

**AGENDA MEMO****PLANNING COMMISSION MEETING DATE: FEBRUARY 14, 2008****DEPARTMENT: PLANNING AND DEVELOPMENT****ITEM DESCRIPTION: ABEYANCE - VAR-25778 - APPLICANT: EXCEED PROPERTIES, INC. - OWNER: EXCEED PROPERTIES, INC., ET AL.**

**** CONDITIONS ******STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:**Planning and Development**

1. Conformance to the conditions for Rezoning (ZON-25776), Special Use Permits (SUP-25775 and SUP-25779) and Site Development Plan Review (SDR-25773), if approved.
2. This approval permits a deviation from LVMC Title 19.08.030 (C) Building Heights Along Streets Classified as Collector or Larger setback requirements to allow only a 10-foot setback at 65 feet where a 1:1 setback-to-height ratio is required for the portion of the building above 35 feet at Sahara Avenue would otherwise be required.
3. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

VAR-25778 - Staff Report Page One
February 14, 2008 - Planning Commission Meeting

**** STAFF REPORT ****

PROJECT DESCRIPTION

This is a request for a Variance to allow no setback where a 1:1 setback-to-height ratio is required along a street classified as Collector or larger for a proposed Mixed-Use Development on 7.02 acres adjacent to the northeast corner of Sixth Street and Sahara Avenue. The size and massing of this project is not compatible with the land use context of this neighborhood, which consists of mainly small shops and single family residences. The recommendation is therefore for denial.

BACKGROUND INFORMATION

<i>Related Relevant City Actions by P&D, Fire, Bldg., etc.</i>	
03/04/92	The City Council approved the appeal of the Planning Commission denial of a request for a Rezoning (Z-0107-91) from R-1 (Single Family Residential) and C-1 (Limited Commercial) to R-PD40 (Residential Planned Development 40 Units per Acre) on 3.3 acres located on the east side of 6th Street north of Sahara Avenue. The request included a deviation from the five-acre minimum site area for an R-PD project (this now requires a variance). The City Council placed a condition on the approval restricting the rezoning to R-PD25 (Residential Planned Development 25 Units per Acre) with a maximum of 84 units. A General Plan Amendment was not required. The Rezoning was subject to a 12-month Resolution of Intent. Staff recommended approval of the Rezoning on condition that it be restricted to R-PD36 (Residential Planned Development 36 Units per Acre).
07/15/92	The City Council approved a Plot Plan Review [Z-0107-91(1)] for a proposed two-story, 84-unit condominium development on 3.3 acres on the east side of 6th Street north of Sahara Avenue. Staff recommended approval. (There was no Planning Commission hearing.)
07/23/92	The Planning Commission approved a Tentative Map (TM-0045-92) for an 84-unit condominium subdivision (Sixth Street Condominiums) on 3.3 acres located on the east side of 6th Street north of Sahara Avenue. Staff recommended approval.
10/22/92	The Planning Commission approved a name change [TM-0045-92(1)] of an approved Tentative Map (TM-0045-92) from Sixth Street Condominiums to Sahara Courtyards Condominiums. Staff recommended approval. The Planning Commission subsequently approved the Final Map (FM-0085-92) of Sahara Courtyards Condominiums. This map recorded on 05/21/93.

VAR-25778 - Staff Report Page Two
February 14, 2008 - Planning Commission Meeting

04/21/93	The City Council approved a Special Use Permit (U-0031-93) to allow the sale of beer and wine within an existing restaurant at 600 East Sahara Avenue. The Board of Zoning Adjustment and staff recommended approval.
04/14/94	The Planning Commission approved a Plot Plan Review [Z-0107-91(2)] for a proposed two-story, 84-unit condominium development (12 buildings) on 3.3 acres on the east side of 6th Street north of Sahara Avenue. Staff recommended approval.
07/14/94	The Planning Commission approved an Amended Final Map [FM-0085-92(1)] for Sahara Courtyards Condominiums on 3.1 acres on the east side of 6th Street north of Sahara Avenue. The purpose of amending the map was to change the configuration of condominium units. The map was never recorded.
08/06/03	The City Council passed R-108-2003 adopting the Beverly Green/Southridge Neighborhood Plan.
08/04/04	The City Council tabled a request for a General Plan Amendment (GPA-4332) to amend a portion of the Southeast Sector Plan of the General Plan from SC (Service Commercial) to M (Medium Density Residential) on 3.16 acres on the east side of 6th Street, approximately 360 feet north of Sahara Avenue. The Planning Commission and staff recommended approval.
01/13/05	The Planning Commission voted to Withdraw Without Prejudice a request for a General Plan Amendment (GPA-5661) to amend a portion of the Southeast Sector Plan of the General Plan from SC (Service Commercial) to H (High Density Residential) on 3.2 acres on the east side of 6th Street, approximately 360 feet north of Sahara Avenue. Staff recommended denial.
01/10/07	This item was held in abeyance at the applicants request to allow time to meet with the neighbors and make revisions to the project proposal.
02/14/07	Companion items for a Rezoning (ZON-25776), a Variance (VAR-25778), a Special Use Permit (SUP-25775) and a Site Development Plan Review (SDR-25773) will be heard concurrently with this item.
<i>Related Building Permits/Business Licenses</i>	
Prior to 01/01/51	A business license, L11-00001, for a Beer Wine Cooler On-Off Sale category license for 610 East Sahara Avenue, Suite 2 was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 01/24/02 due to a reclassification of the license type.
Prior to 01/01/51	A business license, C15-00281, for a Convenience Store category license for 610 East Sahara Avenue, Suite 2 was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 01/29/02 due to a reclassification of the license type.
Prior to 01/01/51	A business license, L16-00042, for a Tavern category license for 620 East Sahara Avenue was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 11/18/02 due to a change of manager. *

VAR-25778 - Staff Report Page Three
February 14, 2008 - Planning Commission Meeting

Prior to 01/01/51	A business license, R09-00027, for a Restaurant - Seating 45 or More category license for 620 East Sahara Avenue was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 12/13/02. *
Prior to 01/01/51	A business license, R23-00009, for a Recreational Instruction or Lessons category license for 610 East Sahara Avenue, Suite 11 was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 02/12/03 due to a reclassification of the license type. *
Prior to 01/01/51	A business license, C05-00904, for a Tobacco Dealer - Retail category license for 610 East Sahara Avenue, Suite 2 was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 02/12/03 due to a reclassification of the license type.
Prior to 01/01/51	A business license, R09-00070, for a Restaurant - Seating 45 or More category license for 600 East Sahara Avenue was issued by the Department of Finance and Business Services. This license was reissued on 10/01/03 due to a misplaced original. *
02/02/89	A building permit application, plan check M-0162-89, was submitted for the site. This was for a plan check review for an interior remodel of an existing restaurant at 600 East Sahara Avenue. This permit (89018670) was reviewed and approved by the Planning and Development Department on 02/02/98 and issued by the Building and Safety Department 03/22/89. This permit received a final inspection on 04/06/89.
05/17/89	A business license, B08-00846, for a Beauty/Cosmetics Sales category license for 610 East Sahara Avenue, Suite 6 was processed in by the Department of Finance and Business Services. This license was issued by Business Services and reissued on 12/04/02 due to a reclassification of the license type.
02/01/90	A business license, B04-01032, for a Barber Shop category license for 610 East Sahara Avenue, Suite 5 was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 02/02/90 and reissued on 04/15/98 due to a change of suite numbering.
09/11/91	A business license, C11-04092, for a Masonry Contractor category license for 604 East Sahara Avenue was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 09/13/91 and reissued on 02/27/97. A Cease and Desist notice was issued 03/15/06. *
04/21/93	A business license, L09-00087, for a Beer Wine Cooler On Sale category license for 600 East Sahara Avenue was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 06/01/93 and reissued on 10/02/03 due to a misplaced original. *
07/21/97	A business license, B05-02665, for a Cosmetological Establishment category license for 610 East Sahara Avenue, Suite 6 was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 07/29/97 and reissued on 04/15/98 due to a change of suite numbering.

VAR-25778 - Staff Report Page Four
February 14, 2008 - Planning Commission Meeting

01/20/99	A business license, A01-01074, for an Administrative Office category license at 610 East Sahara Avenue, Suite 1 was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 01/29/99. *
10/18/00	A business license, F14-00035, for an Auto Title Loans category license for 610 East Sahara Avenue, Suite 10 was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 10/31/00 and reissued on 11/30/07 due to a change of ownership. *
09/07/01	A business license, R10-00045, for a Food Caterer category license for 600 East Sahara Avenue was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 09/27/01 and reissued on 12/17/02 due to a misplaced original. *
01/12/04	A business license, M09-00080, for a Mail Box Center category license for 610 East Sahara Avenue, Suite 7 was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 01/15/04. *
12/17/04	A business license, M01-08415, for a Maintenance Services - Janitorial category license for 610 East Sahara Avenue, Suite 7 was processed in by the Department of Finance and Business Services. This license was issued by Business Services on 12/23/04 and reissued on 02/09/05. *
12/23/04	A business license, C07-03299, for a Clothing Store category license for 610 East Sahara Avenue, Suite 13 was processed in by the Department of Finance and Business Services. This license was approved by the Planning and Development Department on 05/20/05 and issued by Business Services on 06/21/05.
05/02/05	A business license, A04-00084, for an Advertising Space Leasing or Selling category license for 610 East Sahara Avenue, Suite 7 was processed in by the Department of Finance and Business Services. This license was approved by the Planning and Development Department on 05/09/05 and issued by Business Services on 05/10/05.
06/23/06	A building permit application, plan check L-0889-06, was submitted for the site. This was for a plan check review for a tenant improvement (stone entry/floor plan remodel) for a certificate of occupancy at 620 East Sahara Avenue. This permit (07000608) was reviewed and approved by the Planning and Development Department on 07/10/06 and issued by the Building and Safety Department 02/15/07. A revision of the architectural, plumbing, and electrical drawings were reviewed and approved 03/19/07. This permit received a final inspection on 05/15/07.
10/30/07	A business license, C21-00192, for a Check Cashing Service category license for 610 East Sahara Avenue, Suite 10 was processed in by the Department of Finance and Business Services. This license was approved by the Planning and Development Department on 11/16/07 and issued by Business Services on 11/30/07.

VAR-25778 - Staff Report Page Five
February 14, 2008 - Planning Commission Meeting

<i>Pre-Application Meeting</i>	
11/16/07	A pre-application meeting was held, where submittal requirements and elements of this application were discussed. Specifically, staff listed and described several major issues with the project as follows: • Of primary concern is the multiple General Plan designations over the site (C, SC and L) and whether the full site would be included in the Downtown Redevelopment Area when it is all reverted to one parcel. The applicant was advised to submit a General Plan Amendment for the SC (Service Commercial) and L (Low Density Residential) parcels while an answer was sought. • A Waiver of residential adjacency standards must be requested as a part of the Site Development Plan Review application. • A Merger and Resubdivision map would need to be recorded prior to issuance of permits. • NDOT approval is required for any driveway on Sahara. • Subterranean parking was an issue, due to the high water table in the area and the expense of digging through hard caliche. • The applicant was informed of the strict time limits on any future Tentative Map approvals project must be completed within two years or a new map must be submitted. • A Development Impact Notice and Assessment and Project of Regional Significance questionnaire must be completed, signed and submitted as part of the submittal package. • A neighborhood meeting is required if a General Plan Amendment application is submitted; however, a meeting was recommended even if no amendment is submitted. • The area on the site plan labeled Central Plant needed to be more detailed for the submittal.
<i>Neighborhood Meeting</i>	
01/29/08	A neighborhood meeting was held at the Trinity Life Center, 1000 East St. Louis Street. Thirty-eight members of the public, two representatives of the applicant, and one member of the Planning and Development staff attended. Those in attendance had the following comments and concerns: • Concern regarding number and location of entrances off 6th Street. • Traffic on 6th Street and St. Louis Avenue and parking intensity. • Residential adjacency waivers issue. • Property values effect of density apartments rather than condos. • Screening of activity podiums and hours of operation. • Shade and shadow study presented. • Traffic study to be done prior to Planning Commission. • Estimate new students into CCSD. • Exterior lighting and signage question.

VAR-25778 - Staff Report Page Six
February 14, 2008 - Planning Commission Meeting

	• Use of fire retardant coverings. • Apartments to be medium income target. • Small unit sizes. • Tower out of scale with neighborhood. • Not in compliance with Southridge / Beverly Green Neighborhood Plan (albeit non-binding). • Construction staging plan. The majority of those in attendance had significant concerns and opposed the project. A minority were in favor.
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- * This business license has been issued with no indication that it was reviewed or approved by the Planning and Development Department.

Field Check	
12/06/07	The Department of Planning and Development conducted a site visit that found that the south side of the site is developed with a shopping center and two restaurant pads. There is a large mobile storage container in the parking lot area of the shopping center. A low wall with an approximately eight-foot wrought iron fence is located along the north property line of the shopping center. Along 6th Street to the north is a radio station, also with a mobile storage container in the parking area. The rest of the site is undeveloped, except for a private street that is an extension of the road servicing several office buildings to the east of the subject site. This street terminates in a cul-de-sac with an arm jutting out. Cut-through traffic across the site from 6th Street to this private street was observed, although there are no curb cuts on 6th Street except at the radio station.

Details of Application Request	
Site Area	
Net Acres	6.34

Surrounding Property	Existing Land Use	Planned Land Use	Existing Zoning
Subject Property	Shopping Center	C (Commercial)	C-1 (Limited Commercial)
	Undeveloped (w/ full cul-de-sac terminus)	SC (Service Commercial)	R-PD25 (Residential Planned Development 25 Units per Acre)
	Radio Broadcasting	SC (Service Commercial)	R-1 (Single Family Residential)

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VAR-25778 - Staff Report Page Seven
February 14, 2008 - Planning Commission Meeting

North	Undeveloped	SC (Service Commercial)	R-1 (Single Family Residential)
	Undeveloped	L (Low Density Residential)	R-1 (Single Family Residential)
	Single Family, Detached	L (Low Density Residential)	R-1 (Single Family Residential)
South	Auto Repair	CT (Commercial Tourist Clark County Designation)	C-2 (General Commercial Clark County Designation)
	Multi-Family Residential	CT (Commercial Tourist Clark County Designation)	H-1 (Limited Resort and Apartment Clark County Designation)
East	Restaurant	C (Commercial)	C-1 (Limited Commercial)
	Office, Other Than Listed	C (Commercial)	C-1 (Limited Commercial)
	Undeveloped (w/ partial cul-de-sac terminus)	C (Commercial)	C-1 (Limited Commercial)
	Single Family, Detached	L (Low Density Residential)	R-1 (Single Family Residential)
West	Auto Parts (New and Rebuilt)	SC (Service Commercial)	C-1 (Limited Commercial)
	Single Family, Detached	L (Low Density Residential)	R-1 (Single Family Residential)

<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Area Plan			
Beverly Green/Southridge Neighborhood Plan	X		N *
Redevelopment Plan Area	X		Y **
<i>Special Districts/Zones</i>	<i>Yes</i>	<i>No</i>	<i>Compliance</i>
Special Purpose and Overlay Districts			
A-O Airport Overlay District (175 Feet)	X		N ***
Trails		X	n/a
Rural Preservation Overlay District		X	n/a
Development Impact Notification Assessment	X		Y ****
Project of Regional Significance	X		Y ****

VAR-25778 - Staff Report Page Eight
February 14, 2008 - Planning Commission Meeting

- * The proposed project does not reflect Strategy 1 as outlined under Issue 2 of the Existing Land Uses section of The Beverly/Southridge Neighborhood Plan which requests: any development whose building foundation is within 300 of property zoned for a single-family residential home be required to adhere to Title 19.08.060 Residential Adjacency Standards.
- ** Only one of the subject sites parcels (162-03-801-099), which contains existing retail and commercial uses, is located within the Downtown Redevelopment Area.
- *** The proposed height of the residential tower, 345 feet, exceeds the height limitation of 175 feet for this area established by the McCarran International Airport Overlay Map portion of A-O (Airport Overlay) District. A companion Special Use Permit (SUP-25775) has been submitted pursuant to Title 19.06.080 and if approved would grant relief from the height limitation.

DEVELOPMENT STANDARDS

Pursuant to Title 19.08, the following development standards apply:

Standard	Required/Allowed	Provided	Compliance
Min. Lot Size	n/a	276,170 SF	n/a
Min. Lot Width	100 Feet	306 Feet	Y
Min. Setbacks			
• Front	20 Feet	20 Feet	Y *
• Side	10 Feet	52 Feet	Y
• Corner	15 Feet	41 Feet	Y **
• Rear	20 Feet	48 Feet	Y **
Max. Lot Coverage	50%	46%	Y
Max. Building Height	n/a	345 Feet (30-Stories)	n/a
Trash Enclosure	Gated and Screened	Enclosure (A part of the building, access from east service drive)	Y
Mech. Equipment	Screened	Screened	Y

- * The setback complies with C-1 (Limited Commercial) district standards, but does not comply with meet the 1:1 stepback ratio for the portion of the height above 35 feet. If approved, this request will grant relief from the city standard.
- ** The setback complies with C-1 (Limited Commercial) district standards, but does not comply with Residential Adjacency setbacks. A waiver has been requested as a part of the Site Development Plan Review (SDR-25773) that if approved it would grant relief from the city standards.

VAR-25778 - Staff Report Page Nine
February 14, 2008 - Planning Commission Meeting

ANALYSIS

The subject site is located on the Southeast Sector Map of the General Plan. The site is designated as SC (Service Commercial) on the northern portion. This category allows for low to medium intensity retail, office, or other commercial uses that serve primarily local area patrons and do not include more intense general commercial characteristics. Examples include neighborhood shopping centers, theaters, and other places of public assembly and public and semi-public uses. This category also includes offices either singly or grouped as office centers with professional and business services. The SC (Service Commercial) category may also allow mixed-use development with a residential component where appropriate. The southern portion of the project site is designated as C (Commercial) on the Redevelopment Plan Area Map of the General Plan. This category allows for commercial uses that are normally allowed within the O (Office), SC (Service Commercial), and GC (General Commercial) General Plan land use categories. The proposed use is in conformance with these land use designations.

There is a Rezoning (ZON-25776) proposed to change the zoning of the northern portion of the project site from an R-1 (Single Family Residential) and R-PD25 (Residential Planned Development 25 Units per Acre) zoning districts to a C-1 (Limited Commercial) zoning district. This would bring the entire project area into a single C-1 (Limited Commercial) zoning district. The existing radio broadcasting and retail uses are permissible in a C-1 (Limited Commercial) zoning district and the proposed mixed-use development is permissible with the approval of a Special Use Permit (SUP-25779) and would then be consistent with the existing SC (Service Commercial) and C (Commercial) General Plan designations.

The site is within the McCarran International Airport Overlay Map portion of the A-O (Airport Overlay) District. The proposed height of the tower, 345 feet, exceeds the height limitation of 175 feet for this area. This request has been submitted pursuant to Title 19.06.080 and if approved would grant relief from the height limitation.

As previously noted, the southern portion of the subject site is within the boundaries of the Las Vegas Redevelopment Area, with a C (Commercial) land use designation. The proposed use is in conformance with the Redevelopment Plan.

Further, the site is within the Beverly/Southridge Neighborhood Plan area at the southern edge of the plan boundaries. The neighborhood plan is intended to serve as a set of guiding principles for the area. The proposed project does not reflect Strategy 1 as outlined under Issue 2 of the Existing Land Uses section of The Beverly/Southridge Neighborhood Plan which requests any development whose building foundation is within 300 of property zoned for a single-family residential home be required to adhere to Title 19.08.060 Residential Adjacency Standards. This strategy is mainly a response to a concern regarding potential negative impacts a high rise structure may cause if built in the area with the goal being to actively oppose any negative aesthetic effects a high rise structure may pose to the neighborhood. There is a request for a waiver of the residential adjacency standards as a part of the Site Development Plan Review (SDR-25773) that exemplifies how the proposed development does not meet the intent of the neighborhood plan with regard to the buildings proposed height in relation to the neighboring single family residential homes.

VAR-25778 - Staff Report Page Ten
February 14, 2008 - Planning Commission Meeting

Pursuant to Title 19.08.030(C), building heights along streets classified as Collector or larger are subject to additional setback requirements. Buildings may be constructed up to 35 feet in height at the front yard setback line; any portion of a building over 35 feet in height shall be set back an additional one foot for each foot of height in excess of 35 feet. Sahara Avenue is designated as a Primary Arterial by the city's Master Plan of Streets and Highways; therefore, the additional setback applies to the Sahara frontage of the project. In lieu of the additional setbacks, compliance could be attained by sloping the top of the building north from the front setback line at a 45-degree angle.

The mixed use commercial and residential tower as proposed is located at the 20-foot front yard setback line along a portion of Sahara Avenue, and rises for 65 feet before stepping north approximately 10 feet. The building then rises to 195 feet at a setback of approximately 30 feet from the Sahara Avenue right-of-way. The building then rises to its pinnacle at 335 feet without any further stepback. The structure does not comply with the requirements of Title 19.08.030(C), thereby requiring the submittal of this request.

This variance has been submitted in conjunction with a Rezoning (ZON-25776) to change the northern portion of the project site to a C-1 (Limited Commercial) zoning district, a Special Use Permit (SUP-25775) to allow a building height of 345 feet in the A-O (Airport Overlay) District, a Special Use Permit (SUP-25779) to allow a mixed-use development with residential uses in the proposed C-1 (Limited Commercial) zoning district and Site Development Plan Review (SDR-25773) to site a proposed 30-story mixed-use development that includes 108,500 square feet of commercial area and 673 residential units.

The applicant does not specifically address the design issues in relation to the request for the variance. However, the applicant does assert that approval of the project will allow the city to meet many of its design goals and objectives for land use, urban form, pedestrian environment, and image and character in and adjacent to downtown Las Vegas. Conformance to Code requirements would reduce the number of developable units; however, it would also assist in reducing the massing of the project, and make it more compatible within its context and with the existing structures in the neighborhood. Staff does not support the size and massing of this project in relation to the land use context of this location and is therefore recommending denial of this request.

FINDINGS

In accordance with the provisions of Title 19.18.070(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.

Additionally, Title 19.18.070(L) states:

VAR-25778 - Staff Report Page Eleven
February 14, 2008 - Planning Commission Meeting

Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship in designing a structure that fails to meet the required 1:1 stepback-to-height ratio beyond the setback line. Stepping the building back from Sahara Avenue would allow conformance to the Title 19 requirements. In view of the absence of any hardships imposed by the sites physical characteristics, it is concluded that the applicants hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED 11

ASSEMBLY DISTRICT 9

SENATE DISTRICT 10

NOTICES MAILED 316

APPROVALS 7

PROTESTS 20