

PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
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OFFICIAL NOTIFICATION OF DECISION

October 19, 2023

Linda and Lance Kilgore
20 Fishburn Ln.
Edgewood, NM 87015

Project # PR-2023-009207
RZ-2023-00033– Zoning Map Amendment
(Zone Change)

LEGAL DESCRIPTION:

ABQ Land Use Consulting LLC - Carl Garcia, agent for Kilgore Linda K & Kilgore Lance M, requests a zoning map amendment from R-1D to MX-T, for all or a portion of Lot 27, Block 3, Unit 13 of Volcano Cliffs Subdivision, located on Resolana Pl NW, comprising the northwestern corner of the intersection of Rainbow Blvd NW and Rosa Parks Rd NW, approximately 1.6 acres (D-9-Z)

Staff Planner: Catherine Heyne

On October 19, 2023 the Environmental Planning Commission (EPC) voted to DENY Project # PR-2023-009207, RZ-2023-00033– Zoning Map Amendment (Zone Change), based on the following Findings:

1. The request is for a Zoning Map Amendment for an approximately 1.6-acre site, legally described as all or a portion of Tract 27, Block 3, Unit 13, Volcano Cliffs located on Resolana Pl NW, comprising the northwestern corner of the intersection of Rainbow Blvd NW and Rosa Parks Rd NW (“the subject site”).
2. The subject site is zoned R-1D (Residential - Single Family Zone District, Extra Large Lot) and is vacant.
3. The applicant is requesting a zone change to MX-T (Mixed Use - Transition Zone District) to facilitate future development on the subject site.
4. The subject site is in an Area of Consistency as designated by the Comprehensive Plan. It is not located along a Corridor or in a Center designated by the Comprehensive Plan.
5. The Albuquerque Comprehensive Plan and the Integrated Development Ordinance (IDO) are incorporated herein by reference and made part of the record for all purposes.
6. The request does not clearly facilitate the following Goal and Policies from Comprehensive Plan Chapter 5: Land Use regarding Development Areas:

- A. 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 in an Area of Consistency as designated by the Comprehensive Plan, which is intended to remain stable. Any development is intended to reinforce the established character and intensity of the surrounding area and not differ from it. The request would create a spot zone on a site surrounded on all sides by residential zoning, and would allow uses that contrast to the area’s established character.

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

The subject site is within an area intended to develop as a single-family, residential neighborhood. The request could potentially change the area’s character by facilitating development of the subject site with civic and institutional uses, lodging, or other offices and services. Additionally, the character of the residential area would not be protected from uses that could be considered harmful in this setting, such as cannabis retail (permissive), bar (conditionally permissive), cannabis derived products manufacturing (conditionally permissive), or restaurant (conditionally permissive).

- C. Policy 5.6.3(b)- Ensure that development reinforces the scale, intensity, and setbacks of the immediately surrounding context.

The subject site is an approximately 1.6-acre parcel that allows for residential as well as low intensity uses as seen in IDO Table 4-2-1. Although MX-T zone development scale requirements can be similar to R-1D and R-ML, depending on site use and development, MX- T minimums could vary significantly (e.g. 0 ft setback) from R-1D (e.g. 25 ft setback):

<i>Zone</i> <i>Structure</i>	<i>R-1D (feet)</i>	<i>R-ML (feet)</i>	<i>MX-T (feet)</i>
<i>Front, min.</i>	<i>25</i>	<i>15</i>	<i>0/5/15</i>
<i>Rear, min.</i>	<i>15</i>	<i>15</i>	<i>0/5/15</i>
<i>Side, min.</i>	<i>15</i>	<i>0/5/10</i>	<i>0/15</i>
<i>Height, max.</i>	<i>26</i>	<i>38</i>	<i>30</i>

Also, the original intent for a larger parcel is to allow development that would complement the natural environment, preserve significant view corridors, and contain visible private open space, which is further regulated by the Volcano Mesa Character Protection Overlay (CPO-13). A zone change to MX-T would allow more intense development that is not similar in scale, intensity, and setback pattern as is allowed in the immediately surrounding zoning and future land use context.

- D. Policy 5.6.3(c)- Carefully consider zone changes from residential to non-residential zones in terms of scale, impact on land use compatibility with abutting properties, and context.

The subject site lies completely within a residential area. The request would create a spot zone in terms of scale, impact on land use compatibility with abutting properties, and context, especially since there are no existing MX-zoned parcels adjacent to or abutting the subject site. The MX-T zone is a higher intensity zone with regard to uses than the existing R-1D zoning designation for the subject site.

- E. Policy 5.1.2- Development Areas: Direct more intense growth to Centers and Corridors and use Development Areas to establish and maintain appropriate density and scale of development within areas that should be more stable.

The subject site is located in an Area of Consistency, outside of a designated Center and not along a designated Corridor. The relatively more intense growth, which the request would facilitate, would occur in an area intended to be more stable.

7. The request does not clearly facilitate the following Comprehensive Plan Goal from Chapter 5- Land Use:

Goal 5.3 - Efficient Development Patterns: Promote development patterns that maximize the utility of existing infrastructure and public facilities and the efficient use of land to support the public good.

The subject area is located within Special Assessment District (S.A.D.) 228. At this time the property is outside of the Established Service Area for some utilities, as much of the area remains undeveloped, e.g., water delivery, road infrastructure, etc., and not currently served by utilities. Therefore, the request would generally not contribute to an efficient development pattern.

8. The following Goals and Policies from Comprehensive Plan Chapter 8- Economic Development, do not apply:

- A. Goal 8.1- Placemaking: Create places where business and talent will stay and thrive.

The subject site is located in an Area of Consistency, outside of a designated Center and not along a designated Corridor. Due to its location and small size (approximately 1.6 acres), the subject site would not contribute to creating a dynamic and interesting place where business and talent could stay and thrive. The subject site is more suitable for a single-tenant development or business, and the remaining land around it would remain residentially zoned.

- B. Policy 8.1.5- Available Land: Maintain sufficient land that is appropriately zoned to accommodate projected employment growth in targeted areas.

The intent of this policy is to help maintain land that is already zoned to accommodate employment growth in targeted areas such as industrial zones and business parks. The subject site is zoned R-1D, so this policy does not apply. Furthermore, the requested zone would allow both residential and non-residential uses, and isn't in a targeted area.

9. The applicant has not 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, and general welfare is shown by demonstrating that a request furthers a preponderance of applicable Comprehensive Plan goals and policies (and other plans if applicable). Also, since the request would result in a spot zone in an Area of Consistency, it must also clearly reinforce and strengthen (see Criterion B) and clearly facilitate implementation of the Comprehensive Plan (see Criterion H).

The applicant’s policy-based response does not adequately show that the request would clearly facilitate implementation of the Comprehensive Plan. There are conflicts with several applicable Goals and Policies regarding compatible land uses and city development areas with respect to Areas of Consistency. Therefore, the request is not consistent with the City’s health, safety, and general welfare.

For cases resulting in a spot zone, the more rigorous tests in Criterion B (“clearly reinforce or strengthen”) and Criterion H (“clearly facilitates”) are required to reinforce the response to Criterion A. However, the applicant has not adequately demonstrated that the request clearly facilitates implementation of the Comprehensive Plan. Therefore, the request is not consistent with the City’s health, safety, morals and general welfare.

B. Criterion B: The subject site is located wholly in an Area of Consistency. Areas of Consistency are used to apply policies limiting new development to an intensity and scale consistent with the existing character of surrounding neighborhoods. Directing growth to Areas of Change is intended to help preserve and protect established neighborhoods in Areas of Consistency. Change that does occur shall reinforce or enhance the existing character of those neighborhoods.

How the site may or may not be developed cannot be determined, and there is no guarantee that an MX-T designation would not permit development that is significantly different from the surrounding residential character (i.e. motel). The current zoning allows for Household Living (i.e., single-family detached, cluster development, and cottage development) and Group Living (i.e., Community residential facility, small). However, the addition of commercial uses, even small-scale, on a designated residential street, surrounded by residential may not be advantageous to the existing community and is not consistent with an Area of Consistency. Rainbow Blvd NW is not a designated a Corridor and MX-L (Mixed-Use Low Intensity) uses are found less than a quarter of a mile to the south and around 1 mile to the northwest in a designated Urban Center buffered by an MX-T zone.

In addition, the purpose of the R-1D Single-Family Zone District is to provide for neighborhoods of single-family homes with a variety of lot sizes and dimensions. The purpose of the MX-T Transition Zone District is to provide a transition between residential neighborhoods and more intense commercial areas. There is are no intense commercial uses adjacent to the subject area for a transition zone (MX-T) to be applicable. Current zoning is presumed to be the most fitting designation, and as an Area of Consistency is intended to remain as assigned, Residential (R-1D). Therefore, in this case, an MX-T zone district would not be more advantageous.

- C. Criterion C: The subject site is located wholly in an Area of Consistency, so this criterion does not apply.
- D. Criterion D: The applicant compared allowable uses in the existing R-1D (Residential – Single-Family) zone district and the proposed MX-T (Mixed-Use – Transition) zone district. As noted by the applicant, residential uses in the MX-T zone are of a “slightly higher intensity than what is allowed in the R-1 zone district”. Also, many of the allowable uses of MX-T (e.g., clinic, bank, office, residential facility) would generate more activity and vehicular traffic in a single-family residential neighborhood, although not necessarily draw additional traffic into the neighborhood further than elevated use for Rainbow Blvd NW. Additional concerns would be increased noise, light, and pollution for extended periods of time through the increased activity that would potentially add to the congestion of the Regional Principal Arterial roadway of Rainbow Blvd NW instead of allowing traffic to continue more smoothly through the residential area.

Although the Applicant discussed many uses allowed in the MX-T zone, there is no guarantee that potential uses are not harmful to adjacent residential property, the neighborhood, or the community. And although, as stated by the Applicant, “Standards are written with the intent to mitigate any potential incompatibilities between land uses allowed in different zones, and are often triggered by proximity to different zone districts or land uses”, there is at least one potential use of concern. That is, currently there are no IDO’s Use-specific protections shielding nearby residential uses or zones from cannabis retail. Translated to this case, there are no special protections that would apply to any of the adjacent residential lots.

The response to Criterion D is insufficient. The applicant did not discuss any of the uses that would become allowed as permissive conditional, including bar, food truck court, restaurant, tasting room or tap room, other indoor entertainment, club or event facility, and liquor retail. Furthermore, staff does not agree that these uses would not be harmful to the surrounding large-lot residential area.

- E. Criterion E: The subject site does not have adequate infrastructure capacity to serve the development that would be made possible by the zone change (Criterion 1). Additionally, a Development Agreement with Albuquerque Bernalillo County Water Utility Authority (ABCWUA) will be required because this property is outside the Established Service Area and situated within S.A.D. 228.
- F. Criterion F: Though the applicant mentions the subject site’s location along Rainbow Blvd. NW and Rosa Parks Rd. NW, it is not the primary argument. Rather, the applicant claims that the request is justified because it clearly facilitates applicable Comprehensive Plan goals and policies, to which staff disagrees.
- G. Criterion G: The request is not based completely or predominantly on the cost of land or economic considerations. Rather, the applicant claims that the request is justified because it clearly facilitates applicable Comprehensive Plan goals and policies, to which staff disagrees.

H. Criterion H: The properties located north, south, and west of the subject site are zoned R-1D (Residential - Single-Family, Extra Large Lot). Parcels to the east are zoned R-ML (Residential - Multi-family Low Density). The request would result in a spot zone because it applies a different zone to one small area or one premise. Although the Applicant states that a spot zone at this location is justifiable, Staff finds that it is not. There are several reasons why none of the three given criteria apply.

1. By definition, this area does not meet the requirements for an MX-T zone: The purpose of the MX-T (Mixed-Use Transition) Zone District is to provide a transition between residential neighborhoods and more intense commercial areas. The adjacent surrounding areas are all zoned Residential not Commercial (e.g. MX - Mixed-use Development), so there is no transition.
2. Areas of Consistency are used to apply policies limiting new development to an intensity and scale consistent with the existing character of surrounding neighborhoods. Directing growth to Areas of Change is intended to help preserve and protect established neighborhoods in Areas of Consistency, which are mostly single-family neighborhoods and green spaces outside of Centers and Corridors.
3. There are no structures already on the subject property, so reason 3 does not apply.

The response does not meet the criteria of Criterion H as elaborated above, and further, has not been demonstrated to clearly facilitate the implementation of applicable Comprehensive Plan goals and policies as required.

10. The applicant's response does not adequately demonstrate that: a) the request meets the required test for a zone change in an Area of Consistency (Criterion B- "clearly reinforce or strengthen the established character of the surrounding area"), and b) the request "clearly facilitates" a preponderance of applicable Comprehensive Plan Goals and Policies (Criterion H- "clearly facilitates"). On the contrary, the request presents significant conflicts with the type of development envisioned in the Comprehensive Plan for the City's Areas of Consistency and, overall the policy conflicts outweigh the policies that could be furthered, which does not result in these tests being met.
11. There are no affected neighborhood organizations; therefore, no notifications were made. Property owners within 100 feet of the subject site were notified as required.
12. As of this writing, Staff has not been contacted regarding the request. There is no known opposition.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **November 3, 2023**. 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,

Catalina Lehner

for Alan M. Varela,
Planning Director

AV/CL/CH

cc: ABQ Land Use Consulting LLC - Carl Garcia, carl@abqlanduse.com
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