



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

MARK BAKER (CONSENSUS PLANNING, AGENT) requests a special exception to Section 14-16-2-17(B)(18) : a CONDITIONAL USE to allow the sale of alcoholic drink for consumption off premise for all or a portion of Lot 22,23, Block 32, Heights Reservoir Addn TR 32 zoned R-3, located on 529 ADAMS ST NE (K-17)

Special Exception No:..... **17ZHE-80001**
Project No:..... **Project# 1011105**
Hearing Date:..... 03-17-17
Closing of Public Record:..... 03-17-17
Date of Decision: 03-31-17

On the 17th day of March, 2017, CONSENSUS PLANNING (“Agent”) acting as agent on behalf of the property owner MARK BAKER (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow the sale of alcoholic drink for consumption off premise (“Application”) upon the real property located at 529 ADAMS ST NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow the sale of alcoholic drink for consumption off premise.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:*
(a) *Will not be injurious to the adjacent property, the neighborhood, or the community;*
(b) *Will not be significantly damaged by surrounding structures or activities.*”
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The ZHE finds that in the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
5. This matter was heard on the February 21, 2017 agenda. At that time the ZHE took testimony and evidence from the Applicant and interested/concerned community members.
6. Community members raised concerns including parking, noise, intoxicated drivers/individuals in the community, and pollution/odor.
7. The Application was referred to the Land Use Facilitation program, in which the parties participated in constructive good faith and subsequently continued their dialogue.

8. As a result of the facilitated meeting and subsequent dialogue, the Applicant submits several proposed conditions of approval:
9. First, "The sale of alcoholic beverages for off-premise consumption shall be limited to and as regulated by the State of New Mexico under a Small Brewers License."
10. Second, "The brewery owner and employees shall obtain a New Mexico Alcohol Server Permit Certification."
11. Third, "The brewery shall post signs and enforce the three drink limit for its patrons."
12. Fourth, "Security cameras shall be provided as part of the security measures utilized by the brewery."
13. These conditions address concerns raised in the Application process. The ZHE finds that the condition is reasonable, addressed to potential impacts of the Application and should be imposed as a condition of approval.
14. A total of twenty-three parking spaces are required. The Applicant is providing twenty-five, which allows additional capacity for customers purchasing beer for off-premise consumption. Applicant confirms that two parking spaces for such sales is more than adequate, as it will not be a large component of the business.
15. The Applicant notes that single-container sales are prohibited, and the proposed use is the sale of "growlers" (one-half gallon containers), which the Applicant explains do not tend to be the source of nuisance consumption nearby the premises.
16. It is worth noting that many of the concerns raised are more associated with the on-premise consumption (a permitted use) rather than the requested off-premise sales. That said, the Applicant did work to address those concerns as well.
17. The Applicant also notes, correctly that more intense uses appear to be permitted by right under the zoning category.
18. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
19. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
20. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow the sale of alcoholic drink for consumption off premise.

CONDITIONS OF APPROVAL:

1. The sale of alcoholic beverages for off-premise consumption shall be limited to and as regulated by the State of New Mexico under a Small Brewers License.
2. Applicant and employees shall obtain a New Mexico Alcohol Server Permit Certification.
3. Applicant shall post signs and enforce a three-drink limit for its patrons.
4. Security cameras shall be provided as part of the security measures utilized by the Applicant.

If you wish to appeal this decision, you must do so by April 17, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.


An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number.

Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.


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cc: Zoning Enforcement
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