MEETING DATE: December 13, 2018
REQUEST: County Initiated Zone Change from T3 to C1
CASE #: Z18-007
PURPOSE: Correct a zoning classification error on official Zoning Map
PROPERTY OWNER: Brio Commercial LLC
Oscar Del Valle
APPLICANT: Doña Ana County
LOCATION: 300 South Highway 28 Southeast of La Union, NM.
PROPERTY SIZE: 2.00-Acres
PARCEL ID NO.: R1705563
RECOMMENDATION: Approval
CASE MANAGER: Albert Casillas Planner

SYNOPSIS:

Dona Ana County is requesting a zone change from T3 to C1 to correct a zoning classification error on the official County Zoning Map pursuant to §350-203.E “Change-Mistake Rule” of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended) on a parcel consisting of 2.00-acres.

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

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Existing Conditions and Zoning:
The parcel consisting of 2.00-acres is located southeast of La Union, NM and is addressed as 300 South Highway 28. The applicant had previously submitted the following non-residential application on the subject parcel that have received approval:

- Case # PDNR (L) 15-007 to operate a banquet hall from an existing 3,738 sq. ft. building.

The property is described as being within Section 34, Township 27 South, Range 3 East and was recorded in the Doña Ana County Clerk’s Office on June 6, 2018 as Instrument #1813635 and can be further identified by Parcel ID # R1705563. The subject parcels where zoned T3 (Neighborhood Edge) zone under the UDC.

The Request:
Doña Ana County is requesting a Zone Change from T3 (Neighborhood) to C1 (Neighborhood Commercial) as it appears to have been incorrectly zoned based on the existing land uses.

BACKGROUND
On December 13, 2016, the Unified Development Code and the Official Zoning Map of Doña Ana County, which included the zoning classification error, was approved by the Board of County Commissioners and went into effect on February 2, 2017. The property owner alerted staff to the zoning classification error on the Zoning Map and the County initiated Zone Change request was prepared by County staff. The zoning classification prior to the UDC coming into effect was the Performance District zoning of PC-1, Low Intensity Nonresidential Use.
NOTICE / NOTIFICATION

- 20 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 were posted on the property in a timely manner.
- Agenda posted on the DAC Web site.

PUBLIC COMMENTS
No correspondence was received in support or opposition to the requested zone change.

AGENCY REVIEWS

DAC Engineering: No Comments.

DAC Flood Commission: 1) Pursuant to FIRM No. 35013C1725G & 1750G, the subject property is located within a FEMA “Other Areas”, Zone “X”, “areas determined to be outside the 500-year flood”. Note that properties that are not located within the FEMA Special Flood Hazard Areas are still susceptible to localized flooding.

DAC Fire Marshal: Zone Change approved only.

DAC Building Services: No Comments.

DAC Rural Addressing Coordinator: No Comments.

DAC Zoning Codes: No Comments.

ACO/ Codes: No Violations.

NMDOT: No issues or concerns on zone change.

NMED: No Comments received.

APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL

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

§350-202.B General Notice Requirements

§350-203 Zone Changes

§350-203.B Public Hearing for a Zone Change – The P&Z shall approve, conditionally approve, or deny a zone change request.

§350-203.D Decisional Criteria for a Zone Change
§350-203.E Change-Mistake Rule
In the event of a zoning classification error by the County on the official County Zoning Map, the County staff shall correct the error through a County-initiated zone change at no cost to the applicant. This Zone Change request is the result of an error on the Official Zoning Map for the subject parcel that did not reflect the appropriate zoning classification of CI (Neighborhood Commercial) for the Non Residential parcel. This request seeks to correct that error with the appropriate zoning categories approved and incorporated into the UDC.

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.

Prior to the UDC in 2010, a Non-Residential application was approved for the purpose of operating a banquet hall from an existing 3,738 sq. ft. building.

Further, the applicant in his narrative states that the existing zoning of T3 is incorrect as it does not permit the existing and future additional uses such as Adult Day Care as the previous code allowed.

When the Official Zoning Map of Doña Ana County was produced in conjunction with the UDC Ordinance, the PC-1 was replaced with the T3 (Neighborhood Residential) Zone classification without comparing the permitted uses in each zone. Staff determined that the error was due to a clerical error and seeks to replace the incorrect zoning classification with the appropriate UDC zoning classification that reflects the existing uses and structures on the property.

Under the previous Chapter 250 “Land Use and Zoning” any use could have been approved, provided that all development standards for that particular use were met. Development standards for land uses were based on the intensity of the primary use of a parcel of land and the square footage for the proposed buildings. In Case # PDNR (L) 15-007, the proposed square footage for buildings would not be greater than 5,000 sq. ft., resulting in the low intensity non-residential designation.

After becoming aware of the clerical error on the Official Zoning Map, the County is requesting a zone change pursuant to §350-203.E Change-Mistake Rule, of the UDC to correct this error.

Original County Zoning District:
PD (Performance District) “The purpose of the Performance Zone District is to allow flexibility for land use activities in the rural areas of the County, while protecting residents and property values. In the Performance Zone District, any use may be approved, provided that all standards for that particular use are met and the use is consistent with the character of the surrounding areas. Standards for land uses are based on the intensity of the primary use of a parcel of land”.

PC-1 (Low-Intensity Non Residential Use) “The purpose of the PC-1 low intensity nonresidential classification is to provide standards for nonresidential land uses and agriculture that are categorized as having little or no impact on surrounding residential uses. Permitted uses include agriculture, agricultural packaging and warehousing, neighborhood commercial and personal services. Such uses are intended to serve the packaging and shipping needs of farms and ranches nearby; and to provide retail goods and services as well as institutional uses to a neighborhood or
a small area of the County.” Allowed uses include: Auto Related Repair & Services (No auto painting or body work), Banks, Business Services, Bars and Lounges, Child and Adult Care, Commercial Laundries, Convenience Store, Flea Markets, Kennels, Mini-Storage Units, Ornamental Welding and Light Fabrication, Retail Services and RV Parks to name a few.

Current UDC Zone:
T3 (Neighborhood Residential) Zone consists of low-density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings. Parkways within thoroughfares and yard plantings shall be naturalistic and building setbacks shall be relatively deep. Blocks are large and thoroughfare networks irregular. Land Uses allowed: Single Family Dwelling (Mobile Home or Site Built), Community Building Public and Private, Recreation and Sports Facility Public, Farming and Ranching (A). Childcare as a Home Occupation.

Proposed UDC Zone:
C1 (Neighborhood Commercial) Zone permits neighborhood commercial activities and small-scale freestanding businesses. Land Uses allowed: Laboratory, Scientific, Ag Research, Office and Service, Office, General, Office, Small, Commercial Laundry, Commercial Use Not Elsewhere Classified, Convenience Store, Display Gallery, Gas Station, Kiosk, Retail Facility, Large, under 10,000 sq. ft., Bar, Pub, Tavern, Child and Adult Care Commercially Operated, Recreation and Sports Facility, Public and Private, Automobile Related Repair and Service but not Auto Painting or Body Work, Laboratory Facility.

Staff proposes to rezone the parcel consisting of 2.00-acres from T3 (Neighborhood Residential) to C1 (Neighborhood Commercial) Zone as the uses under C1 are more closely aligned to the previously PC-1 zoning of the Performance District.

STAFF FINDINGS:

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

2. The property is located southeast of La Union, NM and is addressed as 300 South Highway 28.

3. The Official Zoning Map of Doña Ana County classifies the subject parcel as a T3 (Neighborhood Residential) Zone on a parcel consisting of 2.00-acres and should be C1 (Neighborhood Commercial) Zone to correct the zoning clerical error as the uses under C1 are more closely aligned to the previously PC-1 zoning of the Performance District.

4. This Zone Change request is authorized by §350-203.E Change-Mistake Rule of the UDC to correct a zoning classification error on the Official Zoning Map of Dona Ana County and all procedures for a zone change have been followed per §350-203 Zone Changes.

STAFF RECOMMENDATION:

Based on the request meeting the applicable sections of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended), and the findings listed above, Staff recommends Approval of Case #Z18-007 to correct the clerical error and change the zoning classification from T3 to C1.
APPLICANT LETTER

Los Portales
HISTORIC EVENT VENUE

10/27/2018

Mr. Albert Casillas
Dona Ana County Planning and Zoning

Dear Mr. Casillas

This letter is in reference to the zoning of Los Portales in Dona Ana County. The address of the property is 300 S. Highway 28, Anthony N.M. 88021. In 2015 and 2016 we went through the process of zoning this property for use as a banquet hall, the zoning was approved and we were issued a Certificate of Occupancy for Los Portales as a banquet hall. In May of 2018, we went to planning and zoning and Building Services to try to add an additional use and occupancy of A4 (Adult day care) to our current A2 occupancy (assembly) to be able to have multiple use and have a small adult day care center from Monday through Friday, and our regular banquet hall use on Saturday and Sunday. At P&Z we were informed that Dona Ana County had change the zoning to a new code, the Unified Development Code, and our property is now zoned T3 under UDC, which to my understanding does not allow banquet halls under T3. I was explained that the UDC classifies us as ‘legal but non-conforming’ since we were already approved and operating prior to the adoption of the UDC (grandfathered-in). However, we would like to request if the County and P&Z to change our zoning to C1 or C3, to be able to be completely legal and conforming. We are located in the corner of a main state highway (HWY 28), and a main county street (Westside Rd.). Two years ago when we went through the zoning process we submitted all our plans, drainage, parking places, and met all requirement by the Dona Ana county P&Z, Buildings services, and Fire Marshal to be 100% in compliance as a commercial property. Since the zoning of this property is very recent and the adoption of UDC is new, we believe the county can rectify this issue.

In June 2018, Building Services and Fire department approved the multiple usage as a banquet hall-adult day care. We are in the process of getting our license from the Department of Health from the State of New Mexico for the Adult Day Care. They requested a zoning verification letter that an adult day care is permitted at our location. We would also like to request if P&Z can fast track the process since we have been trying to resolve this since May of 2018. We are not changing anything to the building, and/or not adding new rooms. The property will remain exactly the same. Two years ago we went through the entire process of zoning to do a banquet hall, and none of our neighbors objected to the banquet hall,
which is noisier in nature, and events generally take place during evening hours. The adult day care is quieter, and takes place during morning and afternoon hours. An A2 occupancy is much more restrictive than an I4. The building is 3,700 square feet. The main banquet hall area has three (3) large double doors directly to the exterior, none of them more than 25 feet away in either direction. The catering kitchen has also a door to the exterior, and the resting room, also has a door to the exterior. We have a 99 occupancy load for both the day care and banquet hall. As previously mentioned, two years ago we went through the entire process to get the banquet hall approved, and none of our neighbors objected to the banquet hall, which is noisier in nature, and events generally take place during evening hours. The adult day care is quieter, and takes place during morning and afternoon hours. An A2 occupancy is much more restrictive than an I4.

Updating the zoning to our location will benefit our community since there will be an option for seniors to have a high quality day care center close to their homes, and will create at least 13 new job openings in the area.

As per our conversation with you and previously with Mr. Marmolejo, will Dona Ana County initiate the zoning change? What do we need to do in our part to resolve the zoning? And how can we speed it up so we can continue with licensing process with the Department of Health

Your assistance and help in resolving this zoning issue, will be greatly appreciated.

Sincerely

Oscar Del Valle
ORIGINAL NON-RESIDENTIAL SITE PLAN
CLOSE-UP OF SUBJECT PROPERTY
PROPERTY NOTIFICATION AERIAL
## NOTIFICATION TABLE

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