



Mayor Timothy M. Keller

# CITY OF ALBUQUERQUE

Albuquerque, New Mexico

## Planning Department

### INTER-OFFICE MEMORANDUM

July 17, 2023

**TO:** Pat Davis, President, City Council

**FROM:** Alan Varela, Planning Director   
Alan Varela (Jul 20, 2023 12:26 MDT)

**SUBJECT:** AC-23-12, PR-2023-008520 – RZ-2023-00015

Beatrice Villegas and Flora Garcia appeal the Environmental Planning Commission's decision to Approve a Zoning Map Amendment from R-ML to MX-L, for all or a portion of Lots 1-6 and 13-15, including the northern 70 feet of the northern 109 feet; the southern 38 feet of the northern 108 feet, and the southern 34 feet of Lots 13-15 respectively, Block 1, Baca Addition, bounded by Second St. and Third St. SW and Santa Fe Ave. and Pacific Ave. SW, approximately 1.1 acres (the "subject site") (K-14-Z). Staff Planner: Silvia Bolivar.

### REQUEST

This is an appeal of the EPC's decision to approve a zone map amendment (i.e. zone change) from R-ML to MX-L on the subject site, which comprises the northern portion of the block located between 2<sup>nd</sup> Street and 3<sup>rd</sup> Street SW and Pacific and Santa Fe Avenues SW. The site is currently vacant but has historically contained a mix of uses. Previously, the site operated as a bar with package liquor sales.

The applicant requested a zone change in order to accommodate a combination of live/work and multi-family uses along with commercial services. Initially, the request was to rezone seven parcels to MX-M, but the applicant amended the request to rezone six parcels to MX-L in response to staff and neighborhood concerns.

### ZONING

The subject site is currently zoned R-ML [Residential – Multi-Family Low Density Zone District]. Prior to the IDO, the subject site was zoned SU-2 for RG (Residential) pursuant to the Barelvas Sector Development Plan.

The request proposes to change the subject site's zoning to MX-L [Mixed-Use – Low Intensity Zone District, IDO 14-16-2-4(B)]. Permissive uses under MX-L in addition to multi-family and live-work residential uses include the following: restaurant, assisted living facility or nursing home, office, and retail sales. The subject site's small size (1.0 acre) limits the viability of most new permissive

uses. The IDO's use-specific standards would mitigate the impacts of uses that could be considered harmful.

### **EPC DECISION**

The EPC heard and approved the proposed zone change to MX-L at its May 18, 2023 public hearing. The decision was based upon 25 findings of fact and testimony at the hearing. The findings are elaborated in the Official Notification of Decision dated May 18, 2023.

### **APPEAL**

Appeal procedures are found in IDO §14-16-6-4(V). The appellants are residents of the Barelás neighborhood and have standing to appeal.

The IDO's Criteria for Decision of an appeal [§14-16-6-4(V)(4)] is whether the decision-making body or the prior appeal body made one of the following mistakes:

- a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.
- b) The decision being appealed is not supported by substantial evidence.
- c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

The appellants base their reasons for the appeal on the low attendance of the Barelás Neighborhood Association (BNA) meeting and that neighborhood opposition was not taken into consideration at the BNA meeting. The appellants allege that the EPC erred because 1) the decision was approved without consideration, research, or reports on the potential dangers the zone change would inflict on the community and 2) the Staff Planner did not remain neutral, their concerns were not addressed, and staff testimony should be grounds to grant the appeal (see attachments). The following points are relevant to the allegations and should be considered in the appeal.

- 1) The Staff Planner addressed neighborhood concerns and recommended to the applicant and agent that the zone change be amended from MX-M to MX-L as more appropriate for the neighborhood and neighboring properties. The MX-L zone allows a maximum building height of 38 feet, similar to the allowable height under the existing R-ML zoning.

During closing arguments, the Staff Planner addressed concerns expressed during the hearing, mostly about affordable housing. In response to concerns about parking, that the Staff Planner explained that parking would be addressed during the site plan review/decision process; the applicant had indicated that they were willing to work with the neighborhood to address parking concerns. In response to concern about the tap room, the Staff Planner explained that it would become a Conditional Use under MX-L and require a Conditional Use Approval from the Zoning Hearing Examiner. Some commenters suggested that the Rail Yards should be demolished and apartments built at the site. The staff planner stated that the Rail Yards is a historic property on the National Register of Historic Properties.

The Superintendent's House would be protected because the allowable height under MX-L is the same as the existing zoning, and the applicant amended their request that the properties west of the Superintendent's House remain R-ML.

- 2) The appellants allege that the EPC failed to address residents' concerns about the applicant's reputation and state that the applicant has not had to answer for the crimes they committed against families during the COVID-19 pandemic; the applicant has not provided residents with any legal obligation regarding how many units will be affordable.

It is not the EPC's purview to address applicants' reputations or issues during the COVID-19 pandemic. In addition, although Santa Fe and 3rd Street contain residential properties, they have always had a mix of commercial and retail uses.

- 3) The EPC addressed Criterion D of the Review and Decision Criteria for Zone Map Amendments and found that the requested zone change would allow for more permissive residential uses, such as live-work spaces while maintaining neighborhood edge requirements to the adjacent R-ML zones.
- 4) The EPC addressed Criterion H of the Review and Decision Criteria for Zone Map Amendments and found that the request is a justifiable spot zone because it clearly facilitates implementation of applicable Comprehensive Plan Goals and policies. A discussion of Criterion H is found on page 37 of the Staff report and is summarized in Finding 21.H of the Official Notification of Decision.

## CONCLUSION

This is an appeal of the EPC's decision to approve a zone change from R-ML to MX-L for an approximately 1.0 acre site, bounded by Second St. and Third St. SW and Santa Fe Ave. and Pacific Ave. SW.

As indicated in the May 18, 2023 Official Notification of Decision, the EPC found that the applicant adequately justified the zone change request based on 25 findings of fact. The appellant believes that the EPC decision was made in error and that the zoning should remain R-ML; however, the record contains substantial evidence that the EPC's decision was neither arbitrary nor capricious and that the IDO regulations were applied correctly to the request.

APPROVED:

*Catalina Lehner*

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Catalina Lehner, AICP- Principal Planner  
Urban Design & Development Division- Current Planning  
Planning Department

# AC-23-12 Memo\_CL markups clean-MRW

Final Audit Report

2023-07-20

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