

## ZONING CHANGE REVIEW SHEET

**CASE:** C14-2007-0185

**ZAP DATE:** November 6, 2007

**ADDRESS:** 900 East Braker Lane

**OWNER/APPLICANT:** Walnut Ridge Shopping Center (Thomas C. Calhoun)

**AGENT:** DAVCAR Engineering (Jim Herbert)

**ZONING FROM:** GR

**TO:** CS-1

**AREA:** 0.160 acres (6,969.6 sq. ft.)

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends denial of the CS-1 rezoning request.

**ZONING AND PLATTING COMMISSION RECOMMENDATION:**

11/06/07: Approved staff's recommendation to deny CS-1 zoning (7-0, S. Hale-absent);  
T. Rabago-1<sup>st</sup>, J. Martinez-2<sup>nd</sup>.

**DEPARTMENT COMMENTS:**

The property in question is a suite located within a retail shopping center fronting Braker Lane. The applicant is requesting CS-1 zoning to open a cocktail lounge/bar use at this location (signs on the site state "Club Whut it Dew"). There is currently a site plan under review by the City staff for La Bare Adult Lounge at this location (Case SPC-2007-0546A).

The staff is recommending denial of the applicant's request for CS-1 zoning because the site does not meet the purpose statement for the CS-1, Commercial-Liquor Sales District. The rezoning of this site will also contribute to the over zoning of the area. There are two other CS-1 zoned properties to the west of the existing Whut it Dew Club within the Walnut Ridge Shopping Center. One is a vacant retail sales use (former Dollar General) and the other is currently used for liquor sales known as Cheers.

**EXISTING ZONING AND LAND USES:**

	ZONING	LAND USES
Site	GR	Night Club/Cocktail Lounge (Club Whut It Dew)
North	MF-2	Apartments
South	GR	Restaurant (Jack In the Box)
East	GR	Bingo hall (River City Bingo)
West	CS-1, GR, CS-1, CS-1-CO	Liquor Sales (Cheers), Personal Services (Top Hat Cleaners, Nail Salon, Restaurant (Subway), Retail (Sherwin Williams Paint Store), Office (Spherion Personnel Services), Night Club/Cocktail Lounge (Club Whut it Dew)

**AREA STUDY:** N/A

**TIA:** Not Required

**WATERSHED:** Walnut Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**HILL COUNTRY ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

Northeast Walnut Creek Neighborhood Association  
River Oaks Lakes Estates Neighborhood  
North Growth Corridor Alliance  
Austin Neighborhoods Council  
NorthEast Action Group  
Taking Action Inc.

**SCHOOLS:**

Graham Elementary (approximately 1500 feet to southeast)  
Pflugerville #4 Middle School  
Dobie Middle School  
Lanier High School

**CASE HISTORIES:**

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-06-0130	SF-2 to CS-1	7/18/06: Postponed to August 15, 2006 by the applicant (6-0, B. Baker, J. Gohil, J. Martinez-absent)  8/15/06: Case withdrawn by applicant, no action required by the Commission.	N/A
C14-04-0058	GR to CS-1	5/18/04: The Commission continued the case the June 1, 2004 (8-0); K. Jackson-1 <sup>st</sup> , J. Martinez-2 <sup>nd</sup> .  6/01/04: Approved the staff's recommendation to deny the request for CS-1 zoning (8-0, J. Pinnelli – absent); K. Jackson-1 <sup>st</sup> , J. Martinez-2 <sup>nd</sup> .  6/07/04: Motion made to rescind, reconsider the June 1, 2004, motion (6-2, B. Baker, C. Hammond-Nay, J. Pinnelli-absent); J. Martinez-1 <sup>st</sup> , M. Whaley-2 <sup>nd</sup> . Motion made to continue case to July 20, 2004 (6-2, B. Baker, C. Hammond-Nay; J. Pinnelli-absent); J. Martinez-1 <sup>st</sup> , J.	8/26/04: Postponed by Applicant to 9/30/04 (7-0)  9/30/04: Postponed by Council to 11/18/04 (5-0, Alvarez & Thomas-off dias)  11/18/04: Approved CS-1 on 1 <sup>st</sup> reading (Vote: 5-2, Wynn, Slusher-No), with following requirements: 1) Create a rollback public restrictive covenant stating that if the use ceases in 90 days the property would be rolled back to days the property would be rolled back to GR zoning; 2) Encourage the applicant and neighborhood work out some private restrictive covenant agreement prior to 2 <sup>nd</sup> /3 <sup>rd</sup> readings.

		Gohil-2 <sup>nd</sup> .  7/20/04: Approved staff recommendation to deny CS-1 zoning (5-3, J. Gohil, J. Martinez, K. Jackson-Nay; J. Pinnelli-absent); B. Baker-1 <sup>st</sup> , M. Whaley-2 <sup>nd</sup> .	4/07/05: Approved 2 <sup>nd</sup> reading only. Applicant asked to continue working with the neighborhood (6-1, Slusher-No)  5/19/05: Postponed to 5/26/05 at the agent's request (6-0, Thomas-off dias)  5/26/05: CS-1 zoning denied (7-0)
C14-02-0130	CS-1 to GR	9/10/02: Approved staff's recommendation of GR zoning by consent (6-0, D. Castaneda-absent)	10/10/02: The Council had many questions about this case because the neighborhood spoke out both for and against the rezoning. The neighborhood felt the rezoning request did not cover the entire tract subject to the prior restrictive covenant (from case C14-95-0034) and stated their opposition to the pending conditional use permit for a new cocktail lounge. Sarah Crocker raised the issue regarding DAC'S approval of a site plan exemption for a cocktail lounge use and Alice Glasco explained how this error occurred. (7-0); all 3 readings
C14-02-0033	CS, GR to CS-1	4/16/02: Approved staff rec. to deny CS-1 (5-0)	5/23/02: Denied CS-1 (7-0)
C14-95-0054 "Expired"	GR to CS-1	5/23/95: Denied CS-1 as requested (6-0)	6/22/95: Motion to deny failed (2-2-1, EM/RR-no, GG-abstain), no action taken
C14-95-0034	TRA: CS to CS-1 TRB: CS to CS-1	5/9/95: Denied CS-1 (6-0)	6/1/95: Approved CS-1 w/ conditions: To approve CS-1, with a restrictive covenant that provides for rollback to GR, if cocktail use does not open within 1 year of zoning case or ceases for more than 90 days. (4-1-2, BS-no, JG/BT-abstain); 1 <sup>st</sup> reading  8/17/95: Approved CS-1 (4-1-2, BS-no, JG/BT-abstain); 2 <sup>nd</sup> reading  8/24/95: Approved CS-1 (5-1, JG-Nay); 3 <sup>rd</sup> reading
C14-88-0110	GR to CS-1	9/27/88: Grant CS-1 w/ conditional overlay	10/27/88: Approved CS-1 w/conditions; all 3 readings

**RELATED CASES:** See "Background" information

**ABUTTING STREETS:**

NAME	ROW	PAVEMENT	CLASSIFICATION
Braker Lane	100'	60'	Arterial

**CITY COUNCIL DATE:** December 13, 2007

**ACTION:**

**ORDINANCE READINGS:** 1<sup>st</sup>

2<sup>nd</sup>

3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057

**EMAIL:** Sherri.Sirwaitis@ci.austin.tx.us

This map has been produced by G.I.S. Services for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

## **STAFF RECOMMENDATION**

Staff recommends denial of the CS-1 rezoning request.

## **BACKGROUND**

### **C14-04-0058**

In 2003, the owner of the Sahara Club bar, Judson Green, was granted a CUP for a 1,300 sq. ft. cocktail lounge in a CS-1 zoned space within the retail shopping center (Case SPC-02-0013A). The owner then decided to expand the cocktail lounge business into an old restaurant area, formerly known as the Tropical Heat Cafe. He applied for building permits for this "renovation" but was denied because the old restaurant area is zoned GR, which does not permit a cocktail lounge use. After that, Mr. Green knocked down the wall between the bar and the vacated restaurant without permits from the City and expanded his facility. Mr. Green applied to the TABC for a mixed beverage/late night hours permit for this site and was denied because of inappropriate zoning. The city informed the Mr. Green that he needed to rezone the property in question and obtain a Conditional Use Permit for this site to come into compliance with City of Austin Code requirements.

The staff recommended denial of the applicant's request for CS-1 zoning because the rezoning of the site would contribute to the over zoning of the area. On May 18, 2004, the Zoning & Platting Commission asked the staff to research the amount of parking spaces that would be required if the Sahara Club was expanded by the proposed 0.103 acres (5,683 sq. ft.). The staff determined that the applicant would need 140 parking spaces for the bar use. With 269 parking spaces available overall for the entire shopping center, the applicant would have been 44 parking spaces short and would not be able to meet this requirement.

The rezoning case was heard by the Zoning and Platting Commission on June 1, 2004. The Commission voted to uphold the staff's recommendation to deny the request for CS-1 zoning. However, on June 7, 2007, a motion was made by the Commission to rescind and reconsider on July 20, 2004. On July 20, 2007, the Zoning and Platting Commission voted again to recommend denial of the CS-1 rezoning request.

The case went to the City Council on November 18, 2004 and the Council voted to approve CS-1 zoning on 1<sup>st</sup> reading, with following requirements: 1) Create a rollback public restrictive covenant stating that if the use ceases in 90 days the property would be rolled back to days the property would be rolled back to GR zoning; 2) Encourage the applicant and neighborhood work out some private restrictive covenant agreement prior to 2<sup>nd</sup>/3<sup>rd</sup> readings. The City Council voted to approve 2<sup>nd</sup> reading only on April 7, 2005 and asked the applicant to continue working with the neighborhood. On May 26, 2005, the City Council voted to deny the applicant's request for CS-1 zoning for the property (Zoning Case Map-Attachment A).

### **C14-02-0130**

In August of 2002, an application was submitted requesting a rollback for a portion of a CS-1 zoned tract to GR, Community Commercial District, zoning (Zoning Case Map-Attachment B). As part of zoning case C14-95-034, there was a public Restrictive Covenant accepted by the City Council in which the owner agreed to a zoning roll back to GR for two properties if a Conditional Use Permit for a cocktail lounge was not issued within one year of the rezoning or if a cocktail lounge use ceased for more than 90 days. The down zoning of a portion of the original Tract B from case C14-95-034 to GR was recommended by the Zoning & Platting Commission on September 10, 2002 and was approved by the City Council on October 10, 2002. The remainder of Tract B was part of the Sahara Club site (CUP Case SPC-02-0013A), now known as Club Whut it Dew.

#### **C14-02-0033**

Rezoning case C14-02-0033 (Zoning Case Map-Attachment C) was a duplicate request of the 1995 case listed below, with the addition of an adjacent store-front to the request for CS-1 zoning. Part of the site was identified as having a zoning violation for an illegal cocktail lounge. It appears that the rezoning case was prompted by a complaint and subsequent red tag by Code Enforcement. Zoning case C14-03-0033 was denied by the Zoning and Platting Commission on April 16, 2002 and by the City Council on May 23, 2002.

#### **C14-95-0054**

In 1995 a rezoning application was submitted for a portion of this retail center, as case C14-95-0054 (Zoning Case Map-Attachment D). The smallest portion of subject tract request was recommended by staff, but denied by Planning Commission and City Council. The development (restaurant use/bar use) existed at the time of the 1995 request and is now part of the property under consideration in the current zoning case.

#### **C14-95-0034**

Also in 1995, one month prior to the above case, a rezoning application for case C14-95-0034 (Zoning Case Map-Attachment E) was submitted for two other store fronts (Tract A and Tract B) within the same retail center as this property. The CS-1 for those two areas was recommended by staff, denied by Planning Commission, and approved by City Council w/conditions. The conditions included a public Restrictive Covenant that mandated a zoning roll back to GR for the two properties if a Conditional Use Permit for a cocktail lounge was not issued within one year of the rezoning or if a cocktail lounge use ceases for more than 90 days. Tract A is now a Subway restaurant and a portion of Tract B is part of a cocktail lounge, the Whut it Dew Club.

In accordance with the public restrictive covenant the applicant agreed not to object to a zoning roll back to GR in 1996, as CUP's were never issued for the properties within the time allotted. While the City is a party to the restrictive covenant, typically city initiated rezoning rollbacks are complaint driven or applicant requested and initiated by the Commission or Council. Over the last seven years no zoning complaints had been filed on the property. The City was not notified of the breach of the agreement stated in the covenant until a zoning case was filed in 2002 requesting additional CS-1 zoning within this retail shopping center (Case C14-02-0033 listed above).

#### **C14-88-0110**

This pad of CS-1 zoning has a CO limiting the site to only GR uses, and the sale of beer and wine in unopened containers for off premise consumption and revenue from the sale of non-alcoholic products must comprise at least 51% of sales and at least 51% of shelf space shall be devoted to items other than beer and wine (Zoning Case Map-Attachment F).

### **BASIS FOR RECOMMENDATION**

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

The property does not properly meet the purpose statement of the district sought. Commercial-liquor sales district is the designation for a commercial or industrial use of a service nature that has operating characteristics or traffic service requirements that are incompatible with the residential environments. Liquor sales is one of the permitted uses is a CS-1 district.

The site is in adjacent to SF-2 and SF-3 zoning. There is an existing apartment complex directly to the north of the site. Commercial-liquor sales zoning is not compatible with these residential environments. In addition, the site does not meet traffic service requirements for CS-1 zoning as parking would be inadequate and a parking variance would be needed.

2. *Rezoning should not contribute to the over zoning of the area.*

The area in question has an adequate amount of CS-1, Commercial-Liquor Sales District, zoning. Currently there are three existing pad sites of CS-1 zoning located within this shopping center.

There is already a reasonable amount of CS-1 zoning in the area providing ratios of CS-1 to non CS-1 zoning similar to other retail strip centers in the City. Recommending more CS-1 zoning would contribute to over zoning the area.

## **EXISTING CONDITIONS**

### **Site Characteristics**

The site is currently a developed suite within a strip retail shopping center.

### **Impervious Cover**

The maximum impervious cover allowed by the CS-1 zoning district would be 95%. However, because the watershed impervious cover is more restrictive than the zoning district's allowable impervious cover, the impervious cover is limited by the watershed regulations. The site is in the Walnut Creek Watershed of the Colorado River Basin, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code.

Under current watershed regulations, development or redevelopment on this site will be subject to the following impervious cover limits:

<i>Development Classification</i>	<i>% of Net Site Area</i>	<i>% with Transfers</i>
Single-Family (minimum lot size 5750 sq. ft.)	50%	60%
Other Single-Family or Duplex	55%	60%
Multifamily	60%	70%
Commercial	80%	90%

In the Water Quality Transition Zones, impervious cover is limited to 30%.

### **Environmental**

The site is not located over the Edward's Aquifer Recharge Zone. The site is in the Desired Development Zone. The site is in the Walnut Creek Watershed of the Colorado River Basin, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code.

According to flood plain maps, there is no floodplain within, or adjacent to the project boundary.



Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment outside of the existing building footprint.

This site is a building or suite footprint within an existing structure. No zoning changes are proposed outside of this structure, therefore there are no environmental features associated with this site.

### **Transportation**

No additional right-of-way is needed at this time.

A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

Capital Metro bus service is available along Braker Lane (Route #45).

There are existing sidewalks along Braker Lane.

Existing Street Characteristics:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Bus Routes
Braker Ln	100'	62'	Arterial	Yes	Rt 10	392 Braker

### **Right of Way**

The scope of this review is limited to the identification of needs for dedication and/or reservation of right-of-way for funded Capital Improvement Program (C.I.P.) Roadway Construction Projects and Transportation Systems Management (T.S.M.) Projects planned for implementation by the City of Austin. No aspect of the proposed project is being considered or approved with this review other than the need for right-of-way for City projects. There are separate right-of-way dedication and reservation requirements enforced by other Departments and other jurisdictions to secure right-of-way for roadway improvements contained in the Austin Metropolitan Area Roadway Plan, roadway projects funded by County and State agencies, and for dedication in accordance with the functional classification of the roadway.

We have reviewed the proposed subdivision, site plan, or zoning case and anticipate no additional requirement for right-of-way dedication or reservation for funded C.I.P. or T.S.M. projects at this location.

### **Water and Wastewater**

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocation, and abandonment. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

### **Stormwater Detention**

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

### **Compatibility Standards**

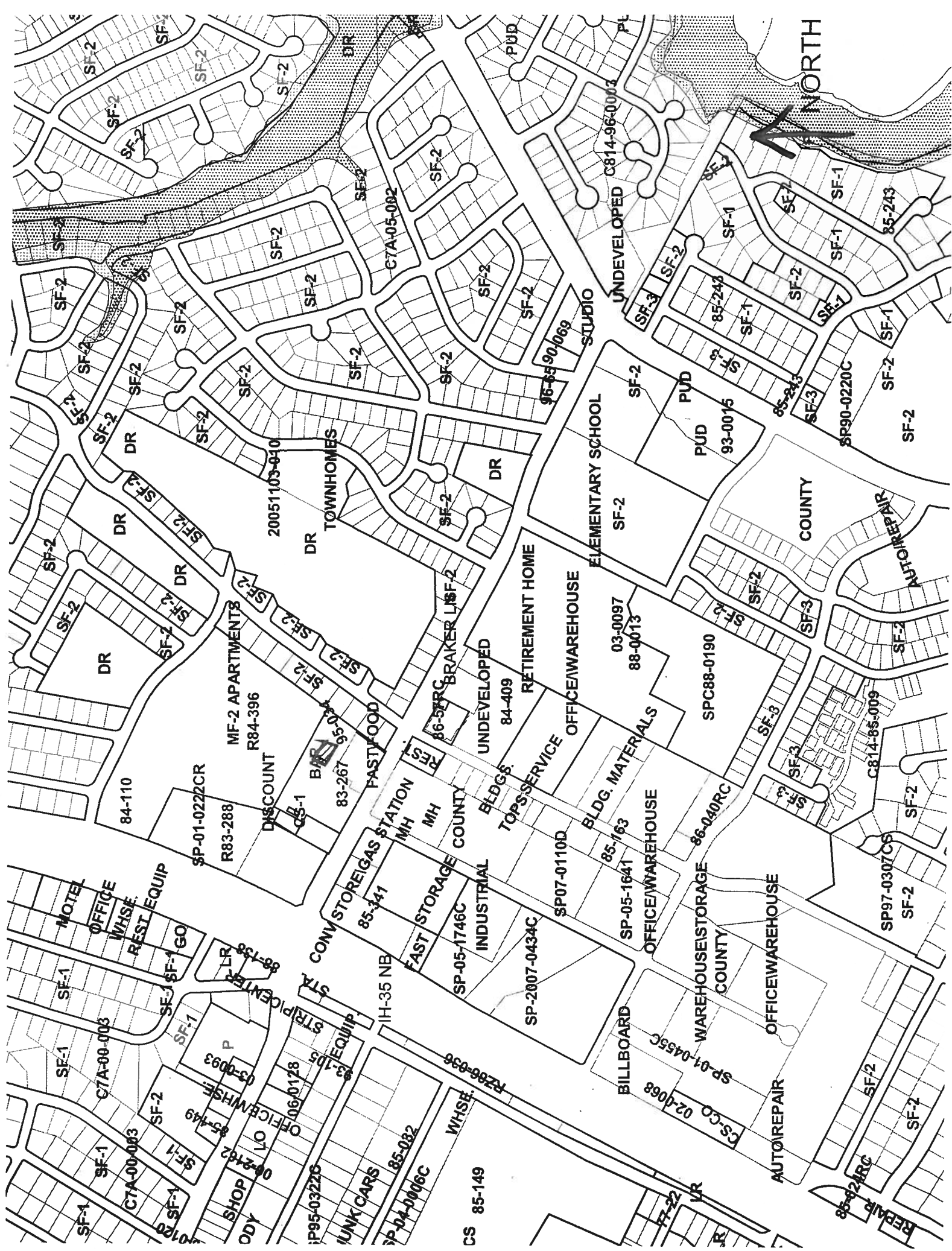
There is a site plan currently under review for this property (SPC-2007-0546A).

The site is subject to compatibility standards along the eastern property line that abuts the SF-2 zoned property with an existing single-family residence. Any new site development will be subject to the following compatibility regulations:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- For a structure more than 100 feet but not more than 300 feet from the property line, a structure may attain a height of 40 feet plus one foot for each 10 feet if distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
- For a structure more than 300 feet but not more than 540 feet from the property line, a structure may attain a height of 60 feet plus one foot for each four feet if distance in excess of 300 feet from the property zoned SF-5 or more restrictive.
- No parking or driveways are allowed within 25 feet of the property line
- A landscape area at least 15 feet in width is required along the property line if tract is zoned MF-3, MF-4, MF-5, MH, NO, or LO.
- A landscape area at least 25 feet in width is required along the property line if the tract is zoned LR, GO, GR, L, CS, CS-1, or CH.
- A fence, berm or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

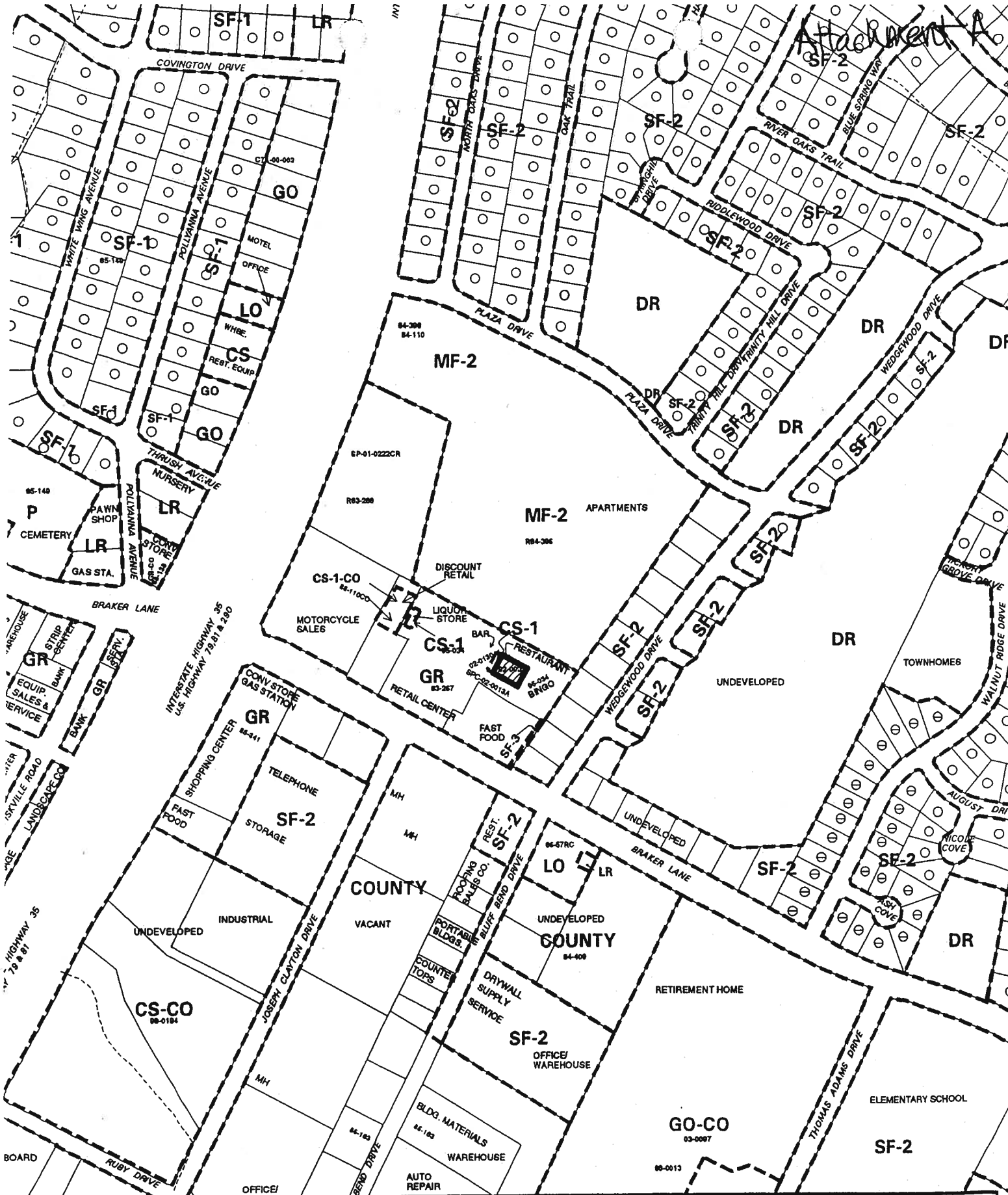
Development of a cocktail lounge, or a General Restaurant with late-hours alcohol sales permit, will require the approval of a Conditional Use Permit.





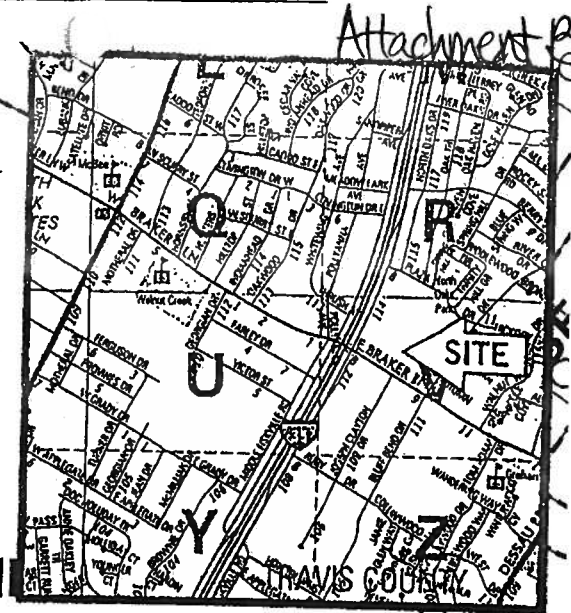
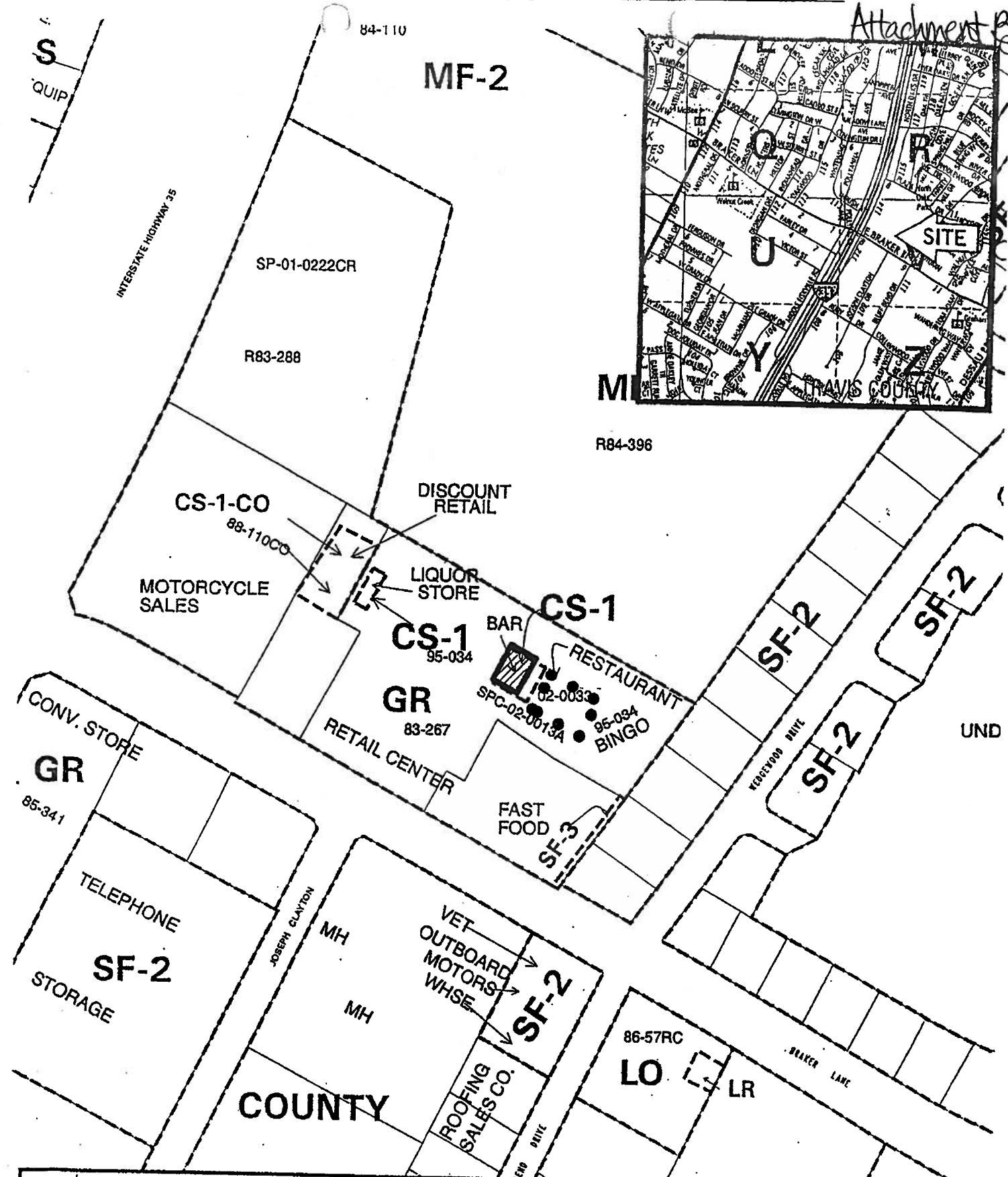






Attachment A

 1" = 400'	SUBJECT TRACT	  	ZONING		CITY GRID REFERENCE NUMBER  M31
	PENDING CASE		CASE #: C14-04-0058	DATE: 04-04	
	ZONING BOUNDARY		ADDRESS: 900 E BRAKER LANE	INTLS: SM	
	CASE MGR: S. GAGER		SUBJECT AREA (acres): 0.130		



 1" = 200'	SUBJECT TRACT	 CASE #: C14-02-0130 ADDRESS: 900 E BRAKER LANE SUBJECT AREA (acres): 0.069	ZONING  DATE: 02-09 INTLS: SM	CITY GRID REFERENCE NUMBER M31
	PENDING CASE			
	ZONING BOUNDARY			
	CASE MGR: S. GAGER			

IVIR-2

Attachment

SP-01-0222CR

R83-288

**MF-2** APARTMENTS

R84-396

**CS-1-CO**

88-110CO

MOTORCYCLE  
SALES

DISCOUNT  
RETAIL

LIQUOR  
STORE

BAR

**CS-1**

95-034

**GR**

83-267

RETAIL CENTER

RESTAURANT  
BINGO

SPC-02-0013A

FAST  
FOOD

**SF-3**

**SF-2**

**SF-2**

UNDEVELOP

ORE

EPHONE

**SF-2**

MH

MH

**COUNTY**

VET  
OUTBOARD  
MOTORS  
WHSE

**SF-2**

ROOFING  
SALES CO.

PORTABLE  
BLDG

BLUFF BEND DRIVE

86-57RC

**LO**


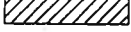


LR

BRAKER LANE

**SF**

84-409

**COUNTY**

 1" = 200'	SUBJECT TRACT		<b>ZONING</b>	CITY GRID REFERENCE NUMBER  M31
	PENDING CASE			
	ZONING BOUNDARY			
	CASE MGR: A. BEAUDET			
CASE #: C14-02-0033			DATE: 02-04	
ADDRESS: 900 E BRAKER LANE			INTLS: SM	
SUBJECT AREA (acres): 0.407				



GO  
HIGHWAY 35

GR

MF-2

APARTMENTS

CS-1-CO

SUPERMARKET

GR

RETAIL CENTER

SF-3  
10' BUFFER

SF-2

GR

CONV. STORE  
DRY CAGE

TELEPHONE

STORAGE

CITY COUNTY

CLINIC  
VET

WHSE.

ROOFING  
SALES CO.

PORTABLE  
BLDG.


LOFT  
CITY COUNTY

BRAKER LANE  
CITY COUNTY

JOSEPH CLAYTON DRIVE  
CITY COUNTY

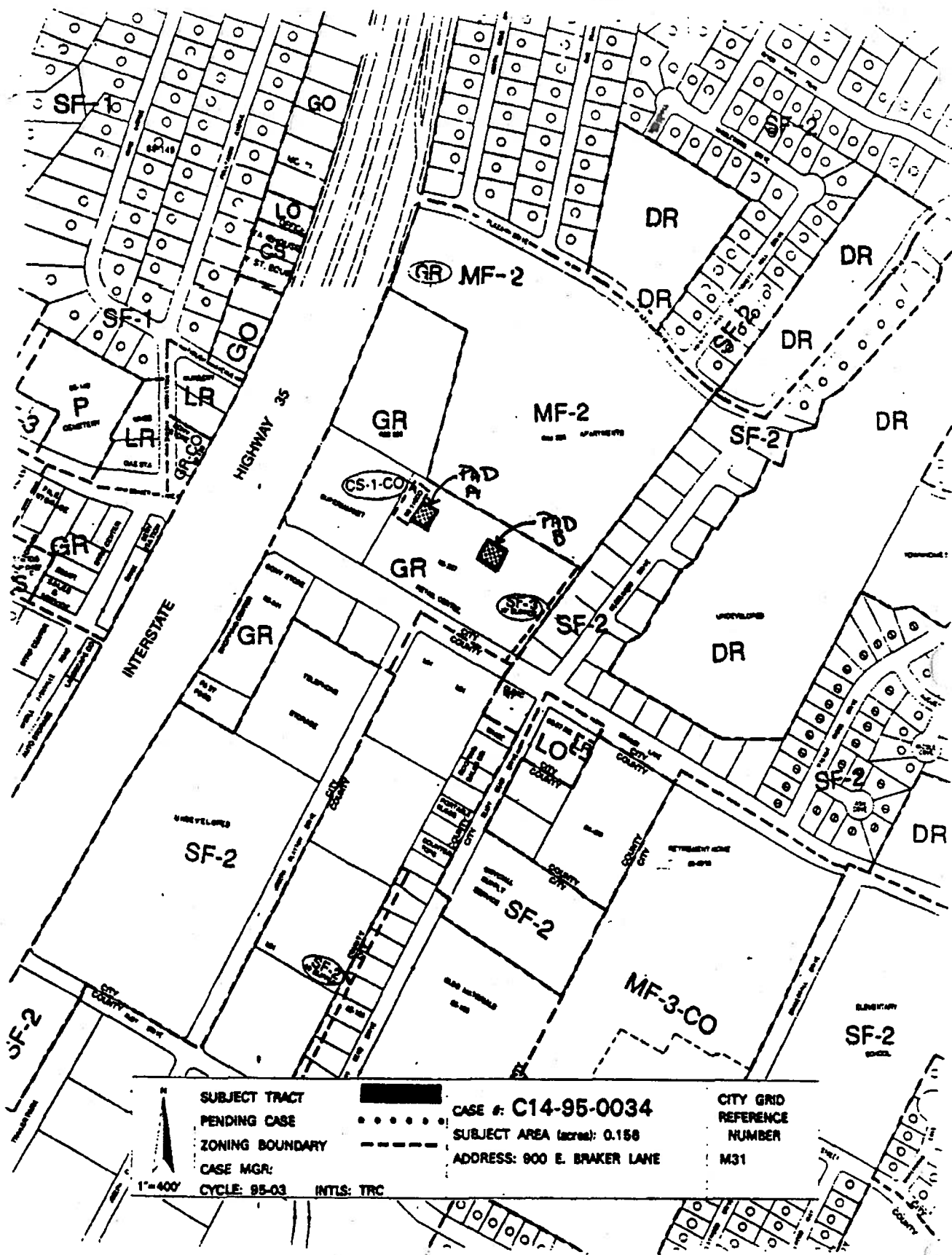
BLUFF BEND DRIVE  
CITY COUNTY

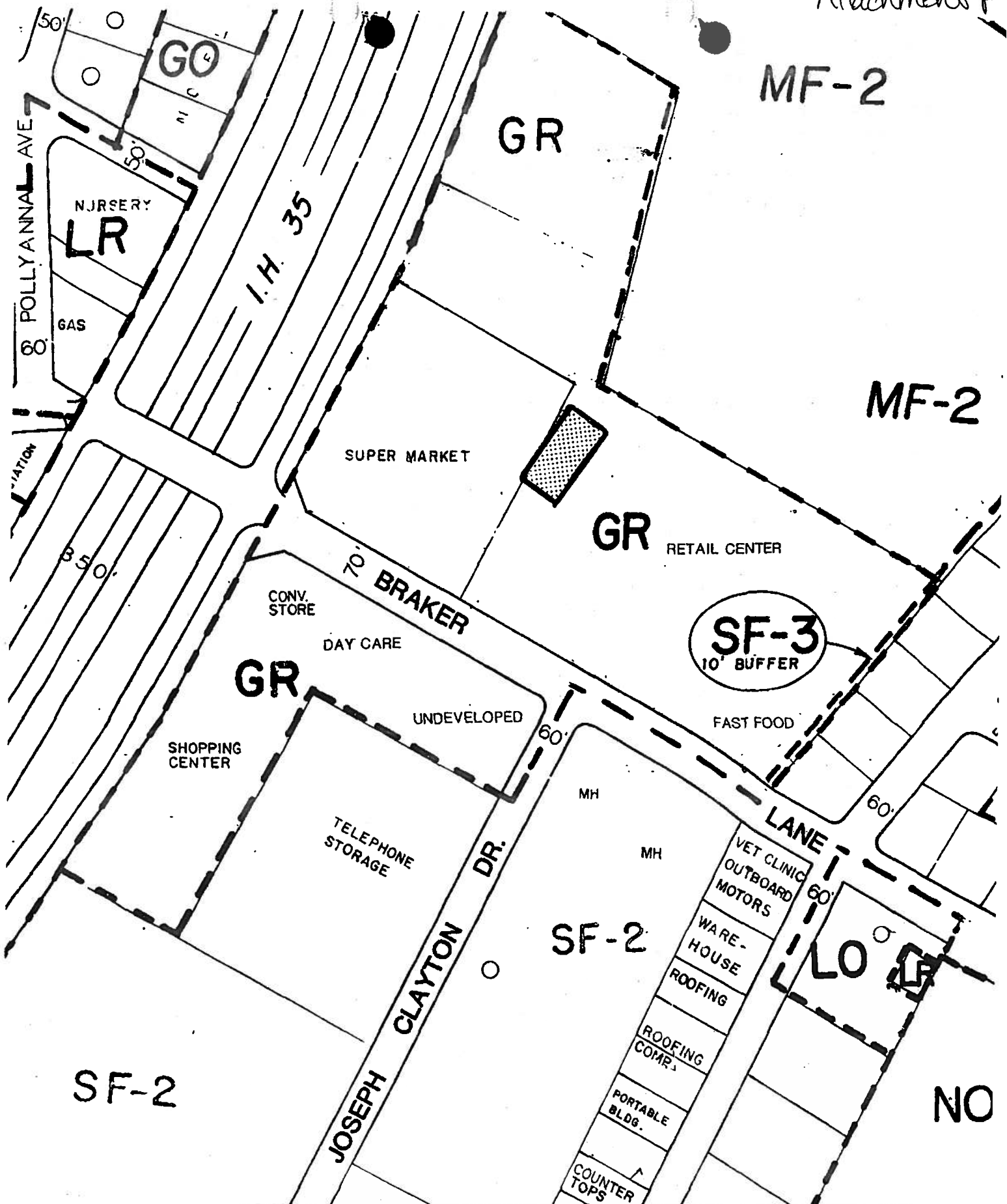


SUBJECT TRAC   
PENDING CASE .....  
ZONING BOUNDARY .....  
CASE MGR: .....  
CYCLE: 4/95 INTLS: M. STECK

CASE #: **C14-95-0054**  
SUBJECT AREA: 0.130 ACRES  
ADDRESS: 900 E. BRAKER LANE

CITY GRID  
REFERENCE  
NUMBER  
**M - 31**





	NORTH	PENDING CASE .....	SUBJECT TRACT .....	GRID
		ZONING LINE .....	SUBJECT ACREAGE 9.205	M31
	CYCLE <u>9/8</u> INTLS <u>YIMOS</u>	CASE NO: C14-88-0110		

§ 25-2-801 **ADULT-ORIENTED BUSINESSES.**

(A) In this title:

(1) **ADULT ARCADE** means a movie arcade, game arcade, or other **business** that primarily offers still or motion pictures or games that emphasize specified sexual activities or specified anatomical areas.

(2) **ADULT BOOKSTORE** means a **business**:

(a) that primarily offers books, magazines, films or videotapes, periodicals, or other printed or pictorial materials that emphasize specified sexual activities or specified anatomical areas; and

(b) in which at least 35 percent of the gross floor area is devoted to offering merchandise described in Subsection (A)(2)(a).

(3) **ADULT CABARET** means a **business** that primarily offers live entertainment that emphasizes specified sexual activities or specified anatomical areas.

(4) **ADULT LOUNGE** means an **adult** cabaret that serves alcoholic beverages.

(5) **ADULT NOVELTY SHOP** means a **business** that primarily sells products that emphasize specified sexual activities or specified anatomical areas, and in which at least 35 percent of the gross floor area is devoted to the sale of those products.

(6) **ADULT-ORIENTED BUSINESS** means an **adult** arcade, **adult** bookstore, **adult** cabaret, **adult** lounge, **adult** novelty shop, **adult** service **business**, or **adult** theater.

(7) **ADULT SERVICE BUSINESS** means an **adult** encounter parlor, **adult** retreat, nude modeling studio, or a commercial enterprise that holds itself out to be primarily in the **business** of offering a service that is distinguished or characterized by an emphasis on depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(8) **ADULT THEATER** means a **business** that primarily exhibits motion pictures that emphasize specified sexual activities or specified anatomical areas.

(9) **SPECIFIED SEXUAL ACTIVITIES** means:

(a) human genitals in a state of sexual stimulation or arousal;

(b) acts of human masturbation, sexual intercourse, or sodomy; or

(c) erotic touching of human genitals, the pubic region, the buttock, or the female breast.

(10) SPECIFIED ANATOMICAL AREAS means:

(a) less than completely and opaquely covered:

(i) human genitals or pubic region;

(ii) buttock; or

(iii) female breast below a point immediately above the top of the areola;

or

(b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(B) On-premises advertisements, displays, or other promotional materials for an **adult-oriented business** that emphasize specified sexual activities or specified anatomical areas must not be visible from public or semi-public places outside the **business**.

(C) Except as provided in Subsection (E), an **adult-oriented business** other than an **adult lounge** is a permitted use in a CBD, DMU, CS, CS-1, or CH zoning district.

(D) Except as provided in Subsection (E), an **adult lounge** is a permitted use in a CBD zoning district, and a conditional use in a DMU, CS-1, or CH zoning district.

(E) An **adult-oriented business** may not be located on a lot:

(1) that is within 1,000 feet of a lot on which another **adult-oriented business** is located;

(2) that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day-care center is located; or

(3) where 50 percent or more of the lots within a 1,000 foot radius are zoned or used for a residential use.

(F) A radius or distance described in Subsection (E) is measured from the midpoint of a line joining the two most distant points on the boundaries of the lot.

*Source: Section 13-2-265; Ord. 990225-70; Ord. 031211-11.*