



# BOA21-00628

## Power Food Truck Park

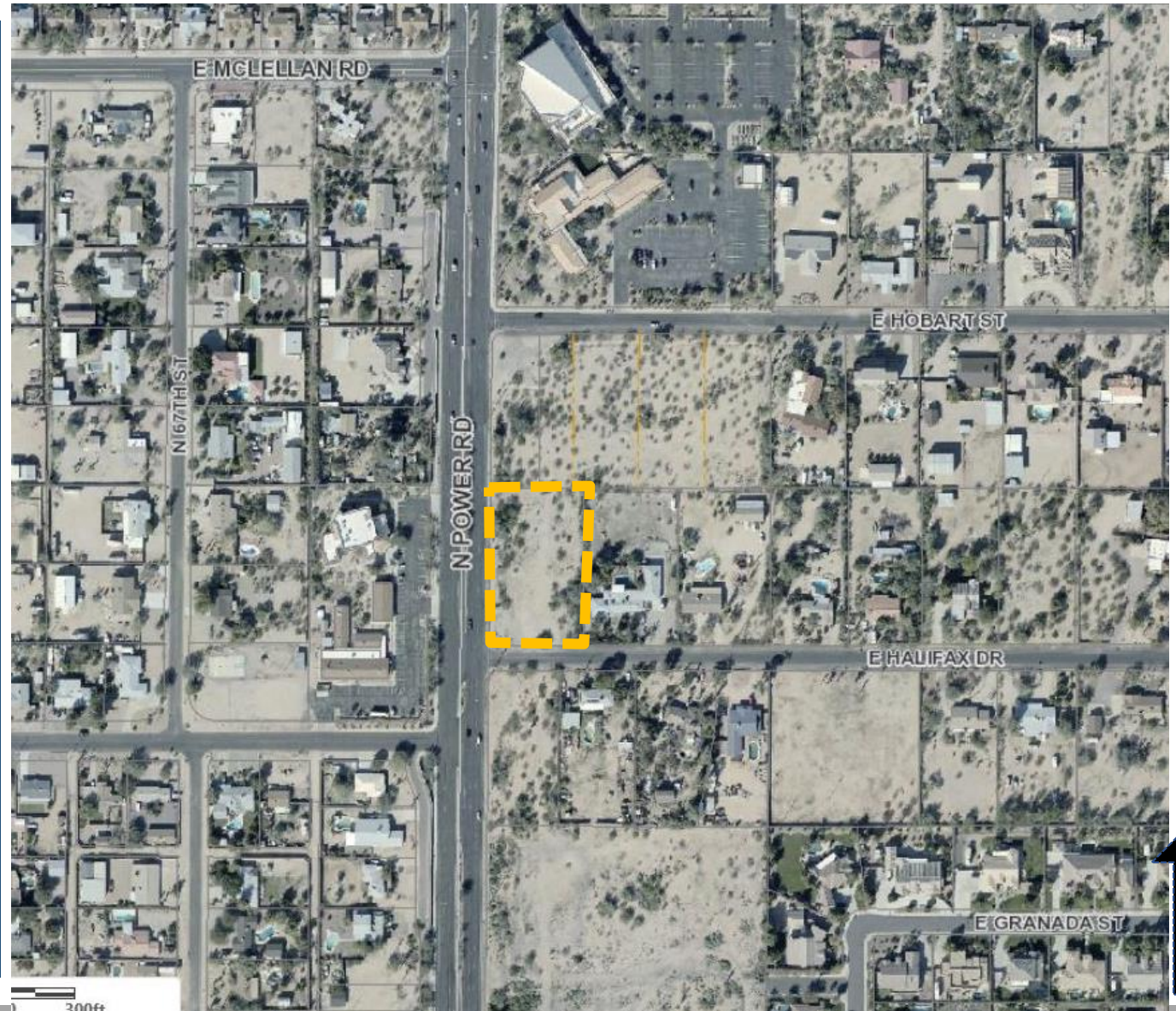
Planning Director/Zoning Administrator  
Nana Appiah, PhD, AICP

# Request

Appeal of an Zoning Administrator interpretation that the current activities on the property do not conform to the Zoning Ordinance **definition of Parks and Recreation Facilities, Public.**

# Location

- 1439 N. Power Road



# General Plan

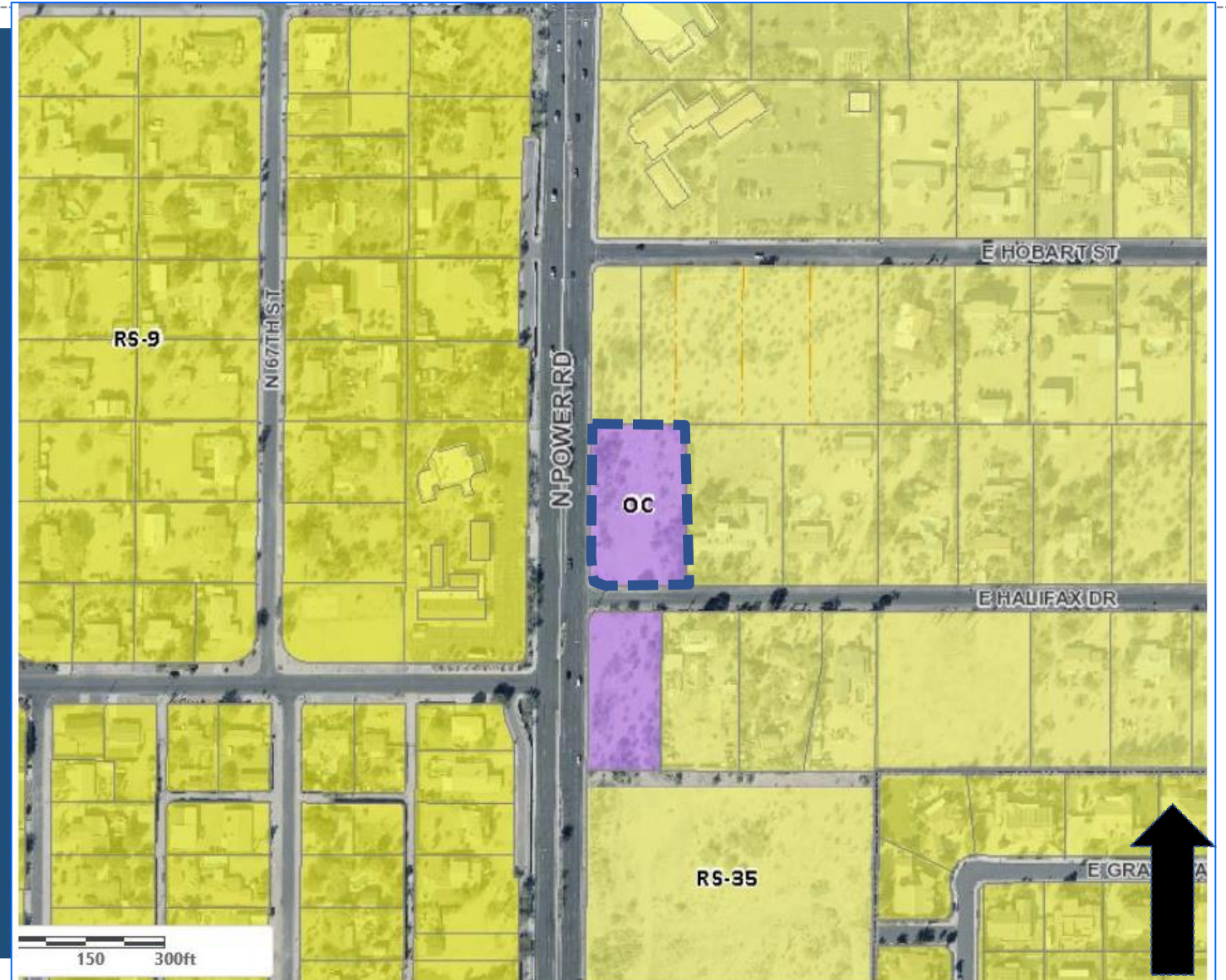
## Neighborhood

- Goals:
  - Provide safe places for people to live
  - Enjoy their surrounding community
  - Include uses such as: parks, schools, places of worship, and local serving businesses



# Zoning

- Office Commercial (OC)
  - Purpose:
    - Provide areas for small-scale medical and professional offices intended to serve the community and remain compatible with adjacent residential uses.



# Parks and Recreation Facilities, Public

*“Parks, playgrounds, recreation facilities, trails, wildlife preserves, and related open spaces, all of which are noncommercial. This classification also includes playing fields, courts, gymnasiums, swimming pools, picnic facilities, tennis courts, and golf courses, botanical gardens, as well as related food concessions or community centers within the facilities.” (MZO Section 11-86-3)*

# Zoning Standards

## Land Use Regulations

**Table 11-6-2: Commercial Districts**

Proposed Use	NC (C-1)	LC (C-2)	GC (C-3)	OC (O-S)	MX	Additional Use Regulations
<b>Public and Semi-Public Use Classifications</b>						
Parks and Recreation Facilities, Public	P	P	P	P	P	
<b>Commercial Use Classifications</b>						
<b>Eating and Drinking Establishments</b>						
Restaurants, Limited Service	P	P	P	P (5)	p	
(5) Permitted if located within an office building or other commercial building and occupying no more than 1,500 SF						

# Pioneer Park

8



# Steele Indian School Park

Phoenix, AZ



# Central Park

NYC



# Factual Background

**2019**

- Discussed with Appellant's representative food truck (i.e., food concessions and vending) uses on the property

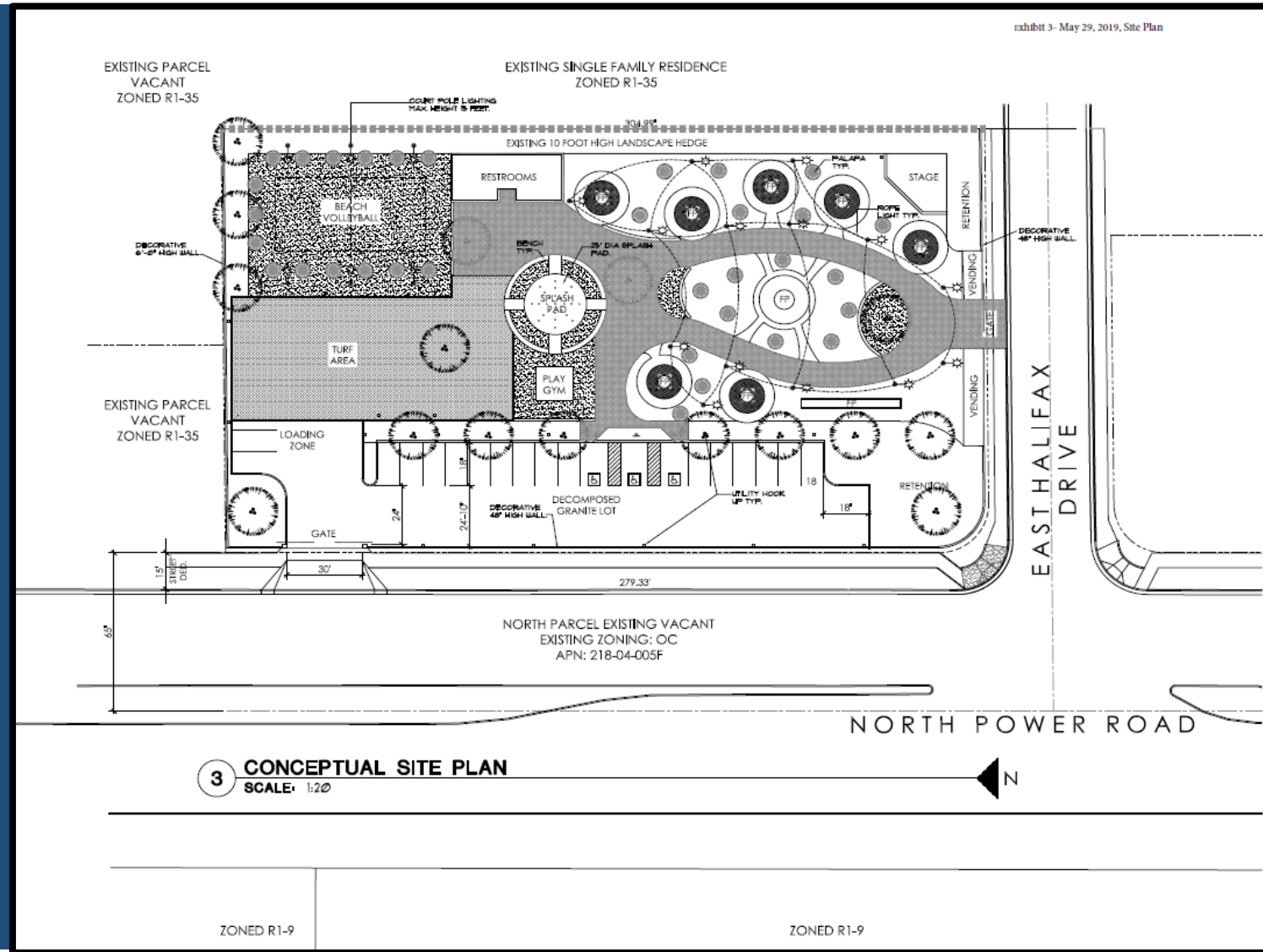
**Staff informed representative that:**

- Food trucks fall under “Limited Restaurant uses”
- “Limited Restaurant uses” are only allowed in OC if: (1) located within an office building or commercial development and (2) not more than 1,500 SF
- Stand alone food trucks (i.e., Limited Restaurants) are allowed as a “related use” to park and recreation facilities

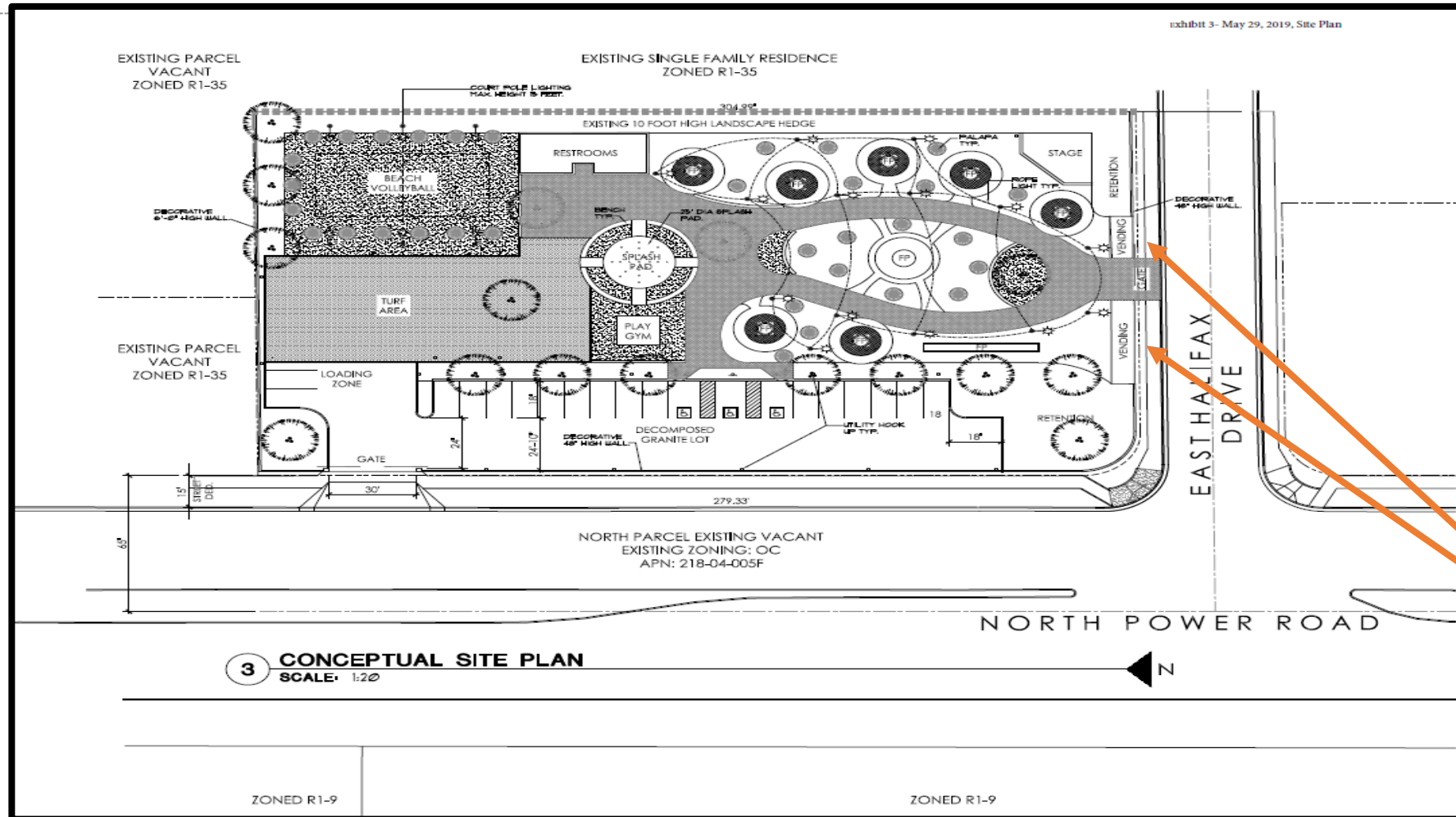
# Factual Background

## Site Plans

- *May 24, 2019:*  
Representative emailed ZA a site plan for a park
- *December 10, 2019:*  
Representative submitted a site plan to DSD for a building permit



# 2019 Original Site Plan



Food  
Vending  
locations

# Factual Background

## **December 2020**

- Staff obtained information about planned food truck event on the property

## **December 8,2020**

- Staff met with appellant and their representative on-site
- Discussed use of the property
  - Observed most of the items shown on the site plan had not been installed/constructed
  - Appellant informed staff they would work with their representative to follow all city requirements

## **December 2020 - October 2021**

- Continuous complaints from neighboring property owners of unapproved use

# Chronology of Interpretation

**May 11, 2021**

- DSD requests for ZA interpretation

**May 24, 2021**

- Representative for owner of 6822 E Halifax Drive requests ZA interpretation

**June 16, 2021**

- ZA issued formal interpretation

**July 1, 2021**

- Appellant's attorney appeals the interpretation of the ZA

# Zoning Administrators Responses to Appeal

## 1. Appellant Position:

Power Road Park nor its Representative submitted a written request for a ZA interpretation:

## ZA Response:

- The City's Zoning Administrator has the duty and authority to "interpret the MZO to the public, City Department, and other branches of government"
  - No limitation to only interpret the MZO only when requested by a property owner
  - Director of Development Services and neighboring property owner's representative requested, in writing, a formal interpretation

# Zoning Administrators Responses to Appeal

## 2. Appellant Position:

- Written request for a formal interpretation allows for applicant to provide supported documentation
- ZA based interpretation on pictures and complaints submitted by neighboring property owners
- The ZA has authority to conduct a public hearing
- ZA made a unilateral decision

## ZA Response:

- MZO allows ZA to determine which request may be decided through the administrative process or through a public hearing
- Interpretation was sent DS Director, the Appellant, and neighboring property owners
- ZA considered the MZO, General Plan, State Statute, information from visits to the property, other City departments, resident and owners of nearby properties, promotional and advertising items, communication with Appellant

# Promotional Information and Photos



# Zoning Administrators Responses to Appeal

## 3. Appellant Position:

- ZA attempts to modify the MZO that food concession is not an allowed use as PPRF because it is commercial
- Determination contradicts language in Section 11-86-3 which allows food concessions to be operated in PPRF

## ZA Response:

- Interpretations does not state commercial food truck are prohibited in PPRF
- Interpretation discusses and ascertains that food concessions and commercial food trucks are permitted only
  - If there are related to noncommercial park and recreation facilities
  - Are subordinate or accessory to park and recreations facilities listed in a PPRF
- The term noncommercial in PPRF applies to the park and recreational facilities
- The term commercial applies to “food concessions.” Food trucks are typically commercial, and allowed as “related” to noncommercial park and recreation facilities
- ZA agrees that he cannot make changes to permitted land uses in the MZO

# Zoning Administrators Responses to Appeal

## 4. Appellant Position:

- ZA ignores specific language of Section 11-86-53 [sic] which defines PPRF to include ‘picnic facilities’ as well as related food concessions

## ZA Response:

- Interpretation does not ignore picnic facilities as allowable use in a PPRF
- Interpretation is specific that food concessions must be a “related” use, and such a use cannot be the dominant use in a PPRF
- Interpretation ascertains that the park and recreation facilities associated with a PPRF must be the main, primary attraction, and not accessory or subordinate uses
- If the dominance or intensity of accessory or subordinate use (food trucks) becomes the primary use then it is no longer a related, accessory use

# Zoning Administrators Responses to Appeal

## 5. Appellant Position:

- ZA interpretation discriminates against mobile food vendors
- Amount of food to be provided and consumed is limited to persons picnicking at the park
- Absent evidence that persons purchasing take-out food to consume off premises, there would be no rational argument that the use is primary for food concession or food truck park

## ZA Response:

- Interpretations does not discriminate against mobile food trucks or food vending
- Food concessions or food trucks are allowed as a “related” use to park and recreation facilities
- MZO lists land uses allowed in different zoning district
- In the OC certain food services are allowed by-right, or with a limitation, or prohibited
- Various communications with the Appellant, information from promotional and advertisement, and discussions with neighbors all show primary use of the property is for food trucks

# Zoning Administrators Responses to Appeal

## 6. Appellant Position:

- ZA interpretation purports to increase the 25-foot distance disallowing food vendors from operating on the property
- ZA interpretation flouts the City policy under Ordinance 5623
- ZA Response:
  - Appellant's statement is false. The interpretation does not increase the required distance between food trucks and a lot containing residence
  - There is no language in the interpretation about distance or separation requirements
  - Interpretation is about the use of food trucks as a “related” use to park and recreation facilities

# Zoning Administrators Responses to Appeal

## 7. Appellant Position:

- Prior to issuing the Interpretation, Power Road Park had submitted a revised plan of development for the “7-acre” parcel and received first round review comments from the Planning Division
- The May 29, 2019, site plan has been superseded by the current site plan
- ZA Response:
  - The revised site plan documents is associated with a rezoning request to change the property from Office Commercial to Neighborhood Commercial
  - The P&Z will hear this rezoning case and make a recommendation to City Council. The City Council will have the final decision
  - The rezoning request is not part of this appeal and is outside the Board of Adjustment’s jurisdiction

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## Conclusion

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For all the reasons stated in the Staff Report and this presentation, including but not limited to, goals of the City's General Plan and Zoning Ordinance, the ZA recommends the BOA deny the appeal and uphold the ZA's interpretation.