



**Environmental
Planning
Commission**

**Agenda Number: 11
Project Number: 1001580
Case Numbers: 14EPC-40030/40031
December 11, 2014**

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

Agent	Robert Lucero, Rodey Law Firm
Applicant	Roybal-Mack Law PC
Requests	Sector Development Plan Map Amendment (zone change) Site Development Plan for Building Permit
Legal Description	Lot 1-A and Lots 3 & 4, Block 6, Albright Moore Addition
Location	SE corner of 6 th St. NW and Kinley Ave. NW (1324 6 th St. NW)
Size	Approximately 0.2 acre
Existing Zoning	SU-2 for S-R (Sawmill Residential)
Proposed Zoning	SU-2 for SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer

Staff Recommendation

That a recommendation of APPROVAL of 14EPC-40030, based on the Findings beginning on Page 17, and subject to the Condition of Approval on Page 21.

That a recommendation of APPROVAL of 14EPC-40031, based on the Findings beginning on Page 21, and subject to the Conditions of Approval beginning on Page 25.

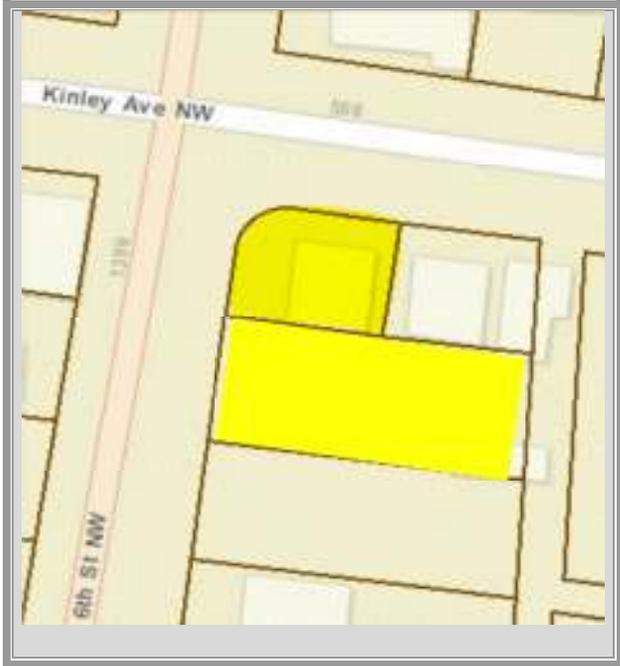
Staff Planner
Catalina Lehner-AICP, Senior Planner

Summary of Analysis

This request for a sector development plan map amendment (zone change) to the Sawmill/Wells Park Sector Development Plan (SWPSDP), and an associated site development plan for building permit, was approved at the June 12th EPC hearing. A single-family home, converted into a law office, occupies the subject site.

The approval was appealed by an area resident and heard by the Land Use Hearing Officer (LUHO) on August 25th. The LUHO recommended, and the Council passed, a remand of the matter to the EPC to re-evaluate the relationship between the SU-2 and SU-1 zone under the SWPSDP, parking, and spot zoning. Additional analysis is contained in the remand Staff report.

Staff again recommends conditional approval of the zone change and the associated site development plan. More extensive revised findings that address the topics the EPC was directed to re-evaluate are provided.



City Departments and other interested agencies reviewed this application from 04/28/'14 to 05/09/'14. Agency comments used in the preparation of the June Staff report begin on Page 23 of that report.

I. INTRODUCTION

Request & Status

This request is for a sector development plan map amendment (zone change) to the Sawmill/Wells Park Sector Development Plan (SWPSDP). A site development plan for building permit, for the existing building on the subject site, is associated with the zone change. The building was remodeled and is being used as a small law office. A zone change is needed to allow the existing use to remain. The proposed zoning is “SU-2 for S-R (Sawmill Residential)” to “SU-2 for SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer.”

On remand, the subject site was enlarged to include the neighbor’s property to the south (Lots 3 & 4, Block 6). Note that Lots 3 & 4 are not differentiated by boundaries; they have one UPC number and are assessed as one lot. Since the application now includes the neighbor’s property, zoning on the neighbor’s property (Lots 3 & 4) would change to match that of the applicant’s lot (Lot 1-A). Re-advertising and re-notification occurred as required. A revised site development plan for building permit was submitted on November 26, 2014 (see Section V of this report).

Background

The Environmental Planning Commission (EPC) heard this request at its June 12, 2014 public hearing and approved it by a 7-0 vote, with the site development plan for building permit subject to 13 conditions. At the hearing, some neighbors expressed concern about the commercialization of the neighborhood and insufficiency of parking, on the subject site and in general. The “doctor office” portion of the proposed zoning was removed in an attempt to address neighborhood concerns. Previously, a representative of the Wells Park Neighborhood Association (NA) indicated that a facilitated meeting was not needed as stated in the “No Meeting” report (see attachment).

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

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

Appeal & LUHO Hearing

A neighbor filed an appeal of the EPC decision on June 27 (AC-14-7), stating concern about parking for the site and claiming that the applicant needed a variance (which is not the case).

The hearing before the Land Use Hearing Officer (LUHO) was held on August 25, 2014. This is the first zone change case the LUHO has heard; previously, appeals of zone changes went directly to the City Council. At the LUHO hearing, Staff explained the Planning Department’s longstanding practices regarding application of regulations on an SU-1 zoned site and analysis of zone change requests, particularly spot zones. The LUHO’s opinions are contained in his September 1 recommendation, in which he recommends a remand to the EPC to clarify these issues (see attachment).

Upon receipt of the LUHO’s recommendation, Staff believed it was important to address his decision and the implications it would have on the Planning Department’s established practice. These practices include the Department’s longstanding interpretation of the relationship between

the SU-2 and SU-1 zones and application of the general regulations (in this case, the general parking regulations). The Planning Department submitted a letter of clarification to Council Services Staff dated September 11, 2014 (see attachment). The items clarified in the letter, and mandated by Council to be re-evaluated, are discussed in depth in Sections III and IV of this report.

II. REMAND & INSTRUCTIONS

In general, the LUHO found that the EPC's decision was not supported by evidence in the record. He also found that the EPC (and Staff) erred with respect to analysis of parking and the spot zone issue because (page numbers refer to the LUHO recommendation):

1. Parking- they failed to properly evaluate the parking regulations, "must apply all the parking regulations to the application, including those in the SWPSDP", and that "evaluation of the parking regulations was neglected altogether" (p. 10).
2. Spot Zone- "Planning Staff and the EPC must use the correct standard for assessing a spot zone, and it must analyze the Comprehensive Plan and the SWPSDP in evaluating the zone change request" (p. 10). The analysis was not correct or sufficient.

The City Council affirmed that the matter be remanded back to the EPC, but issued its own findings. Finding #8 in the Council's October 9, 2014 Notice of Decision (see attachment) contains the remand instructions:

8. The City Council finds that a remand is necessary for the EPC to:
 - A. Analyze and make findings that identify the specific controlling parking requirements for the request;
 - B. Analyze and make findings as to whether the specific controlling parking requirements are satisfied by the request;
 - C. Analyze and make findings as to whether the request satisfies the standard for a spot zone in that it will "clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan"; and
 - D. Perform all other analysis and make all other findings that the EPC determines necessary in order to fully dispose of all of the issues relevant to this request.

Definitions (Zoning Code §14-16-1-5)

OFF-STREET PARKING. An area used for required temporary parking regulated by §14-16-3-1.

PARKING LOT. An area or structure used for temporary parking of automobiles and pickup-size trucks, providing four or more parking spaces, not within the public right-of-way, none of which are required off-street parking.

SPECIAL USE ZONE (ZONING CODE §14-16-2-22). This zone provides suitable sites for uses which are special because of infrequent occurrence, effect on surrounding property, safety, hazard, or

other reasons, and in which the appropriateness of the use to a specific location is partly or entirely dependent on the character of the site design.

Standard Practice Note 1

The definitions for Off-Street Parking and Parking Lot are mutually exclusive. The General Parking Regulations, §14-16-3-1, regulate *off-street parking*. The parking lot regulations in the O-1 zone regulate *parking lots*. The General Parking Regulations are applied to site development plans for building permit, such as the proposed site development plan for building permit associated with the zone change. Because the term “parking lot” does not apply to the request, the parking lot regulations in the O-1 zone also do not apply and need not be evaluated in the Staff report.

[Ref: LUHO recommendation p. 6, Lines 16-19. Parking lot design shall be as regulated in the O-1 zone...this provision of the SWPSDP was not “considered or evaluated by the applicant, planning Staff or the EPC.”]

Zoning

» Please see p. 3-4 of the original Staff report (see attachment).

Analysis- Adopted Ordinances, Plans, and Policies

» Please see pages 4-7 of the original Staff report (see attachment).

Sector Development Plan Map Amendment

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

III. ANALYSIS OF REMAND TOPIC 1- Parking Requirements

The EPC considered the remand topics (parking and spot zone) consistently with established Planning Department practice. However, because this case is a remand, additional information for the record and a more in-depth analysis is needed. This will supplement what’s already been provided in the record (see attachment).

Existing Information & Instructions

The June 12, 2014 Staff report contains the following regarding parking (see attachment):

Because the requested zoning is SU-1, off-street parking is as decided by the EPC pursuant to Zoning Code §14-16-2-22, Special Use Zone. Zoning Code §14-16-3-1, Off Street Parking Regulations, was used to calculate parking using the office category. The proposed use of 1,075 sf/200 (1 space for every 200 sf) ≈ 5 required spaces.

The parking calculations, which indicate 4 spaces required, need to be revised. 5 spaces, which includes one HC space, are shown. 4 are south of the building on adjacent property and one is on the building’s eastern side. The applicant indicates that they have a private agreement with the owner of the property to the south. SWPSDP General SU-2 Regulation 5i requires that screening of off-street parking areas of more than three vehicles with a 3 foot high solid fence or wall (p. 92). The options are to reduce the

southern parking area from 4 to 3 spaces, or to keep the 4 spaces and build the wall (see *Walls & Fences*, below).

One handicap space and one motorcycle space are required according to §14-16-3-1. Both are provided. Two bicycle spaces are required. A bike rack is shown, but it's uncertain how many bikes could use it (note or detail needed). TIS: A Traffic Impact Study (TIS) was not required.

In his recommendation, the LUHO stated that “The purposes and analysis of the SU-2 zone was [sic] not well-developed by Staff, and as a result the EPC failed to consider the SU-2 zoning requirements for parking in the SWPSDP and in the Parking Regulations” (p. 3, Lines 26-28). He also stated that “In Staff’s scant analysis of parking, only parking under the SU-1 requirements were [sic] evaluated. Only SU-1 parking requirements were considered by the EPC and the EPC had a false impression that it has discretion over the parking requirements” (p. 5, Lines 6-8).

On remand, in Finding #8 of its Official Notice of Decision, the Council instructs the EPC to analyze and make findings regarding the parking issue that:

- A. identify the specific controlling parking requirements for the request, and
- B. address whether the specific controlling parking requirements are satisfied by the request.

Staff Response & Re-Analysis

- A. Identify the specific controlling parking requirements for the request- To do this, it’s important to understand the purpose of the SU-2 zone, the SWPSDP and Parking Regulations. Here Staff provides an explanation.

“Tailored” Zones-

The purpose of the SU-2 zone (Zoning Code 14-16-2-23) is to allow “a mixture of uses controlled by a Sector Development Plan which specifies new development and redevelopment which is appropriate to a given neighborhood, when other zones are inadequate to address special needs.” Under the SU-2 designation, zones can be tailored to fit a particular area.

The use of SU-2 zoning is available to sector development plans and is used to create zoning categories, within the context of a given sector plan, which reflect the conditions and/or respond to the needs of a particular area. Some sector plans use SU-2 zoning and establish zoning; others do not. The Sawmill/Wells Park Sector Development Plan (SWPSDP, the “Plan”) uses the SU-2 zone to establish the following special zoning categories particular to the Sawmill/Wells Park area:

S-R Sawmill Residential, S-DR Sawmill Developing Residential Zone, S-MRN Sawmill Mountain Road Neighborhood Zone, SU-2 MI Sawmill Mixed Industrial Zone, and S-I Sawmill Industrial Zone.

Upon Plan adoption, these special zones replaced the standard Zoning Code zones in the Plan area, including the R-1, R-C, C-1, C-3, M-1 and M-2 zones. Part of the purpose of the SU-2 zone is to allow zones to be tailored to a particular area; this often means that certain restrictions are attached to SU-2 zones.

For example, the S-DR zone replaced about 12 acres of M-1 zoning for the express purpose of allowing expansion of the John Baron Burg neighborhood to the east (SWPSDP, p. 77). Permissive uses in the S-DR zone correspond to permissive uses in the R-LT zone, with exceptions. The exceptions are agricultural animal keeping, front yard parking of RVs, and townhouses provided there is only one DU per lot and not more than two dwellings in a building. Each SU-2 zone in the Plan has a specific purpose and restrictions that differentiate it from the zone it replaced.

The SU-2 zone also “allows the City to establish general regulations and land use regulations that are tailored specifically to the Sawmill/Wells Park community” (SWSDP, p. 76).

Standard Practice Note 2

It is standard practice in Staff reports to state the general purpose of the SU-2 zone, copied from the Zoning Code, and briefly discuss the zone it's associated with (ex. S-R, MI, etc.). This was done on p. 3 of the original Staff report. In this case, however, Staff included some additional explanation of the SU-2 zone in the context of the sector plan (see p. 6 of the original Staff report). It seems impractical and onerous to include such a detailed explanation of the purpose of the SU-2 zone in every Staff report.

The SWPSDP & Parking Regulations

The Sawmill/Wells Park General SU-2 Regulations begin on p. 83 of the SWPSDP and apply to all properties in the sector plan area unless specified otherwise. The regulations are established to:

- Conserve and build on the area's distinctive historic physical characteristics by guiding new construction and additions to respect predominant building sizes, shapes, setbacks and architectural elements.
- Increase compatibility among housing, institutions, commercial, and industrial land uses through site design and other requirements.
- Improve the environment adjacent to the public right-of-way through specifications for site parking, walls, fences, landscaping, and pedestrian orientation.

Therefore, since the subject site is within the SWPSDP boundaries and the proposed zoning would retain the SU-2 designation, the General SU-2 Regulations apply.

With respect to parking, the following is stated on p. 94 of the SWPSDP:

“Off-street parking shall be as regulated in the Off-Street Parking Regulations and General Landscaping Regulations. Parking lot design shall be as regulated in the O-1 Office and Institution Zone of the Comprehensive Zoning Code with the following exceptions and limitations:”

[The exceptions and limitations are not necessary to list here since off-street parking is not a parking lot by definition. See Zoning Code 14-16-1-5, Section I of this report, and Standard Practice Note 2].

The EPC considered the SU-2 zoning requirements for parking in the SWPSDP and in the Parking Regulations. Please refer to p. 6 of the original Staff report (see attachment), where the purpose of the general SU-2 regulations is mentioned. Pages 11-13 of the original Staff report (see excerpt above) show that Staff applied relevant regulations to the site development plan as required.

The LUHO asked for a more detailed discussion, so additional analysis is offered here. Staff acknowledges that the SU-2 regulations apply to all properties in the Plan's boundaries. However, the SWPSDP (p. 94) states that off-street parking is as regulated in the Off-Street Parking Regulations, which are found in Zoning Code 14-16-3-1. The SWPSDP did not establish any special parking regulations, but refers back to the Zoning Code.

Staff followed the direction in the Plan's General SU-2 Regulations and referred to the Zoning Code's general parking regulations in the analysis, which require 1 space for every 200 sf of an office use. When an SU-2 zone or SU-2 regulations refer to the Zoning Code, there is no further direction or discussion. It is standard practice to apply what's in the Zoning Code when that's what the Plan says to do.

The SWPSDP acknowledges that SU-1 Special Use zoning is procedurally different than the SU-2 zoning the Plan establishes: "Only the few properties with existing SU-1 zoning require hearings by the EPC when new development or changes are requested." The SWPSDP does not require that SU-2 zoned properties go to the EPC. However, in this case, a zone change is requested. All zone changes, City-wide, go to the EPC whether or not the subject site is in a sector plan area.

This does not mean that the SU-2 descriptor can be ignored. Rather, the SU-2 descriptor has to be "SU-2 for ____". The ____ can be O-1, C-1 uses, C-2, etc. In this case, the zone change is to the SU-1 zone; the SU-1 zone is analyzed because it's the zone proposed (see also Standard Practice Note 1 herein).

The proposed zoning is "SU-2/SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer." If SU-1 descriptor references another zone (ex. R-1, O-1, C-1), the requirements of that zone apply. However, in this case, the SU-1 descriptor does not reference another zone. Even if it did, the portions of the SU-1 zone regarding EPC discretion clearly apply: the SU-1 zone is specific and the General Regulations are general, so the SU-1 zone controls [note for attorneys: "specific over general".]

In the SU-1 zone, the EPC has discretion regarding off-street parking, height, and open space [ref: 14-16-2-22(C), (D) and (E)] and has the authority to decide if these are being met or not independent of the requirements in the General Regulations (ZC Part 3). The SU-1 zone is very specific, and required to be interdependent with a site development plan-

unlike other zones. The specific SU-1 zone requirements trump the general requirements of the General Regulations, which apply to all non-SU-1 zones.

Standard Practice Note 3

It is standard practice in an SU-1 zone that the EPC has discretion over off-street parking, height, and open space. These are called out specifically in *14-16-2-22(C), (D) and (E)*. Furthermore, when an SU-1 zone does not reference another zone, the EPC can vary the General Regulations if it chooses to, as noted in this October 2010 opinion from the City Legal Department:

“The General Regulations, such as parking and landscaping, apply to all straight-zoned and SU-1 properties. However, the EPC can vary the general regulations for SU-1 zoning provided the descriptor use does not reference another zone (emphasis mine), in which case the requirements of that zone must be followed unless a variance is obtained from the Zoning Hearing Examiner (ZHE).”²

² The Managers of the Urban Design and Development Division and the Code Enforcement Division agreed.

With the proposed zoning of “SU-2/SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer”, the EPC can decide off-street parking, height, and open space and, since no other zone category is referenced, it can vary from the General Regulations as determined appropriate given case specifics.

In this case, it is clear that a variance to the off-street parking regulations is not needed. The proposed zoning does not reference another zone. A variance would be needed if the proposed zoning was, for example, SU-1 for O-1, but it’s not.

Conclusion

As elaborated above, Staff concludes that the specific controlling parking requirements for the request are the parking requirements in the SU-1 zone [§14-16-2-22(C)]. To understand this, we start with the SU-2 Regulations of the SWPSDP which, with respect to parking, refer back to the Zoning Code General Parking Regulations. These are General Regulations that apply City-wide.

HOWEVER, when a property is zoned SU-1 Special Use Zone (or there’s a proposed zone change to the SU-1 zone), it’s a very specific zoning category that is tailored to the site and tied to a site development plan for the site. The EPC has discretion over parking in the SU-1 zone. “Off-street parking shall be provided as required by the Planning Commission”.

No other zone allows this discretion; it’s part of what makes the SU-1 zone “special.” Furthermore, the specific zone requirements of the SU-1 zone trump the general requirements where the two differ (again, “specific over general.”) This interpretation is established Planning Department practice (sometimes called “administrative gloss”) that has been relied upon by the public (neighbors, developers, constituents) for a long time.

B. Regarding whether the request satisfies the specific controlling parking requirements:

Whether the request satisfies the specific, controlling parking requirements is up to the EPC to decide, because the EPC has discretion over off-street parking as explained in A, above. When Staff analyzes a site development plan associated with an SU-1 zoned site or a zone change to SU-1, it's standard practice to use the General Parking Regulations to calculate a baseline of what parking would be if the General Parking Regulations applied (i.e.- if the site is straight-zoned or if the zone change is to a straight-zone).

Staff provides this information to assist the EPC in making a decision regarding parking, so they have something to gauge the SU-1 case against. If they know how much parking would be required on a similar, straight-zoned site, they can determine how much discretion is appropriate given the particulars of the SU-1 case. This is the EPC's task pursuant to §14-16-2-22(C).

The EPC could find that all 5 parking spaces are needed as if the case did not involve an SU-1 zone. Alternatively, the EPC could use its discretion to find that the one off-street parking space in the driveway is sufficient and on-street parking can be used for the rest, or it could find that another solution would be appropriate. The point is that it's up to the EPC to determine.

→See also Section V of this report- Site Development Plan for Building Permit.

IV. ANALYSIS OF REMAND TOPIC 2- Spot Zoning

Sector Development Plan Map Amendment (zone change)

- » For requirements, justification and the original analysis of responses to Sections 1A-1J, please see pages 7-11 of the original Staff report (see attachment).

Standard Practice Note 3

Regarding a zone change, the regulations pertaining to the zone requested apply and are analyzed as part of the request. It is standard, established practice to not apply requirements of the existing zone (proposed to be changed) to the site development plans associated with the new, changed zone. Doing so could lead to the illogical result of satisfying requirements of a zone that no longer exists on a given property, and perhaps not satisfying requirements pertaining to the new, changed zone.

Existing Information & Instructions

The June 12, 2014 Staff report contains the following regarding spot zoning (see p. 10-11):

1I: "A zone change request which would give a zone different from surrounding zoning to one small area, especially when only premise is involved, is generally called a 'spot zone'. Such a change of zone may be approved only when:

- 1) the change will clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan, or
- 2) the area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic or special adverse land uses nearby, or because the nature of

structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.”

Applicant (summarized): The proposed zone amendment would not create a spot zone. Other zone amendments have been previously approved by the City in this area for the same use were held not to constitute a spot zone. Even if the change were to create a spot zone, it would facilitate realization of applicable Plans (1) and could serve as a transition (2) between adjacent residential properties and nearby commercial properties.

Staff: The SU-1 zone creates a spot zone by definition; however, it is required to be a justifiable spot zone according to reason 1) or reason 2). The applicant has demonstrated in the response to Section 1.C that the proposed change would facilitate realization of the Comprehensive Plan and the SWSPDP (1). The response to Section 1.I is sufficient.

In his recommendation, the LUHO stated that “The standard is not merely whether or not the zone change will ‘significantly conflict with adopted elements of the Comprehensive Plan’ as Planning Staff believe and used to evaluate [sic] the spot zone. Although this standard is one standard of R270-1980, because the zone change results in a spot zone the correct standard is the weightier standard of whether or not the zone change will ‘clearly facilitate realization of the Comprehensive Plan’.” (p. 9 of LUHO recommendation, Lines 20-25).

He also stated that “There is insufficient evidence in the record that the spot zone satisfies R270-1980, Section 1I” (p. 8, Lines 18-20). “The record is insufficient in the form of analysis from the applicant, City Staff, and from the EPC to determine if the applicant satisfied the spot zone standard of R270-1980” (p. 8, Lines 26-28).

On remand, in Finding #8 of its Official Notice of Decision, the Council instructs the EPC to analyze and make the following findings regarding the spot zone issue:

- C. Analyze and make findings as to whether the request satisfies the standard for a spot zone in that it will “clearly facilitate” realization of the Comprehensive Plan and any applicable adopted sector development plan.
- D. Perform all other analysis and make all other findings that the EPC determines necessary in order to fully dispose of all of the issues relevant to this request.

Standard Practice Note 4

While the tests in Section 1A of R270-1980 are responded to and analyzed individually, this is standard practice and is done for clarity’s sake. It does not diminish the importance of the overarching intent of R270-1980, which is to implement the Comprehensive Plan and to allow “a reasonable flexibility in order to deal reasonably with changes” while still meeting this intent. All of the tests are linked to R270-1980’s overarching intent.

Staff Response & Re-Analysis

- C. The Correct Standard is the Weightier Standard (i.e.-Section 1I over Section 1C of R270-1980)

The LUHO points out that the standard for evaluating a response to Section 1I of R270-1980 states that the request “shall clearly facilitate realization of the Comprehensive Plan and any

applicable adopted sector development plan. The emphasis is on “clearly facilitate.” In other words, for a spot zone to be a justifiable spot zone, it is not enough that there be “no significant conflict(s)” with adopted elements of applicable plans.

In many analyses of spot zones, Staff has cross-referenced the response to Section II (which has the “clearly facilitate” test) with the response to Section 1C (which has the “no significant conflict” test). Staff agrees that these standards are different.

Therefore, in cases where a proposed zone change would create a spot zone, Staff finds that the policy analysis in Section 1C must be held to the “clearly facilitate” standard (which is higher standard and covers “no significant conflict.”) Then, the response to Section II can continue to be the standard practice of cross referencing the location of the related policy analysis- Section 1C. It would be unnecessarily repetitive and lengthy to re-state the policy analysis in Section II.

If a proposed zone change would not result in a spot zone, then Section II would not apply so the “clearly facilitate” test would not apply. The policy analysis under Section 1C and the “no significant conflict” test would suffice. It seems that R270-1980 was purposefully written so that spot zones are subject to a more stringent test. However, it would be good practice to apply the higher standard when a spot zone is not involved, especially in difficult and controversial cases.

Note that Sections 1C and II relate to Section 1A (the “consistency with health, safety and welfare” test). This is because, if a request is generally consistent with the City’s health, safety and welfare, and the City’s health, safety and welfare is the overarching purpose of the Comprehensive Plan, therefore the request is generally consistent with the Comprehensive Plan.

- D. Analyze whether or not the request satisfies the standard for a spot zone in that it will “clearly facilitate” realization of the Comprehensive Plan and the SWPSDP

The LUHO recommendation states that the analysis regarding the spot zone standard of R270-1980 was insufficient in the original Staff report (see attachment). Additional analysis is provided here. In the response to Section II, the applicant claims both reasons 1 and 2- realization of the Comprehensive Plan and transition between zones. However, Staff used reason 1 because it’s the applicant’s stronger argument.

Staff found that, in the applicant’s response to Section 1.C, the proposed zone change would be generally consistent with applicable goals and policies and that there would be no significant conflict with the Comprehensive Plan or the SWPSDP. However, the standard in Section II is to “clearly facilitate realization of the Comprehensive Plan and any adopted sector development plan or area development plan.” The “clearly facilitate” test in Section II is applicable in this case because a spot zone is involved and, as pointed out by the LUHO, is a weightier standard than the “no significant conflict” test in Section 1C.

Staff re-reviewed the applicant's response to Section 1C and finds that the proposed zone change would "clearly facilitate" realization of applicable policies in the Comprehensive Plan and the SWSDP, as follows. Note that only applicable policies are included in the analysis.

A. Applicable Comprehensive Plan policies:

Policy II.B.5a-full range of urban land uses. *The request would contribute to a full range of urban land uses in the area, which is characterized by single-family homes, some vacant land and some small-scale commercial uses. The addition of a small office to the area, in an existing building, would increase land use diversity without increasing residential density.*

Policy II.B.5i-employment/service use location. *The existing building is sited on a corner, is approximately 1,075 sf in size, and would generally not adversely affect nearby residences. The limited, residential and small office uses allowed by the proposed zoning would not produce noise, light, pollution, or traffic to the extent that the surrounding residential environment would be adversely affected. The narrow scope of the proposed zoning would prohibit other uses, such as more intense office uses and commercial uses, which could potentially effect the surrounding environment. Since the subject site would be zoned SU-1, it would be "site plan controlled" and only what's shown on the site development plan would be allowed.*

Policy II.B.5p-cost effective rehabilitation techniques. *The proposed site improvements can be considered a cost-effective redevelopment technique. Although on a small scale, the site improvements are privately funded redevelopment, which is termed cost-effective because it does not use public funds (technique #1).*

Policy II.C.6b-local business and recruitment. *The request would contribute to the development and operation of a local business enterprise.*

B. Applicable SWPSDP Intentions & Policies

The subject request clearly fulfills the intent of the Area Character and History Conservation Action Plan (1) and the Economic Development Action Plan (2) of the Sawmill/Wells Park Sector Development Plan (SWPSDP), as follows.

(1) Area Character and History Conservation Action Plan- Though renovated, the building on the subject site was generally preserved in terms of style and size. It looks very similar to the small homes nearby (1920s bungalow style homes) that characterize much of the area, is not readily identifiable as a small office and does not stand out in appearance from the other nearby buildings.

(2) Economic Development Action Plan- The overall intent is to continue to support a mixture of businesses and residences so that healthy growth of industry and business can occur and be supported by residential neighborhoods. The request would promote economic development by allowing a small business to occupy an existing building,

which blends in with the surrounding neighborhood. The request would support neighborhoods by proposing restrictive zoning that is limited to specified small office uses only and is site plan controlled.

Conclusion

The applicant notes that numerous policies in the Comprehensive Plan and the SWPSDP support the request, and further states that the proposed zone change will provide stability, prevent further deterioration of the area and strengthen the land use mix in the area. Staff finds the policy citations sufficient.

The test under Section 1C is whether or not there is “significant conflict” with an adopted element of the Comprehensive Plan or other City master plan such as a sector development plan. Staff finds no significant conflict with either. The policy-based response demonstrates how the request furthers applicable policies in the Comprehensive Plan and the SWPSDP. Also, the test under Section 1I (spot zone) is that the request “clearly facilitate” realization of the Comprehensive Plan and SWSDP. As demonstrated, the request clearly facilitates realization of these Plans because it clearly furthers the policies that apply to the request.

In addition, the proposed zoning is narrowly defined (limited to residential and small office uses only) and furthers the SWPSDP’s intent, as embodied in its zoning regulations, to allow for harmonious mixed development (SWPSDP, p. 1). Therefore, Staff finds that the applicant has adequately justified the sector development plan map amendment (zone change) pursuant to R270-1980 and recommends approval.

V. SITE DEVELOPMENT PLAN FOR BUILDING PERMIT

Version 3 (v.3) of the proposed site development plan was submitted and evaluated. This remand report discusses only the changes made since v.2, and points out information from the original Staff report only if it’s particularly relevant.

- » Please see pages 11-14 of the original June 2014 Staff report (see attachment) for a discussion of the standard items: Site Plan Layout/Configuration, Vehicle Access, Circulation & Parking, Pedestrian & Bicycle Access, Transit Access, Walls/Fences, Lighting & Security, Landscaping, Grading & Drainage Plan, Utility Plan, Architecture & Design, Signage, Public Outdoor Space, and Process.

Parking & the Amended Application (main site development plan- Sheet 1)

The May 22, 2014 version of the site development plan (v.1) showed 5 parking spaces, one of which is a handicap space. This is consistent with requirements under the General Parking Regulations (see p. 12 of the original Staff report). However, 4 of the spaces are shown on the property to the south, which belongs to a neighbor and was not a part of the original application.

On appeal, it became clear that these 4 spaces on the neighbor’s property could not be counted as parking unless the application was amended to include the neighbor’s property. In October, Staff spoke with Transportation Staff who agreed and suggested a couple of options: applying for an on-

street parking credit or incorporating part of the neighbor's property to make it part of the subject site.

The November 26, 2014 version of the site development plan shows the same parking configuration with three spaces on the neighbor's property to the south (Lots 3 & 4) and one in the driveway of Lot 1-A. It's still unclear why four spaces are shown on the neighbor's property but three are labeled.

The application was amended to include the adjacent property (Lots 3 & 4, Block 6). Recall that Lots 3 & 4 are not differentiated by boundaries; they have one UPC number and are assessed as one lot. Apparently, the neighbor is not interested in subdividing out the area with the parking on it, but would rather enter into a private agreement with the applicant regarding the parking. According to its terms, the private agreement will no longer be valid if ownership of Lot 1-A transfers to another individual.

Since the application now includes the neighbor's property, should the EPC decide to require four parking spaces there would be no question that parking on the adjacent lot can be counted toward meeting the requirement. However, the EPC has the discretion to determine if one parking space (or some other number) is sufficient (see Section III of this report) provided the decision is supported by findings.

Landscaping & Elevations (Sheet 2)

Additional plants are proposed on the western, southern and eastern sides of the building. Russian Sage has been added to the landscape palette. The area of the landscaping beds needs to be indicated on the landscaping plan (not the main sheet). Staff suggests that Chitalpa be re-instated. There's not enough space in the western landscaping bed to plant Desert Willow, and it will eventually encroach onto the sidewalk. Information regarding colors and materials has been added to the elevations.

VI. UNINTENDED CONSEQUENCES

On remand, in Finding #8 of its Official Notice of Decision, the Council instructs the EPC to:

- D. Perform all other analysis and make all other findings that the EPC determines necessary in order to fully dispose of all of the issues relevant to this request.

The following is Staff's analysis of the unintended consequences of diverging from established practice regarding: i) the relationship between the SU-2 zone, the SU-1 zone and the General Regulations, especially regarding parking; and ii) the spot zone test (Section 11).

SU-2/SU-1 & Parking Regulations

Here Staff discusses the unintended consequences, which would be City-wide, of accepting the LUHO's conclusions regarding the relationship between the SU-2 and SU-1 zones and application of the parking regulations. This is important for several reasons, one being that the public (developers, neighbors, constituents) relies on consistency and has come to expect that the SU-1 zone functions as a "give and take" zone. Interested parties can see what's intended on the site

development plan. The developer has to provide this information, and in return obtains EPC discretion over off-street parking, height and open space (and more if the SU-1 zone does not reference a straight-zone).

Removing the EPC's discretion would undermine the purpose of the SU-1 zone, which is to accommodate sites that are special due to their potential effect on surrounding property or when the appropriateness of a given project depends upon the site design. SU-1 zones are often used for large projects and innovative projects when a form-based zone is not needed or desired. Developers understand that, by bring forth a site development plan as part of a public process and showing what they want to build, in exchange they get flexibility regarding parking, height and open space as decided by the EPC. This long-standing practice has functioned effectively and provides a basis for developers and neighbors to work together as part of the public process. The SU-1 zone, and the flexibility built into it, can be used as a mechanism to create compromises and solutions.

Removing the EPC's discretion over parking would:

- Remove an incentive for developers to use a site plan to show what's planned to be built
- Compromise neighbors participation in the public process
- Make it more difficult for innovative projects (ex. mixed use) to meet parking requirements
- Encourage more area of a given site to be used for parking, instead of pervious area, gathering spaces, etc.
- Create an additional and repetitive layer of bureaucracy by requiring that applicants for SU-1 zone changes (like applicants for straight zones) be required to seek a variance when numerical requirements cannot be met.

Spot Zoning Tests

Staff does not find any unintended consequences of, in cases where a spot zone is involved, analyzing the request using the higher standard of "clearly facilitate" realization of applicable Plans. However, accepting the LUHOs conclusions regarding spot zoning analysis could create some difficulties.

Applicants will have to be advised that they must provide Staff with stronger and more precise zone change justification letters, and that not doing so could result in delays. The "burden is on the applicant to show why the change should be made" (Section 1B).

Though helpful for the few cases that are appealed and the even fewer that go to court¹, this degree of scrutiny will make zone change justifications more challenging for agents. It will be even more difficult on "mom and pop" applicants, many of whom have great difficulty producing this type of specialized written work in a field they're unfamiliar with.

Staff cannot act as a private agent or think for an applicant (see Section 1B). So, the more rigorous the justification is required to be, the more difficult it will become for Staff to request (and re-request) sufficient justification. The result of an insufficient zone change justification essay is that

Staff recommends denial of the case to the EPC, and the EPC may wind up denying a zone change that is supportable conceptually but for which the required work was not done adequately.

- 1 Staff is aware of one such relevant case. See Kilmer vs. the City of Albuquerque and City Council of the City of Albuquerque (CV-2009-07499). This case is about a zone change to SU-1 in the Sawmill area, which was denied. The City was upheld in court and had used the “clearly facilitate realization” language in the analysis of Section 11, the spot zone test.

Reviewing Agencies/Pre-Hearing Discussion

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

Neighborhood/Public

Since the applicant amended the scope of the original application and the boundaries became larger, re-notification was required. The applicant obtained a new letter from the Office of Neighborhood Coordination (ONC) and re-notified the contacts on November 20, 2014 as required (see attachment). The City notified property owners within 100 feet of the expanded subject site on November 21, 2014, and a revised legal ad was published in the Albuquerque Journal on November 25, 2014 (see attachments).

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

Regarding the remand, Staff received letters of opposition from neighbors who continue to be concerned about commercialization of the neighborhood and encroachment of non-residential uses into the neighborhood. Staff also received several petitions of opposition based on the same reasons (see attachments).

VII. 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 June 12, 2014 Environmental Planning Commission (EPC) hearing and subsequently appealed by an area resident (AC-14-7). The applicant proposes to change the subject site’s zoning from SU-2 for S-R to “SU-2 for SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer” in order to operate a small law office.

The request was heard by the LUHO on August 25, 2014 and remanded to the EPC for re-analysis and supplementation of the record. This is the first zone change case the LUHO has heard. The City Council tasked the EPC with making findings regarding the controlling parking requirements, whether or not the request satisfies them, and whether the request satisfies the standard for a spot zone and any other analysis needed to dispose of the matter. Both topics are discussed extensively in this remand Staff report, and information regarding standard Planning Department practice is provided.

Staff concludes that established Planning Department practice regarding the relationship between the SU-2 and SU-1 zones and the parking regulations should be allowed to continue based on the

explanations herein and as affirmed by the Code Compliance Official. Planning Department practice is long-standing and relied upon by neighbors and developers.

The revised, November 26, 2014 version of the site development plan (v.3) shows four off-street parking spaces on the subject site, since the site's boundaries were enlarged to include the adjacent Lots 3 & 4, which are assessed as one lot). Although, because the request is for an SU-1 zone and the EPC has discretion over off-street parking, the EPC has the authority to allow less parking than the General Regulations require.

Regarding the analysis of spot zones and application of tests in R270-1980, Staff agrees that "clearly facilitate" (Section 1I) is a higher standard than "no significant conflict" (Section 1C), but points out that the policy analysis can still be housed in the Section 1C response as long as the analyst applies the higher standard to a request that would result in a spot zone.

In sum, Staff recommends approval of the zone change and associated site development plan, subject to conditions, based on revised findings that address the remand topics and satisfy the remand instructions.

FINDINGS - 14EPC-40030, December 11, 2014- Sector Development Plan Map Amendment (zone change)

1. The subject request is for a sector development plan map amendment (zone change) for Lot 1-A and Lots 3 & 4, Block 6 of the Albright-Moore Addition, an approximately 0.2 acre site located at the southeast corner of Sixth Street NW and Kinley Avenue NW. The subject site is within the boundaries of the Central Urban Area of the Comprehensive Plan and the Sawmill/Wells Park Sector Development Plan (SWPSDP).
2. The subject request was heard and approved at the June 12, 2014 EPC hearing. A neighbor appealed the decision. The hearing before the Land Use Hearing Officer (LUHO) was held on August 25, 2014. In his September 1, 2014 opinion, the LUHO recommended that the request be remanded to the EPC to supplement the record and to more thoroughly address parking requirements and Section 1I of R270-1980 regarding spot zoning. The City Council agreed with the LUHO's recommendation but adopted its own findings.
3. Specifically, the remand instructions from the City Council are for the EPC to:
 - A. Analyze and make findings that identify the specific controlling parking requirements for the request;
 - B. Analyze and make findings as to whether the specific controlling parking requirements are satisfied by the request;
 - C. Analyze and make findings as to whether the request satisfies the standard for a spot zone in that it will "clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan"; and
 - D. Perform all other analysis and make all other findings that the EPC determines necessary in order to fully dispose of all of the issues relevant to this request.Items 3C and 3D are relevant to the sector development plan map amendment (zone change) request.
4. The sector development plan map amendment (zone change) request is for a change from SU-2 for S-R (Sawmill Residential) to "SU-2 for SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer" to allow the continued operation of an existing law office. At the June 12, 2014 hearing, the applicant agreed to remove Doctor Office use from the requested zoning in an attempt to address neighborhood concern regarding traffic.
5. The purpose of the subject request is to remedy a Notice of Violation (#2014000375) issued by the Code Enforcement Division.
6. The subject request is accompanied by a site development plan for building permit (14EPC-40031) as required pursuant to the SU-1 Zone, §14-16-2-22(A)(1).

7. Because the subject site is not greater than 10 acres, the Environmental Planning Commission (EPC) is the approval authority. The subject request is not required to be transmitted to the City Council unless it is appealed, which is the case here. This is a quasi-judicial matter.
8. 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.
9. The subject request furthers the following relevant Comprehensive Plan policies:
 - A. Policy II.B.5a-full range of urban land uses. The request would contribute to a full range of urban land uses in the area, which is characterized by single-family homes, some vacant land and some small-scale commercial uses. The addition of a small office to the area, in an existing building, would increase land use diversity without increasing residential density.
 - B. Policy II.B.5i-employment/service use location. The existing building is sited on a corner, is approximately 1,075 sf in size, and would generally not adversely affect nearby residences. The limited, small office uses allowed by the proposed zoning would not produce noise, light, pollution, or traffic to the extent that the surrounding residential environment would be adversely affected. The narrow scope of the proposed SU-1 zoning would prohibit other uses, such as more intense office uses and commercial uses, which could have more effect on the surrounding environment.
 - C. Policy II.B.5p-cost effective rehabilitation techniques. The proposed site improvements can be considered privately funded redevelopment, albeit on a small scale, which is termed a cost-effective redevelopment technique since it does not use public funds (technique #1).
 - D. Policy II.C.6b-local business and recruitment. The request would contribute to the development and operation of a local business.
10. The subject request partially furthers the following relevant Comprehensive Plan Goal and policy:
 - A. Economic Development Goal. The request would contribute to some small-scale economic development in the area that would be very specific (not diversified). It would be generally balanced with neighborhood goals because a small-scale, office operation is not a commercial use, does not generate a lot of traffic or noise impacts and would be controlled by a site development plan.
 - B. Policy II.B.5o-redevelopment of older neighborhoods. Improvements have been made to the building and the site, which is a small portion of this older, established neighborhood. The landscaping does not meet minimum Zoning Code requirements as required by the SU-2 General Regulations in the SWPSDP. However, it is not required to do so since no change

in building square footage is proposed to “kick in” the Zoning Code general regulations (which the SWSDP regulations refer back to).

11. The subject request generally fulfills the intent of the Area Character and History Conservation Action Plan and the Economic Development Action Plan of the Sawmill/Wells Park Sector Development Plan (SWPSDP), as follows:
 - A. Area Character and History Conservation Action Plan. Though renovated, the building on the subject site was generally preserved in terms of style and size. It looks very similar to the small homes nearby (1920s bungalow style homes) that characterize much of the area, is not readily identifiable as a small office and does not stand out in appearance from the other nearby buildings.
 - B. Economic Development Action Plan. The intent is to continue to support a mixture of businesses and residences so that healthy growth of industry and business can occur and be supported by residential neighborhoods. The request would promote economic development by allowing a small office to occupy an existing building, which blends in with the surrounding neighborhood. The request would support neighborhoods by proposing restrictive zoning that is limited to specified small office uses only and is site plan controlled.

12. The applicant has adequately justified the sector development plan map amendment (zone change) request pursuant to Resolution 270-1980:
 - A. Section 1A: The proposed zoning is limited to uses that will not harm the adjacent property or community and has been demonstrated to be consistent with applicable policies and intentions in the Comprehensive Plan and the Sawmill/Wells Park Sector Development Plan (SWPSDP). Therefore, the proposed sector development plan map amendment (zone change) is consistent with the health, safety, morals and general welfare of the City.
 - B. Section 1B: The uses allowed by the proposed zoning (all small-scale office uses) would not adversely affect stability of land use and zoning and, as the applicant has adequately demonstrated, are justified pursuant to R270-1980 because the request clearly facilitates realization of applicable Plans (see responses to Sections 1I, 1C and 1D).
Fulfills Remand Instruction C.
 - C. Section 1C: There is no significant or other conflict with an adopted element of the Comprehensive Plan or the SWPSDP; the request has been shown to further applicable Goals and policies. The proposed zoning is narrow in scope, controlled by a site development plan, and promotes the SWPSDP’s intent to provide for a harmonious mix of residential and non-residential uses. A small-scale office is a non-residential, non-commercial use that could operate in harmony with nearby residential uses.
Fulfills Remand Instruction C.

- D. Section 1D: A different use category is more advantageous to the community as articulated in the Comprehensive Plan and other applicable Plans (the SWPSDP). The policy-based discussion demonstrates that the proposed zoning category would be more advantageous to the community than the current zoning because the request clearly furthers applicable Goals, policies and intents in the aforementioned applicable Plans. *Fulfills Remand Instruction C.*
- E. Section 1E: The proposed uses would not harm the community, the neighborhood or adjacent property. The requested SU-1 zoning is narrowly in scope. Furthermore, as an SU-1 zoned site, the site would be controlled by the site development plan associated with the zone change and required pursuant to Zoning Code §14-16-2-22(A)(1). Only uses in the zoning descriptor would be allowed. Other uses that could be considered harmful in the subject site's setting would not be allowed.
- F. Section 1F: The proposed zone change requires no capital expenditures by the City.
- G. Section 1G: Economic considerations pertaining to the applicant are a factor in the zone change request, but the applicant is not raising them as the determining factor.
- H. Section 1H: Location on a collector or major street is not used as justification for this request.
- I. Section 1I: The requested SU-1 zoning is a justifiable spot zone in this case because it has been demonstrated that the request will clearly facilitate realization of the Comprehensive Plan and the SWPSDP, as demonstrated in the response to Section 1C and Section 1D. *Fulfills Remand Instruction C.*
- 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".
13. The applicant has adequately justified the sector development plan map amendment (zone change) pursuant to R270-1980. The response to Section 1C provides a policy-based explanation of how the request clearly furthers applicable Comprehensive Plan policies and intentions in the Sawmill/Wells Park Sector Development Plan (SWPSDP), and supports the reasoning that a different zoning category would be more advantageous to the community overall than the current zoning (Section 1D). *Fulfills Remand Instruction C.*
14. The proposed zone change would result in a spot zone because the SU-1 zone is a spot zone by definition, as it is uniquely tied to a given site. In this case, however, the proposed SU-1 zoning is a justifiable spot zone because the request has been demonstrated to clearly further realization of applicable Goals, policies and intentions in the Comprehensive Plan and the SWPSDP. The remaining sections of R270-1980 (1A, 1B, 1E, 1F, 1G, 1H and 1J) are sufficiently addressed. *Fulfills Remand Instruction C.*

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15. The affected neighborhood associations (NAs) are the Wells Park Neighborhood Association (WPNA), the Sawmill Community Land Trust and the North Valley Coalition. A facilitated meeting was offered but declined. At the publication time of the original Staff report, Staff received one email inquiry from a neighbor who generally supports the proposed zone change, but had some questions. Staff received petitions of opposition from residents of Wells Park; the applicant wrote a letter of explanation to everyone who signed the petitions.
 16. In addressing the remand, the property to the south (Lots 3 & 4) was included in the application. Since the size of the subject site increased, re-advertisement was necessary. The applicant re-notified the affected neighborhood associations as required and posted updated yellow signs. The City re-advertised in the Albuquerque Journal and re-notified property owners within 100 feet of the enlarged subject site, as required.
 17. Regarding the remand, Staff received letters from neighbors who continue to be concerned about commercialization of the neighborhood and encroachment of non-residential uses into the neighborhood. Staff also received several petitions of opposition based on the same reasons.

RECOMMENDATION - 14EPC-40030, December 11, 2014

APPROVAL of 14EPC-40030, a request for a sector development plan map amendment from SU-2 for S-R (Sawmill Residential) to “SU-2 for SU-1 for Residential, Law Office, Court Reporter, Accountant, Architect, Engineer” for Lot 1-A and Lots 3 & 4, Block 6, Albright-Moore Addition, an approximately 0.2 acre site located at the southeast corner of Sixth Street NW and Kinley Avenue NW, based on the preceding Findings.

CONDITION OF APPROVAL - 14EPC 40030, December 11, 2014–Sector Development Plan Map Amendment

1. Final approval of the associated site development plan for building permit (14EPC-40031) is required. The EPC delegates its approval authority to Staff through the administrative approval (AA) process, meaning that the applicant is required to apply for an AA instead of go to the Development Review Board (DRB).

FINDINGS -14EPC-40031, December 11, 2014-Site Development Plan for Building Permit

1. The subject request is for a sector development plan map amendment (zone change) for Lot 1-A and Lots 3 & 4, Block 6, Albright-Moore Addition, an approximately 0.2 acre site located at the southeast corner of Sixth Street NW and Kinley Avenue NW. The subject site is within the boundaries of the Central Urban Area of the Comprehensive Plan and the Sawmill/Wells Park Sector Development Plan (SWPSDP).
2. The subject request was heard and approved at the June 12, 2014 EPC hearing. A neighbor appealed the decision. The hearing before the Land Use Hearing Officer (LUHO) was held on

August 25, 2014. In his September 1, 2014 opinion, the LUHO recommended that the request be remanded to the EPC to supplement the record and to more thoroughly address parking requirements and Section 1I of R270-1980 regarding spot zoning. The City Council agreed with the LUHO's recommendation but adopted its own findings.

3. Specifically, the remand instructions from the City Council are for the EPC to:
 - A. Analyze and make findings that identify the specific controlling parking requirements for the request;
 - B. Analyze and make findings as to whether the specific controlling parking requirements are satisfied by the request;
 - C. Analyze and make findings as to whether the request satisfies the standard for a spot zone in that it will "clearly facilitate realization of the Comprehensive Plan and any applicable adopted sector development plan"; and
 - D. Perform all other analysis and make all other findings that the EPC determines necessary in order to fully dispose of all of the issues relevant to this request.

Items 3A, 3B and 3D are relevant to the site development plan for building permit request.

4. The subject request is accompanied by a sector development plan map amendment (zone change) request (14EPC-40030). The sector development plan map amendment request is adequately justified pursuant to R270-1980.
5. The purpose of the subject request is to remedy a Notice of Violation (#2014000375) issued by the Code Enforcement Division.
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 subject request furthers the following relevant Comprehensive Plan policies:
 - A. Policy II.B.5a-full range of urban land uses. The request would contribute to a full range of urban land uses in the area, which is characterized by single-family homes, some vacant land and some small-scale commercial uses. The addition of a small office to the area, in an existing building, would increase land use diversity without increasing residential density.
 - B. Policy II.B.5i-employment/service use location. The existing building is sited on a corner, is approximately 1,075 sf in size, and would generally not adversely affect nearby residences. The limited, small office uses allowed by the proposed zoning would not produce noise, light, pollution, or traffic to the extent that the surrounding residential environment would be adversely affected. The narrow scope of the proposed SU-1 zoning

would prohibit other uses, such as more intense office uses and commercial uses, which could have more effect on the surrounding environment.

- C. Policy II.B.5p-cost effective rehabilitation techniques. The proposed site improvements can be considered privately funded redevelopment, albeit on a small scale, which is termed a cost-effective redevelopment technique since it does not use public funds (technique #1).
 - D. Policy II.C.6b-local business and recruitment. The request would contribute to the development and operation of a local business.
8. The subject request partially furthers the following relevant Comprehensive Plan Goal and policy:
- A. Economic Development Goal. The request would contribute to some small-scale economic development in the area that would be very specific (not diversified). It would be generally balanced with neighborhood goals because a small-scale, office operation is not a commercial use, does not generate a lot of traffic or noise impacts and would be controlled by a site development plan.
 - B. Policy II.B.5o-redevelopment of older neighborhoods. Improvements have been made to the building and the site, which is a small portion of this older, established neighborhood. The landscaping does not meet minimum Zoning Code requirements as required by the SU-2 General Regulations in the SWPSDP. However, it is not required to do so since no change in building square footage is proposed to “kick in” the Zoning Code general regulations (which the SWSDP regulations refer back to).
9. The subject request generally fulfills the intent of the Area Character and History Conservation Action Plan and the Economic Development Action Plan of the Sawmill/Wells Park Sector Development Plan (SWPSDP), as follows:
- A. Area Character and History Conservation Action Plan. Though renovated, the building on the subject site was generally preserved in terms of style and size. It looks very similar to the small homes nearby (1920s bungalow style homes) that characterize much of the area, is not readily identifiable as a small office and does not stand out in appearance from the other nearby buildings.
 - B. Economic Development Action Plan. The intent is to continue to support a mixture of businesses and residences so that healthy growth of industry and business can occur and be supported by residential neighborhoods. The request would promote economic development by allowing a small office to occupy an existing building, which blends in with the surrounding neighborhood. The request would support neighborhoods by proposing restrictive zoning that is limited to specified small office uses only and is site plan controlled.

10. The existing building complies with most of the relevant General SU-2 Regulations in the Sawmill/Wells Park Sector Development Plan (SWPSDP), but does not comply with two: Regulation 5i and Regulation 5n regarding screening of off-street parking and landscaping, respectively. Both of these SWPSDP regulations refer back to the Zoning Code General Regulations, which apply because a change in use is proposed.

11. The General Regulations are default, baseline regulations that establish minimum standards that apply City-wide. The General Regulations apply when there is a change in building square footage of 200 sf or more or when there is a change in use, as is the case here. Sometimes regulations in a sector development plan that uses the SU-2 zone, and/or design standards in a site development plan for subdivision, apply to a site. Though typically more stringent than the General Regulations, sector development plan regulations (and design standards) sometimes simply refer back to the Zoning Code General Regulations. When this happens, the General Regulations apply because the SU-2 zone refers to them specifically rather than establish its own requirements for the sector plan area. *Fulfills Remand Instruction D.*

12. The specific controlling parking requirements for the request are the parking requirements in the SU-1 zone [§14-16-2-22(C)]. The SU-2 Regulations of the SWPSDP refer back to the Zoning Code General Parking Regulations, which are general in nature and apply City-wide.

However, when a property is zoned SU-1 Special Use Zone (or there's a proposed zone change to the SU-1 zone), it's a very specific zoning that is tailored to the site and tied to a site development plan for the site [§14-16-2-22(A)(1)]. The EPC has discretion over parking in the SU-1 zone. "Off-street parking shall be provided as required by the Planning Commission" [§14-16-2-22(C)]. *Fulfills Remand Instruction A.*

13. Only the SU-1 zone allows this discretion; it's part of what makes the SU-1 zone "special." Furthermore, the specific zone requirements trump the General Regulations where the two differ. This interpretation is long-standing, Planning Department practice relied upon by the public (neighbors, developers, constituents) and proven to be effective over time. *Fulfills Remand Instruction A.*

14. Whether the request satisfies the specific, controlling parking requirements is for the EPC to decide, because the EPC has discretion over off-street parking pursuant to the Special Use Zone, §14-16-2-22(E). It's standard practice to use the General Parking Regulations to calculate a baseline of what parking would be under the General Parking Regulations (i.e.- if the site is straight-zoned or if the zone change is to a straight-zone). Staff provides this information to assist the EPC in determining how much discretion is appropriate given the particulars of the case before them. *Fulfills Remand Instruction B.*

15. There are potential, unintended consequences of accepting the LUHO's conclusions regarding the relationship between the SU-2 zone, SU-1 zone, parking regulations and EPC discretion regarding parking. Removing the EPC's discretion would undermine the purpose of the SU-1

zone, which is to accommodate sites that are special due to their potential effect on surrounding property or when the appropriateness of a project depends upon the site design. The flexibility built into the SU-1 zone allows it to be used as a mechanism to create compromises and solutions.

16. The affected neighborhood associations (NAs) are the Wells Park Neighborhood Association (WPNA), the Sawmill Community Land Trust and the North Valley Coalition. A facilitated meeting was offered but declined. At the publication time of the original Staff report, Staff received one email inquiry from a neighbor who generally supports the proposed zone change, but had some questions. Staff received petitions of opposition from residents of Wells Park; the applicant wrote a letter of explanation to everyone who signed the petitions.
17. In addressing the remand, the property to the south (Lots 3 & 4) was included in the application. Since the size of the subject site increased, re-advertisement was necessary. The applicant re-notified the affected neighborhood associations as required and posted updated yellow signs. The City re-advertised in the Albuquerque Journal and re-notified property owners within 100 feet of the enlarged subject site, as required.
18. Regarding the remand, Staff received letters from neighbors who continue to be concerned about commercialization of the neighborhood and encroachment of non-residential uses into the neighborhood. Staff also received several petitions of opposition based on the same reasons.

RECOMMENDATION - 14EPC-40031, December 11, 2014

APPROVAL of 14EPC-40031, a Site Development Plan for Building Permit for Lot 1-A and Lots 3 & 4, Block 6 of the Albright-Moore Addition, zoned SU-2 for S-R (Sawmill Residential), based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL -14EPC 40031, December 11, 2014- 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, meaning that the applicant is required to apply for an AA instead of go to the Development Review Board (DRB). 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. Prior to final approval, the applicant shall meet with the Staff planner to ensure that conditions of approval are met. Evidence of this meeting shall be provided at the time of application.

3. Parking:
 - A. Parking calculations based on the General Regulations shall be shown.
 - B. A note shall be added to indicate that parking in an SU-1 zone is as decided by the EPC.
 - C. The motorcycle space shall be labeled.

4. Walls/Fences:
 - A. A 3 ft. high, solid wall, to match the existing wall, shall be provided on the 6th St. NW side of the parking area (SWPSDP Regulation 5.i).
[note: if parking spaces are reduced from 4 to 3 in this location, the wall would not be needed].
 - B. The color of the existing wall shall be specified.

5. Landscaping- coverage:
 - A. Where coverage with living, vegetative material does not amount to 75%, additional plants shall be added (and General SU-2 Regulation 5.n.).
 - B. The two Desert Willows on the western side shall be replaced by Chitalpa.
 - C. The Desert Willow on the eastern side shall be close to the wall and the plants on its northern side.
 - D. Short plants (one or more species) shall be added to the clear sight triangle area.

6. Landscaping- clarification:
 - A. Indicate the square footage of each landscaping bed on the landscaping plan.
 - B. Plant totals shall be listed on the plant legend.

7. Signage: Indicate square footage and color of existing wall-mounted sign.

8. Other:
 - A. Remove the property line between Lots 3 & 4 (they have one UPC number and are not differentiated).
 - B. Use one label "Lots 3 & 4, Block 6".
 - C. Remove the internal floor plan from the landscaping plan.
 - D. Label the main sheet "As-Built Site Development Plan for Building Permit".

E. Include a reduced Zone Atlas page, with the subject site noted, on the main sheet.

9. CONDITIONS FROM THE CITY ENGINEER (TRANSPORTATION):

- A. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan, as required by the Development Review Board (DRB).
- B. Site plan shall comply and be in accordance with all applicable City of Albuquerque requirements, including the *Development Process Manual* and current ADA criteria.
- C. Please add the following note to Site Plan for BP and Landscaping Plan: "Landscaping, fencing and signing will not interfere with clear sight requirements. Therefore, signs, walls, trees, and shrubbery between 3 and 8 feet tall (as measured from the gutter pan) will not be acceptable in this area."
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Catalina Lehner, AICP
Senior Planner

Notice of Decision cc list

cc: Robert Lucero, Esq. Rodey Law Firm, PO Box 1888, Albuquerque, NM 87103
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