

# CITY OF ALBUQUERQUE



**PLANNING DEPARTMENT**  
**URBAN DESIGN & DEVELOPMENT DIVISION**  
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## OFFICIAL NOTIFICATION OF DECISION

November 08, 2018

Eric Kilmer  
1416 6<sup>th</sup> St. NW  
Albuquerque, NM 87102

**Project# 1007648**  
18EPC-40019 Sector Development Plan Map Amendment  
(Zone Change)  
18EPC-40021 Site Development Plan for Building Permit

### LEGAL DESCRIPTION:

The above action for all or a portion of Lots 22, 23 and 24, Block 20, Albright-Moore Addition, zoned SU-2/SR to SU-2/SU-1 for Flower Shop and Nursery and Permissive C-1 Uses, located at the NE corner of 6<sup>th</sup> St. NW and Constitution Ave. NW (1416 6<sup>th</sup> Street NW), containing approximately 0.5 acre. (J-14)  
Staff Planner: Catalina Lehner

PO Box 1293  
On November 08, 2018 the Environmental Planning Commission (EPC) voted to DENY Project# 1007648/18EPC-40019, a Sector Development Plan Map Amendment (zone change), and 18EPC-40021, a Site Development Plan for Building Permit, based on the following Findings:

Albuquerque

### **FINDINGS - 18EPC-40019:**

- NM 87103
1. The request is for a sector development plan map amendment (zone change) to the Sawmill/Wells Park Sector Development Plan (SWPSDP) for Lots 22, 23 and 24, Block 20, Albright-Moore Addition, an approximately 0.5 acre site located at the southeast corner of Sixth St. NW and Constitution Ave. (the "subject site").
  - www.cabq.gov: The request is accompanied by an associated site development plan for building permit (18EPC-40021) as required pursuant to the SU-1 Zone, §14-16-2-22(A)(1).
  3. The request was deferred from the September 13, 2018 hearing to allow additional time for the applicant determine what zoning to request and to provide a strengthened justification letter pursuant to R270-1980. At the August 9, 2018 hearing, the EPC heard from the applicant regarding the deferral and voted to accept a request for another 30-day deferral. Prior to the August hearing, the request was deferred for 30 days at the July 12, 2018 hearing and for 60 days at the May 10, 2018 hearing.
  4. The applicant owns the subject site and proposes to change the subject site's zoning from SU-2/S-R (Sawmill Residential) to "SU-2/SU-1 a combined permissive use of Office with Beauty Salon and/or Barber Shop" to allow an office use, a beauty salon, and a barber shop on the subject site.

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5. The subject site is available for sale or lease, as indicated by a large sign at the SE corner of 6<sup>th</sup> St. and Constitution Ave. shown in photos from Staff's site visit of April 26, 2016. It appears that the building is not currently being utilized; the small blade sign that faces pedestrians walking north on 6<sup>th</sup> St. had no lettering at the time of Staff's site visit.
6. At one time, the applicant was using the existing building for a bail bonding business, but the zone change that would have allowed the bail bonding business to operate legally was denied in 2009; the denial and the City's reading of the SWPSDP were affirmed by a District Court decision in 2010 (*Kilmer vs. City of Albuquerque, CV-2009-07499*). The applicant moved the bail bonding business, which has since ceased operation.
7. The Albuquerque/Bernalillo County Comprehensive Plan, the Sawmill/Wells Park Sector Development Plan (SWPSDP), and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
8. The applicant has not adequately justified the zone map amendment (zone change) request pursuant to Resolution 270-1980 as follows:
  - A. **Section A:** The standard, established way to demonstrate consistency with the City's health, safety, morals, and general welfare is to show that that a request furthers applicable Goals and policies in applicable Plans (the Comprehensive Plan and the SWPSDP), and to reference this discussion in the response to Section A. The applicant has done this and has used the language applicable for a change to an SU-1 zone, but has not demonstrated that the request clearly facilitates realization of applicable Goals and policies in the response to Section C. Therefore, the applicant has not demonstrated that the request is consistent with the City's health, safety, morals, and general welfare.
  - B. **Section B:** The task in the response to Section B is for the applicant to discuss how the proposed zone change would affect stability of land use and zoning. The burden is on the applicant to justify the proposed zone change using a policy-based analysis.

The building on the subject site has existed for many years, but the majority of the subject site is vacant. The use immediately preceding the existing SU-2/SR zoning, a flower shop, closed in approximately 2002. The nursery use ceased in the 1970s. The 1996 SWPSDP allowed the flower shop to continue. The applicant purchased the property in 2008, several years after the flower shop closed and decades after the nursery had closed, so therefore cannot claim that that these uses are continuing. It appears that the applicant re-started the flower shop operations in 2009.

Even if the uses were continuing, the argument is not that important because the focus of a zone change justification is on the zoning requested on the subject site—not on nearby commercial uses (note: the use to the south is an office use), and not on the perceived size of the zone change (“not major”, “modest”).

The SWPSDP purposefully established the subject site's zoning, SU-2/S-R, to not allow new commercial uses once the former commercial uses ceased operation, unless they can be

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demonstrated to conform to SWPSDP Regulation A.5. Allowing new non-residential uses contrary to the intent of the SWPSDP could de-stabilize the area.

- C. Section C: Because the request is for an SU-1 zone, the test in Section C is whether or not the request “clearly facilitates” applicable Goals and policies. The applicant has not adequately demonstrated that the request clearly facilitates realization of applicable Goals and policies in the 2017 Comprehensive Plan and the SWPSDP.

The Comprehensive Plan does not designate the 2005 MRA Plan as the controlling plan. MR Plans are not included in planning policy analysis because they apply to projects that are public-private partnerships subject to an executed development agreement.

There is a significant conflict with the SWPSDP. Therefore, the justification does not demonstrate that the request clearly facilitates realization of applicable Plans. The overarching intent of the SWPSDP (1996) is to establish residential uses when non-residential uses cease to operate. This is why the subject site was zoned SU-2/S-R (Sawmill Residential) upon the Plan’s adoption in 1996, and supported by a regulatory framework to facilitate this. Zoning regulations are a critical component of the SWSDP to implement the Plan’s intent of reinforcing community stability, vitality, and character.

The request conflicts with the regulations the SWPSDP established for the SU-2/S-R (Sawmill Residential) zone, particularly Regulation A.5. The SWPSDP intends to establish residential uses when non-residential uses cease to operate.

The zone change case for the property to the south is irrelevant to the request to re-zone the subject site. R270-1980 is applied to the property for which the change is proposed. Also irrelevant are the reasons for the 1969 approval of a zone change on the subject site. The SU-1 for Flower Shop and Nursery zoning was replaced in 1996 by SU-2/S-R zoning. These arguments do not substitute for the required justification and policy analysis. References to text excerpts from the Comprehensive Plan narrative are not applicable for a policy analysis; the relevant text of the policy documents is embodied in the Goals and policies. The applicant has not adequately demonstrated that the request clearly facilitates applicable Goals and policies in the Comprehensive Plan and the SWPSDP.

- D. Section D: The applicant does not choose just one reason (1, 2, or 3), but instead responds to all of them. It appears that the “first” response corresponds to an alleged error in the zone map pattern. The argument that applicable Plans have changed since the “initial zoning” is irrelevant because any such plans have been superseded by City Council actions and no longer apply. This does not constitute an error. The “second” response: the existence of similar land uses in the area does not mean that the requested zoning on the subject site is more advantageous to the community.

The “third” response: The 1996 adoption of the SWPSDP established zoning particular to the plan area in order to realize the Plan’s overarching intent to reinforce community stability, vitality, and character (SWSDP, p. 1), which is advantageous to the community. Without a zone change, the permissive uses on the subject site are: 1) S-R uses (R-1, two dwelling units on one lot, townhouses, and single-family detached as permitted in R-LT, all as specified in the SWPSDP), and 2) flower shop and/or nursery provided that they comply with Regulation A.5 of the SWPSDP.

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The applicant has not adequately demonstrated that a different zoning category would be more advantageous to the community than the current zoning (SU-2/S-R) because the applicant has not demonstrated that the request clearly facilitates realization of the Comprehensive Plan and the SWPSDP.

- E. **Section E:** The most effective way to respond Section E is to list the uses that the zone change would allow if granted, and discuss whether or not each would be harmful and why. Each allowed use has the potential to develop on the subject site.

The applicant contends that none of the permissive uses (office, beauty salon, barber shop) would be harmful to adjacent property, the neighborhood, or the community, but does not explain why other than to refer to other properties and that the neighbors have “endorsed” the request. Like the other tests in R270-1980, the test in Section E applies to the subject site, not to other sites in the Plan area, and is not transferable to other properties, such as the property to the south.

Though generally the MX-T zone in the IDO is not considered harmful, the applicant does not specifically address each proposed use (office, beauty salon, barber shop) and how each use would convert under the IDO. These uses are all allowed in the MX-T zone. The beauty salon and barber shop fall under the definition of Personal Business Services, Small—which includes some uses that might be considered harmful in the subject site’s setting. However, discussion of the MX-T zone is not applicable because this request is not being considered pursuant to the regulations and processes of the IDO.

- F. **Section F:** The proposed zone change would not result in any major or unprogrammed capital expenditures by the City.

- G. **Section G:** The determining factor for the proposed zone change is the applicant’s desire to add additional non-residential uses to the subject site in order to sell it to commercial businesses, office users, or market it to tenants.

- H. **Section H:** The applicant is not using the subject site’s location on 6<sup>th</sup> St. NW, in itself, as justification for the proposed zone change.

- I. **Section I:** The SU-1 zone is a spot zone by definition, because it pertains to a single, unique property and a site development plan is required. SU-1 zoning is a justifiable spot zone provided that it: i) clearly facilitates realization of the Comprehensive Plan and sector development plan or area plan, or ii) functions as a transition between adjacent zones.

The applicant has not demonstrated, in the response to Section C, that the proposed zone change would clearly facilitate realization of the 2017 Comprehensive Plan and the SWPSDP. Also, the test for a justifiable spot zone does not have to do with the subject site’s history, whether or not the proposed uses exist in the neighborhood, if other zone changes have been approved or not, or if there is neighborhood support or not.

- J. **Section J:** The zone change request would not result in a “strip zone”. The subject site is a single, small property that does not comprise a strip of land.

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9. The existence of other SU-1 zoned properties in the SWPSDP area is irrelevant to justifying a zone change on the subject site. First, a zone change justification is specific to a given site. Second, each SU-1 zoned site is unique by definition because it is tied to a site development plan for a particular site pursuant to Zoning Code §14-16-2-22(A)(1).
10. R270-1980 does not contain a criterion that would allow a historical argument based on a prior approval to be used to justify a zone change request. Therefore, the 1969 zoning decision (Z-69-81), which established zoning on the subject site as SU-1 for Flower Shop and Nursery, is irrelevant. The adoption of the SWPSDP in 1996 superseded this action and established the subject site's current zoning of SU-2/S-R.
11. The flower shop closed in approximately 2002 and the use ceased—prior to the applicant's purchase of the property in 2008. The nursery use ceased to operate a couple of decades ago. Whether or not the applicant is currently operating a flower shop, for which he has obtained a business license, is insignificant to the proposed zone change to SU-2/SU-1 a combined permissive use of Office with Beauty Salon and/or Barber Shop.
12. Though neighborhood and community input are an important part of the EPC process, R270-1980 does not include a criterion that allows neighborhood support or opposition to be used as justification for a zone change request. Any neighborhood support should be discussed within the context of applicable policies. There has been no additional neighborhood support or opposition expressed since April.
13. The Sawmill/Wells Park Metropolitan Redevelopment Area (MRA) plan does not apply because the subject site is not a metropolitan redevelopment site, there is no public purpose to the request, and a development agreement with the City has not been executed.  
  
Even if it did apply, the MR Plan does not over-ride the SWPSDP. Though both are Rank III plans, MR Plans are not regulatory and do not establish zoning. Sector plans that establish zoning, such as the SWPSDP, are regulatory. MR Plans can inform the discussion, but they do not over-ride sector plans.
14. R270-1980 does not include a criterion that allows the perceived size or scope of a proposed zone change (i.e.- "it's just a little zone change") to be used as justification. All proposed zone changes, no matter how similar or different they are from existing zoning, are required to be justified pursuant to R270-1980.
15. The applicant has not adequately justified the sector development plan map amendment (zone change) pursuant to the policies and criteria of R270-1980 because he has not adequately demonstrated, in the response to Section C, that the proposed zone change would clearly facilitate applicable Goals and policies in the 2017 Comprehensive Plan and the SWPSDP. The burden is on the application to justify the zone change pursuant to Section B.

The applicant has not provided citations of applicable Goals and policies and has not completed a policy analysis. Text citations are insufficient. The MR Plan does not over-ride the SWSDP and does not apply to the request. Therefore, the responses to Section D regarding more advantageous

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- to the community as articulated in the 2017 Comprehensive Plan and the SWSDP, and the response to Section A regarding consistency with health, safety, and welfare, are insufficient.
16. The proposed zone change creates a significant conflict with the overarching intent of the SWSDP to establish residential uses when non-residential uses cease to operate. The SWSDP does not intend new non-residential uses that were not allowed by the zoning in place prior to adoption of the Plan (1996). The City's reading of SWPSDP Regulation A.5 was upheld by the District Court in its 2010 decision (Kilmer vs. Albuquerque, CV-2009-07499).
  17. The affected neighborhood organizations are the Wells Park Neighborhood Association (WPNA) and the Sawmill Community Land Trust (SCLT). Both were notified as required. Property owners within 100 feet of the subject site were also notified, as required.
  18. A facilitated meeting was held on April 23, 2018. Neighbors wanted assurance that the applicant would not put a bail bond business or a pawnshop on the subject site. The applicant agreed. There were questions about what uses are currently allowed on the subject site, and what uses could be developed with the proposed zone change.
  19. Staff received correspondence from the WPNA and the SCLT. The WPNA representative indicated that it would support a zone change to MX-T under the new IDO, but not to MX-L. The MX-T zone is the replacement for the RC zone and the MX-L zone is the replacement for the C-1 zone. The SCLT representative indicated that they do not have a problem with the project from what they can see. Staff did not receive any additional correspondence during the deferral periods.

**FINDINGS - 18EPC-40021:**

1. The request is for an as-built site development plan for building permit for Lots 22, 23 and 24, Block 20, Albright-Moore Addition, an approximately 0.5 acre site located at the southeast corner of Sixth St. NW and Constitution Ave. (the "subject site").
2. The request is accompanied by a request for a sector development plan map amendment (zone change) (18EPC-40019). When requesting an SU-1 zone, a site development plan is required pursuant to §14-16-2-22(A)(1).
3. The request was deferred from the September 13, 2018 hearing to allow additional time for the applicant determine what zoning to request and to provide a strengthened justification letter pursuant to R270-1980. At the August 9, 2018 hearing, the EPC heard from the applicant regarding the deferral and voted to accept a request for another 30-day deferral. Prior to the August hearing, the request was deferred for 30 days at the July 12, 2018 hearing and for 60 days at the May 10, 2018 hearing.
4. The subject site is available for sale or lease, as indicated by a large sign at the SE corner of 6<sup>th</sup> St. and Constitution Ave. shown in photos from Staff's site visit of April 26, 2016. It appears that the building is not currently being utilized; the small blade sign that faces pedestrians walking north on 6<sup>th</sup> St. had no lettering at the time of Staff's site visit.

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5. At one time, the applicant was using the existing building for a bail bonding business, but the zone change that would have allowed the bail bonding business to operate legally was denied in 2009; the denial and the City's reading of the SWPSDP were affirmed by a District Court decision in 2010 (Kilmer vs. City of Albuquerque, CV-2009-07499). The applicant moved the bail bonding business, which has since ceased operation.
6. The Albuquerque/Bernalillo County Comprehensive Plan, the Sawmill/Wells Park Sector Development Plan (SWPSDP), 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 not adequately justified the sector development plan map amendment (zone change) pursuant to the policies and criteria of R270-1980 because he has not adequately demonstrated, in the response to Section C, that the proposed zone change would clearly facilitate applicable Goals and policies in the 2017 Comprehensive Plan and the SWPSDP. Therefore, the responses to Section D regarding more advantageous to the community, the response to Section A regarding consistency with health, safety, and welfare, and the response to Section I regarding justification of a spot zone, are also insufficient.
8. The Sawmill/Wells Park General SU-2 Regulations apply to all new construction and building permit applications for additions, renovations, or site rehabilitation work in the SWPSDP area.
9. The affected neighborhood organizations are the Wells Park Neighborhood Association (NA) and the Sawmill Community Land Trust (SCLT). Both were notified as required. Property owners within 100 feet of the subject site were also notified, as required.
10. A facilitated meeting was held on April 23, 2018. Neighbors wanted assurance that the applicant would not put a bail bond business or a pawnshop on the subject site. The applicant agreed. There were questions about what uses are currently allowed on the subject site, and what uses could be developed with the proposed zone change.
11. Staff received correspondence from the WPNA and the SCLT. The WPNA representative indicated that it would support a zone change to MX-T under the new IDO, but not to MX-L. The MX-T zone is the replacement for the RC zone and the MX-L zone is the replacement for the C-1 zone. The SCLT representative indicated that they do not have a problem with the project from what they can see. Staff did not receive any additional correspondence during the deferral periods.

**APPEAL:** If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **NOVEMBER 26, 2018**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15<sup>th</sup> day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-6-1 and 14-16-6-4(U) of the IDO. A Non-Refundable filing fee is required at the time the appeal is filed.

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You will receive notification if any person files an appeal. If there is no appeal, you can receive Building Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

**SITE PLANS:** IDO Section 14-16-6-4(W) details the period of validity for site plans.

**DEFERRAL FEES:** Pursuant to IDO Section 14-16-6-4(G), deferral at the request of the applicant is subject to a \$110.00 fee per application.

Sincerely,



**David S. Campbell  
Planning Director**

DSC/CL

cc: Eric Kilmer, 1416 6<sup>th</sup> St. NW, ABQ, NM 87102  
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