

PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
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OFFICIAL NOTIFICATION OF DECISION

MAY 16, 2024

Eric Carson and Kristin Shiplet
820 Kent Ave NW
Albuquerque, NM 87102

Project # PR-2024-010186
RZ-2024-00022 –Zoning Map Amendment

Eric Carson and Kristin Shiplet, requests a Zone Map Amendment, for all or a portion of 43 West 10ft sf Lot 7 and Lot 8 New Mexico Town Company's Original Towns, located at 820 Kent Ave NW between 8th St NW and 9th St NW, approximately 0.2 acres. (J-13-Z) (K-13-Z)

Staff Planner: William Steele

On May 16, 2024, the Environmental Planning Commission (EPC) voted to APPROVE Project # PR-2024-010186, RZ-2024-00022, Zoning Map Amendment, based on the following Findings.

FINDINGS – RZ-2024-00022 Zoning Map Amendment

1. The request is for a zoning map amendment (zone change) for an approximately 0.2-acre site legally described as all or a portion of 43 West 10ft sf Lot 7 and Lot 8 New Mexico Town Company's Original Towns, located at located at 820 Kent Ave NW, between 8th St NW and 9th St NW (the “subject site”).
2. The applicant is requesting a zone change for the subject site from R-ML (Residential - Multi-Family Low Density) to MX-T (Mixed - Use - Transition) to facilitate both Art Gallery and Small Retail Use. The request will align the subject site’s zoning with the zoning designation of the abutting and adjacent properties to the north, south and west. The subject site is currently operating with an Art Gallery use and the applicant holds a home occupation business license that allows a small number of individuals in the gallery at a time.
3. The applicant would like to expand their business operations to allow more capacity in the space since there is not a business permit that will allow more customers in their current zoning district; therefore, a Small Retail Use is required to be designated. Small Retail Use is not currently permissive under the R-ML zone district and a zone change to MX-T will allow for greater occupancy of customers and increase capacity.
4. Although staff notes the intended purpose of the zone change, an analysis of all uses that would become permissive has been conducted.

5. The subject site is in an Area of Change as designated by the Comprehensive Plan. It is within the Central Albuquerque Community Planning Area (CPA) and Fourth Ward Historic Protection Overlay (HPO)-4. The subject site is within 660-feet of the Central Avenue Major Transit Corridor and Central Avenue Main St Corridor as designated by the Comprehensive Plan.
6. The City of Albuquerque Integrated Development Ordinance (IDO) and the Albuquerque/Bernalillo County Comprehensive Plan are incorporated herein by reference and made part of the record for all purposes.
7. The request furthers the following Goal and Policies from Comprehensive Plan Chapter 4-Community Identity:
 - A. Goal 4.1 Character: Enhance, protect, and preserve distinct communities.
The request would be cohesive with adjacent properties zoned MX-T to the north, south and west. It would protect and enhance the distinct identity of the Downtown Center and Fourth Ward Historic District, which features a diverse mix of low-density and small scale land uses.
 - B. Policy 4.1.3 Placemaking: Protect and enhance special places in the built environment that contribute to distinct identity and sense of place.
The request would enhance and protect a special place in an historic district by promoting the use of a refurbished garage that is being utilized as an art gallery. This request would contribute to the preservation of a structure in the existing community and protect its sense of place in a built environment.
 - C. Policy 4.1.4 Neighborhoods: Enhance, protect, and preserve neighborhoods and traditional communities as key to our long-term health and vitality.
The request could protect, enhance, and preserve a special place and community because it would allow a low-density mix of land uses on the subject site, which is directly adjacent to low-density residential, small-scale multi-family, office and pedestrian-oriented commercial uses in a transitional neighborhood that is characterized by similar development. Any future development of uses allowed permissively in the MX-T zone district would be consistent with surrounding properties and could thus enhance the distinct identity of the Downtown neighborhood, which is a traditional community due to its historic designation.
8. The request furthers the following, applicable Goal and Policy regarding communities and efficient development patterns from Comprehensive Plan Chapter 5: Land Use:
 - Goal 5.1 Centers and Corridors: Grow as a community of strong Centers connected by a multi-modal network of Corridors.
The request would allow a broader range of low-density land uses on the subject site, which is located in the Downtown Center and within 660' of the Central Avenue Major Transit and Main Street Corridors. Although the request is based on the need to allow for greater occupancy of customers and increase capacity in an existing building in a residential zone district, any development made possible by the request could result in growth on the subject site, which is connected to the aforementioned Corridors.

9. The request furthers the following, additional Policy regarding City Development Areas from Comprehensive Plan Chapter 5: Land Use:

Goal 5.6 City Development Areas: Encourage and direct growth to Areas of Change where it is expected and desired and ensure that development in and near Areas of Consistency reinforces the character and intensity of the surrounding area.

The subject site is located wholly in an Area of Change, where growth is both expected and desired. The restoration of the blighted garage on the subject site and the request to expand its capacity as an art gallery and small retail business could encourage, enable, and direct growth to this Area of Change.

10. The request furthers the following, additional Goal and Policies regarding Economic Development from Comprehensive Plan Chapter 8: Economic Development:

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

The request would allow the existing art gallery to expand its capacity by continuing to foster a culture of creativity and entrepreneurship. The art gallery would promote other entrepreneurs in the neighborhood and arts and cultural sector to increase the opportunity for vendors and artist businesses to grow.

- B. Policy 8.2.2 Diverse Talent: Promote a more inclusive ecosystem for developing entrepreneurs.

The request would enable the existing art gallery to reach potential artist and vendors in the Downtown neighborhood. This would continue to support neighborhood-based capacity by promoting building a more inclusive ecosystem for developing potential entrepreneurs, specifically in the art profession.

- C. Policy 8.2.5 Creative Economy: Promote the creative economy.

The request would allow the existing art gallery to further promote the creative economy by allowing it to further engage and participate in the local arts, cultural programs and events such as the Albuquerque Art Walk.

11. The request furthers the following, additional Goal and Policy regarding Historic Assets and Arts promotion from Comprehensive Plan Chapter 11: Heritage Conservation:

- A. Goal 11.2 Historic Assets: The request would allow the existing repurposed detached garage to preserve and enhance the Fourth Ward historic district as art Gallery. The applicant received a Certificate of Appropriateness from the Landmarks Commission for a new garage door and a new wall-painted sign in the rear yard. The sign was requested to display the name of the art gallery and the existing garage door was broken and in inferior condition and needed to be replaced. The applicant has adhered to the Historic Overlay Protection ordinances and development guidelines thereby preserving the past and enhancing the historic district while strengthening its sense of identity as it moves into the future.

- B. Policy 11.2.1 Arts Promotion: The request would allow the existing art gallery to continue to promote the arts and the cultural sector as key assets in a vital economy by providing a space with more capacity for more artist and vendors to display and sell their work. The existing art

gallery is in itself a dedicated special place for local artist to promote their work which promotes art as a major factor in quality of life, healthy communities and contributes to the identity of the historic district in which it resides.

12. The applicant has adequately justified the request pursuant to the Integrated Development Ordinance (IDO) Section 14-16-6-7(G)(3)-Review and Decision Criteria for Zoning Map Amendments, as follows:

A. Criterion A: Consistency with the City's health, safety, morals and general welfare is shown by demonstrating that a request generally furthers applicable Comprehensive Plan Goals and policies and does not significantly conflict with them.

Applicable citations: Goal 4.1 and Policies 4.1.3, and 4.1.4; Goal 5.1, Goal 5.6, Goal 8.2 and Policies 8.2.2 and 8.2.5; Goal 11.2 and Policy 11.2.1.

The applicant's policy-based response adequately demonstrates that the request furthers a preponderance of applicable Goals and policies and does not present any significant conflicts with the Comprehensive Plan. Therefore, the request is consistent with the City's health, safety, morals and general welfare.

B. Criterion B: The subject site is located wholly in an Area of Change, so this criterion does not apply.

C. Criterion C: The subject site is located wholly in an Area of Change. The applicant's policy based analysis and response to Criterion C demonstrates that the request furthers a preponderance of applicable Comprehensive Plan Goals and policies including but not limited to, Character, Land Use, Placemaking, Historic Assets, Art Promotion, City Development Areas and therefore would be more advantageous to the community than the current zoning.

D. Criterion D: The requested zoning includes permissive uses that could be harmful to adjacent property, the neighborhood, or the community. The harmful uses would be mitigated through the IDO's Use-Specific standards. In the MX-T zone district, Cannabis retail (IDO 14-16-4-3(D)(35)) is prohibited, unless associated with an establishment licensed by the State as a cannabis microbusiness, in which case this use shall not exceed 10,000 square feet of gross floor area. In this case, the establishment would have to comply with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. If located within 600 feet of any other cannabis retail establishment, this use shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A), unless associated with an establishment licensed by the State as a cannabis microbusiness. This use is prohibited within 300 feet of any school or child day care facility. Cannabis cultivation and derived products are conditional primary uses which require an approved conditional use permit per Table 4-2-1. Liquor retail Tap Room or Tasting Room are conditional Primary uses and Nicotine retail is a conditional accessory use. No other uses would be considered harmful.

E. Criterion E: The subject site is developed with a single-family home and a renovated detached garage repurposed as an art gallery which is adequately served by existing infrastructure (requirement 1).

- F. Criterion F: The applicant is not completely basing the justification for the request upon the subject site's location on a major street. Kent Ave NW is a local street. Rather, the applicant has adequately demonstrated that the request furthers a preponderance of applicable Comprehensive Plan Goals and policies and does not conflict with them.
- G. Criterion G: The applicant's justification is not completely or predominantly based upon economic considerations although it would add more capacity to the existing Art Gallery business. Rather, the applicant justification is based on a preponderance of applicable Comprehensive Plan Goals and policies and does not conflict with them.
- H. Criterion H: A zone change from RM-L to MX-T is not a "spot zone" because the properties abutting and adjacent to the subject site's north, south and west are zoned MX-T.
13. The applicant's policy-based response adequately demonstrates that the request clearly does not facilitate a "spot zone" and furthers a preponderance of applicable Goals and policies regarding community identity, land use, centers and corridors and efficient development patterns, placemaking, economic development and heritage conservation; and does not present any significant conflicts with the Comprehensive Plan. Therefore, the request is consistent with the City's health, safety, morals, and general welfare.
14. The affected neighborhood organization is the Downtown Neighborhood Association which was notified as required. Property owners within 100 feet of the subject site were also notified as required.
15. A pre-application facilitated meeting was requested by the Downtown Neighborhood Association and held on January 16, 2020 in addition their board meetings. The Neighborhood Association supports the zone map amendment to MX-T.
16. As of this writing, Staff has received two letters of opposition regarding the proposed zone map amendment from neighbors of 820 Kent Ave because of prior property damage and alleged code enforcement violations, noise/loud music, trash, blocking the alley, traffic and parking concerns.
17. Staff has received 20 letters of support for the proposed map amendment from various individuals such as the Downtown Neighborhood Association, local artist, art teachers and patrons, some who have showcased their art work at the gallery. Residents of downtown who support the art gallery stated the value it brings to the artistic community in the area.
18. The Code Enforcement Division received an email reporting a possible "zoning complaint," not a nuisance. After conducting an investigation and at least three (3) site visits, no violations were observed.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **May 31, 2024**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th 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 14-16-6-4(V) of the Integrated Development Ordinance (IDO), Administration and Enforcement. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal an EPC Recommendation to the City Council since this is not a final decision.

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 IDO must be complied with, even after approval of the referenced application(s).

Sincerely,



for Alan M. Varela,
Planning Director

AV/WS/MJ

CC:

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