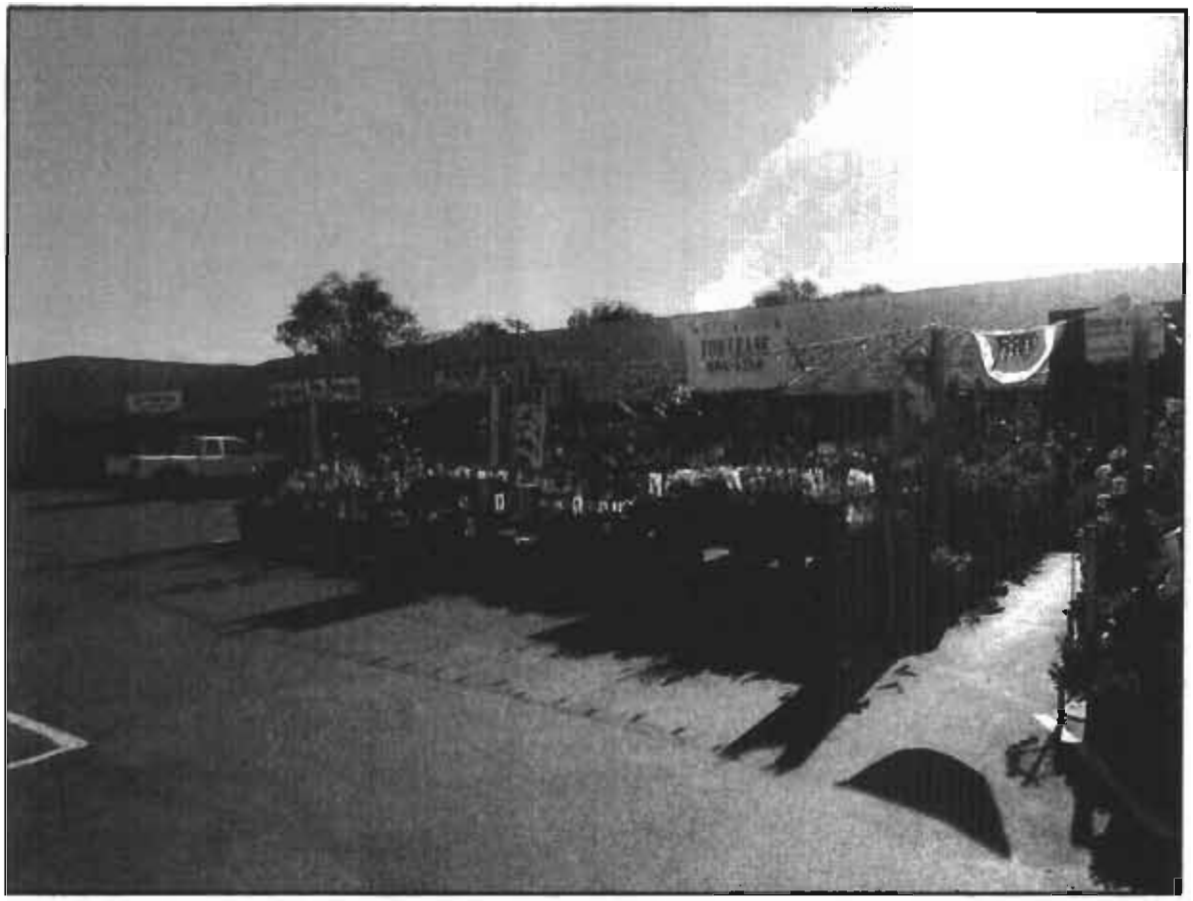


EXHIBIT "A"

EXHIBIT "B"







Site Photos—Page 4 of 5

Site Photos—Page 5 of 5

Carson City Planning Division

108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180 – Hearing Impaired: 711
planning@carson.org
www.carson.org/planning

July 12, 2013

Gene Munnings
Evergreen Gene's
1815 N Carson St
Carson City, NV 89706

Re: SUP-09-055
Permanent Outdoor Display and Sales
1815 N. Carson St.

Dear Mr. Munnings:

I am contacting you regarding a violation of the terms of approval of the Special Use Permit, SUP-09-055, for outdoor display and sales at your location at 1815 N. Carson Street. A copy of the signed notice of decision and a portion of the site plan showing allowed areas of display are attached to this letter for your review. Under the conditions of approval only certain areas of the property at 1803, 1805, 1807, 1809, 1811, 1815, 1817, 1819 and 1821 N. Carson Street are allowed to be used for the outside display and sales. Those areas were shown clearly on the site plan submitted with the request to allow the permanent display and sales. The conditions of approval also stated that the businesses within the complex would regulate among themselves who would utilize what areas for display and sales.

We have received a complaint regarding the encroachment of your outdoor display and sales at 1815 N. Carson St into areas not authorized by the Special Use Permit. In addition, display areas are not allowed to impede, restrict or block any aisle, doorway, pathway or pedestrian access from the parking lot or street or to or from buildings for either customers or employees. Electrical extension cords across pathways are also a hazard and are not allowed. Exterior light fixtures require review by the Planning Division. Lighting of exterior areas must be done with proper procedures, including submission of a building permit for review of proper wiring and fixtures.

You must restrict your outdoor display areas to those shown on the attached site plan, and remove displays that encroach into areas in which it is not allowed. All hazards and impediments to access for pedestrians, customers or employees and parking must also be removed. All temporary electrical cords, wiring and fixtures must be removed until properly permitted. You must be in compliance with the restrictions of the original Special Use Permit within seven days, by July 19, 2013. The compliance officer will be at your site following that date to verify the site is acceptable.

As was stated in the original Special Use Permit, compliance with the conditions of approval is required and is a condition of approval of the permit. This permit is scheduled to be reviewed in July of 2014. However, if this situation is not resolved satisfactorily within seven days, by July 19, 2013, this permit may be scheduled for review and possible revocation by the Planning Commission.

EXHIBIT "C"

Please contact this office at 887-2180 if you have any questions or need additional information.

Sincerely,

Kathe Green

Kathe Green
Assistant Planner

c: Kevin McCoy, Code Enforcement Officer
Lee Plemel, Director, Planning Division
Susan Dorr Pansky, Planning Manager
Kevin Gattis, Chief Building Official

Bernard-Bernard-Cuccaro LLC
c/o MDB Properties
1805 N Carson St
Carson City, NV 89701-1218

Horne, Wm F & D ½ et al
c/o MDB Properties
1805 N Carson St
Carson City, NV 89701-1218

RL Engineering

Civil and Structural Design
675 Fairview Drive #223, Carson City, NV 89701
(775)884-3205 Fax (775)884-3265

July 18, 2013

Mr. Lee Plemel, Director
Carson City Planning Division
108 E. Proctor Street
Carson City, NV 89701

Re: Evergreen Gene's, 1815 N. Carson St.

Dear Mr. Plemel:

I was contacted by Mr. Munnings on July 15, 2013 in regard to the letter he received from your office dated July 12, 2013. Gene indicated that he wanted to file a revised special use permit application to enable him to use the parking spaces in front of his shop for display of plants and other products for sale consistent with his business. I told him I would be happy to help him, but I am overburdened with prior work commitments at this time. I presently have over 20 projects in various sizes and stages from beginning design through construction management. The nearest deadline to submit an application is July 18, which I simply cannot meet, even if I had no other commitments.

Mr. Munnings is interested in the following resolutions to the issues raised in the letter from the city:

1. Encroachment into non-authorized areas: Submit a new application with revision of display areas, and also revision of parking space layout to maintain or increase the original permitted space count of 45.
2. Lighting: Submit plans to the building department for electrical improvements to allow lighting the display area in front of his store in a manner consistent with current building and electrical codes as adopted by Carson City.
3. Access blockage: Move racks, hoses, cords, merchandise, etc. as necessary to maintain minimum travel paths for all users of the shopping center.

On behalf of my client I would like to propose the following schedule:

1. Submit a new special use permit application by August 15.
2. Submit new lighting plans for permit by August 15.
3. Remove blockages to access immediately.

We would appreciate your approval of this proposal at your earliest opportunity. If you have any questions or require additional information please contact me at your convenience at (775)884-3205 or rob.lauder@rl-engr.com.

Sincerely,

Robert F. Lauder, P.E.
RL Engineering

C: Gene Munnings

EXHIBIT 93 "D"

From: Lee Plemel
Sent: Monday, July 22, 2013 5:29 PM
To: 'rob.lauder@rl-engr.com'
Cc: Kevin McCoy; Kevin Gattis
Subject: RE: Evergreen Gene's

Rob,

I reviewed the letter regarding Mr. Munnings' proposed resolutions to the complaints submitted regarding outside displays at 1815 N. Carson Street. Following is my response on behalf of the Planning Division:

1. We cannot allow the outdoor displays to continue outside and beyond the areas originally approved by the Special Use Permit pending resolution through the submittal of a new Special Use Permit. The earliest we could take an application to the Planning Commission would be September 25 if an application were submitted by August 15. One of the complaints specifically relates to excessive outdoor display in parking spaces where it was not approved. The materials need to be removed from areas not approved for outdoor display in the Special Use Permit.

2. My understanding is that a permit is needed for the electrical to the lighting, as you indicate in your letter. Any existing lighting must be removed immediately pending approval of a building permit. The Building Division cannot allow a code violation to continue pending approval of a permit. Such permit may only be for areas approved for outdoor display in the Special Use Permit, pending approval of any additional areas in a new Special Use Permit.

3. While the proposed resolution to move racks, cords, etc., from pedestrian travel paths is certainly necessary, I would note that it is not merely adequate to move such things if they remain in violation of numbers 1 or 2 above. Items in violation must be removed entirely.

I understand Mr. Munnings was given seven days, initially, to correct the violations. With the clarifications noted above, please have Mr. Munnings correct any building or fire code violations (lighting and electrical) immediately, and remove any outdoor display items from outside areas approved by the Special Use Permit by Wednesday, July 31, 2013. I will have Code Compliance Officer Kevin McCoy inform Mr. Munnings, as well. You can work directly with Kevin regarding the timing of bringing things into compliance.

Regards,

Lee

Lee Plemel, AICP, Director
Carson City Community Development Department
108 E. Proctor St., Carson City, NV 89701
775-283-7075
lplemel@carson.org
www.carson.org/planning

EXHIBIT "E"

From: rob.lauder@rl-engr.com [mailto:rob.lauder@rl-engr.com]
Sent: Monday, July 22, 2013 3:16 PM
To: Lee Plemel
Subject: Evergreen Gene's

Lee,

I was curious when we should expect a response to my letter of last week.

I've been playing with the parking lot layout and found that even accounting for the space Gene is using for display, re-striping would provide a total of at least 50 spaces (5 more than at present), and possibly we could shoe-horn in 2-3 more, but I'm not anxious to do that. The present arrangement has drive aisles much wider than the minimum, and some of the spaces are wider than minimum, which is why more spaces is possible.

Robert F. Lauder, P.E.
RL Engineering
675 Fairview Drive #223
Carson City, NV 89701
(775)884-3205

From: Yahoo Help!! [mailto:evergreengene@att.net]
Sent: Wednesday, July 24, 2013 9:15 PM
To: Lee Plemel
Subject: Evergreen Gene's Permit

My name is Gene Munnings and I am the owner of Evergreen Gene's at 1811 North Carson Street. We currently have a special use permit for an outdoor display. When that was done we had no idea as to what was actually needed for the plant area. Since then the main areas that were on the norh side edge are useless since there is no sun and even most shade plants donot thrive there. For the past 3 years we have used the area in front of our store and in front of 1815. We have had to make adjustments as the theft rate was over $2000.00 a month so we build small fencing and have gates that are closed at night to prevent people from coming onto the site after hours and theft has dropped to about $100.00 a month on average and most of that is from the temporary area in front for annuals and vegetables. Our sales from this area in front of the store amount to 60% of our total sales from May to present. To take this away now would esseentially put our store out of business since the small sales from inside would not support even the paying of utilities not to mention the rent. We are catching up on our back rent of $12,000.00 that we still owe. We have no place to move the plants to and the tables, etc. Since we are submitting another permit application to keep at least 45 parking spaces but Mr. Lauder has a drawing that has 50 spaces leaving the current display area as is which is working for our ability to survive. The State Department of Agriculture in Licensing our Nursery had us do what ever we could to sterilize the black top which we did by a lot of cleaning and coating the surface. The other area in the corner we were able to do this by a mulch covering which we decided not to do in the rest of the area due to the problems that the mulch has but its working fine where it is at. We grow all of our shrubs except roses and 50% of all the perennials right on the site. That is why we were classified as a nursery not a garden center since we grow mostof what we sell. I take good care of the area by sweeping the area inside and around it daily which sometimes fills a trash bag from all the trash that blows in there. Once a week I blow out the area to get it completely clean better that the sweeping alone can do. No one else in the entire center does the amount of cleaning I do to maintain the area in and around the display areas. Since there is no using and the abandoning of the far 2 parking spaces in front of the thrift store which are only used for parking their display use is being transferred to the current area infront of my store. These 2 along with another space that was added in repainting the parking spaces in front would mean 3 of the 7 spaces in front of my store are already available for parking in front of the thrift store. Thetemprary display area next to the trift store on the north side (this is used from Mid may to Mid August only) is being emptied out of plants and will be vacated within 2 weeks. This allows another parking space to be available. The other issue of Electrical which was installed over 4 yearsago and meets code will be adjusted to amake the existing Christmas lights that are used from 8pm to 10pm daily up to code. The only time we have any extension cords on the ground was during the Breast cancer fundraiser on July 6th an extension cord was run along the outside edge to the front of 1805 for the bands use for their equipment. No one from the public should have had these in their way. As for hoses of which ther is 1 in front and one in front of our store, they are used at the end of the day for daily watering. I have been there past 10 pm watering Wal mart. Lowes and Home Depot water at anytime and I should not have any

EXHIBIT "F"

more restrictons on watering than they do, but I always water late in the day to avoid people having to go through the hoses. In conclusion I am asking that the current display area be allowed to remain as is pending the new permit application bei ng submitted and going before the planning commission.. No additional areas will be used and the area in front north will be vacated by August 10th so that everything will be condensed down to the existing display area. I was allowed to leave the plants in the outdoor area 4 years ago while the permit was being processed and I should be allowed to do likewise now as to do otherwise would essentially place my business out of business since that is 60% of our sales and the existing plants and tables have no place to go that they can be cared for and are safe from theft. Ifyou have any questions please call me at 530-0946. Thank you,
Gene Munnings

MICHAEL SUGLIA, LTD.
ATTORNEY AT LAW
1950 COLLEGE PARKWAY, SUITE 102-A
CARSON CITY, NV 89706-7983
PHONE (775) 882-5554 FAX (775) 883-6592 E-MAIL Suglia@SugliaLaw.com

July 30, 2013

HAND DELIVERED

Lee Plemel, Director
Planning Division
108 E. Proctor Street
Carson City, NV 89701

Kathe Green, Assistant Planner
Planning Division
108 E. Proctor Street
Carson City, NV 89701

Kevin McCoy, Compliance Officer
Code Enforcement
108 E. Proctor Street
Carson City, NV 89701

Re: Gene Munnings
Evergreen Gene's at 1811 N. Carson Street, Carson City, NV

Dear Mr. Plemel, Ms. Green and Mr. McCoy,

I write to inform you that I represent Gene Munnings, owner of Evergreen Gene's at 1811 N. Carson Street in Carson City, regarding his Special Use Permit. I was retained by Mr. Munnings on the afternoon of July 30, 2013. While we might all agree that retaining me earlier would have been prudent, it took Mr. Munnings a little time to locate me, since I do not advertise, and then I needed time to schedule an appointment with him.

I understand that Mr. Munnings is affected by Planning Department decisions that directly impact his ability to earn a living and to operate a Carson City small business. Mr. Munnings is certainly entitled to competent representation on such serious matters and I ask for the necessary time to fully comprehend the City's concerns and the legal issues involved and

EXHIBIT "G"

to review the prior Special Use Permits. I will do my best to present a mutually agreeable resolution to the issues by the week August 19, 2013.

Please contact me at your earliest convenience to let me know if you will agree to this brief extension of time.

Sincerely,

Michael T. Suglia, Esq.

MS:dk
cc: Client

Carson City Planning Division
108 E Proctor St
Carson City, Nevada 89701
(775) 887-2180
www.carson.org
www.carson.org/planning

NOTICE OF VIOLATION
FINAL ORDER TO COMPLY

August 7, 2013

Mr. Donald Bernard
Bernard-Bernard-Cuccaro, LLC
and
Mr. William Horne
Horne, WM F&D ½ et. al.
c/o MDB Properties
1805 N. Carson St.
Carson City, NV 89701

Via Certified and Regular Mail
Certified: 7011 2970 0000 0867 2382

Re: SUP-09-055
Permanent Outdoor Display and Sales
1815 N Carson St.

Dear Mr. Bernard and Mr. Horne:

This letter is final correspondence regarding the violation of SUP-09-055, a Special Use Permit allowing permanent outdoor display and sales at 1803, 1805, 1807, 1809, 1811, 1815, 1817, 1819 and 1821 N. Carson Street (APNs 002-091-03, 002-091-04 and 002-091-06). As outlined in the July 12, 2013 letter to Gene Munnings from Kathe Green, Assistant Planner, the outdoor display and sales areas currently being utilized by Evergreen Gene's are not in conformance with the areas approved with the Special Use Permit.

Staff is in receipt of a letter from Rob Lauder of RL Engineering, stating proposed actions regarding violation including the following:

1. *Encroachment into non-authorized areas: Submit a new application with revision of display areas, and also revision of parking space layout to maintain or increase the original permit space count of 45.*
2. *Lighting: Submit plans to the building department for electrical improvements to allow lighting the display area in front of his store in a manner consistent with current building and electrical codes as adopted by Carson City.*
3. *Access blockage: Move racks, hoses, cords, merchandise, etc. as necessary to maintain a minimum travel path for all users of the shopping center.*

The letter submitted by Mr. Lauder does not eliminate Mr. Munnings' responsibility to relocate his outdoor displays into the areas approved with the Special Use Permit and comply with all

EXHIBIT "H"

other City requirements as outlined in the original conditions of approval; *nor does it eliminate your responsibility to enforce such relocation and compliance as the property owners subject to the terms of the Special Use Permit.*

The current outdoor display and sales area is in violation of the following Special Use Permit conditions of approval:

2. **All development shall be substantially in accordance with the development plans approved with this application, except as otherwise modified by these conditions of approval.**

   The outdoor display and sales area has expanded well beyond the development plans approved with the Special Use Permit and is no longer substantially in accordance with the approved plans.

3. **All on- and off-site improvements shall conform to City standards and requirements.**

   The outdoor display and sales area is not in conformance with City standards and requirements for electrical service or minimum access. An electrical permit is required to extend electrical service to the outdoor display area and a minimum clear path of 36 inches for pedestrian circulation must be maintained at all times. Please note that the minimum required clear path per the approved Special Use Permit site plan is 48 inches.

7. **The permanent outdoor display and sales area is strictly limited to the areas shown on the submitted site plan; in front of the buildings and the parking islands and two parking spaces. Within the approved display areas, the business or property owners must regulate and decide which businesses will utilize which display areas.**

   Four complaints confirmed by a subsequent site visit on July 26, 2013 indicate that the permanent outdoor display and sales area has expanded beyond the areas limited by the Special Use Permit as shown on the marked up site plan attached.

10. **Display cannot impede, restrict or block any aisle, doorway, pathway or pedestrian access from parking lot or street or to or from buildings for either customers or employees.**

    The display areas were observed to be impeding on and restricting pathways and pedestrian access to and from businesses surrounding Evergreen Gene's during the July 26, 2013 site visit.

Staff is in receipt of a July 24, 2013 email from Mr. Munnings, owner of Evergreen Gene's, requesting the outdoor display and sales areas in violation of the approved Special Use Permit be allowed to remain in place until the Special Use Permit can be brought to the Planning Commission for amendment. Staff has received four complaints regarding the aforementioned violations. While Mr. Munnings alleges his business will be harmed by having to remove the display materials, other businesses in the retail center believe they are being harmed by the reduction of available parking. Therefore, allowing the outdoor display area to remain in place until such time as the Special Use Permit may be modified is not an acceptable option.

Regardless of any intentions to submit a revised Special Use Permit application and revised parking lot layout, the current violations need to be resolved until such time as an amended Special Use Permit is approved by the Planning Commission.

Finally, staff is also in receipt of a July 30, 2013 letter from Michael Suglia, legal counsel for Mr. Munnings, requesting an extension until August 19, 2013 to allow adequate time to review the previously approved Special Use Permit and present a mutually agreeable resolution. Staff acknowledges this request and will allow the outdoor display and sales area to remain as is until August 19, 2013.

Required Action: Reduce the size of the permanent outdoor display and sales area to the areas specifically approved with Special Use Permit SUP-09-055 by no later than August 19, 2013.

Failure to comply with this notice will result in the issuance of citation to you, the property owners subject to the terms of the Special Use Permit, and possible revocation of the approved Special Use Permit by the Planning Commission. The authority for these requirements is from CCMC 18.02.030 Enforcement and CCMC 18.02.080.8(d) Special Use Permits, Expiration; Revocation which are quoted below:

18.02.030 Enforcement. *It is unlawful for any person, firm or corporation, whether as a principal, agent, employee, or otherwise (hereinafter referred to as "party"), to construct, build, convert, alter, erect, maintain a building, structure or any use of property, equipment, or operation in violation of a provision of this Title. Any use contrary to this Title is a misdemeanor offense as defined in Title 1 (Misdemeanor Declared) and a public nuisance. The following procedure shall apply to enforce the provisions of this Title:*

1. *In the event of a violation of this Title, the Director may deliver to any party in violation of this Title an order to comply with the provision of this Title in a time period up to 30 days from the issuance of the order to comply at the Director's discretion.*

2. *Upon failure of any party in violation of this Title to comply with the order described above, the Director is authorized and empowered to prepare, sign, and serve a criminal misdemeanor citation for said violation. A party is guilty of a separate offense for each and every day which such violation of this Title or failure to comply with any order is committed, confined, or otherwise maintained.*

3. *The Director may also refer notice of such violation to the district attorney for commencement of action to abate, remove and enjoin such violation as a public nuisance and a criminal action in the manner provided by law.*

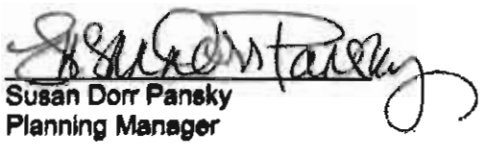
4. *The conviction and punishment of any person under this Section shall not relieve such person from the responsibilities of correcting the nuisance.*

18.08.080.8(d) Expiration; Revocation.

a. *A Special Use Permit shall be, upon violation, subject to revocation or amendment by the Commission.*

Thank you for your immediate compliance with this order. If you have any questions, please contact me at (775) 283-7076 or via email at spansky@carson.org.

Sincerely,
Community Development Department, Planning Division



Susan Dorr Pansky
Planning Manager

cc: **Gene Munnings, Evergreen Gene's**
Rob Lauder, RL Engineering
Michael Suglia, Michael Suglia, Ltd.
Lee Plemel, Community Development Director
Kevin Gattis, Building Official
Vann Clegg, Building Inspector
Dave Ruben, Captain – Fire Prevention Division
Kevin McCoy, Compliance Officer
Kathe Green, Assistant Planner

Attachments:
July 12, 2013 Letter to Gene Munnings from Planning Division
SUP-09-055 Notice of Decision
Site Photos
Originally Approved Site Plan
Marked Up Site Plan

Carson City Planning Division

108 E. Proctor Street
Carson City, Nevada 89701
(775) 887-2180 – Hearing Impaired: 711
planning@carson.org
www.carson.org/planning

July 12, 2013

Gene Munnings
Evergreen Gene's
1815 N Carson St
Carson City, NV 89706

Re: SUP-09-055
Permanent Outdoor Display and Sales
1815 N. Carson St.

Dear Mr. Munnings:

I am contacting you regarding a violation of the terms of approval of the Special Use Permit, SUP-09-055, for outdoor display and sales at your location at 1815 N. Carson Street. A copy of the signed notice of decision and a portion of the site plan showing allowed areas of display are attached to this letter for your review. Under the conditions of approval only certain areas of the property at 1803, 1805, 1807, 1809, 1811, 1815, 1817, 1819 and 1821 N. Carson Street are allowed to be used for the outside display and sales. Those areas were shown clearly on the site plan submitted with the request to allow the permanent display and sales. The conditions of approval also stated that the businesses within the complex would regulate among themselves who would utilize what areas for display and sales.

We have received a complaint regarding the encroachment of your outdoor display and sales at 1815 N. Carson St into areas not authorized by the Special Use Permit. In addition, display areas are not allowed to impede, restrict or block any aisle, doorway, pathway or pedestrian access from the parking lot or street or to or from buildings for either customers or employees. Electrical extension cords across pathways are also a hazard and are not allowed. Exterior light fixtures require review by the Planning Division. Lighting of exterior areas must be done with proper procedures, including submission of a building permit for review of proper wiring and fixtures.

You must restrict your outdoor display areas to those shown on the attached site plan, and remove displays that encroach into areas in which it is not allowed. All hazards and impediments to access for pedestrians, customers or employees and parking must also be removed. All temporary electrical cords, wiring and fixtures must be removed until properly permitted. You must be in compliance with the restrictions of the original Special Use Permit within seven days, by July 19, 2013. The compliance officer will be at your site following that date to verify the site is acceptable.

As was stated in the original Special Use Permit, compliance with the conditions of approval is required and is a condition of approval of the permit. This permit is scheduled to be reviewed in July of 2014. However, if this situation is not resolved satisfactorily within seven days, by July 19, 2013, this permit may be scheduled for review and possible revocation by the Planning Commission.

Please contact this office at 887-2180 if you have any questions or need additional information.

Sincerely,

Kathe Green

Kathe Green
Assistant Planner

c: Kevin McCoy, Code Enforcement Officer
Lee Plemel, Director, Planning Division
Susan Dorr Pansky, Planning Manager
Kevin Gattis, Chief Building Official

Bernard-Bernard-Cuccaro LLC
c/o MDB Properties
1805 N Carson St
Carson City, NV 89701-1218

Horne, Wm F & D ½ et al
c/o MDB Properties
1805 N Carson St
Carson City, NV 89701-1218

CARSON CITY, NEVADA

CONSOLIDATED MUNICIPALITY AND STATE CAPITAL
DEVELOPMENT SERVICES

★ CLERK ★
FILED
Time 1:52p
AUG - 5 2009
By K. Vian Deputy
Carson City, Nevada

PLANNING COMMISSION
JULY 29, 2009

NOTICE OF DECISION

A request to review a Special Use Permit, SUP-09-055, was received from, Rob Lauder of RL Engineering (property owner: Bernard-Barnard-Cuccaro, LLC, William F. and D. Horne et al) for a permanent outdoor display of merchandise, on property zoned Retail Commercial (RC), located at 1803,1805, 1807, 1809, 1811, 1815, 1817, 1819, and 1821 N. Carson Street, APN(s) 002-091-03, -04, and -06, pursuant to the requirements of the Carson City Municipal Code.

The Planning Commission conducted a public hearing on July 29, 2009, in conformance with City and State legal requirements, and approved SUP-09-055 for a permanent outdoor display of merchandise, based on the findings contained in the staff report and subject to the following conditions of approval:

CONDITIONS OF APPROVAL:

The following shall be completed prior to commencement of the use:

1. The applicant must sign and return the Notice of Decision for conditions for approval within 10 days of receipt of notification. If the Notice of Decision is not signed and returned within 10 days, then the item will be rescheduled for the next Planning Commission meeting for further consideration.

2. All development shall be substantially in accordance with the development plans approved with this application, except as otherwise modified by these conditions of approval.

3. All on- and off-site improvements shall conform to City standards and requirements.

4. The applicant shall obtain a building permit from the Carson City Building and Safety Department for any proposed construction. Contact the Building Department for approximate fees, design criteria, number of plans to submit and general assistance in the City's Building Permit process.

PLANNING DIVISION • 2621 Northgate Lane, Suite 62 • Carson City, Nevada 89706
Phone: (775) 887-2180 Fax: (775) 887-2278 E-mail: plandiv@ci.carson-city.nv.us

5. The applicant shall meet all the conditions of approval and commence the use for which this permit is granted within twelve months of the date of final approval. A single, one year extension of time may be granted if requested in writing to the Planning and Community Development Department thirty days prior to the one year expiration date. Should this permit not be initiated within one year and no extension granted, the permit shall become null and void.

The following shall be submitted with any building permit application:

6. The applicant shall submit a copy of the Notice of Decision and conditions of approval, signed by the applicant and owner, with any building permit application.

The following applies to the site throughout the life of the project:

7. The permanent outdoor display and sales area is strictly limited to the areas shown on the submitted site plan; in front of the buildings and the parking islands and two parking spaces. Within the approved display areas, the business or property owners must regulate and decide which businesses will utilize which display areas.

8. Trash and debris generated at the areas of the outdoor display and sales must be collected by the businesses and placed in an appropriate trash container on the site.

9. Advertising of a product or service is limited to promote an existing permanently licensed primary business activity within the addresses which are included in this review.

10. Display cannot impede, restrict or block any aisle, doorway, pathway or pedestrian access from parking lot or street or to or from buildings for either customers or employees.

11. If the merchandise being displayed is either a windmill or photovoltaic panel connected for the production of electricity, and is connected to electrical utilization equipment, then an electrical permit will be required, since this is not an item exempted from the permit process. *(CCMC 15.05.010 Section 105.2)*

12. If the merchandise being display is a solar panel used to provide either conditioned air or heated water for human consumption, then a plumbing permit will be required, since this is not an item exempted from the permit process. *(CCMC 15.05.010 Section 105.2)*

13. **The Special Use Permit will be reviewed by the Planning Commission in five years. The next review will be at the Planning Commission meeting in July of 2014.**

This decision was made on a vote of 6 ayes, 0 nays, and 1 absent.

Jennifer Pruitt, AICP, LEED AP
Principal Planner

JP:jmb

Mailed by: RMT By: Aug 10, 2009

PLEASE SIGN AND RETURN THIS NOTICE OF DECISION WITHIN TEN DAYS OF RECEIPT

This is to acknowledge that I have read and will comply with the Conditions of Approval as approved by the Carson City Planning Commission.

William F. Horne
OWNER/APPLICANT SIGNATURE

8-12-09
DATE

WILLIAM F. HORNE
PLEASE PRINT YOUR NAME HERE

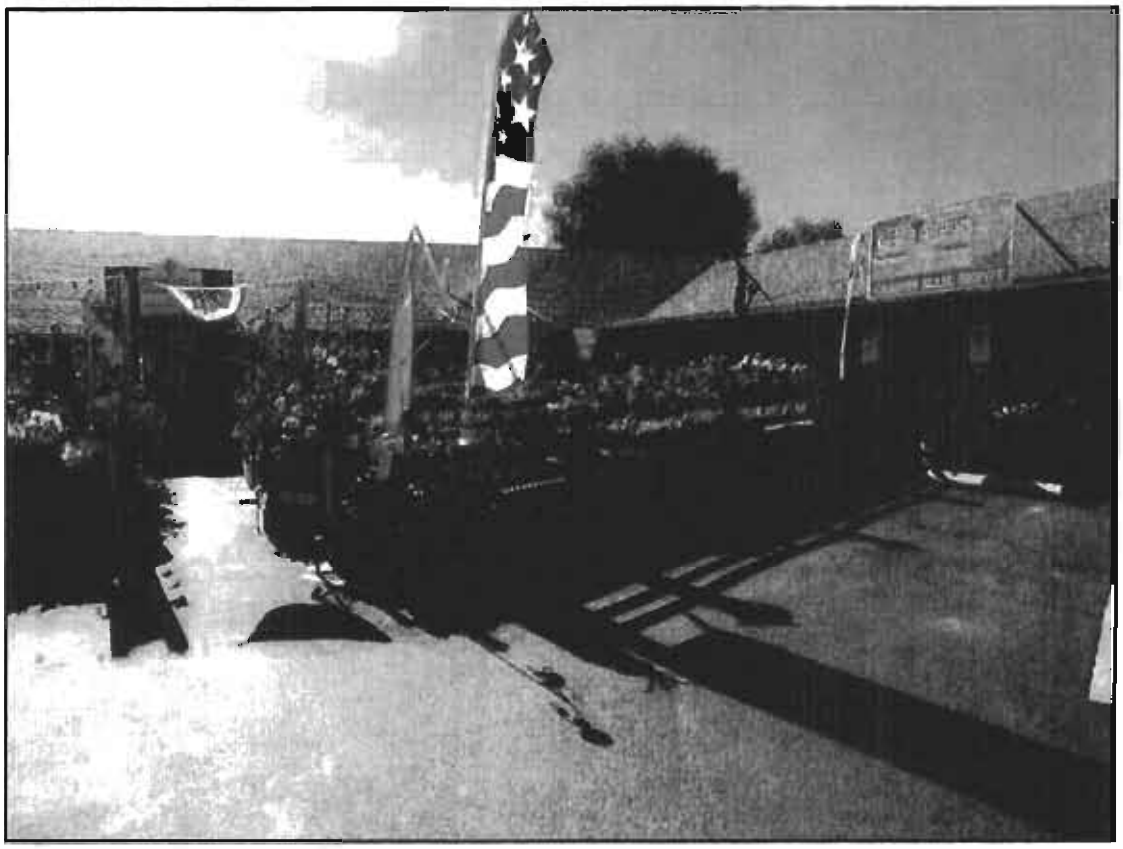
RETURN TO:

Planning Division
2621 Northgate Lane, Suite 62, Carson City, NV 89706

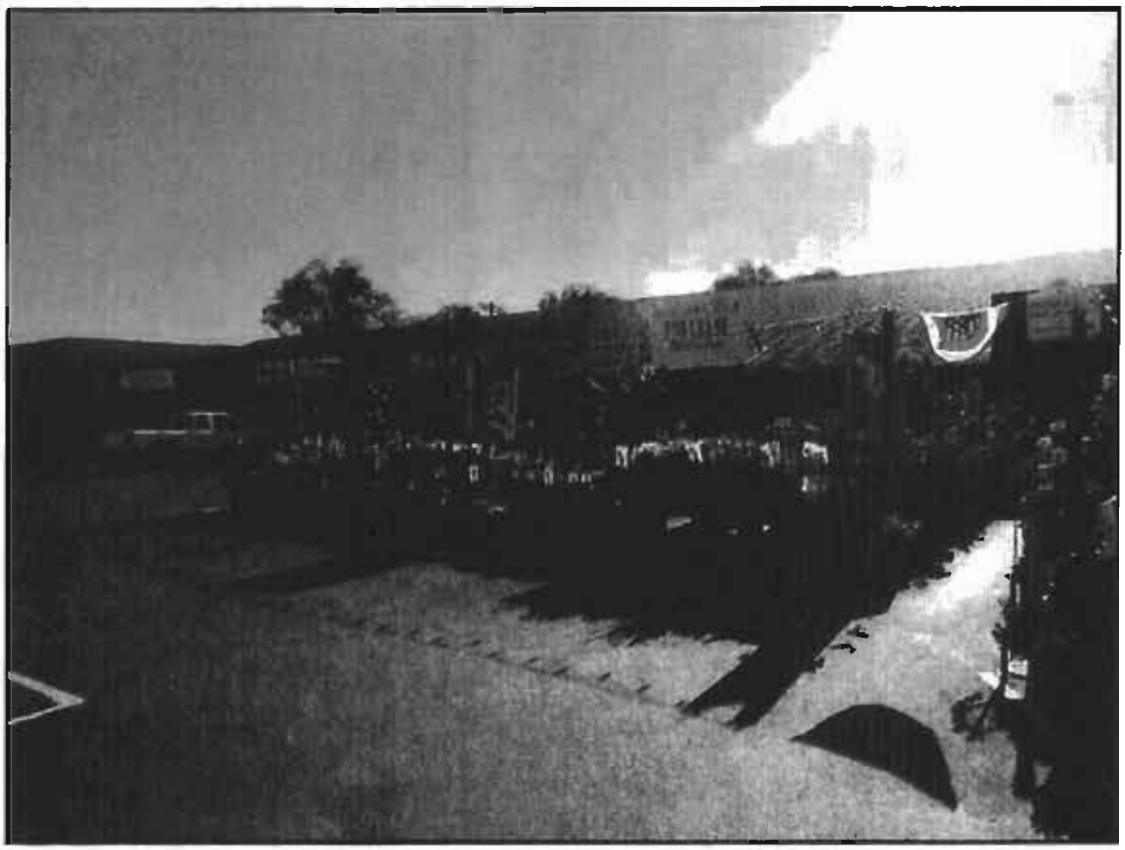
Enclosures: 1. Planning Commission Notice of Decision (2 copies)-Please sign and return only one. The second one is for your records.

2. Self-addressed stamped envelope

Site Photos—Page 1 of 5



Site Photos—Page 2 of 5

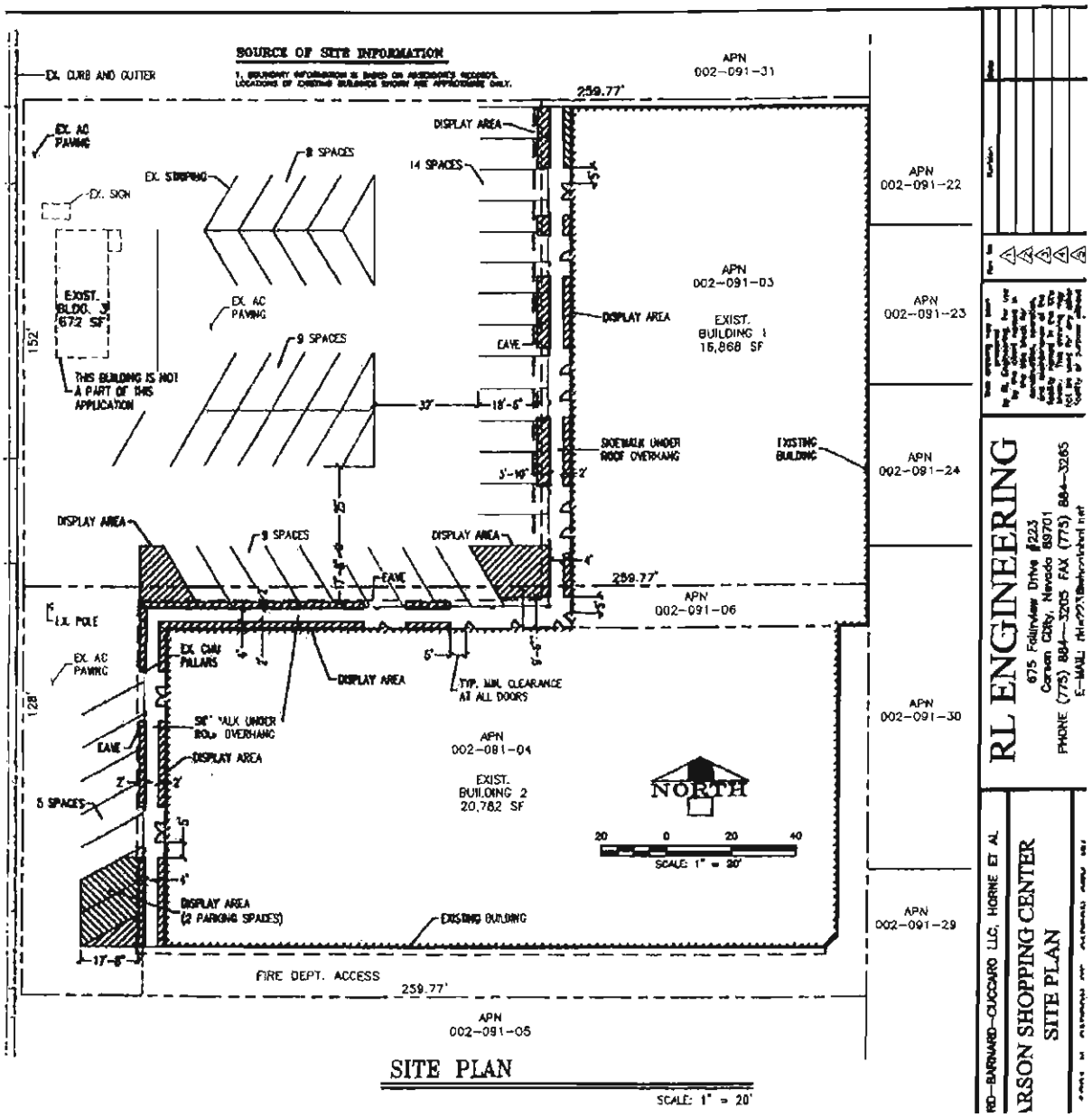


Site Photos—Page 3 of 5

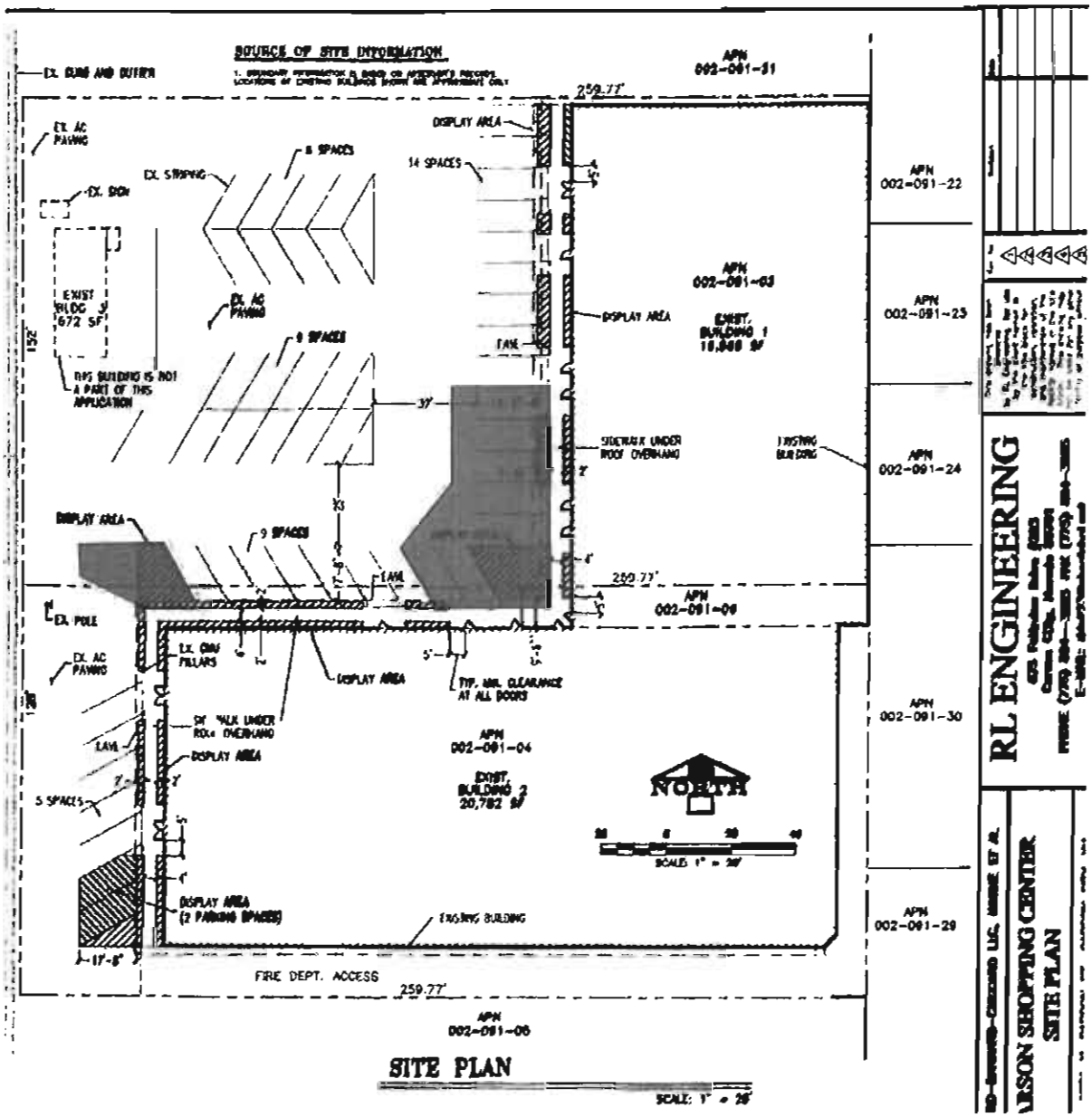
Site Photos—Page 4 of 5

Site Photos—Page 5 of 5

Approved Permanent Outdoor Display and Sales Areas Per SUP-09-055



Permanent Outdoor Display and Sales Area
Current Violation Condition
per July 24, 2013 Site Visit



RECEIVED
AUG 15 2013
CARSON CITY PLANNING DIVISION

Carson City Planning Division
108 E. Proctor Street • Carson City NV 89701
Phone: (775) 887-2180 • E-mail: planning@carson.org

FOR OFFICE USE ONLY:

CCMC 18.02

SPECIAL USE PERMIT

FILE # ~~SUP-43~~ - SUP-09-055

FEE: $2,450.00 MAJOR
$2,200.00 MINOR (Residential zoning districts)
+ noticing fee and CD containing application digital data (all to be submitted once the application is deemed complete by staff)

SUBMITTAL PACKET
- ☐ 8 Completed Application Packets (1 Original + 7 Copies) including:
- ☐ Application Form
- ☐ Written Project Description
- ☐ Site Plan
- ☐ Building Elevation Drawings and Floor Plans
- ☐ Proposal Questionnaire With Both Questions and Answers Given
- ☐ Applicant's Acknowledgment Statement
- ☐ Documentation of Taxes Paid-to-Date (1 copy)
- ☐ Project Impact Reports (Engineering) (4 copies)

Application Reviewed and Received By:

Submittal Deadline: See attached PC application submittal schedule.
Note: Submittals must be of sufficient clarity and detail such that all departments are able to determine if they can support the request. Additional information may be required.

Bernard-Barnard-Cuccaro LLC, William F. and D. Horne et al
PROPERTY OWNER

1805 N. Carson Street, Carson City, NV 89701
MAILING ADDRESS, CITY, STATE, ZIP

775-884-4748 775-884-4211
PHONE # FAX #

Name of Person to Whom All Correspondence Should Be Sent
Robert F. Lauder, P.E. RL Engineering
APPLICANT/AGENT

675 Fairview Drive #223, Carson City, NV 89701
MAILING ADDRESS, CITY, STATE ZIP

775-884-3205 775-884-3265
PHONE # FAX #

rob.lauder@rl-engr.com
E-MAIL ADDRESS

Project's Assessor Parcel Number(s):	Street Address ZIP Code
002-091-03, 002-091-04, 002-091-06	1803, 1805, 1807, 1809, 1811, 1815, 1817, 1819, 1821 N. Carson St. 89701

Project's Master Plan Designation	Project's Current Zoning	Nearest Major Cross Street(s)
Community/Regional Commercial	RC	Long Street

Briefly describe your proposed project: (Use additional sheets or attachments if necessary). In addition to the brief description of your project and proposed use, provide additional page(s) to show a more detailed summary of your project and proposal. In accordance with Carson City Municipal Code (CCMC) Section: 18.04.130.3, or Development Standards, Division ____, Section ____, a request to allow as a conditional use is as follows: permanent outdoor merchandise display.

PROPERTY OWNER'S AFFIDAVIT

I, MBD PROPERTIES, LP (SEE ADDITIONAL AFFIDAVIT), being duly deposed, do hereby affirm that I am the record owner of the subject property, and that I have knowledge of, and I agree to, the filing of this application.

William F. Horne — Signature
1805 N CARSON ST. — Address
8-18-13 — Date

Use additional page(s) if necessary for other names.

STATE OF NEVADA)
COUNTY Carson City)

On 13 Aug 2013, William F Horne personally appeared before me, a notary public, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document and who acknowledged to me that he/she executed the foregoing document.

Melissa L Cochran — Notary Public
1805 N. Carson St
Carson City NV 89701

MELISSA L COCHRAN
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 1-21-2014
Certificate No: 10-1460-12

8/21/14

NOTE: If your project is located within the historic district, airport area, or downtown area, it may need to be scheduled before the Historic Resources Commission, the Airport Authority, and/or the Redevelopment Authority Citizens Committee prior to being scheduled for review by the Planning Commission. Planning personnel can help you make the above determination.

EXHIBIT 17 1

ACKNOWLEDGMENT OF APPLICANT

I certify that the foregoing statements are true and correct to the best of my knowledge and belief. I agree to fully comply with all conditions as established by the Planning Commission. I am aware that this permit becomes null and void if the use is not initiated within one year of the date of the Planning Commission's approval; and I understand that this permit may be revoked for violations of any of the conditions of approval. I further understand that approval of this application does not exempt me from all city code requirements.

William E. Kerns — Applicant — 8-13-13 — Date

Applicant — 8-13-13 — Date

APN 002-091-03, -04, and -06

SPECIAL USE PERMIT APPLICATION
APN 002-091-03, -04, and -06
1803-1821 N. CARSON STREET, CARSON CITY, NV

EXHIBIT "A"
AFFIDAVITS OF ADDITIONAL PROPERTY OWNERS

PROPERTY OWNER'S AFFIDAVIT

I, Donald A. Bernard, being duly deposed, do herby affirm that I am the record owner of the subject property, and that I have knowledge of, and agree to, the filing of this application.

Signature _____ Date 8-13-13

Address 2500 East Lake Ridge Shores Reno, Nevada 89519

STATE OF NEVADA)
COUNTY OF WASHOE)

On August 14, 2013, Donald A. Bernard personally appeared before me, a notary public, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document and who acknowledged to me that he/she executed the foregoing document.

Julie Schield
Notary Public

JULIE SCHIELD
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-4151-2 - Expires June 1, 2015

RL Engineering
Civil and Structural Design
675 Fairview Drive #223, Carson City, NV 89701
(775)884-3205 Fax (775)884-3265

2013 SPECIAL USE PERMIT APPLICATION
CARSON SHOPPING CENTER
APN 002-091-03, -04, -06
1803-1821 N. CARSON STREET, CARSON CITY, NV

EXHIBIT "A"

SITE PHOTOGRAPHS

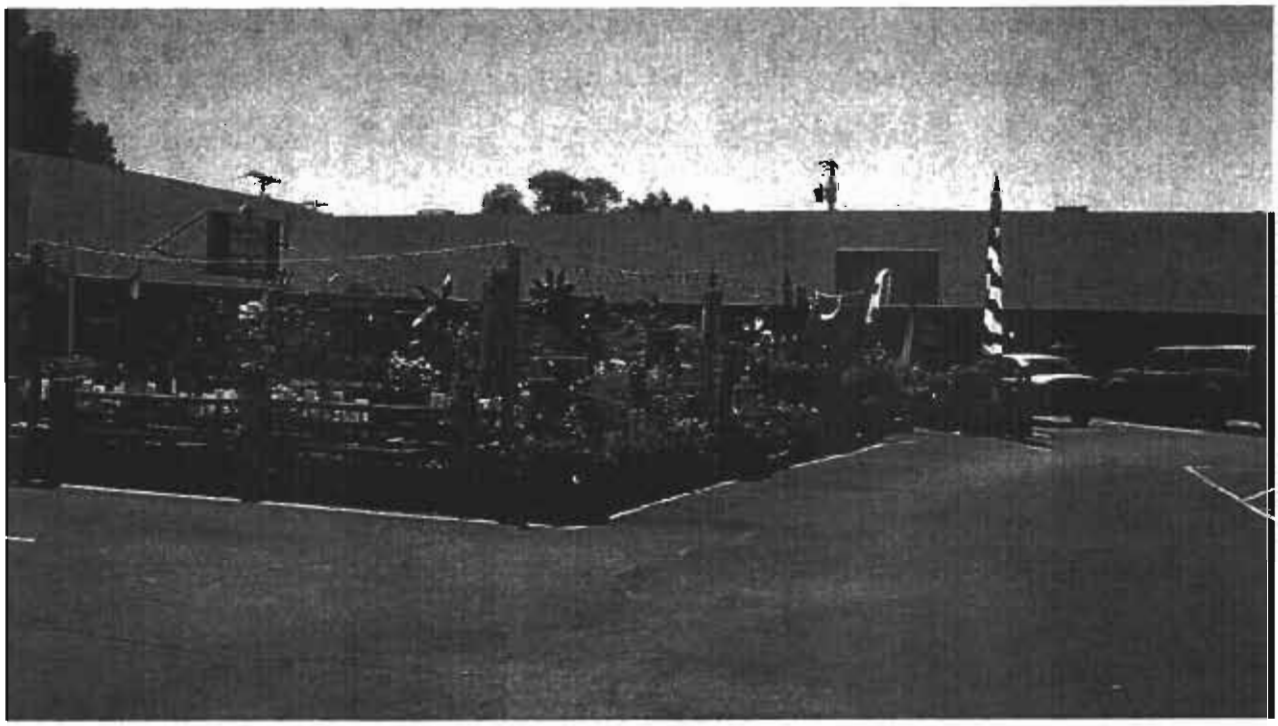
The accompanying photographs are provided instead of elevation drawings, as follows:

1. West elevation – Building 1.
2. North elevation – Building 2.
3. West elevation – Building 2.
4. Evergreen Gene's main display area.

West elevation – Building 1.

North elevation – Building 2.

West elevation – Building 2.



Evergreen Gene's main display area.

8/14/2013

RL Engineering

Civil and Structural Design
675 Fairview Drive #223, Carson City, NV 89701
(775)884-3205 Fax (775)884-3265

2013 SPECIAL USE PERMIT APPLICATION
CARSON SHOPPING CENTER
APN 002-091-03, -04, -06
1803-1821 N. CARSON STREET, CARSON CITY, NV

EXHIBIT "B"

PROJECT DESCRIPTION, QUESTIONNAIRE AND RESPONSES

PROJECT DESCRIPTION

This application is an amendment to an existing special use permit. The reason for the amendment is to increase the amount of display area beyond the area allowed by the original permit, which was granted in 2009. This application also includes provision of outdoor lighting in one display area, and re-striping of the lot to maintain or increase the present number of parking spaces.

The owners seek permission for an increase in the area of permanent outdoor display of merchandise. The tenant businesses are housed in suites which are components of a small shopping mall which has been located on this site since the 1950's (the buildings were built in the 40's and 50's). The project is located on the east side of N. Carson Street between Long Street and Winnie Lane. The southerly part of the building is approx. 40' back from the curb, while the northerly part is approx. 140' back from the curb. The buildings have 385 linear feet of frontage; however 285 feet of that (74%) is either perpendicular to the street or so far back from the street that it is not easy to see the shops from Carson Street.

The original application was prompted by the desire of the tenants to display merchandise outside for sale. That desire remains. The display areas consist of narrow strips along the perimeter of the building facing the parking lot, and areas at the corners of the ell-shaped building complex (see attached site plan). The display areas will be held back 5 feet on each side of the entrance doors of each of the stores as requested by the fire department at the time of the original application. All areas will be considered as being for permanent display as opposed to maximum 30 days per year display (CCMC 18.04.130).

The parking lot will re-arranged and re-striped to maintain or increase the number of spaces. Two accessible parking spaces and an unloading zone will be striped to bring the lot in conformance with ADA guidelines.

Question 1: How will the proposed development further and be in keeping with, and not be contrary to, the goals of the Master Plan Elements?

Explanation A:

Chapter 3: A Balanced Land Use Pattern

The project meets the provisions of the Growth Management Ordinance in that no increase in population is expected as a result. No construction materials are being used, conserving water and energy. The property is fully developed but not fully leased – there are 2 vacant spaces at present. The displays do not impede pedestrian access through the site. No site features are negatively impacted by the addition of the displays. The project is in keeping with Master Plan Goal 1.2a.

Chapter 5: Economic Vitality

The purpose of the project is to stimulate economic activity by making merchandise more visible to passers-by. As such it encourages the re-development of under-used retail spaces. This is in keeping with Master Plan Goal 5.2b.

Question 2: Will the effect of the proposed development be detrimental to the immediate vicinity? To the general neighborhood?

Explanation A:

Land use and zoning of properties to the north, south and west are the same (Retail commercial) as the subject parcels. Land use and zoning to the east is residential. The project will enhance rather than be detrimental to the existing adjacent land use. The residential zone is isolated from the commercial zone by being on a separate parallel street, so it is relatively unaffected by the project.

Explanation B:

This project is similar to other development in the neighborhood because the buildings house small retail and service enterprises similar in size and type to many other businesses on Carson Street. The project will involve outdoor display of merchandise, which will be changed and moved in and out as the business owners see fit to promote their businesses.

Other businesses in this immediate area have used outdoor displays in the past to promote their businesses, but have ceased that practice upon recent notice from the city that they lacked a special use permit to do so.

Explanation C:

The project will not be detrimental to the use, peaceful enjoyment or development of the surrounding properties and the general neighborhood. The use of the property will remain the same as before. It is common knowledge in the retail business that increased visits to one business will likely lead to increased visits to adjoining businesses. Rather than being

detrimental to neighboring businesses, the project is seen as being helpful to surrounding businesses.

Explanation D:

The project will have negligible impact on pedestrian and vehicular traffic that currently exists on the road serving this project (N. Carson St.). The display areas are on the private sidewalks (not in the right-of-way) under the building porch roofs and in the space between the parking spaces and the sidewalk. The display areas are narrow so that walking on the sidewalks will not be impeded. No change in vehicle turning movements will be required. No additional walkways or traffic lights will be required. Traffic will be increased negligibly by the number of vehicles attracted to the stores by the displays. Emergency vehicle response time will be unchanged.

The short-range benefit will be that the appearance of the area will be markedly improved by the addition of a variety of displays and decorations. Currently the site is an older shopping mall surrounded by an undecorated asphalt parking lot. The long range benefit will be that because of the increased ease of attracting customers and commerce, sales tax revenues will increase, thereby increasing the viability of the community as a whole. The short-range benefit will also extend into the future and become a long-term benefit, increasing the attractiveness and vitality of the North Carson Street area.

Question 3: Has sufficient consideration been exercised by the applicant in adapting the project to existing improvements in the vicinity?

Explanation A:

The project will have negligible effect on the school district, and is not expected to add to the student population. It will not provide a service to the student population. Theft of displayed merchandise will be easier than merchandise displayed indoors, so increased rate of theft would affect the Sherriff's office to an undetermined degree.

Explanation B:

There will be no increase in impervious ground coverage.

Explanation C:

Water supply serving the project is sufficient to meet its needs without degrading supply and quality to others in the area. Water supply pressure is adequate. No leaks have been detected, so water lines are not in need of replacement. The site is not served by a well.
Explanation D:

No additional bathrooms or other sanitary drainage facilities are part of the project; therefore there will be no adverse effect on trunk sewers serving the complex.

Explanation E:

No road improvements are proposed or needed to accommodate the project.

Explanation F:

Information concerning the project described herein is provided by RL Engineering and the owners.

Explanation G:

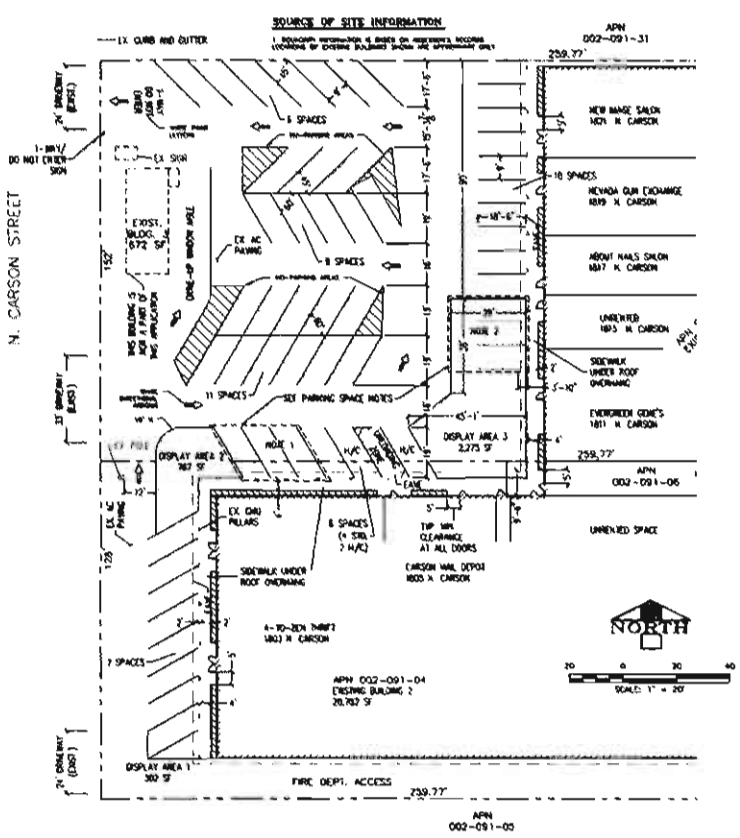
Outdoor lighting is to be provided in front of 1811 N. Carson Street. The lighting will consist of strings of low-wattage lights (Christmas tree-style), plugged into approved outdoor receptacles. The lights will be approx. 8'-9' above grade. The lighting is far enough back from the street that glare is not anticipated to be a problem. The lights will not impact any residential properties.

Explanation H:

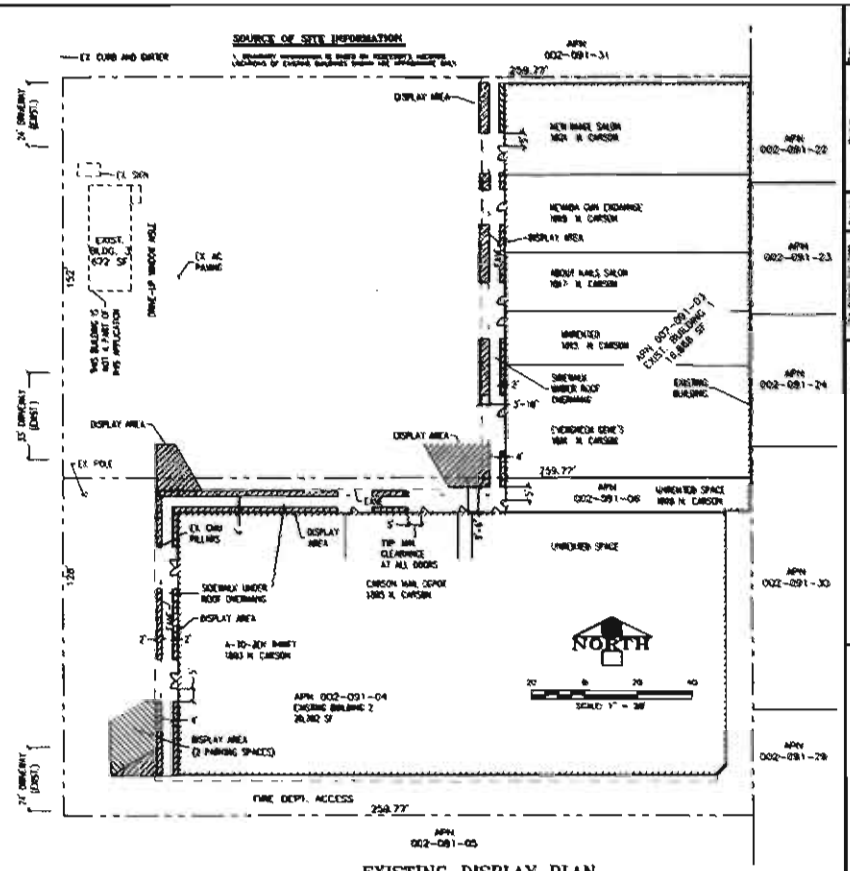
No permanent landscaping is proposed to be added to the complex.

Explanation I:

See site plan for proposed parking layout. The number of existing parking spaces is 45. Several spaces will be lost to enlarged display areas and an unloading zone for accessible parking. Re-striping will create additional spaces to bring the count to 48. The source of space for the additional parking is existing drive lanes that are wider than are required by the city standard details.



NEW STRIPING AND DISPLAY PLAN



EXISTING DISPLAY PLAN

NEW PROJECT STATISTICS:

PARKING SPACE NOTES:

VICINITY MAP

OLD PROJECT STATISTICS:

AGENT:

OWNERS:

ADJACENT ZONING:

SPECIAL USE PERMIT APPLICATION: SUP-13-

RL ENGINEERING
476 Fairview Drive #233
Carson City, Nevada 89701
PHONE (775) 884-3355 FAX (775) 884-3866

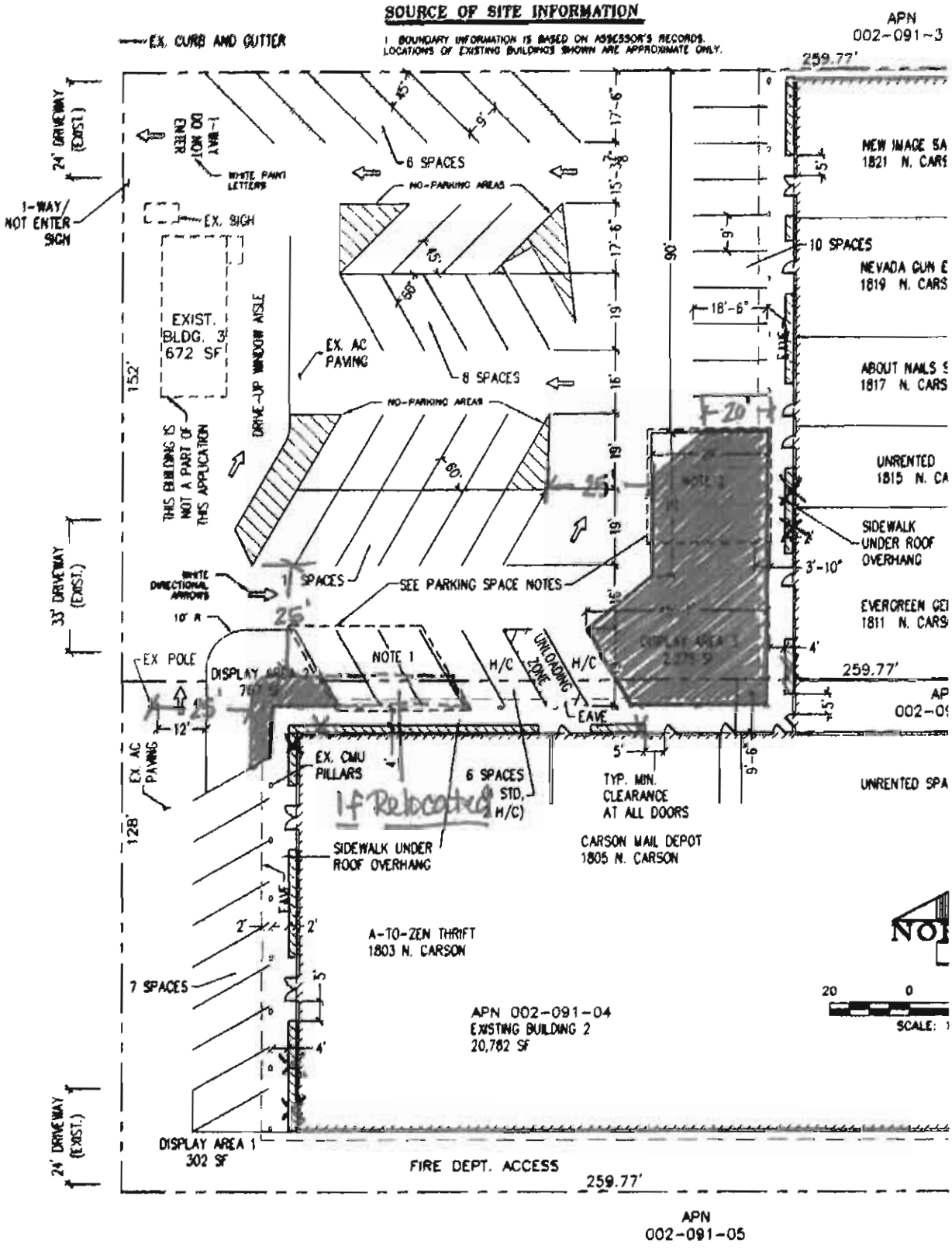
BERNARD-BARNARD-CUSCARO LLC, NORRIE ET AL

CARSON SHOPPING CENTER
SITE PLAN

1855-1921 N. CARSON ST., CARSON CITY, NV

JOB # 130723
DESIGN BY: RRL
DRAWN BY: BNL
CHECKED BY: RRL
DATE: 8-21-13
FILE 130723
SHEET C1

EXHIBIT "1" REDUCED



NEW STRIPING AND DISPLAY PLA

~~SCALE: 1" = 20'~~ NTS

EXHIBIT "J"

September 9, 2013

Major Project Review Committee

Re: # SUP – 09-055A

Dear Susan,

After initial plan review the Carson City Environmental Control Authority (ECA), a Division of Carson City Public Works Department (CCPW), has the following requirements per the Carson City Municipal Code (CCMC) and the Uniform Plumbing Code (UPC) for the SUP 09-055A@ Carson Shopping Center project:

ECA has no comments concerning this project.

Please notify Mark Irwin if you have any questions regarding these comments, I can be reached at 775-283-7380.

Sincerely;

Mark Irwin
Environmental Control Officer 3

c: Kelly Hale, Environmental Control Supervisor

August 20, 2013

Fire Comments

SUP-09-055 A

1. The current tenant has created possible life safety and exiting hazards by the display of merchandise on the walkways in front of the store and the parking lot beyond what was approved by the original SUP. We recommend that no merchandise or display items be allowed in the exit paths or walkways.
2. The outside of display areas 2 and 3 shall be designated a "fire lane-no parking" area. It may be marked with signage per the IFC or at a minimum, a red stripe at least 6 inches wide with the words "Fire Lane-No Parking" painted in a contrasting color on the stripe shall be painted on the pavement outlining the outer edge of the display area. The wordage shall be at a minimum every 10 feet.
3. Remove all curb stops in the display areas.
4. Outside display areas shall comply with the International Fire Code aisle requirements for mercantile occupancies.

Thank you.

Dave Ruben
Captain – Fire Prevention
Carson City Fire Department
777 S. Stewart Street
Carson City, NV 89701

Direct 775-283-7153
Main 775-887-2210
FAX 775-887-2209

File # (Ex: MPR #07-111)	*SUP-09-055*
Brief Description	*Outdoor Sales and Display*
Project Address or APN	*002-091-03, 04, 06*
Bldg Div Plans Examiner	*Kevin Gattis*
Review Date	*August 28, 2013*
Total Spent on Review	

BUILDING DIVISION COMMENTS:
The current tenant at the subject location has created possible life/safety hazards since opening the business by placing items in the required exit paths/walkways beyond what was approved and adding on to the existing electrical system without the required permits and inspection.
I would recommend that no display or sales items be allowed in the exit paths/walkways and no cord and plugged display lighting be allowed.

Engineering Division
Planning Commission Report
File Number SUP 09-055 Revision

TO: Planning Commission

FROM Rory Hogen, E.I.

DATE: August 20, 2013 **MEETING DATE:** August 28, 2013

SUBJECT TITLE:

Action to consider the revision of SUP 09-055 to change parking areas and display areas at 1803 through 1821 N. Carson St.

RECOMMENDATION:

The Engineering Division has no preference or objection to the special use request.

DISCUSSION:

The Engineering Division has reviewed the conditions of approval within our areas of purview relative to adopted standards and practices and to the provisions of CCMC 18.02.080, Conditional Uses.

CCMC 18.02.080 (2a) - Adequate Plans
The plans are adequate for this review with the following conditions:

1) Please show directional arrows with the change in direction next to the street frontage. This is in front of A to Zen.
2) The driveway just north of Carson Coffee must have both a one way do not enter sign and an arrow and do not enter painted on the pavement.
3) The 12 foot wide access between the new display area number 2 and the pole and bollards in front of A to Zen must be maintained as a minimum.
4) It is recommended that the northwest corner of display area 3 be cut off at a 45 degree angle to allow some sight distance for cars exiting the parking space just to the north.

CCMC 18.02.080 (5a) - Master Plan
The request is not in conflict with any Engineering Master Plans for streets or storm drainage.

CCMC 18.02.080 (5c) - Traffic/Pedestrians
The request is not in conflict with pedestrian or traffic movements. This request is being made to improve traffic and pedestrian access.

CCMC 18.02.080 (5d) - Public Services
No new City water, sewer or access services will be needed for this project.