

RESOLUTION NO. \_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA DENYING THE APPEAL OF THE ARCHITECTURAL BOARD OF REVIEW'S FINAL APPROVAL OF THE PROPOSED BEVMO! PROJECT DESIGN LOCATED AT 3052 STATE STREET AND GRANTING A REVISED FINAL DESIGN APPROVAL OF THE BEVMO! PROJECT, MAKING FINDINGS THAT THE BEVMO! PROJECT MEETS THE COMPATIBILITY CRITERIA SET FORTH IN SANTA BARBARA MUNICIPAL CODE SECTION 22.68.040.

WHEREAS, in February 2010, the City Community Development Department staff accepted an application for the benefit of BevMo! This application requested City Architectural Board of Review design approval of a proposal to occupy and remodel an existing commercial building and to reduce the existing square footage of the buildings located on the real property at 3052 State Street (the former Thomasville Furniture Store hereinafter referred to as the "Property".) The Applicant's proposal called for an expansion of the parking facilities on the Property from 12 spaces to 35 spaces in order to re-use the Property for the purposes of operating a new retail wine and beer store in a manner fully consistent with the allowed uses for the City C-2/SD-2 zoning of the Property;

WHEREAS, the BevMo! Project design was reviewed at six separate hearings during the spring of 2010 of the City's Architectural Board of Review (the "ABR") which included extensive site plan review and which required several Project re-designs in order to assure the ABR that the final Project design was aesthetically pleasing, fully and appropriately functional for its intended use, and consistent with the City's new Outer State Street Design Guidelines and the Municipal Code;

WHEREAS, the ABR initially reviewed the BEVMO! Project on March 8, 2010 and eventually it granted Preliminary Design Approval of the BevMo! Project on April 5, 2010. This Preliminary Design Review for the Project was not appealed to the City Council during the required ten day appeal period. The Final ABR Design Approval for the BevMo! project was granted by the ABR on May 17, 2010 and it was only the Final Design Approval which was appealed;

WHEREAS, the Community Development Staff advised the City Council that, following initial submittal, the Community Development Staff had reviewed the proposed Project for CEQA purposes and concluded that since the proposed Project involved a sizeable reduction in the square footage of the existing building improvements on site and since the proposed use of the Property and the remaining improvements would be fully consistent with the City's longstanding applicable C-2/SD-2 zoning and General Plan requirements for the Property (including the SD-2 parking requirements applicable to the Property), and, as a result, City environmental review staff appropriately determined the Project to be categorically exempt from further CEQA review;

WHEREAS, although there was public testimony at several of the ABR hearings concerning the purported impacts of the BevMo! Project on the surrounding neighborhood, none of this testimony raised substantial evidence supported by expert testimony of potentially significant adverse environmental impacts from the BevMo! Project which in any way contradicted the original staff CEQA determination that the Project qualified for a Categorical Exemption under CEQA Guidelines § 15301(e)(1);

WHEREAS, some of the CEQA issues raised by the Appellant in Appellant's Appeal letter dated as of July 20, 2010 were not raised at the ABR hearings prior to the date on which the ABR issued its Final Approval and the failure to raise such issues during the ABR hearings has resulted in the Appellant not exhausting its administrative remedies, which failure cannot be remedied after the fact with an appeal to the City Council;

WHEREAS, the failure of the appellants to appeal the April 5, 2010 of the ABR's preliminary approval of the design of the BevMo! Project constitutes a waiver of any objection to the basic design parameters of the Project as approved by the ABR; as a result, the City Council has not and will not re-examine the basic design parameters of the BevMo! Project as those parameters were approved by the ABR on April 5, 2010;

WHEREAS, on July 26, 2010, the City Council conducted a publicly noticed site visit to the Project site which site visit included a visual inspection of the Property, a careful review of the Project Site Plan and a review of the traffic conditions surrounding the Project site. The Council's questions and Staff's responses addressed parking, ingress and egress and traffic. Council was advised that there was an impacted intersection at the corner of State Street and Las Positas Road, but the net increase in traffic generated by the Project would not reach a level of significance, both on a project specific and cumulative basis;

WHEREAS, on July 27, 2010, a duly-noticed public City Council hearing was held regarding the subject Appeal. During this Appeal, the City Council received and considered the ABR's review of the Project and its Final Approval (in the form of ABR Minutes), and the Council received, read, and considered the Appeal letter and all exhibits thereto, all staff reports prepared for the City Council, the Traffic Report presented by Scott Schell of ATE and Air Quality Analysis presented by Dudek & Associates, as more particularly described in the exhibit attached hereto as Exhibit A. In doing so, the City Council fully considered all of the points made and evidence presented by the Appellants (including their expert's oral testimony) and, after considering the appeal hearing presentations from Staff, Appellants, the Applicant and all members of the public and expert testimony, the City Council denied the Appeal, confirmed the staff's application of the CEQA categorical exemption as being appropriate and reflective of the independent judgment of the City Council under the California Environmental Quality Act and the Council adopted a revised Final ABR Design Approval of the Project (including the consideration of compatibility criteria per Santa Barbara *Municipal Code* section 22.68.040 and imposed two Conditions of Approval;

WHEREAS, at the conclusion of the July 27, 2010 appeal hearing and after expressly deciding to deny the Appeal, the City Council also directed the City Staff to prepare written draft findings, conclusions of law and fact (both with respect to legal conclusions and other factual determinations) and policy determinations applicable to the City Council design appeal review of this Project and to submit those draft findings, conclusions, and determination along with draft language for the two new Conditions of Approval (as requested by the Council) to the City Council for their subsequent review and approval;

WHEREAS, in connection with City Council's July 27, 2010 appeal hearing and its determination of the appeal of the May 17, 2010 Final ABR approval of this Project, the City Council finds, determines, and concludes as follows:

1. It not permissible or appropriate, legally or equitably, for the City to try dictate which particular companies or commercial establishments may occupy and use an existing building within a commercial zone so long as the business and the use occupancy being proposed is permitted by the City's Zoning Ordinance within that particular zone. In this case, BEVMO! is proposing a commercial use expressly permitted in the City's C-2/SD-2 zone and is proposing to lease an existing commercial retail building for that use;
2. The BevMo! Project is proposing the commercial use of an existing buildings with operational and site features which require no modifications or exceptions to the City's C-2/SD-2 zone requirements – all in a manner fully consistent with the City General Plan requirements. As such, the BevMo! Project requires no discretionary land use approval or permit from the City. As a result, the Project would, by its very nature, apparently not generally have potentially significant environmental impacts at this location.
3. The Santa Barbara Municipal Code recognizes that certain commercial buildings, particularly buildings within the SD-2 zone along State Street, are now legally non-conforming, especially with respect to the front setback of the building. The Council finds that it would be inappropriate to use an ABR design review appeal to attempt to deny a property owner the ability to use or lease a non-conforming building for a business which proposes to operate an expressly permitting use within that building merely because the building is not fully conforming as to its front setback.
4. The City's new Outer State Street Guidelines specifically acknowledged that, in this particular subarea of State Street (Las Positas Road to Calle Laureles), it may not be practical, appropriate, or equitable in the short term to absolutely require the SD-2 front setback for existing buildings when such buildings redevelop or have new tenants, especially since doing so would generally require the demolition of large portions of existing buildings.

5. The proposed BevMo! Project is also proposing to reduce the existing square footage of the building on the Project site and this reduction will result in an overall benefit to the surrounding residential neighborhood by lessening the impacts this existing C-2/SD-2 zoned property may have on the adjacent residentially zoned properties.
6. During the July 27, 2010 Council appeal hearing on this Project, the Council heard and accepted the testimony of experts retained by BevMo!, Scott Schell and Jonathan Leech, which testimony and reports confirmed the conclusions made by City staff that there will probably be no negative or potentially significant adverse traffic or air quality impacts which will result from the BevMo! Project; and

WHEREAS, all of the documents and materials which constitute the record of proceedings upon which these findings and conclusions and this Project decision are made are on file at the City of Santa Barbara, Community Development Department, located at 630 Garden Street, Santa Barbara, California 93101 (in care of Jaime Limon or the Plan Check/Records Supervisor acting as the custodian of record) and such records and materials are open for public inspection and copying Monday through Friday during normal business hours upon a request of either the Project Planner or the Records Supervisor.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

**SECTION 1. Approval of Recitals.** Each of the above-stated recitals is true and correct and fully and accurately reflects the record of the City's proceedings and the determinations and considerations which went into the City Council's decision to deny the appeal of the ABR's approval of the BevMo! Project's design.

**SECTION 2. Additional Findings to Deny the Appeal of the ABR Final Approval.** Based on the foregoing, Council denies the Appeal of the ABR decision on the Project, approves of the ABR's Final Design Approval of the proposed development at 3052 State Street and, at Staff's request, grants a Revised Final Approval of the Project finding further that the Project meets the compatibility criteria stated below.

- A. **Compliance with Charter and Municipal Code.** The Project, as designed and approved, is in full compliance with City Charter and Municipal Code and is consistent with all applicable Santa Barbara City Design Guidelines.
- B. **Compatible with the Architectural Character of City and of the Neighborhood.** The design of the BevMo! Project is compatible with the desirable architectural qualities and prevailing characteristics which are distinctive of Santa Barbara and of this particular State Street neighborhood area surrounding this Project. The BevMo! Project proposes to renovate an existing building formerly used as a furniture store

and to make site, parking, and other improvements which are fully consistent with design guidelines adopted by the City for this portion of Outer State Street area.

- C. **Appropriate Size, Mass, Bulk, Height, and Scale.** The size, mass, bulk, height, and scale of the BEVMO! Project is not only fully appropriate for its location and its neighborhood but, given that the existing buildings on the site are actually being reduced in size and additional parking is being provided by BevMo! (in order to fully meet the City's Zoning Ordinance's parking requirements), the size, bulk and scale of this Project are actually improvements on the status quo.
- D. **Sensitivity to Adjacent Landmarks and Historic Resources.** The location of the BevMo! Project is not adjacent to any Federal, State, or City Landmarks or other designated or potential historic resources, including City designated structures of merit, sites, or natural features and its design is fully compatible with the other nearby structures; as a result, it does not negatively impact any designated or listed City Historic Resources.
- E. **Public Views of the Oceans and Mountains.** The design of the BevMo! Project responds appropriately to established scenic public vistas and will not block mountain views any more than the existing buildings.
- F. **Use of Open Space and Landscaping.** The BevMo! Project has an appropriate amount of open space and landscaping for a commercial use such as this and is fully compliant with the applicable City landscape guidelines and requirements.

**SECTION 3. Council Conditions of Approval.** In an effort to address potential parking and delivery concerns expressed by some members of the public during the appeal hearing and as agreed to by BevMo! during the hearing, the City Council imposes the following conditions of approval related to parking on the BevMo! site:

- A. **Employee Parking.** BevMo! employees must be required by BevMo! to park only within the BevMo! parking lot at the location designated for employee parking as designated with parking signage approved by City Public Works Transportation staff, which signage must be properly displayed and maintained for the term of BevMo! use of the property. In order for the City to monitor compliance with this condition, BevMo! will issue parking stickers or parking placards which must be displayed on each automobile driven to work by a BevMo! Employee with the parking sticker used substantially consistent with the design shown in the attached Exhibit B1. The BevMo! store manager will keep a record of each employee's name, car make and model, and license number and will be responsible for monthly written spot checks to ensure that employees on duty are only parking in the BevMo! lot at the location designated for employee parking. The manager's employee parking records shall be made available to the City at any time during regular business hours upon the City's request and shall be substantially consistent with the form attached hereto as Exhibit B2.

**B. Deliveries.** BevMo! delivery hours shall limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. At no time shall any delivery trucks back out from the BevMo! parking lot onto State Street. In addition, a sign shall be posted on the rear of the BevMo! building (within the alley delivery area) stating that there shall be no idling of delivery trucks during unloading. Deliveries shall, whenever possible, take place in the dedicated delivery area immediately behind the store or in the parking area prior to the store opening as depicted in attached Exhibits C1 and C2. Delivery trucks stopping in the commercial alley behind the BevMo! store shall be limited as much as possible and shall not block the alley with all deliveries occurring in the manner depicted in Exhibit C1 and C2.

## **EXHIBIT A**

### **LIST OF DOCUMENTS FILED WITH THE CITY COUNCIL PRIOR TO JULY 27, 2010 APPEAL HEARING.**

1. Appellant's letter dated May 26, 2010, with exhibits
2. Revised Site Plan and Parking Plan.
3. ABR approved Site Plan, Demolition Plan and Building Elevations.
4. ABR Summary of Minutes.
5. Planning Staff Memorandum dated April 17, 2010.
6. Letter with Exhibits dated July 20, 2010, from Marc Chytילו.
7. Traffic and Parking Analysis dated July 23, 2010, prepared by Scott Schell of Associated Transportation Engineers.
8. Air Quality Technical Assessment dated July 19, 2010, prepared by Jennifer Pace, Air Quality Specialist and Jonathan Leech, Senior Project Manager with Dudek.
9. Public Convenience and Necessity Letter issued to the Department of Alcoholic Beverage and Control by the City of Santa Barbara Police Department and dated March 12, 2010.
10. BevMo! presentation booklet consisting of 23 pages presented by Power Point by Jeff Sealey, Vice President of BevMo!
11. July 27, 2010, report from the Assistant City Administrator/ Community Development Director.
12. July 27, 2010, PowerPoint presentation prepared and made by staff.
13. July 27, 2010, PowerPoint presentation prepared and made by Appellant Marc Chytילו.
14. July 27, 2010, letter from Traffic Engineer Stephen A. Orosz, representing the Appellant.
15. July 19, 2010, letter from Air Quality Specialist Jennifer Pace and Senior Project Manager Jonathan Leech, representing the Applicant.
16. July 27, 2010, letter from Principal Transportation Planner Scott A. Schell, representing the Applicant.
17. July 22, 2010, email communications from Daniel Painter; Caryn Meagher; Kurt Koenig, Koenig & Associates; Noelle Buben; Maritza Perez; Ben Johnson; Jon Blake; Mike Sheffler; Ryan Pflieger; Steven Pokornowski; Sarah Dalton; Antonio Nonan; Bram Craig; Christina Speed; David Abbott; David Meldrum-Taylor; Gabriel Millos; Beto Antunez; Guy Tingos; unidentifiable party.

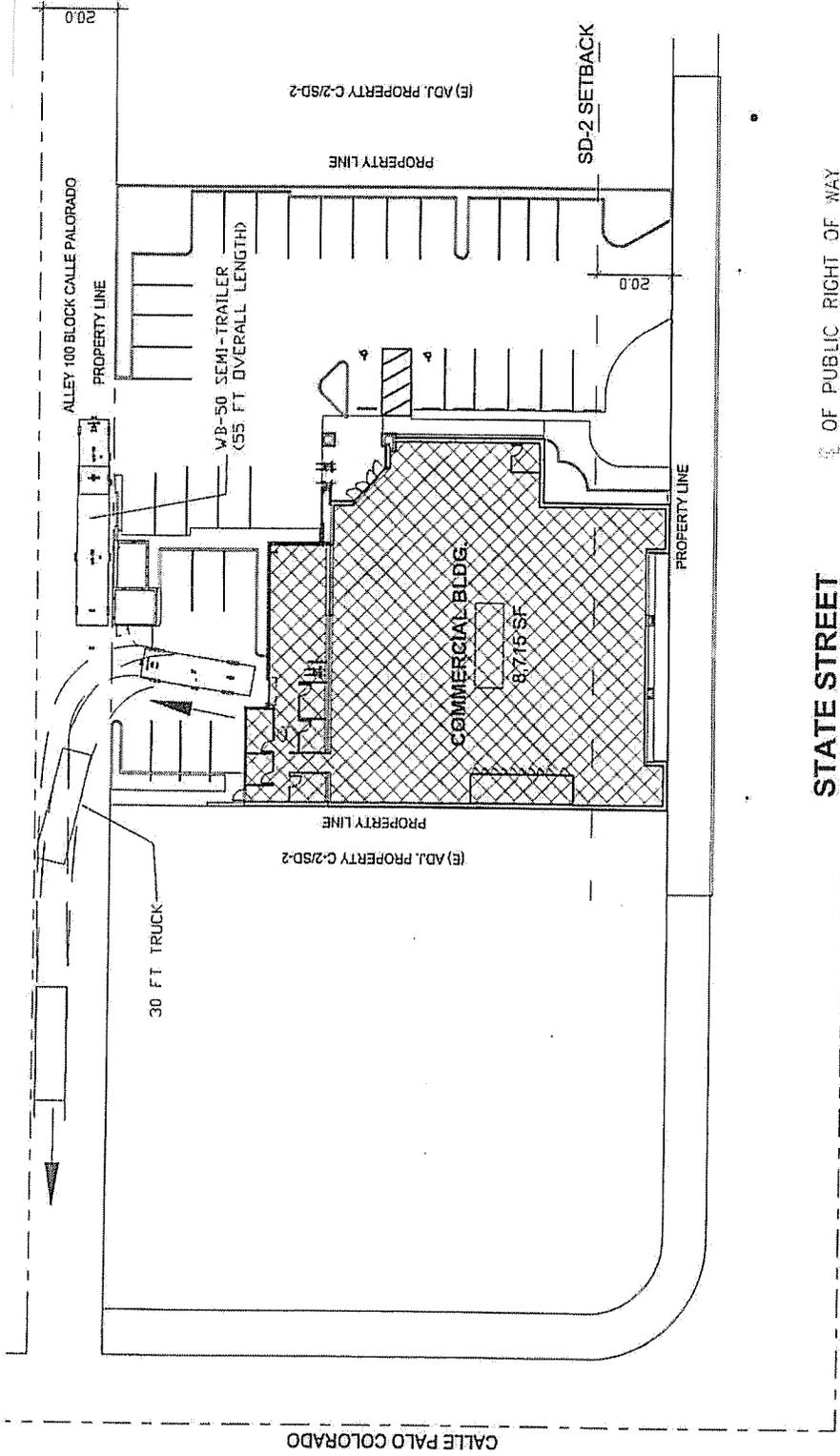
18. July 23, 2010, email communications from Stan Laband; Caryl and Steve Bowman; David and Beverly Thompson; Jennifer Leone; Gary and Tina Lemp; Adam Sand; John Glowicki.
19. July 24, 2010, email communications from Diana Wilk; David Gorbet; Mark Golden.
20. July 25, 2010, letter from Paula Westbury.
21. July 26, 2010, email communications from Marti Fletcher; Robert and Sloane Reali.
22. July 27, 2010, letter from Cathie McCammon, President, Allied Neighborhood Association.

**SANTA BARBARA**



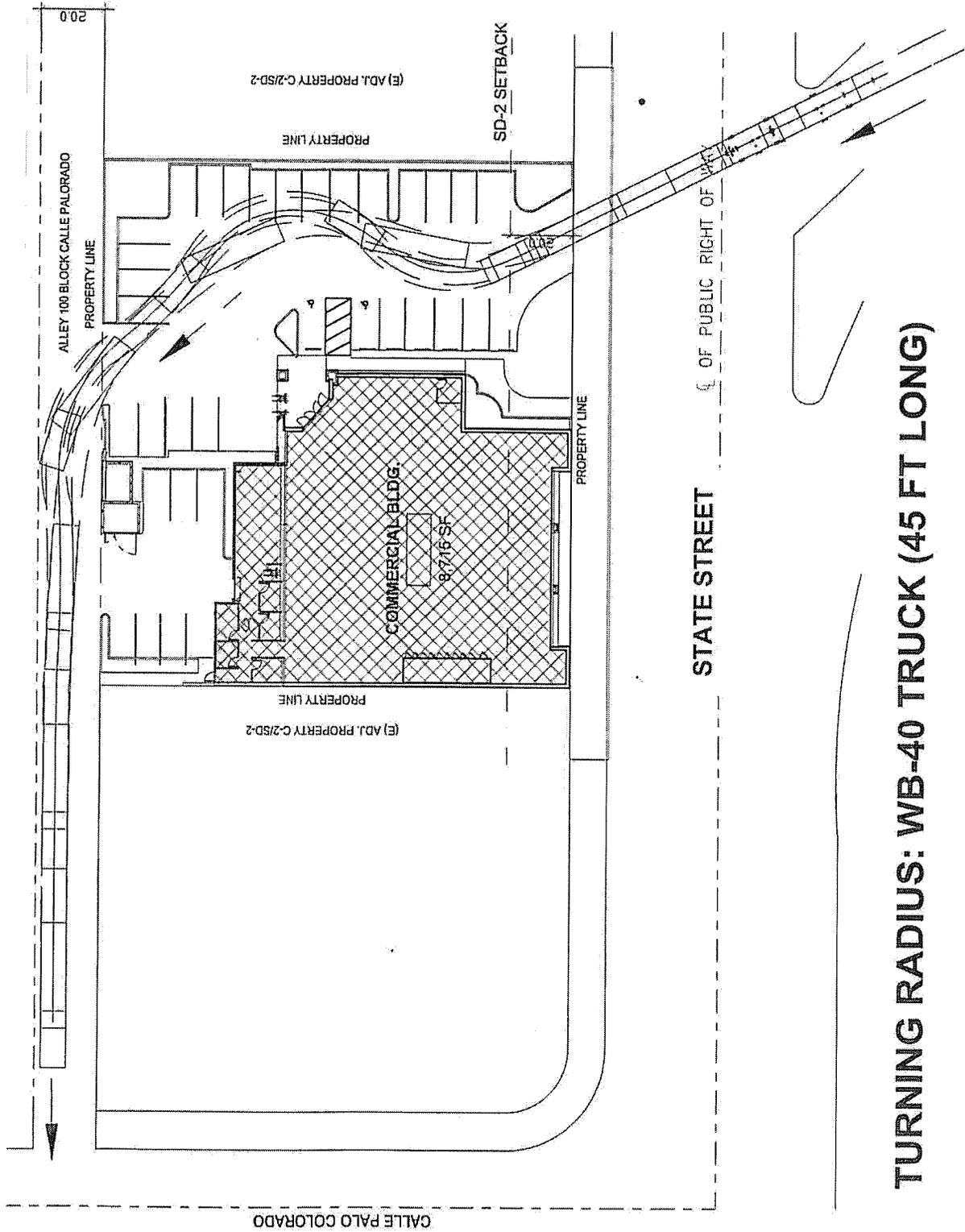
**3" X 3"  
LAMINATED  
DECAL**





**TURNING RADIUS: SU TRUCK (30 FT LONG) & SEMI-TRAILER (55 FT LONG) PARKING IN ALLEY**

**Exhibit C2**



**TURNING RADIUS: WB-40 TRUCK (45 FT LONG)**