



**Environmental
Planning
Commission**

**Agenda Number: 4
Project Number: 105206
Case #s: 17EPC-40054 & 40067
Hearing Date: September 13, 2018**

Supplemental Staff Report- Remand
(to be read in conjunction with the original, February 8, 2018 Staff report)

Agent/Applicant	Steve and Kara Grant
Requests	Sector Development Plan Map Amendment (zone change) Site Development Plan for Building Permit (as-built)
Legal Description	Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition
Location	on High St. NE, between Central Ave. NE and Dr. Martin Luther King, Jr. Ave. NE (201, 207 & 209 High St. NE)
Size	Approximately 0.6 acre
Existing Zoning	SU-2/MR (Mixed Residential)
Proposed Zoning	SU-2/SU-1 for Bed and Breakfast to Include Special Events

Staff Recommendation

APPROVAL of 17EPC-40054, based on the Findings beginning on Page 15, and subject to the Condition of Approval on Page 20.

APPROVAL of 17EPC-40067, based on the Findings beginning on Page 20, and subject to the Conditions of Approval beginning on Page 24.

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

Summary of Analysis

This request is for a sector development plan map amendment (zone change) to the Huning Highland Sector Development Plan (HHSDP) and an as-built site development plan for building permit. The applicants operate a bed and breakfast (B&B) and are requesting a zone change in order to continue hosting special events, such as meetings and weddings, which occur indoors and outdoors.

The EPC approved the request at its February 8, 2018 hearing. An aggrieved neighbor appealed. The Land Use Hearing Officer (LUHO) heard the appeal on April 3, 2018. The City Council rejected the LUHO recommendation and heard the appeal on June 18, 2018. The Council voted to remand the matter back to the EPC with instructions. This supplemental Staff report addresses the Council's instructions.

Staff finds, on remand, that the zone change is adequately justified and recommends approval subject to conditions.

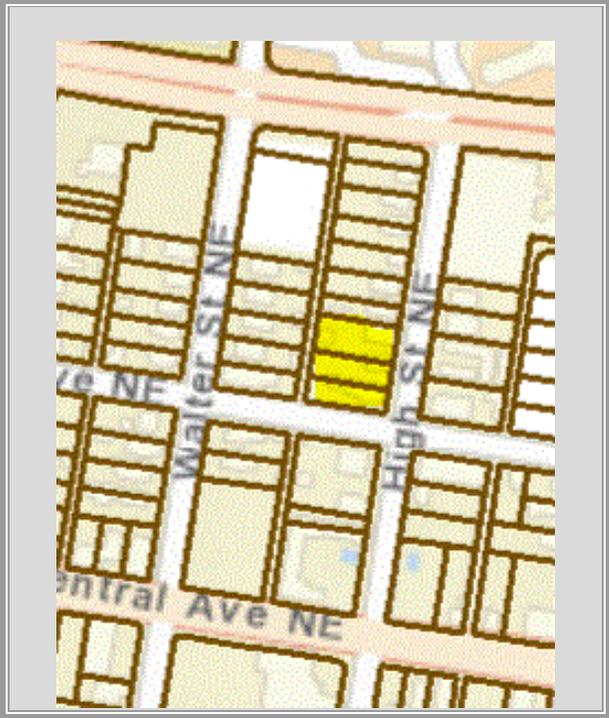


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I. INTRODUCTION

Note: This request was submitted before the effective date of the Integrated Development Ordinance (IDO), so all references to zoning, processes, and criteria are pursuant to those in effect before May 17, 2018.

Request

This request is for a sector development plan map amendment (zone change) to the Huning Highland Sector Development Plan (HHSDP) and an as-built site development plan for building permit. The applicants reside on the subject site and operate a bed and breakfast (B&B). They have been hosting special events, such as weddings, family get-togethers, and business events/meetings. However, the subject site's current zoning (SU-2/MR) does not allow special events.

The subject site is zoned SU-2/MR (Mixed Residential) pursuant to the HHSDP. An aggrieved neighbor brought the special events to the attention of the Code Enforcement Division, which issued a Notice of Violation (NOV). The proposed zoning is SU-2/SU-1 for Bed and Breakfast to Include Special Events.

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

» Please see p. 1-3 of the original, February 8, 2018 Staff report (see attachment).

EPC Hearing

The request was first scheduled for the December 14, 2017 Environmental Planning Commission (EPC) hearing. The applicants requested a 60 day deferral to the February 8, 2018 hearing to allow additional time to strengthen the justification, provide the as-built site development plan, and ensure that proper notification was completed.

The EPC heard the request at its February 8, 2018 public hearing and voted to approve it, based on fourteen findings for the zone change and twelve findings for the as-built site development plan for building permit, which was also subject to ten conditions. The zone change was subject to the condition that the associated site development plan for building permit obtain approval within six months, as required by the SU-1 zone [§14-16-3-17(A)(1)].

At the hearing, two neighbors spoke in favor of the request. One stated that he holds art events, which are desirable for the neighborhood. Another stated that he lives on a block with only one single-family home (his), and that businesses such as the B&B are just what the neighborhood needs. Larry Tucker, a neighbor, is the aggrieved party and lives west of the subject site across the alley. He opposes the request because he believes that the outdoor events are too large and too loud and disrupt the use of his home and back yard.

» Please see p. 15-16 of the February 8, 2018 Staff report and attached letters (see attachment).

Appeal & LUHO Hearing

Mr. Tucker filed an appeal of the EPC decision on February 23, 2018(AC-18-6), disputing several of the EPC's findings. He argues that the zone change was not adequately justified and that the SU-1

regulations are inconsistent regarding B&Bs. He is also concerned about the lack of limitation on the number and duration of outdoor events.

The hearing before the Land Use Hearing Officer (LUHO) was held on April 3, 2018. The LUHO heard testimony from the appellant (Mr. Tucker), the applicants (The Grants, owners of the B&B), and Staff. Discussion topics included R270-1980 (particularly Section E), the Zoning Code definition of B&B, and the application of Comprehensive Plan Goals and policies.

In his April 6, 2018 opinion, the LUHO recommended to the City Council that either the appeal be granted, which would reverse the EPC's decision, or in the alternative that the matter be remanded to the EPC.

City Council Hearing

The City Council rejected the LUHO's recommendation and opted to hear the appeal. At the June 18, 2018 hearing, the appellant argued that the B&B doesn't meet the Zoning Code requirements for a B&B and that the outdoor events are harmful to his property and the single-family residential character of the area. The applicants explained that, though the request would result in a spot zone, such a use is not unique in this part of the City, near Downtown, and that they have neighborhood support. The first Council vote to grant the appeal tied (4-4), so the motion died. Another motion was made, which passed 8-0, to remand the matter to the EPC.

Zoning & Definitions (Zoning Code §14-16-1-5)

» Please see p. 3-4 of the February 8, 2018 Staff report (see attachment).

Original Analysis- Adopted Ordinances, Plans, and Policies

» Please see pages 4-7 of the February 8, 2018 Staff report (see attachment).

Sector Development Plan Map Amendment

» Please see pages 7-11 of the February 8, 2018 Staff report for requirements, justification and analysis (see attachment).

II. REMAND INSTRUCTIONS & ANALYSIS

The City Council voted to remand the appeal to the EPC with the following, specific instructions:

1. Clarify findings required by R270-1980(D) to identify how, if at all, the proposed zoning is more advantageous to the community, as articulated by the Comprehensive Plan or other City master Plan..." as compared to the existing zoning at the site.
2. Clarify findings as to which special use category is intended, subsection 14-16-2-22(B)(7), or B(35); and
3. Identify and appropriately limit the "special events" that will be permitted relative to type, size, hours, and frequency.

Remand Topic 1- Clarify findings required by R270-1980(D)

Clarify findings required by R270-1980(D) to identify how, if at all, the proposed zoning is more advantageous to the community, as articulated by the Comprehensive Plan or other City master Plan...” as compared to the existing zoning at the site.

Context

Section D of R270-1980 requires that the applicant demonstrate that the existing zoning is inappropriate, for one of three reasons, in order to be approved. Section D reads as follows:

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 (1) and (2) above do not apply.”

The applicant chose D3 and believes that the existing zoning is inappropriate because a different use category is more advantageous to the community, as indicated by the Comprehensive Plan and the HHSDP. The applicant stated that both plans indicate very diverse uses in the area, and that the proposal to accommodate special events on the subject site leverages the neighborhood’s unique historic and cultural attributes, and is within close proximity to Downtown.

Staff found that the applicant had adequately demonstrated that the existing zoning is inappropriate, and that the proposed zone category would be more advantageous to the community based on the applicant’s policy-based discussion in Section C. The test in Section D states “as articulated in the Comprehensive Plan or other City master plan”, which is the test in Section C. Because the request is for an SU-1 zone, it is required to clearly facilitate applicable Goals and policies as stated in the test in Section I and demonstrated in the response to Section C (the policy analysis).

In the February 8, 2018 Official Notification of Decision, Findings 5, 6, 7, 8, 9C, 9D of the zone change request (17EPC-40054) and Findings 5, 6, 7, and 8 of the site development plan for building permit (17EPC-40067) are findings required by Section D of R270-1980.

Response & Analysis

Planning Practice

The Section D test calls for a comparison between the existing zoning (not just the existing use) and the proposed zoning. The question is how far the comparison should go and why. In planning practice, the difference between the existing and proposed zones is taken into account in terms of what the proposed zone would make possible (i.e.- would any permissive uses in the zone be harmful- the Section E test) and how the future uses allowed by the zone would further, or conflict with, the Comprehensive Plan and other applicable area and/or sector plans.

For instance, in general terms, applicants request a certain zone and the staff policy analysis focuses on what's proposed because the change is what's presented for evaluation. The fact that a site is already zoned does not necessitate a full, retroactive policy analysis of the existing zone. Rather, the existing zone is considered only to the extent that it is mentioned in R270-1980 and relates specifically to the proposed zone via a requirement ("the existing zoning is inappropriate because"). For a request to an SU-1 zone, this means Section D (which refers to Section C if D.3 is chosen) and Section I (which refers to Section C for the "clearly facilitates" demonstration required for a change to an SU-1 zone).

The case of an SU-1 zone that does not reference an underlying zone (e.g. SU-1 for Bed and Breakfast to Include Special Events instead of SU-1 for O-1 or SU-1 for C-1) affects the policy analysis differently than a change that involves an underlying zone— not only because a proposed SU-1 zone is site specific as required pursuant to 14-16-2-22(A)(1), an SU-1 zone that specifies a certain use is even more narrowly defined than when an underlying zone is involved. The crux of the analysis is what would be allowed by the proposed "custom" zone which, in most cases, is a single use rather than a zone category. In this case, the two uses that would be allowed are B&B and Special Events.

Also, policy analysis is not quantitative. The number of Goals and policies applicable to a particular case does not make it more (or less) approvable than a case to which fewer Goals and policies apply. What's important is the relationship between the request and the applicable Goals and policies, because this relationship demonstrates the extent to which the Comprehensive Plan and its vision can be furthered should the request be approved and implemented.

Revisions to Findings

The following revisions to the relevant findings in the February 8, 2018 Notice of Decision support the proposed zone change from SU-2/MR (Mixed Residential) to SU-2/SU-1 for Bed and Breakfast to Include Special Events.

5. The proposal furthers the following, applicable Comprehensive Plan Goals:

A. Community Identity Goal 4.1- Character: Enhance, protect, and preserve distinct communities.

The subject site is located in the Central Albuquerque Community Planning Area (CPA), which is characterized by a mix of land uses and proximity of residential and non-residential uses (p. 4-24). The Huning Highland neighborhood is a distinct community. The request would enhance the community by providing a space for events by using historic homes that are consistent with the community's character, thereby protecting and preserving the community and its unique history.

B. Transportation Goal 6.2-Multi-Modal System: Encourage walking, biking, and transit, especially at peak-hour commuting times, to enhance access and mobility for people of all ages and abilities.

The subject site is located within 660' feet of a designated Major Transit Corridor and near Downtown. Major Transit Corridors prioritize transit service and emphasize walkability

and cycling, which results in enhanced access and mobility for people of all ages and mobilities. The proposal would allow for special events to be provided in an area that is situated to encourage walking, biking, and transit usage, and thereby enhance access to them for people who use alternative transportation modes and to encourage walking, biking, and transit use.

6. The proposal furthers the following, applicable Land Use policies of the Comprehensive Plan:
- A. Policy 5.2.1-Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The proposal would contribute to the distinct, historical community of **Huning Highland** by providing a **new** use (**special events**) that adds to the **existing** mix of uses in the neighborhood. The **existing B&B** already contributes to the mix of uses in **Huning Highland** by operating a business that has preserved the historic homes and emphasized their appeal and interest, which is a healthy and sustainable way to promote the neighborhood and the surrounding neighborhoods in the Central Albuquerque CPA. The subject site is located in a designated Major Transit Corridor (Central Avenue) and is conveniently accessible from surrounding neighborhoods.

- B. Policy 5.6.3-Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.

The majority of the subject site (Lots 9 and 10) is in an Area of Consistency. The proposal would contribute to protecting and enhancing the character of the historic **Huning Highland** neighborhood because it would emphasize the existing buildings' historic character and background. Hosting special events, such as meetings and get-togethers, would enhance the character of the existing neighborhood (which has single-family and multi-family uses) by utilizing the buildings in a way that would promote awareness and interest in protecting the historic aspects of **Huning Highlands**, which includes not only buildings, but also people and occurrences.

7. The proposal furthers the following Economic Development Goal and policies of the Comprehensive Plan:

- A. Goal 8.2-Entrepreneurship: Foster a culture of creativity and entrepreneurship and encourage private businesses to grow.

The proposal would encourage entrepreneurship and a private business, the **B&B**, to grow by allowing special events to be held.

- B. Policy 8.2.1 -Local Business: Emphasize local business development.

The proposal would encourage a private business to grow and would emphasize stability and development of a locally-owned business.

- C. Policy 8.1.4 -Leverage Assets: Enhance and market the region's unique characteristics internally and to outside businesses and individuals in order to compete with other regions.

The historically-designated Huning Highlands neighborhood and Central Avenue (Route 66) are unique characteristics of the region that can be marketed locally and to outside businesses. The proposal would allow special events to be held at the subject site in Huning Highland, one block north of Central Avenue (Route 66), and would contribute to enhancement of the region's unique characteristics through promotion of tourism, history, and historic preservation that could help Albuquerque compete with other regions. This history of the Spy House is unique to Albuquerque and, specifically, the Huning Highland neighborhood

8. The proposal furthers the following Comprehensive Plan Goal and policy regarding Heritage Conservation:

- A. Goal 11.2-Historic Assets: Preserve and enhance significant historic districts and buildings to reflect our past as we move into the future and to strengthen our sense of identity.

The subject site is in the Huning Highland neighborhood, a designated historic district; the buildings on the subject site are historically significant. The proposal would help promote preservation of this historic district and these buildings because the special events would bring attendees who can learn about and appreciate the area's historic character, thereby enhancing its promotion and strengthening sense of identity for the area.

- B. Policy 11.2.2 -Historic Registration: Promote the preservation of historic buildings and districts determined to be of significant local, State, and/or National historical interest.

The historic buildings on the subject site, and the Huning Highland Historic District of which it is a part, are of significant local, state, and National historical interest. The proposal would promote awareness and preservation of historic buildings in this designated historic district because the special events would attract more people to the area and expose them to this unique historic context. The history of the Spy House and its past residents is important to the City's, the State's, and the Nation's past and present.

9. The proposal furthers the Goal of the HHS DP and the following, applicable objectives:

- A. Goal: The continued development of Huning Highlands into a viable residential and commercial area, building on its unique historic character and location.

Though the existing B&B already builds on the neighborhood's unique historic character and location, the special events would expose more people to this area and further promote its unique character and location. Therefore, the proposal would facilitate the continued development and promotion of Huning Highlands as a viable residential and commercial area.

- B. Objective 1: to protect and enhance the unique residential character of the area.

The proposal would help protect and enhance the unique residential character of Huning Highland, which consists of single-family and multi-family residences on both sides of Central Avenue. In addition to continuing to support the preservation of historic buildings on the subject site, the proposal would attract more people to visit the area and promote

interest in its architecture and history. Preserving the historic value of the B&B helps preserve the neighborhood's value and appeal as a diverse residential area.

C. Objective 7: to encourage and support local employment and local business development.

The proposal would encourage and support the continued development of a local business.

10. The applicant has adequately justified the sector development plan map amendment (zone change) request pursuant to Resolution 270-1980:

A. Section A: The proposed zoning has been demonstrated to further applicable Goals and policies in the Comprehensive Plan and the Huning Highland Sector Development Plan (HHSDP). Therefore, the proposed sector development plan amendment is consistent with the health, safety, morals, and general welfare of the City.

B. Section B: The proposed zoning is limited in scope and, because an SU-1 zone is requested, it is tied to an "as-built" site development plan for the subject site. The uses allowed by the proposed zoning would be unlikely to adversely affect stability of land use and zoning and, as the applicant demonstrated, are justified pursuant to R270-1980.

C. Section C: Since the request is for an SU-1 zone, the "clearly facilitates" test (see Section I) applies and overrides the less rigorous "no significant conflict" test. A policy-based discussion demonstrates that the proposed zone change clearly facilitates realization of the Comprehensive Plan and the HHSDP because it furthers Comprehensive Plan Goal 4.1-Character (Community Identity) and Goal 6.2-Multi-Modal System (Transportation); Land Use Policies 5.2.1-Land Uses and 5.6.3-Areas of Consistency; Economic Development Goal 8.2-Entrepreneurship, Policy 8.2.1- Local Business, and Policy 8.4.1-Leverage Assets; Heritage Conservation Goal 11.2-Historic Assets and Policy 11.2.2-Historic Registration; and the Goal of the HHSDP and Objectives 1 and 7.

D. Section D: The policy-based discussion in Section C adequately demonstrates that a different use category would be more advantageous to the community (D)(3), because the request clearly facilitates applicable Goals and policies in the Comprehensive Plan and the HHSDP. Therefore, the existing zoning is inappropriate because another category is more advantageous overall for the neighborhood, the community, and the City.

E. Section E: The proposed SU-2/SU-1 zoning is narrow in scope and would allow only the specified bed and breakfast use as shown on the associated, as-built site development plan, and the new use- special events. Overall, the new use would not harm the greater community, the neighborhood, or adjacent property. Other uses that could be considered harmful in the subject site's setting would not be allowed.

F. Section F: The proposed zone change requires no capital expenditures by the City.

G. Section G: Economic considerations pertaining to the applicant are a factor in the zone change request, but they are not the determining factor.

H. Section H: Location on a collector or major street is not used as justification for this request.

- I. Section I: The requested SU-1 zoning is a justifiable spot zone because the applicant has demonstrated, in the policy-based response to Section C, that the request will clearly facilitate realization of the Comprehensive Plan and the HHSDP.
- J. Section 1J: The request is for a single lot and not a strip of land, and therefore would not result in a “strip zone”.

Conclusion

Based on a more thought-out policy analysis, Staff concludes that the proposed zone change to SU-2/SU-2 for Bed and Breakfast to include Special Events would be more advantageous to the community, as articulated in the Comprehensive Plan and the HHSDP than the current zoning of SU-2/MR.

Remand Topic 2- Clarify findings regarding special use category

Clarify findings as to which special use category is intended, subsection 14-16-2-22(B)(7), or B(35).

Context

In his recommendation, the LUHO stated that the B&B use does not satisfy the minimum standards of the Zoning Code and referred to the definition of B&B in the Special Use Zone, §14-16-2-22(B)(7), which reads as follows:

(B)(7) Bed and Breakfast Establishment. A Bed and Breakfast establishment with five to eight guest rooms shall abut a collector street, minor arterial street, or major arterial street, except a site of one acre or greater may abut a local street.

Response & Analysis

Because the existing B&B has more than eight guest rooms and is situated on local streets (Copper Ave. and High St.), the LUHO reasoned that it does not meet the above definition and therefore is contrary to law. He stated that the EPC should have given the issue some attention.

The proposed use is a B&B with outdoor events. The zoning requested is SU-2/SU-1 for Bed and Breakfast to Include Special Events. This SU-1 zoning descriptor is tied to a unique site development plan, as required pursuant to (A)(6) of the SU-1 zone.

The SU-1 zone, at §14-16-2-22(B)(35), contains the following category:

(B)(35) Use combinations not adequately allowed and controlled in other zones, relative to a specific site. Signs as permitted and regulated by the Planning Commission.

Code Enforcement Staff has indicated that the B&B with outdoor events is a use combination not adequately allowed and controlled in other zones. (B)(35) of the SU-1 zone is an appropriate zone for the proposed combination of uses, which does not fit with (B)(7) due to the outdoor events and the specifics of the B&B.

Conclusion

The proposed B&B use with special events meets the standards for an SU-1 zone and is an allowed use in the SU-1 zone because it falls under (B)(35), a combination of uses. (B)(7)-B&B,

does not apply because the proposed use does not meet the Zoning Code definition of a B&B. Staff has included a finding that supports this conclusion.

Remand Topic 3- Appropriately limit “special events”

Identify and appropriately limit the “special events” that will be permitted relative to type, size, hours, and frequency.

Context

The applicants have hosted special events for B&B guests, such as weddings, showers, and family get-togethers. They have also hosted corporate events and meetings, which are held during the day and do not involve amplified sound. The outdoor events, however, involve amplified sound and people using the back yard.

The appellant purchased his property in December, when there were no outdoor events. When the events happen, the appellant states that they disrupt the peaceful enjoyment of his property, including use of his back yard, and that trucks block the alley when unloading. He wants to know when an outdoor event is scheduled.

Some limitations on outdoor events are already in place in practice. For instance, the applicants shut down amplified sound by 10 pm. However, the City’s Noise Ordinance (Chapter 9, Article 9 ROA 1994) allows amplified sound until 12 am on Fridays and Saturdays, when most special outdoor events occur.

The idea of formally limiting special events was explored as part of the EPC process, but no limitations were imposed at the EPC hearing. The LUHO recommendation focuses mostly on R270-1980. The limitations idea was mentioned at the City Council hearing, which decided to remanded it the EPC for further discussion.

Responses to Remand Instructions

The applicants’ response to the remand criteria provides information regarding the types, size, hours, and frequency of events held at the B&B (see attachment). The types of events are:

- family get-togethers (ex. graduations, birthdays)
- corporate events (ex. business meetings, educational training sessions)
- shower events (wedding or baby shower)
- wedding events (ceremony and reception)

Size: All events will not exceed 50 guests per event. Hours: No event will start earlier than 12:30 pm and will end no later than 10:00 pm.

Frequency: Outdoor special events are not held during November – March. Indoor events may take place, but not more than once a week. July – August, when outdoor vegetation is stressed, one event per month would be adequate. April – June and September – October, when weather is nice, one event per week would be ideal.

Amplified sound typically starts around 6 pm and ends promptly at 10 pm or before. Parking is available at the nearby church (via private agreement between the applicant and the church).

In his response to the remand instructions, the appellant would like to define the term special events to mean any outdoor gathering of 25 people or more, any outdoor gathering with amplified sound and/or a dance floor, any gathering at which food or alcohol is served. The appellant is also seeking the following limitations on any event that meets the proposed definition of special events:

- no more than 6 outdoor special events per year
- held between the hours of 10 am and 10 pm
- noise shall not exceed any restrictions established by ordinance
- events shall be placed on a calendar or web page accessible at least 2 weeks prior to the event
- the EPC must implement a reporting system to track the number of special events per year
- any additional limitations the EPC deems appropriate.

Staff Analysis

Several factors come into play when considering placing limitations on special events on private property. First, since the corporate retreats and meetings are held indoors and do not involve amplified sound, they can be removed from consideration in order to focus on the special outdoor events with up to 50 people and amplified sound, which is the crux of the appeal.

Consideration must be given regarding what mechanism is appropriate to render the limitations enforceable, which is a big concern of the appellant. The appellant wants the limitations to be enforceable so, should they be violated, he would have a remedy. The applicants do not want to limit their operations to an extent that they believe is unreasonable.

A site development plan for building permit is not the proper vehicle for placing limitations upon a use. By definition, a site development plan for building permit contains information regarding building placement, parking, easements, etc. but does not have stipulations that would regulate the use itself. Uses are regulated via zone category. For example, the R-1 zone contains use limitations with respect to the number of garage sales that can be held per year. This is a proper use limitation in a zone.

Staff finds that the “site plan control” of the SU-1 zone should not apply to use limitations. Just because the SU-1 zone allows for special uses or combinations of uses not found in other zone categories, and because it’s the only zone that requires an associated site development plan, does not mean that use limitations on activities should be placed on an SU-1 site development plan. Such limitations are not placed in other zones. It would be inconsistent, and a mis-use of the SU-1 zone, to place such limitations on the site development plan for building permit associated with the zone change request.

Furthermore, limiting activities via a site development plan is problematic from an enforcement and administration standpoint. For instance, if there is a restriction that special, outdoor events

must end by 10 pm, Code Enforcement Staff is not available at that hour to verify this. A restriction on the number of events would mean that someone would have to monitor the occurrences and report them to Staff. A Staff person (not the EPC) would have to administer this and could be put in the undesirable position of acting as a mediator or referee between private parties in a private matter.

A more appropriate mechanism to place limitations on the special outdoor events is a private agreement. If the parties are able to reach common ground, the agreement could be recorded and thereby become enforceable. Enforcement would be via civil action.

Conclusion

Staff recommends that the applicant and the appellant enter into a private agreement regarding limitations on the special events. Steps toward reaching agreement occurred at the facilitated meeting on January 29, 2018, but since then there has been nothing further to Staff's knowledge. The Facilitated Meeting Report can serve as a starting point since it addresses the number of events and notice, noise concerns, and blocking the alley. The response to remand instructions provided by each party (see attachments) can be utilized to bring the parties closer together in their negotiations. If the parties can come to agreement regarding what each is willing to live with, then both can go forward.

III. SITE DEVELOPMENT PLAN (as-built)

Since the February 8, 2018 EPC hearing, there have been no revisions to the proposed, as-built site development plan for building permit. The conditions in that report are carried over into this Supplemental Staff report.

Reviewing Agencies/Pre-Hearing Discussion

» Please refer to p. 13-17 of the original Staff report (see attachment).

Neighborhood/Public

» Please also refer to p. 13-17 of the original Staff report (see attachment).

IV. CONCLUSION

This request for a sector development plan map amendment (zone change) and an associated, "as built" site development plan for building permit was approved at the February 8, 2018 EPC hearing and subsequently appealed by a neighbor (AC-18-6). The applicant proposes to change the subject site's zoning from SU-2/MR to SU-2/SU-1 for Bed and Breakfast and Special Events.

The City Council rejected the LUHO recommendation and heard the appeal on June 18, 2018. The Council voted to remand the matter to the EPC with instructions to re-analyze three topics. This supplemental Staff report responds to the Council's instructions regarding i) clarify findings required by R270-1980(D), ii) clarify findings regarding special use category, and iii) appropriately limit "special events".

Based on revised findings that address the remand instructions and include a revised and strengthened policy analysis, Staff recommends approval of the zone change and associated site development plan, subject to conditions.

FINDINGS - 17EPC-40054, September 13, 2018- Sector Development Plan Map Amendment (Zone Change)

1. The subject request is for a sector development map amendment (zone change) for Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition, an approximately 0.6 acre site located at the northwest corner of Copper Ave. and High St. NE, between Central Ave. NE and Dr. Martin Luther King, Jr. Ave. NE (the "subject site").
2. The proposed zone change is from SU-2/M-R (Mixed Residential) to SU-2/SU-1 for Bed and Breakfast to Include Special Events to allow the continued operation of a bed and breakfast (B&B) and hosting of special events such as weddings, gatherings, and retreats.
3. The purpose of the subject request is to remedy a Notice of Violation issued by the Code Enforcement Division because special events are not allowed in the SU-2/M-R zone.
4. The subject request is accompanied by a request for an as-built site development plan for building permit (17EPC-40067) as required pursuant to the SU-1 zone [(§14-16-2-22(A)(1))].
5. The subject request was heard and approved at the February 8, 2018 EPC hearing. An aggrieved neighbor appealed the decision. The hearing before the Land Use Hearing Officer (LUHO) was held on April 3, 2018. The City Council rejected the LUHO's recommendation and opted to hear the case, which it did on June 18, 2018. The Council voted to remand the case to the EPC with instructions.
6. The remand instructions from the City Council are for the EPC to:
 - A. 1. Clarify findings required by R270-1980(D) to identify how, if at all, the proposed zoning is more advantageous to the community, as articulated by the Comprehensive Plan or other City master Plan... "as compared to the existing zoning at the site.
 - B. 2. Clarify findings as to which special use category is intended, subsection 14-16-2-22(B)(7), or B(35); and
 - C. 3. Identify and appropriately limit the "special events" that will be permitted relative to type, size, hours, and frequency.
7. The Comprehensive Plan designates Lot 9 and Lot 10 of the subject site as an Area of Consistency. Lot 8 is designated an Area of Change. The subject site is within the boundaries of the Huning Highland Sector Development Plan (HHSDP) and is in the Huning Highland Historic District designated by the City.

8. The Albuquerque/Bernalillo County Comprehensive Plan, the Huning Highlands Sector Development Plan (HHSDP) and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.

Remand Topic 1- Clarify findings required by R270-1980(D)

9. The proposal furthers the following, applicable Comprehensive Plan Goals:

A. Community Identity Goal 4.1- Character: Enhance, protect, and preserve distinct communities.

The subject site is located in the Central Albuquerque Community Planning Area (CPA), which is characterized by a mix of land uses and proximity of residential and non-residential uses (p. 4-24). The Huning Highland neighborhood is a distinct community. The request would enhance the community by providing a space for events by using historic homes that are consistent with the community's character, thereby protecting and preserving the community and its unique history.

B. Transportation Goal 6.2-Multi-Modal System: Encourage walking, biking, and transit, especially at peak-hour commuting times, to enhance access and mobility for people of all ages and abilities.

The subject site is located within 660' feet of a designated Major Transit Corridor and near Downtown. Major Transit Corridors prioritize transit service and emphasize walkability and cycling, which results in enhanced access and mobility for people of all ages and mobilities. The proposal would allow for special events to be provided in an area that is situated to encourage walking, biking, and transit usage, and thereby enhance access to them for people who use alternative transportation modes and to encourage walking, biking, and transit use.

10. The proposal furthers the following, applicable Land Use policies of the Comprehensive Plan:

A. Policy 5.2.1-Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The proposal would contribute to the distinct, historical community of Huning Highland by providing a new use (special events) that adds to the existing mix of uses in the neighborhood. The existing B&B already contributes to the mix of uses in Huning Highland by operating a business that has preserved the historic homes and emphasized their appeal and interest, which is a healthy and sustainable way to promote the neighborhood and the surrounding neighborhoods in the Central Albuquerque CPA. The subject site is located in a designated Major Transit Corridor (Central Avenue) and is conveniently accessible from surrounding neighborhoods.

B. Policy 5.6.3-Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.

The majority of the subject site (Lots 9 and 10) is in an Area of Consistency. The proposal would contribute to protecting and enhancing the character of the historic Huning Highland neighborhood because it would emphasize the existing buildings' historic character and background. Hosting special events, such as meetings and get-togethers, would enhance the

character of the existing neighborhood (which has single-family and multi-family uses) by utilizing the buildings in a way that would promote awareness and interest in protecting the historic aspects of Huning Highlands, which includes not only buildings, but also people and occurrences.

11. The proposal furthers the following Economic Development Goal and policies of the Comprehensive Plan:

- A. Goal 8.2-Entrepreneurship: Foster a culture of creativity and entrepreneurship and encourage private businesses to grow.

The proposal would encourage entrepreneurship and a private business, the B&B, to grow by allowing special events to be held.

- B. Policy 8.2.1 -Local Business: Emphasize local business development.

The proposal would encourage a private business to grow and would emphasize stability and development of a locally-owned business.

- C. Policy 8.1.4 -Leverage Assets: Enhance and market the region's unique characteristics internally and to outside businesses and individuals in order to compete with other regions.

The historically-designated Huning Highlands neighborhood and Central Avenue (Route 66) are unique characteristics of the region that can be marketed locally and to outside businesses. The proposal would allow special events to be held at the subject site in Huning Highland, one block north of Central Avenue (Route 66), and would contribute to enhancement of the region's unique characteristics through promotion of tourism, history, and historic preservation that could help Albuquerque compete with other regions. The history of the Spy House is unique to Albuquerque and, specifically, the Huning Highland neighborhood.

12. The proposal furthers the following Comprehensive Plan Goal and policy regarding Heritage Conservation:

- A. Goal 11.2-Historic Assets: Preserve and enhance significant historic districts and buildings to reflect our past as we move into the future and to strengthen our sense of identity.

The subject site is in the Huning Highland neighborhood, a designated historic district; the buildings on the subject site are historically significant. The proposal would help promote preservation of this historic district and these buildings because the special events would bring attendees who can learn about and appreciate the area's historic character, thereby enhancing its promotion and strengthening sense of identity for the area.

- B. Policy 11.2.2 -Historic Registration: Promote the preservation of historic buildings and districts determined to be of significant local, State, and/or National historical interest.

The historic buildings on the subject site, and the Huning Highland Historic District of which it is a part, are of significant local, state, and National historical interest. The proposal would promote awareness and preservation of historic buildings in this designated historic district because the special events would attract more people to the area and expose them to this

unique historic context. The history of the Spy House and its past residents is important to the City's, the State's, and the Nation's past and present.

13. The proposal furthers the Goal of the HHSDP and the following, applicable objectives:

A. Goal: The continued development of Huning Highlands into a viable residential and commercial area, building on its unique historic character and location.

Though the existing B&B already builds on the neighborhood's unique historic character and location, the special events would expose more people to this area and further promote its unique character and location. Therefore, the proposal would facilitate the continued development and promotion of Huning Highlands as a viable residential and commercial area.

B. Objective 1: to protect and enhance the unique residential character of the area.

The proposal would help protect and enhance the unique residential character of Huning Highland, which consists of single-family and multi-family residences on both sides of Central Avenue. In addition to continuing to support the preservation of historic buildings on the subject site, the proposal would attract more people to visit the area and promote interest in its architecture and history. Preserving the historic value of the B&B helps preserve the neighborhood's value and appeal as a diverse residential area.

C. Objective 7: to encourage and support local employment and local business development.

The proposal would encourage and support the continued development of a local business.

14. The applicant has adequately justified the sector development plan map amendment (zone change) request pursuant to Resolution 270-1980:

A. Section A: The proposed zoning has been demonstrated to further applicable Goals and policies in the Comprehensive Plan and the Huning Highland Sector Development Plan (HHSDP). Therefore, the proposed sector development plan amendment is consistent with the health, safety, morals, and general welfare of the City.

B. Section B: The proposed zoning is limited in scope and, because an SU-1 zone is requested, it is tied to an "as-built" site development plan for the subject site. The uses allowed by the proposed zoning would be unlikely to adversely affect stability of land use and zoning and, as the applicant demonstrated, are justified pursuant to R270-1980.

C. Section C: Since the request is for an SU-1 zone, the "clearly facilitates" test (see Section I) applies and overrides the less rigorous "no significant conflict" test. A policy-based discussion demonstrates that the proposed zone change clearly facilitates realization of the Comprehensive Plan and the HHSDP because it furthers Comprehensive Plan Goal 4.1-Character (Community Identity) and Goal 6.2-Multi-Modal System (Transportation); Land Use Policies 5.2.1-Land Uses and 5.6.3-Areas of Consistency; Economic Development Goal 8.2-Entrepreneurship, Policy 8.2.1- Local Business, and Policy 8.4.1-Leverage Assets; Heritage Conservation Goal 11.2-Historic Assets and Policy 11.2.2-Historic Registration; and the Goal of the HHSDP and Objectives 1 and 7.

- D. Section D: The policy-based discussion in Section C adequately demonstrates that a different use category would be more advantageous to the community (D)(3), because the request clearly facilitates applicable Goals and policies in the Comprehensive Plan and the HHSDP. Therefore, the existing zoning is inappropriate because another category is more advantageous overall for the neighborhood, the community, and the City.
- E. Section E: The proposed SU-2/SU-1 zoning is narrow in scope and would allow only the specified bed and breakfast use as shown on the associated, as-built site development plan, and the new use- special events. Overall, the new use would not harm the greater community, the neighborhood, or adjacent property. Other uses that could be considered harmful in the subject site's setting would not be allowed.
- F. Section F: The proposed zone change requires no capital expenditures by the City.
- G. Section G: Economic considerations pertaining to the applicant are a factor in the zone change request, but they are not the determining factor.
- H. Section H: Location on a collector or major street is not used as justification for this request.
- I. Section I: The requested SU-1 zoning is a justifiable spot zone because the applicant has demonstrated, in the policy-based response to Section C, that the request will clearly facilitate realization of the Comprehensive Plan and the HHSDP.
- J. Section 1J: The request is for a single lot and not a strip of land, and therefore would not result in a "strip zone".

Remand Topic 2- Clarify findings regarding special use category

- 15. The proposed use of B&B with special events meets the standards of the SU-1 zone and is allowed in the SU-1 zone because it falls under subsection (B)(35), a combination of uses not allowed by other zones. Subsection (B)(7)-B&B, does not apply because the proposed use is a use combination and, furthermore, the existing B&B does not meet the Zoning Code definition of a B&B establishment because it has more than eight guest rooms.

Remand Topic 3- Appropriately limit "special events"

- 16. Limitations on activities should not be placed on the site development plan for building permit associated with the zone change request for two reasons: a) enforcement issues, and b) consistency with administrative practice. A more appropriate mechanism to place limitations on the special outdoor events is a private agreement. If the parties are able to reach common ground, the agreement could be recorded and thereby become enforceable via civil action.
- 17. The affected neighborhood organizations are the Broadway Central Corridors Partnership, Inc. and the Huning Highland Historic District Association (HHHDA), which the applicant notified as required. The applicant also notified property owners within 100 feet of the subject site, as required. A letter of support from the HHHDA was submitted, along with other letters of support. A neighbor who lives near the subject site is opposed due to concern about noise, but did not provide a letter.

18. A facilitated meeting was held on January 29, 2018 between the applicants and the aggrieved neighbor. The neighbor is concerned primarily about amplified sound coming from the subject site, especially when weddings are held, and would like to limit the number of outdoor events held. Despite discussion of possible resolutions, no firm agreements were reached.

RECOMMENDATION - 17EPC-40054, September 13, 2018- Sector Development Plan Map Amendment (Zone Change)

APPROVAL of 17EPC-40054, a sector development plan map amendment from SU-2/M-R (Mixed Residential) to “SU-2/SU-1 for Bed and Breakfast to include Special Events” for Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning’s Highlands Addition, an approximately 0.6 acre site located at the northwest corner of Copper Ave. and High St. NE, based on the preceding Findings and subject to the following Condition of Approval.

CONDITION OF APPROVAL - 17EPC-40054, September 13, 2018–Sector Development Plan Map Amendment (Zone Change)

1. Final approval of the accompanying site development plan for building permit (17EPC-40067) is required. The EPC delegates its approval authority to the Planning Department through the administrative approval (AA) process. The applicant is required to apply for an AA rather than the Development Review Board (DRB).
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FINDINGS -17EPC-40067, September 13, 2018-Site Development Plan for Building Permit (as-built)

1. The subject request is for a site development plan for building permit for Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning’s Highlands Addition, an approximately 0.6 acre site located at the northwest corner of Copper Ave. and High St. NE, between Central Ave. NE and Dr. Martin Luther King, Jr. Ave. NE (the “subject site”).
2. The purpose of the subject request is to remedy a Notice of Violation issued by the Code Enforcement Division because special events are not allowed in the SU-2/M-R zone.
3. The subject request is accompanied by a request for a zone change is from SU-2/M-R (Mixed Residential) to SU-2/SU-1 for Bed and Breakfast to Include Special Events.
4. The subject request was heard and approved at the February 8, 2018 EPC hearing. An aggrieved neighbor appealed the decision. The hearing before the Land Use Hearing Officer (LUHO) was held on April 3, 2018. The City Council rejected the LUHO’s recommendation and opted to hear the case, which it did on June 18, 2018. The Council voted to remand the case to the EPC with instructions.

5. The remand instructions from the City Council are for the EPC to:
 - A. 1. Clarify findings required by R270-1980(D) to identify how, if at all, the proposed zoning is more advantageous to the community, as articulated by the Comprehensive Plan or other City master Plan...”as compared to the existing zoning at the site.
 - B. 2. Clarify findings as to which special use category is intended, subsection 14-16-2-22(B)(7), or B(35); and
 - C. 3. Identify and appropriately limit the “special events” that will be permitted relative to type, size, hours, and frequency.
6. The Comprehensive Plan designates Lot 9 and Lot 10 of the subject site as an Area of Consistency. Lot 8 is designated an Area of Change. The subject site is within the boundaries of the Huning Highland Sector Development Plan (HHS DP) and is in the Huning Highland Historic District designated by the City.
7. The Albuquerque/Bernalillo County Comprehensive Plan, the Huning Highlands Sector Development Plan (HHS DP) and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
8. The proposal furthers the following, applicable Comprehensive Plan Goals:
 - A. Community Identity Goal 4.1- Character: Enhance, protect, and preserve distinct communities.

The subject site is located in the Central Albuquerque Community Planning Area (CPA), which is characterized by a mix of land uses and proximity of residential and non-residential uses (p. 4-24). The Huning Highland neighborhood is a distinct community. The request would enhance the community by providing a space for events by using historic homes that are consistent with the community’s character, thereby protecting and preserving the community and its unique history.
 - B. Transportation Goal 6.2-Multi-Modal System: Encourage walking, biking, and transit, especially at peak-hour commuting times, to enhance access and mobility for people of all ages and abilities.

The subject site is located within 660’ feet of a designated Major Transit Corridor and near Downtown. Major Transit Corridors prioritize transit service and emphasize walkability and cycling, which results in enhanced access and mobility for people of all ages and mobilities. The proposal would allow for special events to be provided in an area that is situated to encourage walking, biking, and transit usage, and thereby enhance access to them for people who use alternative transportation modes and to encourage walking, biking, and transit use..
9. The proposal furthers the following, applicable Land Use policies of the Comprehensive Plan:
 - A. Policy 5.2.1-Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The proposal would contribute to the distinct, historical community of Huning Highland by providing a new use (special events) that adds to the existing mix of uses in the neighborhood. The existing B&B already contributes to the mix of uses in Huning Highland by operating a business that has preserved the historic homes and emphasized their appeal and interest, which is a healthy and sustainable way to promote the neighborhood and the surrounding neighborhoods in the Central Albuquerque CPA. The subject site is located in a designated Major Transit Corridor (Central Avenue) and is conveniently accessible from surrounding neighborhoods.

- B. Policy 5.6.3-Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.

The majority of the subject site (Lots 9 and 10) is in an Area of Consistency. The proposal would contribute to protecting and enhancing the character of the historic Huning Highland neighborhood because it would emphasize the existing buildings' historic character and background. Hosting special events, such as meetings and get-togethers, would enhance the character of the existing neighborhood (which has single-family and multi-family uses) by utilizing the buildings in a way that would promote awareness and interest in protecting the historic aspects of Huning Highlands, which includes not only buildings, but also people and occurrences.

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12. The proposal furthers the Goal of the HHS DP and the following, applicable objectives:

- A. Goal: The continued development of Huning Highlands into a viable residential and commercial area, building on its unique historic character and location.

Though the existing B&B already builds on the neighborhood's unique historic character and location, the special events would expose more people to this area and further promote its unique character and location. Therefore, the proposal would facilitate the continued development and promotion of Huning Highlands as a viable residential and commercial area.

- B. Objective 1: to protect and enhance the unique residential character of the area.

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RECOMMENDATION - 17EPC-40067, September 13, 2018

APPROVAL of 17EPC-40067, an As-built Site Development Plan for Building Permit for Lot 8 and the additional south seven feet and eight inches of Lot 7, Lot 9, and Lot 10, Block 24, Huning's Highlands Addition, an approximately 0.6 acre site located at the northwest corner of Copper Ave. and High St. NE, based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL -17EPC-40067, September 13, 2018- Site Development Plan for Building Permit

1. The EPC delegates final sign-off authority of this site development plan Staff through the administrative approval (AA) process. The applicant is required to apply for an AA instead of the Development Review Board (DRB) process. Staff is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met.

A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after final sign-off, may result in forfeiture of approvals.

2. Main Sheet- Notes:
 - A. A note shall be added to indicate that the use shall comply with all applicable City ordinances including, but not limited to, the Noise Ordinance (Chapter 9, Article 9 ROA 1994).
 - B. The site description (listed as site data) shall match the legal description.
 - C. The note shall mention location in the Huning Highland Historic District.
 - D. Add a note regarding refuse collection.
3. Main Sheet- Other:
 - A. Specify what the "1 story brick" building is.
 - B. Indicate any easements.
 - C. Existing and proposed zoning shall be listed.
 - D. The backyard area where special events are held shall be indicated.
4. Parking:
 - A. Parking notes shall be clarified and reflect that the parking is pursuant to the HHSDP.

- B. Provide parking (12 spaces) shall be listed.
 - C. A note shall be added to indicate that parking for events is provided through a private agreement with First Presbyterian Church or a successor.
5. Landscaping- General:
- A. Indicate the approximate square footage of landscaping beds.
 - B. Provide approximate landscaping calculations.
 - C. Add a note that landscape maintenance is the responsibility of the property owner.
6. Landscaping- Plant Palette:
- A. The evergreens shall be identified as a juniper species and a hedge plant (or more specific).
 - B. Rosemary shall be added to the plant palette.
 - C. Spanish Broom shall be removed and replaced with Lavender species.
 - D. Roses and a planting bed shall be added to the turf grass area on Lot 8.
7. Walls/Fences
- A. A detail for the picket fence and the cedar fence shall be provided.
 - B. Specify the height of the existing picket fence.
8. Elevations:
- A. Provide a schedule of colors and materials for each elevation sheet.
 - B. Add a note that no renovation or construction work is part of this site development plan.
9. Clarification:
- A. Label the site plan as “As-Built Site Development Plan for Building Permit”.
 - B. The lots shall be labeled (Lot 8, Lot 9, Lot 10).
 - C. Switch out the standard signature block with a space for an AA stamp.
 - D. Remove the part of the first General Note regarding no change of use.
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***Catalina Lehner, AICP
Senior Planner***

Notice of Decision cc list

cc: Steven and Kara Grant, 201-209 High St. NE. ABQ, NM 87102
Broadway Central Corridors Partnership, Inc. Jim Maddox, 515 Central Ave. NE, ABQ, NM 87102
Broadway Central Corridors Partnership, Inc. Rob Dixon, P.O. Box 302, ABQ, NM 87102
Huning Highland Historic District Association, Bonnie Anderson, 522 Edith SE, ABQ, NM 87102
Huning Highland Historic District Association, Ann Carson, 416 Walter SE, ABQ, NM 87102
Dayan Hochman, Roybal-Mack & Cordova, 1121 4th St. NW, Ste. 10, ABQ, NM 87102
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