



**Cochise County**  
**Community Development**  
**Planning, Zoning and Building Safety Division**

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MEMORANDUM

TO: Cochise County Planning and Zoning Commission  
FROM: Jim Henry, Planner I  
FOR: Mary Gomez, Interim Planning Director  
SUBJECT: Docket Z-15-06 (Hidalgo)  
DATE: August 27, 2015 for the September 9, 2015 Meeting

APPLICATION FOR A REZONING

The Applicant is requesting a rezoning from R-9 (Residential; one dwelling per 9,000-square feet) to MR-1 (Multiple Dwelling Residential; one dwelling per 3,600 ft.). The subject parcel is 0.41-acres in size. The rezoning request is to facilitate the applicant's desire to split the lot in a manner that would not meet the lot dimension requirements of the R-9 zoning district. Rezoning to MR-1 would reduce the minimum lot size, and would allow the applicant to legally split the property between the residential dwellings creating two separate parcels. The subject parcel, APN 102-57-301 is located at the NW corner of W Newell St. and S. Quetal Ave. in Naco, AZ. The Applicant is Raul Hidalgo.

I. PLANNING AND ZONING COMMISSION

On Wednesday, September 9, 2015, the Planning and Zoning Commission voted 8-0 to forward this Docket to the Board of Supervisors with a recommendation of approval. The motion included the conditions of approval recommended by staff. No objections were received from any member of the public.

II. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING LAND USES

Parcel Size:	21,746 square feet (0.50 acres)
Current Zoning:	R-9 (Residential; one dwelling per 9,000-sq. ft.)
Proposed Zoning:	MR-1 (Multiple Dwelling Res.; one dwelling per 3,600-sq. ft)
Growth Area:	C-Rural Community Area
Comprehensive Plan Designation:	Medium Density Residential
Area Plan:	Naco Area Plan
Existing Uses:	Residential
Proposed Uses:	Residential

**Planning, Zoning and Building Safety**

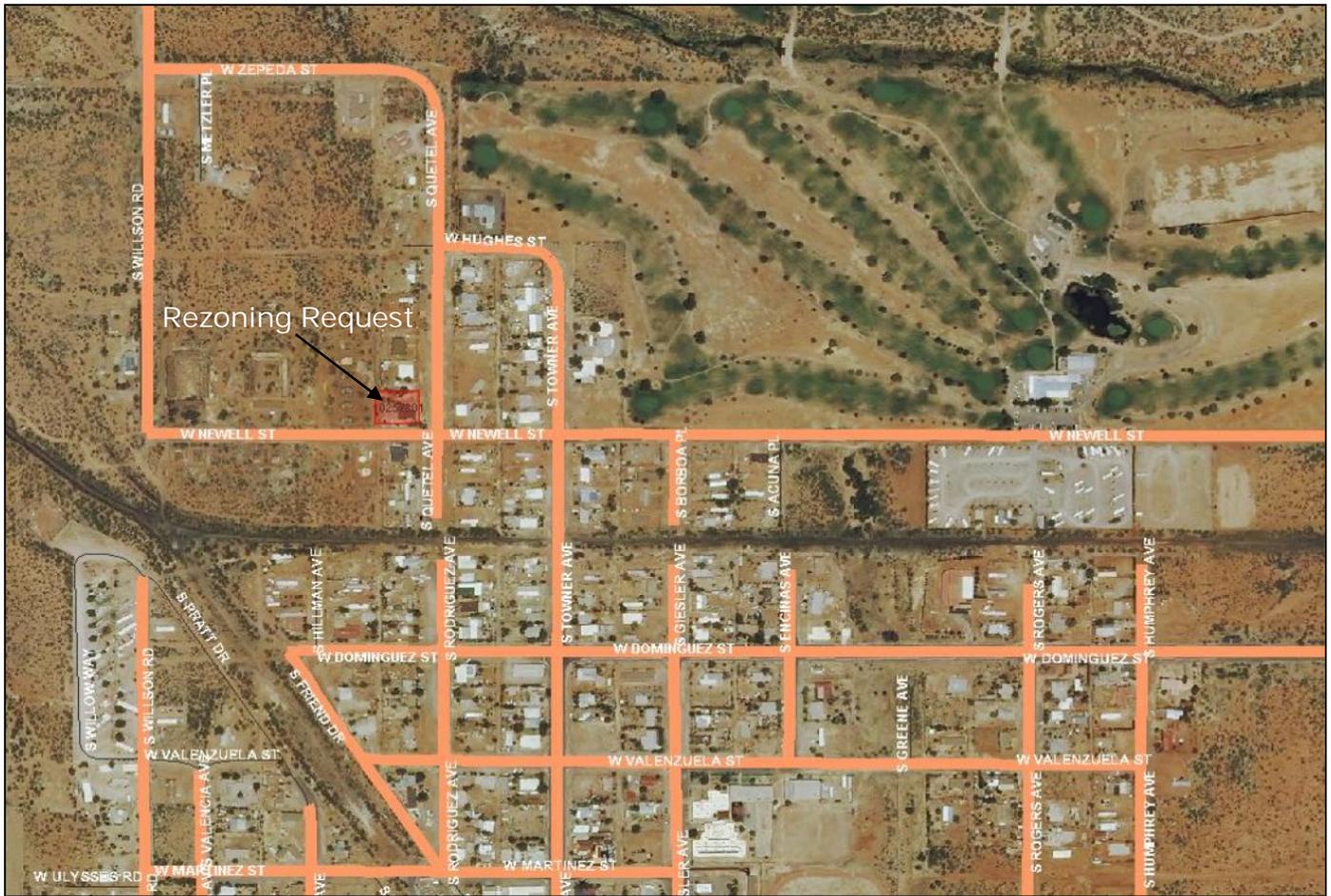
1415 Melody Lane, Building E  
Bisbee, Arizona 85603  
520-432-9300  
520-432-9278 fax  
1-877-777-7958  
planningandzoning@cochise.az.gov

**Highway and Floodplain**

1415 Melody Lane, Building F  
Bisbee, Arizona 85603  
520-432-9300  
520-432-9337 fax  
1-800-752-3745  
highway@cochise.az.gov  
floodplain@cochise.az.gov

Zoning/Use of Surrounding Properties

Relation to Subject Parcel	Zoning District	Use of Property
North	R-9	Single Family Residences
South	R-9	Single Family Residences
East	R-9	S. Quetal Ave/Single Family Residences
West	R-9/Alley	Camp Naco



Location map

III. PARCEL HISTORY

2000 – Addition to dwelling unit

2001– 700 sq. ft. garage addition, 500 sq. ft. enclosed porch, and an enlarged carport to 434 sq. ft.

#### IV. NATURE OF REQUEST

The original residence at 2042 W. Newell St. was built along with a garage in 1966 on the subject parcel. Subsequently, in 1974, the garage was converted into a residence prior to the County adopting a zoning ordinance. The applicant currently shares ownership of the less than a half an acre parcel with his ex-wife and owns the former garage at 2048 W. Newell St. Since the applicant's marriage has dissolved, the applicant desires to split the parcel creating two separate parcels each with their own dwelling unit for property tax purposes. No new structures or additional density is planned; no change of access is planned.

The subject parcel's area equals approximately 18,007.52 sq. ft. of which two lots are proposed. Due to the sitting of the two residential units, a lot split between the dwellings would result in two lots, one that would meet the existing zoning's minimum lot size requirements and one that would not. Under the proposed split of the property, the lot where the residence at 2048 W. Newell St. is situated would have a total area of approximately 7440 sq. ft. (this figure includes the area of the abandoned alley adjacent to the residence). The other lot under the proposal where the residence at 2042 W. Newell is situated would have a total area of approximately 10,560 sq. ft. The minimum lot size in the R-9 zoning district is 9000 sq. ft.

As much as the department would like to approve a lot modification administratively for the proposed undersized parcel, it unfortunately would not qualify. Per section 1715.02 of the Zoning Regulations the minimum site area for lots, less than one acre can be reduced up to 10% from the minimum lot size of the zoning district. In this case, 10% of 9000 sq. ft. would equal 900 sq. ft. Thus, a lot area of 8100 sq. ft. could be approved administratively. However, the proposed parcel would far size would exceed the 10% lot size modification exemption by approximately 660 sq. ft. and would therefore not qualify for a lot modification exemption by the Zoning Inspector.

#### V. ANALYSIS OF IMPACTS

##### Mandatory Compliance

The subject property lies within a C-Rural Community Area. Section 402 of the Zoning Regulations allows owners of property within this Plan Designation to request a rezoning to MR-1.

##### Compliance with Rezoning Criteria

Section 2208.03 of the Zoning Regulations provides fifteen (15) criteria used to evaluate rezoning requests. Eleven of the criteria are applicable to this request, which as submitted, complies with ten of the applicable factors. With the recommended modifications, the request complies with all of the applicable factors.

1. Provides an Adequate Land Use/Concept Plan: Not applicable

The proposal is to rezone a 0.41 acre parcel of land to allow the applicant to split the parcel creating two separate tax parcels, where two residential dwellings currently exist, no new density or development is being proposed.

## 2. Compliance with Applicable Site Development Standards: Complies with (modifications)

The property meets all site development standards in the MR-1 zoning district, except for the setback requirements for accessory structures in a MR zoning district that about a residential zoning district. Accordingly, the applicant is requesting a waiver from this requirement (see Section VI).



*View of the existing homes facing north from W. Newell St.*

## 3. Adjacent Districts Remain Capable of Development: Complies

The proposed rezoning would not affect the development prospects of any neighboring property. All surrounding properties are currently developed.

## 4. Limitation on Creation of Nonconforming Uses: Complies

The proposal would not create any non-conforming land uses. An approval of the rezoning would allow the lot to be split in a legal manner that would abide by the zoning regulations.

## 5. Compatibility with Existing Development: Complies

No changes to the current structures are being proposed at this time.

## 6. Rezoning to More Intense Districts: Complies

This proposal is unique in that no new density or new development is being proposed at this time; all that is essentially changing is the underlying zoning to facilitate a lot split. Thus, the proposal will not cause harm to the adjoining parcels since the density is already in place. While small isolated rezonings to more intense districts are generally discouraged to avoid "spot zoning", the request is in fact not "spot zoning".

The courts have established two requisites that must coexist in order for a rezoning request to be considered "spot zoning". First, a change of the zoning must be applicable to a small area and second, the change of zoning must be out of harmony with a municipality's comprehensive planning for the good of the community (*Landcaster development Ltd. V. Village of River Forest, 1967*). Clearly the nature of the request meets the first requisite being that it is less than half an acre in size. It does not however meet the second requisite, as it is still in harmony with the County's Comprehensive plan.

The Proposal complies with the County's Comprehensive:

Rural Community Area's Category C in the Comprehensive plan calls for "residential and non-residential development to be clustered in settlements on a variety of lot sizes as typified in established townsites and immediate environs" (Section 403.03.A of the Zoning Regulations).

- This proposal will add to the diversity of lots sizes in Naco and will offer future residents an additional zoning category to choose from in an area that is dominated by the R-9 zoning district (see attached map D).

Moreover, the rezoning will not offer much if any unjustified special treatment or any significant increase in uses that are not currently allowed in R-9 zoning districts.

Permitted Uses	R-9	MR-1
All single- and multiple-household dwellings.	X	X
Mobile home, manufactured home, or recreational vehicle parks, subject to the maximum densities in Section 704.01. The standards set forth in Article 18 shall apply.	X	
Utility installations not otherwise exempted by Article 20, other than electric generation plants, regional sewage treatment plants, solid waste	X	X
Churches or places of religious worship.	X	X
Residential care homes.	X	X
Emergency vehicle stations not otherwise exempted by Article 20.	X	X
Bed and breakfast home stay, subject to procedures in Article 17.	X	X
Bed and breakfast inn, subject to procedures in Article 17.	X	X
Indoor and/or unlighted outdoor recreational facilities approved as part of a subdivision review process for subdivision residents and guests only.	X	
Civic, social, fraternal, or business associations approved as part of a subdivision review process for subdivision residents and guests only.	X	
Unlighted riding stables, commercial, on a minimum site of 10-acres approved as part of a subdivision review process for subdivision residents and guests only.	X	
Community Gardens.	X	X
Group quarters.		X
Educational services.		X

## 7. Adequate Services and Infrastructure: Complies

The site is currently developed and served by all necessary infrastructure including sewer and water.

## 8. Traffic Circulation Criteria: Complies

Because no new construction is being proposed, the County transportation planner has determined that this particular land use change should not adversely affect nor change traffic patterns in the neighborhood; though, it may create conditions for future transportation impacts. It is not likely that the proposed rezoning will change the general nature of the present land use, nor is it likely to adversely affect traffic circulation or trip generation in the area.

## 9. Development Along Major Streets: Complies

Access to the subject parcel is taken from W. Newell Street and S. Quetel Avenue both roads are maintained by the County. County right-of-way staff has determined that there is no right-of-way dedication required for W. Newell St. or S. Quetel Ave. at this time.

10. Infill: Not Applicable

This Factor applies only for rezoning requests to GB, LI or HI.

11. Unique Topographic Features: Complies

There are no exceptional topographic features warranting consideration on or near the site.

12. Water Conservation: Does not apply at this time.

The property is within the Sierra Vista Sub-watershed, but is currently developed. No new construction is being proposed. If the rezoning is approved and either home is replaced in the future, all appropriate water conservation measures required by the zoning regulations will apply.



*View of the both homes to the northwest from W. Newell St.*

13. Public Input: Complies

The Applicant completed the required Citizen Review process and has not received a response as of the date of this memo. Staff posted the property on August 25, 2015, and published a legal notice in the *Bisbee Observer* on August 21, 2015. The Department also mailed notices to property owners within 1,000-feet of the site on August 18, 2015. To date, staff has received no objections or concerns about the request, from nearby property owners.

14. Hazardous Materials: Not Applicable

No hazardous materials are proposed as part of the future residential development plan.

15. Compliance with Area Plan: Complies

The subject property lies within the Naco Area Plan and is compliant.

The Naco Area Plan calls for large areas of high density residential development, especially in those areas within close proximity to the international border with Mexico (see attachment E). However, since its adoption in February of 1998 a vast majority of Naco is still zoned R-9 (Residential; one dwelling per 9,000-square feet). The plan characterizes high density as 3100 square feet to 9000 sq. ft. (up to 14 units per acre). Although the proposal on paper may be considered high density, in reality since no new development is being proposed it is in essence still medium density and in conformance with the Naco Area plan. While the location of the proposal lies outside of the areas the Naco Area Plan has designated as high density, should a higher density proposal be presented to the County in the future, it will be conformity with the general principals of the plan, which does call for higher density residential development within Naco.

The Proposal complies with the Naco Area Plan:

The Naco Area plan permits new high density residential development outside the historic Naco Townsite "so long as safe and adequate infrastructure and public services are available or provided to handle additional density including but not limited to: schools; law enforcement; fire protection; roads; water and waste disposal systems (Section II, Policy 2).

- The proposal meets this provision of the Naco Area Plan, as there is indeed sufficient and safe infrastructure currently in place to meet the needs of the existing dwelling units.

VI. MODIFICATIONS TO DEVELOPMENT STANDARDS

The applicant is requesting a waiver from the setback requirements per Section 1004.03 that require a minimum of a 20 ft. setback between accessory structures in a MR zoning district and the lot line of a residential zoning district. The request is to accommodate an existing shed that will not meet the setback requirements should the rezoning be approved. Staff supports this waiver, since the shed in its current location does not appear to be causing any issues or neighborhood distress. Likewise, staff has not received any opposition or written objections concerning its location from the adjacent property owner or from the surrounding property owners.



*Rear storage shed 2042 W. Newell St.*

## VI. PUBLIC COMMENT

The Planning Department mailed notices to neighboring property owners within 1,000-feet of the subject property. Staff posted the property on August 25, 2015 and published a legal notice in the *Bisbee Observer* on August 18, 2015. In response to applicant and County mailings, the Planning Department has not received a response concerning the request.

## VII. SUMMARY AND CONCLUSION

The request is to rezone a parcel of land located in Naco, AZ from R-9 to MR-1. The rezoning is necessary in order for the Applicant to proceed with a split of the parcel in a legal manner for the purposes of creating two separate tax parcels. Staff's recommendation is based upon the above analysis, as well as the following factors in favor and against approval:

### Factors in Favor of Approval

1. Allowing the rezoning and subsequent residential use would not alter the overall character of development in the area; and
2. Rezoning to MR-1 for the purpose described would not change minimum site development standards requirements for any future construction;
3. Allowing the rezoning would permit the applicant to split the property in a legal manner;
4. Allowing the rezone will permit an appropriate variety of new uses that were not otherwise permitted in the R-9 zoning district along with many of the same uses that are currently permitted in the R-9 zoning district.
5. Allowing the rezoning will add to the variety of lot sizes currently available in Naco.

### Factors Against Approval

None

## VIII. RECOMMENDATION

Based on the factors in favor of approval, Staff recommends forwarding the docket to the Board of Supervisors with a recommendation of Conditional Approval, subject to the following Conditions:

1. The Applicant shall provide the County with a signed Acceptance of Conditions and a Waiver of Claims form arising from ARS Section 12-1134 signed by the property owner of the subject property within thirty (30) days of Board of Supervisors approval of the rezoning; and
2. It is the Applicants' responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations; and
3. The lot shall be split in accordance with the MR-1 zoning designation within (three) 3 months of approval; and
4. Any changes or modifications to any Conditions of Approval shall require a recommendation by the Planning and Zoning Commission and approval by the Board of Supervisors.

Staff further recommends that the following Waiver of development standards be applied to the use:

1. A Waiver of the setback requirements per Section 1004.03 of the Zoning Regulations that require a minimum of a 20 ft. setback between accessory structures that abut Residential Zoning Districts.

## IX. ATTACHMENTS

- A. Application
- B. Site Plan
- C. Agency comment memo
- D. Naco parcels zoned R-9
- E. Naco Area Plan Map

## References

Landcaster development Ltd. V. Village of River Forest Appellate Court of Illinois — First District, Fourth Division, June 16, 1967  
[http://www.legale.com/decision/196747984IllApp2d395\\_1418.xml/LANCASTER%20DEVELOPMENT,%20LTD.%20v.%20RIVER%20FOREST#](http://www.legale.com/decision/196747984IllApp2d395_1418.xml/LANCASTER%20DEVELOPMENT,%20LTD.%20v.%20RIVER%20FOREST#) Date Accessed: August 27, 2015