

**FILE NUMBER:** Z190-168(JM) **DATE FILED:** December 23, 2019

**LOCATION:** Northeast side of South Fitzhugh Avenue, north of South Haskell Avenue

**COUNCIL DISTRICT:** 2 **MAPSCO:** 8 J

**SIZE OF REQUEST:** ±0.79 acres **CENSUS TRACT:** 25.00

---

**APPLICANT/OWNER:** Magdaleno Diaz

**REPRESENTATIVE:** Isaac Molina, AIA-Lakeside Architecture

**REQUEST:** An application for an amendment to existing deed restrictions [Z978-150] volunteered by the applicant, on property zoned a CS Commercial Service District.

**SUMMARY:** The existing deed restrictions require a 40-foot setback from the northeast property line, where residential adjacency exists. The purpose of this request is to remove the more restrictive setback and return the site to the CS District standard rear yard setback of 20 feet with residential adjacency.

**CPC RECOMMENDATION:** Approval, subject to amended deed restrictions volunteered by the applicant.

**STAFF RECOMMENDATION:** Approval, subject to amended deed restrictions volunteered by the applicant.

**BACKGROUND INFORMATION:**

- On September 8, 1999, the City Council passed a resolution accepting volunteered deed restrictions at the subject site which: (1) restricted the allowable uses to CR Community Retail District and a machinery, heavy equipment, or truck sales and repair use between the hours of 7:00 am and 7:00 pm; (2) required the installation of a six-foot high minimum masonry screening fence along the northeastern property line and along the front property line along South Fitzhugh Avenue; (3) required a 40-foot setback from the northeast property line for any new structures; and, (4) restricted the location of the driveway.
- The purpose of this request is to remove the more restrictive setback of 40 feet from the northeast property line and return the site to the CS District standard rear yard setback of 20 feet with residential adjacency.
- The existing 3,300-square-foot structure was constructed in 2002, according to permit applications; however, no building permit was issued. If this request is approved, the building would remain noncompliant because the structure provides 17 feet of setback from the northeast property line with residential adjacency, a deficiency of three feet. Additionally, the structure must meet all building codes to obtain a permit.

**Zoning History:** There have not been any zoning changes requested in the area in the past five years.

**Thoroughfares/Streets:**

Thoroughfare/Street	Type	Existing ROW	Proposed ROW
South Haskell Avenue	Principal Arterial	90 feet	90 feet
South Fitzhugh Avenue	Local	50 feet	50 feet

**Traffic:**

The Engineering Division of the Sustainable Development and Construction Department has reviewed the request and determined that the proposed development will not have a negative impact on the surrounding street system.

**Comprehensive Plan:**

The *forwardDallas! Comprehensive Plan* was adopted by the City Council in June 2006. The *Plan* outlines several goals and policies which can serve as a framework for assisting in evaluating the applicant’s request.

**ECONOMIC ELEMENT**

**GOAL 2.1 PROMOTE BALANCED GROWTH**

Policy 2.1.1 Ensure that zoning is flexible enough to respond to changing economic conditions.

**STAFF ANALYSIS**

**Surrounding Land Uses:**

<b>Area</b>	<b>Zoning</b>	<b>Land Use</b>
<b>Site</b>	CS with deed restrictions	Vacant building
<b>Northeast</b>	R-5(A)	Single Family
<b>Southeast</b>	CS	Auto-related
<b>Southwest</b>	CS	Auto-related
<b>Northwest</b>	CS	Auto-related

**Land Use Compatibility:**

In 1965, the subject site was zoned an I-2 Industrial District with MF-2 residential adjacency to the northeast. During the 1989 transition to Chapter 51A, the property was rezoned to an MF-2(A) District on Lot 18 to the east, and an MF-1(A) District on the remainder Lots 15-17. The lots to the east and west were zoned a CS District, as well as other lots previously zoned an I-2 District under Chapter 51 (pre-transition). At the transition time, the northeast residential lots were recategorized as an R-5(A) Single Family District. In 1999, the subject property was rezoned to a CS District, matching adjacent counterparts to the east and west, but with added deed restrictions volunteered by the applicant and property owner which: (1) restricted the allowable uses to CR Community Retail District and a machinery, heavy equipment, or truck sales and repair use between the hours of 7:00 am and 7:00 pm; (2) required the installation of a six-foot high minimum masonry screening fence along the northeastern property line and along the front property line along South Fitzhugh Avenue; (3) required a 40-foot setback from the northeast property line for any new structures; and, (4) restricted the location of the driveway.

The owner maintains ownership of the property and in 2002, erected a 3,300 square foot metal building with a 17-foot setback at the northeast property line. While working through the permitting process, a field inspection revealed noncompliance with the 40-foot setback required at the northeast property line where residential

adjacency exists and as dictated by the existing deed restrictions. The permit was not issued and subsequently expired. No building permit was issued for this structure; however, a Certificate of Occupancy was issued in 2002 for Diaz Trucking. Staff suspects that the CO likely did not include the structure and no floor area is noted on the CO. No other CO has been issued for the property or specifically for the structure. The applicant would like to lease or sell the property.

Surrounding land uses are largely auto-related to the northwest, southeast, and southwest, with residential uses to the northeast and further northwest.

The purpose of this request is to remove the more restrictive setback of 40 feet from the northeast property line and return the site to the CS District standard rear yard setback of 20 feet with residential adjacency. If this request is approved, the building would remain noncompliant because the structure provides 17 feet of setback from the northeast property line with residential adjacency, a deficiency of three feet. Additionally, the structure must meet all building codes to obtain a permit.

Staff supports the return to the 20-foot residential adjacency standard considering the zoning history of the site, surrounding uses to the east, west, and south all being auto-related as well, and due to the separation provided by the eight-foot tall solid masonry wall surrounding the property. While it would be ideal for the block to transition away from auto-related, industry-type businesses to better suit the existing residential uses to the northeast and further northwest, overall the vast majority of uses at the intersection of Haskell and Fitzhugh Avenues are auto and industry related.

**Development Standards:**

DISTRICT	SETBACKS		Lot Size	FAR	Height	Lot Coverage	PRIMARY Uses
	Front	Side/Rear					
<b>Proposed:</b> CS Commercial Service with amending DRs*	When adj. to expressway/Thoroughfare  0' others  Must maintain block continuity with R-5(A) is 20'	40' w/Res Adj per DRs  20' w/Res Adj  0' Others	No Min.	0.5 combo  0.75 all uses	45' RPS applies.	80%	Institutional and community service, retail and personal service, and office (CR District uses) and limited a machinery, heavy equipment, or truck sales and repair use.

**Market Value Analysis:**

Market Value Analysis (MVA), is a tool to aid residents and policy-makers in understanding the elements of their local residential real estate markets. It is an objective, data-driven tool built on local administrative data and validated with local experts. The analysis was prepared for the City of Dallas by The Reinvestment Fund. Public officials and private actors can use the MVA to more precisely target intervention strategies in

weak markets and support sustainable growth in stronger markets. The MVA identifies nine market types (A through I) on a spectrum of residential market strength or weakness. As illustrated in the attached MVA map, the colors range from purple representing the strongest markets to orange, representing the weakest markets. The area of request is not within an identifiable MVA category; however, it is in proximity to Category H to the northeast and further northwest, and Category I further to the south.

**Landscaping:**

Landscaping of any development will be in accordance with Article X, as amended. The request site will not trigger any landscaping because there is no increase in the total floor area with this request.

**Parking:**

The Dallas Development Code requires off-street parking dependent upon the use. No use is associated with this request. If the limited machinery, heavy equipment, or truck sales and repair use were to occupy the site in the existing 3,300-square-foot structure, one off-street parking space per 1,000 square feet of sales area (whether inside or outside) would be required, or a minimum of three spaces.

Z190-168(JM)

**CPC Action**  
**March 26, 2020**

**Motion:** It was moved to recommend **approval** of an amendment to existing deed restrictions [Z978-150], on property zoned a CS Commercial Service District, on the northeast side of South Fitzhugh Avenue, north of South Haskell Avenue.

Maker: Hampton  
Second: Carpenter  
Result: Carried: 14 to 0

For: 14 - MacGregor, Hampton, Stinson, Johnson, Shidid,  
Carpenter, Jackson, Blair, Jung, Schultz, Schwope,  
Murphy, Garcia, Rubin

Against: 0  
Absent: 1 - Housewright  
Vacancy: 0

**Notices:** Area: 200 Mailed: 28  
**Replies:** For: 0 Against: 0

**Speakers:** For: Sonya Martinez, 1524 S. Fitzhugh Ave., Dallas, TX, 75223  
Against: None

**CPC RECOMMENDED  
AMENDING DEED RESTRICTIONS**

THE STATE OF TEXAS     )  
  )     KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF DALLAS     )

**I.**

The undersigned, Magdaleno Diaz and Maria Diaz (“the Owners”) the owners of the following described property (“the Property”), being all of Lots 15, 16, 17 and 18, of City Block C/1461, of the Fair Park Addition, City of Dallas (“City”), Dallas County, Texas, and being that same tract of land conveyed to the Owners by D.D. McDonald, by deed dated January 5, 1998, and recorded in Volume 98003, Page 02908, in the Deed Records of Dallas County, Texas, and being more particularly described in Exhibit “A”, attached hereto and made a part hereof for all purposes.

**II.**

That the Property was impressed with certain deed restrictions (“Original Restrictions”) as shown in an instrument dated September 8, 1999, signed by ~~Magdaleno~~ and Maria Diaz and recorded in Volume 98003, Page 02908, of Deed Records of Dallas County, Texas, a true and correct copy of which is attached to this instrument as Exhibit “B” and made a part of this instrument.

**III.**

That the Owner does hereby remove restriction number 3 of the Original Restrictions as follows:

- ~~3. No new structure may be erected on the Property within forty (40) feet of the northeastern property line.~~

**IV.**

That the preceding amendment was made following notice and hearing before the City Plan Commission and City Council of the City as required in the Original Restrictions and notice of such public hearing was given as would have been required by law for a zoning change on the Property. The Owner must file this instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment becomes effective.

**EXISTING DEED RESTRICTIONS**

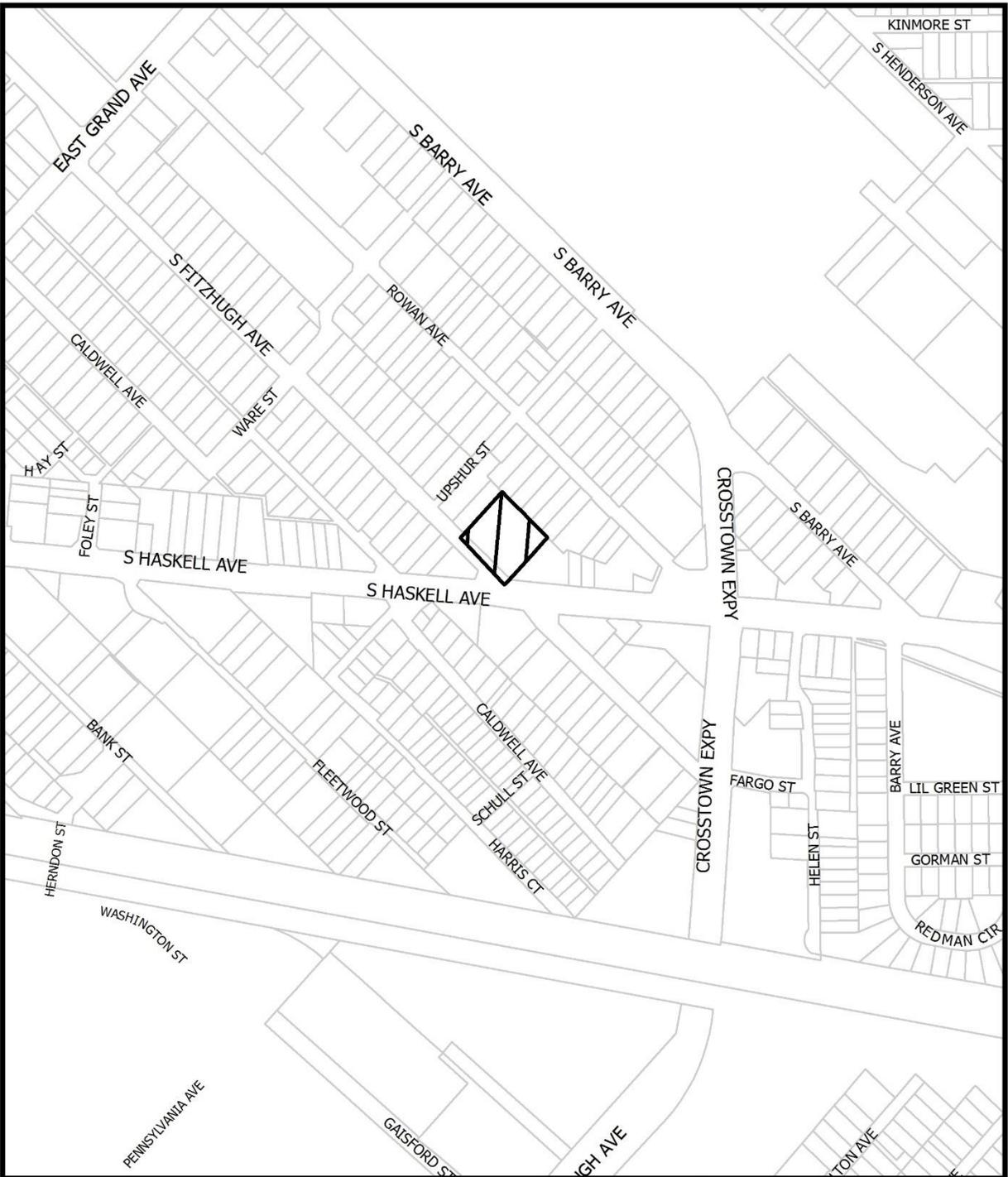
**I.**

The undersigned, Magdaleno Diaz and Maria Diaz ("the Owners") are the owners of the following described property ("the Property"), being all of Lots 15, 16, 17 and 18, of City Block C/1461, of the Fair Park Addition, City of Dallas ("City"), Dallas County, Texas, and being that same tract of land conveyed to the Owners by D.D. McDonald, by deed dated January 5, 1998, and recorded in Volume 98003, Page 02908, in the Deed Records of Dallas County, Texas.

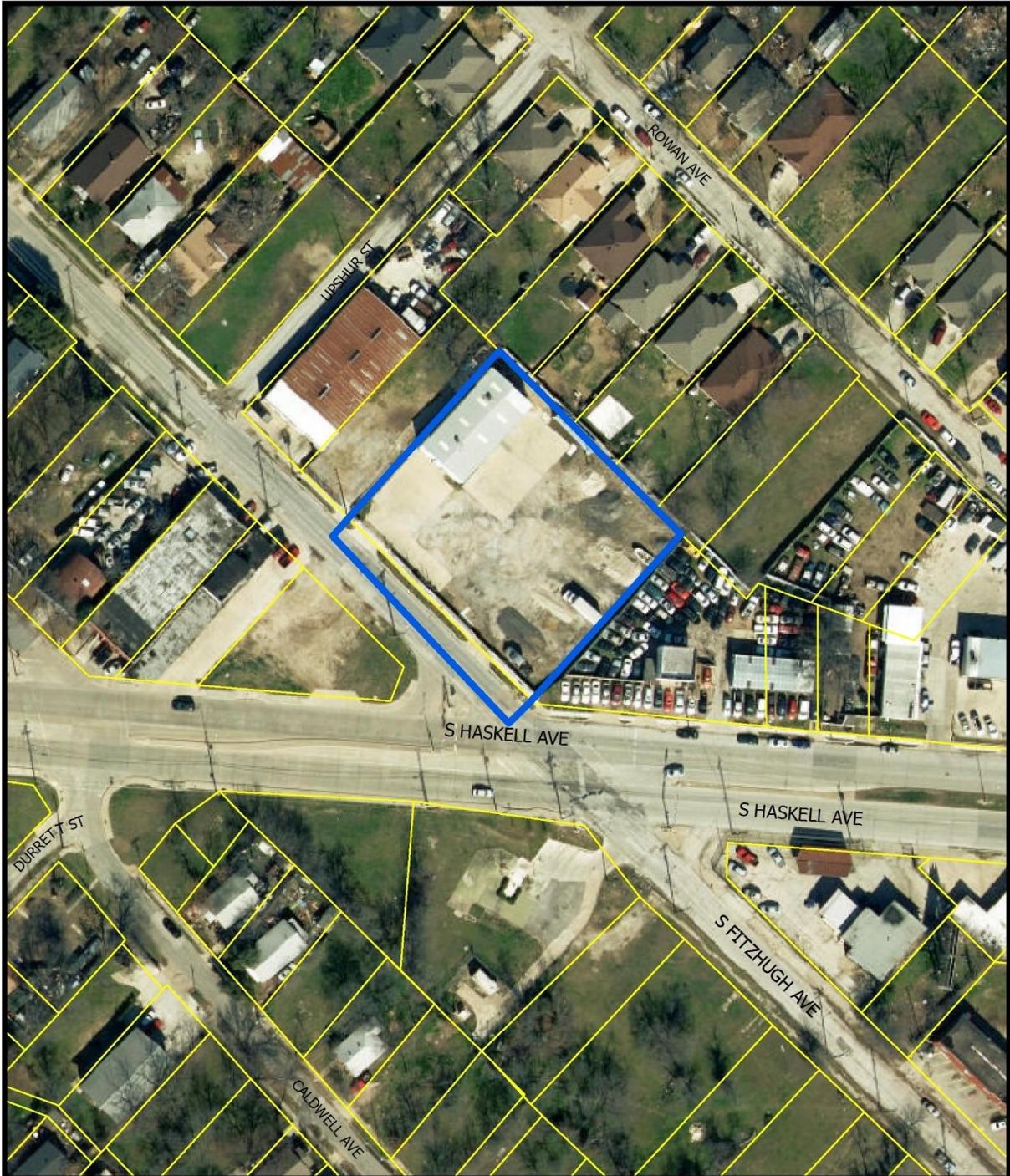
**II.**

The Owner does hereby impress all of the Property with the following deed restrictions ("restrictions"), to wit:

1. The only uses permitted on the Property are:
  - A. those uses permitted in the CR Community Retail District, as amended, and
  - B. a machinery, heavy equipment, or truck sales and repair use with operating hours between 7:00 a.m. and 7:00 p.m..
2. Prior to the submission of an application for a certificate of occupancy for a machinery, heavy equipment, or truck sales and repair use, a minimum six-foot high masonry screening fence must be erected along the northeastern property line and along the front property line along Fitzhugh.
3. No new structure may be erected on the Property within forty (40) feet of the northeastern property line.
4. The centerline of the driveway approach to the Property from Fitzhugh Avenue must be located 120 feet from the north right-of-way line of Haskell Avenue.



 1:4,800	<h2>VICINITY MAP</h2>	Case no: <u>          <b>Z190-168</b>          </u> Date: <u>          <b>1/17/2020</b>          </u>
--	-----------------------	--

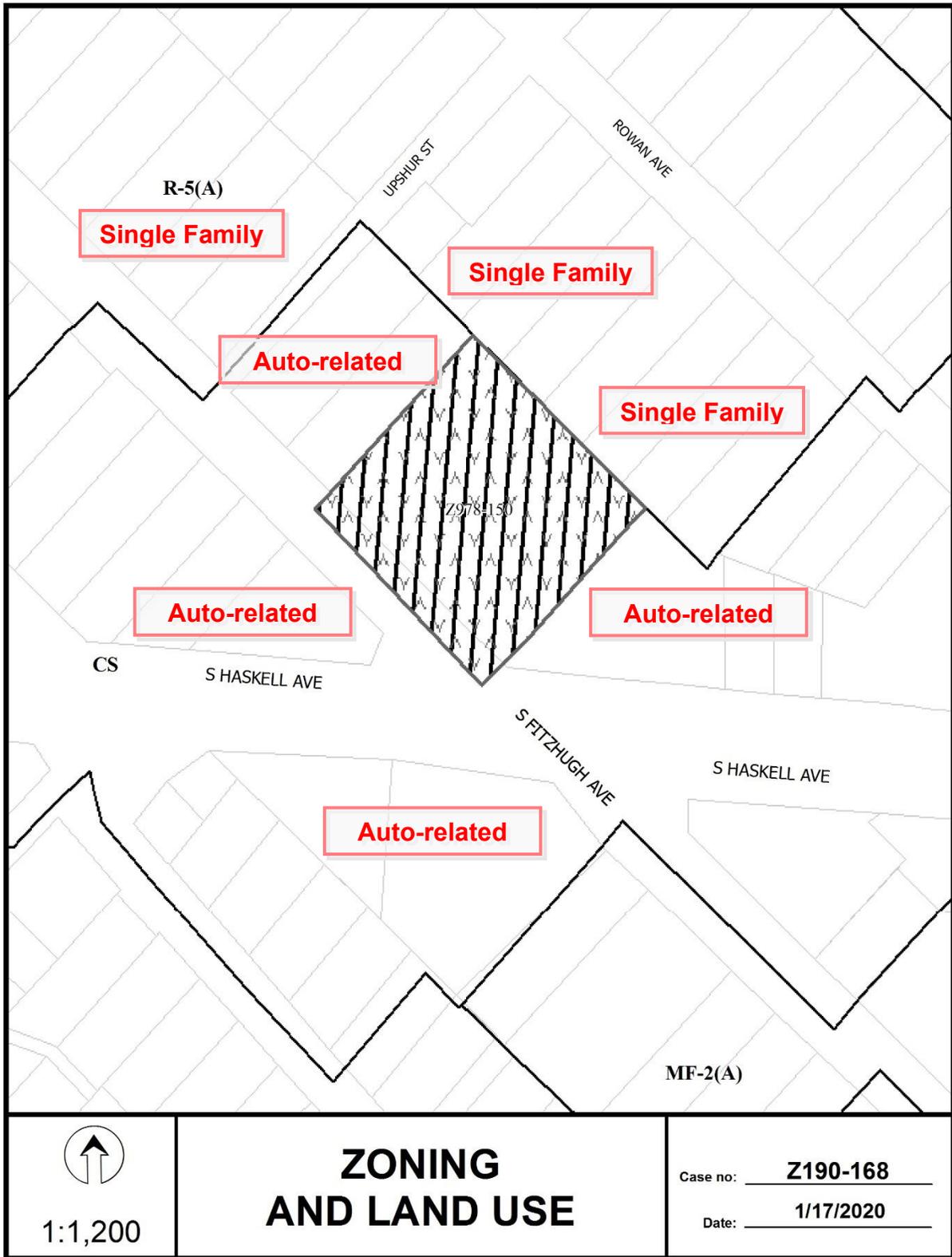


1:1,200

# AERIAL MAP

Case no:     **Z190-168**    

Date:     **1/17/2020**





Market Value Analysis A B C D E F G H I NA



1:4,800

# Market Value Analysis

Printed Date: 1/17/2020

**CPC Responses**



<u>28</u>	Property Owners Notified (35 parcels)
<u>0</u>	Replies in Favor (0 parcels)
<u>0</u>	Replies in Opposition (0 parcels)
<u>200'</u>	Area of Notification
<u>3/26/2020</u>	Date

**Z190-168**  
**CPC**



1:1,200

03/25/2020

***Reply List of Property Owners******Z190-168******28 Property Owners Notified******0 Property Owners in Favor******0 Property Owners Opposed***

<b><i>Reply</i></b>	<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	1524	S FITZHUGH AVE	DIAZ TRUCKING INC
2	1709	S HASKELL AVE	CIPRIANO JAIME &
3	1514	CALDWELL AVE	SAUCEDO ARMANDO PUENTE
4	1520	CALDWELL AVE	CLARK CATHERINE
5	1522	CALDWELL AVE	RELIABLE HOMES LLC
6	1805	S HASKELL AVE	CERVANTES EDGAR O
7	1609	S FITZHUGH AVE	NEGUSSE INVESTMENTS INC
8	1603	S FITZHUGH AVE	NEGUSSE INV INC
9	1715	S HASKELL AVE	VO TRAM N & ONG THEO V
10	1517	ROWAN AVE	ORTIZ JORGE &
11	1519	ROWAN AVE	ORTIZ JUAN &
12	1513	ROWAN AVE	QUEZADA JORGE
13	1511	ROWAN AVE	LOZANO FRANCISCO
14	1503	ROWAN AVE	GUERRERO EUGENIO
15	1507	ROWAN AVE	MARTINEZ HECTOR &
16	1820	S HASKELL AVE	CERVANTES EDGAR
17	1812	S HASKELL AVE	LANEY MICHAEL B
18	1438	S FITZHUGH AVE	VALDEZ ANTONIO &
19	1442	S FITZHUGH AVE	VALDEZ ANTONIO
20	1502	S FITZHUGH AVE	SAMUEL MILLER FIT LLC
21	1520	S FITZHUGH AVE	POLAN MATHEW
22	1439	S FITZHUGH AVE	JAHANGIRI MARIA
23	1443	S FITZHUGH AVE	HERNANDEZ JESUS CARDONA
24	1447	S FITZHUGH AVE	HERNANDEZ JEUS CARDONA
25	1702	S HASKELL AVE	PICCOLA FAMILY LTD PS THE
26	1515	S FITZHUGH AVE	PICCOLA FAMILY LTD PS

Z190-168(JM)

03/25/2020

<i>Reply</i>	<i>Label #</i>	<i>Address</i>	<i>Owner</i>
	27	1453 ROWAN AVE	JIMENEZ JUAN ANTONIO &
	28	1441 ROWAN AVE	DIAZ MARIA DEL CARMEN &