
**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: LUPZ Committee

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

SUBJECT: Downtown Neighborhood Area Sector Development Plan
(R-11-225) – Responses to and Recommendations for
Requests for Individual Plan Amendments Without
Corresponding Recommended Changes to Proposed Zoning
Map

DATE: November 30, 2011

[NOTE: Staff presented a first draft of this memo to the Land Use, Planning and Zoning Committee on September 14, 2011. At that time, staff recommended a deferral of R-11-225 to the November 30, 2011, LUPZ meeting in order to allow time for interested parties to review the 9-14-11 memo and submit questions about, comments on, and/or rebuttals to any of the statements contained therein.

Numbers #1-3 of this memo contain the same information, analysis, and recommendations that were included in the 9-14-11 memo in the section called "Individual Plan Amendment Requests that staff does not believe are supported by adopted City plans and policies and justified per R-270-1980." The discussion of and recommendations for numbers 4-6 represents new analysis that is being presented for the first time in this memo.]

The EPC Draft (10.28.2010) of the DNASDP contained a Proposed Zoning Map showing recommended zone changes for all properties within the Plan area that were based on the goals and objectives developed during the planning process and are consistent with applicable goals and policies of the Comprehensive Plan and other adopted policies. As noted in the April 7, 2011, EPC staff report, "The proposed changes to the zoning for the DNA SDP do not single out any individual property; rather, the changes proposed are area wide. Changes are proposed to individual zones in the 1976 DNA SDP and to the entire sector plan map, rather than to individual properties."

Following the submittal of the official Draft DNASDP to the EPC, property owners who didn't agree with the proposed rezoning of their property began submitting letters and emails, requesting different zoning for their respective properties than what was proposed in the Draft Plan. During the EPC hearing process, Planning staff addressed these requests and, in many cases, depending on the arguments

presented by the requestor, agreed that the application of a different zoning designation would be appropriate.

At its April 7, 2011, hearing, the EPC adopted twelve recommended Conditions of Approval amending the Proposed Zoning Map contained in the 10.28.2010 draft. Unfortunately, there was little, if any, substantive explanation of or justification per Resolution 270-1980 (which establishes the policies for justifying zone map amendments) provided for the recommended changes.

Council staff felt it appropriate to provide an analysis of each of the individual requested amendments to the Sector Plan and try to substantiate, with specific policy citations, whether or not the requests are more consistent with applicable City goals and policies than the rezoning that was proposed in the EPC Draft (10.28.2010). What follows is an analysis of the proposed rezoning of properties, per the EPC Draft (10.28.2010), that staff believes are justified and should not be changed.

1. 1800 (Lots B1 and B2) Old Town Road, NW

Existing Zoning: SU-2/TH (Townhouse) – 1976 Plan

Existing Land Use: Vacant

EPC Draft (10.28.2010) Proposed Zoning: SU-2/SF (Single Family)

Requested Zoning: SU-2/TH – 2011 Plan

Post EPC Draft (6.9.2011) Recommended Zoning: SU-2/SF

Discussion: These two, undeveloped lots are owned by the same person who owns 1802 Old Town Road, NW, which property is discussed above and for which staff is recommending the retention of townhouse (SU-2/TH) zoning rather than the EPC Draft (10.28.2010) proposal of SU-2/SF. The lots are located to the south and southeast of 1802 Old Town Road and do not have direct access to the street.

At the August 10, 2011, LUPZ hearing, the property owner stated that changing the zoning from SU-2/TH (1976 Plan) to SU-2/SF would affect her income and any potential construction on these lots. She also stated that she believes that the downtown area is the appropriate location for rental properties.

Staff believes that the proposed zone change from the existing SU-2/TH (1976 Plan) to SU-2/DNA-SF in the 2011 DNASDP is more advantageous to the community and that to allow SU-2/DNA-TH zoning to remain would be inconsistent with the Comprehensive Plan based on the following:

- R-270-1980, Policy (G): "The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone."

While the "applicant" for the 2011 DNASDP and its proposed zone changes is the City of Albuquerque, staff is citing this policy to demonstrate why the property owner's request to maintain SU-2/TH zoning based on an argument about the effect the proposed zone change will have on her income cannot be the basis for granting the request.

- Comprehensive Plan, Section II.B.5, Policy h: “Higher density housing is most appropriate in the following situations:
 - In designated Activity Centers.
 - In areas with excellent access to the major street network.
 - In areas where a mixed density pattern is already established by zoning or use, where it is compatible with existing area land uses and where adequate infrastructure is or will be available.
 - In areas now predominantly zoned single-family only where it comprises a complete block face and faces onto similar or higher density development; up to 10 dwelling units per net acre.
 - In areas where a transition is needed between single-family homes and much more intensive development: densities will vary up to 30 dwelling units per net acre according to the intensity of development in adjacent areas.”

The subject properties do not meet any of the tests of Section II.B.5, Policy h and, therefore, should not be considered an appropriate location for higher density housing.

- Comprehensive Plan, Section II.B.6: “*NOTE: The Central Urban Area is a portion of the Established Urban Area and as such is subject to policies of Section II.B.5...Development intensities in the Central Urban Area should generally be higher than in other portions of Established Urban.” Section II.B.5 – Developing and Established Urban Areas – provides as Policy 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.”

The subject properties, which total approximately 0.27 acres, are currently vacant. Under the proposed SU-2/SF zone and given the size of the subject lots, staff believes that up to 4 dwelling units (two primary dwelling units and two secondary dwelling units) could permissively be developed on the two lots, resulting in an average density of 14 du/acre. This is consistent with what the Comprehensive Plan envisions for the Central Urban Area.

- Comprehensive Plan, Section II.B.5, Policy 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.” Possible Technique #2: “Specify development guidelines based on local environmental characteristics and community values in sector and area plans...” Application of the SU-2/SF zone in this location will ensure that the intensity of new development complements existing, adjacent development and respects the neighborhood’s goal of preserving and protecting the single-family character of the neighborhood, as articulated in the 2011 DNASDP’s “Goals & Objectives” section (C/S R-11-225, p. 60).

Recommendation: Rezone the properties (1808 [Lots B1 and B2] Old Town Road, NW) from SU-2/TH (1976 Plan) to SU-2/SF as proposed in the original EPC Draft (10.28.2010).

2. 707 and 709 Granite, NW

Existing Zoning: SU-2/TH (Townhouse) – 1976 Plan

Existing Land Use: Single Family

EPC Draft (10.28.2010) Proposed Zoning: SU-2/SF (Single Family)

Requested Zoning: SU-2/TH – 2011 Plan

Post EPC Draft (6.9.2011) Recommended Zoning per Condition of Approval #81: SU-2/TH (for 705, 707, and 709 Granite and for 1103 and 1105 7th St., NW)

Discussion: The 1976 DNASDP zoned a large portion of the neighborhood between Lomas and Mountain as SU-2/TH (Townhouse), but very little of the area, which predominantly contains detached single-family development, redeveloped as townhouses. The subject properties currently each contain a single-family, single-story detached dwelling unit, as do all other residential lots in the immediate area. The exception is a lot to the north of the subject properties, which contains multi-family development and faces Mountain Road. The subject properties are immediately adjacent to the 8th and Forrester Historic District and Overlay Zone but are not within the boundaries of the HOZ.

The owner of these properties testified at the December 2, 2010, EPC hearing that he bought 709 Granite about 15 years ago and later acquired 707 Granite with the intention of developing townhouses on the two properties. He also stated at that hearing that his “plan was is [sic] not to develop into [sic] the extent that it could be, but probably just put four units on it” (Complete Record, EPC Minutes, December 2, 2010, p. 1066-1067). Staff notes that, under the proposed SU-2/SF zoning in the 2011 DNASDP, secondary dwelling units, defined in the Plan as “Living quarters within an accessory building containing kitchen facilities and does not exceed 650 net square feet in area. There shall be no more than one Secondary Dwelling Unit or Accessory Living Quarters per premise,” are a permissive use, meaning that, depending on the particular size of a lot, up to two dwelling units per lot would be allowed for a total of four units on these two lots.

The property owner’s attorney asserted, in written communications submitted to the EPC, that the City (the applicant) “ignores the character and development of the immediate areas being evaluated. As to the Granite properties, the City ignores that the Harwood School is located immediately across 7th Street from Granite, and a Church and its large driveway/parking lot dominate the south side of Granite, between 7th and 8th Streets” (Complete Record, Letter from Mark Andrew Hirsch, p. 443). In response to this claim, Council planning staff offers that proximity and/or adjacency to a school and/or church use is not, in and of itself, considered justification for higher-density residential zoning, either in the Comprehensive Plan or as a matter of

standard urban planning and zoning practice. As a point of clarification, the subject properties do not face the Harwood School; the properties that do directly face the Harwood School, both on 7th Street and on Granite between 6th and 7th (note that the subject properties are located between 7th and 8th) are single-family detached development in character, and the proposed zoning for all of these properties is SU-2/SF to match the existing land use and development form.

Staff believes that the proposed zone change from the existing SU-2/TH (1976 Plan) to SU-2/DNA-SF in the 2011 DNASDP is more advantageous to the community based on the following:

- R-270-1980, Policy (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.” [Note: In the case of Sector Development Plans, the City is the applicant.]

The existing land use of the subject properties is single-family residential development, while the existing zoning is SU-2/TH (Townhouse). It should be noted that the existing zoning has been in place for 35 years, but no townhouse development has occurred on or within the immediate vicinity of the subject properties during that time. Also, the first of the “Major Planning Themes” listed in the Executive Summary of the Plan is “Matching the zoning with the existing land use for properties within the Downtown Neighborhood Area” (C/S R-11-225, p. 4).

Given the discrepancy between existing land use and existing zoning, staff believes that protecting the stability of existing land use, which is less intense than what existing zoning allows, is what will help to “promote the health, safety, convenience, and general welfare of the citizens of the city,” which is the stated intent of the Zoning Code (§ 14-16-1-3 (A)), and, therefore, outweighs the need to preserve the existing zoning, which, as noted above, has never been utilized.

- Comprehensive Plan, Section II.B.5, Policy h: “Higher density housing is most appropriate in the following situations:
 - In designated Activity Centers.
 - In areas with excellent access to the major street network.
 - In areas where a mixed density pattern is already established by zoning or use, where it is compatible with existing area land uses and where adequate infrastructure is or will be available.
 - In areas now predominantly zoned single-family only where it comprises a complete block face and faces onto similar or higher density development; up to 10 dwelling units per net acre.
 - In areas where a transition is needed between single-family homes and much more intensive development: densities will

vary up to 30 dwelling units per net acre according to the intensity of development in adjacent areas.”

The subject properties do not meet any of the tests of Section II.B.5, Policy h and, therefore, should not be considered an appropriate location for higher density housing.

- Comprehensive Plan, Section II.B.6: “*NOTE: The Central Urban Area is a portion of the Established Urban Area and as such is subject to policies of Section II.B.5... Development intensities in the Central Urban Area should generally be higher than in other portions of Established Urban.” Section II.B.5 – Developing and Established Urban Areas – provides as Policy 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.”

The subject properties currently provide 2 dwelling units on approximately 0.32 acres, or an average density of 6+ du/acre. Under the proposed SU-2/SF zone and given the size and depth of the subject lots, an additional 2 dwelling units could permissively be developed, resulting in a doubling of the density. This is consistent with what the Comprehensive Plan envisions for the Central Urban Area.

- Comprehensive Plan, Section II.B.5, Policy 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.” Possible Technique #2: “Specify development guidelines based on local environmental characteristics and community values in sector and area plans...”
Application of the SU-2/SF zone in this location will ensure that the intensity of new development or redevelopment complements existing, adjacent development and respects the neighborhood’s goal of preserving and protecting the single-family character of the neighborhood, as articulated in the 2011 DNASDP’s “Goals & Objectives” section (C/S R-11-225, p. 60).

3. 908 Roma NW

Existing Zoning: SU-2/TH (Townhouse) – 1976 Plan

Existing Land Use: Single Family

EPC Draft (10.28.2010) Proposed Zoning: SU-2/SF (Single Family)

Requested Zoning: SU-2/TH – 2011 Plan

Post EPC Draft (6.9.2011) Recommended Zoning: SU-2/SF

Discussion: The subject property is located in the heart of the single-family residential area of the neighborhood and surrounded on all sides by proposed SU-2/DNA-SF zoning. The property owners, who are requesting to maintain SU-2/TH zoning, provided no justification for why their property should remain SU-2/TH other than, “we want to maintain the option to tear [the existing house] down and build two townhouses on the site... There is a significant monetary difference between the value of two townhouses on this site and the value of a

single family residence on this site" (Complete Record, Letter from Jon Anderson and Laura Daby, p. 1619).

Staff believes that the proposed zone change from the existing SU-2/TH (1976 Plan) to SU-2/DNA-SF in the 2011 DNASDP is more advantageous to the community based on the following:

- R-270-1980, Policy (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." [Note: In the case of Sector Development Plans, the City is the applicant.]

The existing land use of the subject properties is single-family residential development, while the existing zoning is SU-2/TH (townhouse). It should be noted that the existing zoning has been in place for 35 years, but townhouse development has not occurred on the subject property. Also, the first of the "Major Planning Themes" listed in the Executive Summary of the Plan is "Matching the zoning with the existing land use for properties within the Downtown Neighborhood Area" (C/S R-11-225, p. 4).

Given the discrepancy between existing land use and existing zoning, staff believes that protecting the stability of existing land use, which is less intense than what existing zoning allows, is what will help to "promote the health, safety, convenience, and general welfare of the citizens of the city," which is the stated intent of the Zoning Code (§ 14-16-1-3 (A)), and, therefore, outweighs the need to preserve the existing zoning, which, as noted above, has never been utilized.

- R-270-1980, Policy (G): "The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a change of zone."
While the "applicant" for the 2011 DNASDP and its proposed zone changes is the City of Albuquerque, staff is citing this policy to demonstrate why the property owners' request to maintain SU-2/TH zoning is not supported given that the reason provided hinges on the monetary value of TH versus SF zoning.
- Comprehensive Plan, Section II.B.5, Policy h: "Higher density housing is most appropriate in the following situations:
 - In designated Activity Centers.
 - In areas with excellent access to the major street network.
 - In areas where a mixed density pattern is already established by zoning or use, where it is compatible with existing area land uses and where adequate infrastructure is or will be available.
 - In areas now predominantly zoned single-family only where it comprises a complete block face and faces onto similar or higher density development; up to 10 dwelling units per net acre.
 - In areas where a transition is needed between single-family homes and much more intensive development: densities will

vary up to 30 dwelling units per net acre according to the intensity of development in adjacent areas.”

The subject property does not meet any of the tests of Section II.B.5, Policy h and, therefore, should not be considered an appropriate location for higher density housing.

- Comprehensive Plan, Section II.B.6: “*NOTE: The Central Urban Area is a portion of the Established Urban Area and as such is subject to policies of Section II.B.5...Development intensities in the Central Urban Area should generally be higher than in other portions of Established Urban.” Section II.B.5 – Developing and Established Urban Areas – provides as Policy 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.”

The subject property provides 1 dwelling unit on approximately 0.14 acres, or an average density of 7 du/acre. This is consistent with what the Comprehensive Plan envisions for the Central Urban Area.

- Comprehensive Plan, Section II.B.5, Policy 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.” Possible Technique #2: “Specify development guidelines based on local environmental characteristics and community values in sector and area plans...”
Application of the SU-2/DNA-SF zone in this location will ensure that the intensity of new development complements existing, adjacent development and respects the neighborhood’s goal of preserving and protecting the single-family character of the neighborhood, as articulated in the 2011 DNASDP’s “Goals & Objectives” section (C/S R-11-225, p. 60).

4. 918-924 Tijeras Ave., NW, 200-208 10th St., NW, and 919-921 Kent NW

Existing Zoning: SU-2/HDA (High Density Apartments)

Existing Land Use: Multi-family

EPC Draft (10.28.2010) Proposed Zoning: SU-2/MR (Mixed Residential)

Requested Zoning: SU-2/HDA (and complete removal from the Sector Development Plan)

Post EPC Draft (6.9.2011) Recommended Zoning per Condition of Approval #82: SU-2/HDA (per the 1976 Plan and not subject to any requirements of the 2011 Plan)

Discussion: There is extensive documentation in the record detailing the many reasons for this request and the property owner’s objection to being rezoned or included in the Plan at all. Some specific objections include: 1) correspondence of the MR zone to the R-2 zoning district rather than the R-4 zoning district, to which the HDA zone refers; 2) development standards (e.g., setbacks, entries, open space, parking) being the same as those in the Fourth Ward Historic

Overlay Zone, which this property owner sued the City to be removed from, and 3) no allowance for any non-residential development in the proposed MR zone; and. In response to each of those objections, staff offers the following analysis:

1) R-2 vs. R-4 zoning: The R-4 zoning district no longer exists as a zoning district in the Comprehensive City Zoning Code (CCZC). It only exists in certain older sector plans such as the current DNASDP. The highest-density/intensity residential zone in the CCZC is now the R-3 zone. The R-2, R-3, and R-4 zones contain the exact same allowance in terms of "density" as measured in the permissive number of dwelling units per acre, which is 30.

There are repeated references in the record by the property owner to plans to build a 5-story, 35-unit apartment building on the subject property. It is asserted that this project has been "approved" by the City. A Site Development Plan for the proposed "Carlton Apartments" was submitted by the property owner's attorney on 9-14-11. That Plan proposes 35 units on 0.28 acres. This equals 125 du/acre, which is specified in the "Site Data" section of the proposed Site Development Plan. The maximum number of du/acre allowed in the R-2, R-3, and R-4 zones is 30.

The proposed plan exceeds the allowable density by more than four times. This would not change if the requested zoning is adopted. It should be noted that the Comprehensive Plan provides that "Net densities above 30 dwelling units per acre should generally be within Major Activity Centers; lower net densities in areas surrounding all types of Activity Centers will serve as a transition to residential neighborhoods" (II.B.7 Policy b). The subject site is not located within a Major Activity Center.

The proposed Site Development Plan for the "Carlton Apartments" in the record contains the signature of only one City employee. That signature is just one of many that are required before a building permit would be issued. Staff was unable to find anything in the record indicating that an actual building permit for the proposed apartment project had ever been issued.

2) Design standards: All zones contain regulations for things like setbacks, height, required off-street parking, usable open space, etc. For many of these standard kinds of regulations, the proposed MR zone has been adapted to mirror the HDA zone and, in certain respects, is actually less restrictive than the HDA zone that is being requested. For example, the HDA requires a minimum front yard setback of 5', but with respect to the subject property, the MR zone would actually allow a 0' setback, meaning the building could be built at the property line.

With respect to the additional standards that the DNASDP proposes, such standards are proposed in all of the DNASDP zones, not just the MR zone. These additional standards regulate specific features, such as building façade articulation, windows and doors, and location of building entries. Virtually all of the newer Sector

Development Plans that the City has adopted in the past 4-5 years contain similar regulations to those proposed for the DNASDP. The Nob Hill Highland, South Yale, East Gateway, Volcano Cliffs, and Volcano Trails SDPs contain regulations for things like windows and doors (i.e., glazing requirements), orientation of primary entries, and prohibitions on darkly-tinted or reflective glass.

The fact that the design criteria established in the new zones in the DNASDP are similar to/the same as those contained in the Fourth Ward HOZ Design Guidelines is, in fact, consistent with good urban planning practices. Development patterns in established neighborhoods in urban areas are identifiable and distinguishable because of common features of the built environment, such as setbacks, fenestration, and orientation. The Comprehensive Plan contains the following Goal and Policy regarding Community Identity and Urban Design: "The Goal is to preserve and enhance the natural and built characteristics, social, cultural and historical features that identify Albuquerque and Bernalillo County sub-areas as distinct communities and collections of neighborhoods" (II.C.9, Goal statement). And "In each Community Area, strategic planning, neighborhood planning, development and redevelopment shall be evaluated in light of its relationship to and effect upon the following: ...2) Built environment: Height and massing of buildings; Setbacks from the street; Placement of entrances and windows..." (II.C.9 Policy b).

3) Allowance for limited non-residential use in the MR zone: The existing zoning for many of the properties in the DNASDP that are proposed to be rezoned to MR is HDA (High Density Apartments). As was established in 1) above, the HDA zone corresponds to the R-4 zone, which provides that "Non-residential uses [per the RC zone] shall not exceed ten percent of the gross floor area on the premises." Given that the MR zone is intended to "provide a transition between the low-density residential core of the Downtown Neighborhood Area and the central business district of Downtown" (DNASDP, C/S R-11-225, 11-30-11 draft, page 100), and given that the MR zone predominantly abuts mixed-use zones, staff feels that it would be appropriate to maintain the limited allowance for non-residential uses that exists in the HDA zone. Staff has prepared a Committee Amendment that would make this change should the Committee wish to adopt this recommendation.

Recommendation: Rezone the subject properties from SU-2/HDA (1976 Plan) to SU-2/DNA-MR as proposed in the original EPC Draft (10.28.2010). Add an allowance to the SU-2/DNA-MR zone for properties that do not abut properties zoned SU-2 SF to have non-residential uses corresponding to the SU-2/DNA-MUL zone for up to 10% of the gross floor area on the premises.

5. 906 and 908 Tijeras NW

Existing Zoning: SU-2/HDA (High-Density Apartments)

Existing Land Use: Single Family (906 Tijeras) and Multi-Family (908 Tijeras)

EPC Draft (10.28.2010) Proposed Zoning: SU-2/MR (Mixed Residential)

Requested Zoning: SU-2/OR (Office Residential)

Post EPC Draft (6.9.2011) Recommended Zoning: SU-2/MR

Discussion: On October 31, 2011, staff received a letter from the property owners of 906 and 908 Tijeras NW, petitioning for a change of zoning from HDA to OR. The letter states, "The requested change will bring these two houses into better compliance with the transition taking place into higher intensity activities in this high density apartment area. One idea would be to allow owners or tenants to work and live on the same premises. This would have positive fiscal impact for the City in keeping with the higher density transition."

While Tijeras contains a mix of residential (both single family and multi-family) and non-residential uses, the block in which these two properties are located is decidedly residential in character. The properties across the street from and to the east and west of these properties are all exclusively developed and used as residential properties. If the issue is allowing "owners or tenants to work and live on the same premises," as described in the petitioners' letter, this is already allowed under the proposed SU-2/MR zoning since the SU-2/MR zone allows for uses permissive in the R-1 zone, which allows "Home occupation" as an accessory use. Given that neighborhood residents have repeatedly expressed concerns about the encroachment of office uses into the neighborhood, it would be inconsistent with one of the principal goals of the Plan to introduce new opportunities for office development in locations that, historically, have never been used for anything other than residential.

Given the existing zoning and land use of the property and adjacent properties, staff feels that the proposed SU-2/MR zoning is the appropriate designation to apply to the subject properties and cannot find sufficient justification to support rezoning the properties to SU-2/DNA-OR instead.

Recommendation: Rezone the properties (906 and 908 Tijeras NW) from SU-2/HDA (1976 Plan) to SU-2/DNA-MR as proposed in the original EPC Draft (10.28.2010).

6. 727 Tijeras Ave., NW

Existing Zoning: SU-2/HDA (High Density Apartments)

Existing Land Use: Commercial

EPC Draft (10.28.2010) Proposed Zoning: SU-2/OR (Office Residential)

Requested Zoning: SU-2/MUL (Mixed Use Light)

Post EPC Draft (6.9.2011) Recommended Zoning per Condition of

Approval #31: SU-2/MUL

Discussion: The request for SU-2/MUL zoning, which was submitted on behalf of the property owner by her representative, is based on the following explanation: "The draft Sector Development Plan proposes

that this property be zoned SU2 (Office Residential). [The property owner] is requesting instead that the property be zoned SU 2 (Mixed Use Light). As I said in my remarks to the EPC on December 2, I believe that MUL would be a much more appropriate designation, based on the building's design and the uses of the property in the past. The building is clearly designed to be a retail space. The frontage on Tijeras Ave. is entirely glass picture windows so that pedestrians have a clear view of the goods for sale. The west side of the building on 8th Street is approximately half glass, for the same purpose. Parking on Tijeras Ave. is one hour, not metered, on the street. From my years in business next door, I know that parking was never a problem for my customers. Because I worked next door from 1991 through 2009, I know that it was leased by Paulsen and Associates (a planning firm) for one year around 1996. It was also used as a second hand clothing store for about six months. Unfortunately the property was otherwise vacant for most of the last 20 years. I checked the City Directory for the period 1971 through 1990. I found that the building was fairly consistently occupied during that period, with office or retail uses as follows: 1971: Leggett's Laundry and Dry Cleaning. 1972: Sanitary Cleaners. 1973-74: Gordon Herkenhoff and Associates, Engineers. 1975: vacant. 1976: Fisk Trading Co. (jewelry). 1977: vacant. 1978: Besmart Thrift Shop. 1978: Basic Designs. 1980-84: Typography Unlimited. 1985: vacant. 1986-88: Ortiz Hand Woven Fashion (wholesale and retail). 1989-90: vacant. Thus there is a clear history of office or retail use. This property has never been residential. The building is completely unsuited for a residence. So I strongly believe that MUL would be a much more appropriate zoning."

Staff sees the following problems with granting the request for SU-2/MUL zoning at this location:

1. The 10.28.2010 draft of the DNASDP contains the following description of the SU-2/MUL zone: "The intent of the SU-2/MUL Zone is to recognize the unique mixed use character along Mountain Road and to complement the adjacent Sawmill neighborhood to the north." The property in question – 727 Tijeras Ave., NW – is not located anywhere near Mountain Road or the Sawmill neighborhood.
2. R-270-1980, provides the following: (l) 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.

Council planning staff believes that to rezone this property SU-2/MUL would create an unjustified spot zone because the change will neither clearly facilitate the realization of the Comprehensive Plan and the DNASDP, nor does the property meet any of the tests in subsection (2). Specifically, a) it would not function as a transition between adjacent zones but would rather break the continuity of zoning on the street; b) there are not topographical or traffic issues, or special adverse land uses nearby that would make it unsuitable for uses allowed in any adjacent zone; and c) based on the history of the property that was provided by the requestor of the zone change, the property and structure on it are clearly suitable for uses that will be allowed in the adjacent OR (Office/Residential) zone (i.e., office use).

Recommendation: While staff does not believe there is sufficient justification to grant the requested change to SU-2/MUL zoning for this property, staff is not arguing that the SU-2/OR zone, as currently written, is the most appropriate zoning for this property, either. In fact, staff believes that the SU-2/OR zone is overly restrictive and fails to provide a mechanism for dealing with situations like the one described in the narrative above about 727 Tijeras Ave., NW. As such, staff has developed a proposal to amend the SU-2/OR zone that staff feels will appropriately address and resolve this issue.

