

CITY OF ALBUQUERQUE



Planning Department

David Campbell, Director

Development Review Division

600 2nd Street NW – 3rd Floor

Albuquerque, NM 87102

NOTICE OF APPEAL

August 22, 2019

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on August 21, 2019. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

CITY COUNCIL APPEAL NUMBER: AC-19-15

PLANNING DEPARTMENT CASE FILE NUMBER:

17EPC-40011, 1011232, PR-2019-002629, VA-2019-00270

PO Box 1293

Albuquerque

NM 87103

APPLICANT: North Valley Coalition

Peggy Norten

PO Box 70232

Albuquerque NM 87107

www.cabq.gov

cc: Crystal Ortega, City Council, City county bldg. 9th floor

Kevin Morrow/Legal Department, City Hall, 4th Floor-

Zoning Enforcement

EPC File

Edward T. Garcia, co/o Garcia Auto Group LLC, 8100 Lomas Blvd NE, ABQ, NM 87110

Design Workshop Inc 120 East Main Street, Aspen, CO 81611

Near North Valley NA, Joe Sabatini, 3514 6th St. NW, ABQ, NM 87107

Near North Valley NA, Randy Cole, 1501 Los Arboles NW, ABQ, NM 87107

John Roche, 1814 Old Town Rd, NW, ABQ, NM 87104

Christina Blatchford, 1009 18th St NW, ABQ, NM 87104

Ed Garcia, 4200 Aspen NE, ABQ, NM 87110

Christine Dilks, 2458 Rose NW, ABQ, NM 87104

Jackie Fishman, 1820 Gabaldon NW, ABQ, NM 87104

Alan Varela, avarela@cabq.gov



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	Decisions Requiring a Public Meeting or Hearing	Policy Decisions
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Site Plan - EPC including any Variances - EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Historic Certificate of Appropriateness - Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness - Major (Form L)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Annexation of Land (Form Z)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<input type="checkbox"/> Amendment to Zoning Map - EPC (Form Z)
	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)	<input type="checkbox"/> Amendment to Zoning Map - Council (Form Z)
		Appeals
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

APPLICATION INFORMATION

Applicant: <u>North Valley Coalition - Peggy Norton, President</u>		Phone: <u>505-345-9567</u>
Address: <u>PO Box 70232</u>		Email: <u>PNVCabq@gmail.com</u>
City: <u>Albuquerque</u>	State: <u>NM</u>	Zip: <u>87107</u>
Professional/Agent (if any):		Phone:
Address:		Email:
City:	State:	Zip:
Proprietary Interest in Site:		List all owners:

BRIEF DESCRIPTION OF REQUEST

appeal a decision made by EPC / appeal to City Council project #2019-02629(1011232)
on Remand

SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)

Lot or Tract No: <u>multiple tracts - see application</u>	Block:	Unit: <u>1</u>
Subdivision/Addition:	MRCGD Map No.:	UPC Code:
Zone Atlas Page(s): <u>H-13</u>	Existing Zoning: <u>R-1 and M-1</u>	Proposed Zoning: <u>C-2, R-1, R-2</u>
# of Existing Lots:	# of Proposed Lots:	Total Area of Site (acres):

LOCATION OF PROPERTY BY STREETS

Site Address/Street: North of I-40 East Between: Alameda Drive and: Campbell Ditch

CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Signature: <u>Peggy Norton President</u>	<u>David Wood</u> V.R.	Date: <u>8-21-19</u>
Printed Name: <u>Peggy Norton</u>	<u>David Wood</u>	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees	Case Numbers	Action	Fees
<u>VA-2019-00274</u>	<u>Appeal</u>	<u>\$130</u>			

Meeting/Hearing Date:	Fee Total: <u>\$130</u>
Staff Signature: <u>[Signature]</u>	Date: <u>8-21-19</u> Project # <u>PR-2019-002629</u>


FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

A single PDF file of the complete application including all plans and documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD.

- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- ☒ APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)

- ✓ Interpreter Needed for Hearing? No if yes, indicate language: _____
- ✓ Project number of the case being appealed, if applicable: (1011232) 2019-02629
- ✓ Application number of the case being appealed, if applicable: 17 EPC 40011
- ✓ Type of decision being appealed: EPC approval of zone change
- ✓ Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4) see attached
- ✓ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2) see attached
- ____ Letter of authorization from the appellant if appeal is submitted by an agent
- ✓ Copy of the Official Notice of Decision regarding the matter being appealed

I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.		
Signature: <u>David Word</u>	<u>Resident</u>	Date: <u>8-21-2019</u>
Printed Name: <u>David Word</u>	<u>V.P. David Word</u>	<input type="checkbox"/> Applicant or <input type="checkbox"/> Agent
FOR OFFICIAL USE ONLY		
Project Number:	Case Numbers	
<u>PR-2019-002629</u>	<u>VA-2019-00274</u>	
Staff Signature: <u>[Signature]</u>		
Date: <u>8-21-19</u>		

I. Introduction

The North Valley Coalition is appealing the decision by the Environmental Planning Commission to approve a zone map amendment for the referenced case. This appeal will only address the issues and instructions stated in the 2nd Judicial District Court Memorandum Opinion and Order. Lack of notification of neighborhood associations and other stakeholders did not comply with the instructions of the Memorandum Opinion and Order. The findings of the Commission did not resolve the remand issues.

II. Standing

The proposed zone map amendment is within the boundaries of the North Valley Coalition (NVC). NVC is a City- and County-recognized neighborhood coalition. The Office of Neighborhood Coordination listed NVC as an "affected neighborhood association" for this zone change.

III. Denial of Due Process

The North Valley Coalition, and others, were denied due process at this hearing due to the fact we were not notified of this hearing. Mr. Brito stated that Legal Counsel considered this hearing to be no different than a continuance or a deferral. However, it was very different.

One property owner pursued this case in District Court, outside City jurisdiction, and neighborhood associations were not involved in this process. Two years after the original Notice of Decision, City Council referred the remand by District Court to the EPC. However, it does not appear on City Council agenda; a person needs to check the President agenda to determine items of communication (as well as know that this is the process if a Court remands an EPC case) which are included in the agenda. This represents an unreasonable and arbitrary expectation for citizens to comply with for two years of City Council meetings.

This case went outside the City system to District Court and when it returned to the EPC, all parties of standing and interest should have been notified. Comparing this series of actions to a continuance or deferral misstates the circumstances. A continuance or deferral generally gives specific dates and usually this time frame is within a couple of months that the EPC will hear the case again. The trail is easy to follow by checking the EPC agenda each month. The case does not change, although it might have additional information available. While City staff had time to discuss whether notification was required or not, it would have been much fairer and transparent to send out notification, and would have complied with the intent of the Court Order. The case attracted a lot of neighborhood participation in the original hearing and these people would have been present at this meeting if they had known about it. The Coalition, which appealed the original decision, would have had time to prepare more thorough comments. The applicant's lawyer stayed knowledgeable about the scheduling of the case by staying in touch with Russell Brito. It is an unreasonable expectation to have expected a citizen to contact Mr. Brito every

month to get an update. Additionally, Mr. Brito was not the planner on the prior hearing.

IV. The North Valley Coalition should have been notified because it has a special role under the North Valley Area Plan

The Coalition was formed to "facilitate implementation" of the North Valley Area Plan and it was denied the right to thoroughly weigh in on the two issues remanded by the Court (p. 178). "Additional consideration and reasoned decision making", as required by the Court, could not occur without input from the North Valley Coalition, at the very least. Other citizens and neighborhood associations would likely have had public comments that should have been considered by the EPC in determining their findings on the two issues. While the Los Duranes Neighborhood Association approval of this zone map amendment was mentioned, there were many residents of that neighborhood opposed to it, and the Association had specific concerns and criteria that needed to be met. Other nearby affected neighborhoods expressed opposition - such as Near North Valley, Sawmill, and West Old Town. These associations should have been allowed to be participants in the continuation of the approval process of this zone map amendment.

V. The EPC improperly marginalized the position of the North Valley Coalition at its hearing.

As President of the Coalition, I also want to make clear for the record that public comment speaker, John Wright, spoke for the Coalition and had authority to do so. He did an excellent job of stating the concerns of the Coalition which had been voted on by either the Executive Committee or the Board and his comments should not be marginalized for the record. While his exact comments were not voted upon, he accurately summarized our comment letter and issues stated/written in the prior hearing and our prior appeal. The interrogation regarding his comments was inappropriate.

VI. Conclusion of due process concerns

The EPC did not use "additional consideration" as required in addressing the remand by the Court and we therefore dispute the findings of the EPC based on lack of an appropriately notified meeting which would have allowed the public to present facts for additional consideration.

The following two issues needing to be addressed by the EPC are fairly major, since two different points in R 270-1980 have not been complied with.

VII. Whether the proposed C-2 zone is in significant conflict with purported North Valley Area Plan (NVAP) limitations on commercial development

The findings addressing this issue are contained in 7g of the Notice of Decision. The EPC stated the North Valley Area Plan (goals 6 and 11) does not limit commercial development on the subject site and that the NVAP is tempered and superseded by

the Comprehensive Plan.

We interpret the Court Order to acknowledge the importance of the NVAP in guiding commercial development in the North Valley and did not consider it superseded by the Comprehensive Plan. We cited numerous sources in our comments that address the scale of development and the location of development. Large scale development is to be located along the I-25 corridor.

Goal 11 is a general goal and states that commercial and industrial development could occur along selected areas of the I-40 corridor. However, this goal is expanded upon in the rest of the plan in the sources we listed and this expansion should have been considered by the EPC.

Goal 6 discourages commercial development on lots not already zoned commercial and yet commercial development is encouraged by approval of this amendment request. This request includes rezoning residential lots to commercial. Therefore, this request does not comply with goal 6, and the Commission erred in stating that. To comply with the NVAP, "discourages" would be to not allow the zone change request.

In response to the submission by the applicant of a land use map in the NVAP (p.37), this area is to be a village center: mixed small-scale neighborhood commercial and residential uses with pedestrian amenities. This concept is not supported by a C-2 zone - C-2 is named **community** commercial zone which indicates a zone of larger scale than a **neighborhood** commercial zone, which is intended in the NVAP. This zone map amendment is for a large-scale community project and is not supported in this area by the NVAP. Following, for the sake of comparison, are the definitions for C-1 and C-2 zones (Section 14-16-2-17, City Zone Code, p. 2-49 and p. 2-63).

C-1 Neighborhood Commercial Zone - This zone provides suitable sites for office, service, institutional, and limited commercial uses to satisfy the day-to-day needs of residential areas.

C-2 Community Commercial Zone - This zone provides suitable sites for offices, for most service and commercial activities, and for certain specified institutional uses.

The question was asked "could a Walmart or Home Depot be put on this site"? According to Mr. Brito, "probably not" because any big box would need direct access. That answer seems vague and indicates that it is a possibility. Could direct access be supplied from the frontage road? So, a C-2 could accommodate this but these could not be considered neighborhood commercial uses.

VIII. Whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community

The EPC did not do additional consideration and reasoned decision making to determine that there would be no harm to adjacent property, the neighborhood, or the community, 9E of the Notice of Decision. The EPC accepted the applicant's chart of C-2 permissive uses and analysis to support their finding. However, the reasons on the chart do not adequately justify this finding.

1. Stating that the use is already allowed in M-1 does not either justify the zone change of this property (R270-1980, 1B) nor does it address harm
2. Stating that the use is a useful service does not address harm
3. Stating that the use is allowed on Rio Grande Boulevard does not address harm resulting from a zone change on a site across the Alameda Drain with no direct access from Rio Grande Boulevard

The chart states no negative impacts for all permissive uses, yet the Notice of Decision states any adverse impacts will be addressed in the future.

Rezoning the M-1 property to C-2 and the R-1 property to C-2 more than doubles the area available for commercial use and allows for more intense permissive uses of the C-2 property than would have been allowed without the change. This will have harmful impacts to adjacent property, the neighborhood or the community. A commercial project on 5.29 acres (current M-1, 230,500 sq. ft.) and a project on 11.61 acres (proposed C-2, 505,700 sq. ft.) will significantly increase the amount of traffic and its related impacts, such as air quality.

Retailing of any consumer product (with a few exceptions) is a permissive use. A retail project allowed on more than twice the original M-1 area would attract more than twice the number of people and cars, even assuming some of them would walk there from the neighborhood. It also would require more parking area, leaving less landscaped area. As noted above, this area, if the zone map amendment is granted, is at risk for big box store development, along with all the associated negative impacts: traffic, air quality, noise, light pollution, harm to other neighborhood small businesses. Some of the retail outlets (grocery stores, alcohol drink sales) proposed increase traffic during peak hours, which are the most congested times currently.

Supplying building materials is permissive. While it is "probably" not feasible, the closest Home Depot stores are on Coors and Renaissance, none in the general area. This represents a high traffic use, and a sizable parking area, reducing green space and providing a heat sink.

A drive-in restaurant is a permissive use in C-2. This use attracts more vehicles than a sit-down restaurant, due to the fast turn-around. The effect on air quality of idling cars is not something that is mitigated by the R-2 buffer.

Gasoline retail is a permissive use in C-2. This increases rapid turn-over traffic, especially being near the highway, and the fumes affect air quality for nearby residents.

Residential uses, up to 30 dwelling units per acre is permissive. R-1 zoned land has been requested to be R-2 zone (higher density). This use can increase residential density beyond the original request. This increases traffic at peak hours in the morning and evening beyond what was intended and these are the most congested times currently.

Vehicle sales is permissive and generally attracts people from the entire city as

opposed to the local area. This represents new traffic to the area. This use is not appropriate next to residential properties including R-2.

The above are specific permissive uses which will have negative impacts - traffic, air quality, green space. However, the primary harm from the more intensive permissive uses resulting from doubling the commercial area will come from increased traffic. As stated at the hearing, there is an estimate of 8,300 additional trips a day as a result of this change. Reassurance was made that the streets can handle that much increased traffic. However, almost all public comments addressed concerns about harm from increased traffic, adding to the substantial congestion present today.

A traffic study was done by the applicant but was not authorized nor was it approved by the City. The City referred to the intersection Rio Grande Boulevard and I-40 access as a "failing intersection". Without a site plan, which would be required in a special use zone, this harm cannot be prevented or alleviated by a U-turn which was one proposal of the traffic study. There was much discussion about the buffer of R-2, but this does not address the harm to property, health, and safety caused by such an increase in traffic, accidents and air quality.