



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

FRANK HOLLOWAY requests a special exception to Section 14-16-2-21(A)(1) and 14-16-2-20(B)(5) : a CONDITIONAL USE for off premise consumption in a M-2 Zone for all or a portion of Lot 6A, Block 19, Paris Addn zoned M-2, located on 1324 1ST NW (J-14)

Special Exception No:..... **17ZHE-80191**
Project No: **Project# 1011335**
Hearing Date: 09-19-17
Closing of Public Record: 09-19-17
Date of Decision: 10-04-17

On the 19th day of September, 2017, FRANK HOLLOWAY ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a conditional use to allow off premise consumption in an M-2 Zone ("Application") upon the real property located at 1324 1ST NW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow off premise consumption in an M-2 Zone.
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 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. Applicant in his Application explains that "Research shows that breweries/distilleries help and revitalize manufacturing areas. Distilleries/Breweries are proven to help raise the income of an area while dropping crime rate and homeless activity. We will create a fun and responsible atmosphere that will help bring traffic and business to the area." It is the latter statement that lies at the root of the concerns.
6. Applicant confirmed that the business would operate responsibly and have reasonable security measures in place. It will also purvey a higher-priced product, which tends to reduce problems associated with off premise consumption.
7. Applicant stated, based on experience with similar operations, that the vast majority of off-premise purchase customers are expected to be existing patrons, and he expects only one or two sales per day to individuals coming in solely for off-premise purchase. That is, off-premise sales is primarily an amenity for on-premise patrons who enjoy the product and wish to take some home.

8. The business will have 42 parking spots, with a capacity of 99 patrons.
9. The business will close at 12:00 AM.
10. Concern was expressed by the neighbor directly across the street about parking, crime and noise associated with the proposed use.
11. The neighbor had experienced problems with other nearby businesses, such as Marble brewing, particularly around closing time, and does not want the problems exacerbated.
12. The ZHE recognizes the neighbor's concerns, particularly in the context of the uses of his residence that require a quiet environment. The focus for purposes of this Application, however, is to what extent the addition of off-premise sales might create an injurious circumstance as distinct from any circumstances not associated with the off premise consumption.
13. Upon reviewing the record it seems that, if anything, off-premise consumption would reduce the impacts associated with on-premise consumption. That is, patrons might tend to purchase a nightcap to go rather than staying until closing.
14. Said alternatively, there is no evidence to dispute the Applicant's assertions that the off-premise consumption will not be injurious.
15. The ZHE does recognize that impacts such as these are situational, and for that reasons intends a limited, one-year approval and trial period.
16. During this one-year period, the Applicant should meet with his neighbors to proactively address any potential impacts. Neighbors experiencing impacts should raise their concerns with Applicant to see if they can be addressed.
17. At the one-year hearing, the ZHE will focus on any asserted injury caused by off-premise consumption and measures taken to mitigate that injury.
18. The ZHE finds that 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 off premise consumption in an M-2 Zone.

CONDITIONS OF APPROVAL:

This approval will expire after one year. Applicant is responsible for re-applying in advance of the expiration of this one year period. If no evidence of injury is presented at the hearing on re-approval then permanent approval will be considered.

If you wish to appeal this decision, you must do so by October 19, 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
frank@hollowspirits.com
Joe Cackins, 1313 1st St. NW, 87102