MEETING DATE: February 28, 2019
REQUEST: Zone Change
CASE #: Z19-001
PURPOSE: Zone Change from I3 (Heavy Industrial) Zone to a T2 (Rural) Zone to build a single family site built home.
PROPERTY OWNER: Melissa Carson
APPLICANT/AGENT: Steve Warren
LOCATION: 3257 Railroad Road Rincon, NM
PROPERTY SIZE: 4.00-acres
PARCEL ID NOs: R1200498
RECOMMENDATION: Denial
CASE MANAGER: Albert Casillas, Planner

SUMMARY: Submitted by Melissa Carson, a request for a Zone Change on a 4.00-acre parcel from an I3 (Heavy Industrial) zone to a T2 (Rural) zoning district to build a single family site built home. The parcel is addressed at 3257 Railroad Road in Rincon, NM within Section 7, Township 19 South, Range 2 West and was recorded in the Office of the Doña Ana County Clerk on January 16, 2019 with Instrument #1901080. The subject parcel can be further identified as part of Parcel # R1200498.

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

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EXISTING CONDITIONS:
The subject parcel is located within a I3 (Heavy Industrial) Zoning District within Section 7, Township 19 South, Range 2 East. The parent parcel has an existing 4,438 site built home constructed in 2015 with numerous agricultural/industrial warehouses and associated structures. The parcel is surrounded by mostly T2 (Rural), T3 (Neighborhood Edge) and I3 (Heavy Industrial). Access to the property is from Railroad Road, a NMDOT paved road. Water to the parcel will be provided by Rincon Water and a Septic Tank will be installed on the property.

The Request:
The applicant is requesting a Zone Change on a 4.00-acre parcel from an I3 (Heavy Industrial) zone to a T2 (Rural) zoning district to build a single family site built home.

BACKGROUND
The subject parcel had been zoned Performance District (PD) since the inception of the Land Use and Zoning Ordinance in 1995. In 1998 the owner started applying for non-residential applications for various agricultural processing facilities on the 97-acre parent parcel. They included:

- PDNR 98-003: Milling of raw wheat into flour an bran.
- PDNR 14-001: Pecan Cleaning Plant and Storage
- MSPA 16-001: Onion Processing Facility

The properties immediately east of the parent parcel have also received numerous non-residential applications for the existing Rio Valley Chili Plant and agricultural processing. On February 2, 2017, the Unified Development Code was implemented and I3 (Heavy Industrial) Zoning replaced the Chapter 250 Zoning of PD.

In January 16, 2019, the applicant received approval of a Claim of Exemption for a lot-line adjustment, resulting in the creation of the subject 4.00 acre parcel (Pg. 14, Tract 5) where the applicant wishes to construct a site built dwelling.
The Conceptual Site Plan/Survey (Pg. 14-15) shows that if the zone change is approved, the 4,00 acre parcel will be accessed through Railroad Road. 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.

**NOTICE / NOTIFICATION**

- Twenty (20) letters of notification were mailed to the property owners within the area of notice on February 4, 2019.
- Legal Ads were placed in the Las Cruces Sun-News on February 3, 2019.
- 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:** There are no additional landscape requirements until the zone change is approved. If the zone change is approved, the Unified Development Code (UDC) 350-507 requirements may apply depending on the final use.

**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:** No significant impact to the State’s highway system.

**NMED:** The down-zoning request will not significantly affect air quality, except for temporary construction related air emissions. Care should be taken during construction activities to minimize fugitive dust and equipment emissions. The proposed project is not expected to have any adverse impacts on ground water quality in the area of the project.
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: There will be only one single family home built on the 4 acre tract.
ii. Population: The family building the home will be part of the family which owns the adjacent businesses, farm land, and one of the other single family-family houses.
iii. Demographics: One new family on a new residence.
iv. Potential traffic flows and impacts: Very little impact on traffic.
v. Need for new commercial or residential activity: The property is located on a farm land which is by three commercial businesses, also there are several houses in the area. The business are family owned and seasonal.
vi. Potential water and sewer needs: Rincon Water will provide and septic tank will be installed.
vii. Existing infrastructure capacities and the ability of existing systems to accommodate new development: Water and septic will be available. There is an existing entrance and road that serves homes to the west, one home to the north and two businesses. This will also provide access to the new home.
viii. Environmentally sensitive areas, areas of historical significance, or areas that contain endangered or rare species of animal and plant life: There are no environmentally
sensitive areas, animal species or plant life in the area that will be affected, it is existing farm land.

ix. The impact of a proposed zone change on surrounding properties: The impact of the proposed change will improve the value of the surrounding properties and developing the four acres into one single-family site built home will improve the appearance of the existing farm land and will also help with maintenance of the proposed property and surrounding properties.


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 Zone Change request does not meet the following Goals and Actions within Plan 2040 provide the policies and criteria that are applicable for approval of Case # Z19-001, 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.

Additionally, the applicant has stated that “this zone change is not in conflict with the Comprehensive Plan or adopted county plans and amendments and is down zoning”.

The proposed Zone Change does not meet §350-203.D.4 as it is in conflict with the Comprehensive Plan, or approved County plans and amendments thereto as it is creating a residential zoning district within and industrial district.
§350-203.D.5 “Miller” Criteria

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.”

The applicant states: “The zone change is not necessary to protect public interests, is not needed to perfect a previous defective ordinance or correct a mistake or injustice. For this purpose, the Zone Change to T2 is the most appropriate zoning for this property. In closing, the Zone Change is a down zoning and will actually improve the property and surrounding properties in a positive way, breaking up the farm land and providing a buffer between the two commercial operations”.

The subject parcel had been zoned Performance District (PD) since the inception of the Land Use and Zoning Ordinance in 1995. In 1998 the owner started applying for non-residential applications for various agricultural processing facilities on the property. They included:

- PDNR 98-003: Milling of raw wheat into flour and bran.
- PDNR 14-001: Pecan Cleaning Plant and Storage
- MSPA 16-001: Onion Processing Facility

The 97-acre parent parcel has an existing 4,438 site built home constructed in 2015 which was allowed under the PD district. The properties immediately east of the parent parcel have also received numerous non-residential applications for the existing Rio Valley Chili Plant and agricultural processing. On February 2, 2017, the Unified Development Code was implemented and I3 (Heavy Industrial) Zoning replaced the Chapter 250 Zoning of Performance District.

The I3 (Heavy Industrial) Zone permits heavy-intensity industrial activities properly buffered from surrounding communities. When staff mapped zoned the area, it was considering the previously approved non-residential requests in subject parcel and surrounding areas to allow for expansion of the industrial use.

The Zone Change request does not meet the threshold of sufficient cause for the rezoning of the property. The applicant has not stated specifics in regards to the “change of conditions” or “Change or Mistake” that would justify the request. The request does not meet §350-203.D.5 of the Decisional Criteria of the UDC; therefore, does not satisfy the Miller Criteria to warrant the Zone Change in order to protect the public health, safety and welfare.

§350-203.D.11 Spot Zoning:

The requested Zone Change does not satisfy all three points of the 1999 Bennett ruling.

The applicant’s request for T2 Zoning would not be in harmony with the surrounding industrially zoned properties. The requested Zone Change for a 4.00-acre parcel within a 97-acre tract is not of sufficient size and it would be considered a spot zone. The proposed Zone Change request will only be beneficial to the applicant by allowing him to build a new site-built home with no benefit to the community.
Additionally, the applicant states “the Zone Change is a down zoning and will actually improve the property and surrounding properties in a positive way, breaking up the farm land and providing a buffer between the two commercial operations”.

These findings illustrate that the request is considered a spot zone per §350-203.D.11.

**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 is not in conformance with the following Goals and Actions within Plan 2040: Goal G2.2 Ensure Regulations Support the Plan Requirements.

6. The Zone Change request does not meet §350-203.D.5 as the applicant has not stated specifics in regards to the “change of conditions” or “Change or Mistake” that would justify the request. The Zone Change request does not meet the threshold of sufficient cause for the rezoning.

7. When the UDC went into effect on February 2, 2017, an I3 zoning designation was assigned to the property. The I3 (Heavy Industrial) Zone permits heavy-intensity industrial activities properly buffered from surrounding communities. When staff mapped zoned the area, it was considering the previously approved non-residential requests in subject parcel and surrounding areas to allow for expansion of the industrial use.

8. The Zone Change request is considered a spot zone per §350-203.D.11 as the T2 Zoning would not be in harmony with the surrounding industrially zoned properties. The requested Zone Change for a 4.00-acre parcel within a 97-acre tract is not of sufficient size and it would be considered a spot zone. The proposed Zone Change request will only be beneficial to the applicant by allowing him to build a new site-built home with no benefit to the community.

**STAFF RECOMMENDATION:**

Based on the request not meeting the applicable sections of the Doña Ana County Code, Chapter 350. The Unified Development Code, does not conform to elements of the Comprehensive Plan: “Plan 2040”, does not meet the Miller Criteria per §2.3.2 Decisional Criteria, is considered a “spot zone”, and the findings listed above, Staff recommends **Denial** of Case #Z19-001.
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Doña Ana County
Community Development Dept.
845 N. Motel Blvd.
Las Cruces, NM 88007

RE: Zone Change Request
For 3565 Rail Road Rd. Rincon, NM 87940

Narrative

Please accept our application to change the zoning at 3565 Rail Road Rd. Rincon, NM 87940. A tract of land west of Rincon, Doña Ana County New Mexico within Section 7, Township. 19S., Range 2 W. N.M.P.M. of the U.S.G.L.O. Surveys. See attached description and plat of survey.

We would like to change the aforementioned property (existing farm land) from I-3 to T-2. The property was zoned I-3 a few years back to accommodate a pecan cleaning plant and onion processing plant, as can be seen on the plot plan it was part of a large piece of farm land surrounded by more farm land. Attached is a plat of survey showing the four acres.

There will only be one single family home built on the four acre tract, Rincon water will supply the water and a septic tank will be permitted and installed by Johnny’s Septic Tank Co. Inc. The property is located on farm land which is by three commercial businesses, also there are several houses in the area. The businesses are family owned and are seasonal. The family building the home is part of the family which owns the adjacent businesses, farm land, and one of the other single-family houses.

We are down zoning and the home will improve the overall view of the area and will provide a pleasant view from Rail Road Rd.

There is an existing entrance and road that serves several homes to the west, one home to the north and two businesses. This will also provide access to the new proposed home site, there will be very little impact on traffic.

There are no environmentally sensitive areas, historical areas of significance, animal species or plant life in the area that will be affected, it is existing farm land.
The impact of the proposed change will improve the value of the surrounding properties and developing the four acres into one single-family home site will improve the appearance of the existing farm land and will also help with maintenance of the proposed property and surrounding properties.

The zone change is not in conflict with the comprehensive plan or adopted county plans and amendments.

The zone change is not needed to cover or protect a previous defective ordinance or correct a mistake or injustice.

The zone change is not necessary to protect public interests, is not needed to perfect a previous defective ordinance or correct mistakes or injustices.

For this purpose, the zone change to T-2 is the most appropriate zoning for this property. In closing, the zone change is a down zoning and will actually improve the property and surrounding properties in a positive way, breaking up the farm land and providing a buffer between the two commercial operations. The existing property is family owned and will remain family owned in the same family.

Thank you for accepting this application for zone change, if any further information is requested please let us know.

Regards,

[Signature]

Steve Warren
Warren Construction Inc.