



**Environmental
Planning
Commission**

**Agenda Number: 5
Project Number: 1000897
Case #s: 14EPC-40025 & 14EPC-40027
July 10, 2014**

Supplemental Staff Report
(to be read with the original 6-12-14 Staff report)

Agent	Joshua Skarsgard
Applicant	Red Shamrock Investments LLC
Requests	Deviations from the Regulations of the East Gateway Sector Development Plan (EGSDP) Site Development Plan for Building Permit
Legal Description	Tract B1-A Plat for Video Addition Tracts B1-A & B1-B
Location	On Eubank Blvd. SE, between Central Ave. and Southern Blvd.
Size	Approx. 11.5 acres (larger, existing site) Approx. 1.0 acre (smaller, proposed site)
Zoning	SU-2/EG-C (East Gateway Corridor Zone)

Staff Recommendation

DENIAL of 14EPC-40025, five major deviations from the regulatory requirements of the EGSDP, based on the Findings beginning on Page 11.

DENIAL of 14EPC-40027, v.1/v.4 of the site development plan for building permit, dated October 2013, based on the Findings beginning on Page 14.

[APPROVAL of an alternate site development plan "Exhibit 9 as revised".]

***Staff Planner
Catalina Lehner, AICP- Senior Planner***

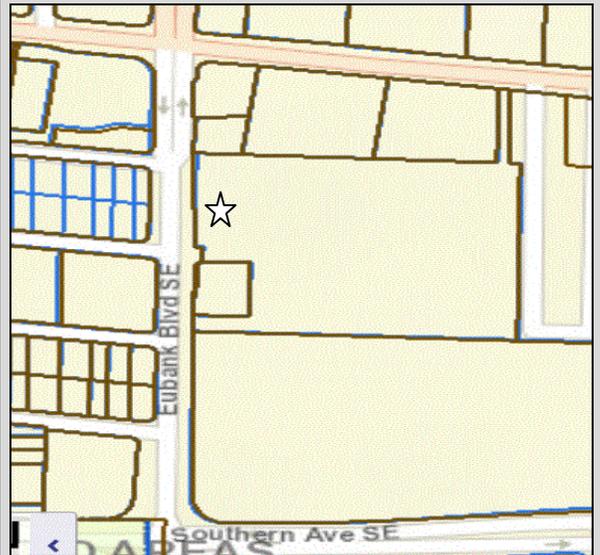
Summary of Analysis

This request for major deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP), and an associated site development plan for building permit, was heard on June 12, 2014 and continued for 30 days to find a "meet in the middle" solution to lessen the amount and scope of deviations. The revised site development plan is the same as version 1 (October 2013) with one change.

The applicant wants to develop a fast-food restaurant. Five major deviations are requested (was 6, 1 was addressed). The East Gateway Coalition expressed support.

The EGSDP requires that deviations be justified pursuant to specific criteria. The EPC's role is to decide based on these criteria only, and not on other factors cited by the applicant. The EPC has approval authority for deviations <50% & >25% (major).

Staff recommends that the EPC deny these deviations and the associated site development plan. The deviations are not justified pursuant to the EGSDP deviation criteria. The site can be developed in a more compliant manner, but it's not the applicant's preference. Staff recommends that the EPC consider Approval of an alternate site development plan.



City Departments and other interested agencies reviewed this application from 3/31/14 to 4/11/14. Agency comments used in the preparation of this report begin on Page 24 of the original report.

I. OVERVIEW

Continuance

This request for multiple (six), major deviations from the regulatory requirements of the East Gateway Sector Development Plan (EGSDP), and an associated site development plan for building permit, was heard on June 12, 2014. The Environmental Planning Commission (EPC) voted to continue the hearing for 30 days so Staff could continue to work with the applicant and find a “meet in the middle” solution to improve the site layout and decrease the amount and scope of deviations requested, thereby coming closer to compliance and meeting the Plan’s intents. The EPC also voted to withdraw the zone change request; it is not needed since the EGSDP establishes a deviation process and the proposed use is allowed.

At the June hearing, Legal staff suggested that the application be re-noticed as a deviations application so the public could be made aware of what the request entails. Consistent with standard procedure, the applicant re-notified the affected neighborhood organization and Staff re-notified affected property owners (see attachments).

Request & Status Update

This request pertains to an approximately 1 acre lot (the smaller “subject site”) that is a portion of a larger, approximately 11.5 acre site located on the east side of Eubank Blvd., between Central and Southern Avenues. The proposed boundaries of the lot, still not as clear as they should be on the site development plan, were created by private agreement prior to treating the request as a deviation application. The EGSDP regulations have been in effect since Plan adoption in October 2010.

The applicant proposes a fast-food restaurant with a drive-up service window. Version 3 (v.3) of the site development plan for building permit was discussed at the June hearing. It is the same as the site development plan proposed with the original zone change application (v.1, dated October 2013) before this became a deviation application, though Staff worked closely with the applicant attempting to achieve a site layout that at least partially complies with the EGSDP.

Staff offered a compromise at the June hearing and recommended approval of 2 of the 6 requested deviations, and redesign of the site accordingly, to reduce and/or remove the remaining deviations. During the continuance, Staff proposed additional solutions to the applicant. However, the applicant does not want to alter the original (October 2013) site layout despite the availability of feasible alternatives. The site development plan presented for the July hearing is, for all intents and purposes, the same as the originally submitted v.1. One substantive change was made and it does not alter the site layout (see also Section V of this report).

EPC Role, Context, History & Background, Transportation System, and Public Facilities/Community Services:

» Please see p. 1-3 of the original Staff report (see attachment).

Zoning

The subject site is zoned SU-2/EG-C (East Gateway Corridor Zone) and is subject to the regulations of the East Gateway Sector Development Plan (EGSDP). The intent of the SU-2/EG-C Zone is to enable “the future development of a mixture of non-residential and residential uses intended to

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support a multi-modal environment and encourage legitimate activity along the street between community and neighborhood activity centers” (p. 5-18).

All properties zoned pursuant to Section 5.4 of the EGSDP (the SU-2 zoning districts) are required to comply with the General Regulations of the EGSDP as part of their zoning designation (p. 5-10). Development on the subject site- like development on all other properties in the Plan’s boundaries- is required to meet the regulations of the EGSDP.

The applicant repeatedly refers to examples of other fast-food restaurants. These were all developed prior to Plan adoption, without SU-2 zoning, and were not subject to EGSDP regulations. Therefore, they are not a valid comparison with the current request (see also Section II).

Zoning Definitions (§14-16-1-5) and Zoning & Regulations:

» Please see p. 3 of the original Staff report (see attachment).

EGSDP Deviation Criteria (recap)

The EGSDP established a deviation process to offer relief of requirements provided that the project still meets the intent of the Plan and will result in a project with “comparable quality and design” as if the regulations were still being followed.

Pursuant to the EGSDP (p. 5-8), compliant site designs go straight to building permit; there is no public hearing and approval timeframes are shorter. Deviations <25% can be approved administratively by Staff- also no public hearing and shorter timeframes. Deviations of 25% and up to 50% go through the EPC process. Deviations in excess of 50% are not allowed (unless the City Council amends the Plan).

The deviation criteria are repeated here for convenience:

C. Criteria/Process:

1. In order for the Planning Director or the EPC to grant a Deviation, the applicant must demonstrate that the applicable intent, goals and policies of the East Gateway Sector Development Plan are still met and that the project is of a comparable quality and design, as otherwise required by the EGSDP, and will enhance the area. In addition, the applicant must also demonstrate at least one of the following:
 - a. The site is unique in terms of physical characteristics and requires the deviation in order to be developed. This may include, but is not limited to slope, drainage, safety issues or site constraints.
 - b. The site/project will serve as a catalyst to redevelopment or further development in the EGSDP area.
 - c. The site/project provides a needed service for the community, as identified in the EGSDP, CIP proposals, community survey or other similar source.
 - d. The project will preserve a historic building or structure or an archeological site.
2. Applicants must provide written statement detailing how the deviations meet the intent of the plan. Applicants may refer to sections 2.1 and 2.3 of the Plan.

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3. All applicants seeking deviations shall attend a Pre-Application Meeting with the Pre- Application Review Team (PRT) or Design Review Team (DRT) before submitting the request for deviation.

II. SIGNIFICANT ISSUES (from the June 12, 2014 hearing)

At the June public hearing, the following significant issues came to the forefront:

- A) Parameters established by the EGSDP deviation criteria and the EPC's task.
- B) EGSDP adoption date and relationship to existing and proposed development.
- C) Alternative site designs that decrease the amount and scope of deviations requested.

Additional significant issues are the role of private agreements and Hydrology as related to site layout.

A) Deviation Criteria Parameters & the EPC's Task

The task of the EPC is to make a sound decision based on the EGSDP's deviation criteria, and not based on information outside of the criteria. The scope of the EPC's authority, as delegated to it by the City Council, is within these parameters only. Going beyond these parameters, and changing the text of the Plan, are the purview of the City Council exclusively.

A lot of information presented at the June hearing is not included in the deviation criteria. Like or dislike of a brand, like or dislike of a product or service, (in)consistency of site layout compared to other fast-food restaurants, neighborhood support or opposition, and limitations created by private agreements are not factors allowed to be used to make a decision regarding deviations.

B) EGSDP Adoption Date and Relationship to Existing & Proposed Development

Properties developed prior to EGSDP adoption in October 2010 were not required to comply with the General Regulations because they did not apply at that time. Several restaurants with drive-up service windows, referred to by the applicant, were developed near the Central Ave./Eubank Blvd. intersection- all prior to EGSDP adoption.

The fast-food restaurant just south of the proposed site was also developed prior to EGSDP adoption, so the regulations did not apply to it. These examples are invalid comparisons with the current request and do not create a valid precedent that can be used to justify the current request.

Two examples of restaurants with drive-up windows are valid comparisons because they were developed after the EGSDP was adopted and pursuant to its regulations. The first is Dion's, located at Central Ave./Elizabeth St. The building fronts Central Ave. and the queuing length is long. The second is Freddy's, located near the NW corner of the Central Ave./Elizabeth St. intersection. Freddy's was recently approved administratively (May 2014) with four minor deviations: front façade lot coverage, parking, outdoor space and Central frontage windows.

Development of fast-food restaurants that comply with the EGSDP regulations, with or without deviations, is entirely possible and has been demonstrated. This is consistent with the EGSDP's purpose of improving area function and appearance along Central Ave. and Wyoming, Eubank and Juan Tabo Blvds.

C) *Alternative Site Layouts* (see also Section IV of this report)

At the June hearing, Staff presented some alternative site layouts that would create compliance with the EGSDP regulations and reduce the number and scope of the deviations requested. For each, the applicant found reasons why it would not work (according to the applicant). Among the reasons were vehicle/pedestrian conflict points, parking and terms of the private agreement. Staff notes that the proposed site development plan (v.1/v.4) contains three vehicle/pedestrian conflict points, and that the terms of the private agreement are not a usable reason to justify deviation from regulatory requirements.

Section IV of this report discusses site layout alternatives in more detail. After the June hearing, Staff requested that the applicant provide the site development plan iterations (17 or so claimed) considered prior to choosing v. 4 of the site development plan. The result is the “Alternate Site Plan Studies Deviations Application- EPC” packet submitted by the applicant (see attachment). However, v. 4 of the site development plan is the same as v.1 (October 2013), so it appears that v.4/v.1 has been the only option considered by the applicant until recently.

D) *Role of Private Agreements*

Prior to submitting an application, the agent negotiated with the big-box store (Home Depot) to create a private agreement between Red Shamrock Investments (his LLC) and Home Depot. Certain restrictions were created via private agreement between the parties: number of parking spaces, prohibition on backing out, size of the lot and various others.

The agent claims that the alternative site layouts do not work because: the private parking requirement cannot be met given the size of the lot; the queuing lane cannot be relocated because the lot is too small and queuing spills over; and the private agreement prohibits vehicles backing out into drive aisles, etc.

Staff suggested that the terms of the private agreement be revisited, but the applicant is not willing to consider this. Knowing the EGSDP applies, it would have been helpful to consider the existing, regulatory requirements up-front. This would allow more flexibility with site layout, rather than being limited by the restrictiveness of the private agreement created by the applicant/agent and another private party.

Private agreements are not specified as a criterion for deviation and cannot properly be used as justification for a deviations request.

E) *Hydrology & Site Layout*

Staff points out that the \approx 1 acre site has been considered undevelopable because it is the drainage pond for the larger, approximately 11.5 acre site. Drainage from the parking lot of the existing big box store ponds along approximately the eastern half of the smaller site. The original grading and drainage plan for the larger site (Z-94-45) does not show an outlying building in the location of the 1 acre lot for good reason. However, an outlying building is shown where the other fast-food restaurant is located.

The southern portion of the \approx 1 acre site is not a good place to put the building from a hydrology perspective. That’s where the most ponding occurs. Placing the building closer to Eubank Blvd. is

preferable and would require less cut-and-fill because the ponding is along the eastern half of the proposed site (not the western half). In one location, the ponding would be about 2 feet deep. A new inlet is proposed nearby.

Analysis- Applicable Plans, Policies & Regulations:

» Please see p. 4-6 of the original Staff report (see attachment).

III. DEVIATIONS REQUESTED & JUSTIFICATION LETTER (updated)

Summary Tables

Since the June EPC hearing, one change was made. Regarding Deviation #2, the applicant is now proposing a porte cochere (patio cover) over the western side of the drive-thru lane. Because it's considered a structure, though not part of the building's interior space, the front yard setback requirement can now be met.

- Table 1: Commercial Building & Lot Standards -

#	Page	Requirement		Proposed	Difference between Required & Proposed	Deviation & Classification
		Name	Amount			
1	5-36	Building Front Façade Lot Width Coverage	50% minimum	142.5 feet is 50%. 56 feet is proposed and is 20%	Lot is 285 feet wide. 142.5-56=86.5 feet difference, or 30%	30%- Major
2	5-36	Front Yard Setback	10 feet maximum	24.75 feet from building	14.75 feet, 147.5% of the standard.	50% deviation is 15 feet. The EPC cannot grant deviations >50%*

- Table 2: General Design Regulations -

#	Page	Requirement		Proposed	Difference between Required & Proposed	Deviation Classification
		Name	Amount			
3	5-46	Building Façade at Least 50% of Street Frontage	50% minimum	142.5 feet is 50%. 56 feet is proposed and is 20%	Lot is 285 feet wide. 142.5-56=86.5 feet difference, or 30%	30%- Major
4	5-48	Maximum Parking Allowed	ZC min plus 10% (33 spaces)	44 spaces.	11 extra spaces, a third of the standard	33%- Major
5	5-55	Drive-up windows and Ordering Panels at Rear of Building	--	1 window at rear, 1 window at side, ordering panel at side	The side window and ordering panel should be at the rear of the building	non-dimensional standard requiring review
6	5-56	No portion of queuing lane within 40 feet of street-facing façades	--	Queuing lane is within 25 feet of street facing facade	Relocate queuing lane to another location (many available)	non-dimensional standard requiring review

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Now the application is for 5 deviations instead of 6. No changes were made to address any other deviations. Three deviations (#s 1, 3 & 4) are still major in scope. Two deviations are still to non-dimensional standards.

Analysis of Deviation Requests & Justification

» Please refer to p. 6-13 of the original Staff report for a full discussion of:

1) EGSDP Requirements: Section 5.5- Building Types, & Section 5.6- General Design Regulations: Overview, Process & Parameters and Requirements, and 2) the Applicant's original justification letter dated May 28, 2014 (see attachments).

Please refer to the original Staff report for a full analysis of the May 28, 2014 deviation justification letter (with the June 2 supplement). Since only one deviation was addressed, this discussion is still relevant and the most important points remain largely the same. Please see below for an update and revisiting of the issues.

Analysis of Applicant's Revised Justification

The applicant provided a revised deviation justification letter, dated June 24, 2014 (see attachment). On June 27, 2014, Staff and the applicant had a conference call to discuss alternative site plan layouts. The letter, written prior to the call, was not revised to address any items discussed on the call or subsequently.

The following is Staff's analysis of what has changed in the applicant's justification. Please refer to the original Staff report for a full analysis (p. 6-13). New wording is found on p. 2 & 3 of the applicant's letter, added cut-and-pasted language on p.4, and minor re-wording on p. 9 (Note: pages are not numbered).

Applicant (summarized): Amended notification letters were sent and the yellow sign was posted with the July hearing date. The applicant explored three alternate designs, but they don't satisfy the applicant's needs for five reasons:

1. *Safety- customers would walk across the drive-thru lane.*
2. *Queuing Analysis- not enough cars could queue.*
- 3 & 4. *Parking- layouts cannot provide parking required by private agreement.*
5. *Backing out- layouts make cars back out into drive aisles, which is prohibited by private agreement.*

Staff: The applicant's justification letter only considers the three alternate site layouts presented at the hearing, and does not address the other possibilities that ensued from the conference call (held after the letter was written and analyzed here). All five reasons, however, can be answered and a (more) compliant site layout can be created.

1. ***Safety- the applicant's October 2013 site development plan (v.1/v.4) shows three pedestrian/vehicle conflict points (four if you count coming from the parking lot)- more than Staff's layouts.***
2. ***Queuing Analysis- additional cars can be queued by using a double drive-thru design and reconfiguring.***
- 3 & 4. ***Parking- NA, this is stipulation of a private agreement.***
5. ***Same as 3 & 4, above.***

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IV. SITE LAYOUT ALTERNATIVES & DEVIATIONS

Staff requested that the applicant provide one or two feasible site development plan options- drawn, to scale and clearly labeled- to discuss on the June 27, 2014 conference call. However, the call did not focus on finding solutions to the extent that it could have. At Staff’s request, after the call the applicant provided exhibits of other site layouts in addition to the site layout shown in v.1/v. 4 (the “final version”) of the site development plan.

The result is the “Alternate Site Plan Studies Deviations Application- EPC” packet, which contains 10 site layout exhibits that were supposedly considered prior to choosing the “Final Site Plan- July 10, 2014” (see attachment). Since v. 4 is essentially the same as v.1 and is also dated October 2013, it appears that v.4/v.1 is the only option the applicant has considered until recently.

Staff reviewed the 10 site layout exhibits. The applicant included several site layouts that he claims do not work for one reason or another. As requested by Staff, the reasons are listed on the left-hand side. Otherwise, the exhibits are difficult to understand (ex. exhibits v.1- see attachment).

Several inconsistencies complicate reading the exhibits: some exhibits are drawings and some are aerial photos, they are not to scale and mostly not dimensioned, and do not show cars queuing or certain deviations addressed that are relatively easy to address. For example, the front yard setback is only shown as “solved” in the “Final” layout exhibit, yet it could be “solved” in exhibits #s 1, 2 and 9 and should be shown as such to be consistent. The final layout shows landscaping, which none of the other layouts do. This should be removed for consistency.

For all the applicant’s alternative layouts, deviations to EGSDP regulations would be needed. The restrictions created by the private agreements cannot be used. The existing sewer line, brought to Staff’s attention on June 27, cannot be under the proposed building. Staff summarizes as follows:

Exhibit #	# EGSDP Deviations*	Possible?	Notes
1	6	yes	Add porte cochere, goes from 6 to 5 deviations needed
2	4	no	Add porte cochere, goes from 4 to 3 deviations needed. Storm sewer location would be under building.
3	4	no	Add double queuing lane. However, storm sewer location would be under building.
4	4	no	Add double queuing lane. However, storm sewer location would be under building.
5	4	yes	Add double queuing lane.
6	4	no	Add double queuing lane. However, storm sewer location would be under building.
7	4	no	Add double queuing lane. However, storm sewer location would be under building.
8	4	yes	Reduce landscape buffer and proposed sidewalk width.
9**	4	yes	Reduce LS buffer on E side, remove 1 LS island, use compact parking spaces.
10	6	yes	Add porte cochere to make same as original version.

*There are two regulations regarding building façade width as % of lot, so these are two (not one) deviations.

Staff has adjusted the second column accordingly (usually +1 from the applicant’s #).

**Exhibit 9, with minor Staff modifications, can create a win-win situation. 4 deviations needed.

Based on the table, five of the applicant's exhibits show site plan layouts that are possible and are not precluded by location of the existing sewer line or by private restrictions. Just because these layouts are possible, however, does not mean that they are the most compliant or effective.

Of these, Staff finds that Exhibit 8 came closest to being the "meet in the middle solution". As such, Staff provided a "mark-up" of Exhibit 8 to the applicant; this became a new Exhibit 9.

As drawn by the applicant, however, Exhibit 9 fails to show some of Staff's suggestions that would make this layout work. The landscape buffer on the eastern side, near the drive-thru lane, could be reduced by about 4 feet. 10 parking spaces could be added between the drive-thru queues; the pedestrian "path to nowhere" can be removed. A landscape island could be removed in the middle of the parking lot. Doing so would provide 45 parking spaces.

Therefore, "Exhibit 9 as revised" by Staff, is a viable "meet in the middle solution" that would result in a functional site with the least amount of deviations (4) that would best meet EGSDP requirements. However, the applicant has found an additional restriction from the private agreement that makes this layout not work. Recall that these self-imposed, private restrictions are not a criterion for deviation. The bottom line is that the applicant designed a certain site layout in October 2013 and, regardless of EGSDP regulations, does not want to change it (or revisit the terms of the private agreement).

V. SITE DEVELOPMENT PLAN FOR BUILDING PERMIT (v.1/v.4)

» Please refer to p. 13-17 of the original Staff report (see attachment) for a discussion of Vehicle Access & Circulation, Setback & the Drive-thru Lane, Parking, Pedestrian & Bicycle, Transit Access, Walls/Fences, Lighting & Security, Landscaping, Outdoor Space, Grading & Drainage Plan, Utility Plan, Architecture and Signage.

Section 14-16-3-11 of the Zoning Code states, "...Site Development Plans are expected to meet the requirements of adopted city policies and procedures." As such, Staff reviewed the proposed site development plan (v.1/v.4-October 2013).

The only notable change to the proposed site development plan for building permit is the addition of the porte cochere (patio cover) over a portion of the drive-thru lane on the site's eastern side. Minor changes include addition of clear site triangles on Sheet 1 and revision of the deviation table (found on various sheets). The property line is still not labeled or clearly indicated; the same symbol is used to mean more than one thing and no legend is provided.

Agency & Neighborhood Concerns:

» Please refer to p. 16-17 of the original Staff report (see attachment).

VI. SUMMARY & CONCLUSION

Summary

The request is for deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) and an associated site development plan for building permit for an approximately 1 acre site that is part of a larger, approximately 11.5 acre site located on the east side of Eubank Blvd.

The applicant proposes a fast-food restaurant, which is a permissive use in the SU-2/EG-C (East Gateway Corridor) zone.

The regulatory requirements of the East Gateway Sector Development Plan (EGSDPP apply: the Commercial Building & Lot Standards (p. 5-36) and the General Design Regulations (beginning on p. 5-46). The EGSDP established a deviation process to offer relief of requirements for projects that still meet the intent of the Plan and are of “comparable quality and design”. The EPC is hearing this case because the EGSDP specifies the EPC process for major deviations, which are between 25% and 50% of a given regulation.

The City Council adopted the EGSDP and specified criteria that must be met in order to approve a deviation to regulatory requirements. Neither Staff nor the EPC has the authority to change the existing regulations or use non-specified criteria to evaluate a deviation request.

Conclusion- Requested Deviations

Five major deviations are needed for the proposed site development plan. Versions 1 and 4 of the site development plan are the same (October 2013), except for the addition of the porte cochere (patio cover) to address one deviation. Regarding site layout alternatives, Exhibit 9, with minor revisions by Staff, is a “win-win solution” that would result in a functional site with the least amount of deviations (4) that would best meet EGSDP requirements. Though there are viable alternatives, the applicant has not indicated a willingness to revise the proposed site development plan.

The five deviations associated with the proposed site development plan are not absolutely necessary to develop the site; they are being requested to allow the applicant’s preferences and meet the self-imposed terms of a private agreement. The applicant has not adequately justified the deviations pursuant to the EGSDP as required. The restrictions in the private agreement are just that- private, and cannot be used to justify a deviation request.

The site could still develop if some deviations are granted and others are not; this is not an “all or nothing” scenario. Even if it was, unlike a zone change application that must wait a year if denied, a deviation application can be re-applied for, and a revised site development plan submitted, after the appeal period expires (15 days).

Conclusion- An Alternative

Staff finds that requested deviations #1 and #3 of Table 1 and 2, regarding building façade at least 50% of lot width/street frontage, would not compromise the intent of the Plan and would result in “comparable quality and design.” Staff recommended in June that the EPC grant these, and recommends the same thing now.

The other deviations needed for Exhibit 9 (as revised by Staff) are regarding parking maximum and order board location (#4 and #5 of Table 2). Order board location would have a relatively minor effect on the “comparable quality and design” and intent of the Plan. Staff believes this is grant-able.

The parking deviation, which would compromise the Plan’s intent (SU-2/EG-C zone) to create a multi-modal environment, Staff generally does not consider grant-able but is willing to recommending granting it as a compromise to make “Exhibit 9 as revised” work. Therefore, Staff recommends that

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the EPC grant deviations #1 of Table 1 and #3, #4 and #5 of Table 2 and conditionally approve "Exhibit 9 as revised". Staff also recommends denial of the October 2013, v.1/v.4 site development plan.

If demonstrated over time, and in many cases, that certain EGSDP regulations make it impossible for development to occur, these regulations could be changed via text amendments. However, Staff believes that text amendments are not warranted for a single case or for instances when compliance with the regulations is possible- it's just not preferred. As the City's zoning authority, the City Council would make the final determination.

FINDINGS – 14EPC-40025, July10, 2014, Deviations from Certain Regulatory Requirements of the East Gateway Sector Development Plan (EGSDP)

1. The request is for five major deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) for an approximately 1 acre portion (the “smaller subject site”) of a larger, existing, approximately 11.5-acre site that is Tract B1-A Plat for Video Addition Tracts B1-A & B1-B of Block A-1-A1 (the “larger subject site”), located on the east side of Eubank Blvd., between Central and Southern Avenues, zoned SU-2/EG-C (East Gateway Corridor Zone).
2. The subject sites are located in the Established Urban Area of the Comprehensive Plan. The East Gateway Sector Development Plan (EGSDP) applies. The subject sites are not located in a designated Activity Center.
3. The applicant proposes to develop a 4,526 square foot fast-food restaurant with a drive-up service window, on an approximately 1 acre portion of the parking lot of an existing big-box store.
4. A proposed site development plan for building permit (14EPC-40027) is associated with this request for deviation from five major regulatory requirements of the EGSDP.
5. The Albuquerque/Bernalillo County Comprehensive Plan, the City of Albuquerque Zoning Code and the EGSDP are incorporated herein by reference and made part of the record for all purposes.
6. The EGSDP established a deviation process to offer relief of requirements for projects that still meet the intent of the Plan and are of “comparable quality and design”. The EGSDP specifies the EPC process for deviations between 25% and 50% of a given regulation. Deviations < 25% can be approved administratively by Staff. Projects that comply with applicable regulations can proceed directly to building permit.
7. The EGSDP gives the EPC authority to grant, or not grant, deviations to the Plan’s regulatory requirements. Similar to justifying a zone change, the burden is on the applicant to demonstrate that the intent, goals and policies of the EGSDP are still met and that the project is of a comparable quality and design as if it had developed pursuant to the EGSDP regulations.
8. The EGSDP criteria for granting a deviation are as follows (p. 5-9):

“In order for the Planning Director or the EPC to grant a Deviation, the applicant must demonstrate that the applicable intent, goals and policies of the East Gateway Sector Development Plan are still met and that the project is of a comparable quality and design, as otherwise required by the EGSDP, and will enhance the area. In addition, the applicant must also demonstrate at least one of the following:

 - a. The site is unique in terms of physical characteristics and requires the deviation in order to be developed. This may include, but is not limited to slope, drainage, safety issues or site constraints.

- b. The site/project will serve as a catalyst to redevelopment or further development in the EGSDP area.
- c. The site/project provides a needed service for the community, as identified in the EGSDP, CIP proposals, community survey or other similar source.
- d. The project will preserve a historic building or structure or an archeological site.”

The applicant claims (a), that the smaller subject site is unique in terms of physical characteristics and that the proposed project would be a catalyst to redevelopment (b).

- 9. The five major deviations, as shown on the associated site development plan for building permit (14EPC-40027) would, in combination and due to their scope and quantity, result in a site layout that is in direct conflict with the intent, Goals and Policies of the EGSDP. The resulting site layout would not be comparable in quality and design to what would be approved pursuant to the EGSDP regulations. The following deviations are not granted:
 - A. Commercial & Building Lot standard regarding building front façade lot width coverage (Table 1, #1)
 - B. General Design Regulation regarding building façade at least 50% of street frontage (Table 2, #3)
 - C. General Design Regulation regarding maximum parking allowed- Zoning Code required plus 10% (Table 2, #4)
 - D. General Design Regulation regarding drive-up window and ordering panel location at the rear of a building (Table 2, #5), and
 - E. General Design Regulation regarding no portion of a queuing lane allowed within 40 feet of street-facing façades (Table 2, #6).
- 10. The deviations referred to in Finding #9, in combination and due to their scope and quantity, would result in a site layout that is in direct conflict with the intent, Goals and Policies of the EGSDP, as follows:
 - A. The SU-2/EG-C (East Gateway Corridor Zone) intends to enable development of a mixture of uses that support a multi-modal environment and encourage legitimate activity along the street. Locating a queuing lane between the building and the street would effectively discourage interaction between the building and the street and would create three pedestrian-vehicle conflict points that are potentially unsafe. Non-vehicle modes of transportation would be discouraged.
 - B. For the reasons elaborated in A, the applicant’s preferred site layout conflicts with EGSDP Goals 1 and 3, which generally seek to provide safety and support non-vehicular transportation choices.
- 11. The EPC finds that two deviation criteria (see Finding #8) apply, but that they have not been met as follows:

- A. Deviation criterion 1a: The subject site is not unique in terms of physical characteristics, including topography. Topography does not make the site undevelopable. The site to the south is in the same situation regarding topography and it is also an outlying portion of a parking lot. Any alleged site constraints, including those due to size, are not a natural physical characteristic but are a result of the applicant's decision to create the smaller subject site with certain dimensions.
- B. Deviation criterion 1b: The purpose of the EGSDP is to improve the area "through proposals developed in a sector development plan and a metropolitan redevelopment plan." These are larger projects that will have a catalytic (definition: provoking significant change) effect on the area. The site is a less than one acre portion of a parking lot and the use is limited in scope in contrast to, for example, a new shopping center or mixed-use development that is likely to attract other development and/or redevelopment as the Plan intends.
12. The EPC finds that two deviation criteria do not apply:
- A. Deviation criterion 1c: The site/project would not provide "a needed service for the community, as identified in the EGSDP, CIP proposals, community survey or other similar source." The proposed project is not identified in any of these sources.
- B. Deviation criterion 1d: The project would not "preserve a historic building or structure or an archeological site." The proposed project would be new construction.
13. The applicant states that alternative site layouts do not work because several requirements of a private agreement cannot be met, such as parking, backing out, etc. The private agreement and its restrictions are self-imposed. Private agreements are not specified as a criterion for deviation and cannot properly be used as justification for the requested deviations.
14. The applicant refers to four restaurants with building orientations perpendicular to a major arterial (Central Ave.) as evidence that the proposed restaurant should be allowed to be perpendicular to Eubank Blvd. These restaurants, including the one just south of the subject site, were all built prior to the adoption of the EGSDP and were not subject to its regulations. Inconsistency with the site layout of other fast-food restaurants is not a criterion for deviation and cannot properly be used as justification for the requested deviations.
15. Though neighborhood support is desirable, the EGSDP criteria for granting a deviation do not include neighborhood support. Therefore, neighborhood support cannot properly be used as justification for the requested deviations.
16. The applicant states that the five regulations cannot be complied with without causing substantial hardship. The EGSDP criteria for granting a deviation do not include hardship. Therefore, alleged hardship cannot properly be used as justification for the requested deviations.

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17. It is common for franchise restaurants to adapt to local requirements such as those in the EGSDP. The EGSDP doesn't prohibit the generic franchise design proposed. The conflict with the regulations results from the applicant's preferred site layout. This is not the only layout that could work on the site.
18. Development of fast-food restaurants that comply with EGSDP regulations, with or without deviations, is possible and has been demonstrated. Two examples of restaurants with drive-up windows, developed after EGSDP adoption and pursuant to its regulations, are Dion's (at Central Ave./Elizabeth St.) and Freddy's, near the NW corner of the Central Ave./Eubank Blvd. intersection. Freddy's was approved administratively in May 2014 with four minor deviations.
19. Denial of the request for five major deviations to the EGSDP regulatory requirements is warranted because the request is in direct conflict with the intents, goals and policies of the EGSDP and because it cannot be justified pursuant to the EGSDP criteria for deviation. The EPC recognizes the importance of development in the area, but finds in this case that such development can occur in a manner that creates fewer conflicts with applicable regulations. For example, "Exhibit 9 as revised" could meet both the regulations and the applicant's needs.
20. The neighborhood organization required to be notified is the East Gateway Coalition of Neighborhoods, which the applicant notified (and re-notified) as required. Staff re-notified property owners within 100 feet of the subject site and re-advertised the request, as a deviations request, in the Albuquerque Journal. A facilitated meeting was neither recommended nor held. The East Gateway Coalition provided a letter of support. There is no known opposition as of this writing.

RECOMMENDATION - 14EPC-40025, July 10, 2014

DENIAL 14EPC-40025, a request for five major deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP), associated with a site development plan for building permit (14EPC-40027), for an approximately 1 acre portion of a larger, approximately 11.5 acre site, based on the preceding Findings.

FINDINGS – 14EPC-40027, July 10, 2014- Site Development Plan for Building Permit

1. This request is for a site development plan for building permit for an approximately 1 acre portion (the "smaller subject site") of a larger, approximately 11.5-acre site that is Tract B1-A Plat for Video Addition Tracts B1-A & B1-B of Block A-1-A1 (the "larger subject site"), located on the east side of Eubank Blvd. SE, between Central Ave. and Southern Blvd., zoned SU-2/EG-C (East Gateway Corridor Zone).
2. The subject sites are located in the Established Urban Area of the Comprehensive Plan. The East Gateway Sector Development Plan (EGSDP) applies. The subject sites are not located in a designated Activity Center.

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3. The applicant proposes to develop a 4,526 square foot fast-food restaurant with a drive-up service window, on an approximately 1 acre portion of the parking lot of a big-box store.
4. The Albuquerque/Bernalillo County Comprehensive Plan, the City of Albuquerque Zoning Code and the EGSDP are incorporated herein by reference and made part of the record for all purposes.
5. The proposed site development plan for building permit is associated with a request for five major deviations from certain regulatory requirements of the EGSDP (14EPC-40025), as follows:
 - A. Commercial Building and Lot Standards: building front façade lot width coverage.
 - B. General Design Regulations: façade at least 50% of street frontage, maximum parking allowed, drive-up window and order panel location, and queuing lane location.
6. The deviations referred to in Finding #5, in combination and due to their scope and quantity, would result in a site layout that is in direct conflict with the intent, Goals and Policies of the EGSDP, as follows:
 - A. The SU-2/EG-C (East Gateway Corridor Zone) intends to enable development of a mixture of uses that support a multi-modal environment and encourage legitimate activity along the street. Locating a queuing lane between the building and the street would effectively discourage interaction between the building and the street and would create three pedestrian-vehicle conflict points that are potentially unsafe. Non-vehicle modes of transportation would be discouraged.
 - B. For the reasons elaborated in A, the applicant's preferred site layout conflicts with EGSDP Goals 1 and 3, which generally seek to provide safety and support non-vehicular transportation choices.
7. Denial of the associated request for five, major deviations to the EGSDP regulatory requirements (14EPC-40025) is warranted because the request is in direct conflict with the intents, goals and policies of the EGSDP and because it has not been adequately justified pursuant to the EGSDP criteria for deviation. The criteria do not include inconsistency with site layout of fast-food restaurants developed prior to Plan adoption, restrictions established via private agreement, and neighborhood support.
8. The EPC recognizes the importance of development in the EGSDP area, but finds in this case that such development can occur in a manner that creates fewer conflicts with applicable regulations. The alternate site layout "Exhibit 9 as revised" would need fewer deviations and could meet both the regulations and the applicant's needs. However, it is not the applicant's preference.
9. A Traffic Impact Study (TIS) was not required, but a queuing analysis was. The queuing analysis finds that queuing for the proposed fast-food restaurant could be adequately handled on site.

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10. The neighborhood organization required to be notified is the East Gateway Coalition of Neighborhoods, which the applicant notified (and re-notified) as required. Staff re-notified property owners within 100 feet of the subject site and re-advertised the request, as a deviations request, in the Albuquerque Journal. A facilitated meeting was neither recommended nor held. The East Gateway Coalition provided a letter of support. There is no known opposition as of this writing.

 11. Several revisions would be needed to provide clarification, ensure compliance with applicable regulations, including the Zoning Code, and bring the submittal in line with local standards.

RECOMMENDATION - 14EPC-40027- July 10, 2014- Site Development Plan for Building Permit

DENIAL of 14EPC-40027, a request for a Site Development Plan for Building Permit associated with the request for deviations to certain regulatory requirements of the East Gateway Sector Development Plan (EGSDP) (14EPC-40025), for an approximately 1 acre portion of a larger, approximately 11.5 acre site, based on the preceding Findings.

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