

CONTENTS

- Sec. 3-4. Zoning Procedures..... 206
 - A. Zoning Map Amendments206
 - B. Site Plans208
 - C. Building Permits and Certificates of Occupancy211
 - D. Planned Unit Developments (PUDs).....212
 - F. Special Use Permits (SUPs)..... 216
 - G. Zoning Variances 218
 - H. Nonconformities..... 219

Sec. 3-4. Zoning Procedures

A. Zoning Map Amendments

1. The zoning map may be amended (i.e., rezonings, boundary changes, or district changes) in accordance with NMSA 3-21-6, as amended.
2. Application Procedures
 - a) Applications shall be submitted to the Community Development Department.
 - b) Application submittal requirements for the include, but are not limited to, the following:
 - i) Official zoning application and **Development Statement** that meets the following conditions:
 - a. The application shall be signed by all property owners of record (including all trustees of an estate or all persons that have a specific "power of attorney" for the subject property as recorded in the Dona Ana County Clerk's Office.) Persons who have an equitable interest in the subject property, but no legal title, shall not be deemed the "owners of record" of said property for purposes of this Code. The Community Development Director may reject any application if the ownership of the subject property is not clearly established.
 - b. Any pending litigation or any Final Order entered by any Court of Law regarding the ownership of the subject property shall be disclosed by the applicant at the time the application is submitted.
 - c. Copy of notification letter to the noticed area and copy of minutes (summary or verbatim) from meeting pursuant to **Sec. 1-3.I. Early Notification and Meeting Requirements**.
 - ii) Submittal fee,
 - iii) Notarized affidavit,
 - iv) **Copy of property's survey and legal description:**

An accurate and complete boundary survey shall be made of the land to be rezoned. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable.
 - v) Copy of site plan (if applicable),
 - vi) A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director, the Planning and Zoning Commission, or the City Council.
 - vii) Description and justification of requested variances (if applicable),
 - viii) Request and justification to waive submittal requirements (if applicable), and
 - ix) **For rezoning requests of areas 50 acres or larger, a Master Plan in accordance with Sec. 4-3.A. Master Plan shall be submitted in conjunction with the rezoning application.**
3. **Criteria for Review and Decisions**
 - a) In considering all requests, the decision-maker shall review the **Elevate** Comprehensive Plan and other applicable plans and codes and determine whether the request will:
 - i) Impair an adequate supply of light and air to adjacent property or otherwise adversely impact adjoining properties.
 - ii) Unreasonably increase the traffic on public streets.
 - iii) Increase the danger of fire or endanger the public safety.
 - iv) Deter the orderly and phased growth and development of the community.
 - v) Unreasonably impair established property values within the surrounding area.

Does the City have a current definition for a Development Statement? This is probably a good requirement to keep since the smaller rezonings don't require a concept plan.

- vi) In any other respect impair the public health, safety or general welfare of the City.
 - vii) Constitute a spot zone and, therefore, adversely affect adjacent property values. The term "spot zoning" means the singling out of a lot or small area for a zoning change which is out of harmony with the Elevate Comprehensive Plan and surrounding land uses to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.
 - viii) Be in harmony with the purpose and intent of the Zoning Regulations, Design Standards, and other companion codes.
- b) The decision-maker shall consider present and future needs and promote the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
 - c) The decision-maker shall encourage the proper use and development of land, shall seek to create and maintain an aesthetic setting, and protect and preserve the quality of the water, air and other environmental, natural, historical and cultural resources for the city.
 - d) Before taking any action concerning land use and development and financing and location of capital improvements, if a finding is made that a proposed action is inconsistent with the comprehensive plan, the Commission shall recommend to the City Council either that the plan shall be amended in accordance with the proposal or that the original proposal shall be amended to be in conformity with the plan or that the proposal be rejected.
4. Public Hearing and Notice Required
- a) No zoning regulation, restriction or boundary shall become effective, amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard.
 - b) Notice shall be provided in accordance with **Sec. 1-3.H. Notice for a Public Hearing.**
5. Hearing and Recommendation - Planning and Zoning Commission
- a) The Planning and Zoning Commission shall hold a public hearing on the proposed amendment, then provide a report and recommendation to the City Council to approve or deny the proposed amendment.
 - b) The recommendation may be made by a simple majority vote of the Planning and Zoning Commission.
6. Hearing and Final Action - City Council
- a) Following receipt of the report and recommendation from the Planning and Zoning Commission, the City Council shall hold a public hearing to approve or deny the proposed amendment.
 - b) Zoning Map amendments may be approved by a simple majority vote of the City Council.
 - i) Exception: In accordance with NMSA 3-21-6.C., if the owners of 20 percent or more of the area of the lots and of land included in the area proposed to be changed by a zoning regulation or within 100 feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a majority vote of all the members of the City Council.
 - ii) Special Use Permits shall not be considered a zoning district change.
 - iii) A variance may be approved as part of a zoning district change request.
 - iv) The City Council is also authorized to remand the request back to the Planning and Zoning Commission for further study and consideration.
7. Recordation of Zoning Map Amendment

When approved by the City Council and the 30-calendar day appeal period has expired, the zoning district change shall be recorded and shown on the Official Zoning Map.

Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

B. Site Plans

1. Purpose

The purpose of the Site Plan process is to facilitate the review of proposed improvements to property. Through Site Plan review, the City and other jurisdictional agencies can effectively apply the standards of this Code and other applicable development standards to multi-family, mixed-use, and nonresidential development.

This process is intended to promote the efficient use of land, safe vehicular and pedestrian circulation, appropriate provision of open space, parking, screening, and lighting.

2. Applicable Regulations

All Site Plans must conform with applicable requirements and regulations found in the following documents:

- a) This Development Code;
- b) Fire Code;
- c) Building Code; and
- d) All technical manuals outlined in **Sec. 1-1.E. Technical Manuals**.

3. Site Plan **Applicability**

The following applications require Site Plan approval:

- a) A request for approval to construct one (1) or more residential buildings consisting of **more than two (2) units**;
- b) A request for approval to construct residential and nonresidential uses in the same building (i.e., mixed-use);
- c) A request for approval to construct a nonresidential development;
- d) A request for approval to construct a building within a Planned Unit Development district (see **D. Planned Unit Developments (PUDs)**), unless otherwise exempted in this Development Code or in the ordinance adopting the Planned Unit Development district;
- e) A request for a shared nonresidential facility within a residential subdivision, such as a clubhouse, amenity center, pool house, or gated entry maintained by a homeowners' association;
- f) A request for approval of a Special Use Permit (see **F. Special Use Permits (SUPs)**); or
- g) Expansion or reconstruction of a building identified above, or an existing building that changes from a use not listed above to a use listed above.

Discuss threshold; only a building permit would be needed for SF/2F

4. Approval Process

a) Administrative Site Plan

- i) The Community Development Director is responsible for approving a Site Plan with no associated Planned Unit Development district or Special Use Permit if it meets all the requirements of the Development Code.
- ii) The Community Development Director may authorize review and approval of a Site Plan simultaneously with review and approval of a Building Permit, Landscape Plan, Lighting Plan, or other plans required by this Development Code.
- iii) Community Development Director Action

The Community Development Director will inform the applicant of any deficiencies and provide instructions for the resubmittal of corrected plans in accordance with the City's adopted Development Schedule.

b) Site Plan with Special Use Permit Request

A Site Plan submitted as part of an SUP request shall require a public hearing and decision by the Planning and Zoning Commission.

- c) Site Plan with a Planned Unit Development
 - A Site Plan submitted as part of a PUD district shall require a public hearing and recommendation by the Planning and Zoning Commission and a public hearing and decision by the City Council.
- 5. Use of Existing Building
 - a) If the Site Plan request involves use or expansion of existing buildings or structures, the Building Official may conduct an inspection of buildings or structures to be utilized or expanded to determine the adequacy of the buildings or structures to support the proposed use and to make recommendations for improvements to the buildings or structures.
 - b) The decision-maker may condition approval of the Site Plan on compliance with the Building Official's recommendations, and the Building Official may withhold a Certificate of Occupancy if the buildings or structures do not comply with the conditions.
- 6. Site Plan Effect of Approval
 - a) By approving a Site Plan, the City authorizes the applicant to apply for approval of a building permit and to receive approval of construction plans associated with the property for which the Site Plan was approved.
 - b) During the time the Site Plan remains valid, the City will not apply additional requirements concerning building placement, streets, drives, parking, landscaping, or screening.
- 7. Amendments to Administratively Approved Site Plans
 - a) The Community Development Director may approve changes to a Site Plan that was originally approved administratively without requiring the applicant to submit a new Site Plan if the requested changes meet the following criteria:
 - i) Adjustments of no more than 10 percent or 50 feet in any direction, whichever is less, to the location or configuration of roadways, sidewalks, utilities, parking areas, buildings, landscape features (shrubs and trees), ponds, or any other improvements depicted on the Site Plan.
 - ii) Adjustments of no more than five percent to the building square footage of any individual building to be constructed within the area of the Site Plan. Administrative adjustments made by the Community Development Director must comply with limitations (minimum or maximum) on impervious cover, height, or floor area for the district.
 - iii) Adjustments of no more than ten percent to the parking required within the area of the Site Plan.
 - iv) Is a minor adjustment to flat work such as curbs, sidewalks, streets, decks, and other paved areas if there is no net increase in impervious coverage within the area of the Site Plan.
 - v) Adjusts any building façade, including adjustments to materials, colors, windows, weather protection such as awnings and porticos, or building height adjustments of ten feet or less.
 - vi) Does not authorize the construction or relocation of any retaining wall, regardless of whether the retaining wall is shown on the Site Plan.
 - b) The Community Development Director is not authorized to make an administrative adjustment that increases residential unit density, adds one or more floors, or reduces compliance with any architectural or building height requirements of this Development Code.

Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

8. Dormant Site Plans and Site Plan Expiration

- a) Other than Site Plans associated with an SUP, a Site Plan approval expires two (2) years from the approval date unless an applicant or property owner demonstrates **Progress Toward Completion** or a new Site Plan is approved for the property.
- b) If other plans, plats, permits or other activity qualifying as Progress Toward Completion are approved for a portion of the property for which a Site Plan has been approved, the Site Plan for the remaining portion will expire unless otherwise exempted from expiration.
- c) If a Site Plan expires, all vesting claims shall also expire on the property, and the applicant must submit a new Site Plan subject to the regulations in place at the time.

Note, typical definition:

Progress towards completion of the project shall include any one of the following:

- a. An Application for a Final Plat or plan for development is submitted;
- b. A good-faith attempt is made to file with the City or County an application for a permit necessary to begin or continue towards completion of the project;
- c. Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- d. Fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- e. Utility connection fees for the project have been paid to a regulatory agency.

9. Revocation of Site Plan Approval

The City may revoke approval of a Site Plan if the City determines that the applicant has not met the conditions of approval or if the Site Plan contains, or is based upon, incorrect information or if approval was obtained using fraud or deceit.

10. Additional Development, Site Modifications, or Redevelopment

Following the completion of improvements shown on an approved Site Plan, additional development, site modifications, or redevelopment of the site shall be permitted subject to the approval of a revised Site Plan, which shall be considered a new project and shall require submittal and approval of a revised Site Plan.

11. Site Plan Submittal Requirements


The Site Plans shall be at a scale that adequately represents the information as determined by the Community Development Director. The plans shall be prepared electronically in PDF format. Plans shall be legible and of a good quality, with no limit to the number of sheets used. The plans shall indicate the following:

- a) Title of Site Plan.
- b) Total acreage of site.
- c) Date of preparation, north arrow, written and graphic standard engineering scale.
- d) Identification of site by lot, block, subdivision, if applicable.
- e) A statement of ownership, signed by the property owner.
- f) Name and address of property owner.
- g) Name and address of applicant, if applicable.
- h) Name and address of consulting firm or representative, if applicable.
- i) Location and type of all land uses.
- j) All site improvements with all setbacks indicated.
- k) Dimensions of all buildings.
- l) Existing and proposed vehicular circulation systems, including parking areas, storage areas, service areas, loading areas, and major points of access, including street pavement width and right-of-way.
- m) A landscaping plan, to include the location, size, common name, and biological name of all landscaping materials.
- n) Where applicable, pedestrian and bicycle circulation system, and its relation to surrounding circulation.



- o) Where applicable, location and arrangement of all open space, common recreational space, and private open space.

C. Building Permits and Certificates of Occupancy

1. No permit for the construction of a building, fence, wall, sign, or any other structure that requires a building permit shall be issued until the lot is part of a plat of record, approved by the City and filed with the County 
2. No building hereafter erected or structurally altered shall be used, occupied, or changed in use or occupant until a Certificate of Occupancy has been issued by the Building Official, stating that the building or proposed use of the building/premise complies with the City's adopted construction and safety codes and the provisions of this Development Code.

Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

D. Planned Unit Developments (PUDs)

1. General Provisions

- a) PUDs are intended to support innovative developments that otherwise cannot reasonably be accommodated by the Development Code. The PUD process is not intended as a method to avoid the Code's standards. A developer shall not be granted a deviation to planning-related minimum standards without providing a **public benefit** to the community.
- b) All contiguous property owned or legally controlled by the applicant shall be included within the PUD.
- c) A Planned Unit Development shall meet all standards established by this Development Code and the identified base zoning district unless specifically indicated otherwise within the PUD.

2. Review Procedures

a) Authorization

A Planned Unit Development (PUD) is a zoning district change and is not permitted by-right in any zoning district. The procedures and requirements in this section shall govern the development of a PUD.

b) Process

Each PUD shall require the following steps:

- i) Step 1: Pre-Application Meeting with a Sketch Plan;
- ii) Step 2: Concept Plan with zoning action;
- iii) Step 3: Platting, if required; and
- iv) Step 4: Site Plan(s)

c) Step 1: Pre-Application Meeting

Any proposed PUD shall first be reviewed at a pre-application meeting scheduled and held by the Community Development staff. The submittal of a Sketch Plan is required for the pre-application meeting for a PUD. See **Sec. 1-3.B. Pre-Application Meeting** for more information.

d) Step 2: Concept Plan

i) Concept Plan Purpose

The Concept Plan is intended to serve as a tool that can assist in identifying the appropriateness of a proposed development within the context of its surroundings. The Concept Plan forms the basis for approval of the PUD.

ii) Concept Plan Application Submittal

The Concept Plan and supplemental application material shall be submitted to the Community Development Department no later than 60 calendar days prior to the date of the regular meeting of the Planning and Zoning Commission. The application is subject to a determination of completeness by City Staff (see **Sec. 1-3.C.4. Complete Application** for more information).

iii) Approval Criteria

The Concept Plan may be approved only if it includes the following findings:

- a. The proposed construction and use of the PUD will not be detrimental to the health, safety or welfare of the community or adjacent neighborhood;
- b. There is or will be adequate sewage capacity, roadway capacity, energy supply, and potable water supply to serve the PUD at the time a certificate of occupancy or letter of acceptance, as applicable, is to be issued;
- c. The PUD conforms to the intent, goals, objectives, policies, and standards of all City plans and codes (unless deviations are specifically noted);
- d. The uses proposed, including their density and intensity, are appropriate to the character of the neighborhood and will have a positive aesthetic effect on the neighborhood in which the PUD will be located; and
- e. The proposed uses will not subject surrounding properties and pedestrians to hazardous traffic conditions.

iv) Community Development Department Recommendation

The Community Development Department shall review the submittal and prepare a written staff report with recommendations, which shall be provided to the Planning and Zoning Commission along with the Concept Plan. The report shall recommend that the Concept Plan be approved, conditionally approved, disapproved, or postponed.

v) Concept Plan Public Hearings and Approval

The Planning & Zoning Commission and City Council shall act upon the Concept Plan application in accordance with **A. Zoning Map Amendments**. The applicant or applicant's representative shall be present at the public hearings for the proposal to be considered. If the applicant or representative is not at the public hearings, the Concept Plan shall be postponed until the next regular meeting. The decision-makers may impose additional conditions as part of the terms of approval.

vi) PUD Shown on Zoning Map at Concept Plan Approval

If the Concept Plan is approved or conditionally approved by the City Council, the PUD shall be shown on the Official Zoning Map as PUD replacing the existing zoning districts.

vii) Concept Plan Effective Period

The approved Concept Plan shall be effective for a period of five years. If a Site Plan for all or part of the area has not been approved by the City Council by the expiration of the five-year period, the Concept Plan shall expire and a new Concept Plan will be required. If the property owner desires to revert the property to its previous zoning (or any other zoning designation besides the approved PUD), a rezoning in accordance with **A. Zoning Map Amendments** is required.

- a. Prior to the expiration date, the Community Development Director may approve a request for an extension of time of up to two years. After the first extension, the Planning and Zoning Commission shall consider any other time extension request. When at least one Site Plan has been approved, the Concept Plan shall remain effective until amended.

viii) Concept Plan Amendment

Any substantial change proposed that would affect the approved Concept Plan shall require re-submittal of the Concept Plan in its entirety. Minor changes are those changes that are not substantial and may be approved by the Community Development Director; however, the Director may determine that any proposed change should be reviewed by the Planning and Zoning Commission and City Council. Substantial changes to the Concept Plan are subject to the same requirements as the original application. Substantial changes shall include but are not limited to:

- a. Any change that would increase the intensity of the land uses;
- b. Fifteen percent cumulative increase in vehicular traffic to any roadway segment or intersection;
- c. Fifteen percent cumulative increase in residential density;
- d. Fifteen percent cumulative increase in nonresidential square footage;
- e. Any change in private incentives and public benefits;
- f. Increase in size of property;
- g. Any reduction in screening, buffer yards and setbacks at the PUD property line;
- h. Fifteen percent cumulative increase in the buildable area for structures including signs; and
- i. Fifteen percent cumulative reduction in open space.

ix) Concept Plan Submittal Requirements

A request for review of a Concept Plan shall include the following information:

- a. Official Application and Development Statement, including the identification of the **base district** upon which the PUD regulations are based;
- b. Submittal fee;
- c. Waiver request and justification to delete submittal information, if applicable;
- d. Descriptions of deviations to planning-related development standards and the public benefits to be provided;

Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

- e. Association by-laws (may be submitted with each Site Plan);
- f. Concept Plan. The following information shall be provided on the Concept Plan and supporting maps and drawings:
 - i. Name of Concept Plan.
 - ii. Name, address and telephone number(s) of property owner(s), developer(s) and consultant(s) preparing the Concept Plan.
 - iii. Detailed area map showing the surrounding area within one-half mile and the PUD in relationship to adjacent parcels, existing roadways, and natural or manmade features that may impact or be impacted by the PUD.
 - iv. North arrow, date of preparation, and written and graphic standard engineering scale.
 - v. Legal description.
 - vi. Boundary lines of Concept Plan area with approximate length of lines and boundary lines of phases.
 - vii. For each lot, parcel, or tract, list proposed land uses and acreage and show building area boundaries within which each structure will be located:
 - (a) Maximum number of dwelling units and maximum density.
 - (b) Maximum square footage of nonresidential uses.
 - viii. Proposed screening and buffer yard/setback distances along the PUD property line.
 - ix. Existing land uses and zoning on adjacent lots, parcels, or tracts.
 - x. Name of adjacent subdivisions (including the filing date, book and page numbers), property owners, and zoning. If not subdivided, name of property owner.
 - xi. Twenty-foot contour intervals minimum or as appropriate.
 - xii. Proposed alignment of roadways and how they relate to the Elevate Las Cruces comprehensive plan and the Active Transportation Plan and the impacts created on the area road network, neighborhood, and other land uses. Impact data shall include the anticipated traffic volume generated by the proposed development, identification of the affected road network, and the additional traffic volumes associated for each road. If required, provide a Traffic Impact Study, including a roadway improvement schedule, consistent with the requirements of **Sec. 5-4.F. Traffic Impact Analysis**) and based on the latest recommendations from the Institute of Traffic Engineers.
 - xiii. Thoroughfare System: Identification of adjacent roadways and other transportation lines by functional classification; proposed location, length, width of all roadways, bikeways, trails, walkways, and any other transportation lines. Identify existing and proposed classification of roadways as per City of Las Cruces Design Standards, the Elevate Las Cruces comprehensive plan, and the Active Transportation Plan.
 - xiv. Location and sizes of existing and proposed utilities.
 - xv. Significant natural features, such as arroyos and 100-year floodplains.
 - xvi. All easements.
 - xvii. Tabular Information:
 - (a) Land uses of each lot, parcel, or tract.
 - (b) Total acreage of the PUD, acreage for each land use, and acreage of each land use by phase.
 - (c) Maximum number of dwelling units and maximum density by phase.
 - (d) Total square footage of nonresidential uses by phase.
 - (e) Total acreage for open space, private and public facilities, and right-of-way.
 - (f) Maximum height of proposed structures for each lot, parcel or tract.
 - xviii. Approval block signifying the final approved Concept Plan to be signed by the Community Development Director upon approval by the City Council and resolution of all outstanding staff comments.

- g. Other Impact Studies, if required by the Planning and Zoning Commission, are to be submitted prior to City Council consideration:
 - i. Impacts on any public facilities outside the PUD area. Impact data shall include expected population generated by the proposed development, identification of public facilities, e.g., utilities, parks, that are anticipated for use by said population and level of capacity of said utilized public facilities.
 - ii. Impacts on air quality, specifically solid particulates known as PM10. Impact data shall include identification of proposed uses that generate air pollution substances into the environment and the projected impact.
 - iii. Impacts on views and noise to adjacent property. Impact data shall include identification of proposed uses that generate excessive noise, anticipated maximum height for proposed structures, identification of existing physical features that are viewed from the PUD and adjacent properties, and how these views will be altered by the PUD. Proposals to mitigate impacts shall be provided.
 - iv. Geological and Soils Hazards. Report on the Geologic and Soils Hazards in relation to slope conditions, drainage problems and suitability for septic system use, if applicable, as identified by the Soil Survey of Dona Ana County Area, New Mexico. This report shall also include either an aerial photograph or a map with existing contours at an appropriate interval to establish accurate ground contour of the PUD area.

e) Step 3: Platting

If platting is required, all plats and plans must be submitted and approved in accordance with **Sec. 4-2. Subdivision Procedures**.

f) Step 4: Site Plan

i) Site Plan Purpose

The purpose of a Site Plan is to identify the detailed site layout and features for a PUD development or phase of PUD development.

ii) Site Plan Application Submittal

Upon approval of the Concept Plan and completion of any required platting process, the applicant may submit a Site Plan in accordance with **B. Site Plans** for part or all of the land area covered by a Concept Plan for Planning and Zoning Commission and City Council consideration. Alternatively, an applicant **may choose to** submit a Site Plan along with the Concept Plan.

iii) Review Procedures

A Site Plan submitted as part of a PUD shall require a public hearing and recommendation by the Planning and Zoning Commission and a public hearing and decision by the City Council.

iv) Approval Criteria

No findings are required except that the Site Plan conforms to the Concept Plan.

v) Site Plan Effective Period

A Site Plan shall be effective for two years from the date of approval. When at least one Building Permit has been approved, the Site Plan shall be effective until amended.

If this is the case, is a PZ/CC public hearing necessary for PUD site plans? Does the concept plan include enough detail to support this statement?

Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

F. Special Use Permits (SUPs)

1. General Provisions

- a) A Special Use Permit is required to allow a use that is not permitted by right in a zoning district and requires review and approval by the Planning and Zoning Commission to determine impacts on the surrounding area. Uses eligible for Special Use Permit (SUP) approval are designated in **Figure 3-3-1. Permitted Use Chart**.
- b) Approval of a Special Use Permit is not a zoning district change.

2. Review Procedures

The procedures for such approval are as follows:

a) Pre-Application Meeting

Any proposed Special Use Permit shall first be reviewed at a pre-application meeting scheduled and held by the Community Development Department. The submittal of a Sketch Plan is required for the pre-application meeting for an SUP. See **Sec. 1-3.B. Pre-Application Meeting** for more information.

b) Application Procedures

- i) An official application for a Special Use Permit shall be obtained from the Community Development Department. Application requirements shall include, but not be limited to:
 - a. A letter of intent stating the following:
 - i. A statement of the purpose and use of the property,
 - ii. All property improvements to be made, and
 - iii. A development schedule indicating the approximate dates at which construction or phases of construction will begin and end.
 - b. An accurate and complete boundary survey shall be made of the land to be developed. Property lines shall be shown giving the bearings in degrees, minutes and seconds. Distances shall be shown in feet and hundredths. Curved boundaries or lines on the survey shall provide sufficient data to enable the re-establishment of curves on the property. The location and description of all monuments set or found shall be included where applicable. If only part of the property is to be used for the Special Use, the limits or boundary of the Special Use shall be described in addition to the entire property.
 - c. A Site Plan in accordance with B.11. Site Plan Submittal Requirements.
 - d. Architectural renderings or artistic drawings. The drawings shall be provided electronically in PDF format. Drawings shall be legible and of a good quality, with no limit to the number of sheets used. The drawings shall illustrate the following:
 - i. All new development illustrating all exterior building materials and colors.
 - ii. All new development illustrating relationships to neighboring uses, including site lighting.
 - iii. Sign location, materials, color, size, shape and lighting.
 - e. A drainage facilities plan, environmental impact statement and/or other items not listed above may be required by the Community Development Director, or the Planning and Zoning Commission.
 - f. Copy of early notification letter to the defined noticed area and copy of minutes (summary or verbatim) from any required meeting.
- ii) Application materials that are illegible and/or otherwise of a low quality will not be accepted.
- iii) A portion of the submittal requirements may not be required in all cases. Upon receipt of a written request justifying the deletion of required information, the Community Development Director may waive any submittal requirement. The Planning and Zoning Commission may require additional items and resulting information in addition to the submittal requirements as per this section. Additional items and/or information requested by staff may include, but are not limited to, the need for early notification to a neighborhood group(s) and/or defined noticed area. Additional requests shall be justified in writing. The City Council may require additional information before acting on an appeal.

c) Public Hearing and Notice Procedure

A public hearing shall be held by the Planning and Zoning Commission for all Special Use Permits in accordance with the provisions of **Sec. 1-3.H. Notice for a Public Hearing.**

d) Review and Approval Procedures

The Planning and Zoning Commission may deny a Special Use Permit request or may grant final approval including the minimum conditions listed in **Sec. 3-3.B. Use Classifications and Use-Based Standards.** Also, approval may be granted with additional conditions imposed which are deemed necessary to implement the Comprehensive Plan, to ensure compatibility with surrounding development, and to ensure that the purpose and intent of this Code are met to protect and provide safeguards for persons and property in the vicinity. **Any applicable development conditions in addition to those required by this Development Code shall be noted on the Certificate of Occupancy.** Appeal of a Planning and Zoning Commission decision may be made in accordance with **Sec. 1-3.G. Appeals.**

e) Revisions to an Approved SUP

Any major revision proposed to the Special Use Permit and Site Plan shall require resubmittal of the Special Use Permit and Site Plan in their entirety. Minor revisions may be approved by the Community Development Director. Major revisions to the Special Use Permit and Site Plan shall include, but are not limited to:

- i) Any change in land use,
- ii) Fifteen percent cumulative increase in land use or building square footage,
- iii) Fifteen percent cumulative increase in vehicular traffic on any roadway segment or intersection,
- iv) Any increase or decrease in size of the Special Use Permit area,
- v) Any reduction in screening, buffer yards and setbacks at the Special Use boundary line, and
- vi) Fifteen percent cumulative increase in the buildable area for structures including signs.

f) Recording of the Special Use Permit

After approval, the Special Use Permit shall be issued by the Community Development Director and shall include all information, conditions, reference to site plans, and other provisions of the Special Use Permit. The Special Use Permit shall be filed in the Dona Ana County Property Records. The Special Use Permit shall not become effective until adequate evidence of filing in County records has been provided to the Community Development Director.



Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

G. Zoning Variances

1. In accordance with NMSA 3-21-8 and this section, the Planning & Zoning Commission may authorize a variance from this **Chapter 3. Zoning Regulations** upon determination that all of the following criteria are met:
 - a) That are not contrary to the public interest;
 - b) Where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship;
 - c) So that the spirit of the zoning regulations is observed and substantial justice done; and
 - d) So that the goals and policies of the comprehensive plan are implemented.
2. A public hearing before the Planning & Zoning Commission is required.
3. No variance may be granted that results in undue hardship upon another parcel of land.
4. A variance shall not be granted to relieve a self-created hardship.
5. The relief granted shall be to the minimum degree required to alleviate such hardship.
6. The applicant bears the burden of proof in establishing the facts that may justify a variance.
7. The granting of a variance does not establish precedence for future determinations.
8. The Planning & Zoning Commission shall not grant a variance unless it finds, based upon evidence, that each of the conditions and standards in this section have been met. The Planning & Zoning Commission may impose such conditions, limitations, and safeguards as it deems appropriate upon the granting of any variance. Violation of any such condition, limitation or safeguard shall constitute a violation of the Development Code.
9. A variance may be recommended by the Planning and Zoning Commission and granted by the City Council as part of a zoning map amendment.

H. Nonconformities

1. Purpose

The purpose of this section is to regulate land uses, lots, structures, and site features that were legally established at the time of their creation but that have been made nonconforming due to a change in the City's regulatory environment (i.e., legal nonconforming). The regulations herein are intended to reduce or eliminate these nonconformities over time.

2. Applicability

These regulations apply to any land use, lot, structure, and/or site feature that was legally established but has since become nonconforming to the regulations in place.

3. General Provisions

a) Authority to Continue

Any nonconformity that legally existed on or before the Effective Date of this Development Code that becomes nonconforming upon the adoption of this Code or future amendments may be continued, subject to the regulations of this section.

b) Repairs and Maintenance

Nothing in this Development Code shall prohibit the routine operation and maintenance of legal nonconformities in such a manner as to not exacerbate any existing nonconformity.

c) Change in Ownership or Tenancy

Nonconforming status runs with the land and is not affected by changes in tenancy, ownership, or management.

d) Determination of Legal Nonconforming Status

The burden of proving that a nonconformity legally exists (as opposed to a zoning code violation) is the responsibility of the subject owner. The Community Development Director is authorized to determine whether reliable evidence of nonconforming status has been provided by the subject owner. Resources for such evidence include but are not limited to recorded plats, aerial photography, or utility billing records.

e) Illegal Nonconformities

Any land use, lot, structure, and/or site feature that was established in violation of the regulations at the time is prohibited and shall be considered a violation of this Development Code. The provisions included in this section do not apply to illegal nonconformities.

f) Nonconformity Legalization

The Planning and Zoning Commission may use the Variance process to bring any nonconformity into compliance, subject to the requirements of **G. Zoning Variances**.

4. Nonconforming Lots

A nonconforming lot is a lot that does not meet the current lot size or dimensional requirements established in **Sec. 3-2. Zoning Districts**. Any platted lot is deemed a conforming lot. Any variations to the minimum setbacks may be modified through the Variance process (**G. Zoning Variances**).

5. Nonconforming Uses

a) A nonconforming use is a land use that is no longer not permitted in the zoning district in which it is located, or that does not meet the use-based standards outlined in **Sec. 3-3.B. Use Classifications and Use-Based Standards**.

b) If a nonconforming use is discontinued for a period of at least six months, the use shall not resume except in full conformance with the Development Code. For the purpose of this paragraph, to "discontinue" shall mean to intentionally terminate operations of the nonconforming use. Any nonconforming use that does not involve a permanent type of structure or operation that is moved from the premises shall be considered to have been discontinued, regardless of intent.

i) Exceptions: Residential Dwellings

a. Residential dwellings with four or fewer units may be resumed for up to five years following discontinuance.

Chapter 3. Zoning Regulations

Sec. 3-4. Zoning Procedures

- b. A mobile home or recreational vehicle (RV) used as a residence may be replaced if the unit is being replaced by a manufactured house, site-built house, or safer mobile home. If the replacement residence is a mobile home, for safety reasons, the replacement mobile home shall have accessible bedroom windows, the appropriate number of properly located and working smoke detectors, and an effective residential fire extinguisher. Furthermore, the replacement dwelling unit shall not be located on the property to create a nonconformity that did not previously exist.
 - c) A nonconforming use shall not be expanded, except that the Community Development Director may authorize the expansion of a nonconforming use within an existing structure.
6. Nonconforming Structures
- a) A nonconforming structure is a building or other construction that does not meet the building height, setbacks, design, or other structural requirements.
 - b) A structure or portion thereof may be altered to decrease its nonconformity as determined by the Community Development Director.
 - c) A nonconforming structure may be expanded; however, the expansion must conform to the Development Code standards in place at that time and shall not result in increased or additional nonconformities.
 - d) Reconstruction of nonconforming structures or portions amounting to less than 50 percent of the existing square footage is permitted if the nonconformity is not enlarged in volume, area, or footprint.
 - e) Voluntary removal or destruction of a nonconforming structure or portion amounting to 50 percent or more of the existing square footage shall require either complete removal of the structure or its reconstruction in conformance with existing regulations
 - f) Involuntary damage to or destruction of a nonconforming structure (e.g., fire, winds, or other calamity) may be rebuilt, reconstructed, or restored on the same footprint of the original structure plus any addition or expansion that is allowed by and conforming to the applicable zoning district. Such reconstruction is permitted as long as it begins within 18 months of the loss and complies with all other applicable zoning, development, and building codes.
 - g) A nonconforming structure may be moved to another location on the lot, provided that the moving will make it nonconforming to an equal or a lesser extent. A nonconforming structure shall not be moved to an off-site location unless the nonconformity is eliminated through the relocation.
7. Nonconforming Site Features
- a) A nonconforming site feature is an improvement to a site, such as landscaping, screening, or parking, that no longer meets the current requirements.
 - b) Each section within this Development Code includes applicability provisions to indicate when compliance is required, typically upon an expansion or change in use.