



Planning Division

**PLANNING COMMISSION
STAFF REPORT**

TO: Planning Commission

FROM: Kathleen Mallory, AICP, Contract Planner

DATE: December 20, 2007

SUBJECT: APPEAL OF THE PLANNING MANAGER'S DENIAL OF PLANNING & ZONING PERMIT NO. 07-200-08 (Development Design Review Permit) for the property located at 3501 Saviers Road.

- 1) **Recommendation:** That the Planning Commission uphold the Planning Manager's denial of Planning and Zoning Permit No. 07-200-08, a development design review permit, and direct staff to bring back a resolution memorializing the decision of the Planning Commission.

- 2) **Project Description and Applicant:** The applicant requested a development design review (DDR) permit to repair and reinstitute a swap meet use in a building located at 3501 Saviers Road (APN 205-0-443-085). The project is located within the Bryce Canyon North neighborhood. The Planning Manager denied the DDR application because the proposed use shown on the plans (i.e. swap meet) requires a special use permit (SUP). The applicant appealed the decision of the Planning Manager. Filed by Roussey Family Partnership, AKA, Market Group, LTD., P.O. Box 5224, Oxnard, CA 93031.

- 3) **Existing & Surrounding Land Uses:** The fire-damaged commercial building formerly used as the Oxnard Swap Meet is the subject of the appeal; smaller ancillary retail shops adjoin the facility to the north (see Attachments A, maps and pictures of project site).

LOCATION	ZONING	GENERAL PLAN	EXISTING LAND USE
Project Site	C-2	General Commercial	Dilapidated burned building and retail buildings
North	C2-PD	General Commercial	Commercial/retail, 3445 Saviers Rd.
South	R-1 and R-3	Residential Low	Single family and Garden Apartments
East	C2-PD	General Commercial	Commercial/retail
West	RPD and R-1	Residential Low	Single family

4) **General Plan Policies and Land Use Designation Conformance:** The 2020 General Plan designation for the site is General Commercial (CG) and the zoning is General Commercial (C-2).

5) **Environmental Determination:** not applicable

6) **Analysis:**

a) **General Discussion:** On August 13, 2007, the applicant submitted plans for a Development Design Review permit to repair and reoccupy a building that had been damaged by fire in July of 2005 and had remained unoccupied and in a fire damaged state since that time. The plans contained a notation that the building would be used as a swap meet. A swap meet use within the C-2 zone requires an SUP not a DDR permit. Within a correspondence dated October 18, 2007, the applicant was asked to either revise their application to apply for an SUP or revise their plans to eliminate the swap meet use and submit such revisions by 5:00 p.m. on November 6, 2007 (see Attachment B). The applicant did neither. On November 8, 2007, the Planning Manager sent a notice of decision to the applicant denying Planning and Zoning Permit Number 07-200-08 (see Attachment C). The November 8, 2007 decision stated: "A swap meet use cannot be approved by the Development Design Review permit process." The applicant appealed the decision to the Planning Commission. (see Attachment D, applicant's correspondence is dated November 24, 2007 but received on November 26, 2007).

b) **Relevant Project and Property History, Related Permits:** The building located at 3501 Saviers Road was constructed in approximately 1957 as a Food Giant supermarket. Sometime after this date, the supermarket use was abandoned. On October 14, 1998, the applicant applied for City approval to utilize the building for swap meet purposes. This use was established when final occupancy was granted on December 3, 1998 (Building Permit Number 98-4232). No discretionary permits were required for the swap meet use when the use was initiated in December 1998.

On March 6, 2001, the City adopted Ordinance number 2561 which required approval of an SUP for a swap meet use. Upon the effective date of the ordinance, the existing swap meet use became a legal non-conforming use.

On July 29, 2005, a structure fire occurred within the building and a significant portion of the building was burned; at this point use of the property as a swap meet was discontinued. Since this time, the building has caught fire six additional times from February 4, 2006 to March 24, 2006 due to warming and cooking associated with illegal vagrant activities occurring within the unsecured building. The building has been unoccupied and fire damaged since July 29, 2005.

c) **City Code Conforming Status Provisions:** Section 16-514 of the City Code reads in relevant part: "a building destroyed to the extent of not more than 50% of its reasonable value by fire,

The applicant's appeal misstates the test set forth in Section 16-514 of the City Code. The applicant stated "the cost to repair will not exceed 50% of the total improvements as defined by the City". The test is not measured by the total improvements to the site. Rather, the benchmark is 50% of the "reasonable value" of the building itself.

If the Planning Commission finds that the cost to repair the building exceeds 50% of the value of the building at the time of the fire, then the legal non-conforming use status of the swap meet has been lost. Once lost, a swap meet use may only be approved by an SUP.

Further, Section 16-509 (C), of the City Code specifies, "if any nonconforming use of land ceases for any reason for a period of 30 days or more, any subsequent use of such land shall conform to the regulations specified by this chapter". The use has been terminated since July 29, 2005.

The law regarding abandonment of use is that such abandonment is an act by the user. In this case, the applicant has delayed initiation of repairs to the fire-damaged building for nearly 2 ½ years. If the Planning Commission finds that such passage of time amounts to an abandonment of the swap meet use, then such finding is an independent ground for upholding the decision of the Planning Manager.

- d) **Zoning Compliance:** The proposed project is located in the General Commercial, C-2 zone district. In accordance with the City Code, a swap meet use requires approval of a special use permit. Therefore, request for reinstatement of the previous swap meet use via the DDR application does not comply with the City Code.

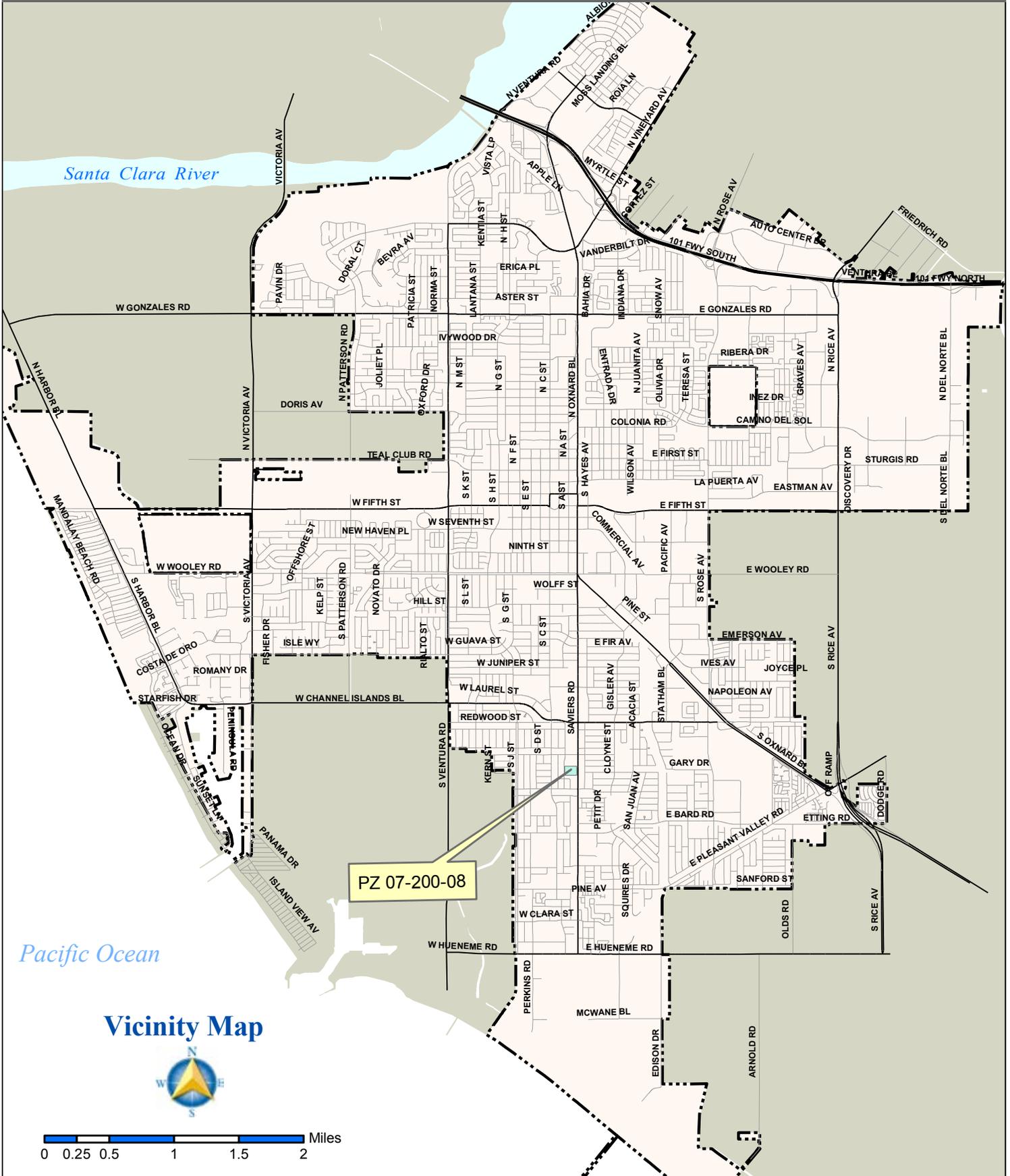
7) **Attachments:**

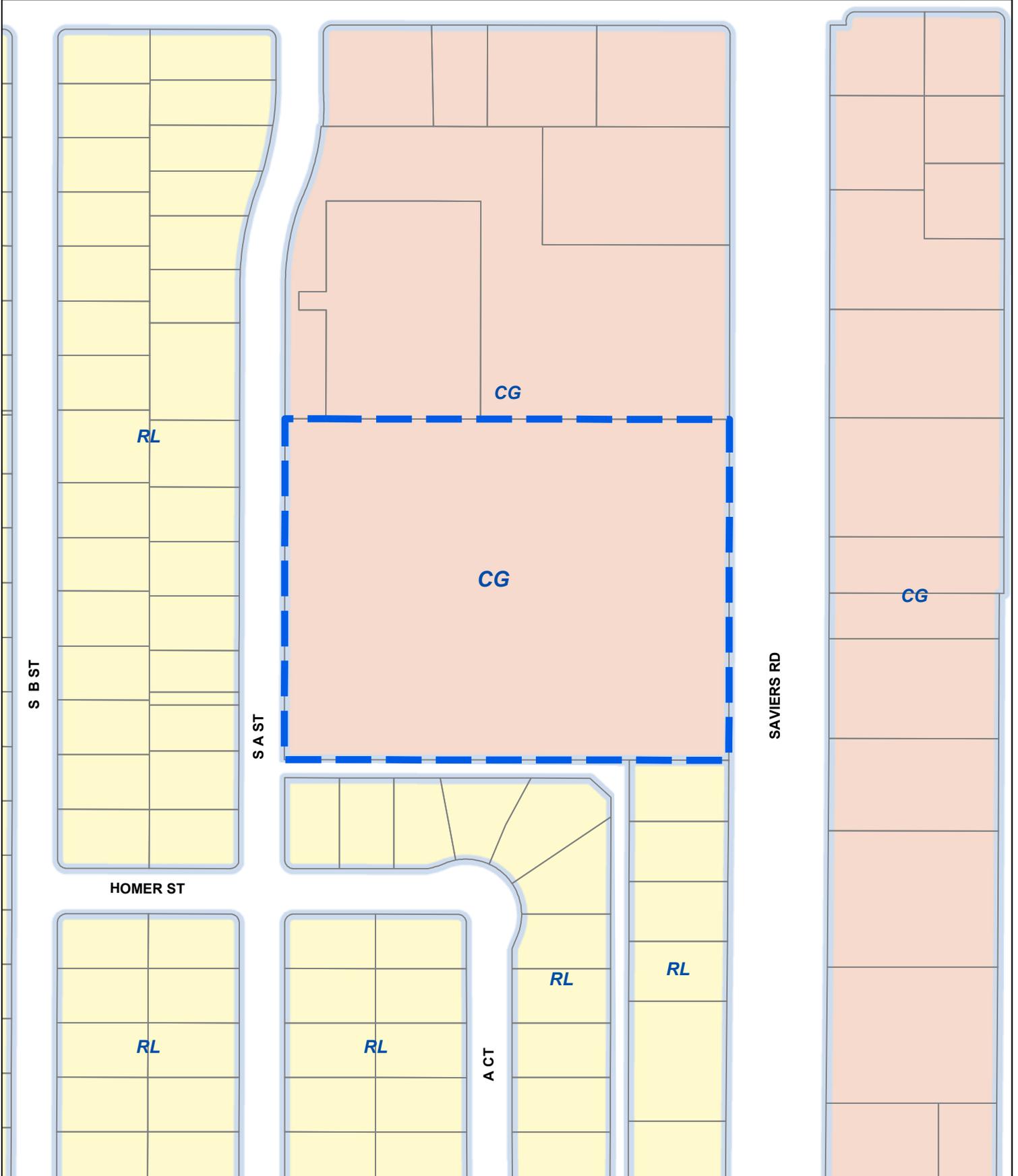
- A. Maps (Vicinity, General Plan, Zoning)
- B. October 18, 2007 Planning Manager correspondence
- C. November 8, 2007 Planning Manager correspondence
- D. November 24, 2007 applicant correspondence

Prepared by: _____ KM
Approved by: <u>SM</u> SM

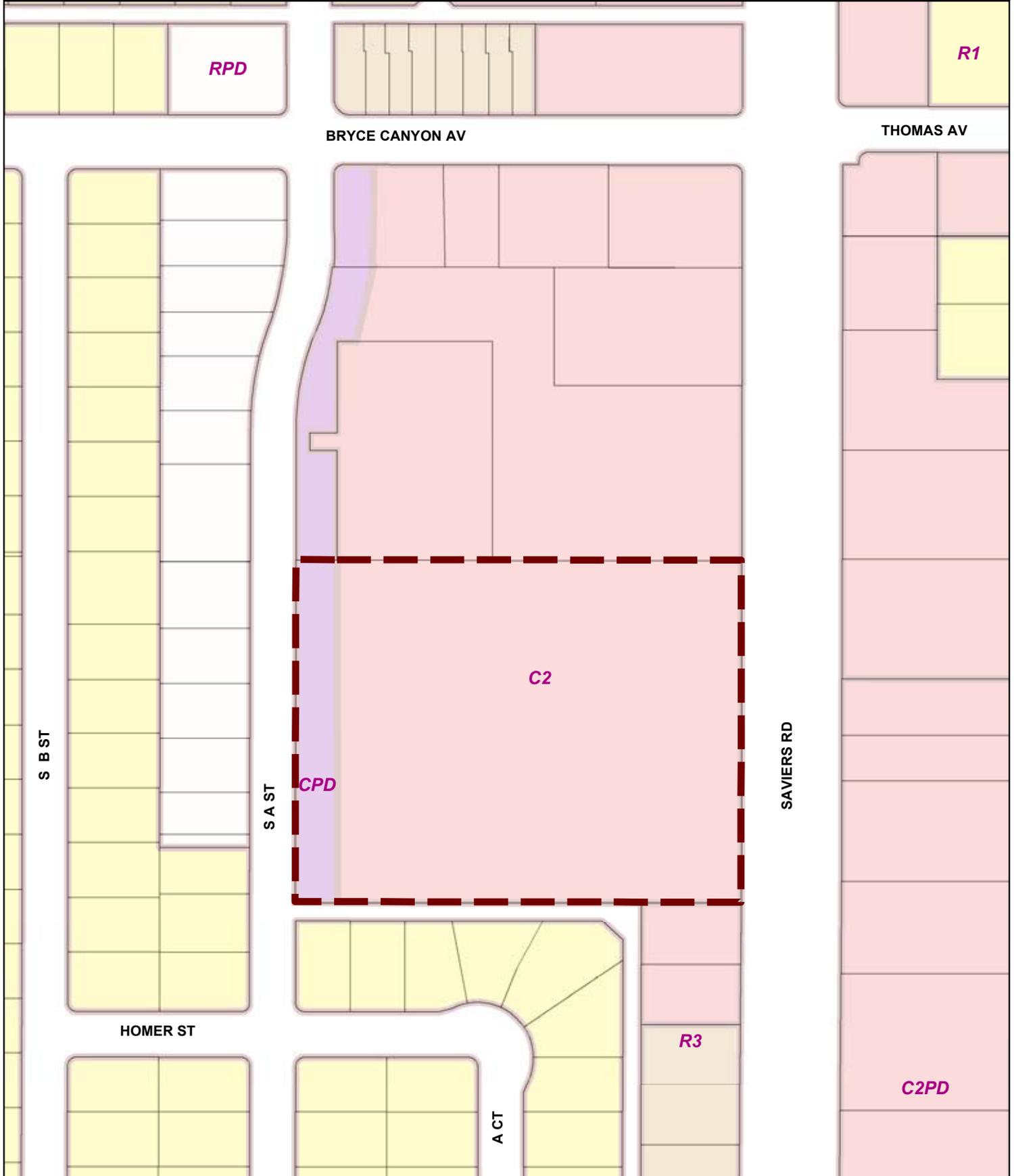
Attachment A

Vicinity, General Plan, Zoning, and Aerial Maps and Site Photos





Zone Map



PZ 07-200-08
Location: 3501 Saviers Rd
APN: 205044308
Ralph Roussey



Zone Map



1:1,700

Aerial Map



2003 Aerial



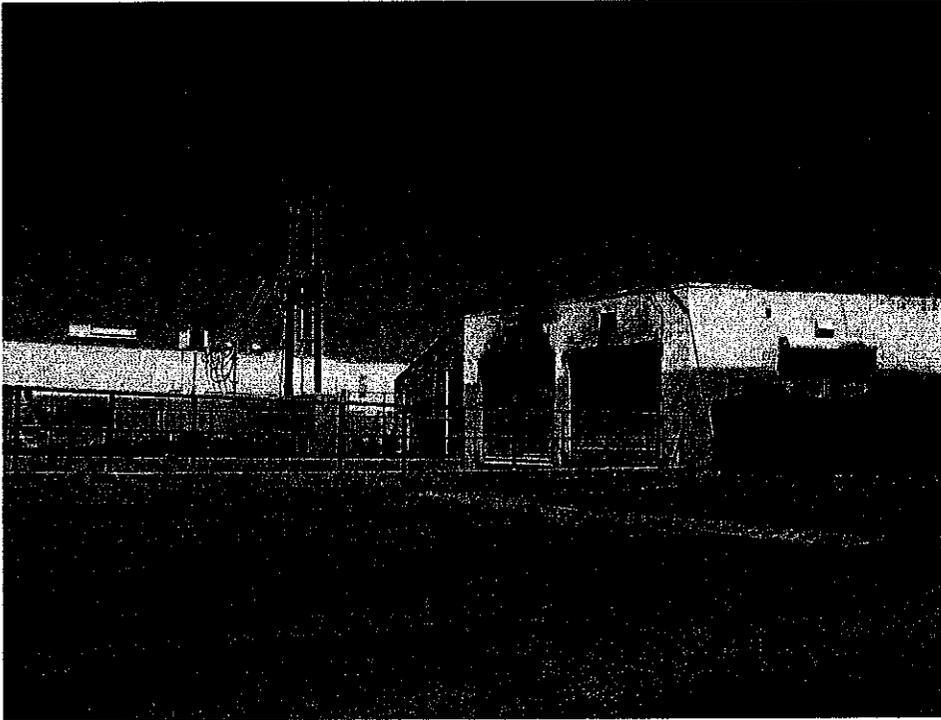
Oxnard Planning
August 30, 2007

PZ 07-200-8
Location: 3501 Saviers Rd.
APN: 205044308
Ralph Roussey

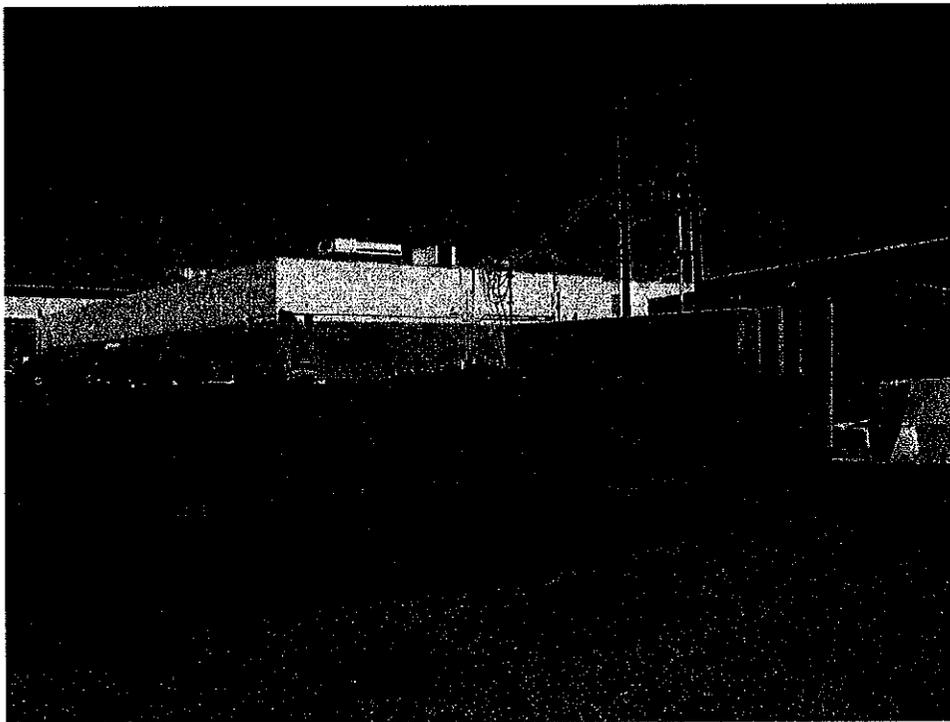


Aerial Map

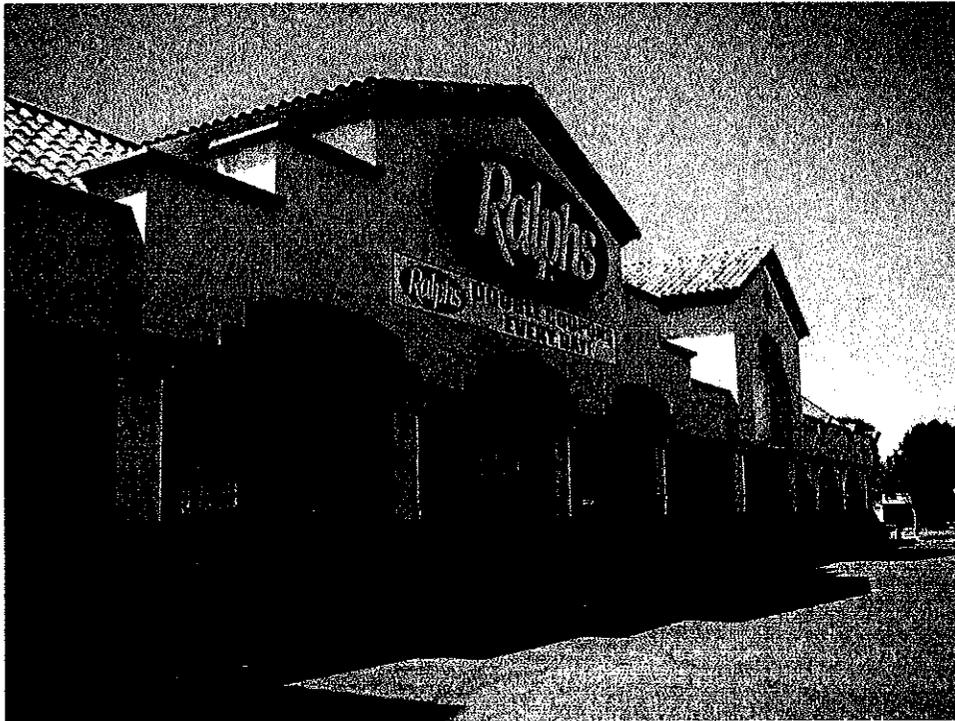




Loading dock, roll-up doors



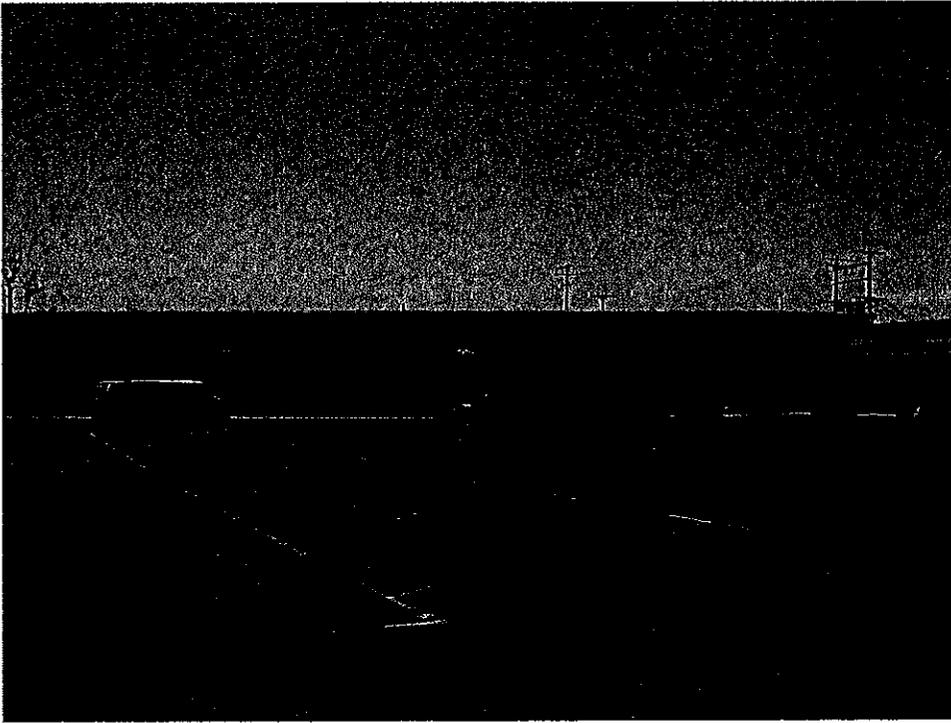
Rear elevations, utility area



Neighboring property, north on Saviers Road



Potion of existing building still in use (no fire damage)



"As-is" portions of building damaged by fire



Neighboring properties South on Saviers Road



Existing signage and landscape at Saviers Road

Attachment B

October 18, 2007 Planning Manager Correspondence



Planning and Environmental Services Division
305 West Third Street • Oxnard, CA 93030 • (805) 385-7858 • Fax (805) 385-7417

October 18, 2007

Mr. Ralph Roussey
P.O. Box 5224
Oxnard, CA 93031

Subject: **VIA CERTIFIED MAIL**
PZ 07-200-08 (3501 Saviers Road, Oxnard)

Dear Mr. Roussey:

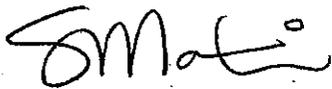
On September 12, 2007, the City's Development Advisory Committee (DAC) reviewed your application for a Development Design Review Permit (DDR) for the property located at 3501 Saviers Road. DAC minutes were provided to you that day; a signed copy is attached for your records. As part of these minutes, concerns were expressed regarding the parking configuration, landscaping and pole sign on Saviers Road.

In accordance with section 16-525 of the City Code, your application indicates that you have applied for a DDR permit. However, based upon review of your floor plan, which identifies the reinstallation of partitions and associated hardware in support of a swap meet use (scope of work comment number 5 on the floor plan), it appears that you have applied for the wrong application. As you know, the City Code (Section 16-136 (A) (19)), requires the application for a Special Use Permit (SUP) for use of the building for swap meet purposes. Repair of the building to support occupancy with a swap meet or other use requiring discretionary approval may not be permitted with a DDR permit. Therefore, please revise your application to either apply for an SUP or revise your DDR plans to eliminate the swap meet use and submit such revisions to this office on or before November 6, 2007 by 5:00 p.m. A copy of the SUP application and our fee schedule is attached for your information. Unless we receive revised plans by such time, your application for a DDR permit will be denied. Denial of an application for a DDR permit may be appealed to the Planning Commission if an appeal application and payment of the associated fee is made within 10 days of a notice of decision.

Mr. Ralph Roussey
October 18, 2007
Page 2 of 2

Please feel free to contact Kathleen Mallory at (805) 512-9800 if you should have any questions regarding this correspondence.

Sincerely,



Susan L. Martin, AICP
Planning Manager

Attachments:

DAC Minutes – September 12, 2007
SUP Application Materials and Fee Schedule

Cc: Mr. Matthew Winegar, Development Services Director (w/o attachments)
Mr. James Rupp, City Attorney's Office (w/o attachments)
Ms. Julie Doi, City Attorney's Office (w/o attachments)
Mr. Steve Geoffrion, Lauterbach and Associates, Architects (Via Certified Mail)
(/attachments)

Attachment C

November 8, 2007 Planning Manager Correspondence



Planning and Environmental Services Division
305 West Third Street • Oxnard, CA 93030 • (805) 385-7858 • Fax (805) 385-7417

November 8, 2007

Mr. Ralph Roussey
P.O. Box 5224
Oxnard, CA 93031

**Subject: VIA CERTIFIED MAIL – NOTICE OF DECISION TO DENY PLANNING
AND ZONING PERMIT NUMBER 07-200-08
(3501 Saviers Road, Oxnard)**

Dear Mr. Roussey:

On October 18, 2007, I sent you a letter by certified mail regarding PZ 07-200-08 (3501 Saviers Road, Oxnard).

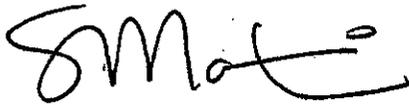
The letter stated that your application for a Development Design Review permit contained a notation that the building was to be used for a swap meet. The letter stated that a swap meet use required a Special Use permit. A swap meet use cannot be approved by the Development Design Review permit process.

The letter gave you until November 6, 2007, to either file revised plans or, alternatively, to file an application for a Special Use Permit. The letter stated that unless such revised plans were received by November 6, 2007, your application for a Development Design Review permit would be denied.

I have not received revised plans on this date and am therefore denying your application for a Development Design Review permit. Pursuant to Section 16-525 (B), this decision is appealable to the Planning Commission provided the appeal application materials and appeal fee (\$500.00) are received within 10 days after the date of this correspondence.

Please feel free to contact Kathleen Mallory at (805) 512-9800 if you should have any questions regarding this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Susan L. Martin, AICP
Panning Manager

Attachment:
Appeal form

Cc: Mr. Matthew Winegar, Development Services Director (w/o attachment)
Mr. James Rupp, City Attorney's Office (w/o attachment)
Ms. Julie Doi, City Attorney's Office (w/o attachment)
Mr. Steve Geoffrion, Lauterbach and Associates, Architects (Via Certified Mail)
(attachment)

Attachment D

November 24, 2007 Applicant Correspondence

Roussey Family Partnership
P.O. Box 5224
Oxnard, CA 93031

November 24, 2007

Sent by Certified Mail-Return Receipt requested

Cert No: 7006 2150 0000 5417 0040

Susan L. Martin AICP
Planning Manager
City of Oxnard Planning Division
305 West Third Street
Oxnard, CA 93030

Subject: Additional requests for form & explanation on Planning and Zoning Permit Number 07-200-08 (3501 Saviers Road, Oxnard)

Dear Ms. Martin:

As requested by Kathleen Mallory by phone on November 21, 2007, I am enclosing the Land Use Permit Application indicating request for appeal of DDR denial. Also requested was a short explanation for the appeal, which is as follows:

Kathleen Mallory's staff analysis submitted to the DAC was flawed in that she states that the Swap Meet was required by City Code to obtain a SUP prior to occupancy. This was false, since the ordinance amendment requiring a SUP for a Swap Meet was enacted several years later. Subsequently, all conditions that flow from the DAC are unsupported. It also appears that the cost to repair will not exceed 50% of the total improvements as defined by the City.

Sincerely,



Ralph Roussey, Jr.

RECEIVED

NOV 26 2007

PLANNING DIVISION
CITY OF OXNARD