SYNOPSIS:

The applicant is requesting a Zone Change on a 6.00-acre parcel from a D1 (Low Density Residential) Zoning District and C1 (Neighborhood Commercial) Zones to an I1 (Light Industrial) Zone for a contractor’s yard to include a warehouse for storage and office space.

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 property is addressed as 285 Carver Road, south of the City of Las Cruces, NM. It is within Section 32, Township 23 South, Range 2 East and it was recorded in the Office of the Doña Ana County Clerk on July 25, 2017, with Instrument #1717319. The subject parcel can be further identified by Parcel ID # R0313574. Access to the property will be from Carver Road, a paved, county maintained road.

The Request:
The applicant is requesting a Zone Change on a 6.00-acre parcel from a D1 (Low Density Residential) and C1 (Neighborhood Commercial) Zoning District to an I1 (Light Industrial) Zoning District. The applicant is requesting the Zone Change for a contractor’s yard which will include a warehouse for storage of tools and small equipment and office space for warehouse manager.

BACKGROUND
Existing Zoning: The subject parcel was zoned residential from the inception of the ETZ in 1989 as ER3M (Residential, 1-acre minimum new lot size, single-family site built homes and mobile homes). On January 15, 2003, the Extra-territorial Zoning Authority approved a zone change on the northern 3.5 acres of the 6.00 acre property from ER3M to EC1 (Neighborhood Commercial) to facilitate the operation of a non-conforming commercial greenhouse. The greenhouse began operation prior to the inception of the ETZ Ordinance (1989) and suspended operation in February 2001. Since the greenhouse was discontinued for a period exceeding one year, it was no longer grandfathered in; therefore they had to apply for a zone change. The southern 2.5 acres remained ER3M.

On February 2, 2017, the Unified Development Code was implemented and a D1 (Low Density Residential) and C1 (Neighborhood Commercial) replaced the ETZ Zoning of ER3M and EC1. A D1 residential zone is 1 acre minimum, and can have up to two dwellings and other uses by means of a Special Use Permit. Water is provided by the City of Las Cruces and there are no sewer services to the site at the moment. Several Zone Changes have been approved in the vicinity since the inception of the ETZ in 1989.

The Proposal: The purpose of the Zone Change is for a contractor’s yard which will include a warehouse for storage of tools and small equipment and office space for warehouse manager. Outside storage will consist of material, equipment, vehicles and trailers for transporting materials to job sites.
The Conceptual Site Plan (Pg. 15) shows that the facility will be accessed through the existing driveway off Carver Road. It also depicts the approximate location of a 1,800 sq. ft. building that will be used for warehousing and storage. The Conceptual Site Plan meets the requirements of § 2.3.b.iv 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.

NOTICE / NOTIFICATION

- 15 letters of notification were mailed to the property owners within the area of notice on November 16, 2018.
- Legal Ads were placed in the Las Cruces Sun-News on November 18, 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:** 1) Provide a STA for Traffic Generation onto Carver.

**DAC Flood Commission:** 1) Pursuant to FIRM No. 35013C1094G, the subject property is partially located within a FEMA Special Flood Hazard Area. A portion of the property lies in a FEMA Special Flood Hazard Area Zone “A”, “No Base Flood Elevations Determined”. The other portion of the property lies within FEMA “Other Areas”, Zone “X”, “areas determined to be outside the 500-year flood”. 2) The proposed site improvements will require additional on lot ponding during the permit phase of this development.

**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 comment.

**ACO/Codes:** The property has a violation of weeds (Solid Waste).

**NMDOT:** No significant impact to states highway system.

**NMED:** No Comments received.

**CLC Planning Department:** No issues.

**Mesilla Valley MPO:** Approved with no comments.
APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL

Ordinance No. 287-2016, Unified Development Code

§1.4.3.c Duties of the Planning and Zoning Commission: Receive, hear and make final determinations to approve, approve with conditions, or deny applications for zone changes.

§2.2.2 General Notice Requirements

§2.3 Zone Changes

§2.3.b Application Procedure

§2.3.b.iv 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.

§2.3.1 Public Hearing for a Zone Change

§2.3.2.a 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:

§2.3.2.d 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.

§2.3.2.e 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.

§2.3.2.f 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

§2.3.2.g The applicant has the burden of overcoming the presumption that the current zoning district designation is the most appropriate designation.

§2.3.2.k 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.

§2.3.2.a 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 (Pgs 16-18) staff analysis in bold:

i. Potential number of homes: No residential homes constructed on the site.
ii. Population: Zone Change will not increase population.
iii. Demographics: Zone Change will have no impact on the demographics of the area.
iv. Potential traffic flows and impacts: No additional accesses are planned for this parcel, the access will be provided through the roadway off Carver Road.
v. Need for new commercial or residential activity: New commercial classification will allow the property owner to utilize the parcel for Warehouse, vehicle parking and storage.
vi. Potential water and sewer needs: There are 2 Fire Hydrants, one at the intersection of Willow Glen and Carver Road 632’ from the property and another at the intersection of Turtle Creek Ave and Carver Road 615 feet to the property. Septic Tank will be installed as there is no sewer service available.
vii. Existing infrastructure capacities and the ability of existing systems to accommodate new development: Water service is currently at the existing site.
viii. Environmentally sensitive areas, areas of historical significance, or areas that contain endangered or rare species of animal and plant life: The parcel has no impact on environmentally sensitive areas.
ix. The impact of a proposed zone change on surrounding properties: The Zone Change should have no impact to the surrounding properties. The property has light industrial use to the north and south of the subject property. The property to the east is vacant land and to the west is residential.
x. Implementation of Best Management Practices for the development: **Landscaping and Buffering will meet the requirements of the UDC**

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

**§2.3.2.d Comprehensive Plan “Plan 2040”:**

The following Goals and Actions within Plan 2040 provide the policies and criteria that are applicable for approval of Case # Z18-001, 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.
- Encourage a variety of building types — particularly for affordable housing — and allow a variety of uses where they are compatible with each other.
- Designate locations for industrial uses where they would be convenient to residents

**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.

Additionally, the applicant has stated that with the rezone of the property there will be no additional accesses to this property. The owner has been in contact with adjoining property owners and has received no negative communication from them. The owner will be constructing a buffer around the property to minimize the impact.

The proposed Zone Change meets §2.3.2.d as it is not in conflict with the Comprehensive Plan or other adopted or approved County plans and amendments thereto.
§2.3.2.e  “Miller” Criteria

The subject parcel was zoned residential from the inception of the ETZ in 1989 as ER3M (Residential, 1-acre minimum new lot size, single-family site built homes and mobile homes). On January 15, 2003, the Extra Territorial Zoning Authority approved a zone change on the northern 3.5 acres of the 6.00 acre property from ER3M to EC1 (Neighborhood Commercial) to facilitate the operation of a non-conforming commercial greenhouse.

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.”

Per the applicant: The UDC should have considered the existing use at the time it was zoned to determine the appropriate zoning. There has not been any residential use on this property. The property was previously being used as a storage lot for mobile homes.

When the UDC went into effect on February 2, 2017, a D1 (Low Density Residential) and C1 (Neighborhood Commercial) replaced the ETZ Zoning of ER3M and EC1. When staff mapped zoned this area of Carver Road, it was hard to predict which properties would become commercial/industrial. This could be considered an oversite as this frontage of Carver Road is already zoned for I1 as well as other surrounding properties. Approving the 6 acres as a light industrial zone would allow the applicant to gain additional space and operate this business in a more safe and efficient manner.

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 §2.3.2.e 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.

§2.3.2.f 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 D1 (Low Density Residential) and C1 (Neighborhood Commercial), or possibly subdivide into 1-acre lots.

§2.3.2.g Current Zoning Most Appropriate

The applicant’s requested use of the property will be for additional vehicular parking and storage for the proposed business. Pursuant to §2.3.2.g the applicant has overcome the presumption that the current zoning is the most appropriate, as the project site is not suitable for residential development due to its lack of wastewater services. If approved, the business will be appropriately buffered from the nearby large lot residential areas mitigating any negative visual impacts.
2.3.2.k Spot Zoning:

The requested Zone Change does satisfy all three points of the 1999 Bennett ruling. The applicant’s request for I1 Zoning would be in harmony with the nearby properties and uses. Although there are residentially zoned properties located to the west and east (vacant) of the subject parcel, the property immediately north and south are zoned Industrial.

The requested Zone Change of 6.00-acres is of sufficient size that it would not be considered a spot zone as there are properties in the surrounding area and adjacent to that are zoned industrial.

The proposed Zone Change request will be beneficial to the applicant by allowing her to expand the business in the area, create economic development, increase tax base and provide jobs to the community. The property does not have wastewater services in the area thus, not conducive to dense residential development. Additionally, with the existing industrial uses surrounding the property and lack of wastewater services, dense residential development would not be desirable or compatible with this area. These findings illustrate that the request would not be considered a spot zone per §2.3.2.k.

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 FINDINGS:

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

2. Pursuant to §1.4.3.c, 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 §2.3.1 Public Hearing for a Zone Change.

4. The applicant’s request meets §2.3.2.a 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 Goal G2.2 Ensure Regulations Support the Plan Requirements, Economic Opportunity Goal G6.7: Support Regional Small-Scale Businesses Including Agriculture, thus, §2.3.2.d of the UDC is met.

6. The Zone Change request meets §2.3.2.e as there has been a change in conditions in the area with the approval of Zone Changes to industrial and commercial zoning.

7. When staff mapped zoned this area of Carver Road, it was hard to predict which properties would become commercial/industrial. This could be considered an oversite as this frontage of Carver Road is already zoned for I1 as well as other surrounding properties. Approving the 6 acres as a light industrial zone would allow the applicant to gain additional space and operate his business in a more safe and efficient manner.

8. 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 D1 (Low Density Residential) and C1 (Neighborhood Commercial), or possibly subdivide into 1-acre lots.

9. The applicant has overcome the presumption that the current zoning designation is the most appropriate zoning designation per §2.3.2.g as the proposed additional vehicular parking and storage for his existing business will more readily conform to the surrounding uses and zones. If approved, the business will be appropriately buffered from the nearby residential areas mitigating any negative visual impacts.

10. The Zone Change request would not be considered a spot zone per §2.3.2.k as it is in harmony with other industrial uses in the immediate area, is of sufficient size at 6.00-acres, and there are properties in the surrounding area and adjacent to that are zoned industrial. 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 Unified Development Code Ordinance No. 287-2016, 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 #Z18-007.

1. A detailed site plan shall be prepared by a professional engineer licensed in the State of NM and shall include a buffer/landscaping plan.
CLOSE-UP OF SUBJECT PROPERTY
AREA LAND USES
# NOTIFICATION TABLE

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CONCEPTUAL SITE PLAN
PROJECT NARRATIVE

The property located at 285 Carver Rd in Las Cruces, Dona Ana County, New Mexico has split zoning Commercial C1 and Residential R1. The property consists of one 6 acre tract of land. The properties to the north and south of the parcel are zoned I1 Light industrial. The UDC should have considered the existing use at the time it was zoned to determine the appropriate zoning. Attached is a google map which shows the property previously being used as a storage lot for mobile homes. There has not been any residential use on this property.

The applicants have an offer to acquire the property contingent upon zoning to I1. Applicants will construct a warehouse for storage of tools and small equipment and office space for warehouse manager. Outside storage will consist of material, equipment, vehicles and trailers for transporting materials to job sites.

Decisional Criteria for the zone change:

- There will be no residential homes constructed on the site
- The zone change will not increase any additional population
- The zone change will have no impact on the demographics of the area (age, gender and income).
- No additional accesses are planned. Access will be provided through the roadway off Carver to the subject property.
- City water is at the subject property. Septic tank will be installed as there is no city sewer service available. Water and sewer will be installed to meet Dona Ana County building code requirements.
- Fire hydrants- there are 2 fire hydrants, one at the intersection of Willow Glen and Carver Rd 632ft from the property and another at the intersection of Turtle Creek Ave and Carver Rd 615 feet to the property.
- Water service is currently at the existing site. (Attached is confirmation of water service from the City of Las Cruces)
- This parcel has no impact on environmentally sensitive areas.
- The zone change should have no impact to the surrounding properties. The property has Light Industrial uses to the north and south of the subject property. The property to the east is vacant land and to the west is residential.
- Landscaping and Buffering will meet the requirements of the UDC.
PROJECT NARRATIVE (page 2 of 2)

Zone change is supported by:

a. This zone change is to correct a mistake as the UDC should have considered looking at existing conditions when the zone change was determined. Maps from 2014 show the property being used as a storage yard for mobile homes. The proposed use of the property will be consistent with I1 zoning which abuts the property to the north and south. Additionally, the property has 2 different zone classifications with no property line delineating the zones.

This rezone is the most appropriate zoning designation as it currently abuts I1 (Light Industrial) to the north and south of the parcel and the use on the property previous to the adoption of the UDC was I1.

The size of the area to be rezoned is the 6 acre tract.

The public will benefit from the zone change because the property will be cleaned and put to use.

The rezone of the property will not require additional access to be created. The applicant has been in contact with adjoining land owners and have not received any opposition to the zone change.
A Site Threshold Assessment (STA) is required of all developing or redeveloping properties within Dona Ana County.

Permit Application

Applicant Name: Padilla
Business Name: 293 Carver Rd
City: Las Cruces

Site Description

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Building Size (SF): 2,000
Parcel Size (ac): 16.00
Roadway Frontage (ft): 200

The STA examines existing roadway volumes and anticipated site trip generation for the purpose of determining if additional analyses are required. If the site characteristics and the trip generation estimate for a proposed development do not satisfy the requirements for a STH or a TIA as determined by the County Engineer, the STA should be approved and the traffic study requirement for the proposed development will be complete. If additional analysis is required based on the results of the STA, the County Engineer should indicate to the applicant the level of analysis that is required.

Existing Roadway Data

Road Name: Carver Rd
Count Year: 2017
Number of Lanes (two-way): 2

Trip Generation

ITE Trip Generation Land Use Category:
AM Peak Hour Trips
PM Peak Hour Trips

Exceeds Threshold: Y or N
If yes, is a STH or TIA Required?

Notes: Total Trips 54