

FILE NUMBER: Z1120-0159
REQUEST FOR: Zoning Change from Planned Development – Service Station to Planned Development – General Retail with a Conditional Use Permit to allow a Coin-Operated Amusement Gameroom
CASE MANAGER: Lesley Frohberg

PUBLIC HEARINGS

Planning and Zoning Commission: Monday, December 14, 2020
City Council: Monday, January 4, 2021

GENERAL INFORMATION

Applicant: Roberto Nunez, Alchemi Development Partners
Requested Action: Zoning change from Planned Development – Service Station (Ord. No. 2888) to Planned Development - General Retail zoning district to allow a proposed building expansion with a Conditional Use Permit to allow a Coin-Operated Amusement Gameroom, including six (6) amusement machines, inside an existing convenience store with a restaurant and limited fuel sales as a permitted use on the subject property with a modification to have one customer restroom instead of the required one customer restroom each for male and female.
Location: 1320 Gross Road

PLANNING AND ZONING ACTION

Decision: On December 14, 2020, the Planning and Zoning Commission recommended the following:

1. Denial of the zoning change to Planned Development – General Retail.
2. Denial of the Conditional Use Permit to allow a coin-operated amusement gameroom, including six (6) amusement machines.
3. Approval of an amendment to Planned Development – Service Station, Ordinance No. 2888, with the following new stipulations:
 - a. Diesel fuel sales shall be limited to passenger vehicles only.
 - b. Development of the site shall conform generally to the development standards, attached hereto as "Exhibit A," and the concept plan, attached hereto as "Exhibit B," as determined by the Director of Planning and Development Services.

SITE BACKGROUND

Platting:	Oakbrook, Block A, Lot 1
Size:	0.86 Acres / 37,422 Square Feet
Zoning:	PD-SS – Planned Development Service Station Ord. No. 2888
Land Use:	Commercial
Zoning History:	1954: Annexed into City of Mesquite and zoned Residential 1969: Zoning changed to Commercial (Ord. No. 828) 1993: Zoning changed to Planned Development – Service Station (Ord. No. 2888)

Surrounding Zoning and Land Uses (see attachment 3):

	<u>ZONING</u>	<u>LAND USE</u>
NORTH:	LC - Light Commercial	Restaurant
SOUTH:	PD-SS – Planned Development Service Station & GR – General Retail	Convenience Store with Fuel Sales & Vacant / Undeveloped
EAST:	LC - Light Commercial	Vacant / Undeveloped
WEST:	LC - Light Commercial	Restaurant

CASE SUMMARY

The subject property is a 0.86-acre parcel located north of the Gross Road and Interstate-635 intersection. The property is currently operating as a convenience store with fuel sales and a quick-service restaurant per Planned Development-Service Station, Ordinance No. 2888, which was approved in 1993. PD #2888 placed conditions on the property, including prohibiting diesel fuel sales, requiring six-foot-tall dumpster screening, and requiring landscaping and irrigation.

The applicant had initially requested a Planned Development amendment to allow proposed alterations and additions to the site and to amend the development standards of Ordinance No. 2888. That request was withdrawn by the applicant due to a desire to rezone the property to General Retail to have the opportunity to apply for a Conditional Use Permit (CUP) to allow existing coin-operated amusement machines to remain within the convenience store. The business currently has five coin-operated amusement machines on the premise, including five eight-liners. The business was never legally able to have five amusement machines.

On October 19, 2020, the City Council amended (Ordinance No. 4820) the Mesquite Zoning Ordinance (MZO) regarding coin-operated amusement machines. Ordinance No. 4820 recognizes that coin-operated amusement devices can have adverse effects on nearby properties, compromising the quality of life, property values and the character of surrounding neighborhoods. To address these concerns, the amendment reduced the number of coin-operated amusement machines permitted as an accessory use from four to two and established 300-ft separation requirements from churches, schools, or hospitals. The new ordinance also prohibited coin-operated amusement machines as an accessory use with convenience stores.

It also prohibited coin-operated amusement machines within the Service Station zoning district. Under the new ordinance, the MZO classifies having three or more coin-operated amusement machines as a primary use called Coin-operated Amusement Gameroom, which is permitted through a Conditional Use Permit (CUP).

A new application was submitted for a zoning change to Planned Development – General Retail with a CUP to allow a Coin-Operated Amusement Gameroom to include six (6) game machines. Included in the CUP request is a Modification to the Special Conditions to have one customer restroom instead of the required one customer restroom each for male and female. Following the construction of the proposed building addition, the site will meet the minimum restroom requirements. Special Conditions are special requirements for specific uses noted in Section 3-203 of the Mesquite Zoning Ordinance under “Special Conditions.” The MZO further states:

The designated use is permitted only when in compliance with the special conditions listed. When a use is authorized as a conditional use or as a special exception, the authorizing body may approve modification of the special conditions by specifying the allowed modification in its approval, provided that proposed modifications must be identified in the required notices as part of the request. Modifications may be approved if it is determined that the use can be accommodated under modified conditions without creating adverse impact on adjacent properties and that it will be compatible with the neighborhood.

Special Conditions for a Coin-operated Amusement Gameroom include the following requirements:

- Customer restroom each for male and female;
- State license; and
- 300-ft separation from church, hospital, or school.

It is unknown if the coin-operated amusement machines have a current state license. The place of business is at least 300 feet from any church, hospital, or school.

The proposed building addition includes a 975 square-foot addition to the northwest side of the existing 2,830 square foot structure. The proposed addition will meet the setback requirements of the General Retail zoning district except for the exterior side yard adjacent to the service road. The addition will allow the expansion and renovation of the existing convenience store (Chevron), quick-service restaurant (Subway), and fueling station. The applicant is not proposing an expansion to the existing fuel sales, which currently includes 12 fueling positions.

Refueling stations, specifically Limited Fuel Sales (other than heavy load vehicles), are allowed by right in the Service Station zoning district; however, it requires the approval of a CUP in the General Retail zoning district. Limited fuel sales are generally limited to servicing no more than eight vehicles at a time.

The Planned Development amendment is also establishing the exterior side yard setback at fifteen feet, which is a ten-foot reduction of the required twenty-five-foot setback for the existing structure. The Mesquite Zoning Ordinance requires the exterior side yard setback for General Retail zoning districts to be twenty-five feet. The existing structure was approved administratively with a fifteen-foot exterior side yard setback with the Planned Development Site Plan in 1993; however, the variation was not identified in PD #2888. The subject property is approximately 615 feet from the nearest residential district. Unless specified in the Planned Development, all other requirements of the Mesquite Zoning Ordinance and City Code will be met.

MESQUITE COMPREHENSIVE PLAN

The *Mesquite Comprehensive Plan* designates the subject property within a Regional Retail land use designation with the Corridor Development overlay. Regional Retail represents development intended to serve the retail needs of the greater regional area. Developments are large scale with the ability to serve a large amount of people. Compatible land use types include department stores, major retailers, commercial, restaurants, and entertainment. The Corridor Development designation represents commercial development that is located along a major corridor. Developments within these corridors are highly visible and enhanced landscaping and public art is encouraged in these areas. Compatible land use types for this area include retail, hotels, restaurants, big box retailers, entertainment, and personal services.

STAFF COMMENTS:

It is Staff's opinion that the proposed zoning change to Planned Development – General Retail does not align with the Mesquite Comprehensive Plan due to the subject property's proximity to a major thoroughfare (Interstate 635). The existing convenience store and restaurant with fuel sales serve the needs of the greater regional area, which the existing Service Station zoning and Regional Retail designation is more compatible.

A coin-operated amusement gameroom may be compatible with the *Mesquite Comprehensive Plan's* Regional Retail designation as entertainment uses are more appropriate in areas near major thoroughfares that may support higher intensity land uses.

MESQUITE ZONING ORDINANCE

SECTION 5-503: REVIEW CRITERIA FOR CONDITIONAL USE PERMITS

1. Existing uses

The Conditional Use will not be injurious to the use and enjoyment of other property in the immediate area for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.

STAFF COMMENTS:

It is staff's opinion that the proposed CUP will be injurious to the convenience store and the surrounding uses. Having a Coin-operated Amusement Gameroom at a convenience store would encourage patrons to remain for an extended period of time. Police records show a number of 911 calls to the subject property, as noted in Attachment 9. Given the small physical

size, convenience stores are suited for quick transactions and are not suited for patrons to congregate for an extended period.

2. Vacant Properties

The Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

STAFF COMMENTS:

Staff does not anticipate the request to impact the development or redevelopment of any nearby property negatively.

3. Services

Adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.

STAFF COMMENTS:

The subject property does not currently meet the minimum number of restrooms required for the proposed primary use; however, the property owner has included a 975 square foot building addition in the request to include two new restrooms. The two new restrooms, includes a female restroom with two stalls and a male restroom with three stalls. The proposed building addition would satisfy the restroom requirement.

4. Parking

Adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed uses.

STAFF COMMENTS:

The building, with the proposed addition, is 3,805 square feet. Per the parking requirements found in the MZO, a total of fifteen (15) parking spaces are required for the proposed uses. All parking standards are shown in the table below. The subject property is proposed to have 12 parking spaces.

1320 Gross Road Parking Requirements			
Land Use	Building Square Footage	Parking Requirement	# of Required Parking Spaces
Public Assembly (Coin-operated amusement device)	180 s.f.	1 per 50 s.f.	3.6
Restaurant	325 s.f.	1 per 100 s.f.	3.25
Convenience Store	1,300 s.f.	1 per 250 s.f.	5.2
Other (storage, restrooms, utility, etc.)	2,000 s.f.	1 per 750 s.f.	2.67
Total			14.72 (15 spaces)

5. Performance Standards

Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance and to control lighted signs and other lights in such a manner that no disturbances to neighboring properties will result.

STAFF COMMENTS:

The subject property does not meet the minimum number of parking spaces required for the proposed convenience store, restaurant, Coin-operated Amusement Gameroom. Operating a Coin-Operated Amusement Gameroom at a property that is not designed for such a use, as evident by not meeting the required number of parking spaces; and a use that encourages loitering may create a nuisance for adjacent businesses.

CONCLUSIONS

ANALYSIS

It is Staff's opinion that the proposed site alterations and building addition will allow updated facilities, landscaping, and expansion of the existing restaurant to revitalize the subject property; however, the rezoning request to Planned Development – General Retail does not align with the Regional Retail land use designation as intended in the *Mesquite Comprehensive Plan*. The existing convenience store and restaurant with fuel sales has twelve (12) vehicle fueling positions, which is a higher intensity than described per the definition of Limited Fuel Sales, therefore, may be incompatible within the General Retail zoning district.

Additionally, it is City staff's opinion that the request for six coin-operated amusement devices does not meet the criteria for a CUP.

RECOMMENDATIONS

Staff recommends the following:

4. Denial of the zoning change to Planned Development – General Retail.
5. Denial of the Conditional Use Permit to allow a coin-operated amusement gameroom, including six (6) amusement machines.
6. Approval of an amendment to Planned Development – Service Station, Ordinance No. 2888, with the following new stipulations:
 - a. Diesel fuel sales shall be limited to passenger vehicles only.
 - b. Development of the site shall conform generally to the development standards, attached hereto as "Exhibit A," and the concept plan, attached hereto as "Exhibit B," as determined by the Director of Planning and Development Services.

PUBLIC NOTICE

Staff mailed notices to all property owners within 200 feet of the subject property. As of the date of this writing, Staff has not received any returned notices for the request.

CODE CHECK

Staff conducted a site visit to the subject property and identified that five amusement machines were present on the premise as of December 10, 2020. The current Certificate of Occupancy, finalized on March 25, 2020, permitted a maximum of four coin-operated amusement devices.

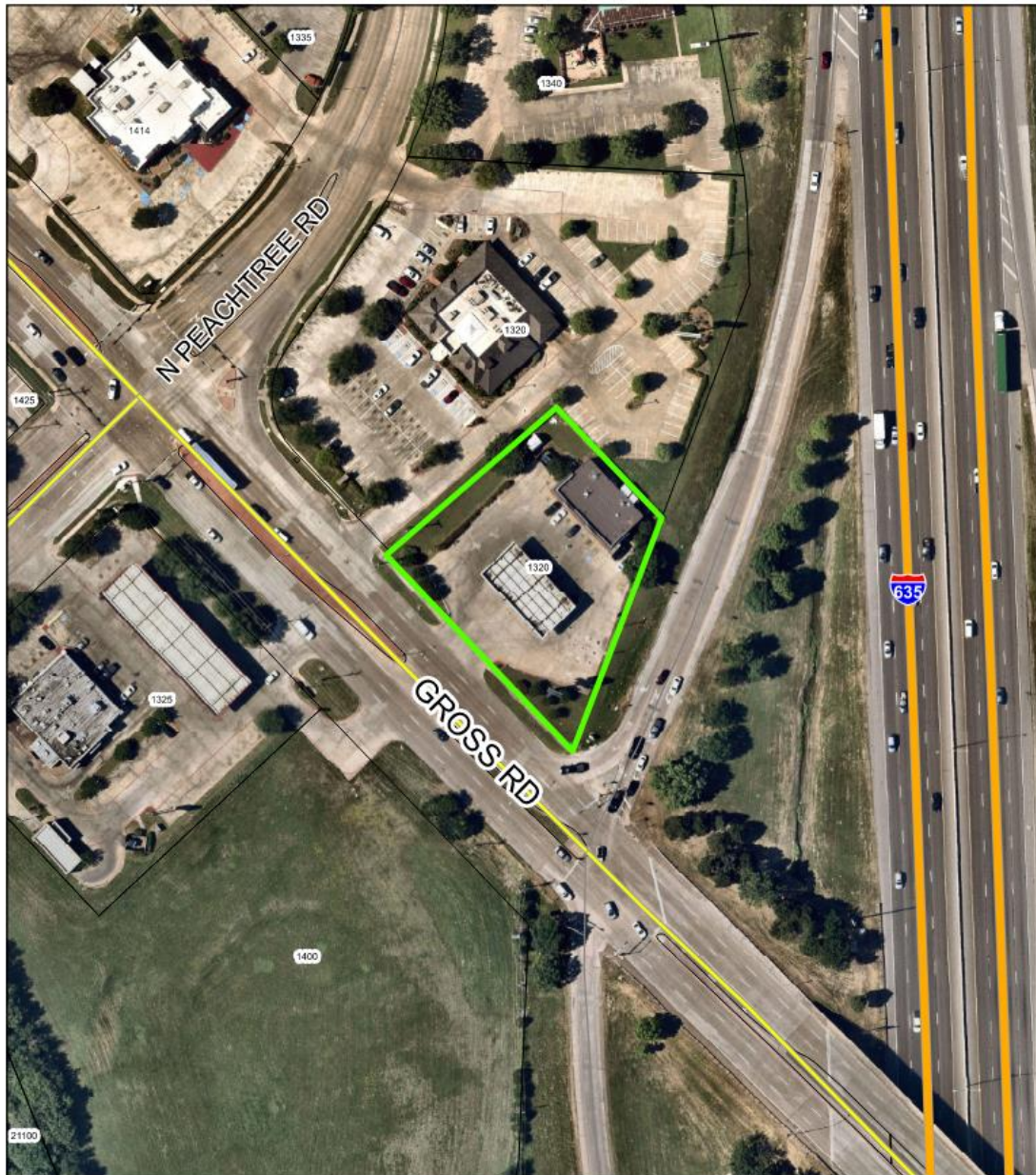
The property failed an inspection (Attachment 10) on November 12, 2020, conducted by the Police Department to determine compliance with the Convenience Store and Late Hour Business Regulations in Chapter 8 of the City Code.

ATTACHMENTS

1. Aerial Map
2. Public Notification Map
3. Zoning Map
4. Future Land Use Map
5. Application Materials
6. Development Standards (Exhibit A)
7. Concept Plan (Exhibit B)
8. Site Photos
9. Police Activity Report
10. Police Department Inspection Form

ATTACHMENT 1 – AERIAL MAP

Aerial Map



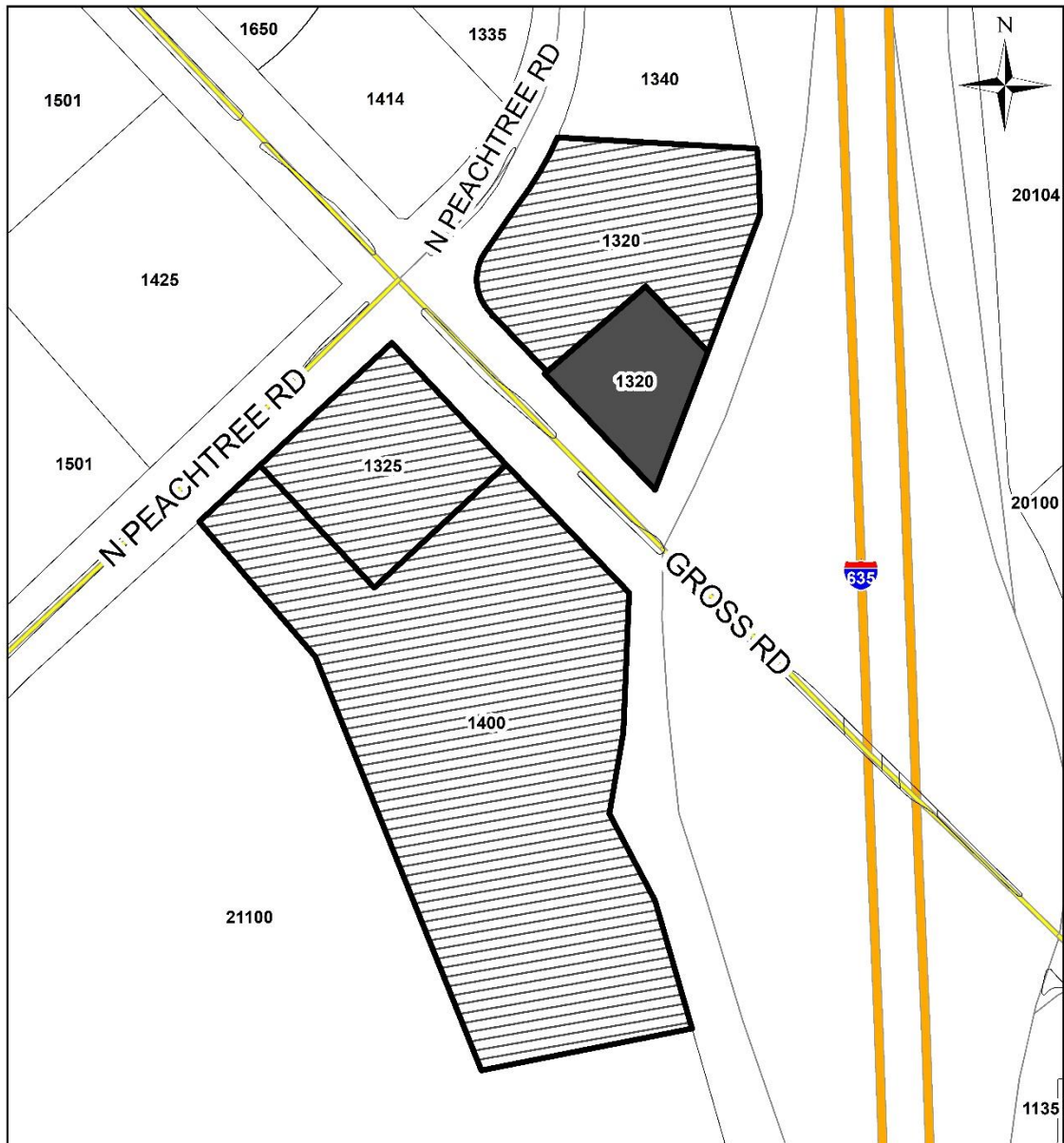
Legend

 Subject Property

0 50 100 200 300 Feet

ATTACHMENT 2 – PUBLIC NOTIFICATION MAP

Notification Map





Request: Conditional Use Permit to allow a game room with a modification to have one customer restroom instead of the required one customer restroom each for male and female.

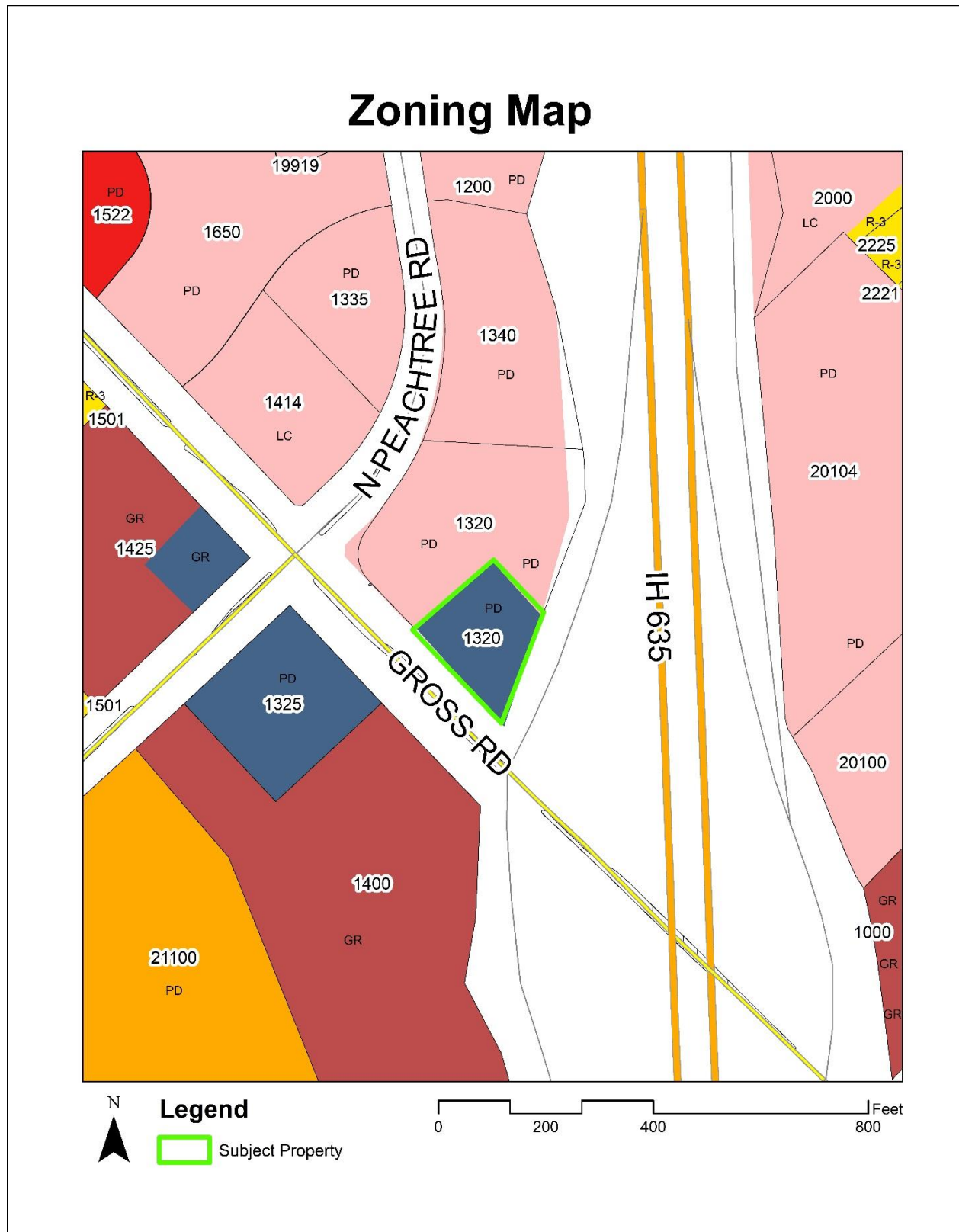
Applicant: Roberto Nunez, Alchemi Development Partners

Location: 1320 Gross Road

Legend

-  Notified Properties
-  Subject Property

ATTACHMENT 3 – ZONING MAP



ATTACHMENT 4 – FUTURE LAND USE MAP

Future Land Use Map



ATTACHMENT 5 – APPLICATION MATERIALS



Alchemi Development Partners, LLC
Dallas – Ft Worth

August 25, 2020

To: John Chapman
Planner – City of Mesquite

RE: Proposed Planned Development Amendment

Project: 1320 Gross St. (Proposing a convenience store/gas station and on-premise food consumption taco shop)

Dear John Chapman

We are applying for a Planned Development Amendment, the existing use is for a convenience store, gas station, and interior Restaurant. The proposed land use is the existing land use, our proposal is only to amend the planned development because the property was built under previous construction standards and setbacks. Our proposal pertains to a future addition we proposed. Under this proposed addition "site plan review" it was determined that the building setback is currently 15 feet, the new Planned Development – Service Station, the setback is 40 feet.

The existing zoning is Planned Development – Service Station, we are not proposing a zoning change.

The property is currently developed and operating, the businesses operating include Food Mart Convenience store and a full-service Subway.
Our request to change the zoning, only to amend the Planned Development to show the existing setback and new addition proposal.

Signed by Roberto Nunez

A handwritten signature in black ink, appearing to be 'R. Nunez', with a stylized 'R' and a horizontal line extending to the right.

ATTACHMENT 5 – APPLICATION MATERIALS



Alchemi Development Partners, LLC
Dallas – Ft Worth

November 24, 2020

To: City of Mesquite

RE: Proposed Conditional Use Permit for Coin operated machines

Project: 1320 Gross Rd.

Dear City of Mesquite Planning Department

We are applying for the Conditional Use Permit for the coin operated machines. The store currently operates 4 machines, our request is to have a total of 6 machines in operation after the approval of this Conditional Use Permit. Please let us know what other documents are required.

The property is currently developed and operating, the business is operating as a convenient store with 4-coin operated machines and is not changing any of the current business practices.

Signed by Roberto Nunez
Alchemi Development Partners
806.570.4867

A handwritten signature in black ink, appearing to be the name 'Roberto Nunez'. The signature is stylized with a large 'R' and a long horizontal stroke extending to the right.

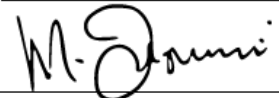
ATTACHMENT 5 – APPLICATION MATERIALS

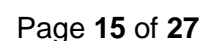
OWNER AUTHORIZATION PAGE

1. I hereby certify that I am the owner of the subject property or the duly authorized agent of the owner of the subject property for the purpose of this application.
2. I hereby designate the person named as the applicant on page 1 of this application, if other than myself, to file this application and to act as the principal contact person with the City of Mesquite.
3. I hereby authorize the City of Mesquite, its agents or employees, to enter the subject property at any reasonable time for the purpose of taking photographs, documenting current use and current conditions of the property; and further, I release the City of Mesquite, its agents or employees from liability for any damages which may be incurred to the subject property in taking of said photographs.
4. I have read and understand the information contained in the application for which I am applying.

Property Owner: Mansoor Dhanani Phone Number: 281924 5654

Address: 18 Berenger PL
Sugar Land TX 77479 Email Address:

Signature: 



ATTACHMENT 6 – DEVELOPMENT STANDARDS (EXHIBIT A)

EXHIBIT A - PLANNED DEVELOPMENT STANDARDS

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This Planned Development General Retail (PD-GR) must adhere to all conditions of the Mesquite Code of Ordinances, as amended, and adopt base district standards corresponding with the Concept Plan attached hereto and incorporated herein as **Exhibit A** and as identified below. The following regulations apply to this PD-GR District. Where these regulations conflict with or overlap another ordinance, easement, covenant or deed restrictions, the more stringent restriction will prevail and apply.

A. **Permitted Land Uses.** Uses in the PD-GR are limited to those permitted in the GR – General Retail zoning district as amended and subject to the following:

1. Any land use requiring a Conditional Use Permit (CUP) in the GR zoning district shall require a CUP in the PD-GR.
2. Any land use prohibited in the GR zoning district is also prohibited in the PD-GR.
3. The following uses are permitted by right in the PD-GR:
 - i. SIC 549.a – Convenience Store
 1. Only in conjunction with self-service gasoline sales.
 - ii. SIC 554 – Fuel Sales (12 fueling positions)

B. **Development Standards.** In addition to the requirements of the GR base zoning district, the Planned Development is subject to the following.

1. Open space, as defined by the Zoning Ordinance, must be a minimum 20% of the lot.
2. The primary structure shall conform to the following setbacks:

Minimum Front and Exterior Side Yards	10 Feet
Minimum Interior Side and Rear Yards	
1. Adjacent to Nonresidential District	0 Feet
2. Adjacent to A District	15 Feet
3. Adjacent to AG, R, and D District	25 feet or two times the height of the building above the grade at the nearest AG, R, or D district boundary, whichever is greater.

ATTACHMENT 6 – DEVELOPMENT STANDARDS (EXHIBIT A)

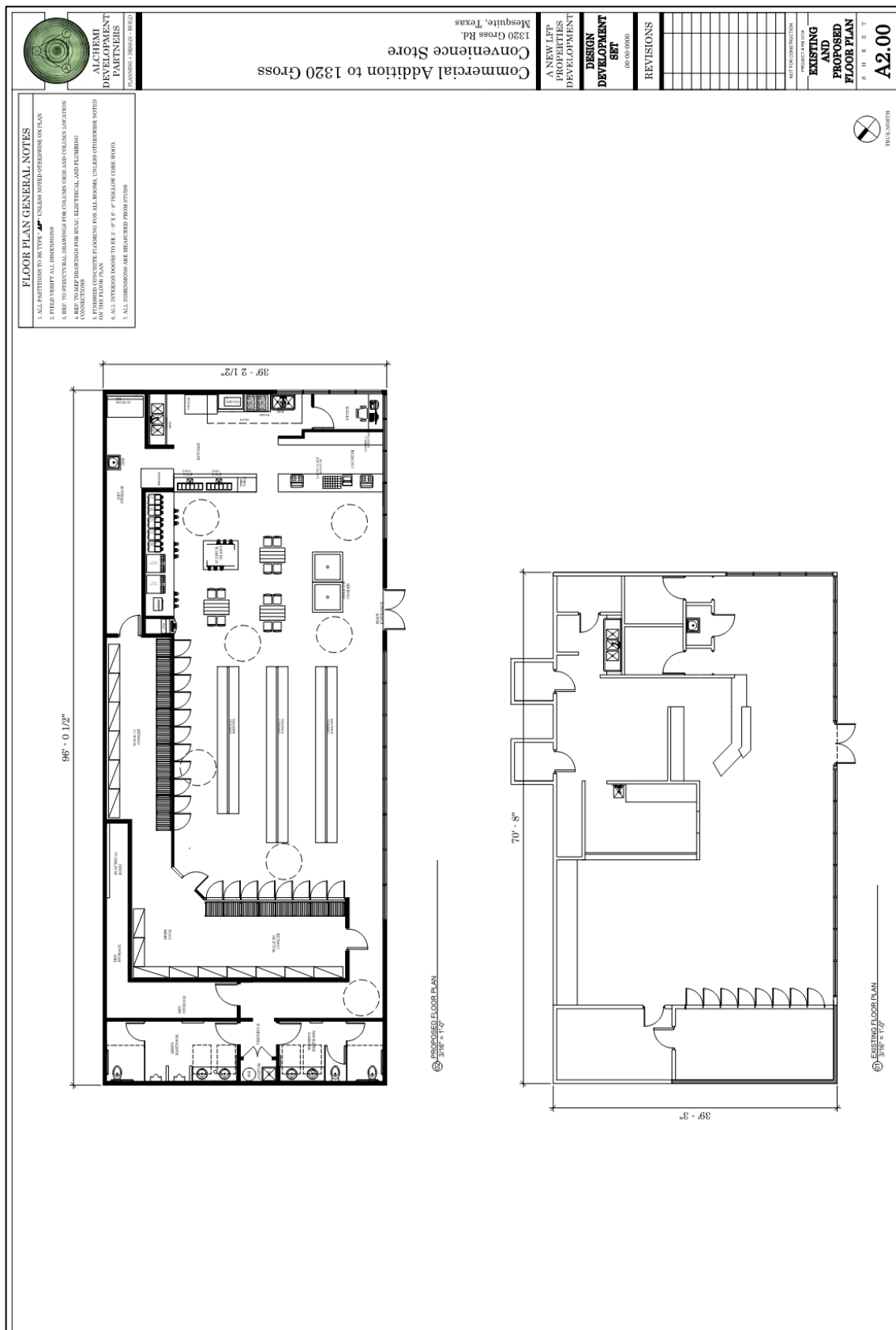
EXHIBIT A - PLANNED DEVELOPMENT STANDARDS

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3. Except as provided herein, the plat and site plan for the Property shall conform substantially to the Concept Plan attached hereto as **Exhibit B** and to these Planned Development Standards.



ATTACHMENT 7 – CONCEPT PLAN



ATTACHMENT 8 – SITE PHOTOS



Subject property facing northeast



Subject property facing southeast from adjacent property

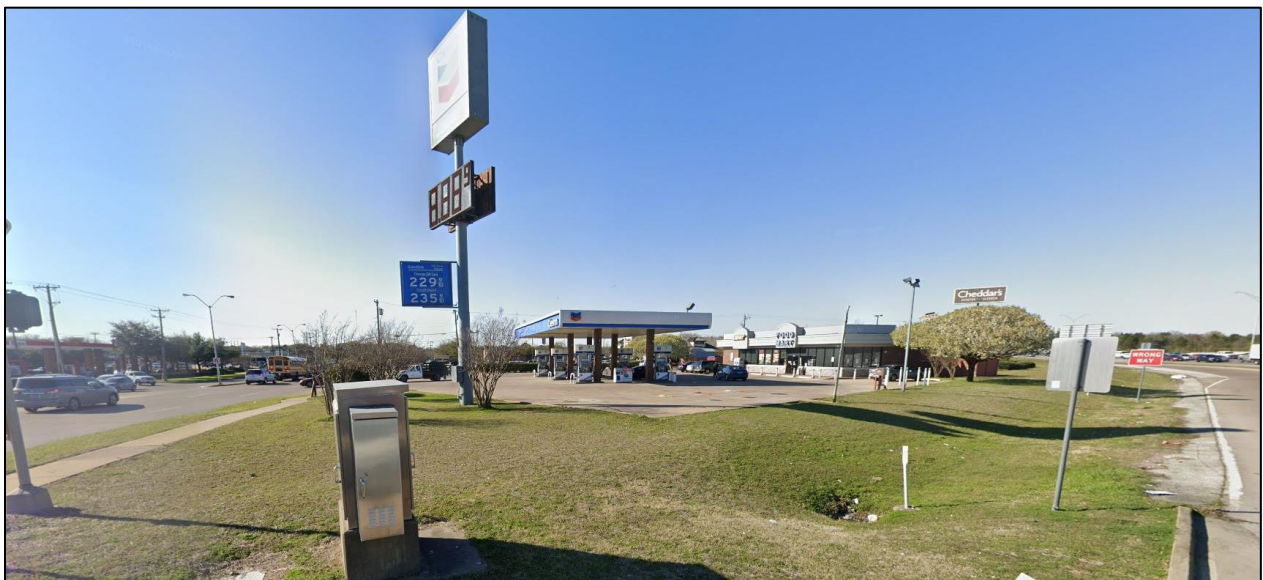


Subject property facing southwest from I-635 Frontage Road

ATTACHMENT 8 – SITE PHOTOS



Subject property facing north from Gross Road

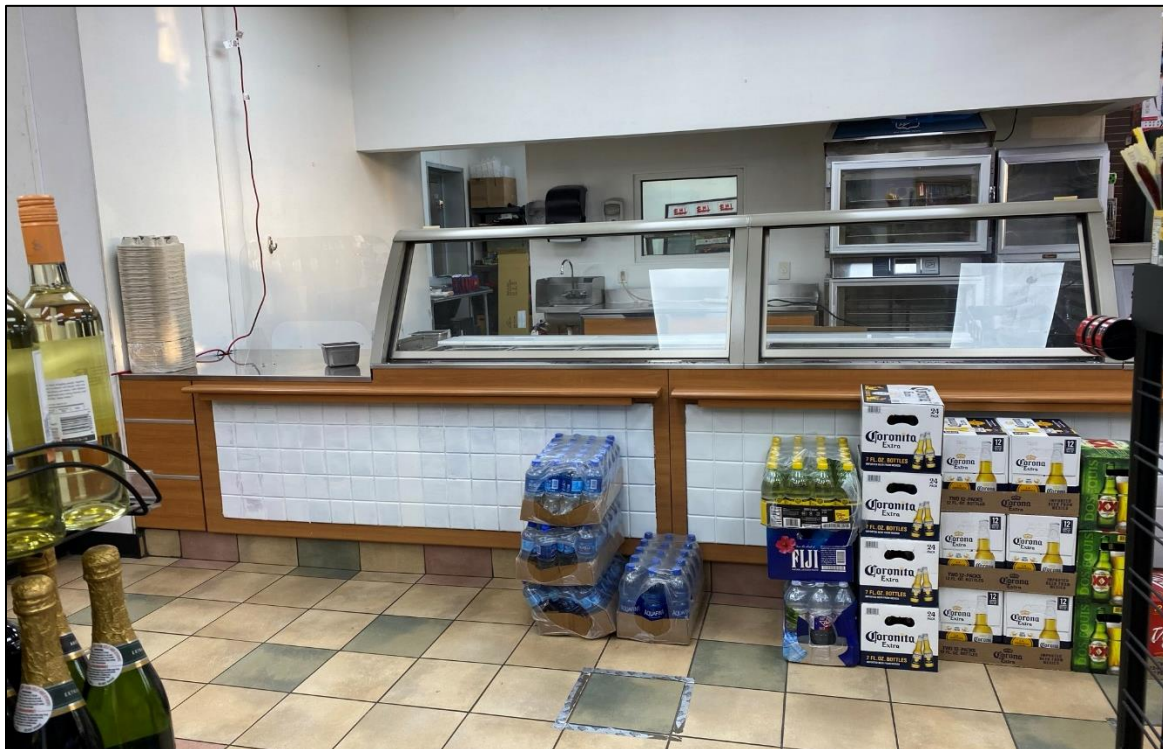


Subject property facing northwest from I-635 Frontage Road

ATTACHMENT 8 – SITE PHOTOS



Coin-operated amusement device area at subject property



Restaurant inside convenience store at subject property

ATTACHMENT 8 – SITE PHOTOS



Entrance of subject property

ATTACHMENT 8 – SITE PHOTOS



Male restroom at subject property

ATTACHMENT 8 – SITE PHOTOS



Female restroom at subject property

ATTACHMENT 9 – POLICE ACTIVITY REPORT



MESQUITE POLICE DEPARTMENT

POLICE ACTIVITY REPORT

12/1/2015 - 11/30/2020

1320 GROSS RD							
CALLS FOR SERVICE							
12/1/2015 - 11/30/2020							
	2015	2016	2017	2018	2019	2020	TOTAL
ABANDONED VEH			1				1
ALARM BURGLARY			1		4	1	6
ASSIST FD		1	2	2			5
ASSIST OFFICER		1					1
DELAY BURGLARY					2		2
DELAY DISTURB					1		1
DELAY FORGERY					1		1
DELAY THEFT		1					1
DELAY THEFT VEH				1			1
DISTURBANCE	2	4	3	9	6	6	30
GUN			1				1
HARASSMENT			1		1		2
INFORMATION	1	3	1		1	2	8
INTOX DRIVER		1	1	1			3
INVESTIGATION			2	2	2		6
MAJOR MVA		2					2
MENTAL HEALTH						1	1
MINOR MVA		5	2	4	1	3	15
MINOR MVA HIT R		4	1	2	1		8
MISSING PERSON		1					1
ROBBERY					1	1	2
SOUNDS GUNFIRE				1			1
SUSP ACTIVITY		9	11	5	2	5	32
THEFT					1		1
WELFARE CHECK		1			1	1	3
DIRECT TRAFFIC			1				1
MOTORIST ASSIST			1	3	1	5	10
UNLOCK VEHICLE			1		1	1	3
MVA				1	1	1	3
MISSING EMERG						1	1
ANIMAL CALL						1	1
TOTAL CALLS	3	33	30	31	28	29	154
REPORTED OFFENSES							
12/1/2015 - 11/30/2020							
	2015	2016	2017	2018	2019	2020	TOTAL
ASSAULT				1	1		2
BURGLARY				1			1
CRIMINAL MISCHIEF					1		1
DUI ALCOHOL OR DRUGS		2		1		1	4
EVADING OFFENSES					1		1
FRAUD					1		1
INFORMATION REPORT		1					1
INTOXICATED PERSON		1	1			1	3
ROBBERY					1		1
THEFT				1			1
THEFT VEHICLE		1				1	2
WARRANT(S)		1					1
TOTAL OFFENSES REPORTED	0	6	1	3	6	3	19

ATTACHMENT 10 – POLICE DEPARTMENT INSPECTION FORM

MESQUITE POLICE

CONVENIENCE STORE AND LATE HOURS BUSINESS INSPECTION FORM

Business Name: Food Mart

Date: 10/12/20

Address: 1320 Gross

Hours: 12:15 24/7

Registered? (N) N

PDF FILES OF THE CITY ORDINANCE AND THE MPD TRAINING MATERIAL ARE AVAILABLE ON THE REGISTRATION PAGE AT WWW.MESQUITEPOLICE.ORG

Surveillance System Sec 8-915	Yes	No	Notes
At least four cameras	X		
At least 1080P		X	only two register cameras 1080P
Entrance Covered	✓		
Exit Covered	✓		
Registers Covered	✓		
Retention of at least 10 days		X	only 8 days
Continuous Recording (not motion based)	✓		
Is the DVR clock accurate?		X	1hr 10 min off
Known Password	✓		
DVR physically accessible	✓		
Video Surveillance Sign on Door (provided by Mesquite PD)			
Circle one: <u>PASS</u>			FAIL

Visibility - Both Late Hours Business & Convenience Stores at all times Sec 8-916	Yes	No	Notes
Line of sight to register through windows and public access doors. Windows and public doors must be clear between 3' - 6' *if "no", next line must be "yes"		X	
Two employees on site at ALL times OR Controlled access window		X	
Circle one: <u>PASS</u>			FAIL

Additional Requirements - Convenience Store or Late Hours Business between 22:00-05:00 Sec 8-917	Yes	No	Notes
Two Employees OR Controlled Access Window		X	
In addition to the above, one of the following must be present: Covert Theft Detection Device OR Drop Safe OR Silent Police Alarm System	✓		
If there is a Drop Safe, are there proper drop safe decals? (if no drop safe, leave blank)	X		
Silent Police Alarm	X		16 alarm decals
If there is a Silent Police Alarm, is there a Panic Button within reach of the register and are there entry/exit decals? (if no Silent Police Alarm, leave blank)	X		
Circle one: <u>PASS</u>			FAIL

Signage & Height Strips Sec 8-914	Yes	No	Notes
"No Loitering" & "No Trespassing" signs (in English and Spanish) at all public entrances and exits		X	
"No Loitering" & "No Trespassing" signs (in English and Spanish) on all sides of the business		X	
Letters on the above signs must be at least 2" tall			
Height Strips on all public exits	X		
Circle one: <u>PASS</u>			FAIL

PDF FILES OF THE CITY ORDINANCE AND THE MPD TRAINING MATERIAL ARE AVAILABLE ON THE REGISTRATION PAGE AT WWW.MESQUITEPOLICE.ORG

Inspecting Officer: Purdue Business Representative: Sahil