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**CITY OF ALBUQUERQUE  
CITY COUNCIL**

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**INTEROFFICE MEMORANDUM**

**TO: LUPZ Committee**

**FROM: Kara Shair-Rosenfield, Policy Analyst/Planning  
Andrew Webb, Policy Analyst/Planning**

**SUBJECT: Downtown Neighborhood Area Sector Development Plan (R-11-225) – Responses to Issues Raised at the Land Use, Planning and Zoning Committee meeting on November 30, 2011**

**DATE: January 6, 2012**

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The following concerns and issues were raised by property owners and/or their representatives during the public comment period at the November 30, 2011, LUPZ hearing on R-11-225, Adopting the Downtown Neighborhood Area Sector Development Plan as a Rank 3 Plan; Changing Existing Zoning. A discussion of each issue is provided.

- 1. Issue: 934 11<sup>th</sup> St., NW – Property owner testified that the house on her property was built as a beauty shop and that she plans to use it as a beauty shop upon retirement; proposed zoning will reduce property value significantly. Have not received notification of this proposal from the City.**

Re: Notification: Mailed notification of the first EPC hearing and first LUPZ hearing on the DNASDP were sent to the property owner address on record with the County Assessor's office. See page 939 of the EPC record.

Re: Proposed Zoning

Property History

- Currently zoned SU-2/RC (Residential Commercial): Permissively allows up to 50% of a property to be used for certain non-residential uses, including beauty shop. The other 50% of the property must contain a residential use.
- Proposed zoning SU-2/DNA-MUL (Mixed Use Light): For the subject property, conditionally allows 100% of the property to be used for certain non-residential uses, including beauty shop.
- Current land use, single family. Built as a single-family house in 1936, according to the historic building inventory (recorded in 1979).
- 1976 DNASDP land use map shows it as a single-family house.

- Historic use of property, according to the City Directories:
  - 1958: House, plus auto mechanic/garage
  - 1969-72: Realtor's office plus home
  - 1973-75: Realtor's office, beauty salon and home
  - 1976-78: Realtor's office and home
  - 1979-88: Home only
  - 1993, 1996 and 1999: Home only

Discussion: SU-2/DNA-MUL zoning is proposed to replace all existing SU-2/RC zoning for properties along and immediately adjacent to Mountain Road. The additional conditions that must be met in order to establish a non-residential use for a property that faces a local, residential street are intended to protect established residential areas by requiring a public hearing process. Per the Albuquerque/Bernalillo County Comprehensive Plan, Section II.B.5, Policy i: "Employment and service uses shall be located to complement residential areas and shall be sited to minimize adverse effects of noise, lighting, pollution, and traffic on residential environments."

The property in question is, actually, part of the residential environment, given that it is a single-family structure that faces a residential (local) street. As such, conversion of the property in the future to a non-residential use should be required to show that the use will have minimal "adverse effects of noise, lighting, pollution, and traffic" on the residential environment, i.e., it will not be injurious to the adjacent property, the neighborhood, or the community, which is the standard established in § 14-16-4-2(C)(1) for approving a conditional use.

Applying the SU-2/DNA-MUL zoning designation to the subject property as recommended in the 10.28.2010 EPC Draft but with the proposed amendments to the MUL zone contained in the 11-30-11 proposed Committee Substitute will result in the property being treated the same as similarly-situated properties. Leaving the existing zoning for this property would result in a "spot" zone.

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OWNERSHIP

REC	LP CODE	OWNER	OWNER ADDRESS	OWNER CITY	OWNER STATE	OWNER ZIP CODE	PROPERTY CLASS	TAX DISTRICT	LEGAL	ACRES
1	101005552020444920	LOTZS BRIGHT V	PO BOX 512	TADS	NM	87571	R	A14M	5 MEDVALE SUBD REPLAT OF L NO 7	0.140 95357

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**2. Issue: 819 11<sup>th</sup> St., NW – Property is currently zoned SU-2/TH (townhouse) and is proposed to be rezoned SU-2/DNA-SF (Single Family). Property owner wishes to retain TH zoning and stated that the property had been divided into townhouses at one point and that she may wish to return the property to townhouses in the future.**

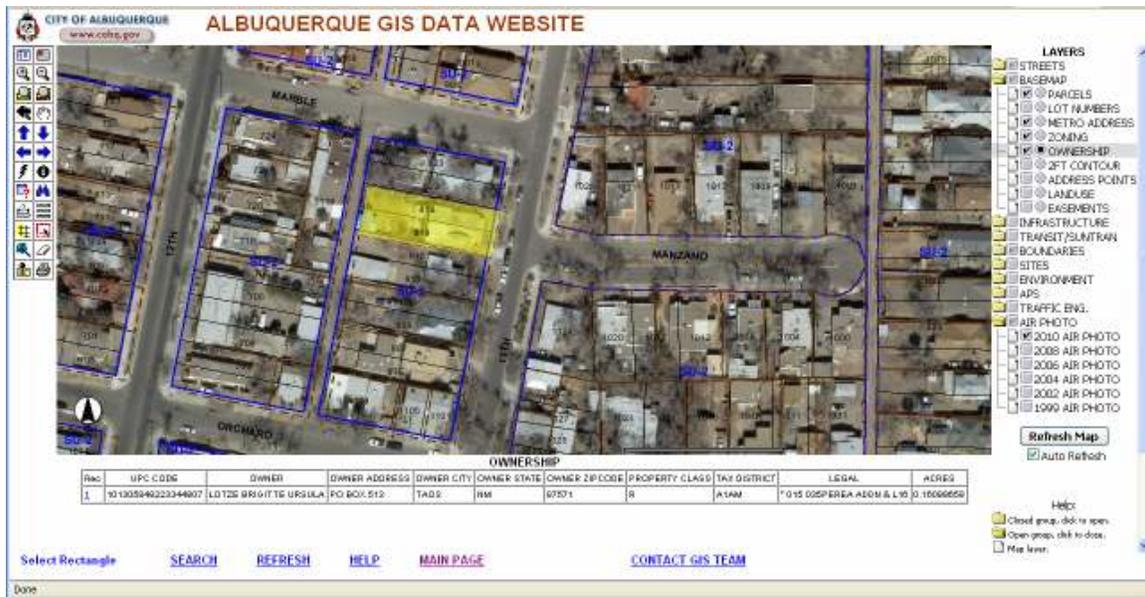
Re: Proposed Zoning

Property History

- Currently zoned SU-2/TH (Townhouse)
- Proposed zoning SU-2/SF (Single Family)
- Current land use, single family. Built in 1918. Sanborn maps from 1919-1957 show the property as containing a single-family dwelling.
- 1976 DNASDP land use map shows it as a single-family house.
- The historic building inventory form from 1979 noted two front doors but stated that it was not clear whether it was a single-family house that had been converted to a duplex or a single-family house with two doors.
- Historic use of property, according to the City Directories:
  - 1958: One resident, one address (i.e., no A, B, C, or 1/2)
  - 1969-89: One resident, one address
  - 1993: Home, plus business
  - 1996 and 1999: Home only

Discussion: Throughout the Plan area, SU-2/DNA-TH zoning is only proposed to be applied to properties that contain existing townhouse or townhouse-like development. Based on the subject property's historic and current use, it has been proposed to be zoned SU-2/DNA-SF. The proposed SU-2/DNA-SF zone would allow a secondary dwelling unit (SDU), currently defined as 650 square feet or less and containing a kitchen, to be built on a property. Staff is reviewing the SDU regulations to determine if it would make sense to amend the definition and regulations

in order to allow for the subdivision of an existing single-family structure, in lieu of adding a detached secondary dwelling unit, for properties that are currently zoned TH and that are proposed to be rezoned to SF.

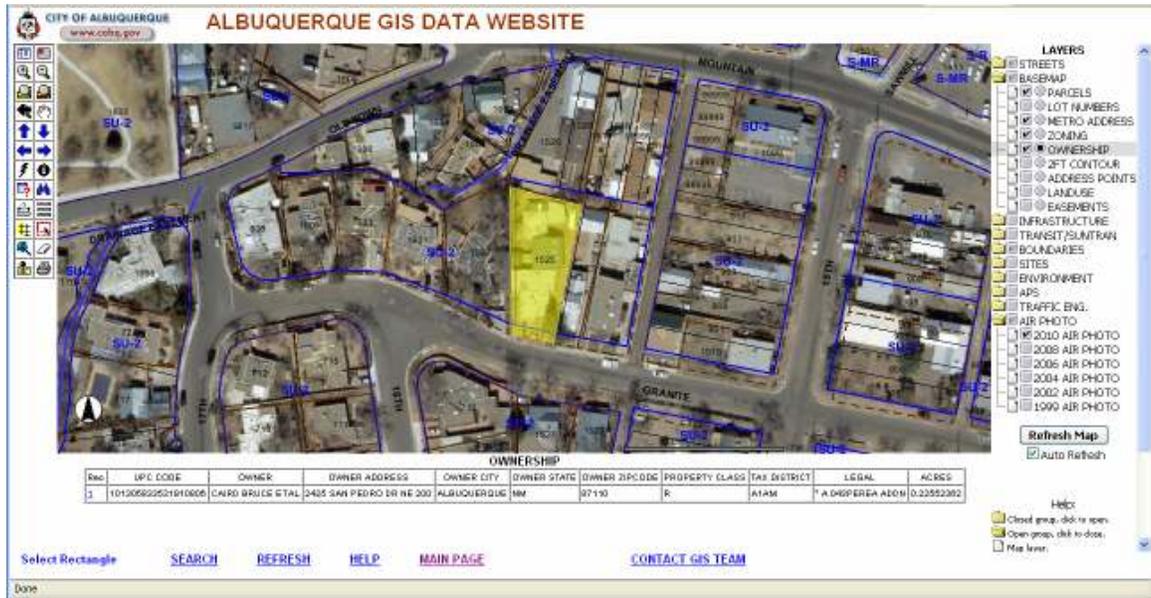


**3. Issue: 1525 Granite NW – Property is currently zoned SU-2/SF (Single Family) and is proposed to be zoned SU-2/DNA-SF (Single Family) in the updated Plan. Property owner wishes to have TH zoning because the property contains a duplex, not a single family home.**

Discussion: The subject property is in the middle of an established single-family residential area on a street with single-family detached homes. From the street, this property has the appearance of a single-family home in keeping with the character of the rest of the street. Keeping the zoning of this property SF (single family) as it has been since the 1976 DNASDP was adopted is intended to have zoning match the predominant existing land use and zoning in the area, which is single family. The existing land use and zoning of this property were discussed at the April 7, 2011, EPC hearing; that discussion can be found on page 295 of the record.

The SU-2/DNA-SF zone includes the following conditional use: “Existing non-conforming uses are to be treated as approved conditional uses.” If the duplex use existed prior to the adoption of the 1976 DNASDP, the subject property would be considered a non-conforming use and would become an approved conditional use under the proposed rezoning. This is actually more advantageous to the property than its current non-conforming status, which means that it would have to be brought into conformance with the Single Family zoning requirements within a certain number of years. Also, if the property owner can prove that the duplex existed prior to 1959, the property would be eligible for designation as a Status Established Building.

Rezoning the subject property to TH would create a “spot zone” of TH that cannot be justified under the criteria of R-270-1980.



**4. Issue: 707 and 709 Granite NW – Property is currently zoned SU-2/TH (Townhouse) and is proposed to be rezoned SU-2/DNA-SF (Single Family). Property owner wishes to retain TH zoning.**

Staff has provided an analysis of this issue in memos that were prepared for and made available at the 9-14-11 and 11-30-11 LUPZ hearings.

**5. Issue: In order to “downzone” the properties at 707 and 709 Granite NW from SU-2/TH to SU-2/DNA-SF, the City must explain why these properties are being downzoned as compared to other available properties.**

Staff is preparing a separate analysis of this complex issue.

**6. Issue: Council planning staff has “usurped” the EPC’s recommendation regarding 707 and 709 Granite NW and has not provided a summary of the EPC’s recommendation.**

Discussion: The EPC’s discussion of and recommendation regarding the zoning and proposed rezoning of the subject properties can be found in its entirety in the official record, specifically pages 240-361, EPC Minutes, April 7, 2011. Staff is not comfortable “summarizing” the EPC’s recommendation since the EPC did not provide, in its own words, a succinct explanation, or finding, to support its recommendation (Recommended Condition of Approval #81) to change the zoning of the subject properties from the proposed SU-2/SF to SU-2/TH. Individual commissioners offered statements explaining their basis for supporting the property owner’s request to retain TH zoning; these statements can be found on pages 310, 314, 328, and 347 of the record. It should be noted that Planning staff, in its EPC staff reports, provided significant analysis to

explain the justifications for the proposed rezoning of properties Plan-wide from TH to SF. However, the EPC, in countering the draft Plan's recommendation, did not address staff's analysis and the justifications staff provided in support of the Plan's recommendations and also failed to reconcile Recommended Condition of Approval #81, which would leave the subject properties with TH zoning, with Finding #18, which explains the need to rezone properties from TH to SF. Council staff, in reviewing the record, could find no logical explanation of this disconnect, which is one of the primary reasons that Council staff was prompted to pursue its own, independent analysis of the EPC's recommendation.

It should also be noted that one of the reasons provided was that the properties are surrounded on two sides by alleys, creating a distinct boundary that defines one quarter of the block. However, the maps contained in the 10.28.2010 Draft DNASDP that the EPC was reviewing mistakenly show a north-south-running alley bounding the west side of the property at 709 Granite NW, making it appear that the "quarter block" that the EPC recommended changing to TH instead of SF is separated from the rest of the block. Staff feels that it is important to note this issue since it became, at least partially, the basis for justifying TH rather than SF zoning at this location. This mistake, which was not corrected at the hearing, is repeated during the EPC hearing numerous times, including on pages 268, 281, and 348.

With respect to the EPC's role in the Sector Development Plan approval process, § 14-16-4-3(C)(3) provides that "Only the City Council shall approve Sector Development Plans for areas which are not entirely zoned R-D or PC." The EPC is a recommending body with respect to the DNASDP. In fact, during the April 7, 2011, EPC hearing on the DNASDP, some members of the Commission specifically commented that they felt that certain issues should be further considered by both Planning and Council staff, acknowledging that their recommendations would be further reviewed, analyzed, and refined as the adoption process moves forward (see pages 315 [Siegel] and 339 [Peterson] of the record).

In its 9-30-11 memo to the LUPZ Committee titled "Downtown Neighborhood Area Sector Development Plan (R-11-225) – Discussion of Plan Amendment Requests and Preliminary Recommendations," staff explained the following in the introductory paragraphs of the memo: *"At its April 7, 2011, hearing, the EPC adopted twelve recommended Conditions of Approval amending the Proposed Zoning Map contained in the 10.28.2010 draft. Unfortunately, there was little, if any, substantive explanation of or justification per Resolution 270-1980 (which establishes the policies for justifying zone map amendments) provided for the recommended changes.*

*"Council staff felt it appropriate to provide an analysis of each of the individual requested amendments to the Sector Plan and try to substantiate, with specific policy citations, whether or not the requests are justified per R-270-1980. What follows is an analysis of each of the twelve recommended Conditions of Approval by the EPC related to individual plan amendment requests..."*

What followed in that memo was an analysis of the EPC's recommendation to change the zoning designation of the subject properties from SF, as proposed in the 10.28.2010 draft, to TH. The analysis concluded that based on the requirements of R-270-1980 and applicable policies of the Comprehensive Plan, the proposal to rezone the subject properties to SF was justified.

Staff believes it is more accurate to characterize its analysis of and counter-recommendation to the EPC's recommendation as an objective, unbiased review and informative application of policy rather than "usurpation." Like the EPC, staff serves only in a recommending capacity to the LUPZ Committee and City Council and desires to provide the most informed and policy-based recommendations possible.

**7. Question: What makes someone a "planner"? Do they have to be licensed? Is there an exam?**

Response: The staff persons and consultants who have worked on developing and reviewing the DNASDP have different educational and professional backgrounds. Some "planners" are certified by the American Institute of Certified Planners (AICP). AICP certification requires minimum educational attainment, professional experience, and passage of a written exam. Jim Strozier and Jackie Fishman of Consensus Planning, Inc., the consultants who worked with Planning Department staff to draft the DNASDP, are AICP certified. Petra Morris, project manager and Planning Department staff member, earned her Master's degree in Community and Regional Planning from the University of New Mexico. Kara Shair-Rosenfield, Policy Analyst/Planning, earned a B.A. in Architectural History & Theory, *summa cum laude*, from the University Professors Program at Boston University and has more than 5 years of experience working as a policy analyst on planning-related issues for the Albuquerque City Council. Andrew Webb, Policy Analyst/Planning, has completed his Master's coursework in the Community and Regional Planning program at UNM. All members of City staff working on the DNASDP meet the job qualifications required for their respective positions.

**8. Issue: Is allowing a secondary dwelling unit in the Single Family zone consistent with that zone's intent and the Plan's goal of maintaining the single-family character of the neighborhood?**

Discussion: This issue is discussed from a legal perspective in a memo from Bruce Thompson, Policy Analyst, to the LUPZ Committee that was provided at the November 30, 2011, LUPZ meeting. From an urban planning and design perspective, the proposal to allow secondary dwelling units within the DNASDP area is consistent with the established development form and pattern of the neighborhood and with the proposed new regulations for properties within the DNASDP area.

First, it is important to note that secondary dwelling units are allowed in all residential zones, not just the SF zone. While, arguably, allowing a secondary dwelling unit on SF-zoned property increases the density of the SF area of the neighborhood, densities have the potential to commensurately increase in the TH and MR zones, as well, since secondary dwelling units are also allowed in these zones. Additionally,

secondary dwelling units are required to be located to the rear of the primary dwelling and are not to exceed 650 square feet – these requirements ensure that the neighborhood’s character – which is defined by more than just density as calculated by number of dwelling units – is respected and maintained. Maintaining the single-family character of the neighborhood is primarily accomplished through design standards related to fenestration, articulation, building orientation, etc.

Furthermore, allowing secondary dwelling units can help broaden the range of affordable housing options, respond to changing family needs, acknowledge the trend towards smaller households, and provide a means for residents to remain in their homes as they age, which contributes to the stability of the neighborhood. These goals are all consistent with both the DNASDP’s stated goals and objectives and with other City policies.

**9. Issue: Property owner wants to be able to continue to have a bail bond office operate on his property located on the NW corner of 5<sup>th</sup> St. and Granite NW.**

Discussion: The subject property is proposed to be rezoned SU-2/DNA-MUM (Mixed Use Medium), which would permissively allow bail bond office as a use, provided certain criteria are met. The subject property meets the required criteria as proposed in the post-EPC/Committee Substitute versions of the Plan. However, staff has prepared an amendment for the LUPZ Committee/Council’s consideration that would change one of the criteria and require a property to be located within 500’, rather than 1,000’, of the courthouses in order to be eligible to have bail bond office as a permissive use. The majority of the subject property is located within 500’ of the courthouses, but the location of the bail bond office, itself, on the property is just beyond 500’. Staff recommends adding language to both the proposed Committee Substitute and the recommended amendment that clarifies that as long as a portion of the property is within the adopted buffer zone measured from the courthouses, bail bond office use is allowed on the property. Staff is recommending that the full City Council decide whether the buffer zone will be 1,000’ or 500’.

**10. Issue: Apartment complex at 9<sup>th</sup> and Tijeras (902 Tijeras NW) – what changes are proposed to this property, and how will those changes affect the use of the storage units on the property? What kind of notification of the proposed changes was provided by the City to property owners?**

Re: Notification: Mailed notification of the first EPC hearing and first LUPZ hearing on the DNASDP were sent to the property owner address on record with the County Assessor’s office. See page 922 of the EPC record.

Re: Proposed Zoning: The subject property is currently zoned SU-2/HDA (High Density Apartments). The proposed new zoning is SU-2/DNA-MR (Mixed Residential), which allows essentially the same uses (up to 30 dwelling units per acre) and contains the same or very similar development requirements (parking, open space, setbacks, etc.) as the

SU-2/HDA zone. With regard to the storage units, if the storage units are for the use of the tenants of the apartments on the property, they are allowed under both the current and proposed zoning. Use/rental of storage units by off-site tenants is not an allowed use under the existing zoning, nor would it be allowed under the proposed zoning.