



Legislation Details (With Text)

**File #:** AC-19-11  
**Type:** Appeal **Status:** Denied  
**File created:** 7/31/2019 **In control:** City Council  
**Final action:** 10/7/2019  
**Enactment date:** **Enactment #:**

**Effective date:**

**Title:** Project #2018-001924/RZ-2018-00063: Land Development Consultants LLC, Agents for Circle K Stores, Inc., appeals the decision of the Environmental Planning Commission (EPC) to deny a zone map amendment for Tract A and Tract B, a plat of Tracts, A, B, and C, Lands of Romero-Page Etal., zoned M-XL, to NR-C, located at 1100 Old Coors Dr. SW, between Bridge Blvd. SW and San Ygnacio Rd. SW, containing approximately 4.5 acres

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. AC-19-11, 2. DAC-19-11

Date	Ver.	Action By	Action	Result
10/7/2019	1	City Council	To Accept the Land Use Hearing Officer Recommendation and Findings	Pass



INTER-OFFICE MEMORANDUM

July 24, 2019

**TO:** Klarissa Peña, President, City Council

**FROM:** Brennon Williams, Interim Planning Director

**Subject:** AC-19-11, ..title

**Project #2018-001924/RZ-2018-00063:** Land Development Consultants LLC, Agents for Circle K Stores, Inc., appeals the decision of the Environmental Planning Commission (EPC) to deny a zone map amendment for Tract A and Tract B, a plat of Tracts, A, B, and C, Lands of Romero-Page Etal., zoned M-XL, to NR-C, located at 1100 Old Coors Dr. SW, between Bridge

Blvd. SW and San Ygnacio Rd. SW, containing approximately 4.5 acres. (L-11)  
Staff Planner: Catalina Lehner

## REQUEST

This is an appeal of the EPC's decision to deny a zone map amendment (zone change) to change the subject site's zoning from MX-L to NR-C to allow for liquor retail on the subject site. The subject site comprises the southeastern corner of the intersection of Old Coors Dr. SW and Bridge Blvd. SW. The approximately 0.8 acre Tract A, located at the hard corner of the intersection, contains an existing light vehicle fueling station. Tract B contains approximately 3.6 acres and is vacant.

If the zone change request were to be approved, the applicant would still be required to obtain a conditional use pursuant to IDO §14-16-4-3(D)(36)(a through h), the use-specific standards for liquor retail, because the subject site is within 500 feet of a residential subdivision zoned R-1B.

## ZONING

The subject site is zoned MX-L [Mixed-Use Low Intensity Zone District, IDO §14-16-2-4(B)], which was assigned upon adoption of the Integrated Development Ordinance (IDO). The MX-L zone is roughly the IDO equivalent of the previous C-1 Neighborhood Commercial zone, the subject site's former zoning upon annexation.

The request proposes to change the subject site's zoning from MX-L to NR-C (Non-Residential Commercial Zone District, IDO §14-16-2-5(A)). Primary land uses include a wide spectrum of retail and commercial uses intended to serve neighborhood and area-wide needs, and some light industrial uses. The NR-C zone is the IDO equivalent of the former C-2 and C-3 commercial zones.

A key difference between the MX-L and the NR-C zones is liquor retail. In the MX-L zone, liquor retail is prohibited, though it is allowed as an accessory use only with a grocery store in certain areas pursuant to IDO §4-3(D)(36)(e), which does not include the subject site. The NR-C zone allows liquor retail as a permissive use.

## EPC DECISION

At its June 13, 2019 public hearing, the EPC voted to deny the proposed zone change based on twelve findings. The EPC's findings are detailed in the June 13, 2019 Official Notification of Decision.

The EPC found that the applicant's policy analysis does not meet the IDO's Zone Map Amendment criteria because it does not adequately demonstrate that the request furthers a preponderance of applicable Goals and policies in the Comprehensive Plan [IDO 14-16-14-16-6-7 (F)(3)(a)]. Therefore, the EPC concluded that the proposed zone category of NR-C would not be more advantageous to the community than the current zoning of MX-L [IDO §14-16-6-7(F)(3)(c)]. Furthermore, the applicant did not adequately prove that the proposed zone change is not completely or predominantly based on the cost of land or economic considerations. The existing light-vehicle fueling station on the subject site could expand and upgrade its facilities without a zone change, but without the liquor retail use.

## APPEAL

Appeal procedures are found in §14-16-6-4(U) of the IDO. The agent for the appellant is Land

Development Consultants, LLC on behalf of Circle K Stores. A letter of authorization from the property owner of record was provided.

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

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

The appellant alleges that Findings 6A, 6B, 7C, 7D, and 8 are not supported by the totality of the facts and evidence relevant to the property and the project (reason b), and therefore are applied incorrectly (reason c).

## STAFF RESPONSES

The following are Staff's responses to the appellant's arguments, which are stated in the appellant's letter.

1. The determination set forth in item 6(A) of the EPC Notice of Decision for Project #2018-001924, RZ-2018-00063 is not supported by the totality of the facts and evidence relevant to the property and the project and is therefore not applied correctly in making such determination that the Zone Map Amendment conflicts with the Comprehensive Plan Goals and Policy.

Response: Finding 6A in the Official Notification of Decision explains how the request conflicts with Comprehensive Plan Goal 5.1-Centers and Corridors. The appellant does not specifically state which facts and evidence contradict Finding 6A.

Finding 6A is a factual statement that the subject site is not located in a designated Activity Center, where commercial and service growth is intended to occur. The request would allow permissive uses in the NR-C (non-residential commercial) zone, which would facilitate development of a wide range of community and regional commercial uses outside of a designated activity center. A core concept of the Comprehensive Plan is to protect low density residential neighborhoods by directing more intense development to activity centers designated for that purpose.

The fundamental concepts of Centers and Corridors mutually reinforce each other. The Comprehensive Plan relies on this idea, and further supports it by designating Bridge Blvd. SE a Major Transit Corridor. The request would limit the ability to support existing and future transit along the Bridge Blvd. major transit corridor because the NR-C zone does not allow residential uses, which would support transit usage, and vice-versa.

2. The determination set forth in item 6(B) of the EPC Notice of Decision for Project #2018-001924, RZ-2018-00063 is not supported by the totality of the facts and evidence relevant to the property and the proposed use and development thereof, as outlined in the Application and supporting materials, and is therefore not applied correctly in making such determination that the Zone Map Amendment conflicts with the Comprehensive Plan Goals and Policy.

Response: Finding 6B in the Official Notification of Decision explains how the request conflicts with Comprehensive Plan Policy 5.1.10-Major Transit Corridors. The appellant does not specifically

state which facts and evidence contradict Finding 6B.

The Finding is a factual statement that Bridge Blvd. SW is a designated Major Transit Corridor, along which the Comprehensive Plan intends to prioritize transit and development that is transit and pedestrian-oriented near transit stops. Residential uses (especially multi-family) are generally desirable along Major Transit Corridors because they can result in more people using transit and walking along the corridor as intended. The request for the NR-C zone does not allow residential uses and allows more auto-oriented uses than the current MX-L zoning, so therefore conflicts with this Comprehensive Plan policy.

3. The determination set forth in item 7(C) of the EPC Notice of Decision for Project #2018-001924, RZ-2018-00063 is not supported by the totality of the facts and evidence relevant to the property and the proposed development thereof, as outlined in the Application and supporting materials, and is therefore not applied correctly in making such determination under the IDO Review and Decisions Criteria for Zone Map Amendments [IDO §14-16-6-7(F)(3)].

Response: Finding 7C in the Official Notification of Decision explains why the appellant's response to Criterion C of the IDO's Review and Decisions Criteria for Zone Map Amendments [IDO §14-16-6-7(F)(3)] is insufficient. The appellant does not specifically state which facts and evidence contradict Finding 7C.

The applicant has not proven that a different zone district would be more advantageous to the community, as articulated by the Comprehensive Plan and its Goals and policies, than the current zoning. The request conflicts with some applicable Goals and policies, especially with respect to the intent of the Centers and Corridors concepts and the Major Transit Corridor designation of Bridge Blvd.

4. The determination set forth in item 7(D) of the EPC Notice of Decision for Project #2018-001924, RZ-2018-00063 is not supported by the totality of the facts and evidence relevant to the property and the proposed use and development thereof, as outlined in the Application and supporting materials, and is therefore not applied correctly in making such determination under the IDO Review and Decisions Criteria for Zone Map Amendments [IDO §14-16-6-7(F)(3)].

Response: Finding 7D in the Official Notification of Decision explains why the appellant's response to Criterion D of the IDO's Review and Decisions Criteria for Zone Map Amendments [IDO §14-16-6-7(F)(3)] is insufficient. The appellant does not specifically state which facts and evidence contradict Finding 7D.

The applicant provided a listing of the uses that would become allowed under the NR-C zone, with a statement that the subject site's relatively small size could preclude some uses. The IDO does not have lot size thresholds for NR-C uses. Other uses, such as kennel, nursery, auditorium or theatre, bar, catering service, nightclub, and liquor retail could fit on the subject site and would become permissive uses if the request is granted.

The EPC applied Criterion D correctly in finding that some of the permissive uses that would result in harmful impacts to adjacent property, the neighborhood, or the community. The applicant's response to Criterion D is insufficient because it does not adequately address the issue of harm to the neighborhood and the community.

5. The determination set forth in item 8 of the EPC Notice of Decision for Project #2018-001924, RZ-2018-00063 is not supported by the totality of the facts and evidence relevant to the property and

the proposed use and development thereof, as outlined in the Application and supporting materials, and is therefore not applied correctly in making such determination under the IDO Review and Decisions Criteria for Zone Map Amendments [IDO §14-16-6-7(F)(3)].

Response: The policy analysis is contained in a response to Criterion A of IDO Review and Decisions Criteria for Zone Map Amendments [IDO §14-16-6-7(F)(3)]. Finding 8 in the Official Notification of Decision explains why the appellant's policy analysis does not adequately demonstrate that the request furthers a preponderance of applicable Goals and policies in the Comprehensive Plan, and does not conflict with them. The appellant does not specifically state which facts and evidence contradict Finding 8.

The EPC applied Criterion A correctly in finding that, without an adequate demonstration that the request furthers a preponderance of applicable Goals and policies, it is not possible to conclude that the proposed zone category would be more advantageous to the community than the current zoning.

## CONCLUSION

This is an appeal of the EPC's decision to deny a zone change to the NR-C zone, which would allow a variety of uses not currently allowed on the subject site, including liquor retail. The EPC found that the applicant did not adequately justify the request pursuant to IDO §14-16-6-7(F)(3), Review and Decision criteria for zone changes. The EPC's decision is based on twelve findings as elaborated in the Official Notification of Decision. The EPC acted within its authority, fully considered the request, and did not err in determining that the request is not adequately justified as required. Therefore, the Planning Department recommends denial of this appeal.

APPROVED:

Russell Brito, Manager  
Urban Design & Development Division  
Planning Department