



**Environmental
Planning
Commission**

*Agenda Number: 4
Project Number: 1008443
Case Number: 10EPC-40041
November 18, 2010*

Staff Report

Agent	DAC Enterprises, INC
Applicant	Gary Padilla and Jack Harris
Request	Zone Map Amendment/Sector Development Plan Map Amendment
Legal Description	Lots 1-9, Block 30, J.L. Finley's Subdivision, Heights Reservoir Addition
Location	South side of Lomas Boulevard between Jefferson Street NE and Madison Street NE (4718 Lomas Boulevard NE)
Size	Approximately 0.63-acres
Existing Zoning	C-1
Proposed Zoning	C-2

Staff Recommendation

APPROVAL of 10EPC-40041, based on the Findings beginning on Page 15.

Staff Planner
Christopher Hyer, Senior Planner

Summary of Analysis

The request is to rezone 9 lots located on Lomas Boulevard from C-1 to C-2. The applicants own businesses (a car lot and an architecture firm) along Lomas Boulevard. The car lot is not a permissive use in the C-1 and requires a zone change to C-2 - this was the initial request. The office building is permissive in C-1, but would have created a spot zone of C-1 if the car lot's request alone resulted in a zone change to C-2. The zoning along the Lomas corridor in this area is C-2.

The site is in the Established Urban Area of the Comprehensive Plan and is within the boundaries of the Nob Hill Highland Sector Development Plan. However, the properties are not zoned SU-2 and thus, the regulations of the sector plan do not apply.

The applicant provided an adequate justification for the zone change per R-270-1980, and the request furthers a preponderance of applicable goals and policies in City plans.

Staff has received a letter of support the Highland Business and NA. Staff recommends approval.

Location Map (3" x 3")

I. AREA CHARACTERISTICS AND ZONING HISTORY

Surrounding zoning, plan designations, and land uses:

	<i>Zoning</i>	<i>Comprehensive Plan Area; Applicable Rank II & III Plans</i>	<i>Land Use</i>
Site	C-1	Established Urban Area; Nob Hill Highland Sector Development Plan	Used car sales lot; architectural office building
North	C-2	Established Urban Area;	Various commercial and office uses
South	C-1	Established Urban Area; Nob Hill Highland Sector Development Plan	Outdoor storage, parking lot, then Zia Elementary School
East	C-2	Established Urban Area; Nob Hill Highland Sector Development Plan	Commercial: Vehicle repair and service, shopping center
West	C-2	Established Urban Area; Nob Hill Highland Sector Development Plan	Glass Shop, Jewish Synagogue

II. INTRODUCTION

Proposal

This is a request for a Sector Plan Map Amendment (a zone change) from C-1 to C-2 for Lots 1-9, Block 30, Finley’s Subdivision, Heights Reservoir Addition. The collection of these lots will be referred to as the “subject site” in this staff report and is located on the south side of Lomas Boulevard between Madison Street and Jefferson Street, west of San Mateo Boulevard. The subject site is approximately 0.63-acres and is the location of Houston Wholesale, LLC, a used vehicle sales dealership and Jack Harris Architect, an architectural firm.

The subject site has been commercial ever since its annexation into the City. The portion of the block in this request has been a vehicle sales dealership for many years on lots 1-4, a separate office building on lots 5-7 and a different office building on lots 8 and 9. The other two lots in this block, lots 10 and 11, contain a glass shop and are zoned C-2. The current owner of the car sales lot acquired lots 5-7 and has already demolished the existing office building in order to expand his sales lot, fusing the original sales lot with these additional lots. However, these lots, Lots 1-7, are zoned C-1 and the sales of vehicles is not allowed in this zoning category.

The initial owner of this business purchased the original site (Lots 1-4) for the purpose of vehicle sales in the 1980’s. The City approved this use and issued a zoning certificate stating that the

site was indeed C-2 and he could establish a vehicle sales business. The city then found this site to be zoned C-1 (after the City initially made the determination that it was zoned C-2) and told the owner they were in violation of the zoning ordinance. The owner went to District Court and received a positive judgment that allows the operation of a vehicle dealership in a C-1 zone in virtual perpetuity, yet only on Lots 1-4, not any other lots. Therefore, the addition of Lots 5-7 (zoned C-1) is found by the City to be in violation and requires the applicant to ask for a zone change.

Since Lots 10 and 11 are already zoned C-2, the remaining lots, Lots 8 and 9, would create a spot zone of C-1 if the zone change to C-2 for Lots 1-7 were approved. Thus, the applicant asked for a deferral in order to allow the owner of Lots 8 and 9 to join the requested zone change. Since the owner of the architectural firm has joined the owner of the car sales lot in this request, an approval of the zone change would no longer create a spot zone of C-1.

The subject site is within the Nob Hill Highland Sector Development Plan (NHSDP) area. The Environmental Planning Commission (EPC) has the authority to amend the NHSDP Zone Map as the subject site is less than 1 City block (considered 10-acres or more) §14-16-4-1(C)(10) of the Zoning Code.

Context

Abutting the site to the south is an alley. Further south is a fenced area that is used as an outdoor storage of vehicles for this vehicle dealership and the parking lot for a Jewish Synagogue (both zoned C-1) that is west of the site. Further south is Zia Elementary School that is zoned R-3. East of the subject site, across Madison Street, is a Jiffy Lube - an auto repair and service business and Diagnostic Brakes Alignment and is zoned C-2. To the west of the subject site is the retail business of North Star Glass (the same block) and an associated parking lot with zoning of C-2.

Abutting the subject site on the north side is Lomas Boulevard, a major arterial that is lined on both sides with frontage properties zoned C-2 – this zoning is constant from San Mateo Boulevard to Washington Street and further east all the way to Wyoming Boulevard. The block of the subject site, Block 30, is the exception to all properties fronting Lomas Boulevard, on both the north and south sides of the arterial, being zoned C-1, instead of the typical zoning for Lomas, C-2.

History

In 1971, a zone change request was brought to the Planning Commission for the two lots (Lots 10 and 11) on the west side of this block, Block 30, the corner properties at Lomas and Jefferson Street, which is on the opposite end of this block from the vehicle sales lot. At that time, the Planning Department recommendation was to change the zoning of all the lots in Block 30 of Finley's Addition from C-1 to C-2, which included the six lots south of this strip of land that is across the alley. The case went to the City Commission and from there it is unclear what the result was regarding the Planning Departments recommendation as there is not a record showing the outcome. Staff's assumption is that this opinion never made it though the City Commission process as the zone map only changed the zoning on Lots 10 and 11, which was the original request.

In 1989, the EPC denied a request for a zone map amendment (Z-89-62) from C-1 to C-2 for Lots 1-4, Block 30, Finley's Subdivision (a.k.a., Houston Auto Sales). The EPC denied it because the applicant was not able to justify this request as per the policies of R-270-1980, specifically, Section 1.D. where the applicant must demonstrate the existing zoning is inappropriate. The applicant was unable to justify the need for a zone change regarding all three portions of Policy 1.D: 1) there was an error made in the zone map; 2) there was a changed neighborhood condition that would justify the request; or 3), the proposed use would be more advantageous to the community as articulated by the Comprehensive Plan.

The case was denied and the EPC found that the applicant was not "denied reasonable use of his land under the C-1 zone". That is when the applicant appealed the decision to the City Council and to the District Court. The applicant presented to the court that the City had granted him a Zoning Certificate that stated his property was indeed zoned C-2 and that car sales was permissive in that zone and then came back and told him that his property was actually zoned C-1 and that he would need a zone change to continue operation. The court agreed with him and gave him a Stipulated Judgment allowing vehicle sales activity for Lots 1-4 in virtual perpetuity.

The last case that is relevant to this request's history is an August 2002 request to change the zoning on Lot 21, the lot that is south of the dealership across the alley, from C-1 to C-2. This request was withdrawn after the staff planner completed the staff report recommending denial. It is recognized in that staff report that outdoor storage is not allowed in the C-1 zone permissively, but is allowed conditionally - now the use has a conditional use permit. However, the requested zone change was not found to further all applicable goals and policies of the Comprehensive Plan, the applicant failed to justify the request as per the policies of R-270-1980 and the existing zoning was not shown to be inappropriate. Further, the request would have created a spot zone.

There has been one other piece of history regarding the land use for the area around this site and that is the revised Nob Hill Highland Sector Plan, which was adopted by City Council in September 2007, enactment number 96-2007. This plan's area was expanded from the original 1987 Nob Hill Sector Development Plan to include properties east of Washington Street in order to address community concerns regarding the protection of the established character of the neighborhood. The neighborhood wants to protect the walkability in and around the plan area, promote and retain a successful business community and protect historic structures in their immediate area.

Transportation System

The Long Range Roadway System (LRRS) map, produced by the Mid-Region Council of Governments (MRCOG), identifies the functional classifications of roadways.

The Long Range Roadway System designates Lomas Boulevard as a Principal Arterial, with a right-of-way of 124' (Established & Developing Urban). It is a four-lane facility in front of the subject site. Traffic flow in 2009 was 15,500 Average Weekday Traffic (AWT) along Lomas Boulevard in front of the subject site.

Jefferson Street and Madison Street are local streets.

Comprehensive Plan Corridor Designation

Lomas Boulevard is designated as an Enhanced Transit Corridor.

Trails/Bikeways

The Long Range Bikeway System (LRBS) map shows a bike lane on Washington Avenue and a proposed bike lane on Marble Avenue.

Transit

The ABQ Ride #11 Lomas Boulevard bus route operates 7 days a week from Second Street east to Tramway Boulevard. There are bus stops for the #11 on either side of Lomas Boulevard with an eastbound stop on the block of the subject site.

Public Facilities/Community Services

See map at front of staff report. Staff does not consider that these are of particular significance to the request.

Zoning Information

Section 14-16-2-16 C-1 Neighborhood Commercial Zone. This zone provides suitable sites for office, service, institutional and limited commercial uses to satisfy the day-to-day needs of residential areas.

(A) Permissive Uses. Permissive uses, provided there is no outdoor storage or activity except parking and as specifically allowed.

(3) Office.

Section 14-16-2-17 C-2 Community Commercial Zone. This zone provides suitable sites for offices, for most services and commercial activities, and for certain specified institutional uses.

(A) Permissive Uses. Permissive uses, provided there is no outdoor storage except parking and as specifically allowed below:

(5) Office.

(13)(b) Vehicle sales, rental, service, repair, and storage, both indoor and outdoor, provided:

1. Outdoor activity areas (display and storage of stock in trade) meet all the specifications for a parking lot, as regulated in the O-1 zone.
2. Outdoor storage of inoperative vehicles is limited to two vehicles at any time, and a given inoperative vehicle shall not be parked outdoors over two weeks ...

Although the subject site is within the NHHSDP area, it is not an SU-2 and therefore, is not subject to the sector plan's regulations.

III. REQUEST FOR ZONE MAP AMENDMENT

Resolution 270-1980 (Policies for Zone Map Change Applications)

This Resolution 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.

Analysis of Applicant's Justification

Note: R-270-1980 and references to city policies are stated in plain type; *the applicant's justification is quoted or summarized in italicized text; staff's analysis is in bold italics*

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

The applicant addresses the current zoning between Montclair and Wyoming Boulevard that fronts Lomas Boulevard, on both the north and south sides, is C-2. "The intent of zoning regulations [is to] 'create orderly, harmonious and economically sound development' to secure the health, safety, morals and general welfare of the City. The C-2 zone is a standard zone category and, with the exception of the block referenced in this request, is the zone category for both sides of Lomas. The C-1 anomaly is neither orderly, nor harmonious with the surrounding zone categories." It would be inconsistent with the intent of the Zoning Code (to protect health, safety, morals, etc.) to make the case that a zone change that mirrors all other zoning along Lomas would not be appropriate.

The applicant furthers their justification by stating that the regulations found in the Zoning Code are necessary to provide adequate open space for light and air and avoid over concentration of population, etc. The applicant's justification is the Zoning Code already addresses the health and safety of the community and the requested zone change is a portion of the code. Since there is no difference between C-1 and C-2 zone in terms of a change with respect to R-270-1980, the C-2 regulations have already dealt with the issue of health, safety, morals and general welfare of the City with the C-1 zone.

Staff accepts the applicant's justification, but believes there are additional issues to be discussed in this part of the policy. Lomas Boulevard is lined with C-2 or CCR-3 zoned properties along this portion of the roadway. The subject site's block, Block 30, is the exception as it has 9 of the 11 lots zoned C-1. A continuous zone category along this portion of the arterial is reasonable.

As far as differences between C-1 and C-2 zoning regarding health, safety and welfare of the City (relative to the intent of the Zoning Code), the C-2 zone allows sales of liquor for offsite consumption, outdoor storage and vehicle sales, repair, etc. These uses are more intense than

uses allowed in the C-1 zoning category. However, since the subject site abuts Lomas Boulevard, these more intense uses allowed in the C-2 zoning category would not infringe upon the health, safety, morals and general welfare of the City. The subject site will be able to offer the same uses as adjacent sites, which offers more variety to the community. Thus, staff believes this request furthers the general welfare of the City.

- 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.

Stability of land use and zoning does not necessarily mean that the current zoning on a property is appropriate, even if no zone change is desired. All the surrounding zoning on Lomas Boulevard, except the remaining lots on this block are zoned C-2. The car lot is in existence on lots 1-7 and is a C-2 use. The other uses on the block are allowed in the C-2 zone. Changing a zone to match every other zone in the area would destabilize neither land use nor zoning.

Staff agrees that the rezoning of Lots 1-7 (the automobile sales lot) and Lots 8 and 9 (the office building housing the architectural firm) will not destabilize land use and zoning because it is compatible with uses of adjoining properties. The fact remains that most all properties lining Lomas Boulevard on both sides from Montclair to Wyoming are zoned C-2. Further, the use of the vehicle sales dealership (car lot) has been in existence for several years and the intended use will not change with this request. The office building on Lots 8 and 9 is permissive in the C-1 and C-2 zones and will not change the character of the area. There are several other similar uses (both car lots and office buildings) in close proximity to the subject site along Lomas Boulevard.

- 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 agrees with Finding #3 (attached to this staff report) in the Z-89-62 that there are no adopted elements of the Comprehensive Plan or other City master plans, including the Nob Hill Highland Sector Development Plan (NHSDP), which did not exist in 1989. Applicant notes several supporting policies of the Comprehensive Plan and is discussed below.

FINDING #3 of Z-89-62

The proposed zone map amendment is compatible with the requirements of Resolution 270-1980 in that it is not in significant conflict with adopted elements of the Comprehensive Plan or other City master plans.

The zone change request in 1989 for part of the site, for Lots 1-4, was a similar request as this case today. The applicant was asking for a zone change from C-1 to C-2 in order to keep the use on the property as a car sales lot. The staff planner denied this case because the applicant's justification of R-270-1980, policy D. was not strong enough to justify the change. Staff for the 1989 case found that "an argument cannot be made that neighborhood conditions have changed or that the proposed (existing) use is more advantageous to the community."

As the applicant for the current case pointed out that Finding #3 supports their argument for the zone change, Findings #5 and #6 of the 1989 case reveal that the staff planner found other arguments to support the denial of the zone change request.

Finding #5 (Z-89-62) states:

The applicant has not justified the proposed zone map amendment by utilizing that portion of Resolution 270-1980 which requires that an error was made on the zone map, that changed neighborhood conditions exist, or that the proposed use is more advantageous to the community.

Finding #6 (Z-89-62) states:

The owner of the property is not denied reasonable use of his land.

Thus, staff believes that the Findings of the 1989 case are valid, but there is one other issue worthy of discussion and that is of the strip zoning the subject site creates along Lomas Boulevard: it being C-1 in the middle of the C-2 zoned properties fronting Lomas. This will be discussed below.

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 variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.”

The applicant has cited the following policies to justify the 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 density up to 5-dwelling units per acre.

This request furthers this policy because it allows the property to take advantage of appropriate C-2 permissive and conditional uses in line with adjacent properties and all other commercially zoned lots on Lomas Boulevard between Montclair and Wyoming. If the City has deemed C-2 appropriate for every other commercial lot in the area, then leaving the C-1 zoning designation on this property deviates from this policy by not allowing the same uses as are allowed on the other parcels. There is no sound policy justification to limit these uses on these seven lots.

Staff agrees with the applicant – although, now it is nine lots. As mentioned in Policy 1.A of R-270-1980, the C-1 zone is similar in the C-2 zone as both allow commercial uses. The C-2 zone allows more intensity of these uses and includes the sales of liquor for offsite consumption, outdoor storage and vehicle sales, repair, etc. This is a larger range of commercial uses and will be compatible with urban uses allowed on the adjacent C-2 zoned properties that line Lomas Boulevard.

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, cultural, recreational concern.

Any incompatible use, which may be placed on this lot if the zone map amendment is passed, is already on all of the other nearby blocks on Lomas. Signage, building height, landscaping, lighting and all other regulations of the Zoning Code would govern the rezoned site. There would be no new intensity of development that is not already allowed in the area and the size of the lot limits many allowed uses.

Staff concurs. In addition, the vehicle sales dealership and the architectural firm have been in existence and their uses on the lots they occupy are not proposed to change. Thus, these uses will not effect neighborhood values or alter carrying capacities of the land.

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

This infill re-zoning request is contiguous to all urban facilities. Lomas Boulevard is entirely zoned community commercial (C-2) between Montclair and Wyoming. All urban facilities, including water, sewer and transit routes abut this property. The applicant believes that this request is not opposed by any affected neighborhood, neighborhood association, or merchants association, thus, ensuring the integrity of the existing neighborhood.

Staff generally agrees. As mentioned above, a portion of this site has been used as a car sales lot for several years with the balance used as office buildings. Although, the car sales lot is non-conforming in the C-1 zone, it has not threatened the integrity of the existing neighborhood. The requested zone change to C-2 would not change the site's uses, only allow the uses to be legal and conforming. Thus, use of existing urban facilities and services and the integrity of existing neighborhoods will remain unchanged by this request.

Policy II.B.5.o: Redevelopment and rehabilitation of older neighborhoods in the Established Urban Area shall be continued and strengthened.

Providing the same zoning on this block as is allowed on all neighboring blocks would provide for a more even playing field in redeveloping or rehabilitating the commercial neighborhood along Lomas Boulevard.

Staff agrees with the applicants reasoning. The more intense C-2 zoning over the C-1 zone is the allowance of sales of liquor for off-site consumption and the sales, service and storage of automobiles. If the request was approved, the zoning was changed from C-1 to C-2, the subject site will be able to offer the same uses as adjacent sites. Thus, in the event of redevelopment, the subject site could offer the same uses found in the Lomas corridor, offering more variety to the community.

Policy II.B.5.p: Cost effective redevelopment techniques shall be developed and utilized.

Technique 2 of this policy says to "[e]mphasize private investment as a primary means to achieve redevelopment objectives." This property is developed by the property owner at no cost to the City of Albuquerque.

Staff does not consider this policy relevant because it pertains to redevelopment. The subject site will not redevelop to different uses.

C. ENVIRONMENTAL PROTECTION AND HERITAGE CONSERVATION POLICIES

1. AIR QUALITY

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

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

Approval of C-2 zoning on these small lots that are not large enough to develop any intensity and will not negatively impact the air quality in the area. The property will not generate any traffic that does not already exist on Lomas Boulevard.

Staff agrees with the applicant's justification. The total area of lots 1-9 is a little more than ½ an acre and is not large enough to create a greater intensity of uses than what currently exists: the existing car lot and the existing office building.

4. NOISE

Goal: To protect the public health and welfare and enhance the quality of life by reducing noise and by preventing new land use/noise conflicts.

Policy II.C.4.a: Noise considerations shall be integrated into the planning process so that future noise/land use conflicts are prevented.

Again, the property is too small to be used for any purpose that would create significant noise and, except for the four commercial lots directly west, is surrounded by three streets and an alley.

Staff finds that the request is consistent with the Noise goal rather than the policy, which focuses on preventing future, rather than mitigating existing, noise/land use conflicts. The noise generated from the adjacent Lomas Boulevard is greater in intensity than the noise generated from the car lot or office building. Further, since the subject site already exists as a car lot and office building, the expansion of the car lot is minimal and limiting to the generation of substantial increased activity. The size of the site is also a limiting factor for other activities that could be located there in the future. The lots of the office building are also too small for other than a small business.

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 business enterprises as well as the recruitment of outside firms shall be emphasized.

The applicant is a local resident and small businessman who owns a successful automobile sales company. He is not able to expand based upon the current zoning of the property. The current zoning does not provide for meaningful economic development based on this policy.

Staff generally agrees with the applicant's justification, however, there are two applicants for this request as the abutting architect has joined the owner of the car sales lot. The expansion of the car sales lot requires that the site be compliant with the current regulations and Vehicle Sales are first permissive in the C-2 zone - §14-16-2-17 (A)(13)(b). Thus, a zone change is required. The architectural firm is in an office building and this use is permissive in both C-1 and C-2. The change in zoning is necessary for the car sales lot to become compliant through the expansion onto 3 additional lots. The inclusion of the neighboring architect eliminates the creation of spot zoning.

The rezoning would allow established local businesses to remain and grow in their current location, which will continue to benefit the surrounding neighborhoods by providing jobs and services.

Nob Hill Highland Sector Development Plan (Rank III)

The Nob Hill Highland Sector Development Plan was adopted by the City Council on August 20, 2007 (R-07-185). The Plan replaces the 1987 Nob Hill Sector Development Plan and was expanded to include the Highland Metropolitan Redevelopment Plan area. The Plan generally encompasses properties between Girard Boulevard to the west, Lomas Boulevard to the north, San Mateo Boulevard to the east, and Zuni and Garfield Street to the south. Specific boundaries are shown on page 3 of the Plan. The main goals of the Plan are to protect the established character of the neighborhood, its walkability, its successful business community and its historic structures. It will also act as a guide to manage future residential density levels along Central Avenue as transit service continues to grow in this corridor.

Although this request is located within the boundaries of the NNHSDP, it is not zoned SU-2. Applicant believes that this request is unaffected by the regulations and policies of this plan.

Staff generally agrees with the applicant; the NNHSDP specifies properties that have regulations tailored for them – the subject site is not one of these properties. The sector plan has a primary focus on the Central Corridor and the properties surrounding it, the older neighborhood west of Hermosa Drive, east of Girard and south of Lomas and some residential properties between Washington Street and San Mateo Boulevard as well as two commercial blocks fronting Lomas Boulevard west of San Mateo Boulevard.

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.

The applicant believes that a different use category can be demonstrated as being more advantageous to the community. However, the applicant would like to include the issue of an error being made when the existing zone map was created.

As noted, this block is the only exception to C-2 zoning along both sides of Lomas Boulevard from Montclaire to Wyoming. If the case were the opposite, i.e., everything on Lomas was zoned C-1 except this block, then the case could be made for lobbying or special treatment in creating the zone category. In this case, there is simply no logic to justify this total inconsistency with the entire map pattern of Lomas Boulevard.

Staff agrees that the C-1 zoning for this block is an anomaly when all other properties facing Lomas Boulevard in this area are zoned C-2. It remains unclear what the initial zoning was for this block when the City's zone map was created in 1959. Staff is compelled to agree with the applicant that since all properties along Lomas Boulevard, from Montclaire to Wyoming – except this block, are zoned C-2, the community commercial zoning was likely the original zoning for the corridor. Even though there is yet to be discovered an error in the creation of the zone, staff agrees with the applicant's statement "there is simply no logic to justify this total inconsistency with the entire map pattern of Lomas Boulevard".

Further, the inconsistency argument has been used by the Planning Department in the past for the zoning of this block. In 1971, a request to change the zoning from C-1 to C-2 for Lots 10 and 11 (the west end of block 30) was made and the Planning Department was of the opinion that the entire block, Lots 1-11 and Lots 12, 13, 14, 21, 22, and 23 (the lots that are south of the subject site - across the alley) should have the zoning changed to C-2 as well in order to avoid a strip zone along the corridor. The ultimate outcome was to approve the initial request to change the zoning designation of Lots 10 and 11 to C-2, but not the entire block of lots (on both sides of the alley). Available records do not indicate why the Planning Department's recommendation was not approved.

In 1989, the previous owner of the car sales lot made a request for a zone change for lots 1-4 from C-1 to C-2. The staff planner found that the request was acceptable as per R-270-1980 except for policy D(2) as there was not a changed condition for the neighborhood that would justify the change of zone. This was carried further as the argument that if D(1) and D(2) do not apply, then D(3) must apply. The R-270-1980 policy of D(3) states that a different zone category must be shown to be more advantageous to the community. The applicant in 1989 did not use this portion of Policy D. to explain or justify how the zone change was more advantageous to the community. Since there was no good reason on the applicant's part to justify why the change in zoning was needed, the request was denied.

The current applicant uses D(3) as the justification of why a change in zoning from C-1 to C-2 is necessary. The request will eliminate a strip zone of C-1 that is inconsistent with the zoning along Lomas Boulevard, zoned C-2. Staff finds the elimination of the strip zoning along the Lomas corridor is more advantageous to the community as articulated in the Comprehensive Plan – Established Urban Area Policies a., i., j., and k. The subject site will offer a greater variety of choice to the residents of the nearby neighborhood, be in walking or bicycling distance to the neighborhoods and act as buffer between the traffic impacts on the arterial of Lomas Boulevard and the residential areas. (Comprehensive Plan Policies II.B.5.a, i, j, k)

- 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.

The permissive uses in the C-2 zone are the same uses that have been allowed on every other block in the vicinity for over 50-years. The current use, a car lot, is a C-2 permissive use not

usually allowed in the C-1 zone. The property is buffered from the nearest residential neighborhood by an alley and C-1 zoning to the south.

Staff concurs with the applicant's justification. The existing C-1 property that is south of the subject site, across the alley, provides a transition from any possible, more intense uses along the Lomas Corridor. The requested zoning, C-2, allows more intense uses to be adjacent to the Lomas arterial. In sum, the uses of these properties are buffered from the neighborhood to the south by the C-1 properties on the south side of the alley.

- 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.

This proposed zone change requires no capital expenditures on the part of the City in order to be developed.

Staff agrees. The uses already exist and will remain as they are currently.

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

Applicant makes no argument regarding economic factors as they may apply specifically to him.

Staff acknowledges the applicant's response.

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

This property is already zoned commercial. The fact that every other piece of commercial property on Lomas between Montclair and Wyoming is zoned community commercial instead of neighborhood commercial has been discussed.

Staff agrees. The fact that the property is located adjacent to Lomas Boulevard is not a reason for this request.

- 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.

This is not a spot zone. If this re-zoning is approved, the land will be zoned C-2, which is identical to the property to the east and north of this request.

Staff agrees. Now, with the architectural firm and his associated property joining this request, there will be no spot zoning along Lomas Boulevard in this area. This will clearly facilitate the intention of the Comprehensive Plan and the Zoning Code in creating orderly, harmonious and economically sound development.

- 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:
3. The change will clearly facilitate realization of the Comprehensive Plan and any adopted sector development plan or area development plan; and
 4. 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.

This is not a strip zone. See I. above.

Staff concurs. In fact, the request will eliminate the current strip zone situation that exists (a strip of C-1 zoning that is different from the surrounding zoning).

In conclusion, staff considers that the applicants have provided an adequate justification for this zone change request. They have demonstrated that the proposed C-2 zone is compatible with surrounding zoning and land uses and will allow the car lot to exist legally, and the office building of the architect to not create a spot zone.

IV. AGENCY & NEIGHBORHOOD CONCERNS

Reviewing Agencies/Pre-Hearing Discussion

There are no agency comments needing discussion.

Neighborhood/Public

Property-owners within 100' and the affected neighborhood associations (Highland Business and Neighborhood Association, Pueblo Alto Neighborhood Association, District 6 Coalition of Neighborhood Associations and District 7 Coalition of Neighborhood Associations) were notified. A facilitated meeting was neither offered nor requested. Staff has received a letter of support for this request from Claude Lewis, president, Highland Business and Neighborhood Association.

There is no known opposition to the request.

V. CONCLUSION

This is a request to rezone 9 lots along Lomas Boulevard from C-1 to C-2. The request will allow the expansion of an existing vehicle sales dealership that has been operating only on Lots 1-4 to expand to lots 5, 6, and 7. Lots 8 and 9 are included in the request in order to avoid the creation of a spot zone and to be consistent with established zoning along Lomas Boulevard.

The applicant/owner of the car sales lot has a stipulated judgment from 1989 that allows the vehicle sales use to operate in a C-1 zone in virtual perpetuity for Lots 1-4 only. Because of the desire to expand his car lot to the abutting 3 lots, he is required to ask for a zone change to C-2. As this will create a spot zone of C-1 for the architectural firm on Lots 8 and 9, the owner of those lots was asked to join this request.

The applicants have further pointed out that all other blocks of properties that front Lomas Boulevard between Montclair and Wyoming (on both sides of Lomas) are zoned C-2. This block is a strip zone of C-1 and their justification argues that the current C-1 zoning should be changed to C-2.

The applicant has provided an adequate justification for the zone change per R-270-1980, by demonstrating that the request is consistent with a preponderance of applicable goals and policies in the Comprehensive Plan. Even though the subject site is within the boundaries of the Nob Hill Highland Sector Development Plan, it is not an SU-2 zoned property, and therefore, the regulations of sector plan do not apply.

There is a letter of support for this zone change request from Claude Lewis, president, Highland Business and Neighborhood Association.

There is no known opposition to this request.

Staff recommends approval.

FINDINGS – 10EPC-40041, September 9, 2010, Sector Plan Map Amendment (Zone Change)

1. The request is to rezone Lots 1-9, Block 30, Tract 31, J.L. Finley's Subdivision, Heights Reservoir Addition, from C-1 to C-2. The subject site is approximately 0.63-acres and is located on the south side of Lomas Boulevard NE, between Jefferson Street NE and Madison Street NE.
2. The original request for the zone change from C-1 to C-2 was for Lots 1-7. Since approval of this change would have created a spot zone of C-1 for Lots 8 and 9, the owner of these lots was asked to join this request.
3. The subject site is the location of two businesses: Houston Wholesale, LLC, a used vehicle sales dealership that has been in existence under various owners for many years and Harris Architects, an architectural firm.
4. The original vehicle sales dealership is on Lots 1-4. This portion of the subject site has a district court decision (No. CV-90-07665) that allows it to remain as a vehicle dealership in the C-1 zone in virtual perpetuity. No other property is included with this judgment.
5. Properties along Lomas Boulevard between Montclair Street and Wyoming Boulevard are zoned C-2. The subject site is considered a "strip zone" – a strip of zoning that is different from surrounding zoning.
6. The subject site is in the Established Urban Area of the Comprehensive Plan and the boundaries of the Nob Hill Highland Sector Development Plan, however, it is not zoned SU-2 and the regulations of the sector plan do not apply to this property.
7. The Albuquerque/Bernalillo County Comprehensive Plan, the Nob Hill Highland Sector Development Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
8. The request is justified per R-270-1980:
 - A. The proposed zone change is consistent with the health, safety, morals and general welfare of the city, because the allowable uses available to it will be the same allowable uses of adjacent properties that front onto Lomas Boulevard. This will increase the variety of uses on the site and will provide greater choice to the community
 - B. The change of zoning will not destabilize land use and zoning in the area because the proposed zoning is consistent with surrounding zoning along Lomas Boulevard.

- C. The zone change is not in significant conflict with adopted elements of the Comprehensive Plan or the Nob Hill Highland Sector Development Plan as described below:

ESTABLISHED URBAN AREA LAND USE POLICIES

Policy II.B.5.a: The request will allow a variety of uses in an urban setting at similar densities/intensities as allowed along Lomas Boulevard.

Policy II.B.5.d: The location, intensity and design of new development will respect existing neighborhood values and carrying capacities. Any new development that would take place on this site would not alter the intensity of uses that isn't already in existence along the Lomas corridor. Also, the size of the subject site limits development that may occur in the future which will help in protecting neighborhood values.

Policy II.B.5.e: The site is located in an Established Urban area that is served by existing services. The existing urban facilities and services and the integrity of existing neighborhoods will remain unchanged by this request.

Policy II.B.5.o: The subject site is not considered for redevelopment; however, the request will provide consistent zoning and allow different uses that are compatible with the adjacent properties that line Lomas Boulevard, which continues the commercial viability surrounding the neighborhood.

ENVIRONMENTAL POLICIES

The request will not negatively impact the air or noise quality in the area that does not already exist on Lomas Boulevard. (Policies II.C.1.a and II.C.4.a)

ECONOMIC POLICIES

Policy II.D.6.b: The rezoning would allow established local businesses to remain and grow in their current location encouraging economic development, which will continue to benefit the surrounding neighborhoods by providing jobs and services.

- D. The applicant has adequately justified the request by demonstrating that:
- 1) There was an error when the zone map was created; all abutting and adjacent properties along Lomas Boulevard are zoned C-2 except for the subject site.
 - 3) The requested zone change from C-1 to C-2 is more advantageous to the community as articulated in the Comprehensive Plan.
- E. The proposed C-2 zone will not be harmful to adjacent property, the neighborhood or the community. The requested zoning, C-2, allows more intense uses to be adjacent to the Lomas arterial. The existing C-1 property that is south of the subject site, across the alley, provides a transition between the subject site and residential development further south.
- F. The request would not require unprogrammed capital expenditures by the City.

- G. The cost of land or other economic considerations pertaining to the applicant are not the determining factor for the zone change.
 - H. The property's location on a major street is not the reason for this request.
 - I. The proposed C-2 zone would not be a spot zone because it adjoins existing C-2 zones. The request for a zone change will correct a problem of spot/strip zoning along the Lomas corridor and will clearly facilitate the intention of the Comprehensive Plan and the Zoning Code in creating orderly, harmonious and economically sound development.
 - J. The proposed change would correct a problem of strip zoning by changing the subject site's zoning to the same category as the adjacent properties along the Lomas corridor.
9. Property owners within 100' and the affected neighborhood associations (Highland Business and Neighborhood Association, Pueblo Alto Neighborhood Association, District 6 Coalition of Neighborhood Associations and District 7 Coalition of Neighborhood Associations) were notified. A facilitated meeting was neither offered nor requested. There is no known opposition to the request.
10. There is a letter of support for this zone change request from Claude Lewis, president, Highland Business and Neighborhood Association.

RECOMMENDATION - 10EPC-40041 (November 18, 2010)

APPROVAL of 10EPC-40041, a Sector Development Plan Map Amendment (zone change) from C-1 to C-2, for Lots 1-9, Block 30, Tract 31, J.L. Finley's Subdivision, Heights Reservoir Addition, based on the preceding Findings.

***Christopher Hyer
Senior Planner***

cc: DAC Enterprises, Inc., P.O. Box 16658, Albuquerque, NM, 87191
Gary Padilla, 4718 Lomas Boulevard NE, Albuquerque, NM 87110
Jack Harris, 4706 Lomas Boulevard NE, Albuquerque, NM 87110

Attachments

1. C-1 zone
2. C-2 zone
3. Letter from DAC Enterprises, October 9, 2010 – Revising applicant’s request
4. Stipulated Judgment, July 9, 1990 – Granting auto sales for Lots 1-4
5. Z-89-62, August 17, 1989 – previous request for zone change
6. Z-71-140, September 20, 1971 – zone change for Lots 10 and 11
7. Letter on support, July 28, 2010 – Claude Lewis, HBNA
8. Additional letter of support, October 23, 2010 – Claude Lewis, HBNA

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement

No comments Received.

Office of Neighborhood Coordination

Highland Business & NA (R)

Pueblo Alto NA (R)

District 6 Coalition of NA's

District 7 Coalition of NA's

Long Range Planning

The site is located with the boundaries of the Established Urban area of the Comprehensive Plan and the Nob Hill Highland Sector Development Plan.

The site is not within the SU-2 are of the Nob Hill plan and does not have any special requirements.

The proposed zone would seem to be compatible with the surrounding because it will be the same zone as the majority of properties along the Lomas corridor.

CITY ENGINEER

Transportation Development (City Engineer/Planning Department):

- Reviewed, no comments.

Hydrology Development (City Engineer/Planning Department):

- The Hydrology Section has no objection to the zone map amendment.

Transportation Planning (Department of Municipal Development):

- Reviewed, and no comments regarding on-street bikeways or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

Conditions of approval for the proposed Zone Map Amendment shall include:

- a. None.

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

No comments Received.

City Forester

POLICE DEPARTMENT/Planning

This project is in APD's Southeast Area Command.

No Crime Prevention or CPTED comments concerning the proposed Amendment to Zone Map - Establishment of Zoning or Zone Change request at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

Approved; must comply with SWMD ordinance.

FIRE DEPARTMENT/Planning

No comments Received.

TRANSIT DEPARTMENT

Adjacent and nearby routes	Route #11, Lomas route passes the site on Lomas
Adjacent bus stops	Bus Stop serving Route #11 in eastbound direction is located adjacent to the property
Site plan requirements	None.
Large site TDM suggestions	N/A
Other information	None.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

Finley, Lots 1-7, Block 30, is located on 4718 Lomas Blvd NE between Jefferson St NE and Madison St NE. The owner of the above property requests an Amendment to Zone Map for a zone change from C-1 to C-2 for a development that consists of an existing car lot. This will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

Lomas Blvd has been identified as an ITS Corridor in the AMPA Regional ITS Architecture and ITS Corridor Map.

For informational purposes, the functional classification of Lomas Blvd is that of urban principal arterial, as per the Current Roadway Functional Classification System Map.

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

- PNM has no comments based on information provided to date.