

FILE NUMBER: Z1120-0161
REQUEST FOR: Conditional Use Permit with Modifications
CASE MANAGER: Johnna Matthews, Principal Planner

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: Rezone from "GR," General Retail to "GR," General Retail with a Conditional Use Permit to allow a Coin-operated Amusement Game room with a modification to have one customer restroom instead of the required one customer restroom each for male and female.
Location: 1604 W.Bruton Rd. (Attachment 1)

PLANNING AND ZONING ACTION

Decision: On December 14, 2020, the Planning and Zoning Commission unanimously recommended denial of the Conditional Use Permit to allow a Coin-operated Amusement Game room, with modifications to have one customer restroom instead of the required one customer restroom each for male and female. .

SITE BACKGROUND

Platting: Hickory Heights 2, Block A, W Pt LT IR
Size: 0.47
Zoning: GR - General Retail
Future Land Use: Neighborhood Retail
Zoning History: 1955: Annexed into City of Mesquite, Zoned Residential
1982: Rezoned to GR – General Retail

Surrounding Zoning and Land Uses (see attachment 3):

	<u>ZONING</u>	<u>EXISTING LAND USE</u>
NORTH:	GR - General Retail	Undeveloped/Car Wash (Not in Service)
SOUTH:	A-1 - Multifamily Residential	Multi-family Development
EAST:	GR - General Retail	Family Dollar
WEST:	GR - General Retail	Undeveloped

CASE SUMMARY

On October 19, 2020, the City Council amended the Mesquite Zoning Ordinance (MZO) via Ordinance No. 4820 regarding coin-operated amusement machines. The ordinance 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 the aforementioned concerns, the amendment reduced the number of coin-operated amusement machines permitted as an accessory use from four to two, and it established a 300-ft. separation from churches, schools, and hospitals. The amendment also prohibits coin-operated amusement machines as an accessory use with convenience stores and tobacco stores. Having three or more coin-operated game machines is now classified as a primary use identified as a Coin-operated Amusement Game Room and is permitted with the approval of a Conditional Use Permit (CUP).

The applicant is requesting a Conditional Use Permit (CUP) to allow a Coin-operated Amusement Game room at 1604 W. Bruton Rd. as a primary use with six (6) coin-operated amusement machines. The applicant also operates a convenience store with limited fuel sales (EZ Trip Beer & Wine) and a restaurant at the same location. While coin-operated amusement machines are not permitted as an accessory use at a convenience store, coin-operated amusement machines may be permitted at the location as a primary use with the approval of a CUP.

Included in the request for the CUP is a Modification to the Special Conditions to have one customer restroom instead of the required one customer restroom each for males and females. Special Conditions are special requirements for specific uses noted in Section 3-203 of the MZO 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 impacts on adjacent properties and that it will be compatible with the neighborhood."

Special Conditions for Coin-operated Amusement Game rooms include the following requirements:

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

The coin-operated amusement machines have a current state license, and the place of business is at least 300 feet from any church, hospital, or school. The applicant is requesting a total of six coin-operated amusement machines.

MESQUITE COMPREHENSIVE PLAN

The *Mesquite Comprehensive Plan* designates this area as Neighborhood Retail on the Future Land Use Map (see attachment 4). "Neighborhood Retail establishments include a variety of retail and personal service businesses that meet the daily needs of the residents. This development type generally includes small or medium scale development ranging from 1,500 square feet to 45,000 square feet and one to two stories in height."

STAFF COMMENTS:

The CUP to allow a Coin-Operated Amusement Game room is not compatible with the *Mesquite Comprehensive Plan's* Neighborhood Retail designation. A game room is an entertainment use that would be more appropriate at a location that supports higher intensity uses as opposed to a site developed as a convenience store with limited fuel sales.

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 City staff's opinion that the proposed CUP will be injurious to the existing use of the convenience store with fuel sales. Having a coin-operated amusement game room at a convenience store with gasoline sales would encourage patrons to remain for extended periods. Police records show a number of 911 calls to the subject property, as noted in Attachment # 6.

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 negatively impact the normal and orderly development and improvement of surrounding vacant properties.

3. Services

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

STAFF COMMENTS:

The subject property does not have a sufficient number of restrooms for the proposed primary use. Allowing one customer restroom to serve multiple primary uses and uses that encourage customers to stay at the location for extended periods of time is not suitable.

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 applicant operates a convenience store with limited fuel sales (EZ Trip Beer & Wine) and a restaurant at the subject property. While the operation of a convenience store and restaurant are permitted in conjunction with fuel sales, the MZO requires a number of parking spaces for each use. A convenience store with limited fuel sales, requires one parking space for each two hundred fifty square feet of floor area for buildings less than 10,000 square feet. Restaurants require one space for each three seats or one space for each 100 square feet of floor area, whichever is greater. A coin-operated amusement game room requires one parking space per each 50 square-feet of assembly area. It is estimated that a total of 15 parking spaces will be required. The site currently has 19 parking spaces, including parking spaces at fuel pumps.

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:

Staff does not anticipate disturbances such as offensive odors, fumes, dust, noise or vibration due to the operation of a game room. Disturbances to neighboring properties may result; however, due to the operation of a game room which may cause customers to remain at the business for extended periods of time.

CONCLUSIONS

The request does not meet the criteria for approval of a CUP.

PUBLIC NOTICE

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

CODE CHECK

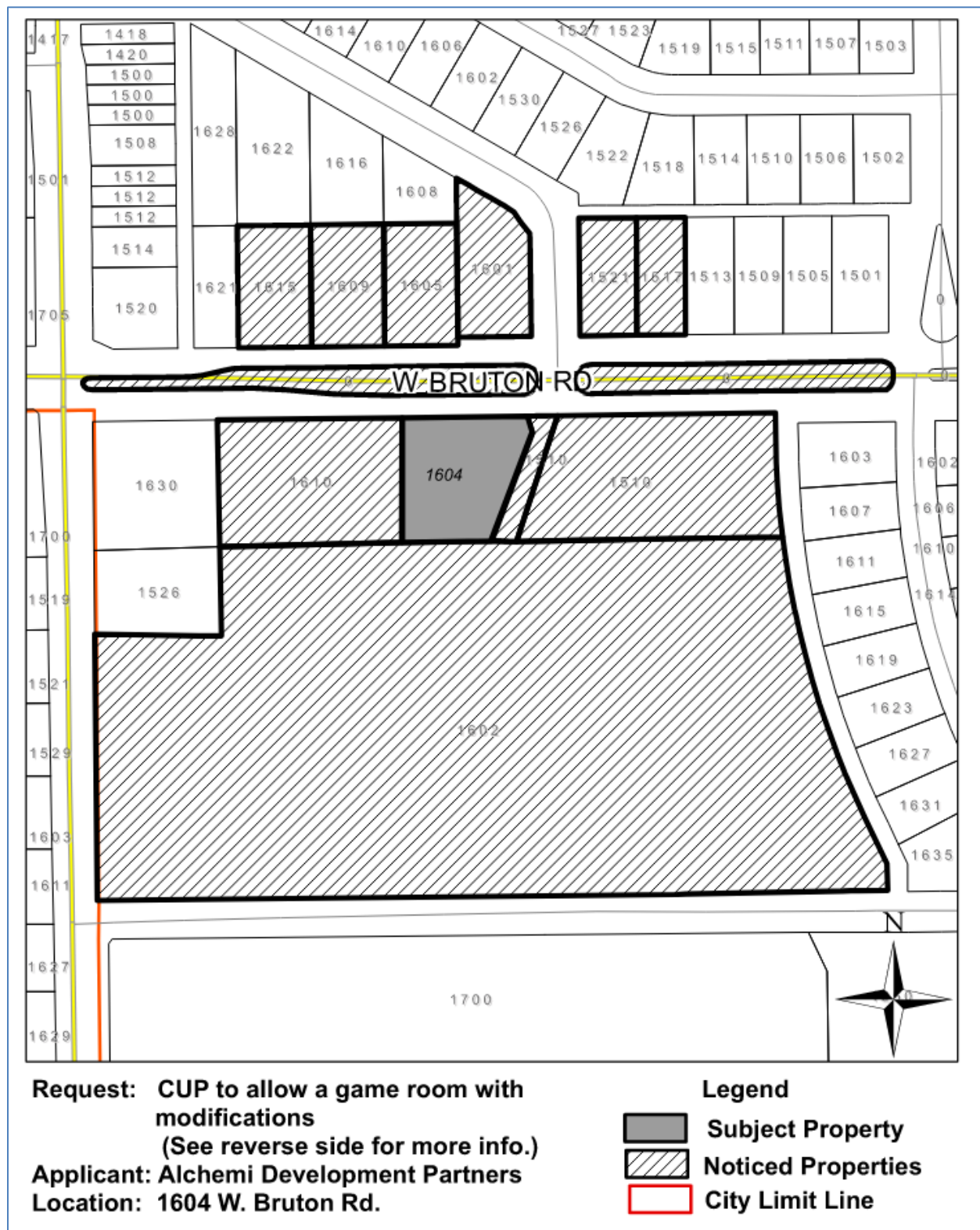
The property failed an inspection (Attachment 9) on October 12, 2020, conducted by the Police Department to determine compliance with the Convenience Store and Late Hour Business Regulations in Chapter 8 of the City Code.

ATTACHMENTS

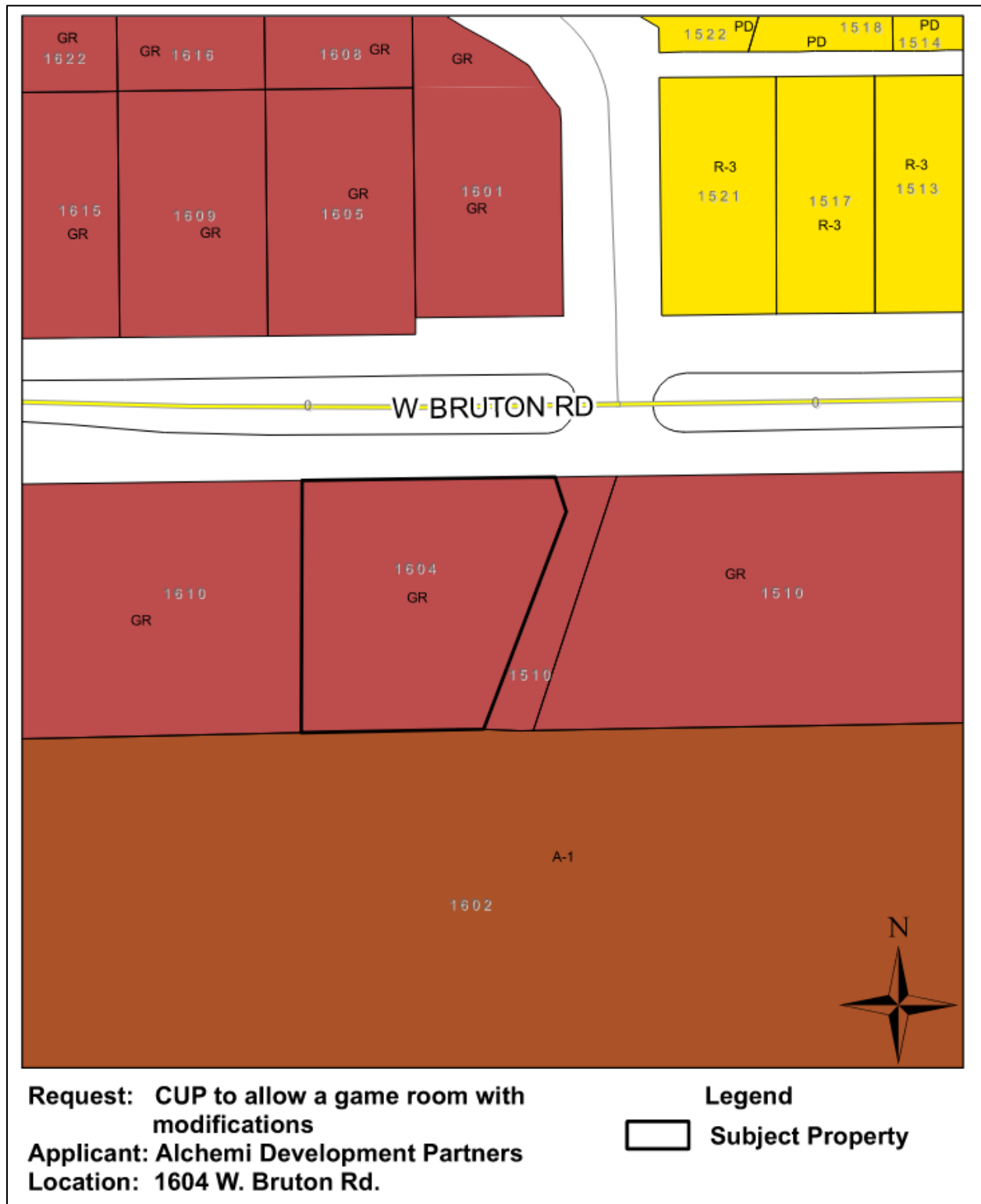
1. Aerial Map
2. Public Notification Map
3. Zoning Map
4. Future Land Use Map
5. Site Pictures
6. Police Activity Report
7. Application Materials
8. Floor Plan
9. Police Department Inspection Form

ATTACHMENT 1 – AERIAL MAP

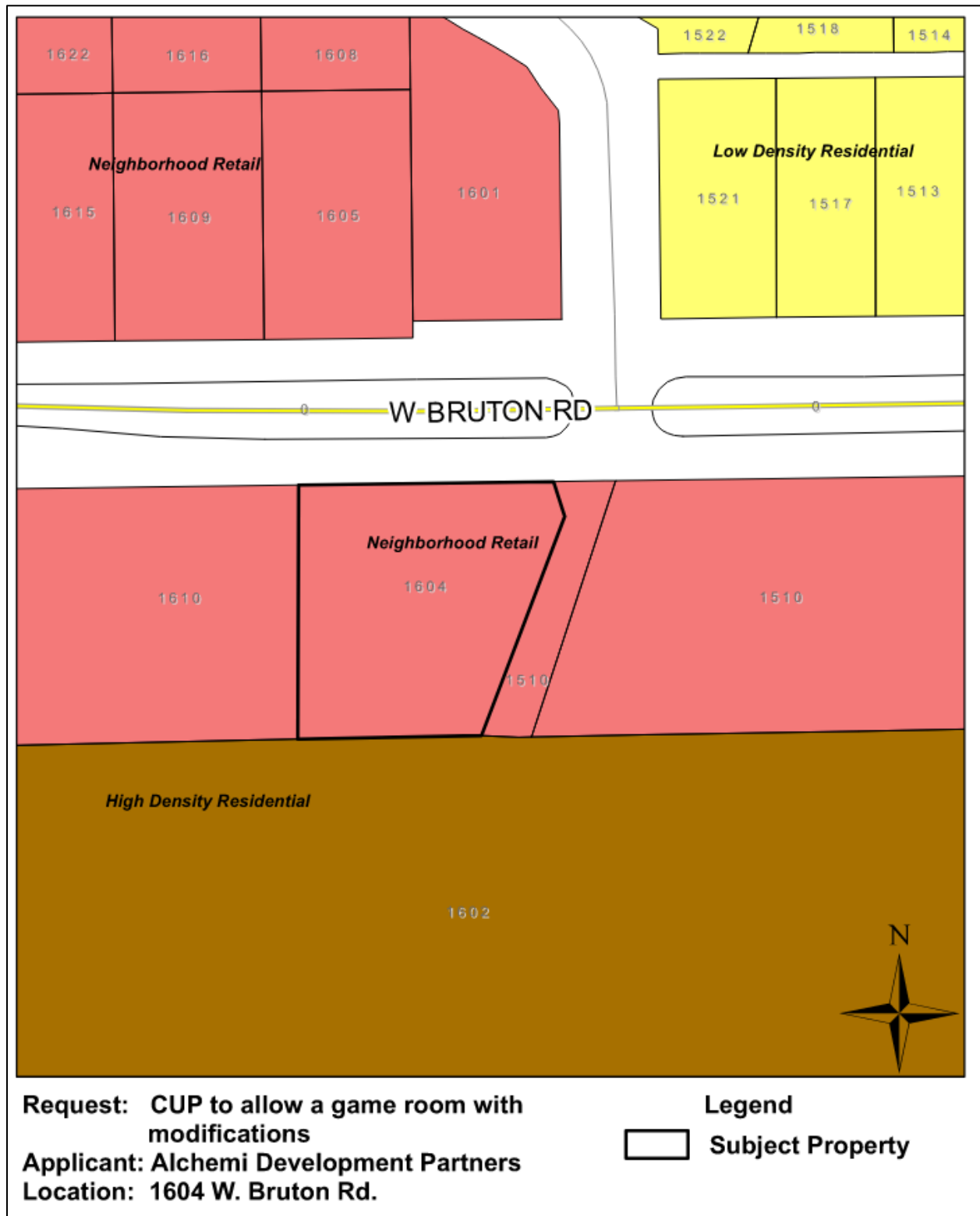




ATTACHMENT 3 – ZONING MAP



ATTACHMENT 4 – FUTURE LAND USE MAP



ATTACHMENT 5 – SITE PHOTOS



Street view of subject property.



Photo of existing coin operated game machines.

ATTACHMENT 5 – SITE PHOTOS



Interior hallway to restroom.



Restroom.

ATTACHMENT 6 – POLICE ACTIVITY REPORT



MESQUITE POLICE DEPARTMENT

POLICE ACTIVITY REPORT

12/1/2015 - 11/30/2020

1604 W BRUTON RD							
CALLS FOR SERVICE							
12/1/2015 - 11/30/2020							
	2015	2016	2017	2018	2019	2020	TOTAL
911 HANG UP					1		1
ABANDONED PROP				1			1
ALARM BURGLARY			1		3		4
ASSAULT				2			2
ASSIST FD			1	1			2
ATTEMPT TO LOC						1	1
CRIMINAL MISCH					1	1	2
DELAY ASSAULT						1	1
DELAY BMV						1	1
DELAY SUSP ACT					1		1
DELAY THEFT			1		1	1	3
DISTURBANCE			1	7	27	12	47
GUN						1	1
HARASSMENT					1		1
INFORMATION				1	3	3	7
INVESTIGATION				1	9	1	11
MINOR MVA					1	2	3
MINOR MVA HIT R					1		1
NOISE COMPLAINT					1		1
ROBBERY			1				1
SHOOTING					2	1	3
SOUNDS GUNFIRE					1	1	2
SUSP ACTIVITY		1	4	4	36	23	68
THEFT			2	5	4	1	12
THEFT VEHICLE					1		1
WELFARE CHECK					1	1	2
TOTAL CALLS	0	1	10	22	96	51	180
REPORTED OFFENSES							
12/1/2015 - 11/30/2020							
	2015	2016	2017	2018	2019	2020	TOTAL
ASSAULT				3	1	2	6
BURGLARY			1				1
CONT SUBS					2	1	3
CRIMINAL MISCHIEF					1	1	2
DISCHARGE FIREARM					1	1	2
DUI ALCOHOL OR DRUGS					1		1
HOMICIDE					1		1
INFORMATION REPORT					1	1	2
INTOXICATED PERSON						1	1
RESIST OR INTERFERE W/ POLICE					1		1
ROBBERY			1				1
THEFT				4	2	3	9
THEFT VEHICLE					1		1
THREATENING						1	1
TRESPASS OF REAL PROP					1	1	2
WARRANT(S)			1	1	1	1	4
WEAPONS OFFENSE					1		1
TOTAL OFFENSES REPORTED	0	0	3	8	15	13	39

ATTACHMENT 7 – APPLICATION MATERIALS



Alchemi Development Partners, LLC
Dallas – Ft Worth

November 14, 2020

To: City of Mesquite

RE: Proposed Conditional Use Permit for Coin operated machines

Project: 1604 W Bruton Rd. Mesquite, Texas 75149

Dear City of Mesquite Planning Department

We are applying for the Conditional Use Permit for the coin operated machines. Our proposal includes adding a total of 6 machines to continue to operate. Please let us know what other documents are required.

The property is currently developed and operating, the businesses operating as a convenient store and is not changing any of the current business practices. Our request is only to allow 6-coin operated machines as they are currently operating.

Signed by Roberto Nunez
Alchemi Development Partners
806.570.4867



ATTACHMENT 7 – APPLICATION MATERIALS

Mapsc0: 59A-B (DALLAS)

DCAD Property Map

[View Photo](#)

2020 Appraisal Notice

[Electronic Documents \(ENS\)](#)



[Print Homestead Exemption Form](#)

Owner (Current 2021)

AMERICAN KGB INC
DBA EZ TRIP BEER & WINE
1604 W BRUTON RD
MESQUITE, TEXAS 751490000

Multi-Owner (Current 2021)

Owner Name	Ownership %
AMERICAN KGB INC	100%

Legal Desc (Current 2021)

- 1: HICKORY HEIGHTS 2
 - 2: BLK A W PT LT 1R ACS 0.4747
 - 3:
 - 4: INT202000262797 DD09242020 CO-DC
 - 5: 1015000A01R00 3CM1015000A
- Deed Transfer Date:** 9/28/2020

Value

2020 Certified Values	
Improvement:	\$185,770
Land:	+ \$62,030
Market Value:	= \$247,800
Revaluation Year:	2020
Previous Revaluation Year:	2019

ATTACHMENT 7 – APPLICATION MATERIALS

CERTIFICATE OF APPROVAL

CITY OF MESQUITE

Manager of Collections

To the County Clerk of Borden County

This plan is approved subject to all zoning ordinances, rules, regulations and restrictions of the City of Mesquite, Texas.

Under authority adopted by the City of Mesquite on September 3, 2015, the approval of this plan by the City of Mesquite is a permanent determination that the plan meets the requirements of the City of Mesquite, Texas.

By: *[Signature]*
 Date: *[Date]*
 City Manager

OWNER'S CERTIFICATE

I, the undersigned, being the owner of the above described property, hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and that the same is in accordance with the requirements of the City of Mesquite, Texas, and that the same is in accordance with the requirements of the City of Mesquite, Texas, and that the same is in accordance with the requirements of the City of Mesquite, Texas.

By: *[Signature]*
 Date: *[Date]*
 Owner

LOT 26

LOT 25

ALMOND DRIVE
 80' WIDE PUBLIC RIGHT-OF-WAY

LOT 1

LOT 2
 BLOCK E
 HICKORY HEIGHTS ADDITION
 NO. 1
 VOL. 42, PG. 141
 C.D.C.T.

LOT 3

LOT 4

LOT 5

LOT 6

WEST BRUTON ROAD
 100' WIDE PUBLIC RIGHT-OF-WAY

LOT 1, BLOCK A
 34,418 SQ. FT. OR
 0.791 ACRES OF LAND

LOT 1, BLOCK A
 HICKORY HEIGHTS, NO. 2
 VOL. 106, PG. 106
 M.D.C.T.

SUNAM INVESTMENT INC.
 INST. NO. 2015007337
 D.P.R.C.T.

LOT 2, BLOCK A
 40,822 SQ. FT. OR
 0.933 ACRES OF LAND

MAX ALLEY INVESTMENTS, LLC
 INST. NO. 2017003186
 D.P.R.C.T.

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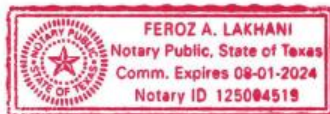
ATTACHMENT 7 – APPLICATION MATERIALS

OWNER AUTHORIZATION

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 City of Mesquite Conditional Use Permit Application.

Property Owner: Niraj KC Phone Number: 682-710-2481
Address: 1604 W. Bruton Road
Mesquite, TX 75149 Email Address: LLUVNIRAJ@GMAIL.COM
Signature:  11/10/2020

Each property owner must complete a separate authorization form



11/10/2020
Feroz A. Lakhani

[illegible]

ATTACHMENT 9 – POLICE DEPARTMENT INSPECTION FORM

MESQUITE POLICE

CONVENIENCE STORE AND LATE HOURS BUSINESS INSPECTION FORM

Business Name: E2 Trip

Date: 10-12-20

Address: 1604 Bruton

Hours: 6am - 12am

Registered? ☒ Y ☐ 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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
At least 1080P	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Entrance Covered	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Exit Covered	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Registers Covered	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Retention of at least 10 days	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Continuous Recording (not motion based)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Is the DVR clock accurate?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Known Password	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
DVR physically accessible	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Video Surveillance Sign on Door (provided by Mesquite PD)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Circle one: PASS

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"	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Two employees on site at ALL times OR Controlled access window	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Circle one: PASS

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
In addition to the above, one of the following must be present.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Covert Theft Detection Device OR Drop Safe OR Silent Police Alarm System	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If there is a Drop Safe, are there proper drop safe decals? (If no drop safe, leave blank)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Silent Police Alarm	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Circle one: PASS

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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
"No Loitering" & "No Trespassing" signs (in English and Spanish) on all sides of the business	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Letters on the above signs must be at least 2" tall	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Height Strips on all public exits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Circle one: PASS

FAIL

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Inspecting Officer: S. Contreras 917

Business Representative: X. Adrian Gantam