



**Environmental
Planning
Commission**

Staff Report

**Agenda Number: 2
Project Number: 1000870
Case #: 13EPC-40119
July 11, 2013**

Agent	Consensus Planning, Inc.
Applicant	Lee Properties, Inc.
Request	Zone Map Amendment
Legal Description	Portion of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant
Location	98 th Street Between Avalon & Volcano Rd. NW
Size	Approximately 4.0 acres
Existing Zoning	SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales
Proposed Zoning	C-2

Staff Recommendation

APPROVAL of Case #13EPC-40119 based on the Findings beginning on Page 14, and subject to the Condition of Approval beginning on Page 16.

**Staff Planner
Carrie Barkhurst**

Summary of Analysis

The request is for a zone change at a site located in an urbanizing area just south of the 1-40 and 98th Street Interchange. The applicant would like to develop a gas station that sells packaged liquor. The applicant argues that there have been changed community conditions in the area as the justification for the zone change request.

The subject site is in the Developing Urban Area of the Comprehensive Plan. The West Side Strategic Plan also applies. This site is included within the boundaries of the Updated West Route 66 SDP, which is currently before the City Council. The proposal generally meets the applicable requirements of the Comprehensive Plan, the West Side Strategic Plan, and the City Zoning Code.

While the main reason for the zone change is economic – the ability to compete fairly with other nearby gas stations – the justification is based on the request being consistent with the City-sponsored WR66 zone change proposed for the subject site. Therefore the request meets R-270-1980, Section G.

There is some opposition to this request, on the basis that liquor sales are prohibited by the current zone and in light of the adjacent uses, more alcohol sales will not be beneficial to the community.



Part of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant

City Departments and other interested agencies reviewed this application from 6/3/2013 to 6/14/2013. Agency comments used in the preparation of this report begin on Page 18.

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>
<i>Site</i>	SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales	Developing Urban Area; West Side Strategic Plan (Rank II)	Vacant
<i>North</i>	SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales	Developing Urban Area; West Side Strategic Plan (Rank II)	Restaurant; Commercial; Hotel; Truck Plaza
<i>South</i>	SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales; SU-2 Planned Commercial Area	Developing Urban Area; West Side Strategic Plan (Rank II) ; West Route 66 Sector Dev. Plan	Vacant; Gas Station and Automobile-oriented Retail
<i>East</i>	SU-1 for IP Uses & C-2 Permissive Uses With Exceptions	Developing Urban Area; West Side Strategic Plan (Rank II); West Route 66 Sector Dev. Plan	Vacant
<i>West</i>	SU-1 for C-2 Uses and Campground, Excluding Package Liquor Sales	Developing Urban Area; West Side Strategic Plan (Rank II)	Vacant

II. INTRODUCTION

Proposal

This request is for a Zone Map Amendment (Zone Change) for a 4.0 acre portion of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant, located on 98th Street NW between Avalon Rd NW and Volcano Rd NW. The subject site is zoned SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales. The request is for C-2 zoning, which would remove the SU-1 site plan control and the restriction on package liquor sales, in order to develop a gas station with liquor sales. It would also allow the property owner to apply for Conditional C-2 Uses.

EPC Role

The Environmental Planning Commission (EPC) has decision-making authority for the zone change because the site is less than one block, per §14-16-4-1(C)(10) of the Zoning Code.

Context

The subject site is vacant, undeveloped land located approximately 1/3rd of a mile south of the I-40 and 98th Street interchange. It is shown at a mid-block location between Avalon and Volcano Rds. and it dimensions as approximately 420' x 420'. The subject site is surrounded by primarily undeveloped land in the County and developing land in the City.

There are developed lots near the subject site that are primarily travel and automobile-oriented businesses. Approximately 1/3rd of a mile south, there are two shopping centers on either side of 98th Street at the Central Avenue intersection. There are two existing gas stations in the near vicinity – a Truck Plaza one block north, and a standard gas station one block south of the subject site. Additionally, within a half-mile of the subject site there is existing development consisting of commercial, manufacturing, warehousing, storage, residential, and mobile-home courts.

The subject site is in the Developing Urban Area of the Comprehensive Plan and within the boundaries of the Rank II West Side Strategic Plan. It is adjacent to, but outside of, the West Route 66 Sector Plan. The 2013 Update to that plan proposes to include the site within the boundaries, with *SU-2/WR66 C-2 zoning*. The subject site is located within the Atrisco Park Community - designated in the West Side Strategic Plan - which is one of three major employment areas on the west side.

History

The subject site was annexed in 1997 as part of a larger 20-acre site and was zoned *SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales (Z-97-83/AX-97-15)*. At that time, a camp ground, motel, restaurant, convenience store and gas station were proposed for Tracts 3 & 4, which are to the west of the subject site. Planning Staff recommended that Tracts 1 & 2 also be included in the annexation, for a more logical City/County boundary. The EPC recommended approval of the annexation of Tracts 1 – 4 with the zoning *SU-1 for C-2 Uses* for the subject site. Because the request was for annexation, City Council was the final approval body.

A memorandum from the Mayor urged City Council to consider amending the zoning to exclude package liquor sales. It states: “SU-1 zoning for C-2 Uses allows the development of service stations or convenience stores which have package liquor sales. The combination of automobile-oriented uses with package liquor sales promotes drinking and driving – a deadly combination which this administration strongly opposes.” City Council supported the Mayor’s position and amended the zoning to exclude package liquor sales, see attachments.

Since the property was annexed, a truck wash, motel, adult video store, and a fast-food restaurant developed according to the zoning established in 1997 with annexation. Commercial development to the south has occurred as well, according to the *SU-2 for Planned Commercial Area* zoning established by the West Route 66 Sector Development Plan in 1987. In 2011, a 76-acre tract of land on the east side of 98th Street was annexed and rezoned *SU-1/IP Uses and C-2 Permissive Uses with Exceptions*. No development has yet taken place in this property.

Transportation System

The Long Range Roadway System map, produced by the Mid-Region Council of Government, identifies the functional classifications of roadways. The Long Range Roadway System designates 98th Street NW as an Urban Principal Arterial, with a right-of-way of 156-feet. Additional dedication of right-of-way will be required at the time of subdivision and replatting.

Comprehensive Plan Corridor Designation. Central Avenue, approximately 1/3rd of a mile to the south, is designated as an Enhanced Transit Corridor, which aims to “improve transit and

pedestrian opportunities ... and develop adjacent land uses and intensities that promote the use of transit.” The Enhanced Transit Corridor is within a walking distance of the subject site.

Trails/Bikeways. There are no existing bicycle routes, lanes, or trails that directly abut the subject site. According to the MRCOG Albuquerque Area Long Range Bikeway System Map, bicycle lanes are proposed along 98th Street adjacent to the subject site. There is an existing bicycle lane on 98th Street at Volcano Road, approximately 700 feet to the south of the subject site. The Department of Municipal Development, Transportation Planning Section, required a 10’ trail and an on-street bicycle lane in the public right-of-way to be constructed on the adjacent property to the north, in lieu of a sidewalk.

Transit. There is currently no public transportation that passes by the site. There is transit service along Central and 98th Street south of Central. The MRCOG Metropolitan Transportation Plan classifies 98th Street north of I-25 as a Potential High Capacity Transit Corridor. Future transit service along this corridor is expected.

Public Facilities/Community Services

A park, school, and residential area are located over 500 feet to the east of the subject site.

III. ANALYSIS

A) Albuquerque Comprehensive Zoning Code

The existing zoning is SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales. Development on an SU-1 zone may “only occur in conformance with an approved site development plan” that is subject to Environmental Planning Commission (EPC) review. A site development plan was not required at the time of annexation.

The proposed zoning is C-2. The C-2 zone provides suitable sites for offices, for most service and commercial activities, and for certain specified institutional uses. Because the current zoning designation already references C-2 uses, the main difference between the existing and proposed zone is the ability to sell packaged liquor. Another significant difference is that the proposed zone does not require a site development plan, which is required for all adjacent property. Also, the property owner would be allowed to request Conditional Uses of the C-2 Zone.

The proposed use, a gas station, is permissive under the current zoning. However, no alcohol sales would be allowed, due to the specific restriction of the current zoning.

General regulations also apply, including off-street parking (14-16-3-1), sign (14-16-3-5), landscaping (14-16-3-10) and building and site design for non-residential uses (14-16-3-18).

The proposed 2013 West Route 66 SDP update has included the subject site within the proposed boundaries. The site would be rezoned SU-2/WR C-2 when the plan is adopted. The same uses, height, and setbacks would apply. Additionally, the General Development Standards would apply to the site, see attachment. If a building permit is issued prior to adoption of the WR66 SDP, those requirements will not apply to the site.

B) Applicable Ordinances, Plans and Policies

Albuquerque / Bernalillo County Comprehensive Plan

Policy Citations are in Regular Text; *Applicant's analysis - Italics; Staff Analysis - Bold Italics*

The subject site is located in the area designated Developing Urban by the Comprehensive Plan. The Goal of Developing Urban Areas is 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.” Applicable policies include:

Policy II.B.5d: 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, and recreational concern.

The location of the C-2 use along 98th Street, an Urban Principal Arterial, is appropriate. There are no residential uses adjacent to this area. Adjacent land uses have been designated SU-1 or SU-2 for C-2 uses, which allow for package liquor sales.

From the time of the annexation until now, the area in where the property is located has changed. The uses surrounding the property are no longer limited to an adult store and truck stop. Restaurants, gas stations, and other commercial uses have changed the condition of the area. These additions call for a reevaluation of the current zoning as it no longer reflects the current social, cultural, and recreational concerns that may have existed at the time of annexation.

The subject site is located on a major arterial that can support the additional vehicular traffic. The site's current zoning allows a gas station use as a C-2 permissive use; the WR66 SDP also proposes C-2 uses for this site, subject to design regulations. There are no known adverse impacts to environmental conditions and carrying capacities, scenic or social resources. Public comments indicate the neighborhood association has concerns about alcohol sales near an existing adult store and would like the development to contribute to the aesthetic value of the community (neighborhood values). The request is generally consistent with Policy II.B.5d.

Policy II.B.5e: 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 future commercial site has full urban facilities and services available to it. Direct access is provided from 98th Street, an Urban Principal Arterial. The site can also be accessed via Central Avenue approximately 0.35 miles to the south, a designated Enhanced Transit Corridor.

The subject site is currently vacant land and it is contiguous to existing urban facilities, infrastructure, and services. The proposed development will not compromise the integrity of existing neighborhoods because there are none within close proximity to the subject site. The proposal furthers Policy II.B.5e.

Policy II.B.5j: 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.

As previously stated, there are no adjacent residential uses to this property along 98th Street. In addition, noise and lighting are regulated by the proposed WR66 SDP which is proposed to include the subject property.

Staff agrees that there are no adjacent residential environments that would be adversely impacted by the proposed use. Staff finds the WR66 SDP regulations inapplicable to this request because they have not been adopted, and the request has not incorporated them into the proposed zoning. However, the Zoning Code's general regulations have been crafted to address these concerns, and they do apply to the subject site. The request is consistent with Policy II.B.5i.

Policy II.B.5j: 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.
- In larger area-wide shopping centers located at intersections of arterial streets and provided with access via mass transit; more than one shopping center should be allowed at an intersection only when transportation problems do not result.
- In freestanding retailing and contiguous storefronts along streets in older neighborhoods.

The area proposed for commercial uses is sited along 98th Street, an Urban Principal Arterial. From the south, the area can be accessed from Central Avenue, and Enhanced Transit Corridor. The Enhanced Transit Corridor is within a convenient, walking distance of the subject site.

This is an existing commercially zoned property. Staff agrees with the applicant's analysis, but notes that it is an automobile-oriented use, which would not generate much pedestrian traffic. The request is generally consistent with Policy II.B.5j.

Policy II.B.5k: 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 operations.

Because there is no developed access from Avalon or Volcano Rd., new access point(s) would be proposed onto 98th Street. An existing private access and public utility easement on Tract 3 may be available to serve the subject site. There is no information provided to indicate how potential harmful effects of traffic would be minimized.

The subject site, adjacent to 98th Street, does not directly abut or provide access to any existing residential neighborhoods. Therefore the livability and safety of established neighborhoods will not be adversely impacted. The proposal generally further Policy II.B.5k.

The Goal of Economic Development is to achieve steady and diversified economic development balanced with other important social, cultural, and environmental goals.

Policy II.D.6a: New employment opportunities which will accommodate a wide range of occupational skills and salary levels shall be encouraged and new jobs located convenient to areas of most need.

Allowing for a new commercial uses north of Volcano Road, that are able to fairly compete with existing uses to the south, will provide additional employment opportunities and support new job creation in this area.

The subject site is located within the Atrisco Park Community, which is one of three major employment areas on the west side. A gas station would provide new jobs, however, this use neither accommodates a wide range of occupational skills and salary levels nor many new job opportunities. With three existing gas stations within ¼ mile of this site, it also does not offer much in the way of variety of jobs for this major employment center. The request is partially consistent with Policy II.D.6a.

West Side Strategic Plan (Rank II)

The West Side Strategic Plan (WSSP) was adopted in 1997 and amended in 2009 to help promote the development of Neighborhood and Community Centers. The WSSP identifies 13 communities, each with a unique identity and comprised of smaller neighborhood clusters. The subject site is in the Atrisco Park Community. The west end of this community consists of long 5 acre lots that are desirable to be replatted to provide land for residential, industrial/office and commercial development near Central.

Although the applicant did not discuss consistency with the WSSP, Staff has reviewed the application against the WSSP goals and policies.

Objective 8: Promote job opportunities and business growth in appropriate areas of the West Side.

This request is partially consistent with Objective 8 (WSSP) because the development will allow some job opportunities and business growth in an area zoned for commercial use. The addition of alcoholic beverage sales to the site's permissive uses will not substantially impact job opportunities.

Policy 4.6.g: Create commercial developments that are or will be accessible by transit. Locate buildings adjacent to street frontages and place parking areas to the rear or sides of properties and/or on adjacent streets. Locate landscaping, walls, or fences so that they do not create barriers for pedestrians. Parking shall not take precedence over pedestrian circulation.

The development will be fairly accessible by transit; however, this business type would not likely draw transit users from Central. There is a grocery store and another gas station closer to Central Avenue that provide the same products. The building is not likely to be located adjacent to the street frontage because the fuel pumps are typically located at the front of the development. The applicant has agreed to accept the WR66 zoning when that plan is adopted.

Consequently, if the WR66 SDP is adopted prior to the site receiving a building permit, the site would be required to follow the General Development Standards, which address street frontages and site design. The request is partially consistent with Policy 4.6.g (WSSP).

Policy 4.10: It is important to promote and establish land uses and urban patterns whose design support bicycle and pedestrian travel, and public transportation, encourage ridership, enhance public mobility and promote alternatives to single occupant vehicle use.

The development will provide a new 10' trail and on-street bicycle lane as part of the required public infrastructure improvements. However, the development is a low intensity land use geared to serve primarily automobile traffic. This proposal is partially consistent with Policy 4.10 (WSSP).

Policy 3.33: It is appropriate for new development, both residential and nonresidential, to occur in this Community. Redevelopment efforts associated with the existing five acre tracts in this area shall be encouraged.

The proposed development is new commercial development on land that is a partially developed five-acre tract. This proposal further Policy 3.33 (WSSP).

C) 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; 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: Policy is in regular text; *Applicant's justification is in italics; 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.

This request is consistent with the health, safety, morals, and general welfare of the City. The permissive uses that exist on the properties to the south and east of the property allow package liquor sales. Eliminating the current exclusion on the subject property would match the conditions present in the areas adjacent to the property. Additionally, the update to the WR66 SDP has included the subject property as part of the Sector Plan boundaries and proposes to

change the zoning from SU-1 for C-2 to SU-2/WR66 C-2. Therefore, our request reflects the efforts of and complies with current updates that are undergoing review.

Staff agrees that the City has proposed a zone change for the subject site to become SU-2/WR66 C-2, and found that the C-2 zone would be consistent with health, safety, morals, and 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.

As previously stated, the permissive uses in the adjacent properties already allow packaged liquor sales. Expanding liquor sales to the subject property would stabilize the zoning of the area by homogenizing allowed uses in the area.

In addition, the property currently sits outside of the WR66 SDP. As previously mentioned, the update to the SDP includes the proposed gas station property within its boundaries and rezone the area to SU-2/WR66 C-2. By both including the property as part of the Plan's boundaries and updating the zoning, the Sector Plan attempts to eliminate the inconsistency that exists between the site north of Volcano and the properties south of Volcano and east of 98th Street. The requested zone change seeks to stabilize existing land use by requesting zoning that is consistent with the updated Sector Plan. The property owner is in agreement with the proposed changes to the Sector Plan, but timing necessitates this request prior to the City Council's adoption of the Plan.

Staff agrees that there is currently a request before City Council to rezone the property in a manner consistent with this request. However, the applicant desires to develop the property immediately, and it is unknown when the WR66 SDP update will be adopted.

Further, the proposed uses are similar to those in the subject site's current zoning, and other nearby zones. The differences are that package liquor sales would be allowed, conditional uses could be requested, and that request seeks to remove the site plan controls established by the SU-1 zone and WR 66 SDP that apply to all adjacent properties. Staff finds that these changes would generally not destabilize area land use or zoning, particularly in light of the similar proposed City-sponsored zone change.

- 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.

The applicant's response to Section C is analyzed above on pages 4 – 7 of the Staff Report. The applicant did not address consistency with any WSSP goals or policies.

In Staff's analysis, the request is generally consistent with a preponderance of applicable goals and policies. Where there are inconsistencies, it is generally regarding policies that promote multi-modal travel and pedestrian access. However, these policies could be considered inapplicable to this request, which is by its nature automobile-oriented. Staff also

notes that the site design would be the same regardless if the zone change is approved. However, the applicant has stated that it would not be financially feasible to compete with the other nearby gas stations without also selling alcohol. In light of that distinction, the request is consistent with and furthers the balance of the goals and policies related to job opportunities and business growth on undeveloped property and particularly the West Side.

- 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 existing zoning is inappropriate because it does not reflect the changed conditions in the area which have expanded beyond an adult store and a truck stop. The conditions of the neighborhood that surrounds the property have also changed. The recent annexation of the land to the east, across 98th Street, established SU-1 for C-2 and IP uses with restrictions zoning. The restrictions do not exclude package liquor sales. As a result, a gas station that sells package liquor was developed on the northeast corner of 98th Street and Volcano Road. This and other developments necessitate the zone change to level the playing field.

The applicant argues that the recent annexation of the property on the east side of 98th Street and concurrent establishment of zoning reflects a changed community condition. Because that zoning did not restrict packaged liquor sales, the applicant argues that the subject site should also not have that restriction. Staff notes that the original restriction was to limit the sale of alcohol from automobile-dominant uses, which was thought to increase drunk driving. However, if that remained a concern in the area, the recent annexation should also have limited that combination of uses. Staff generally agrees that changed community conditions justify the change, and further notes that the proposed WR66 SDP would also remove the exclusion of packaged liquor sales from the permissive uses at the subject site.

- 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 requested zoning for the subject site will maintain the C-2 designation that currently exists as part of the SI-1 zoning. The zone change will eliminate the exclusion of package liquor sales. The applicant is requesting C-2 zoning rather than removing the restriction on the current SU-1 zoning to comply with the proposed zoning changes to the WR66 SDP. The Sector Plan update has undergone a lengthy process that has included public meetings, as well as EPC review and recommendation for approval. It is currently subject to review by the LUPZ. Consequently, the provisions within the Plan have been thoroughly evaluated to ensure the proposed zoning provide the most appropriate uses. Therefore, the proposed zone change will not be harmful to adjacent property, the neighborhood, or the community.

Staff agrees that the request would not inherently be harmful to adjacent property, the neighborhood, or the community. This request will allow further requests for conditional uses, which would be made through a public hearing with public notification. Note: The EPC made a recommendation of Denial to City Council for the WR66 SDP and all associated plan amendments.

- 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.

The proposed zone change will not necessitate the need of capital improvements. The proposed site is privately owned by Lee Properties, Inc. and all future development and infrastructure improvements necessitated by this development will be funded by Lee Properties, Inc.

Staff agrees. The City will not be required to make any major or unprogrammed capital expenditures as a result of this request.

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

The cost of land and other economic considerations pertaining to the applicant are not a determining factor for the proposed zone change. The property is already zoned C-2 for Community Commercial. Economics are a valid consideration though, in that the current restriction prohibiting package liquor sales is arbitrarily applied to this property and not to those in the immediate area. The proposed change will allow the subject property to have consistent rules and regulations.

Staff generally agrees. In Section D of this zone change justification, it is stated that the purpose and intent of the zone change is to “level the playing field.” As stated in Section G and H, the property is already zoned C-2 uses, so a gas station could be built with the current zoning, and that proposed by the WR66 SDP. Therefore, the primary impetus for the request is for the property developer to be able to sell alcohol, in order to financially compete with other nearby gas stations.

While the main reason for the zone change is economic – the ability to compete fairly with other nearby gas stations – the justification is also based on the desire for consistency with permissive uses on adjacent properties as well as the City-sponsored WR66 zone change proposed for the subject site. The request is not for a SU-1 zoning, which would be consistent with other adjacent zones that allow alcohol sales, it is for C-2, which is similar to what is proposed in the WR66 SDP. Therefore, the determining factor for recommending approval of the request would be for consistency with adjacent uses and the proposed amendments to WR66 SDP.

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

The subject site is already zoned for C-2 Community Commercial. This zone map amendment request is not based on the property location on a major roadway. It is consistent with the proposed West Route 66 Sector Plan zoning recommendations and represents a slight modification in order to allow for a complete product selection, specifically one that is currently allowed and provided on a number of the adjacent properties.

Staff agrees that the zone change has not been justified based on its location on a major street.

- 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.

The change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan.

The request is for a justifiable spot zone. As demonstrated in the policy analysis section, above, the request is consistent with the preponderance of applicable policies and goals. However, the applicant has not demonstrated how the request will “clearly facilitate realization of the Comprehensive Plan” and other applicable plans.

- 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.

This proposed zone change does not classify as strip zoning because it is not a strip of land and it is keeping with the current zoning trends of the surround area that currently allow package liquor sales.

Staff agrees that the request would not result in strip zoning.

IV. AGENCY & NEIGHBORHOOD CONCERNS

Reviewing Agencies/Pre-Hearing Discussion

The only substantive agency comment received was from City Hydrology. It states: "Hydrology supports the Zone Change if a Site Plan for Building Permit application is made to the DRB, since public infrastructure is required on 98th street as well as Leonidas Lane." This is complemented with a condition of approval for a site plan to be approved by the DRB.

Because the request is for a straight zone that is not site plan controlled, this recommended condition is not possible. However, the request applies to only a portion of two tracts. Because of this, a re-plat of the two tracts is required in order to establish a zone boundary that is consistent with property boundaries. The required public infrastructure can be required by the DRB concurrently with the replatting. Staff recommends the subject site be replatted as a condition of approval.

Neighborhood/Public

The Avalon Neighborhood Association, South Valley Coalition of Neighborhood Associations, Southwest Alliance of Neighbors, and the Westside Coalition of Neighborhood Associations were notified of the request. A facilitated meeting was recommended, but declined by the neighborhood. There is some opposition to this request.

A letter submitted by the Avalon NA states that the neighborhood does not oppose the change in zoning to C-2 as long as the applicant agrees to prohibit the sale of distilled spirits in containers smaller than 750 mL, fortified wines with a volume of alcohol greater than 13.5%, and broken packages of alcoholic beverages. These prohibitions are consistent with the requirements stated in the C-2 zoning regulations. However, as a result of a 2008 decision by the Second Judicial District Court, it was determined that the City does not have the authority to impose restrictions on alcohol sales that are not found in the Liquor Control Act, NMSA 1978 (Ref: CV-2008-02996). The applicant has indicated a willingness to restrict those types of alcohol sales. Any restriction would be addressed at the State Liquor Board Hearing when the applicant applies for a liquor license. The neighborhood association will receive notice when the applicant applies.

The letter also indicated that the NA would like the applicant to develop procedures to mitigate potential problems of drunkenness, prostitution, and drug sales. These concerns are related to criminal activity, which is regulated by the Albuquerque Police Department, and are not typically considered a land use matter.

The final concern identified was that the development should "have an aesthetic value and complement the efforts of the community to attract future development." Development will be subject to the General Regulations of the Zoning Code.

V. CONCLUSION

This request is for a Zone Map Amendment (Zone Change) for a 4.0 acre portion of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant, located on 98th Street NW between Avalon Rd NW and Volcano Rd NW. The subject site is zoned SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales. The request is for C-2 zoning, which would remove the SU-1 site plan

control and the restriction on package liquor sales, in order to develop a gas station with liquor sales. Conditional C-2 Uses could also be requested under the proposed zoning.

The site's zoning was established at the time of annexation, during which time there was concern about automobile-oriented businesses selling alcohol. Consequently, the zoning restricted alcohol sales in those 20 acres annexed in 1997.

The subject site is in the Developing Urban Area of the Comprehensive Plan. The West Side Strategic Plan also applies. This site is included within the boundaries of the *Updated* West Route 66 SDP, which is currently before the City Council. The site would be rezoned SU-2/WR C-2 when the plan is adopted. The same uses, height, and setbacks would apply; however, the WR66 SDP also has development design standards. These "General Development Standards" would apply to the site, unless a building permit is issued prior to adoption of the WR66 SDP, in which case only the Zoning Code General Regulations would apply to the site.

The request generally conforms to the Developing Urban goals and policies of the Comprehensive Plan and the West Side Strategic Plan. Where there are inconsistencies, it is generally regarding policies that promote multi-modal travel and pedestrian access. However, these policies could be considered partially inapplicable to this request, which is by its nature automobile-oriented. Staff also notes that the site design would be the same regardless if the zone change is approved. The request has been justified pursuant to R-270-1980.

There is some neighborhood concern about alcohol sales in this location, in relation to the other adjacent uses, in particular an adult video store. There is also concern that the development should "have an aesthetic value and complement the efforts of the community to attract future development."

Staff recommends approval of the Zone Map Amendment for a 4.0 acre portion of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant, subject to the one condition of replatting the subject site.

FINDINGS – 13EPC-40119 – July 11, 2013 – Zone Map Amendment

1. This is a request for a Zone Map Amendment for a portion of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant located on 98th Street between Avalon and Volcano Rd. and containing approximately 4.0 acres. This is a quasi-judicial request.
2. The subject site is currently zoned SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales. The applicant requests C-2 Zoning, which, in relation to the current zone, would allow alcohol sales and does not require a site development plan.
3. The applicant would like to develop a gas station at the subject site, and requests the zone change so that package liquor sales would be permitted. Because the request is for straight C-2 zoning, site development plan review and approval by the EPC will not be required. Conditional C-2 Uses would be allowed, if approved by the Zoning Hearing Examiner.
4. The site's zoning was established at the time of annexation, during which time there was concern about automobile-oriented businesses selling alcohol. Consequently, the zoning restricted alcohol sales in those 20 acres annexed in 1997.
5. The subject site is located within the Developing Urban Area of the Comprehensive Plan and within the boundaries of the West Side Strategic Plan. The site is within the proposed boundaries of the 2013 Updated West Route 66 SDP *update*, which does not currently apply to the subject site.
6. The Albuquerque/Bernalillo County Comprehensive Plan, West Side Strategic Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
7. The applicant has justified the zone change request pursuant to *R-270-1980* as follows:
 - A. This request is consistent with the health, safety, morals, and general welfare of the City. The permissive uses that exist on the properties to the south and east of the property allow package liquor sales. The City has proposed a zone change for the subject site to become SU-2/WR66 C-2, and determined that the C-2 zone and uses are appropriate for the subject site.
 - B. The permissive uses in the adjacent properties already allow packaged liquor sales. Expanding liquor sales to the subject property would stabilize the zoning of the area by homogenizing allowed uses in the area. Further, the site is already proposed to be rezoned to allow all C-2 uses through the WR 66 SDP update.

- C. The request is generally consistent with a preponderance of applicable goals and policies. There is no significant conflict with adopted elements of the Comprehensive Plan (CP) or the West Side Strategic Plan (WSSP).
1. CP Policy II.B.5d: neighborhood values/natural and social resources - There are no known adverse impacts to environmental conditions and carrying capacities, scenic or social resources. Public comments indicate the neighborhood association has concerns about alcohol sales near an existing adult store and would like the development to contribute to the aesthetic value of the community (neighborhood values).
 2. CP Policy II.B.5e: existing facilities/integrity of neighborhoods - The subject site is currently vacant land and it is contiguous to existing urban facilities, infrastructure, and services. The proposed development will not compromise the integrity of existing neighborhoods because there are none within close proximity to the subject site.
 3. CP Policy II.B.5i: service uses/minimize impacts to residents - There are no adjacent residential environments that would be adversely impacted by the proposed use.
 4. CP Policy II.B.5j: new commercial development/appropriate locations - This is an existing commercially zoned property, in a location appropriate for commercial development.
 5. CP Policy II.B.5k: land adjacent to arterial streets/livability of neighborhoods - The subject site, adjacent to 98th Street, does not directly abut or provide access to any existing residential neighborhoods.
 6. CP Policy II.D.6a and Economic Development Goal: new employment opportunities/convenient locations - The subject site is located within the Atrisco Park Community, which is one of three major employment areas on the west side. A gas station would provide new jobs, and services in an appropriate location.
 7. WSSP Objective 8: job opportunities/appropriate areas - The development will allow some job opportunities and business growth in an area zoned for commercial use.
 8. WSSP Policy 4.6.g: commercial development/pedestrians and transit - The development will be fairly accessible by transit; however, this business type would not likely draw transit users from Central. The building is not likely to be located adjacent to the street frontage and there will be vehicular circulation adjacent to the street.
 9. WSSP Policy 4.10: land use patterns that support bicycle/pedestrian travel - The development will provide a new 10' trail and on-street bicycle lane as part of the required public infrastructure improvements.
 10. WSSP Policy 3.33: new development/redevelopment of 5 acre tracts - The proposed development is new commercial development on land that is a partially developed five-acre tract.

- D. The existing zoning is inappropriate because it does not reflect the changed conditions in the area which include more variety in commercial uses and the recent annexation of the land to the east, with zoning that allows IP and C-2 Uses. This and other developments necessitate the zone change to equalize development opportunities for the area.
 - E. The request would not be harmful to adjacent property, the neighborhood, or the community, and it is consistent with the City-sponsored WR66 SDP updates.
 - F. The City will not be required to make any major or unprogrammed capital expenditures as a result of this request.
 - G. While the main reason for the zone change is economic – the ability to compete fairly with other nearby gas stations – the justification is also based on the request being consistent with adjacent uses.
 - H. The zone change has not been justified based on its location on a major street.
 - I. This is a justified spot zone because it is not contrary to the policies of the Comprehensive Plan and other adopted master plans.
 - J. The zone change will not result in strip zoning.
8. The applicant has agreed to accept a zone change to SU-2/WR66 C-2 if the plan boundaries are changed, as proposed in the 2013 update of the West Route 66 Sector Development Plan.
9. There is some neighborhood concern about alcohol sales in this location, in relation to the other adjacent uses, in particular an adult video store. There is also concern that the development should “have an aesthetic value and complement the efforts of the community to attract future development.”

RECOMMENDATION – 13EPC-40119 – July 11, 2013 – Zone Map Amendment

APPROVAL of 13EPC-40119, a request for Zone Map Amendment, from SU-1 for Permissive C-2 Uses Excluding Package Liquor Sales to C-2 for a portion of Tract 1 & 2, Row 2, West of Westland, Atrisco Grant, based on the preceding Findings.

CONDITION OF APPROVAL – 13EPC-40119 – July 11, 2013 – Zone Map Amendment

- 1. The subject site shall be re-platted at the DRB so that the zone boundary lines are consistent with the parcel boundary. Dedication of right-of-way and infrastructure improvements may be required at that time.
-

***Carrie Barkhurst
Planner***

Notice of Decision cc list:

Consensus Planning, 302 Eighth Street NW/87102
Kelly Chappelle, 9135 Santa Catalina Ave. NW/87121
Bob Wood, 9135 Anacapa Ave. NW/87121
Rod Mahoney, 1838 Sadora Rd. SW/87105
Marcia Fernandez, 2401 Violet SW/87105
Klarissa Pena, 6525 Sunset Gardens SW/87121
Louis Tafoya, 6411 Avalon Rd. NW/87105
Candelaria Patterson, 7608 Elderwood NW/87120
Harry Hendriksen, 10592 Rio Del Sole Ct. NW/87114-2701

Attachments

1. Background Information
 - a. Photographs
 - b. R-270-1980
 - c. Certificate of Zoning
 - d. Proposed Zoning
 - e. Existing Zoning
2. History
 - a. Annexation Ordinance, January 1998
 - b. Interoffice Correspondence regarding Zoning Designation, October 1997
 - c. EPC Notice of Decision, August 1997
3. Application
 - a. Cover Page
 - b. TIS form
 - c. Authorization letter
 - d. Justification letter
 - e. Support material from applicant
4. Notification
 - a. ONC letter
 - b. Applicant letter & certified mail receipts
 - c. Neighborhood comments/letters

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Enforcement

Reviewed- No comments

Office of Neighborhood Coordination

Avalon NA (R)

South Valley Coalition of NA's

South West Alliance of Neighbors (SWAN)

Westside Coalition of NA's

6/3/13 – Recommended for Facilitation – siw

6/3/13 – Assigned to Jessie Lawrence – sdb

Long Range Planning

CITY ENGINEER

Transportation Development

Reviewed, no comments.

Hydrology Development

Hydrology supports the Zone Change if a Site Plan for Building Permit application is made to the DRB, since public infrastructure is required on 98th street as well as Leonidas Lane.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

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

Traffic Engineering Operations

No comments received.

Street Maintenance

No comments received.

RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT and NMDOT:

1. Submit a Site Plan for Building Permit application to for DRB approval.

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

POLICE DEPARTMENT/Planning

No Crime Prevention or CPTED comments concerning the proposed Amendment to Zone Map request at this time.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division – Approved as long as it Comply with SWMD Ordinance.

FIRE DEPARTMENT/Planning – No comments received

TRANSIT DEPARTMENT

No comments.

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY – No comments received

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

This will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS – No comments received

MIDDLE RIO GRANDE CONSERVANCY DISTRICT – No comments received

PUBLIC SERVICE COMPANY OF NEW MEXICO

1. It is the applicant's obligation to determine if existing utility easements cross the property and to abide by any conditions or terms of those easements.
2. Any existing or proposed public utility easements are to be indicated on the site plan and utility sheet prior to DRB review.
3. Screening should be designed to allow for access to utility facilities. All screening and vegetation surrounding ground-mounted transformers and utility pads are to allow 10 feet of clearance in front of the equipment door and 5-6 feet of clearance on the remaining three sides for safe operation, maintenance and repair purposes. Please refer to the PNM Electric Service Guide at www.pnm.com for specifications.