

ZONING EXAMINER'S AGENDA

Thursday, August 3, 2017

City Hall - First Floor
Mayor and Council Chambers
255 West Alameda
Tucson, Arizona 85701

CALL TO ORDER - *6:00 P.M.*

ADMINISTRATION OF OATH TO PERSONS WISHING TO TESTIFY

PUBLIC HEARING

1. Case: C9-17-06 Wildcat Realty Investments – 5th Avenue (Ward 6)

Proposed Development: The proposal is to rezone approximately 1.03 acres to allow commercial, retail, and food service uses with associated parking and landscaping, at the northwest corner of Speedway Boulevard and 5th Avenue.

Owner: Wildcat Realty Investments, Inc.
4729 E. Sunrise Drive, Ste. 384
Tucson, AZ 85718

Applicant/Agent: Rory Juneman
Lazarus, Silvyn & Bangs, PC
5983 E. Grant Road, Ste. 290
Tucson, AZ 85716

Engineer/Architect/other: Michael Sarabia, Developer
DSW Commercial Real Estate
1795 E. Skyline Dr, Ste. 193
Tucson, AZ 85718

ADJOURNMENT

Si usted tiene algunas preguntas respecto a estas peticiones de rezonificación, favor de llamar al Departamento de Planeación y Desarrollo, al número de teléfono 791-5550.

* The staff reports and related case maps are available online at <http://pdsd.tucsonaz.gov/pdsd/public-hearing-agenda-materials-rezoning-special-exceptions-original-city-zoning>



MEMORANDUM

DATE: July 19, 2017
For August 3, 2017 Hearing

TO: Thomas Saylor-Brown
Zoning Examiner

FROM: Scott Clark
Planning & Development Services
Interim Director

SUBJECT: REZONING – PLANNING & DEVELOPMENT SERVICES REPORT
C9-17-06 Wildcat Realty Investments – 5th Avenue, NR-1 to C-1 (Ward 6)

Issue – This is a request by Rory Juneman, on behalf of the property owner Wildcat Realty Investments, to rezone approximately 1.03 acres from NR-1 to C-1 zoning. The rezoning site is located on the northwest corner of Speedway Boulevard and 5th Avenue (see Case Location map) and makes up the eastern half of the project site. The preliminary development plan (PDP) proposes commercial retail uses totaling 3,400 square feet of floor area, and food service uses totaling 4,600 square feet of floor area and 700 square feet of outdoor patio dining area, with a drive-through lane proposed for the fast/casual restaurant, along with associated parking, landscaping, and detention basins. As part of the overall development, an additional food service use with 2,200 square feet of floor area, 700 square feet of outdoor patio area, and a drive-through lane, is proposed to the west of the rezoning site on adjacent property currently zoned C-2. The maximum proposed building height on the rezoning site is 30 feet, as allowed in the C-1 zone.

Planning & Development Services Recommendation – The Planning & Development Services Department recommends approval of C-1 zoning, subject to the attached preliminary conditions.

Background Information

Existing Land Use: Vacant land with one single-family home on the northern portion of the site.

Zoning Descriptions:

Existing: NR-1 – The R-1 zone provides for urban, low density, single-family, residential development, together with schools, parks, and other public services necessary for a satisfactory urban residential environment. The “N” prefix designation refers to a Neighborhood Preservation Zone (NPZ). The NPZ applies to residential zones only and is an overlay zone which establishes districts to preserve, protect, and enhance the unique character and historical resources of neighborhoods, such as Feldman’s Neighborhood Preservation Zone, which are

listed on the National Register of Historic Districts, or neighborhoods eligible to be listed on the National Register of Historic Districts and that have completed a National Historic District Nomination or Eligibility Assessment application.

Proposed: C-1 – This zone provides for low-intensity commercial and other uses that are compatible with adjacent residential uses. Residential and other related uses are also permitted.

Surrounding Zones and Land Uses:

North: Zoned Residential (NR-1): single-family residences;
South: Zoned Residential (HO-3, HR-2 and HC-2): office, day-care, and single-family residences;
East: Zoned Planned Area Development (PAD-20): Casa de los Niños shelter care center;
West: Zoned Commercial (C-2): vacant land

Previous Cases on the Property:

C9-09-07 City of Tucson – Feldman’s Neighborhood Preservation Zone (NPZ) Overlay, R-1 to NR-1 This was a rezoning to establish a Neighborhood Preservation Zone (NPZ) for the Feldman’s Neighborhood, a residential neighborhood listed on the National Register of Historic Places with over 480 contributing properties acres located between Speedway Boulevard on the south and Lee Street on the north, and between Stone Avenue on the west and Park Avenue on the east. On November 9, 2009, Mayor and Council adopted Ordinance No. 10727 and on the ordinance became effective and the zoning changed to NR-1 on December 9, 2010.

Related Cases:

C9-98-36 Catholic Community Services – Speedway Boulevard, R-2 and P to O-3 This was a rezoning to allow the development of the entire 1.18-acre block north of Speedway Boulevard between 10th Avenue and Queen Avenue, with the exception of an existing maintenance building, into a parking lot for St. Elizabeth of Hungary Clinic and Catholic Community Services. The Mayor and Council adopted Ordinance 9210 on March 22, 1999. The case was closed on March 9, 2000 with a site inspection.

C9-11-04 Casa de los Ninos PAD – 4th Avenue, NR-1 to PAD Zone This was a rezoning request for approximately 3.45 acres bounded by 5th Avenue, Helen Street, 4th Avenue, and Speedway Boulevard to allow for the redevelopment of an established shelter care facility, comprised of existing shelter care residential uses, a small preschool, play areas, a courtyard, and associated parking. Supporting uses proposed for site included a 2-story, 21,000 square-foot office building, a 2,000 square-foot visitation house, a 1,500 square-foot pre-school, and a 1,150 square foot storage building. The Casa de los Ninos PAD is located within the Feldman’s Neighborhood, a National Registered Historic District, and the Feldman’s Neighborhood Preservation Zone (NPZ). The PAD document included standards and regulations that respect the NPZ by complying with criteria contained within the Feldman’s Neighborhood Design Manual. The PAD also included historic preservation policy direction for two structures identified as contributing properties to the Feldman’s National Register Historic District. On

July 6, 2011, the Mayor and Council adopted Ordinance 10906, and this rezoning was effectuated on August 6, 2011.

C9-11-11 Couston – Speedway Boulevard, R-2 to O-2 This was a request to rezone 0.37 acres, located on the southwest corner of Speedway Boulevard and 10th Avenue, to allow the conversion of an existing 1,864 square-foot, single-family residence to an office. On August 6, 2013 Ordinance No. 11099 was adopted. The conditions were met and the case was closed on October 6, 2015.

Applicant’s Request – C-1 (Commercial) zone is requested for development of commercial retail and food service uses.

Planning Considerations – *Plan Tucson (PT)* and the *University Area Plan (UAP)* provide policy direction for the rezoning site.

Plan Tucson: Sensitivity to the adjacent residential neighborhoods is a high priority within *PT*. *PT* policy supports neighborhood commercial and retail uses along arterial streets, taking into consideration traffic safety and congestion issues. *PT* guidelines support the location of employment, retail and services in proximity to each other to allow easy access and reduce dependence on car travel, and supports infill and redevelopment projects that reflect sensitivity to site and neighborhood conditions and adhere to relevant site and architectural design guidelines. *PT* also supports strategically located mixed-use activity centers and activity nodes in order to increase transit use, reduce air pollution, improve delivery of services, and create inviting places to live, work, and play, while protecting established residential neighborhoods by supporting compatible development, which may include other residential, mixed-use infill and appropriate non-residential land uses.

The proposed site is within an area identified in *PT* as “Existing Neighborhood”, which are primarily developed, largely built-out residential neighborhoods and commercial districts in which minimal new development and redevelopment is expected in the next several decades. The goal is to protect and maintain the character of the neighborhood by accommodating new, compatible development, and encouraging reinvestment and new services as area amenities. *PT* also encourages context-sensitive community design that protects the integrity of existing neighborhoods, complements adjacent land uses, and enhances the overall function and visual quality of adjacent streets.

University Area Plan: The *UAP* recognizes distinct neighborhoods in the University Area, and supports those changes which protect and enhance the character, identity, and residential quality of life in these neighborhoods. The *UAP* supports the development of new commercial uses on arterial streets which complement the scale and character of neighborhoods and commercial districts in the University area. The *UAP* calls out for the buffering of high intensity land uses by utilizing appropriate screening techniques to mitigate the impacts of new development on adjacent uses.

Feldman's Neighborhood Preservation Overlay: On November 24, 2009, the Mayor and Council adopted the rezoning of the Feldman's Neighborhood with a Neighborhood Preservation Zones (NPZ) overlay. The NPZ overlay area is subject to change if a property within the area is rezoned to or from residential. NPZ overlays are designed with the purpose of preserving, protecting, and enhancing the unique character and historical resources of established city neighborhoods. The preface "N" has been added to the assigned Residential zoning designation for each of the properties within the Feldman's NPZ (e.g., R-1 became NR-1). The design manual is a condition of the rezoning (C9-09-07, Feldman's Neighborhood Preservation Zone Overlay) and is a required review component of all applicable projects.

The rezoning site totals 1.03 acres and consists of six parcels and an alley way, which is proposed to be vacated. The site and is rectangular in shape, measuring roughly 250 feet north-to-south by 200 feet east-to-west. Based on the PDP, these six parcels and alleyway will be combined with three parcels to the west, currently zoned C-2. This adjacent area to the west will be incorporated into the overall development project site. Farther to the west across 6th Avenue is vacant land, single family homes, duplexes, a daycare/preschool, and residentially scaled office uses along the north side of Speedway Boulevard in C-2 zoning. To the south across Speedway is an office building zoned HO-3, a daycare/pre-school zoned HC-2 and HR-2. There is a gas station/convenience store located at the southwest corner of Speedway Boulevard and 6th Avenue. To the east across 5th Avenue is the Casa de los Niños Planned Area Development (PAD-20), a family shelter care facility which includes offices, a school, and single family residences. To the north are single-family homes zoned NR-1 and C-2.

One single-family home in the northwest corner of the site is proposed to be demolished to accommodate development and access to the site. Due to the age of this structure being more than fifty years, architectural documentation is required and the property is subject to review and recommendation by the City of Tucson Historic Preservation Officer prior to permits being issued for the demo of the structure.

Field inspection by staff indicates there are currently no billboards on the rezoning site.

Design Considerations

Land Use Compatibility – The rezoning request to C-1 is to allow commercial retail and food service uses. Sensitivity to the adjacent residential neighborhood is a high priority in *Plan Tucson*, and the *University Area Plan*. Per the submitted PDP, a 20-foot wide landscape border with detention basins and a 5-foot high screen wall is proposed along the northern boundary of the rezoning site. Trash pickup will be located just west of the rezoning site in the portion of the project which is currently zoned C-2.

On April 6, 2017 the applicant held the required neighborhood meeting, where there were 25 attendees plus the applicant and the project team. Issues discussed included access, vehicle/pedestrian circulation, and concerns regarding traffic flow onto 5th Avenue; specifically directing traffic southward onto 5th Avenue towards Speedway Boulevard and away from the

Feldman's residential neighborhood. Other questions from the attendees related to the hours of operation, delivery, location of dumpster, and the type of food service proposed for the fast-casual restaurant proposed with a drive-through lane, and possible noise impact from the food ordering kiosk. The applicant assured the neighbors that traffic would be directed away from the residences to the north, trash-pick up would be consolidated in one location to be at least 50 feet away from residential area to the north, and that delivery hours would be restricted along the northern edge of the site.

Staff recommends that hours of operations for deliveries along the north side of the buildings be limited to between the hours of 7:00 am and 10:00 pm, and that restaurant uses be limited to between the hours of 5:00 am and 12:00 midnight.

Drainage/Grading/Vegetation – Total 5-year threshold retention is required in water harvesting basins and all on-site run-off should drain towards water harvesting areas before overtopping to the adjacent right-of-way or private property. Landscaping in the form of drought-tolerant canopy trees, shrub and groundcover should be planted to enhance the overall visual impact of the proposed uses and the parking area, as required to comply with *Unified Development Code* Table 7.6.4-I.

Road Improvements/Vehicular Access/Circulation – The rezoning site is located along the north side of Speedway Boulevard and the west side of 5th Avenue. The PDP reflects that the site and its parking area will be accessed at a single point from 5th Avenue, a single point from Speedway Boulevard, and two points from 6th Avenue to the west. Road improvements are not proposed as part of the rezoning request. According to the Major Streets and Routes Map, 5th Avenue is a local street, Speedway Boulevard is a major arterial with a future right-of-way of 120 feet, and 6th Avenue is a major arterial with a future right-of-way of 90 feet. The PDP shows dedication of right-of-way as required along the north side of Speedway Boulevard adjacent to the rezoning site, and a proposed vacating of alleyway through the northern portion of the site. The applicant should be aware that any dedication of right-of-way or vacating of alleyway must be processed by the Real Estate Division. Based on the PDP, and per comments addressed at the neighborhood meeting, access from the site onto 5th Avenue will be limited to right-turn out only to avoid vehicle traffic flow into the Feldman's residential neighborhood to the north.

Conclusion – The proposed rezoning is consistent with, and supported by, the policy direction provided in *Plan Tucson* and the *University Area Plan*. Subject to compliance with the attached preliminary conditions, approval of the requested rezoning is appropriate.

PROCEDURAL

1. A development package in general compliance with the preliminary development package dated July 21, 2017, and required reports, covering the rezoning site together with parcel numbers 115-04-3220, 115-04-329B, and 115-04-329C is to be submitted and approved in accordance with the *Administrative Manual*, Section 2-06.
2. The property owner shall execute a waiver of potential claims under A.R.S. Sec. 12-1134 for this zoning amendment as permitted by A.R.S. Sec. 12-1134 (I) in the form approved by the City Attorney and titled “Agreement to Waive Any Claims Against the City for Zoning Amendment”. The fully executed Waiver must be received by the Planning & Development Services Department before the item is scheduled for Mayor and Council action.
3. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Historic Preservation Officer. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director of Arizona State Museum.
4. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
5. Five years is allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of rezoning with a site inspection.

LAND USE COMPATIBILITY

6. Hours of operation for deliveries along the north side of the buildings, as well as for trash pick-up, are limited to between 7:00 AM and 10:00 PM.
7. Hours of operation for food service uses are limited to between 5:00 AM and 12:00 AM (midnight).
8. All screen walls visible from a public right-of-way and/or adjacent to existing residential development, are to be graffiti-resistant and incorporate one (1) or more visually appealing design treatments, such as the use of two (2) or more decorative materials like stucco, tile, stone, rustic metal, or brick; a visually interesting design on the wall surface; varied wall alignments, (jog, curve, notch, setback, etc.); and/or trees and shrubs in voids created by the wall variations.

9. Six (6) inch wide masonry block or greater shall be used for perimeter walls, where proposed, as depicted on the preliminary development package dated July 21, 2017.
10. The building shall not be solely occupied by a single food service use/restaurant with a drive-through lane. However, a food service use/restaurant with a drive-through lane is permitted as long as other tenants are incorporated in (i.e. sharing) the building. There shall be no more than one drive-through lane on the rezoning site.
11. Vehicle ingress/egress along 5th Avenue shall be limited to a single access point. For vehicles exiting the site onto 5th Avenue, the exit direction shall be limited to right turn (southbound traffic) only, with directional signage provided as indicated on the preliminary development package dated July 21, 2017. Vehicles entering the site from 5th Avenue may enter with both left turn (for northbound traffic) and right turn (for southbound traffic).
12. The loud speaker at the menu board for the drive-through lane kiosk shall be located as indicated on the preliminary development package dated July 21, 2017. Any positioning of the speaker/menu board closer than 40 feet from the northern rezoning site boundary shall require a new sound analysis to be completed to ensure compliance with City Noise Ordinance.
13. The interior landscape border area along the northern edge of the rezoning site shall not include seating, grass, or other amenities that would encourage loitering.
14. As part of the building plan submittal, the applicant shall include architectural elevation drawings demonstrating that elements of the Feldman's Neighborhood Design Manual will be incorporated into the building design, as described in the site's Concept Building Design dated June 2, 2017.

AGREEMENT TO WAIVE ANY CLAIMS
AGAINST THE CITY FOR ZONING AMENDMENT

This agreement ("**Agreement**") is entered into between _____, as the owner of the property described herein ("**Owner**") and the City of Tucson ("**City**") to waive any and all claims for diminution of value that may be based upon action by the City in response to a request from the Owner. This Agreement is entered into in conformance with A.R.S. §12-1134(I).

The Owner is the holder of fee title to the property located at _____, Tucson, Arizona, (the "Property") which is more fully described in the Owner's application to the City in Case C9-17-06 incorporated herein. The Owner, or the authorized agent of the Owner, has submitted an application to the City requesting that the City rezone the Property. The Owner has requested this action because the Owner has plans for the development of the Property that require the rezoning. The Owner believes that the rezoning of the Property will increase the value and development potential of the Property, and that this outweighs any rights or remedies that may be obtained under A.R.S. §12-1134 et. seq.

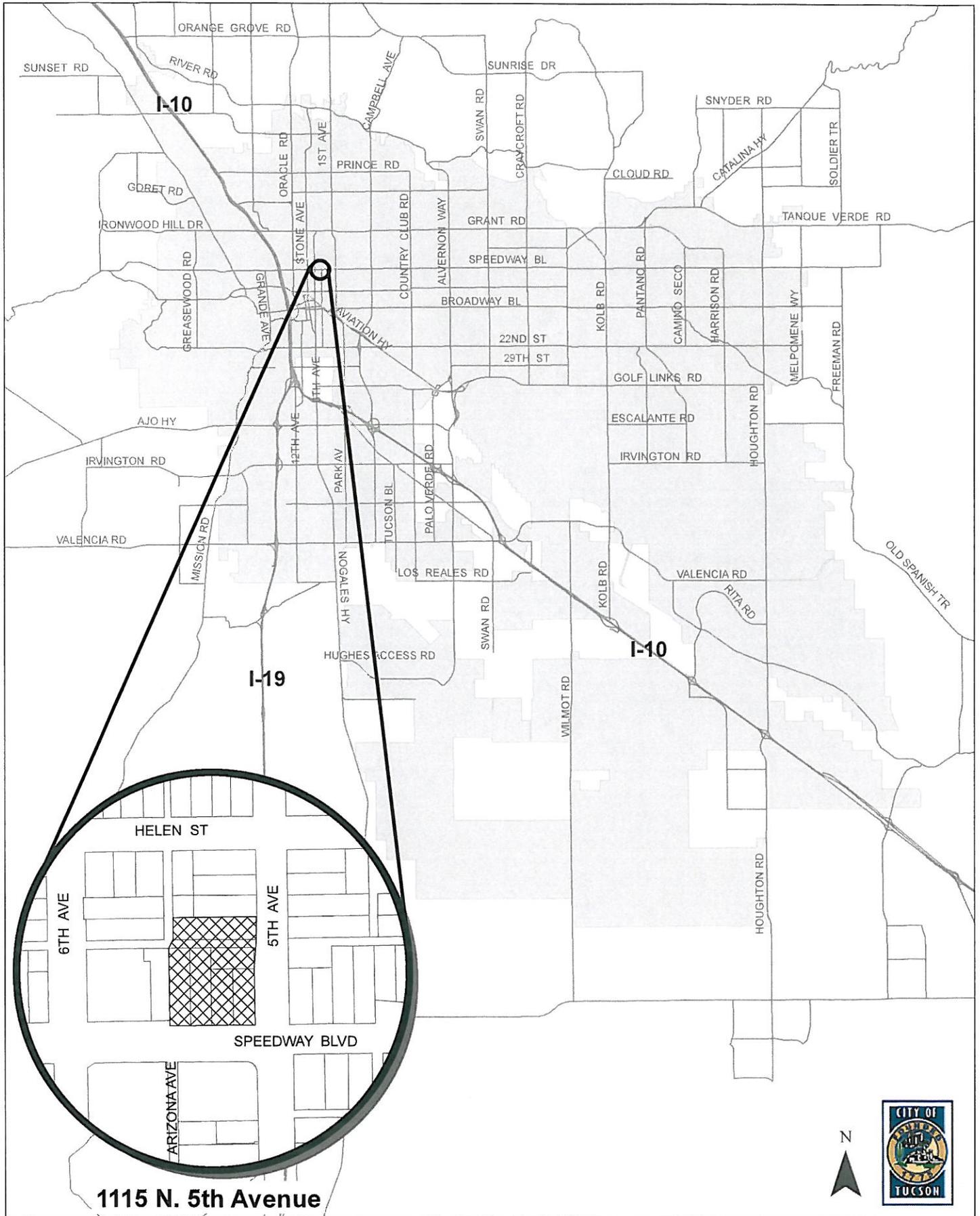
By signing this Agreement, the Owner waives any right or claim that may arise under A.R.S. §12-1134, including any claim for the reduction in the value of the Property, as a result of the enactment of the zoning amendment in Case C9-17-06 .

The Owner understands that City staff may propose, the Zoning Examiner may recommend and the Mayor and Council may adopt conditions to the requested zoning that limit the potential development of the Property. The Owner acknowledges that the rezoning and conditions are a single, integrated legislative approval. The Owner agrees and consents to all conditions that may be imposed. The Owner retains the right to withdraw the rezoning application prior to a vote by the Mayor and Council or to decline to implement the necessary requirements to effectuate the zoning if the Owner disagrees with any conditions that are proposed or approved. If the Owner does not withdraw the application, the Owner shall be deemed to have accepted all adopted conditions to the requested zoning. If the Owner withdraws the application or does not effectuate the new zoning, this Agreement is null and void.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. The Owner has agreed to the form of this Agreement provided and approved by the City Attorney. The Owner has had the opportunity to consult with an attorney of the Owner's choice prior to entering this Agreement and enters it fully understanding that the Owner is waiving the rights and remedies as set forth herein.

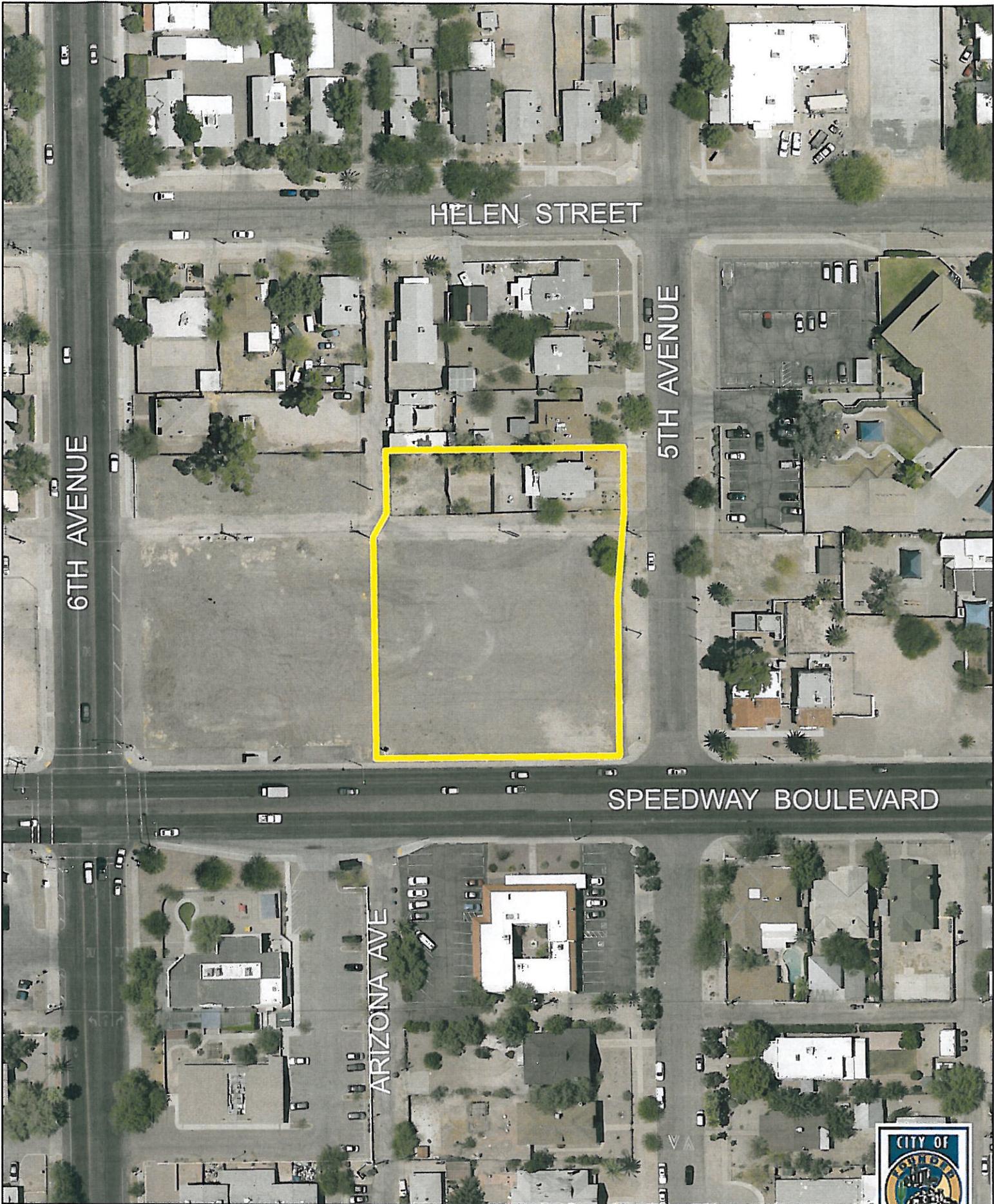
Upon execution, this Agreement shall be recorded in the Office of the Pima County Recorder.

C9-17-06 Wildcat Realty Investments.- 5th Avenue



1115 N. 5th Avenue





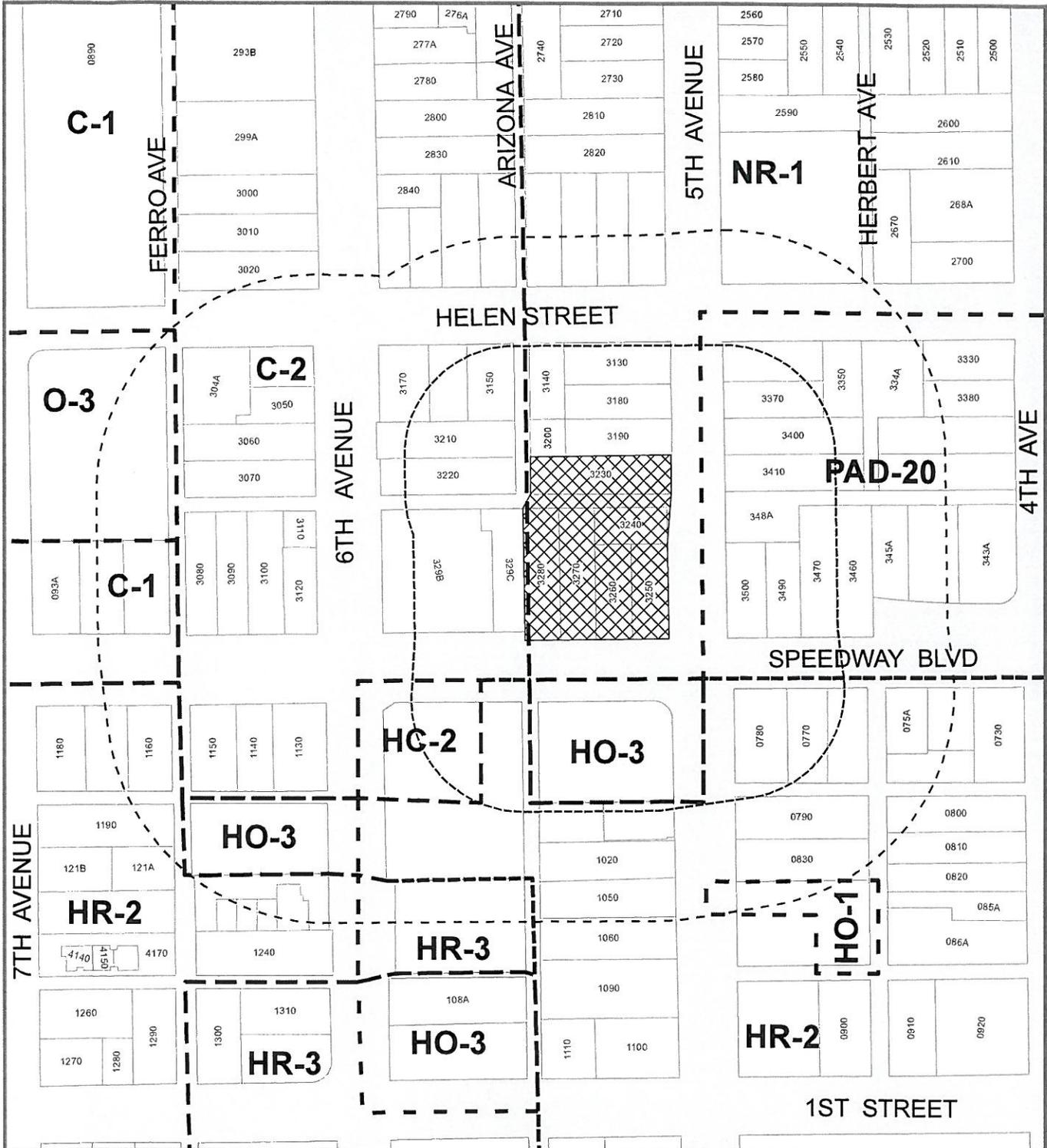
C9-17-06 Wildcat Realty Investments - 5th Avenue
2016 Aerial

0 50 100 Feet
1 inch = 100 feet

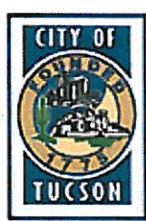


C9-17-06 Wildcat Realty Investments - 5th Avenue

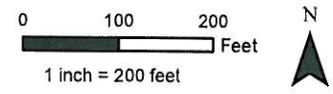
Rezoning Request: from NR-1 to C-1



-  Area of Rezoning Request
-  150' Protest Area
-  300' Notification Area
-  Zone Boundaries



Address: 1115 N. 5th Avenue
 Base Maps: Sec.1 T.14 R.13
 Ward: 6



created by: JR, 5/23/2017



Approval – Protest Form

If you wish to submit a written protest or approval, this form is provided for your convenience. Please print your comments below, sign your name, and mail to the Rezoning Section of the Planning and Development Services Department at the address on the reverse side (you will need to attach postage). The number of approvals and protests along with protest calculations will be reported at the Zoning Examiner’s public hearing.

Approvals and protests must have an owner’s signature to be recorded.

If protests are filed from property owners representing 20% or more by area in any quadrant of the area located within a 150 foot radius of the parcel(s) on which the rezoning is proposed, an affirmative vote of ¾ of the Mayor and Council will be required to approve the rezoning ordinance.

**Case: C9-17-06 Wildcat Realty Investments – 5th Avenue, NR-1 to C-1
Ward #6**

I/We the undersigned property owners, wish to

- APPROVE the proposed rezoning.
 PROTEST the proposed rezoning.

Reason:

PLEASE PRINT YOUR NAME	PLEASE PRINT MAILING ADDRESS	PLEASE PRINT LEGAL PROPERTY DESCRIPTION		
		Subdivision	Block	Lot

Owner’s Signature: _____ Date _____

Place
Stamp
Here

City of Tucson
Planning and Development Services Department
Rezoning Section
201 N. Stone
P.O. Box 27210
Tucson, Arizona 85726-7210

C9-17-06

Expose this flap - Affix stamp and return



City of Tucson PMc
Planning and Development Services
Department -Rezoning Section
201 N. Stone Avenue
P.O. BOX 27210
Tucson, Arizona 85726-7210

C9-17-06

IMPORTANT REZONING NOTICE ENCLOSED

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