MEETING DATE: January 24, 2019
REQUEST: Zone Change
CASE #: Z18-009
PURPOSE: Zone Change to extend the T4 Zone to the entire parcel to provide parking for the proposed brewery.

PROPERTY OWNER APPLICANT/AGENT: John Bruker
LOCATION: 10092 S. Highway 28 Chamberino, NM
PROPERTY SIZE: 0.90-acres
PARCEL ID NOs: R1902510
RECOMMENDATION: Conditional Approval
CASE MANAGER: Albert Casillas, Planner

SYNOPSIS:
Submitted by John Bruker, a request for a Zone Change on 0.90 acres out of a 2.42-acre parcel that currently has a T2 (Rural) and T4 (General Neighborhood) zoning classification. The request is to extend the T4 zone to the entire parcel to provide parking for the proposed craft brewery.

REPORT CONTENTS: (1) Case Analysis and Staff Recommendation (2) GIS Information & Maps (3) Conceptual Site Plan (4) Supporting Documents
SURROUNDING ZONING AND LAND USE

<table>
<thead>
<tr>
<th>SITE</th>
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<th>LAND USE</th>
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<tbody>
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<td>North</td>
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<td>West</td>
<td>T2/T3</td>
<td>Agricultural/Residential/Mobile Home Park</td>
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EXISTING CONDITIONS:
The subject parcel is located within a T4 (General Neighborhood) Zoning District within Section 18, Township 26 South, Range 3 East. The property has a 3,487 sq. ft. home built in 1940, a 1,800 sq. ft. building/equipment shop and a 600 sq. ft. shade both built in 2005. The parcel is surrounded by mostly T2 (Rural) and some T3 (Neighborhood Edge) zoning on the east. Access to the property is from Highway 28 from the west, and E. Provencio Road from the north. Highway 28 is a NMDOT paved road, E. Provencio Road is a County paved road.

The Request:
The applicant is requesting a Zone Change on a 2.42-acre parcel that currently has a T2 (Rural) and T4 (General Neighborhood) zoning classification. The request is to extend the T4 zone to the entire parcel to provide parking for the proposed craft brewery.

BACKGROUND
The subject parcel had been zoned Performance District (PD) since the inception of the Land Use and Zoning Ordinance in 1995. On February 2, 2017, the Unified Development Code was implemented and T4 (General Neighborhood) Zoning replaced the Chapter 250 Zoning of PD.

In June 2018, the applicant, Mr. Bruker, received approval of a Claim of Exemption for a lot-line adjustment. The southern property line of the subject parcel was shifted further south approximately 88’. This resulted in the parcel having a T4 designation on the north and T2 on the south of the parcel. The applicant is applying for the zone change to extend the T4 zone to the entire parcel.

On November 8, 2018, the Doña Ana County Planning and Zoning Commission (P&Z) approved a Variance to the occupant capacity and parking standards in Table 5.2 Conditions for Transect Zone of the UDC, for the proposed brewery/bar. Table 5.2 allows for no more than 40 seats and 20 parking spaces maximum. The Variance was approved for 98 occupants and 55 parking spaces in a graveled parking area located northeast of the proposed brewery building.

The applicant is proposing to relocate the parking area from what was previously approved by the Variance to the property immediately adjacent to the T4 to the south, which is now T2, see attached site plan (Pg. 17).
The Conceptual Site Plan (Pg. 17) shows that if the zone change is approved, the brewery will be accessed through S. Highway 28. NMDOT has issued Driveway Permit #1-3473 to the applicant. The Conceptual Site Plan meets the requirements of §350-203.B.4 that provides a general concept of what is being proposed to be developed on the site. In the event of the Zone Change approval and at time of the Building Permit application, a detailed site plan will be required per the UDC stamped by a Professional Engineer to include a street screen per §350-503.F.

NOTICE / NOTIFICATION

- 20 letters of notification were mailed to the property owners within the area of notice on January 2, 2019.
- Legal Ads were placed in the Las Cruces Sun-News on December 30, 2018.
- Signs posted on the property in a timely manner.
- Agenda posted on the DAC Web site.
- No correspondence in opposition or support was received by staff.

AGENCY COMMENTS

**DAC Engineering:** No issues with Zone Change.

**Advance Planning:** Landscaping, buffering and fencing requirements per UDC 350-507 apply, based on non-industrial uses and areas in 350-507.D.2. That includes landscaping, 1 tree/5 parking spaces evenly distributed in 6 foot minimum planting areas, and buffering the length of the residential use north of the existing building and west of the proposed parking area.

**DAC Flood Commission:** Pursuant to FIRM No. 35013C1525G, the subject property is not located within a FEMA Special Flood Hazard Area. The property lies within FEMA “Other Areas”, Zone “X”, “areas determined to be outside the 500-year flood”. The property is still susceptible to localized flooding despite not being located within a FEMA Special Flood Hazard Area.

**DAC Fire Marshal:** Zone Change approved only.

**DAC Building Services:** Proposed building will require permits. All permits shall be pulled prior to commencement of any construction.

**DAC Rural Addressing Coordinator:** No comment.

**DAC Zoning Codes:** No comments

**ACO/Codes:** No zoning violations on property.

**NMDOT:** See attached Driveway Permit (Pg. 25).

**NMED:** See attached comments (Pg. 28).

**APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL**

Chapter 350. Unified Development Code
Ordinance No.287-2016

§350-104.C.3 Duties of the Planning and Zoning Commission: Receive, hear and make final
determinations to approve, approve with conditions, or deny applications for zone changes.

§350-202.B General Notice Requirements

§350-203 Zone Changes

§350-203.B Application Procedure

§350-203.B.4 A conceptual site plan showing arrangements of uses proposed and the relationship to
adjacent natural and built networks. The conceptual site plan is for information only and is
not intended to be used in approval of subsequent building plans, unless required by P&Z.

§350-203.C Public Hearing for a Zone Change

§350-203.D Decisional Criteria: A proposed zone change shall be consistent with the intent of this
Chapter and promote the health, safety, and general welfare of the residents of the County.
Additional factors that the P&Z and BOCC may consider in decisions include but are not
limited to:

i. Potential number of homes:
ii. Population:
iii. Demographics:
iv. Potential traffic flows and impacts:
v. Need for new commercial or residential activity:
vi. Potential water and sewer needs:
vii. Existing infrastructure capacities and the ability of existing systems to accommodate new
development:
viii. Environmentally sensitive areas, areas of historical significance, or areas that contain
endangered or rare species of animal and plant life:
ix. The impact of a proposed zone change on surrounding properties:
x. Implementation of Best Management Practices for the development:

§350-203.D.4 A proposed zone change shall not be in significant conflict with the Comprehensive Plan or
other adopted or approved County plans and amendments thereto, including privately developed
area plans that have been adopted by the County.

§350-203.D.5 The applicant shall demonstrate that the requested zone change is supported by a:

i. Need to cover and perfect a previous defective ordinance or to correct mistakes or
injustices therein; or

ii. Sufficient change of conditions making the zone change reasonably necessary to
protect the public interest.

§350-203.D.6 Where evidence of a change or mistake is adduced, there is no reciprocal right to a change
in zoning, nor is there a threshold evidentiary standard which when met compels rezoning.
Even with very strong evidence of a change or mistake, a zone change may be granted, but
is not required to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property.

§350-203.D.7 The applicant has the burden of overcoming the presumption that the current zoning district designation is the most appropriate designation.

§350-203.D.11 Spot zoning is prohibited. Spot zoning is an attempt to wrench a single lot from its environment and give it a new rating that disturbs the tenor of the neighborhood, and which affects only the use of a particular piece of property or a small group of adjoining properties and is not related to the general plan for the community as a whole, but is primarily for the private interest of the owner of the parcel. Spot zoning is determined on an ad hoc basis depending on the facts and circumstances of each case. Factors to be considered are:

i. The disharmony with the surrounding area;
ii. The size of the area to be rezoned; and
iii. The benefit of the rezoning to the community or the owner of the parcel.

STAFF ANALYSIS

The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Zone Change request. The decision of the Planning and Zoning Commission can be appealed by an aggrieved party or person to the Board of County Commissioners.

§350-203.D Decisional Criteria:

A proposed zone change shall be consistent with the intent of this Chapter and promote the health, safety, and general welfare of the residents of the County. Additional factors that the P&Z and BOCC may consider in decisions include but are not limited to: Applicants responses (Pg. 18) in bold:

i. Potential number of homes: No new homes proposed for this zoning change.
ii. Population: There will be no permanent residences with this new zoning.
iii. Demographics: No new demographics since no new residences.
iv. Potential traffic flows and impacts: NMDOT has already done traffic flow and impact studies and has given a permit for access from the highway into the proposed parking area for which we are requesting the zoning change.
v. Need for new commercial or residential activity: The south NM Highway 28 is in a transition period. As Las Cruces and El Paso continue to grow and new neighborhoods, remodeled historic buildings, tourists and weekend sightseers continue to increase the need for new commercial activity on the highway is growing. Changing this zoning will accommodate a new business that the neighbors and community are in favor of and will bring people from both Las Cruces and El Paso into the area.
vi. Potential water and sewer needs: Municipal water is available on location. Municipal sewage is not available. A new septic system is being installed to meet the current standards and occupancy. There will also be waste water tanks, for the non-toxic by products from the beer production that will be picked up by a commercial waste water company for proper treatment and reuse.
vii. Existing infrastructure capacities and the ability of existing systems to accommodate new development: NMDOT has approved the proposed use and traffic. The fire department and emergency personnel are less than a mile away and a fire hydrant is within 250’ of
the property. The electric company has already approved the required electric needs. Municipal water and gas have also been added.

viii. Environmentally sensitive areas, areas of historical significance, or areas that contain endangered or rare species of animal and plant life: The property is surrounded by existing commercial businesses, homes and farmlands. There are no unpreserved historic sites or rare species of plants or animals on the property.

ix. The impact of a proposed zone change on surrounding properties: This proposed zoning change will make it much safer for patrons of the business and the local residences by allowing the parking lot to be accessed from the highway instead of using East Provencio Road. East Provencio is a quiet neighborhood road with families and pets. At the southeast corner of East Provencio and Highway 28 is an historic building close to the highway that partially obstructs the view. By granting this zoning change it will allow better visibility to the parking area and allows parking adjacent to the business which avoids East Provencio Road altogether. This zoning change will also complete the transition of this property from an abandoned building and eyesore into a community asset and taxpaying entity.


Staff’s evaluation of the applicants responses indicate that the application has met the Decisional Criteria of §2.3.2.a.

§350-203.D.4 Comprehensive Plan “Plan 2040”:

The following Goals and Actions within Plan 2040 provide the policies and criteria that are applicable for approval of Case # Z18-009, in order to insure and create orderly, harmonious and economically sound development and promote the health, safety, convenience and general welfare of the citizens of Doña Ana County.

Goal G2.2 Ensure Regulations Support the Plan Requirements
Doña Ana County is revising its zoning and other ordinances into a Unified Development Code. This code should address a number of issues:

- Safeguard and extend desirable neighborhood character.
- Safeguard open space.
- Develop in existing locations with existing infrastructure, and extend as necessary.
- Locate industry where it will be convenient for workers

Action A2.2 Update Codes to Provide Tools to Support an Appropriate Physical Structure
The Unified Development Code shall do the following:

- Preserve the existing neighborhoods’ character by tailoring the zones to match it, and by blending extensions with the existing communities and neighborhoods.
- Zone for and create incentives for development within the existing neighborhoods and communities — and as extensions of those communities.

Development Implementation
Zoning and Subdivision: Encouraging manufacturing and other industry to locate within the County, appropriately buffered from communities.

G6.7 Support Regional Small-Scale Businesses Including Agriculture:
The County is already pursuing constructive initiatives and working with such entities as the Mesilla Valley Economic Development Alliance (MVEDA), the Green Chamber of Commerce and the City of Las Cruces Department of Economic Development. Yet, Doña Ana County lacks a strong environment for small businesses. It can establish a community network to build capacity within cities, towns, and colonias – via business incubation and microloans.

**Economic Opportunity**

**G6.10 Keep Money from Leaking out of the County**  
Doña Ana County loses retail sales and some service offerings to El Paso and Chihuahua. It needs to strengthen its retail sales and business-to-business sales and services in order to keep money from leaking out of the County.

**A6.10 Plug the Leaks in Sales and Services**  
The County should do three main things to support local retail and business-to-business sales and service:

- Develop policies to enable businesses to locate in neighborhoods so that the customers are always at the retailers’ doorsteps.

**El Camino Real Corridor Enhancement Plan**

The Corridor Enhancement Plan, part of the Viva Doña Ana initiative, focuses on a series of improvements along the 92 mile corridor in Doña Ana County. The corridor is part of the official El Camino Real Scenic Byway that stretches from the border of Mexico to north of Santa Fe. After more than 20 outreach events and hundreds of comments from the public and regional stakeholders, the project team for the Corridor Enhancement Plan prioritized four catalytic projects. Two of those projects where “Culinary Tourism and Agritourism” and “Commercial Revitalization”. Culinary tourism is the pursuit of unique and memorable eating/drinking experiences and commercial revitalization focuses on showing how underutilized land along the corridor can be redeveloped to create new commercial hubs of activity.

Additionally, the applicant has stated that “this zone change is not in conflict with the Comprehensive Plan and actually fits well with the Comprehensive Plan and surrounding community. This proposed zoning change will allow easy and safe public access to a business that will serve as a community meeting area, small farm and community garden”.

The proposed Zone Change meets §350-203.D.4 as it is not in conflict with the Comprehensive Plan, the El Camino Real Corridor Enhancement Plan and other adopted or approved County plans and amendments thereto as this increases the culinary tourism and commercial revitalization.

**§350-203.D.5 “Miller” Criteria**

The subject parcel had been zoned Performance District (PD) since the inception of the Land Use and Zoning Ordinance in 1995. In February 2, 2017, the Unified Development Code was implemented and T4 and T2 replaced the Chapter 250 Zoning of PD.

The purpose of the PD was to allow flexibility for land use activities in the rural areas of the County, while protecting residents and property values. In the PD, any use could be approved, provided that all development standards for that particular use were met and the use was consistent with the character of the surrounding area. If the PD was still in effect today, the applicant would have been required to apply for a Non-Residential Application for this request and meet the development standards of the Ordinance.
A Non-Residential Application was typically approved administratively if the development standards were met. Once a Detailed Site Plan was submitted for a Non-Residential Use the following procedures where followed:

- Copies of the site plan where routed to affected county and state agencies for review.
- Notice published in a newspaper of general circulation 15 days prior to approval of the site plan.
- Signs where posted on the property 15 days prior to approval of the site plan.
- Copies of the site plan where routed to affected county and state agencies for review.
- If the site plan was approved, conditions could be added to meet the standards and policies of the Code and the Doña Ana County Comprehensive Plan.

If an objection was submitted for a Non-Residential request, then the application and objection went before the Planning and Zoning Commission. Notice of the objection was given in the same manner as mentioned above.

The Supreme Court of New Mexico, in Miller versus Albuquerque, September 9, 1976, stated: “The fundamental justification for an amendatory or repealing zoning ordinance is a change of conditions making the amendment or repeal reasonably necessary to protect the public interest. Also, a zoning amendment may cover and perfect previous defective ordinances or correct mistakes or injustices therein.”

When the UDC went into effect on February 2, 2017, a T4 and T2 zoning designation was assigned to the property. The T2 zone consists of sparsely settled lands in open or cultivated conditions. These include bosque, agricultural land and grazing land. Typical buildings include single family residential site-built homes and mobile homes, farmhouses and agricultural buildings. When staff mapped zoned the area of Chamberino, it was difficult to predict which properties would become commercial/industrial. This could be considered an oversight as NM Highway 28 is ideal for commercial development as it allows for commercial businesses to serve a community or several communities as it is along the El Camino Real Corridor.

The UDC establishes two types of zoning districts: Transect Zones and Use Zones. Transect Zones reflect the historic development patterns of Doña Ana County and are predominantly mixed uses and compact development. These zoning districts are located and map zoned to the existing historic communities and townsites that includes natural and rural conditions.

Under the PD, the applicant would have been able to pursue this request administratively as long as he met all the development standards and criteria under Chapter 250. The T2 zone does allow for a variety of residential and agricultural uses; however, any other use not allowed under Table 5.1 Land Use Classification Matrix: Zoning Districts would require a Special Use Permit, or in this case a Zone Change.

The applicant states “as traffic on Highway 28 increases it makes it more important to provide modern and safe access on and off of the highway. This zoning change will allow the parking area to avoid an intersection with an obstructed view at Highway 28 and E. Provencio Road”.

The zoning on this parcel is the direct result of a “change in conditions” due to the adoption of the UDC and falls within the parameters of the Miller Criteria to correct a mistake or injustice in the original zoning classification. The change in condition meets §350-203.D.5 of the Decisional Criteria of the UDC; therefore, satisfies the Miller Criteria to warrant the Zone Change in order to protect the public health, safety and welfare.
§350-203.D.6 Change or Mistake

This section of the UDC allows the Planning and Zoning Commission to review and determine if a Zone Change request, even though meeting the “change or mistake” rule of the Miller Criteria is still appropriate to be granted, it is not required to be approved, except where a failure to do so would deprive the owner of all economically viable use of the property. If denied, the applicant could still use the property as allowed under T2 zoning. If the zone change is denied, the applicant can still move forward with the operation of the brewery as he has a previously approved parking area.

§350-203.D.7 Current Zoning Most Appropriate

The applicant’s requested use of the property will be to relocate the vehicular parking area for the proposed brewery. Pursuant to §350-203.D.7 the applicant has overcome the presumption that the current zoning is the most appropriate, as the project site is not suitable for dense residential development due to its lack of wastewater services and its T2 designation. If approved, the business and parking area will be appropriately buffered from the nearby residential areas mitigating any negative visual impacts. Staff is also proposing that the open parking area be masked from the frontage by a street screen per §350-503.F.

A street screen is defined as a freestanding wall built along the frontage line, or coplanar with the facade. It may mask a parking lot from the thoroughfare, provide privacy to a side yard, and/or strengthen the spatial definition of the public realm. As used in this chapter, a street screen is a form of screen which need not be part of a landscape buffer.

The applicant states “the most appropriate designation for zoning of this property would be that all of it with Highway 28 frontage be zoned T4. This allows for functional/conformed use of the land, fits with the Comprehensive Plan and increases public safety.

§350-203.D.11 Spot Zoning:

The requested Zone Change does satisfy all three points of the 1999 Bennett ruling. The applicant’s request for the extension of the T4 Zoning would be in harmony with the nearby properties and the proposed brewery. Although there are residentially zoned properties located to the west and north of the subject parcel, the properties immediately north are zoned T4.

The requested Zone Change extension for approximately 0.90-acres is of sufficient size that it would not be considered a spot zone, considering that the total combined area of T4 zoning would be approximately 4.00 acres.

The proposed Zone Change request will be beneficial to the applicant by allowing him to open a new business in the area, create economic development activities, increase tax base and provide jobs to the community. The property does not have wastewater services in the area and has a T2 designation thus, not conducive to dense residential development.

Additionally, the applicant states “this will actually bring harmony to the zoning of this property. The currently allowed area for parking is disharmonious by being intrusive to the properties layout and decreased public safety”.

These findings illustrate that the request would not be considered a spot zone per §350-203.D.11.
Buffering in accordance with Best Management Practices in Article 6 Low Impact Development will be used along the boundaries of the subject parcel under the current UDC regulations. Staff is also proposing that the open parking area be masked from the frontage by a street screen attached to the building which will contribute to the aesthetic quality of the development, provide privacy and security and to enhance the overall quality of life in the area.

**STAFF FINDINGS:**

1. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County.

2. Pursuant to §350-104.C.3, the Doña Ana County Planning & Zoning Commission has jurisdiction to review this application and make a final decision on approval, approval with conditions, or denial of zone change requests.

3. Notice requirements have been met as prescribed in §350-203.C Public Hearing for a Zone Change.

4. The applicant’s request meets §350-203.D Decisional Criteria and is consistent with the health, safety, and general welfare for the residents of the County.

5. The applicant’s proposal would be in conformance with the following Goals and Actions within Plan 2040: Goal G2.2 Ensure Regulations Support the Plan Requirements, Economic Opportunity Goal G6.7: Support Regional Small-Scale Businesses Including Agriculture, G6.10 Keep Money from Leaking out of the County, thus, meeting §350-203.D.4 of the UDC.

6. The applicant’s proposal would be in conformance with the El Camino Real Corridor Enhancement Plan as it promotes two of the four catalytic projects: “Culinary Tourism and Agritourism” and “Commercial Revitalization”.

7. The Zone Change request meets §350-203.D.5 as there has been a change in conditions due to the adoption of the UDC and falls within the parameters of the Miller Criteria to correct a mistake or injustice in the original zoning classification.

8. When staff mapped zoned the area of Chamberino, it was difficult to predict which properties would become commercial/industrial. This could be considered an oversight as NM Highway 28 is ideal for commercial development as it allows for commercial businesses to serve a community or several communities. Approving the extension of the T4 zone would allow the applicant to relocate the parking area and operate his business in a more safe and efficient manner by providing a street screen attached to the building and contribute to the aesthetic quality of the development, provide privacy and security and to enhance the overall quality of life in the area.

9. The P&Z can review and determine if the Zone Change request, even though meeting the “change or mistake” rule of the Miller Criteria is still appropriate to be granted, it is not required to be approved, except where a failure to do so would deprive the owner of all economically viable use of the property. If denied, the applicant could still use the property as allowed under T2 zoning. If
the zone change is denied, the applicant can still move forward with the operation of the brewery as he does have a currently approved parking lot location.

10. The applicant has overcome the presumption that the current zoning designation is the most appropriate zoning designation per §350-203.D.7 as the project site is not suitable for dense residential development due to its lack of wastewater services and T2 designation. If approved, the business and parking area will be appropriately buffered from the nearby residential areas mitigating any negative visual impacts by providing street screen attached to the building which will contribute to the aesthetic quality of the development, provide privacy and security and to enhance the overall quality of life in the area.

11. The Zone Change request would not be considered a spot zone per §350-203.D.11 as the T4 Zoning would be in harmony with the nearby properties and uses, extension of T4 for approximately 0.90-acres is of sufficient size that it would not be considered a spot zone, considering that the combined total area of T4 zoning would be approximately 4.00 acres. The Zone Change will create economic development, increase tax base and provide jobs to the community.

**STAFF RECOMMENDATION:**

Based on the request meeting the applicable sections of the Doña Ana County Code, Chapter 350. Unified Development Code, conforming to elements of Comprehensive Plan: “Plan 2040”, meeting the Miller Criteria, §2.3.2 Decisional Criteria, is not considered a “spot zone”, and the findings listed above, Staff recommends Conditional Approval of Case #Z18-009.

1. Staff is proposing that the open parking area be masked from the frontage by a street screen attached to the building which will contribute to the aesthetic quality of the development, provide privacy and security and to enhance the overall quality of life in the area. A street screen is defined as a freestanding wall built along the frontage line, or coplanar with the facade. It may mask a parking lot from the thoroughfare, provide privacy to a side yard, and/or strengthen the spatial definition of the public realm. As used in this chapter, a street screen is a form of screen which need not be part of a landscape buffer.

2. Applicant shall pave the new proposed parking area within one year of operation.
CLOSE-UP OF SUBJECT PROPERTY
AREA LAND USES
PROPERTY NOTIFICATION AERIAL
# NOTIFICATION TABLE

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<td>SECRETARY OF VETERANS AFFAIR</td>
<td>3401 WEST END AVE STE 760W</td>
<td>NASHVILLE</td>
<td>TN</td>
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<td>R1716932</td>
<td>CINCO ESTRELLAS LLC</td>
<td>816 CANTERBURY ARC</td>
<td>LAS CRUCES</td>
<td>NM</td>
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<td>QUIROGA FARMS ET AL</td>
<td>PO BOX 217</td>
<td>CHAMBERINO</td>
<td>NM</td>
<td>88021</td>
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<td>NM STATE I-HWY DEPT.</td>
<td>8070 BATAAN MEMORIAL EAST</td>
<td>LAS CRUCES</td>
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NARRATIVE & EVALUATION CRITERIA

PUBLICHOUSE 28,
10108 Highway 28 Anthony NM 88021
915-203-0818 JOHNBRUKER@YAHOO.COM

12-4-2018

Albert Casillas
Dona Ana County
Community Development

Dear Albert Casillas,

Decisional criteria for a zone change.

(1)

A proposed zone change shall be consistent with the intent of this chapter and promote the health, safety, and general welfare of the residents of the County. Additional factors that the P&Z and BOCC may consider in decisions include but are not limited to:

(a)

Potential number of homes;

No new homes proposed for this zoning change.

(b)

Population;

There will be no permanent residences with this new zoning.

(c)
Demographics;

No new demographics since no new residences.

(d)
Potential traffic flows and impacts;

NMDOT has already done traffic flow and impact studies and has given a permit for access from the highway into the proposed parking area for which we are requesting the zoning change.

(e)
Need for new commercial or residential activity;

The South NM Highway 28 is in a transition period. As Las Cruces and El Paso continue to grow and new neighborhoods, remodeled historic buildings, tourists and weekend sightseers continue to increase the need for new commercial activity on the highway is growing. Changing this zoning will accommodate a new business that the neighbors and community are in favor of and will bring people from both Las Cruces and El Paso into the area.

(f)
Potential water and sewer needs;

Municipal water is available on location. Municipal sewage is not available. A new septic system is being installed to meet the current standards and occupancy. There will also be waste water tanks, for the non-toxic by-products from the beer production, that will be picked up by a commercial waste water company for proper treatment and reuse.
Existing infrastructure capacities and the ability of existing systems to accommodate new
development;

NMDOT has approved the proposed use and traffic. The fire department and emergency
personnel are less than a mile away and a fire hydrant is within 250 feet of the property. The
electric company has already approved the required electric needs. Municipal water and gas
have also been added.

(h)

Environmentally sensitive areas, areas of historical significance, or areas that contain
endangered or rare species of animal and plant life;

The property is surrounded by existing commercial businesses, homes and farmlands. There
are no unpreserved historic sites or rare species of plant or animals.

(i)

The impact of a proposed zone change on surrounding properties;

This proposed zoning change will make it much safer for patrons of the business and the
local residences by allowing the parking lot to be accessed from the highway instead of
using East Provencio Road. East Provencio is a quiet neighborhood road with families and
pets. At the southeast corner of East Provencio and Highway 28 is an historic building close
to the highway that partially obstructs the view. By granting this zoning change it will allow
better visibility to the parking area and allows parking adjacent to the business which
avoids East Provencio Road altogether. This zoning change will also complete the transition
of this property from an abandoned building and eyesore into a community asset and
taxpaying entity.

(f)

Implementation of best management practices for the development.

Applicant is willing and eager to follow any Best Management Practices recommended.
(2).

The cost of land or other economic considerations pertaining to the applicant shall not be the sole determining factor for a zone change.

(3).

Stability of land use and zoning is desirable; therefore, the applicant shall provide a sound justification for the zone change. The burden is on the applicant to show why the change should be made.

The property for this zoning change currently has the majority of it zoned T4 with one area of it zoned T2. The proposed parking for this property is best suited (for safety and conformity of surroundings) on the southern boundary because of its access to the highway but this portion is zoned T2. Allowing this zoning change will enable a safe and direct access to this business without increasing traffic on the neighborhood road.

(4).

A proposed zone change shall not be in significant conflict with the Comprehensive Plan or other adopted or approved County plans and amendments thereto, including privately developed area plans that have been adopted by the County.

This zoning change is not in conflict with the Comprehensive Plan and actually fits well with the Comprehensive Plan and surrounding community. This proposed zoning change will allow easy and safe public access to a business that will serve as a community meeting area, small farm and community garden.

(5).

The applicant shall demonstrate that the requested zone change is supported by a:

(a)
Need to cover and perfect a previous defective ordinance or to correct mistakes or injustices therein; or

(b) Sufficient change of conditions making the zone change reasonably necessary to protect the public interest.

As traffic on Highway 28 increases it makes it more important to provide modern and safe access on and off of the highway. This zoning change will allow the parking area to avoid an intersection with an obstructed view at Highway 28 and E. Provencio Road.

(6) Where evidence of a change or mistake is adduced, there is no reciprocal right to a change in zoning, nor is there a threshold evidentiary standard which when met compels rezoning. Even with very strong evidence of a change or mistake, a zone change may be granted, but is not required to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property.

(7) The applicant has the burden of overcoming the presumption that the current zoning district designation is the most appropriate designation.

The most appropriate designation for zoning of this property would be that all of it with Highway 28 frontage be zoned T4. This allows for functional/conformed use of the land, fits with the Comprehensive Plan and increases public safety.

(8) A proposed zone change that requires major and un-programmed capital expenditures by the County may be:
(a) Denied due to lack of capital funds; or

(b) Approved with the understanding that the County is not bound to provide the capital improvements on any special schedule.

(9) Location on a collector or major thoroughfare is not in itself sufficient justification for apartment, office, commercial or industrial zoning.

(10) A zone change that results in a zone different from surrounding zoning on a strip of land along a thoroughfare is generally called "strip zoning." Strip commercial zoning may be approved only where:

(a) The change will clearly facilitate realization of the Comprehensive Plan;

This change will help the community thrive and fit well with the mixed use zoning.

(b) The area of the proposed zone change is different from surrounding land as 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 due to traffic or special adverse land uses nearby.

The area of the proposed zone change is by far the most effective use of the land in relationship to the surrounding zones.

(11)
Spot zoning is prohibited. Spot zoning is an attempt to wrench a single lot from its
environment and give it a new rating that disturbs the tenor of the neighborhood, and
which affects only the use of a particular piece of property or a small group of adjoining
properties and is not related to the general plan for the community as a whole, but is
primarily for the private interest of the owner of the parcel. Spot zoning is determined on an
ad hoc basis depending on the facts and circumstances of each case. Factors to be considered
are:

This is definitely not Spot Zoning.

(a)

The disharmony with the surrounding area;

This will actually bring harmony to the zoning of this property. The currently allowed area
for parking is disharmonious by being intrusive to the properties layout and decreased
public safety.

(b)

The size of the area to be rezoned; and

The size of the area to be reasoned is less than an acre.

(c)

The benefit of the rezoning to the community or the owner of the parcel.

This rezoning benefits the community by allowing traffic to avoid the neighborhood street
and enables the owner to have a visible and easily accessible parking area without having to
disrupt agriculture on other areas of the owners property.

John Bruker DVM (agent for PH28)
September 17, 2018

Nava-Tech, Inc.
1615 S. Solano Dr.
Las Cruces, NM 88001

ATTN: Mr. Navarrete,

RE: Driveway Permit(s) # 1-3473

STIPULATIONS FOR CONSTRUCTION OF DRIVEWAY (S)

Please find your approved copy to construct a driveway(s) on NM 28 mm 10.06+ in Dona Ana County.

THE APPLICANT UPON ACCEPTING THE APPROVED PERMIT WILL BE IN COMPLIANCE TO THE TERMS AND CONDITIONS OF THE NMDOT SPECIFICATIONS:

(X) The applicant will be required to comply with all local Codes and Ordinances.
(X) Repairs and maintenance of driveway from NMDOT right of way line to edge of pavement are the responsibility of the applicant and any future owners.
(X) Adequate drainage within the right of way shall be maintained at all times.
(X) The driveway(s)/Auxiliary lane shall be finished within 45 days of start of construction within the highway ROW.
(X) Saw cut to inside of solid white line (shoulder stripe) of existing asphalt to include tapers for asphalt & concrete driveway pads, acceleration and deceleration lane, if applicable.
( ) The contractor/applicant/developer SHALL treat all vertical drop-offs in accordance with the Departments Administrative Directive 241, Pavement Drop-Off Guidelines for Maintenance and Construction work Zones (AD 241 attached)
( ) Contractor SHALL provide a copy of approved Hot Mix Design Mix from a certified supplier to NMDOT District One Traffic Section at least two (2) weeks before starting paving operation per NMDOT Standards Specifications for Highway and Bridge 2014 edition.
(X) Mailboxes installed within public right of way shall be constructed to United States postal Services or to NMDOT specifications.
( ) Owner SHALL be required to construct and maintain GATE(s) or Cattle guard offset into your property and keep gate closed at all time to avoid any animals to get within NMDOT ROW.

(X) Please note that the traffic control plan shall not be left overnight and will need to be removed at the end of the day and placed down by the fence line.
If an extension is needed, please request it with an e-mail or official letter
Permit shall be deemed expired and void if access is not started with in six months from date of approval.

A written request for a six (6) month extension is required before permit expires.
A copy of the approved driveway permit package and the approved traffic control plan that meets with MUTCD standards shall be on the job site while the driveway(s) are under construction.

**NOTIFY THE DISTRICT ONE OFFICE 72 HOURS PRIOR TO CONSTRUCTION**
575-494-3216 and the Anthony Maintenance Patrol Office @ 575-202-2127

Sincerely:

[Signature]

Bernardino Sotelo
District One
Permit Agent

cc. Ernest Sedillo, Patrol Supervisor 41-43
COE LOT LINE
January 8, 2019

Albert Casillas
Doña Ana County, Community Development
845 N. Motel Blvd.
Las Cruces, NM 88007
Via email: albertc@donaanacounty.org

Dear Mr. Casillas,

The New Mexico Environment Department (NMED) has reviewed the scoping letter for the proposed CASE # Z18-009 / BRUKER Projects and offers the following comments:

**NMED Air Quality Bureau Comments**

If a stand by electrical generator is used at the facility, be advised that records should be kept of the hours of operation of the generator. An application for a construction permit must be submitted for stand by generators used 500 hours per year or more.

To further ensure air quality standards are met, applicable local or county regulations requiring noise and/or dust control must be followed; if none are in effect, controlling construction-related air quality impacts during projects should be considered to reduce the impact of fugitive dust and/or noise on community members.

Potential exists for temporary increases in dust and emissions from earthmoving, construction equipment, and other vehicles; however the increases should not result in non-attainment of air quality standards. Dust control measures should be taken to minimize the release of particulates due to vehicular traffic and construction. Areas disturbed by the construction activities, within and adjacent to the project area should be reclaimed to avoid long-term problems with erosion and fugitive dust.

All asphalt, concrete, quarrying, crushing and screening facilities contracted in conjunction with the proposed project must have current and proper air quality permits. For more information on air quality permitting and modeling requirements, please refer to 20.2.72 NMAC.

If air quality permits are required for the proposed action, permits will need to be administered by the New Mexico Environment Department (NMED).
NMED Drinking Water Bureau Comments
There are no regulated public ground water system wells within 1 mile of the proposed site, nor any regulated public surface water system intakes within 10 miles downgradient. Therefore, this project will likely not have a significant impact on any regulated public water system.

NMED Ground Water Quality Bureau Comments

NMED Petroleum Storage Tank Bureau Comments

NMED Solid Waste Bureau Comments

NMED Surface Water Quality Bureau Comments

NMED Surface Water Quality Bureau (SWQB) Requested Comments, CASE # Z18-009 / BRUKER, Hwy 28 Brewery, Chamberino, Doña Ana County

The U.S. Environmental Protection Agency (USEPA) administers the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Federal Clean Water Act (CWA) in the State of New Mexico. The following information is provided on federal Clean Water Act permits and requirements for industrial stormwater discharges to the Waters of the United States (Waters of the U.S.) from construction and industrial activity at the above-referenced facility.

If the County or the County’s applicant has questions related to pollutant discharges to surface water or NPDES permits in the State of New Mexico, then you may contact Sarah Holcomb, Program Manager, Point Source Regulation Section, NMED SWQB at 505-827-2798. More information is available at: https://www.env.nm.gov/surface-water-quality/stormwater/.

USEPA Section 402 NPDES Stormwater Program, Construction General Permit

USEPA’s 1990 and 1999 federal regulations at 40 CFR 122.26(b)(14)(x) and (15) require coverage under the NPDES Construction General Permit (CGP) for storm water discharges to waters of the U.S. from large and small construction projects that disturb one or more acres, and smaller sites that are part of a larger common plan of development or sale. USEPA’s CGP was re-issued January 11, 2017 effective February 16, 2017 and includes requirements for endangered species and historic properties, and additional state and tribal requirements.

USEPA requires that all "operators" as defined by the permit obtain NPDES permit coverage for construction projects. Generally, this means that at least two parties will require permit coverage. The owner/developer of this construction project who has operational control over project specifications, and the general contractor who has day-to-day operational control of those activities at the site, which are necessary to ensure compliance with the storm water pollution plan and other permit conditions, and possibly other "operators" will require NPDES permit coverage for this project.
Among other things, the CGP requires that a Stormwater Pollution Prevention Plan (SWPPP) be prepared for the site and that appropriate Best Management Practices (BMPs) be installed and maintained both during and after construction to prevent, to the extent practicable, pollutants (primarily sediment, oil & grease, and construction materials from construction sites) in storm water runoff from entering waters of the U.S. This permit also requires that permanent stabilization measures (revegetation, paving, etc.), and permanent storm water management measures (storm water detention/retention structures, velocity dissipation devices, etc.) be implemented post construction to minimize, in the long term, pollutants in storm water runoff from entering these waters. In addition, permittees must ensure that there is no increase in sediment yield and flow velocity from the construction site (both during and after construction) compared to pre-construction, undisturbed conditions.

USEPA’s CGP has additional requirements for discharges to a sediment- or nutrient-impaired water or to a water that is identified by the State of New Mexico, tribe, or USEPA as Tier 2, or Tier 3 for antidegradation purposes. Basic information on water quality and water pollution control programs in the State of New Mexico is provided in NMED SWQB Integrated List and Report and on-line mapper at:

https://gis.web.env.nm.gov/oem/?map=swqb
https://www.env.nm.gov/swqb/303d-305b/

More information on USEPA’s NPDES Stormwater Program is available on-line at https://www.epa.gov/npdes/npdes-stormwater-program. A link to the 2017 CGP and USEPA’s reporting tool (NeT-CGP) for operators to apply for coverage or waivers is available at https://www.epa.gov/npdes/2017-construction-general-permit-cgp.

**USEPA Section 402 NPDES Stormwater Program, Stormwater Discharges from Industrial Activities, Multi-Sector General Permit**

USEPA’s 1990 federal regulations at 40 CFR 122.26(b)(14)(i)-(ix) and (xi) require stormwater discharges associated with specific categories of industrial activity to be covered under NPDES permits, unless excluded or eligible for an exemption. Activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing or other operations that occur at industrial facilities are often exposed to stormwater. The runoff from these areas may discharge pollutants directly into nearby waterbodies or indirectly via storm sewer systems, thereby degrading water quality.

Information on USEPA’s reissued Multi-Sector General permit authorizing stormwater and certain non-stormwater discharges from industrial facilities, including non exposure exemptions, effective June 4, 2015 is available at https://www.epa.gov/npdes/stormwater-discharges-industrial-activities.

Requirements for coverage under an industrial stormwater permit include development of a written stormwater pollution prevention plan (SWPPP), implementation of control measures, and
submittal of a request for permit coverage, usually referred to as the Notice of Intent or NOI. The SWPPP is a written assessment of potential sources of pollutants in stormwater runoff and control measures. The MSGP also includes requirements for endangered species and historic properties, and additional state and tribal requirements.

Food and kindred products facilities, as defined by Standard Industrial Classification (SIC) Major Code 20 in 40 CFR 122.26(b)(14)(xi), include malt beverages, breweries, establishments primarily engaged in manufacturing malt beverages (SIC 2082) and Sector U of the MSGP. USEPA Fact Sheet for Sector U includes a summary of typical pollutants associated with activities and types of stormwater control measures (BMPs) used to minimize the discharge of those pollutants is available at:


An industrial facility with its industrial materials and activities protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff is eligible for an exemption from NPDES industrial stormwater permit requirements. A no exposure certification must be provided to the permitting authority, which is USEPA in New Mexico, for each facility qualifying for the permitting exclusion. In addition, the exclusion from NPDES permitting is available on a facility-wide basis only, not for individual outfalls. To retain the exclusion, an owner/operator must recertify the condition with the permitting authority at least every five years. USEPA guidance for conditional no exposure exemptions is available at:


Thank you for providing NMED with the opportunity to review and comment on this proposed project.

Sincerely,

Michaelene Kyrala
Director of Policy
New Mexico Environment Department
Office: 505.827.2892
E-mail: michaelene.kyrala@state.nm.us