



**Environmental
Planning
Commission**

*Agenda Number: 6
Project Number: 1003801
Case #'s: 11EPC-40066/40087
January 12, 2012*

Supplemental Staff Report

Agent	DAC Enterprises, Inc.
Applicant	Douglas H. Peterson, d/b/a Peterson Properties
Request	Zone Map Amendment; Amendment to Site Development Plan for Building Permit
Legal Description	Lot 28A, Block A, Altura Addition
Location	East side of Carlise, between Indian School Road and Hannett Avenue NE
Size	Approximately 0.64 acres
Existing Zoning	SU-1/C-1 w/Exclusions & Modifications
Proposed Zoning	SU-1/C-1 w/Exclusions & Modifications and an amendment to Site Development Plan

Staff Recommendation

DENIAL of 11EPC 40087, a Zone Map Amendment, based on the Findings beginning on page 11.

DENIAL of 11EPC 40066, an Amendment to a Site Development Plan for Building Permit, based on the Findings beginning on page 14.

Staff Planner

Christopher Hyer, Senior Planner

Summary of Analysis

This is a two part request: a zone change and the subsequent amendment to the site development plan by removing Modification D (a modification note for the special use zoning) that refers to restaurants. Specifically, Modification D states that a restaurant use is only allowed if approved by the EPC. Any change of restaurant tenant must also be approved by the EPC.

The subject site is in the Established Urban Area of the Comprehensive Plan and there are no sector development plans in the area.

A facilitated meeting was held on November 14, 2011 and there is not support for this request from the neighborhoods. Further, this request is not found to further applicable policies of the Comprehensive Plan.

Staff is recommending denial of both requests, but would support amending these requests by moving the approval body for future requests from the EPC to the Planning Director; a restaurant use or change of restaurant tenants would be requested from the Planning Director through an administrative process.

The supplemental staff report should be read in conjunction with the December 8, 2011 staff report (attached).

I. Background

This request is continued from the December 8, 2011 EPC hearing in order to allow the applicant to request a zone change and to give proper notification of that request to surrounding property owners. Also, the applicant has provided additional information: a justification letter for the zone change request based on R-270-1980. Staff has reviewed this justification and it is presented below.

II. Analysis for Zone Change

Resolution 270-1980 outlines policies and requirements for deciding zone map change applications pursuant to the Comprehensive City Zoning Code. There are several tests that must be met and the applicant must provide sound justification for the change. The burden is on the applicant to show why a change should be made, not on the City to show why the change should not be made.

The applicant must demonstrate that the existing zoning is inappropriate because of one of three findings: there was an error when the existing zone map pattern was created; or changed neighborhood or community conditions justify the change; or a different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other City master plan.

This request is for removal of Modification D on the site development plan. Modification D is tied to the current zoning which is SU-1/C-1 with Exclusions and Modifications. Removal of one of four of the modifications to the special use zoning is an effectual change of zoning. Staff has reviewed this request using the standards for a zone change.

Analysis of Applicant's Justification

Policy Citations are in Regular Text; *the applicant's response (or a summary of their justification) is italicized and the original staff analysis is in Bold Italics. Any new justification presented by the applicant will again be in italics and followed by additional staff response in bold text, but no italics.*

- A. A proposed zone change must be found to be consistent with the health, safety, morals, and general welfare of the city.

Original staff response: *The SU-1 zone provides suitable sites for uses, which are special because of their effect on surrounding property, or other reasons. In approving the change to SU-1 zoning and associated site development plan, the EPC imposed requirements to implement the purpose of the Zoning Code: "to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city." The request to remove Modification D from the site development plan is not in the best interest of the adjacent neighborhoods, who are opposed to this request; therefore, the request is not consistent with the health, safety, morals and general welfare of the City.*

New applicant justification: *Despite recorded opposition from two neighborhood associations and a resident near the site, applicant does not believe that removal of Modification D would*

pose problems regarding the health, safety, morals and general welfare of the City. The use of the property for a restaurant or other food service establishment in the C-1 zone is allowed. Two food service establishments, an ice cream parlor and a bakery/café already exist on the site. A Papa Muphy's take and bake pizza parlor was also permitted and a cupcake sales establishment also existed on the site.

Restaurants are common in the C-1 zone to which this site is referenced. Alcohol sales, outdoor seating, and drive through service windows are prohibited in this particular case. The site to the north of this property is zoned C-1 and it allows unlimited restaurant use as regulated in the C-1, without site plan approval.

There is no precedent showing that certain types of restaurants are inconsistent with the health, safety, morals and general welfare of the public.

Water, sewer, accessible public transportation are all available on the site. An approved grading and drainage plan will properly channel any flood water runoff and assure the safety and integrity of both this property and the nearby properties affected by this zone change.

Re-zoning the property will have no impact on schools and recreational facilities in the area.

Additional Staff Response: Staff is satisfied with the original response.

- B. Stability of land use and zoning is desirable; therefore the applicant must provide a sound justification for the change. The burden is on the applicant to show why the change should be made, not on the city to show why the change should not be made.

Original staff response: Removal of Modification D would make the zoning less restrictive by allowing an unknown restaurant use in the existing shopping center, without any notification to the adjoining residents. This lack of notification could have a destabilizing effect on the adjoining residents since some restaurant uses could have a negative impact on the residents.

Further, the burden is on the applicant to provide a sound justification for the change. Staff finds that the applicant has not presented a sound justification for the change, which mainly relies on Modification D being subjective, unnecessary and onerous.

New applicant justification: Applicant does not believe that the removal of a modification requiring EPC approval for a tenant improvement involving a new restaurant will destabilize the current zoning. SU-1/C-1 (with or without restrictions) is a common Special Use zone in the City. No other Special Use or standard zone has a requirement similar to Modification D. The EPC has approved this site with restaurant uses, both generally and specifically. The removal of one descriptor does not destabilize the zone category, it merely changes the approval process for a new restaurant or food service interior remodel from the EPC to the building permit process, a universally accepted practice except in this instance.

Additional Staff Response: As stated in the "Applicant's Argument for Removal of Modification D" in the original staff report (the staff response to item 3.), is "The EPC has authority to control land uses in an SU-1 zone and therefore also tenants. Also, the SU-1 zone, Section 14-16-2-22 (A)(3), states the EPC "may impose requirements as may be necessary to implement the purpose of the Zoning Code" which includes protection of the health, safety and welfare of its' citizens."

- C. A proposed change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other city master plans and amendments thereto, including privately developed area plans, which have been adopted by the city.

Applicant notes several supporting policies of the Comprehensive Plan as discussed below. Applicant does not believe that this request is in significant conflict with any of these plans.

Albuquerque / Bernalillo County Comprehensive Plan

The subject site is located in the area designated Established Urban by the *Comprehensive Plan* with a Goal to “create a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers a variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.”

The applicant did provide justification to applicable policies with the original submittal for the amendment to the site plan for building permit. Staff has included this portion from the original staff report, as it is now a response to the R-270-1980 analysis. Staff has indicated what is the original applicant justification and staff’s response and what is new information with this request. Applicable policies include:

This is an additional policy to this request. Policy II.B.5.a – The Developing Urban and Established Urban Areas as shown by the Plan map shall allow a full range of urban land uses, resulting in an overall gross density up to 5 dwelling units per acre.

New applicant justification: This request furthers this policy because the current lot is not large enough to be developed independently, and therefore does not allow any uses.

New staff response: This request is not concerned with adding uses; rather it is concerned about taking a restriction away from the current zoning. This policy does not apply.

Policy II.B.5.d – The location, intensity and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources and resources of other social and recreational concern.

Original applicant justification: There is a landscaping buffer to protect the abutting neighborhood and 9 additional parking spaces were added to assure adequate on-site parking. An interior remodel to allow a restaurant or food service establishment will have no effect on the traffic to the site and would not affect the surrounding neighborhood because all parking and activity would take place on Carlisle Boulevard, a heavily utilized minor that provide access to Interstate 40 less than a half mile from this property.

Original staff response: The applicant lists several site improvements to demonstrate that the development respects neighborhood values and existing development. As stated earlier, staff agrees that parking and traffic do not pose major impacts to the residents in the area. However, there may be other unknown impacts that could compromise neighborhood values, if Modification D is deleted from the site plan.

Additional applicant justification: There has never been any discussion of the type of restaurant that would cause problems associated with this policy.

Additional staff response: Modification D does not imply that different types of restaurant use are in question, only that any restaurant use is allowed if the EPC grants approval.

Policy II.B.5.e – New growth shall be accommodated through development in areas where vacant land is contiguous to existing programmed urban facilities and services and where the integrity of existing neighborhoods can be ensured.

Original applicant justification: This property is located on a dedicated transit route and has access to all municipal services. A restaurant without outdoor seating that doesn't serve alcohol or have a drive up service window will not generate significant noise, odors or pollution over and above what would generally occur because of the property location. The removal of Modification D only affects interior remodels, which do not change the building footprint, lighting, landscaping or any other exterior features of the site. Any building remodel affecting the exterior of the site would still require full EPC review.

Original staff response: This is a two-part policy. The applicant has adequately addressed the first part – the subject site is located on an existing public street and has access to existing municipal services. However, the second part of this policy calls for ensuring the integrity of existing neighborhoods. The applicant claims that the removal of Modification D only affects interior remodels, which would not affect the neighborhoods. This is not entirely correct. Modification D affects any and all new restaurant proposals, which may or may not include interior remodels. Interior remodeling of an existing restaurant would not require EPC approval, unless it was in conflict with the established restrictions on the site plan.

Additional Staff Response: Staff is satisfied with the original response.

Policy II.B.5.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.

Original applicant justification: This site was reviewed by the EPC when first approved and twice more when restaurant/food service establishments were presented. At no time was there any evidence that the originally approved site plan was not adequate to mitigate potential adverse impacts of a restaurant. There is no access to the abutting residential development to the east. The original approval specifically prohibited restaurants serving alcohol, outdoor seating, and drive through windows. Further review of the type of restaurants that would be allowed is redundant and unnecessary.

Original staff response: Staff generally agrees with the applicant, however, the applicant fails to mention that the previous food establishments were approved in coordination with the affected residents in the area. Approving future food establishment without this coordination will not guarantee that the establishment will not have negative impacts on the area residents.

Additional applicant justification: There appears to be a perception among the neighborhood associations that they will have the final say over which restaurants will be approved and which will not. This is not true and the EPC may approve a restaurant that the neighborhood does not approve. Modification D only allows a highly subjective review process, whereas the standards of the restaurant uses in the C-1 takes this policy into account from the beginning.

Additional Staff Response: Staff agrees that it is ultimately the decision of the EPC, which determines whether a restaurant is approved for location in this strip shopping center and not the neighborhood. However, the site is zoned SU-1 for C-1 uses, which allows the EPC to consider “the effect on surrounding property”. The review of the requested restaurant use allows for neighborhood input and the EPC makes the determination if this restaurant

will be injurious to surrounding properties; this is an exercise by the EPC of “imposing requirements as may be necessary” through the SU-1 zone that supports the purpose of the Zoning Code.

Policy II.B.5.j: Where new commercial development occurs, it should generally be located in existing commercially zoned areas as follows:

- In small neighborhood-oriented centers provided with pedestrian and bicycle access within reasonable distance of residential areas for walking or bicycling.

Original applicant justification: This site is near a residential neighborhood with easy walking and biking access. Neighborhood restaurants, ice cream shops and other food service establishments are valued amenities and the property is correctly zoned for such uses.

Original staff response: Staff agrees with the applicant, however, the request is not about the best location for the existing commercial development, it is about removal of a specific requirement regarding restaurant uses within the development. This policy does not apply to the request.

Additional applicant justification: Further, because the removal of Modification D is in affect a zone change, the tenant remodels for restaurant should now be considered new commercial development based upon the zone category, not upon the approval of the neighborhood with the EPC’s concurrence.

Additional Staff Response: This is an existing commercial development that will keep the SU-1/C-1 uses with Exceptions and Modifications zoning. The applicant is requesting the removal of one of the modifications on the site plan only, not a new zone category and not new development. Staff agrees with the original response and this policy does not apply to the request.

Policy II.B.5.k: Land adjacent to arterial streets shall be planned to minimize harmful effects of traffic; livability and safety of established residential neighborhoods shall be protected in transportation planning and operation.

Original applicant justification: The property has approximately 240 feet of street frontage along Carlisle Boulevard. There is a raised median that controls access to most of the property and the addition of nine parking spaces allows for adequate queuing.

Original staff response: Staff agrees that the site is designed to mitigate harmful effects of traffic on existing residential neighborhoods. However, the request is about removal of a specific requirement regarding restaurant uses within the existing development and not about transportation planning. This policy does not apply to the request.

Additional applicant justification: There was a recently approved Administrative Amendment to expand parking to further this policy and protect the neighborhood from the effects of too little parking causing harmful traffic situations.

Additional Staff Response: Again, “the request is about removal of a specific requirement regarding restaurant uses within the existing development and not about transportation planning. This policy does not apply to the request.”

C. ENVIRONMENTAL PROTECTION AND HERITAGE CONSERVATION

1. Air Quality

Goal: to improve air quality to safeguard public health and enhance the quality of life.

Policy II.C.1.i: Air quality considerations shall be integrated into zoning and land uses decisions to prevent new air quality/land use conflicts.

New applicant justification: *The site has already been approved taking this policy into consideration. Although, removal of Modification D may not be furthered, it is an example of an important policy that is not in significant conflict the request as required in Section C.*

New staff response: Staff agrees that the current zoning has already been approved taking this policy into consideration. The removal of Modification D may allow air quality/land use conflicts and therefore, this policy is not supported by this request.

D. COMMUNITY RESOURCE MANAGEMENT

6. Economic Development

Goal: to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

Policy II.D.6.b: Development of local businesses as well as the recruitment of outside firms shall be emphasized.

New applicant justification: *Modification D inhibits the ability of the landlord to attract tenants because of the lengthy (and iffy) approval process. Removal of Modification D would allow for an easier path to develop local and outside restaurants.*

New staff response: Modification D was placed on the site plan originally to ensure protection of surrounding properties from possible injury from a proposed restaurant use. The applicant has stated that previous restaurants have been approved with the restriction imposed on the zoning. The landlord has demonstrated that new restaurant tenants can be attracted and established with Modification D in place.

Policy II.D.6.f: The City and County should remove obstacles to sound growth management and economic development throughout the community.

New applicant justification: *Modification D is an obstacle to the economic development of this neighborhood center. It exists on no other site in the City.*

New staff response: Staff agrees that Modification D restrictions are unique to this site. However, this site is unique due to its location in this neighborhood and this restriction is what enabled the development of this strip shopping center in 2005.

D. The applicant must demonstrate that the existing zoning is inappropriate because:

1. There was an error when the existing zone map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other city master plan, even though (D)(1) or (D)(2) above do not apply.

Original staff response: *The applicant has not demonstrated why the existing zoning is inappropriate pursuant to parts 2 & 3 of this policy:*

(2) The applicant has not demonstrated any change in neighborhood or community conditions that would justify the removal of Modification D. The adjoining residents continue to advocate for notice and an EPC Hearing when a new restaurant is proposed in the existing shopping center.

(3) The applicant has not demonstrated why removal of Modification D would be more advantageous to the community, as articulated in the Comprehensive Plan. Removal of this Modification could result in adverse impacts on abutting residents.

New applicant justification: *As stated in the background section of this letter, applicant believes that a different use category can be demonstrated as being more advantageous to the community as articulated in the Comprehensive Plan.*

Additional Staff Response: **Staff is satisfied with the original response.**

- E. A change of zone shall not be approved where some of the permissive uses in the zone would be harmful to adjacent property, the neighborhood, or the community.

Original staff response: *Removal of Modification D from the site development plan could be harmful to adjacent properties, the neighborhood and the community as there would no longer be the requirement of EPC review and a public hearing that would address possible impacts.*

New applicant justification: *This change does not add any new permissive uses to the site. It merely moves the approval process from a subjective hearing to an objective review through the standard permitting process. In addition, the site already allows such uses as hardware stores with outside storage, parking lots, 24 hour pharmacies, day care, emergency animal clinics or health gymnasiums that could be damaging based upon parking, traffic, lighting, noise, buffering or odors.*

Additional Staff Response: **Staff agrees that the removal of Modification D does not add any new permissive uses to the zoning descriptor. However, this policy is focused on the harm created from a zone change to adjacent property, the neighborhood, or the community. The removal of Modification D would allow a proposed restaurant use that may be harmful to surrounding properties to operate without first being approved through the EPC review process. This policy is not supported by this request.**

- F. A proposed zone change which, to be utilized through land development, requires major and unprogrammed capital expenditures by the city may be:
1. Denied due to lack of capital funds; or
 2. Granted with the implicit understanding that the city is not bound to provide the capital improvements on any special schedule.

Original staff response: *Removal of Modification D will not invoke any unprogrammed capital expenditures by the City.*

New applicant justification: *This proposed zone change requires no capital expenditures on the part of the City in order to be developed.*

Additional Staff Response: Staff is satisfied with the original response.

- G. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone.

Original staff response: *The applicant has not discussed any economic considerations or has mentioned the cost of land pertaining to this request.*

New applicant justification: *Applicant makes no argument regarding economic factors as they may apply specifically to this request, except as it allows for a re-plat of six lots into one parcel.*

Additional Staff Response: Staff is unsure of applicants response and therefore, will stay with the original response.

- H. Location on a collector or major street is not in itself sufficient justification for apartment, office, or commercial zoning.

Original staff response: This policy does not apply to the current request since the site is already zoned for commercial uses.

New applicant justification: *This property is not located on a collector or major street.*

Additional Staff Response: Staff is satisfied with the original response.

- I. A zone change request, which would give a zone different from surrounding zoning to one small area, especially when only one premise is involved, is generally called a "spot zone." Such a change of zone may be approved only when:

1. The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or
2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

Original staff response: *The existing zoning could be considered a spot zone since the exceptions and modifications associated with the zoning are different from surrounding C-1 zones. However, the SU-1 descriptor allows the EPC to place restrictions on the site plan to protect abutting residents. C-1 zoning exists across the street from Carlisle and does not have the same restrictions, however the C-1 zone does not include SU-1 in the zoning description and the site is separated from adjacent residents by an alley. The current SU-1 zoning with exceptions and modifications is appropriate on the subject site to facilitate realization of the Comprehensive Plan and the Zoning Code.*

New applicant justification: *The current zone has been determined to not be a spot zone because it abuts similar zone categories and because it facilitates realization of the Comprehensive Plan.*

Additional Staff Response: Staff is satisfied with the original response, but would like to add that removal of Modification D does not facilitate the realization of the Comprehensive Plan as has been discussed with the above analysis.

- J. A zone change request, which would give a zone different from surrounding zoning to a strip of land along a street is generally called “strip zoning.” Strip commercial zoning will be approved only where:
1. The change will clearly facilitate realization of the Comprehensive Plan and any adopted sector development plan or area development plan; and
 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones or because the site is not suitable for the uses allowed in any adjacent zone due to traffic or special adverse land uses nearby.

Original staff response: *See response to Policy I above.*

New applicant justification: *See “I” above.*

Additional Staff Response: **Staff is satisfied with the original response.**

III. AGENCY & NEIGHBORHOOD CONCERNS

Reviewing Agencies/Pre-Hearing Discussion

Staff has not received any new comments from reviewing agencies.

Neighborhood/Public

Property owners within 100’ of the subject site and the Altura Addition Neighborhood Association, the Summit Park Neighborhood Association, and the District 7 Coalition of Neighborhood Associations were notified again. Staff has received two letters of opposition to this request, each from the Altura Addition Neighborhood Association and Summit Park Neighborhood Association.

VI. CONCLUSION

This is a two-part request for the removal of Modification D: a zone map amendment and amendment to the site development plan for building permit for a shopping center located on Lot 28A, Block A, Altura Addition, which is located on the east side of Carlisle Boulevard NE just south of Indian School Road. Modification D is specific to a restaurant use, which is only allowed if approved by the EPC. The applicant must demonstrate that there is “adequate buffering and protection of adjacent residential uses from the adverse effects of noise, lighting, pollution, traffic and odors”. The subject site has been approved for a restaurant use on two previous cases.

The request does not meet the test of R-270-1980 and residents in the area are opposed. The Neighborhood Associations do not oppose a restaurant use, but want to ensure that future restaurant uses continue to be required to go through a notification and approval process. Staff is recommending denial of the request, but the compromise presented in the original staff report on page 10 (of that document) suggests that Modification D be amended to require Administrative Approval (AA) of a restaurant use rather than EPC approval.

Staff would like to revise that compromise: it is stated in the original staff report that the AA process requires that adjacent property owners and neighborhood associations be notified and if there are any aggrieved parties, the request must be heard by the EPC. After reviewing the Zoning Code Section 14-16-2-22 (A)(6), staff believes that a Condition of Approval would be required to notify surrounding property owners and to require EPC review if there are any parties aggrieved from the request of a proposed restaurant. Staff makes this revised suggested amendment as a compromise; it will simplify the process for the applicant and the residents.

If this revised amendment is considered, then staff finds that it furthers a preponderance of applicable City policies and recommends approval. If the applicant's request is considered without any modification (Modification D is simply removed from the site development plan), then staff cannot support a recommendation of approval.

FINDINGS - 11EPC-40087, Zone Map Amendment, 1/12/12

1. This is a request for approval of a Zone Map Amendment for Tract 28A, Block A, Altura Addition, to delete Modification D, pertaining to restaurant use, from the zoning description on the site plan. The subject site is located on the east side of Carlisle Boulevard NE between Indian School Road and Hannett Avenue NE and contains approximately 0.64-acres.
2. An amendment to the Site Development Plan for Building Permit request, Project #1003801, 11EPC-40066, accompanies the requested zone change. This request is contingent on the approval of that request as the site development plan controls the zoning on all SU-1 zoned sites.
3. The site is zoned SU-1/C-1 with Exclusions and Modifications. A restaurant use is permitted under the current zoning and subject to Modification D which states: *“Restaurant use is allowed only if approved by the EPC in conjunction with a site development plan for building permit that demonstrates adequate buffering and protection of adjacent residential uses from adverse effects of noise, lighting, pollution, traffic, and odors.”* A change of restaurant tenant also requires EPC approval.
4. The SU-1 zone provides uses which are special because of infrequent occurrence, effect on surrounding property, safety, hazard, or other reasons. The SU-1 zone authorizes the EPC to impose requirements as may be necessary to implement the purpose of the Zoning Code – “to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city.”
5. The EPC has approved two prior requests for a restaurant with very specific restrictions to address neighborhood concerns. These restaurants are currently operating; one is an ice cream shop and the other is a bakery with 12 seats and one oven.
6. The applicant is not proposing any changes to the building footprint, parking, lighting, landscaping, or any other exterior features on the site.
7. The original request was for an amendment to the site development plan for building permit – to remove Modification D. At the December 8, 2011 hearing, the EPC determined that removal of this modification from the zoning descriptor was a zone change. The EPC continued this case to the January 12, 2012 hearing in order to allow the applicant to request a zone change action.
8. The subject site is in the Established Urban Area of the Comprehensive Plan. There are no other governing plans (Sector Development Plans or others) in the area.

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9. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.

 10. The subject site is zoned SU-1/C-1 with Exclusions and Modifications; the applicant is requesting removal of Modification D which is a change of zoning. The following are the results of the R-270-1980 analysis:
 - A. The Removal of Modification D is not in the best interest of the neighborhood as the potential impacts of a restaurant use could have a negative impact on adjacent properties. The EPC would no longer have approval authority of a change to a restaurant use (or a change of tenants that resume an existing restaurant use) and public review and approval of a restaurant use would no longer be required; thus, this request is not consistent with the health, safety, morals and general welfare of the City.
 - B. Removal of Modification D would make the zoning less restrictive by allowing an unknown restaurant use in the existing shopping center, without any notification to the adjoining residents. This lack of notification could have a destabilizing effect on the adjoining residents since some restaurant uses could have a negative impact on the residents.
 - C. Removal of Modification D does not further applicable Comprehensive Plan policies. It makes the current zoning of the subject site to be less restrictive when considering restaurant uses. Applicable Comprehensive Plan policies are as follows:

ESTABLISHED URBAN AREA POLICIES

Policies II.B.5.d & e – The request does not respect neighborhood values because it will not promote collaboration between the applicant and the neighborhoods to address potential impacts of a new restaurant use.

Policy II.B.5.i – The request may result in a restaurant use that will not complement residential areas and may result in adverse effects of noise, pollution and other adverse impacts.
 - D. The applicant has not demonstrated why the existing zoning is inappropriate pursuant to parts 2 & 3 of this policy:
 - (2) The applicant has not demonstrated any change in neighborhood or community conditions that would justify the removal of Modification D. The adjoining residents continue to advocate for notice and an EPC Hearing when a new restaurant is proposed in the existing shopping center.
 - (3) The applicant has not demonstrated why removal of Modification D would be more advantageous to the community, as articulated in the Comprehensive Plan. Removal of this Modification could result in adverse impacts on abutting residents.
 - E. Removal of Modification D from the site development plan could be harmful to adjacent properties, the neighborhood and the community as there would no longer be the requirement of EPC review and a public hearing that would address possible impacts.
 - F. Removal of Modification D would not cause any unprogrammed capital expenditures.

- G. The applicant has not discussed any economic considerations or has mentioned the cost of land pertaining to this request.
 - H. This policy does not apply to the current request since the site is already zoned for commercial uses.
 - I. The EPC already approved the current zoning, SU-1/C-1 with Exclusions and Modifications, in 2005 in order to tailor the allowed uses on the site to facilitate some of the neighborhood's concerns. The current zoning is appropriate on the subject site to facilitate realization of the Comprehensive Plan and the Zoning Code.
 - J. The EPC already approved the current zoning, SU-1/C-1 with Exclusions and Modifications, in 2005 in order to tailor the allowed uses on the site to facilitate some of the neighborhood's concerns. The current zoning is appropriate on the subject site to facilitate realization of the Comprehensive Plan and the Zoning Code.
11. There is opposition to the request of removing Modification D from the site development plan. A facilitated meeting was held on November 14, 2011 and neighbors expressed their concern with the applicant's request.
12. Staff has received two letters of opposition from each of the neighborhood associations (NA) that were notified – the Altura Addition NA and Summit Park NA.
13. Staff has received a letter of support from Monte Skarsgard who is affiliated with one of the tenants in the shopping center, Los Poblanos Organics.

RECOMMENDATION - 11EPC-40087 (January 12, 2012)

DENIAL of 11EPC-40087, a request for a Zone Map Amendment, for Lots 28A, Block A, Altura Addition, based on the preceding Findings.

FINDINGS - 11EPC-40066, Site Development Plan for Building Permit Amendment, 1/12/12

1. This is a request for approval of an amendment to a site development plan for building permit for Tract 28A, Block A, Altura Addition to delete Modification D, pertaining to restaurant use, from the zoning description. The subject site is located on the east side of Carlisle Boulevard NE between Indian School Road and Hannett Avenue NE and contains approximately 0.64-acres.

1. The requested Site Development Plan for Building Permit is accompanied by a Zone Map Amendment request, Project #1003801, 11EPC-40087. Approval of that request is contingent on the approval of this request as the subject site is an SU-1 zoned site and the zoning refers to an approved site plan. The accompanying zone change is not justified.

2. The site is zoned SU-1/C-1 with Exclusions and Modifications. A restaurant use is permitted under the current zoning and subject to Modification D which states: *“Restaurant use is allowed only if approved by the EPC in conjunction with a site development plan for building permit that demonstrates adequate buffering and protection of adjacent residential uses from adverse effects of noise, lighting, pollution, traffic, and odors.”* A change of restaurant tenant also requires EPC approval.

3. The SU-1 zone provides uses, which are special because of infrequent occurrence, effect on surrounding property, safety, hazard, or other reasons. The SU-1 zone authorizes the EPC to impose requirements as may be necessary to implement the purpose of the Zoning Code – “to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city.”

4. The EPC has approved two prior requests for a restaurant with very specific restrictions to address neighborhood concerns. These restaurants are currently operating; one is an ice cream shop and the other is a bakery with 12 seats and one oven.

5. The applicant is not proposing any changes to the building footprint, parking, lighting, landscaping, or any other exterior features on the site.

6. The subject site is in the Established Urban Area of the Comprehensive Plan. There are no other governing plans (Sector Development Plans or others) in the area.

7. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.

8. This request is for removal of Modification D on the site development plan and is found to be in conflict with goals and policies of the Comprehensive Plan. These policies include:

ESTABLISHED URBAN AREA POLICIES

Policies II.B.5.d & e – The request does not respect neighborhood values because it will not promote collaboration between the applicant and the neighborhoods to address potential impacts of a new restaurant use.

Policy II.B.5.i – The request may result in a restaurant use that will not complement residential areas and may result in adverse effects of noise, pollution and other adverse impacts.

9. There is opposition to the request of removing Modification D from the site development plan. A facilitated meeting was held on November 14, 2011 and neighbors expressed their concern with the applicant's request.

14. Staff has received two letters of opposition from each of the neighborhood associations (NA) that were notified – the Altura Addition NA and Summit Park NA.

15. Staff has received a letter of support from Monte Skarsgard who is affiliated with one of the tenants in the shopping center, Los Poblanos Organics.

RECOMMENDATION - 11EPC-40066 (January 12, 2012)

DENIAL of 11EPC-40066, a request for an Amendment to the Site Development Plan for Building Permit, for Lots 28A, Block A, Altura Addition, based on the preceding Findings.

Christopher Hyer
Senior Planner

Notice of Decision cc list:

DAC Enterprises, Inc., 9520 MacAllan Road NE, Albuquerque, NM, 87109
Douglas Peterson, 2325 San Pedro NE, Suite 2-A, Albuquerque, NM, 87110
Robert Romero, DAC, P.O. Box 16658, Albuquerque, NM, 87191
Denise Hammer, 1735 Aliso Drive NE, Albuquerque, NM, 87110
Jeanne Adams, 1405 Solano Drive NE, Albuquerque, NM, 87110
Keith Rasmussen, 3401 Calle de Ranchero NE, Albuquerque, NM, 87106
Judy Jennings, 916 Dartmouth NE, Albuquerque, NM, 87106
Bill Hoch, 813 Calle del Corte NM, Albuquerque, NM, 87110
Lynne Martin, 1531 Espejo NE, Albuquerque, NM, 87112

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement

1. Amendment of the conditions of approved site development plan- specifically condition #5 is noted, they are actually seeking to change condition #4 the condition being that the applicant shall submit an amendment of this site development plan to the Environmental Planning Commission in the event a restaurant or food service tenant is proposed for the site.
2. The existing Zoning is SU-1 for C-1 Uses with exclusions, restaurant is not an exclusion and is allowed permissively in the C-1 zone. Also an internal only tenant improvement does not require an amended site development plan or any inspections from Zoning.
3. No comment on the change from Zoning concerning the requirement of an EPC amendment, being as this would be an allowed use unless specifically excluded on the site development plan and as long as no exterior modifications to the property are made Zoning would not require an amended site development plan.

Office of Neighborhood Coordination

Altura Addition NA (R)
Summit Park NA (R)
District 7 Coalition of NA's
10/31/11 – Recommending Facilitation – siw
10/31/11 – Assigned to Pilar Vaile - sdb

Metropolitan Redevelopment Section

The subject development site is not within a Redevelopment Area, and Metropolitan Redevelopment Section staff have no comments on this application.

Long Range Planning

Established Urban
No area or sector plan

The current restrictions on the site were enacted before the project was built. The previous zoning on the site was O-1, was the SU-1 C-1 zone approved to address the concerns of the neighborhood regarding a more intense zone?

There are now two restaurant uses on the site. Do the neighbors still have concerns about food/restaurant uses on the site?

The applicant references the policies cited in previous applications, but does not provide copies, so there is no current verbiage to evaluate compliance with the criteria of R-270-1980.

CITY ENGINEER

No adverse comments

WATER UTILITY AUTHORITY

Utility Services

No comments received.

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

No comments received.

Environmental Services Division

No comments received.

PARKS AND RECREATION

Planning and Design

No comments received.

Open Space Division

After review, Open Space Division has 'No Adverse Comment'.

City Forester

No comments received.

POLICE DEPARTMENT/Planning

This project is in the SE Area Command.

No Crime Prevention or CPTED comments concerning the proposed Amended Site Development Plan For Building Permit at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

Approved as long as you comply with SWMD Ordinances.

FIRE DEPARTMENT/Planning

No Comments

TRANSIT DEPARTMENT

Project # 1003801 11EPC-40066 AMEND SITE DEVELOPMENT PLAN- BLDG. PRMT.	Adjacent and nearby routes	Route #5, Montgomery/ Carlisle, route passes the site on Carlisle.
	Adjacent bus stops	Nearest bus stop is 286' north from the northeast corner of the property, serving the above-mentioned route.
	Site plan requirements	Transit plans to move the existing bus stop 330' south and place it adjacent to the property. Applicant to provide a 5' wide x 20' long easement between sidewalk and the property for shelter pad if sufficient Right-of-way not available and requests that the applicant install a Type C bus shelter as per the COA Design standard COA 2355, and associated bench and trash can at the proposed bus stop.
	Large site TDM suggestions	N/A
	Other information	None.

COMMENTS FROM OTHER AGENCIES

ALBUQUERQUE PUBLIC SCHOOLS

The owner of the above property requests an Amendment to the Site Development Plan for a Building Permit that will allow for the development of a House of Bread restaurant. This will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MPO ID # 801.2 "Carlisle Blvd Bike Lane Study" is a City of Albuquerque-DMD project to conduct a bike lane study between Indian School Rd and Cutler Ave. The project has been included in the 2035 MTP. Coordination with the City of Albuquerque-DMD is recommended to insure development is consistent with this project (848-1575).

For informational purposes, Indian School Rd and Carlisle Blvd have been classified as a Minor Arterials as per the Current Roadway Functional Classification System map.

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comments based on information provided to date.