
**CITY OF ALBUQUERQUE
CITY COUNCIL**

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 Non-Zone-Change Issues Raised Prior to and/or at the Land Use, Planning and Zoning Committee meeting on August 10, 2011

DATE: September 14, 2011

The following concerns and issues were raised by property owners and/or their representatives, either in writing prior to the August 10, 2011, LUPZ hearing and/or during the public comment period at the August 10, 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 and response to each issue is provided.

1. Issue: Number and location of public meetings on the development of the Sector Development Plan.

Response: The first speaker at the August 10 LUPZ hearing was representing his parents, who, according to the speaker, own a property that is proposed to be zoned SU-2/SF (Single Family). The speaker asked if there were going to be any open meetings within the Plan area to which he could take his parents, and the Committee requested that staff contact the speaker to set up a meeting with him and his parents to address any concerns they have about the Plan and proposed zoning. Staff has twice attempted to contact the speaker to set up a meeting but has yet to hear back.

Regarding public meetings and outreach during the development of the Plan, Planning staff provided the following information:

- 3 public meetings (January 16, 2010 – Hotel Blue; February 20, 2010 – Manzano Day School; September 25, 2010 – Mid-Region Council of Governments office)
- 19 Steering Committee meetings
- 3 Environmental Planning Commission hearings (December 2, 2010; March 10, 2011; April 7, 2011)
- 1 Land Use, Planning and Zoning Committee of the City Council hearing to-date (August 10, 2011)

- Mailings sent for first and third public meetings- to all property owners and residential addresses (to try and get renters as well as owners).
- Mailing to all legal owners for the first EPC hearing and for the August 10, 2011, LUPZ hearing.
- Flyers distributed for all three public meetings.
- Newspaper legal advertisements for EPC and LUPZ.
- Anyone who signed up or called/emailed the City project manager at any point is on the master emailing list and receives regular updates on the process.
- Two city websites with same info maintained throughout the process - one on the City Council website, and one on the Planning Department's website.
- Regularly featured in the Office of Neighborhood Coordination newsletter.
- Featured in Vecinos, the Downtown Neighborhood Association's newsletter, which is delivered to every front door in the neighborhood.

2. Issue: Request to allow an existing paid parking lot on the northwest corner of 7th Street and Keleher Street NW to continue to be used as a paid parking lot.

Response: Parking lots became a prohibited use in the SU-2/HDA zone of the DNASDP, which is the zoning of the property in question, in 1999. R-99-148 (Enactment Number 35-1999) amended the DNASDP as follows: "Section 1. SU-2(HDA), 3. Parking lots are not allowed. Landscaping. Parking lots established prior to the effective date of this amendment are allowed to remain, as regulated by standards for parking lots in the O-1 zone, based upon a site plan submitted for approval of the Zoning Enforcement Officer within 60 days of adoption of this amendment, to include landscaping. Landscaping shall be installed within 60 days of site plan approval, and subsequently maintained according to the approved site plan."

If the owner of the subject property complied with the provisions of R-99-148, that is to say, if he 1) could prove that the parking lot was established prior to the adoption of the amendment (March 1, 1999), 2) submitted and had approved a landscaping plan within 60 days of adoption of the amendment, and 3) installed the landscaping per the approved landscaping plan within 60 days of that approval, then his parking lot would have been considered a non-conforming use. The 2011 DNASDP proposes to make all non-conforming uses approved conditional uses, which means that the parking lot would be allowed to remain in use, subject to the provisions for conditional uses contained in Section 14-16-4-2 ROA 1994 (the Special Exceptions section of the Zoning Code). If the property has not complied with the requirements of R-99-148, it would currently be considered an illegal use and would remain so under the 2011 DNASDP.

3. Issue: Rear Yard Setbacks for Buildings Over 26' in Height – Request to require a minimum 15' rear yard setback in the SU-2/CC, SU-2/MUM, SU-2/OR, and SU-2/MR zones.

Response: Staff is unclear why this request is being made. All of the referenced zones already contain a minimum rear yard setback requirement of 15 feet. The SU-2/MUM zone goes even further, providing that non-residential uses adjacent to properties zoned SU-2/SF or SU-2/TH shall have a minimum rear yard setback of 20 feet, and the SU-2/CC zone goes further, still, requiring a 25-foot rear yard setback from SU-2/SF- and SU-2/TH-zoned properties.

There may be some confusion because there was discussion during the April 7 EPC hearing about reducing all rear yard setbacks to zero feet, but an actual condition was never offered to approved.

Unless staff has misunderstood the issue being raised, no change appears to be necessary.

4. Issue: SU-2/NC Clarifications – Request to add the following regulation for Building Height to the zone: “D. Building Height. 1. The maximum building height is 26 feet. Buildings shall comply with the Building Height Limitation to Preserve Solar Access, §14-16-3-3(A)(7) of the Comprehensive City Zoning Code.”

Response: Where the sector plan is silent regarding specific regulations, such as height, the regulation contained in the referenced zoning district (in this case C-1) in the Comprehensive City Zoning Code becomes the default regulation. The only reason to include a regulation for height in this SDP is if it departs from that which is contained in the Zoning Code. The height limit contained in the C-1 zone is 26 feet.

Regarding the second part of the proposed regulation, which deals with the preservation of solar access, §14-16-3-3(A)(7) only applies to “residential zones.” Since the SU-2/NC zone is not a “residential zone,” this section of the Zoning Code has no applicability. Staff has, in fact, recommended removing this reference from other zones in the Draft Plan that are not purely residential zones.

In conclusion, staff does not feel that it is necessary to add a “Building Height” section to the SU-2/NC zone.

5. Issue: For townhouses developed in the SU-2/MR zone, delete or greatly reduce the requirement for the percentage of open area of the building facades for west facing facades.

Response: The “Windows and Doors” requirement for townhouses in the SU-2/MR zone is as follows: “All building facades that face a public street shall contain a minimum of 30% of their surfaces in windows and/or doors. Garage doors shall not be counted towards meeting this requirement.” The commenter argues, “‘Open’ west facing facades gain a phenomenal amount of heat from the low west sun during the summer months. This heat gain increases the cooling load by a very large amount. Such openings are not good environmental design.”

There is nothing that would prevent west-facing openings from being shaded by features such as porches or awnings. Additionally,

there is a requirement for providing a minimum of one street tree per townhouse dwelling unit; a properly-sited street tree can also function to provide ample shade for window openings. This requirement can be found in all of the zones of the 2011 DNASDP, and staff does not agree with removing it from this zone.

6. Issue: SU-2/MUM Setbacks – Request to require a 15’ setback from the centerline of an alley.

History: The original draft that was submitted to the EPC (EPC Draft 10.28.2010) contained a required minimum rear yard setback of 15 feet and minimum off-street parking setback of 10 feet in the SU-2/MUM zone. One of the EPC commissioners suggested changing this to allow the rear yard and off-street parking setbacks adjacent to an alley to be zero (0) feet. Planning staff agreed with the concept but proposed that at least a 5-foot setback be maintained in order to allow adequate space for vehicular maneuvers. The EPC chose to change staff’s recommended condition from 5 feet to 0 feet based on the argument from one commissioner that the 5-foot setback would be “an invitation to weeds and very little else” and that “to require a five-foot setback is mostly to require wasted space” (see complete record, EPC Minutes, April 7, 2011, p.331).

The request from the Downtown Neighborhood Association to require a 15’ setback from the centerline of an alley in the SU-2/MUM zone is based on the following argument: “Zero rear setbacks along alleys present some problems in that the widths of alleys in our neighborhood vary. It may be difficult for rescue or utility vehicles to maneuver and impossible for someone to make a turn into a garage in some areas without a setback. We believe the setback along the alleys should remain consistent throughout the plan and not differ for MUM along Lomas, 5th and 6th streets.”

Response: In many locations that are proposed to be zoned SU-2/MUM, existing buildings have zero setback from the platted alley and, in some cases, even appear to encroach into the alley. Staff agrees that alley widths in the neighborhood vary and that preserving adequate space for rescue and other vehicles to maneuver is important. However, requiring a 15’ setback from the centerline of the alley would be excessive. (A similar regulation in the SU-2/SF and SU-2/TH zones requires only a 5-foot setback for attached or detached garages off an alley.)

Planning staff’s recommendation of requiring a minimum 5-foot setback adjacent to alleys was based on the following: on average, platted alleys in the DNA are 16’ wide. Requiring a minimum 5-foot setback on either side of that alley will result in a 26’-wide right-of-way, which is the width of an average local street and will, therefore, be able to accommodate standard vehicular maneuvers.

Council planning staff agrees with Planning staff’s reasoning and recommendation and has incorporated this proposed change (i.e., required minimum 5-foot setback adjacent to alleys) into the red/blue/green-line Committee Substitute.

7. Issue: SU-2/MUM Open Space Requirement – Request to increase to a minimum 100 square feet per dwelling unit.

History: The original draft that was submitted to the EPC (EPC Draft 10.28.2010) contained a minimum Usable Open Space requirement in the SU-2/MUM zone of 500 square feet per dwelling unit. Prior to the April 7, 2011, hearing on the DNASDP, Planning staff recommended revising this requirement by reducing the amount of open space required to 360 square feet per dwelling unit for properties with alley access or 500 square feet per dwelling unit where alley access for garages doesn't exist, which is similar to the Zoning Code's usable open space requirement in the R-T (Townhouse) zone. The EPC recommended reducing this requirement to 30 square feet per dwelling unit based on the per-dwelling unit requirement for multi-family development found in the East Downtown (EDo) Regulatory Plan.

The request from the Downtown Neighborhood Association to increase the open space requirement in the SU-2/MUM zone is based on their belief that 30 square feet per unit is "inappropriate to maintain the character of the area along the streets where MUM is proposed." They cite the lack of parks along Lomas as one of the reasons that more on-site open space should be required in this zone.

Response: Council planning staff recommends two changes to the usable open space requirement in the SU-2/MUM zone. First, Council staff agrees that 30 square feet per dwelling unit in this area, where public open spaces don't exist, is too low and that a minimum of 100 square feet per dwelling unit is a reasonable compromise. Additionally, the open space regulation as currently written doesn't contain a requirement for non-residential development, which is likely what will develop, at least in part, in the SU-2/MUM zone. Council staff recommends adding a requirement for usable open space to this zone for non-residential development that follows the requirement contained in the Zoning Code's SU-1/MX (Mixed-Use) zone, which is similar in intent to the SU-2/MUM zone. The SU-1/MX zone provides the following for the usable open space requirement: "A minimum 10% of the site area shall be designated as usable open space in the form of patios, plazas, exterior walkways, balconies, roof decks or courtyards."

The following change reflecting what is described above has been incorporated into the red/blue/green-line Committee Substitute:
SU-2/MUM Zone

L. Usable Open Space

1. The usable open space requirement for residential development is 100 square feet per dwelling unit, which may be satisfied through features such as balconies and private roof-top gardens.

2. A minimum 10% of the site area shall be designated as usable open space for non-residential development and may satisfied through features such as patios, plazas, exterior walkways, balconies, roof decks or courtyards.

8. Issue: SU-2/CC Open Space Requirement – Request to increase to a minimum 50 square feet per unit.

History: The original draft that was submitted to the EPC (EPC Draft 10.28.2010) did not specify a minimum Usable Open Space requirement in the SU-2/CC zone and would, therefore, have defaulted to the R-3 requirement (since the CC zone corresponds to the Zoning Code's R-3 zone), which is "200 square feet for each efficiency or one-bedroom dwelling unit, 250 square feet for each two-bedroom dwelling unit, and 300 square feet for each dwelling unit containing three or more bedrooms." Prior to the April 7, 2011, hearing on the DNASDP, Planning staff recommended reducing the usable open space requirement in the SU-2/CC zone as follows in order to provide a more urban standard: "The usable open space requirement is 150 square feet per efficiency or one bedroom or 200 square feet per two bedroom or more." The EPC recommended reducing this requirement to 30 square feet per dwelling unit based on the per-dwelling unit requirement for multi-family development found in the East Downtown (EDo) Regulatory Plan.

The request from the Downtown Neighborhood Association to increase the open space requirement in the SU-2/CC zone is based on the following rationale: "The requirement can be lower than in the MUM zone since Central is a Major Transit Corridor where somewhat higher density development is appropriate and because there is nearby public park space to offset a relatively small amount of private open space. However, in keeping with the moderate levels of density and height allowed in the CC zone, we recommend that the open space requirement be raised to at least a minimum of 50 square feet per unit."

Response: Council planning staff recommends two changes to the usable open space requirement in the SU-2/CC zone. First, Council staff agrees that 30 square feet per dwelling unit in this area, where public open spaces are limited, is too low and that a minimum of 50 square feet per dwelling unit is a reasonable compromise. Additionally, the open space regulation as currently written doesn't contain a requirement for non-residential development, which is likely and hopefully what will develop, at least in part, in the SU-2/CC zone. Council staff recommends adding a requirement for usable open space to this zone for non-residential development that follows the requirement contained in the Zoning Code's SU-1/MX (Mixed-Use) zone, which is similar in intent to the SU-2/CC zone. The SU-1/MX zone provides the following for the usable open space requirement: "A minimum 10% of the site area shall be designated as usable open space in the form of patios, plazas, exterior walkways, balconies, roof decks or courtyards."

The following change reflecting what is described above has been incorporated into the red/blue/green-line Committee Substitute:

SU-2/CC Zone

L. Usable Open Space

1. The usable open space requirement for residential development is 50 square feet per dwelling unit, which may be satisfied through features such as balconies and private roof-top gardens.

2. A minimum 10% of the site area shall be designated as usable open space for non-residential development and may be satisfied through features such as patios, plazas, exterior walkways, balconies, roof decks or courtyards.

9. Issue: SU-2/MUL Clarifications – Request to further restrict non-residential uses by requiring proof that non-residential uses have existed for 10 of the last 50 years rather than the EPC’s proposal of 6 of the last 10 years.

History: The original draft that was submitted to the EPC (EPC Draft 10.28.2010) required the following: “The subject property contains a building that had a non-residential use for a minimum of the past 10 years.” The EPC recommended changing this to “...a minimum of 6 of the past 10 years” in order to make the requirement less burdensome for property owners by accounting for vacancy periods due to the tough economic times (see complete record, EPC Minutes, April 7, 2011, p. 335).

Response: Staff agrees with the recommendation to change the requirement to 10 of the last 50 years, which matches the requirement for properties on the north side of Mountain Road, which are in the Sawmill/Wells Park Sector Development Plan. This change has been incorporated into the red/blue/green-line Committee Substitute.

10. Issue: Remove the Lot Size Requirement for Townhouses in the SU-2/MR (Mixed Residential) zone.

Response: Staff does not agree with completely removing the lot size requirement for townhouses in the SU-2/MR zone but agrees that, in order to recognize the urban transition character of the SU-2/MR area, the lot size requirement for townhouses in this zone should be reduced from 2,000 square feet to 1,500 square feet. Staff believes that this is a reasonable compromise because, while the SU-2/MR zone provides opportunities for medium-density residential development, there is supposed to be a mix of residential types, including some lower-density development. If the lot size requirement were to be removed entirely, even very small lots, which are more appropriate for single-family/single unit development that currently exists in the area proposed to be SU-2/MR, could end up with multiple units crammed onto the lot. This proposed change has been incorporated into the red/blue/green-line Committee Substitute.

11. Issue: Non-Conforming Uses language needs to be clarified.

Response: Council legal staff has prepared a memo in response to this issue and agrees that the Non-Conforming Uses regulation in the Plan is somewhat ambiguous and should be clarified. Council planning staff is working with legal and Code Enforcement staff to develop language that will clarify this regulation and the relationship between the 2011 DNASDP and §14-16-3-4.

12. Issue: SU-2/MUL Clarifications – Request to further restrict non-residential uses by prohibiting non-residential uses for properties that face a local street (8th, Forrester, and 11th).

Response: The SU-2/MUL regulations already limit non-residential uses for properties that face a local street to a conditional use. Staff recommends requiring that one of the three conditions that has to be met in section A.3 of the SU-2/MUL zone be required in section C.1 of the SU-2/MUL zone. That is to say, in order to be eligible to apply for a conditional use for a non-residential use for a property facing a local street in the SU-2/MUL zone, a property owner would first have to establish that the property meets any of the three conditions established in section A.3.

13. Issue: Bail Bonds Offices.

History: Opposing concerns have been expressed regarding bail bonds offices. On the one hand, neighborhood residents and the Downtown Neighborhood Association (DNA) have expressed that they would prefer more restrictions on, if not outright prohibition of, bail bonds offices, which they feel have been encroaching into the neighborhood and are incompatible with the primarily residential character of the area. The DNA's August 9 letter to the LUPZ committee articulates: "The DNA originally requested that the sector plan prohibit bail bond businesses entirely in the sector plan area. These businesses are not typical office uses. They operate for extended hours, sometimes 24-hours a day, usually have brightly lit signs that disturb neighbors and are out of compliance with current sign regulations, and by nature they are doing business with people who are in trouble with the law. These attributes are not compatible with residential uses."

On the other hand, one speaker (who acknowledged that he doesn't own property or operate a business within the boundaries of the DNASDP) at the August 10, 2011, LUPZ hearing expressed that he feels that the regulations in the 2011 DNASDP unfairly discriminate against a certain type of business. He also stated that the bail bonds industry is regulated by the State of New Mexico and seemed to suggest that the City has limited authority to place restrictions on bail bonds businesses.

The original draft of the DNASDP that was submitted to the EPC (EPC Draft 10.28.2010) proposed to allow bail bond offices as a conditional use in certain zones (SU-2/MUL, SU-2/MUM, SU-2/NC, and SU-2/CC), subject to the following criteria: (1) must be located on a street classified as collector or higher, (2) not permitted on a block face with more than 30% residential uses, (3) not located within 500' of another bail bond office, (4) the number of employees is limited to 5, and (5) the hours of operation are limited to 7 AM to 10 PM. During the EPC review process, criterion (3) was changed to "Shall not be located further than 1,000 feet from the Metropolitan Courthouse, Bernalillo County Courthouse, or Federal Courthouse buildings" and criterion (5) was removed entirely. Also, "bail bond" was moved from

being a conditional use to being allowed as a permissive use in the SU-2/MUM and SU-2/NC zones but would remain a conditional use in the SU-2/MUL and SU-2/CC zones.

Numerous people have requested, both in writing and at the August 10 LUPZ hearing, that criterion (3) be amended to restrict bail bond offices to within 500' of the courthouses, citing concerns that the 1000' radius would allow an incompatible use to expand too far into residential areas.

Response: Council legal staff has provided a separate memo to the LUPZ Committee in response to the latter concern dealing with state law and preemption; that memo concludes "The city is not preempted from regulating the location and hours of operations of bail bond businesses."

From the perspective of land-use planning, Council planning staff believes that the Rank 1 Comprehensive Plan supports limiting the location of bail bond offices to within 500' of the courthouses. Specifically, Section II.B.5 Policy i provides the following: "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." Clearly, this policy establishes the need for appropriate separation between residential and non-residential uses and deters the intrusion of non-residential uses that create negative impacts into residential environments. Including a regulation in the 2011 DNASDP to limit bail bond offices to within 500' of the courthouses is consistent with applicable polices set forth in the Comprehensive Plan.

This recommended change is not included in the red/blue/green-line Committee Substitute but will rather be presented as a separate proposed Committee Amendment given its potentially controversial nature.