

*Council women, Council men & staff*  
Mayor Goodman and ~~members of the City Council:~~

Just for your information, I sent a detailed letter to the Planning Commission on May 24, prior to the June 18<sup>th</sup> letter detailing these concerns.

Granting of the zoning change, variances and special use permits of APN 126-36-201-006, 24-0167 are (1) contrary to the staff's recommendation to deny; (2) contrary to and ignoring the 100% negative response from the notification area; and (3) irresponsible of the safety factor of placing an alcohol serving facility down the road from a gravel yard where it is a matter of time before an impaired driver tries to beat one of the hundreds of gravel truck per day passing the site, out of the parking lot and causes the loss of life and property.

This 5 acre land, including approx 1 acre of road is bordered on the east and west by residences.

Submitted at City Council

Date 7/17/24 Item 65

By: Barbara Pipchok



**Picture in Mr. Malik's package:**





**24-0167-ZON1** – REZONING – FROM C-V (CIVIC) TO C-1 (LIMITED COMMERCIAL)  
(5.00 ACRES)

As the staff stated in its Conditions and Staff Report which is part of the public record for this matter, at page 19 of 52,

- The proposed C-1 (Limited Commercial) zoning district would be located in the middle of an area defined by single-family residential neighborhoods, **which is discouraged** by Title 19.
- The requested Rezoning would create a situation commonly known as “spot zoning.” Spot zoning is defined by **Title 19.18** as, “rezoning of a lot or parcel of land to benefit an owner for a use incompatible with surrounding land uses and that does not further the General Plan.” The parcels surrounding the subject site are zoned C-V (Civic), R-CL (Single Family Compact-Lot), and R-TH (Single Family Attached). Amending the subject site could create a “spot” of C-1 (Limited Commercial) in an area strongly consisting of residential zoned properties surrounding the subject site. Rezoning the subject site would be contrary to the intent of the General Plan as the proposed building type is out of character with the surrounding area.

On page 32 of 52, the Conditions and Staff reports further states: “Rezoning to C-1) would not be compatible, as it would create a spot zone in a predominately residential area.” And “Growth and development factors in the community do not indicate the need for or appropriateness of the rezoning.”

Spot zoning is a chicken and egg situation. It is a concept land planners watch for but is also a legal concept courts can use to overturn zoning decisions. ***Zoning laws strategically direct commercial growth to suitable areas, preventing the chaotic mix of incompatible businesses and residences.*** According to Anderson’s American Law of Zoning 4<sup>th</sup> Edition § 5.12 (1995), the classic definition of spot zoning is “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of the other owners.” Ironically, that is ***exactly*** what we see happening with 24-0167. If you have not been out to this property to

look at it, please look at the pictures the applicant submitted as part of his application. There is very little room between the road and the houses.

The benefit to the applicant is obvious. The detriment to the neighborhood, especially the 16 Montalado lots 15 feet (because of the variances requested and granted) from this commercial complex is equally obvious with reduced property values, noise (especially with a tavern and drive-thru creating non-stop noise) and light. So both prongs of the legal spot zoning definition requirements are met – it a small parcel of land use classification totally different from the surrounding area for the benefit of that owner, and to the detriment of the other owners.

Zoning laws have the power to transform desolate areas into bustling commercial hubs if they are used correctly. They can ensure the city grows strategically and sensibly. However, in this case they should not be used to make a tiny 5-acre (including road) jam packed spot, 15 feet away from houses

The Location and Aerial Maps and all the Special Maps submitted by the applicant are all inaccurate in labeling the entire 58 acre parcel as the “subject property” yet he only purchased this 5 acre portion from the BLM. Ironically, the upper portion alone probably would have survived a spot zoning test since only one portion borders residential and he would only have to worry about the residential adjacency setback. But we don’t concern outself with that – this 5 acres, when divided by Shaumber into two two acre parcels cannot survive either the legal definition or the City of Las Vegas Unified Development Code’s definition of a spot zoning situation. The staff recognized this and recommended denial but one Planning Commissioner spoke out in favor of the project and here we are.

**24-0167-VAR1** is a variance requested to allow one loading space where two loading spaces are required on Side A and Side B

**Self-created hardship**

*The staff cites the same reasons for denial of all three variances*

This variance is self-created due to an attempt to overdevelop the site and should not be granted.

*the applicants*  
This land is vacant land and as such it is in ~~Mr. Malik~~ <sup>the applicants</sup> full control to conform his use of the land and associated building plans to all requirements of the Unified Development Code. There are no obstacles in his path. It is desert. It is a blank slate to work on. If there are any obstacles or encumbrances or easements on the land due to size, shape, elevation, drainage or a road going right through the middle of it, that was his obligation to be aware of through his due diligence when purchasing the property from the BLM. If there are any building requirements due to it being adjacent to residential housing, those are the obligations of the developer to be knowledgeable of them and comply with them. Unless he tries to overdevelop the site, he should be able to develop it without needing any variances.

The Staff Report cites Title 19.16.140(B) in regard to all three variance requests in its report (at pages 32, 33, 34 of 52) and I pointed this out in my detailed May 24, 2024 Opposition/Protest letter to the Planning Commission:

In accordance with the provisions of **Title 19.16.140(B)** the Planning Commission and City Council, in considering the merits of a Variance request, **shall not** grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
- 3. Relieve a hardship which is solely personal, self-created or financial in nature.**

Granting this variance is contrary to the provisions of **Title 19.16.140(B)** and is solely the result of the developer overdeveloping a small parcel. The variance should not be allowed. It clearly states the Commission shall not grant a variance, not should not, not at its discretion. **Shall not.** No discretion available to the



Planning Commission to grant these variances. They made a mistake in granting this variance.

The Unified Code wording has since been updated but is substantantially the same. It now states:

A Variance:

1. Is not available to permit a use in a zoning district in which the use is not allowed, or to vary any minimum spacing requirement between uses: and
2. **Shall not** be granted in order to relieve a hardship which is solely personal, self-created or financial in nature.

To repeat -- this Title states **shall not**. It does not state should not. Section 19.16.140 is Entitled Variance and Section b is Scope and Limitations. These are Limitations. The Commission overlooked the fact that it did not have the discretion to grant a variance in this case since the needs were self-created. They cannot issue such a variance. ~~They do not have the authority to grant a variance in this case since it is soley personal and self-created.~~

Shall not is not defined in the Unified Development Code, so I looked to other Nevada law.

Nevada Revised Statutes, Chapter 0.025 (f) "Shall not" imposes a prohibition against acting.

**24-0167-VAR2** is a variance requested to allow a 36-foot residential adjacency setback where 60 feet is required for Building 3 (drive-thru); a 15-foot residential adjacency setback where 60 feet is required for Building 2 (commercial) ; and to allow a 10-foot rear yard setback where 20 feet is required for Building 1 (Tavern)[Side A]

### Self-created hardship

The staff calculated the Residential Adjacency Setback for Building 3 (drive-thru) and Building 2 (commercial) as 60 feet at page 30 of 52 and the setback for Building 1 at 20 feet (Tavern) at page 30 of 52:

The submitted plans depict three commercial buildings that are each 20 feet tall that are decorated with stucco, metal siding, and stone veneer materials of neutral tones. Pursuant to **Title 19.08.040**, all property to be developed for nonresidential or multifamily residential use that is located adjacent to property which is zoned R-E, R-D, R-1, R-SL or R-CL unless such adjacent property is developed with a nonresidential use, shall conform to the residential adjacency standards. As the proposed commercial buildings are 20 feet tall, the 3:1 proximity slope requires these buildings to be set back at least 60 feet from the property line of the protected property. The proposed development places Building 1 and Building 2 at 36 feet and 15 feet from the protected property line respectively. This prompts the second Variance (24-0167-VAR2) request. Additionally, **Title 19.08.070** stipulates that buildings shall be set back at least 20 feet. Building 1 has a 10-foot rear yard setback. **Again, as the subject site is undeveloped, staff finds this hardship to be self-imposed and is also recommending denial of this Variance** (24-0167-VAR2).

*We are the protected property*

At Page 33 of 52: FINDINGS (24-0167-VAR2) [Side A]

In accordance with the provisions of **Title 19.16.140(B)**, the Planning Commission and City Council, in considering the merits of a Variance request, **shall not** grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature."

The property is vacant land and a blank slate to work on. Since it self-imposed **Title 19.16.140 (B)** states such Variance **shall not** (not should not) be granted in

order to relieve a hardship which is solely personal, self-created or financial in nature.

The property is being over-developed. As the Staff cited at page 37 of 52: "The subject site is not physically suitable for the type and intensity of land use proposed as evidenced by the requested Variance (24-0167-VAR1 and VAR2) for relief from minimum loading and **residential adjacency setback requirements.**"

The applicant is well aware he is over-developing the property and the proof is in the documents he has submitted with his application. In the Location and Aerial Maps it shows a project with one building on each side with only one building on the west side in the middle of the property. That is really all that size property can bear – one building with at least a 60 feet setback. This is how the applicant obviously originally envisioned what he could do with the property as evidenced by this map and the maps for SUP3 and SUP4. However he's overdeveloping the property by moving that tavern from the middle of the property as depicted on the Aerial Maps and special maps for SUP 3 and SUP 4 to the southern border of the property and putting two more buildings in the residential adjacency setback area – the only way to jam two more buildings into the property because of the property shape.

That request for residential adjacency setback is also not allowed under number 2 of 19.16.140 (B) as quoted in the report or the second part of number 1 of the re-written 19.16.140(B) inasmuch as it itself is a **minimum spacing requirement between use.**

A Zoning District is defined in the Unified Development Code as an area designed on the Official Zoning Map in which certain **uses** are permitted and certain others are not permitted, all in accordance with this Title. As such, under 19.16.140 (B) it is not allowed to vary any minimum spacing requirements between a Residential Zone and a Commercial Zone and by this alone the variance of the two buildings from the 60 feet Residential Adjacency Setback was not allowed.



The word Use is also defined in the Unified Development Code as the purpose (type and extent) for which **land** or a building is arranged, designed or **intended**, or for which **land** or a structure is **occupied** or maintained.

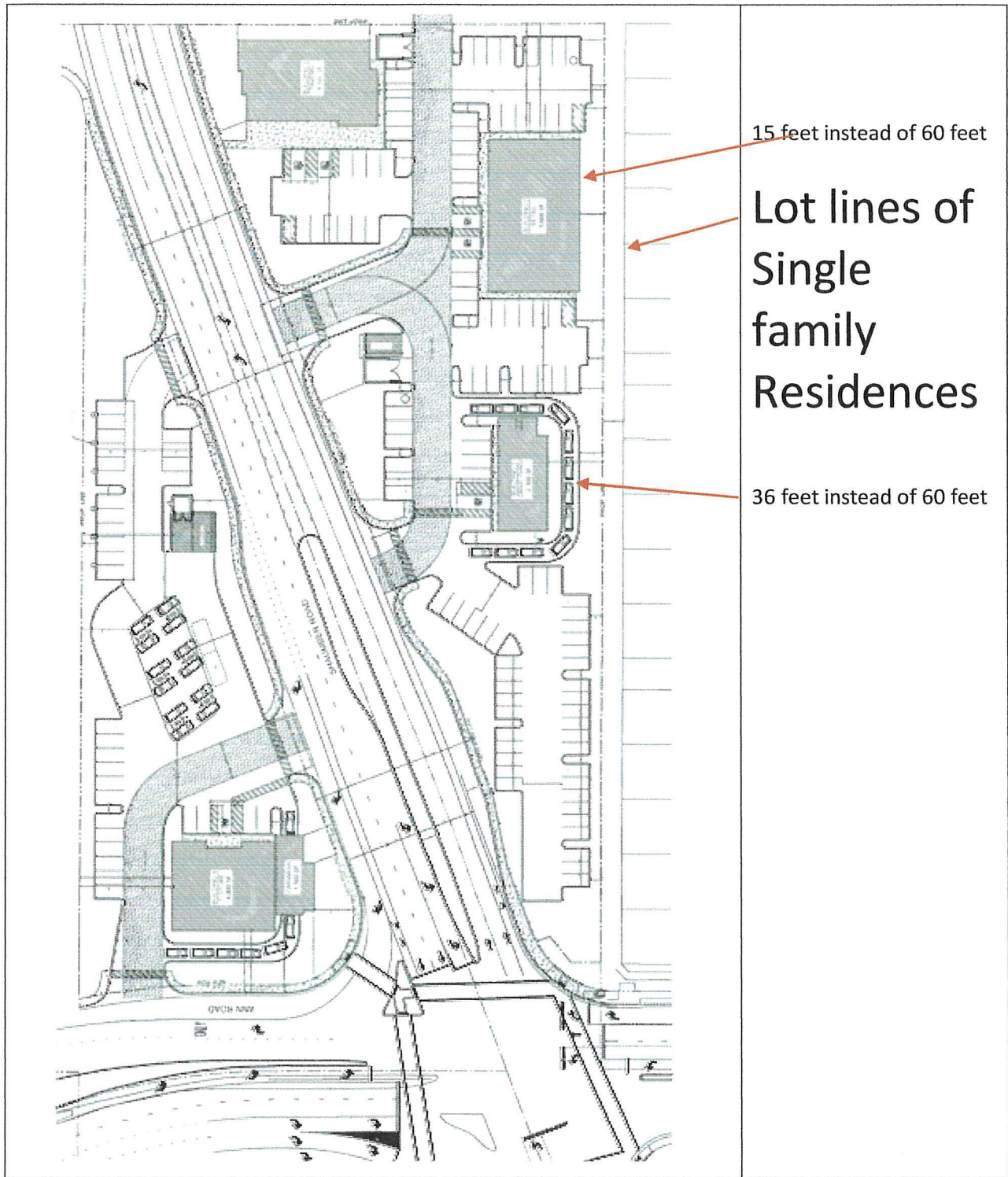
This is proof that the residential adjacency setback between commercial and residential property is a minimum spacing requirement that can't be varied.

*Remind the Mayor & Council that*

10.08.020 – Intent of Commercial and Industrial Development Standards

C. To encourage sensitive design and planning of commercial and industrial development which enhances compatibility between the built environment and the natural environment and will not negatively impact the use and enjoyment of adjacent and neighboring properties.

By completely disregarding the Residential Adjacency Standard – the purpose of which is to provide a buffer between commercial and residential properties, the Planning Commissioners did a disservice to the residences of Montalado by reducing the standard by 75% and allowing commercial buildings 15 feet instead of 60 feet from our backyards. This is something that is not allowed in 24-0167 by the provisions of Title 19.16.140(B).



**24-0167-VAR3** is requested to allow an 80-foot lot width where 100 feet is required [Side B]

**1. Self-created hardship**

As Staff cited at page 19 of 52 of its Conditions and Staff Report, which the Commission is aware:

Additionally, property which is proposed to be rezoned must meet the minimum site requirements as defined in **Title 19.08.070** for commercial and industrial districts. As the subject site will become two separate lots due to the required dedication of Shaumber Road, Side B of the proposed commercial development does not meet the minimum 100- foot lot width requirement, prompting a Variance (24-0167-VAR3). The applicant has instead requested an 80-foot lot width, which staff does not support as no justification for this request has been provided. As such, staff recommends denial of the requested Variance (24-0167-VAR3).

At Page 34 of 52, Staff Stated:

In accordance with the provisions of Title 19.16.140(B), the Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
  2. Vary any minimum spacing requirement between uses; 3.
- Relieve a hardship which is solely personal, self-created or financial in nature."

*Besides advising denial based on 19.16.14(B) - the hardship being self-created, the staff cited*



The only thing I want to draw attention to the City Council and Planning Commission as far as the Special Use Permit is in regard to SUP3.

**24-0167-SUP3** [Side A] – Alcohol, On-Premise Full use

**1. Not Compatible with surrounding land uses; safety and welfare**

In order to approve a Special Use Permit application, per [Title 19.16.110\(L\)](#) the Planning Commission and City Council must affirm the following: 1. The proposed land use can be conducted in a manner that is harmonious **and compatible with existing surrounding land uses**, and with future surrounding land uses as projected by the General Plan. It further states, that approval of the Special Use Permit at the site in question will not be inconsistent with or compromise the public health, **safety and welfare** or the overall objectives of the General Plan.

Shaumber Rd. to Ann is the route the multi-ton gravel trucks use to and from the quarry. There are in excess of a hundred per day. I assume the city has done a transportation study of the site and knows and is aware of this issue. This has nothing to do with improving the road and intersection. You are knowingly putting multi-ton gravel trucks and impaired drivers – wanting to beat those trucks and not wanting to wait for them at Ann & Shaumber or getting onto the expressway ---together in a way that will inevitably end in tragedy.

The City's legal counsel should at least look into whether a liquor special use permit should be allowed at this location given its proximity to the only route the trucks take from one of the quarries 24 hours per day. I argue an alcohol special use permit is not compatible with existing surrounding land uses (the quarry which cannot be moved) and compromises the safety and welfare of the public as a result.

## **SDR-1 and SDR-2**

The Staff has cited in the Conditions and Staff Report:

The proposed development is not compatible with adjacent development and with development in the area. This is evidenced by the requested Variances (24-0167- VAR1 and VAR2) for loading zones and residential adjacency setbacks and associated Waivers and an Exception for a reduction in landscape materials. (page 41 of 52)

The proposed development detracts from the intent of the City of Las Vegas 2050 Master Plan and is therefore not consistent with the General Plan, this Title, and other duly adopted city plans, policies and standards. (page 41 of 52 and page 42 of 52)

The proposed development is not compatible with adjacent development and with development in the area. This is evidenced by the requested Variances (24-0167- VAR3) for minimum lot width requirements and associated Waivers and an Exception for a reduction in landscape materials. (page 42 of 52)

As the Staff does not believe the proposed Site Development is compatible, I reaffirm their concerns.

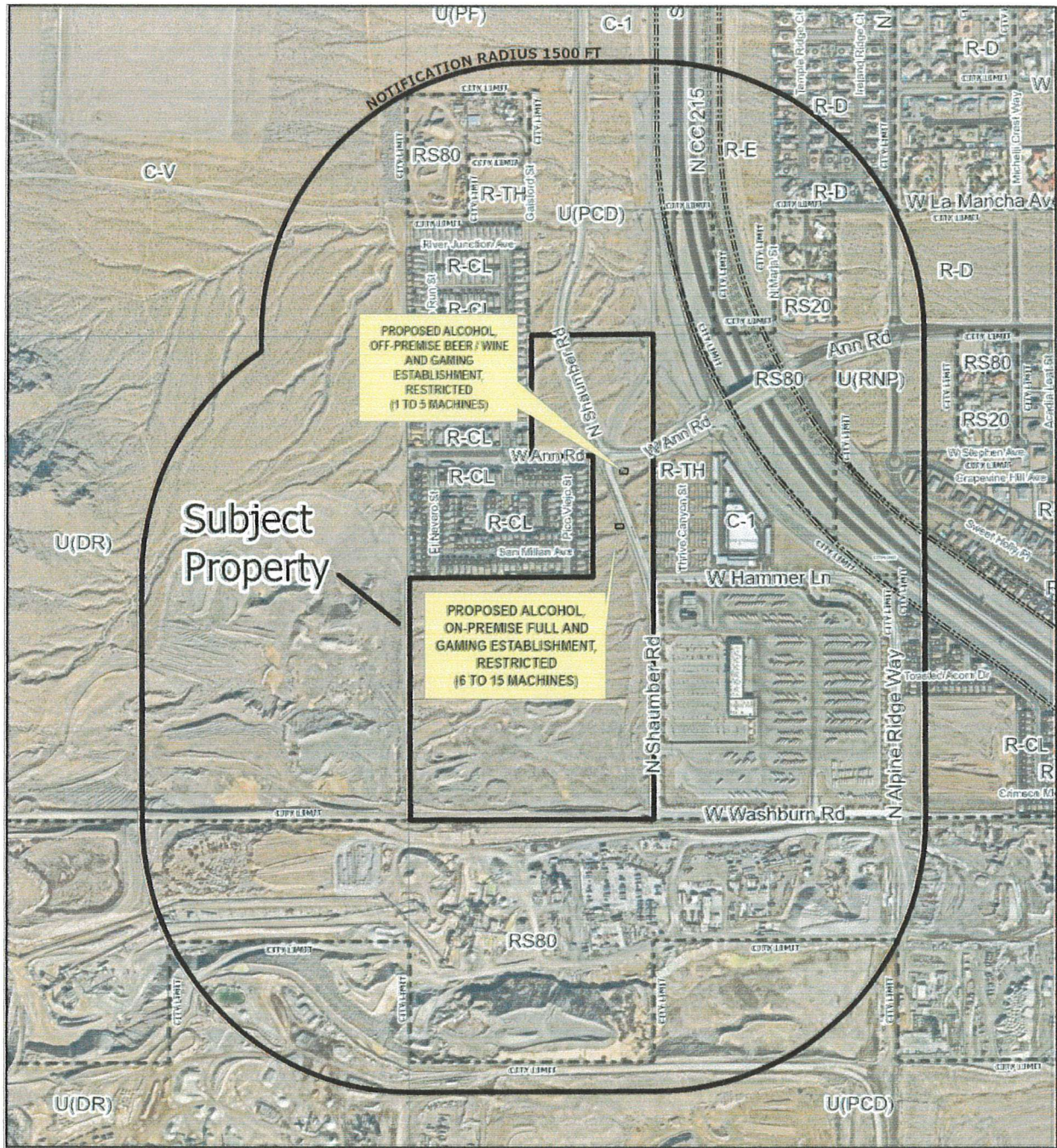
## General Objection

The 100% negative response via post-card notifications, web-site submittal, Protest Letter, and residents speaking at the meeting were not considered by the Planning Commission whatsoever. One Commissioner spoke up in favor of the Applicant, the others were silent, and all the Commissioners then voted in favor of the project. Their minds were made up in advance. A deal had been cut. In past dealings with this applicant, at Shaumber, 215 & Centennial Parkway, they at least required him to have meetings with the neighborhood on the proposed development. In this case .... nothing. That project, almost 2 years ago, has not yet been built.

They ignored the Staff recommendations in the Conditions and Staff Report which pointed to Title 19.16.140(B) which is a limitation in their authority to grant variances in this case. They granted residential adjacency setback variances which are minimum spacing requirements between uses which are not allowed under Title 19.16.140 (B) and would now allow commercial development within 15 feet of single family residences which is completely disrespectful of the residences of Montalado. Both sides of the longer sides of the this small 5 acre rectangular parcel are bordered by residential land making it a spot zoning situation by the strict legal definition of spot zoning as well as the spot zoning definition in the City of Las Vegas' Uniform Development Code.

I respectfully request that under these circumstances this project approval be reconsidered and that at a minimum the residential adjacency setback requirements under the Unified Development Code be honored to provide a respectful barrier between commercial and residential development that the Code intended for the Montalado residents.





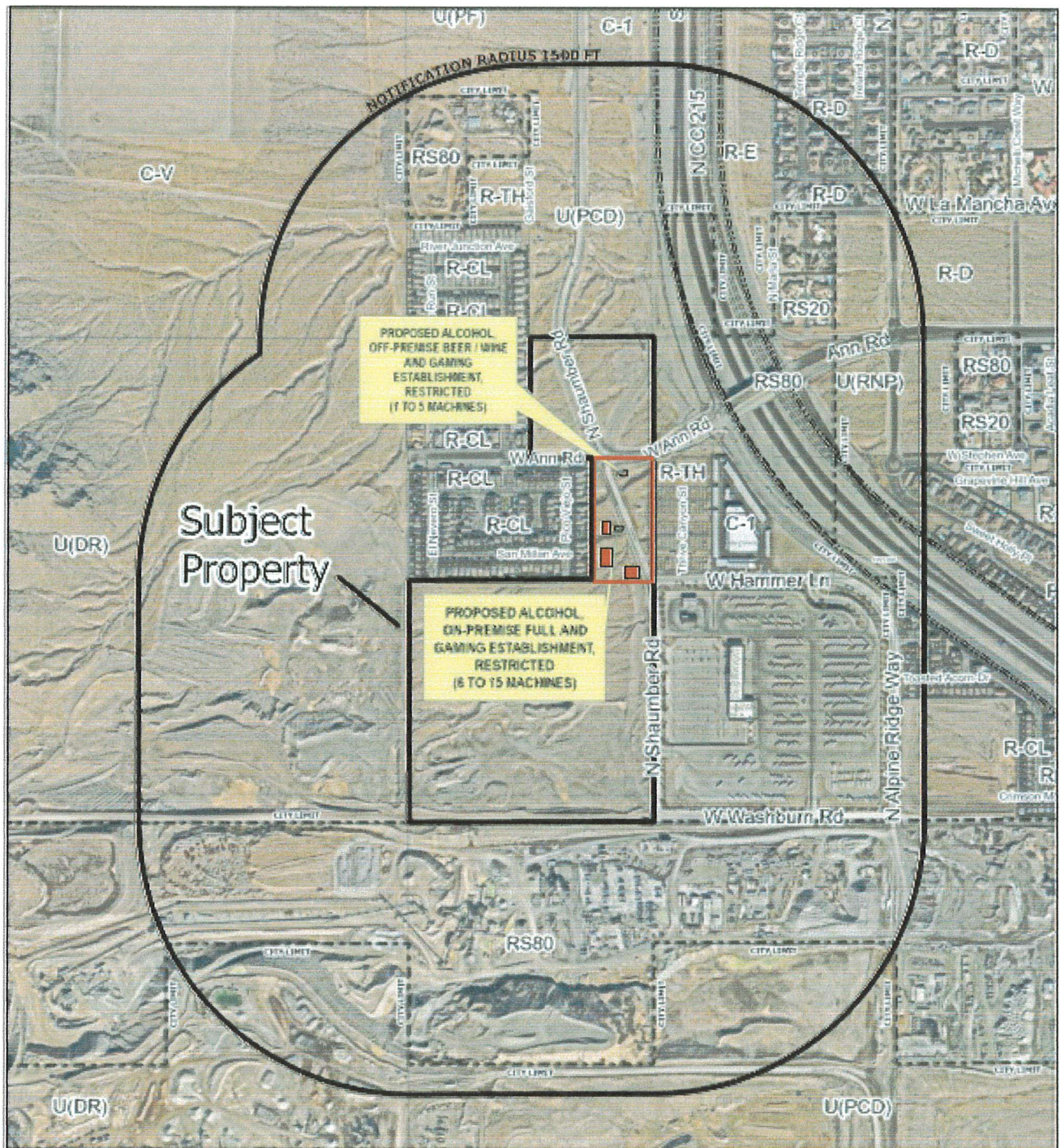
CASE: 24-0167

RADIUS: 1500 FEET

ZONING OF SUBJECT PROPERTY: C-V (CIVIC)

PROPOSED ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)





CASE: 24-0167

RADIUS: 1500 FEET

ZONING OF SUBJECT PROPERTY: C-V (CIVIC)

PROPOSED ZONING OF SUBJECT PROPERTY: C-1 (LIMITED COMMERCIAL)

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