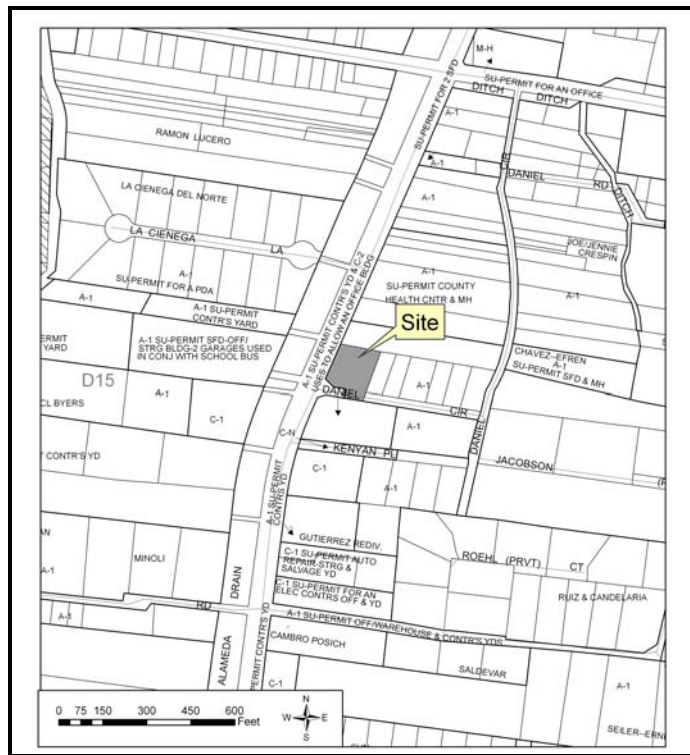


Applicant:	Jeremy Peck
Agent:	R2 Consulting Services
Location:	7610 Second St., NW
Property Size:	.48 acres (approximately)
Existing Zone:	A-1
Proposed Zoning/SUP	Special Use Permit for Specific Use for Cold Storage Plant and Single Family Dwelling
Recommendation:	Denial



Summary:	This is a request for a Special Use Permit for Specific Use for a Cold Storage Plant and Single Family Dwelling on a .48 acre property located on the northeast corner of Second St. and Daniel Circle. This request is the result of a zoning violation in which a refrigerated trailer and other storage was located on the property without the correct zoning.
Staff Planner:	Catherine VerEecke, Program Planner

- Attachments:**
1. Application
 2. Zoning and Land Use Maps
 3. Notices of Violation
 4. Site Plan (Commissioners only)

Bernalillo County Departments and other agencies reviewed this application from 4/29/08 to 5/12/08. Their comments were used in preparation of this report, and begin on Page 10.

AGENDA ITEM NO.: 13
County Planning Commission
June 4, 2008

CSU-80017 R2 Consulting Services, agent for Jeremy Peck, requests approval of a Special Use Permit for Specific Uses for Cold Storage Plant and Single Family Dwelling on Tract 231C1, MRGCD Map 27, located at 7610 2nd Street NW, zoned A-1, and containing approximately .48 acres. (D-15)

AREA CHARACTERISTICS AND ZONING HISTORY
Surrounding Zoning & Land Uses

	Zoning	Land use
Site	A-1	Single family residential Refrigerated truck
North	A-1	Single family residential
South	A-1/Special Use Permit for Contractor's Yard	Contractor's Yard
East	M-H	Single family residential
West	Drain A-1/Single Family Dwelling, Office, Storage Building, School Bus Company	Drain School Bus Company

BACKGROUND:

The Request

The applicant is requesting a Special Use Permit for Specific Use for a Cold Storage Plant and Single Family Dwelling to be located on a .48 acre tract of land on the northeast corner of Second St. and Daniel Circle. The property currently has a 2640 square foot single family dwelling and a 2740 square foot garage/storage building on it. The request is the result of a zoning violation in which the applicant established the use on the property, which includes a 48 foot long refrigerated trailer and storage of equipment related to an ice cream distribution business (Southwest Ice Cream). (See Attachment 3--Notice of Violation).

Under this request, the refrigerated trailer would remain on the property with additional buffering to minimize sound from the refrigeration compressor. The existing garage would be used for and office and storage of items for the business, and the existing house would continue to be used as a residence. Two 20 foot refrigerated trucks will continue to deliver ice cream from the site throughout the state. There currently are two employees associated with the business.

Request justification. The applicant's agent argues that changed neighborhood conditions have occurred in the area of the site including the issuance of Special Use Permits for non-residential uses to the south and west of the site. The agent indicates the intent to comply with County regulations for landscaping and fencing.

Surrounding Land Uses and Zoning

The subject property is located in an area along Second St. to the north of Daniel Circle with both residential and non-residential uses. Properties to the east along Daniel Circle are zoned A-1 with single family dwellings on them. Two properties to the north of the site are zoned A-1 with single family dwellings on them. Beyond that to the north, a property has a Special Use Permit for a County Health Center (CSU-76-23). Further north, most properties have residential uses.

On the south side of Daniel Circle along Second St., a property has a Special Use Permit for a Contractor's Yard and C-2 uses (CSU-92-6). Further south, a property has C-1 zoning, and there are several other properties with Special Use Permits for contractor's-type uses.

On the west side of Second St. nearby the site, properties have A-1 or C-1 zoning, some of which have Special Use Permits for non-residential uses. To the west of the Alameda Drain, a property has a Special Use Permit for a Single Family Dwelling, Storage, and a School Bus Company (CSU-74-10), and another property has a Special Use Permit for a Contractor's Yard (CSU-79-31). To the north of this business a property has a Special Use Permit for a Contractor's Yard, and further north is a Planned Development Area (Residential) (CZ-94-2) and other residential properties with A-1 and R-1 zoning.

APPLICABLE PLANS AND POLICIES:

Albuquerque/Bernalillo County Comprehensive Plan

The site is located in the Semi-Urban Area as delineated in the Albuquerque/Bernalillo County Comprehensive Plan. The principal goal for this area is to "maintain the character and identity

of semi-urban areas which have environmental, social or cultural conditions limiting urban land uses.”

Policy a states that “Development within the Semi-Urban area shown by Plan map shall be consistent with development limitations imposed by topography, soil consistency, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; overall gross density shall be up to 3 dwelling units per acre.”

North Valley Area Plan

This property is located within the Semi-Urban area of the North Valley Area Plan. The plan states that properties in this area may have special soil and water limitations or scenic, agricultural, or recreational assets, with the appropriate gross density at 1 to 3 dwelling units per acre.

Policy 4.4 of the Plan states that the County and City shall encourage rural standards for development, especially within the Semi-Urban and Rural Comprehensive Plan areas of the North Valley.

Policy 2 (Land Use) states ‘The City and County shall stabilize residential zoning and land use in the North Valley Area.’ This may be accomplished through the following:

- a. Limit the location, duration, and type of new uses allowed by Special Use Permit.
- b. Cancel discontinued Special Use Permits granted where existing conditions of approval are not met and permits that are otherwise in violation of the Zoning Ordinance.
- c. Retain existing County A-1 zoning as the only Rural Agricultural zone intended to provide agricultural activities and spacious development.
- d. Require landscape buffering and other measures necessary to limit potential impacts of non-residential uses on residential areas.
- e. Retain the low density character of the North Valley.

Policy 2.2.d (Land Use) of the Plan states that “the County and City shall retain the low density character of the North Valley and that the minimum lot area for R-1 zoned land in the Rural area should be three-quarters of an acre.”

Policy 3.a (Land Use) states that “the City and County shall retain existing residential zoning on Alameda Blvd., Second Street, and on future roadway corridors.”

Policy 7.1 states the City and County shall stabilize land use to protect affordable housing and land presently zoned for housing.

- a. Maintain and expand areas zoned for residential uses including A-1, R-1, M-H
- b. Limit encroachment of non-residential uses into residential areas
- c. Encourage residential zoning of parcels with residential uses.

The property is also located in an area the Plan refers to as the “Second Street to Fourth Street Sub-Area” of the Plan, which extends from Fourth Street in the west to the railroad in the east, and north from Montano Rd. to Paseo del Norte. The plan calls out the portion of Second St. between Osuna Rd. and Paseo del Norte as “a transitional area between the more

rural to the north and the more urban environment in the south”. The general trend for the area has been the expansion of heavy commercial and other non-residential uses in previously residential areas along Second and Fourth Streets, which could threaten the stability of residential areas.

Under the Comprehensive Plan Scenario, new heavy commercial and industrial uses would be limited to areas east of Second Street and south of Montano Rd.

Under the Preferred Scenario, the Plan states that the “land use pattern should reflect the present zoning” (Appendix, p.4). The areas to the north of Osuna Rd. should be primarily residential as the present zoning reflects. Special Use Permits should be phased out.

Bernalillo County Zoning Ordinance

Resolution 116-86 lists policies for evaluating Zone Map change and Special Use Permit applications.

- A. A proposed land use change must be found to be consistent with the health, safety, and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
 - 1. There was an error in the original zone map.
 - 2. Changed neighborhood or community conditions justify a change in land use or
 - 3. A different use category is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even though (1) and (2) above do not apply.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. A proposed land use change which, to be utilized through land development, requires major and unprogrammed capital expenditures by the County may be:
 - 1. denied due to lack of capital funds; or
 - 2. granted with the implicit understanding that the County is not bound to provide the capital improvements on any special schedule.

- H. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- I. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a “spot zone.” Such a change of zone may be approved only when:
 - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted land use plan; or
 - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- J. A zone change request which would give a zone different from the surrounding zoning to a strip of land along a street is generally called a “strip zoning.” Such a change of zone may be approved only when:
 - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone due to traffic or special adverse uses nearby.

ANALYSIS:

Surrounding Land Use and Zoning

This request is proposing to keep a cold storage plant on a .48 acre residentially-zoned property for an ice cream distribution business along Second St. at Daniel Circle. The use was established without the proper zoning.

The proposed use conflicts with residential uses adjacent to and nearby the site. Although there are several non-residential uses nearby the site to the south and west, the area to immediate the north and east of the site is predominantly residential. If this request is approved, it would extend non-residential uses into what is mainly a residential area. In addition, the subject property currently has a single family dwelling on it, and could continue to be used as a residence.

Plans

This property is located in the Semi-Urban Area. The Comprehensive Plan suggests that this Area should retain its semi-rural, residential character. The North Valley Area Plan generally states that there should be no new permanent zone changes or Special Use Permits for industrial or heavy commercial uses, and it states the preference for residentially-zoned properties to retain their residential uses.

The request appears not to be consistent with specific North Valley Area Plan land use policies and scenarios regarding residentially-zoned properties. In particular, Policy 3 states that the County must limit the location, duration and type of new uses allowed by Special Use Permit and also that existing residential zoning should be retained along Alameda Blvd. and Second Street. The plan scenarios for this area also call for the preservation of existing residential uses and zoning with any new commercial or industrial development to be located south of Montono Rd.

Zoning Ordinance

This request is not consistent with Resolution 116-86 of the Zoning Ordinance. Although some Special Use Permits have been granted for non-residential uses to the south and west of the subject site, the area to the north and east of the property has not experienced such a change and is still residential. Approving a Special Use Permit on this residential site could destabilize residential zoning in the site's vicinity and would be contrary to North Valley Area Plan policies that call for limiting new non-residential uses allowed by Special Use Permits and retaining existing residential zoning along Second St. The property is approximately one-half acre with a plan to continue residential use on it (in addition to the business), so that the applicant has not demonstrated that the existing A-1 zoning is inappropriate for the site.

The applicant has submitted a petition of support signed by several residents of properties nearby and adjacent to the site.

Agency Comments

County staff and representatives from other agencies have provided comments on this case.

County Building staff indicates that building permits are required for structures on the site. This will include the permitting of the existing trailer as a permanent structure and the conversion of the existing garage to a commercial use. Apparently, the garage was constructed without a completed building permit.

Environmental Health comments state that the refrigerated trailer is not a permanent building. There are potential safety issues with storage located in the existing garage and with improper electrical wiring to the garage. There also is equipment on the site (storage container, fork lift, and pallet jacks) that is not shown on the site plan. In addition, there are potential issues with noise emitted from the refrigerated truck.

Staff also noted during a recent site visit to the site that additional vehicles and storage are located on the site and that a wall has recently been constructed on Daniel Circle, all of which are not shown on the site plan.

County Public Works (Drainage) staff states that the applicant must submit a grading and drainage plan prior to the approval of the request.

County Public Works (Development Review) staff states that the access proposed on the site plan may not be acceptable. The proposed driveway and drive pad are substandard. The trailer may not be backed out onto Second St., and it appears there may not be enough room

for its turnaround within the site. Replatting of the property may be necessary as it appears (from County Zoning Atlas) that a portion of the lot extends into Daniel Circle.

The New Mexico Department of Transportation states a driveway permit is required for this request.

Analysis Summary

Zoning	
Resolution 116-86	Applicant has not demonstrated that the existing zoning is inappropriate.
Requirements	Must comply with code requirements for landscaping and fencing. Evidence of substantial neighborhood support has been provided.
Plans	
Comprehensive Plan	Use does not appear to be consistent with Semi-Urban Area designation--does not maintain semi-rural features of the area.
Area Plan	Use is not consistent with North Valley Area Plan policies regarding changing of residential properties to non-residential use.
Other Requirements	
Environmental Health	There are potential issues with noise and storage on the site
Public Works	Require grading and drainage. Address access issues.
Other	Building permits will be required for 'structures' on the site, including the refrigerated trailer.

Conclusion

The applicant wishes to establish a cold storage plant on a .48 acre property that already has a single family dwelling on it. Staff has noted that there are a number of issues with the land use and the development plan.

The proposed land use is inappropriate for the site and the area in which it is located. The North Valley Area Plan states that new commercial or industrial uses should be limited to designated areas (other than that of the site) and that residentially-zoned properties should retain their zoning. The Plan specifically states that residential zoning along Second St. should be retained. If approved, this request would extend industrial uses into a predominantly residential neighborhood.

Staff has noted a number of issues with the site development plan including the following: converting the trailer into a permanent structure; converting the existing garage into commercial use without proper permits; and maneuvering the trailer or other delivery vehicles within the site and not onto Second St. In addition, a grading and drainage plan and an access permit must be provided.

The site also appears to be too small to accommodate the requested land use. It is zoned A-1 and is only about a half acre, already with a dwelling on it. According to staff's comments, there may not be sufficient room on the site to allow for safe maneuvering of the refrigeration trailer or other delivery vehicles.

RECOMMENDATION

DENIAL of CSU-80017, based on the following Findings.

Catherine VerEecke
Program Planner

FINDINGS

1. This is a request for approval of a Special Use Permit for Specific Uses for Cold Storage Plant and Single Family Dwelling on Tract 231C1, MRGCD Map 27, located at 7610 2nd Street NW, zoned A-1, and containing approximately .48 acres.
2. This request is a result of a zoning violation in that the property was being operated as a cold storage plant without the proper zoning.
3. The property is located in the Semi-Urban Area of the Albuquerque/ Bernalillo County Comprehensive Plan and the North Valley Area Plan.
4. The request conflicts with Resolution 116-86 in that the proposed land use for a non-residential use is in significant conflict with the North Valley Area Plan policy 7.1.b which states "Limit encroachment of non-residential uses into residential areas."
5. The request is not consistent with Policy 3.a (Land Use) of the North Valley Area Plan, which states that "the City and County shall retain existing residential zoning on Alameda Blvd., Second Street, and on future roadway corridors".
6. The applicant has failed to demonstrate that the existing zoning is inappropriate.
7. This request is not consistent with the health, safety, and general welfare of the residents of the County.

BERNALILLO COUNTY DEPARTMENT COMMENTS

Building Department:

Corrections listed below must be corrected for approval:

Building permits will be required for the proposed use of a refrigeration trailer as a permanent storage structure.

There is an expired building permit BP 93-126 for a Residential Garage that requires a new building permit for completion of the garage.

There are no records of building permits for the conversion of the garage to office space. A building permit will be required for the conversion of the garage to office space.

Environmental Health:

1. Water and sewer is connected to dwelling.
2. Refrigerated trailer is not a permanent building.
3. The three phase electrical connection from power source to the storage container is not "hard wired" it is connected with a long extension cord.
4. This storage container doesn't have an UPS [uninterrupted power supply] and shall require this. Diesel or other combustion engines for the purpose of UPS cannot be used. Battery back-up is the proper method. Combustion engines cause air quality issues.
5. This site is exceptionally small in comparison to the length of the storage container [trailer]. No on-site turn arounds can be performed.
6. The applicant has failed to include in the application and site plan the use of a forklift for unloading the storage container and subsequent reloading into local delivery trucks. The forklift and the operation thereof requires an OSHA Audit.

The applicant has failed to include in the application and site plan the use of an accessory building that has 40-50 [3.5' X 3.5' X 6'] refrigerator freezers labeled with Blue Bunny Ice Cream stacked, stored, staged for delivery. These refrigerator freezers are delivered to customer locations for retail sale. The storage stacking height is approx. 12'. These refrigerator freezers are located in the garage at the east end of the lot. The storage height is suspect and shall require a OSHA audit.

The property is situated close to private residential dwellings. The applicant should be aware of the Noise Ordinance 30-116, which states, "it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any person residing in the area..."

COUNTY PLANNING COMMISSION

JUNE 4, 2008

CSU-80017

The applicant is proposing to use a 48' long trailer as permanent storage for his ice cream business. The trailer refrigerant unit creates ambient noise that may be in excess of the allowable decible levels allowed for this type of activity within a residential setting.

Zoning Enforcement Manager:

Must comply with all Bernalillo County Code regulations for this project.

Property is in violation of proper use. operating a commercial business (Ice Cream Cold Storage Plant) w/o proper approvals.

Zoning Administrator:

No comments received.

Fire:

Required access: Fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction.

The required width of a apparatus access road shall not be obstructed in any manner, including parking of vehicles during construction and/or occupancy.

An exiting analysis will be required to evaluate existing and/or proposed exiting systems.

Fire lanes shall be designed, approved, and inspected prior to occupancy.

Extinguishers shall be suitable for the anticipated character of the fire, the construction and occupancy of the individual property or premises, the vehicle or hazard to be protected and the ambient-temperature conditions.

Upon the development of this property there will be a fire protection plan required for the office and garage. This will include monitored smoke and heat detectors for the garage and Office. This must be approved through the Fire Marshal's Office. There must be a minimum of 20 ft clearance for ingress and egress for all emergency vehicles. All Plans must be approved through the Fire Marshal's Office.

Public Works:

DRAN:

Because this Special Use permit application shows development in addition to the existing substantial development without accommodations for drainage infrastructure, a conceptual grading and drainage plan prepared by an engineer licensed in the State of New Mexico submitted to, and approved by, Bernalillo County Public Works is required prior to final approval of this application. The conceptual grading and drainage plan must meet minimum design criteria including existing contours and elevations and proposed contours and elevations. A complete drainage plan and/or report, approved by Bernalillo County Public Works, will be required prior to any development.

DRE:

1. The 16'2" driveway width is below the County minimum and below what is typically required for larger vehicle access.
2. The applicant must show geometric design adequate to assure that the tractor and trailer can be maneuvered within the site. Backing in or out of the Second Street driveway is not acceptable.
3. The drivepad width is substandard for commercial purposes. Indicate the frequency of use. Turning movement may be limited to left turn only unless it can be demonstrated that rigs can exit northbound without crossing into southbound Second Street lanes.
4. The street should be correctly labeled as Daniel Circle.
5. It appears that a portion of Daniel Circle abutting the site is not identified as public right of way and is located on the subject lot. This portion must be created as a private easement or dedicated to the County by platting action.
6. There are presently no sidewalks on Daniel Circle.

Parks & Recreation:

REVIEWED, NO ADVERSE COMMENT.

Sheriff's:

No comment received.

COMMENTS FROM OTHER AGENCIES

MRCOG:

MRCOG staff have no comment on the proposed development. For information purposes, 2nd St has a functional classification of urban principal arterial.

AMAFCA:

No comment.

City Planning Department:

City of Albuquerque Planning Department, Development Services Division has no comments for the May 2, 2007 CZ and CSU hearing.

City Public Works:

Transportation Planning: No comments received.

Transportation Development: No adverse comments.

COUNTY PLANNING COMMISSION

JUNE 4, 2008

CSU-80017

Water Utility Authority:

No comments received.

City Transit:

No comments received.

City Open Space:

Open Space has no adverse comments.

NMDOT

Due to the size of the development, there will be no significant impact to the state roadway system. However, since the property is changing from residential to residential/commercial, a new driveway permit will be required. The property owner will need to contact Ms. Christina Bahl, District Three permitting agent, at 505-841-2778 to start the process of obtaining the required driveway permit.

MRGCD

No comments received.

APS

MRGCD Map 27, Tract 231C1, is located at 7610 2nd St NW. The owner of the above property requests a special use permit for a specific use for cold storage plant. This will have no adverse impacts to the APS district.

PNM

No comments received.

NEIGHBORHOOD ASSOCIATIONS:

Alameda North Valley Association

La Cienega del Norte Neighborhood Association