



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

JOHN DACAMARA requests a special exception to Section 14-16-2-23(A), South Broadway SDP p. 46 III (B)(1) and 14-16-2-17(A)(13)(b): a CONDITIONAL USE to allow C-2 permissive uses in the SU-2/NCR zone for all or a portion of Lot 8, Block 7 & 1, EASTERN ADDN SECOND EXTENSION zoned SU-2, located on 1806 BROADWAY BLVD SE (L-14)

Special Exception No: **18ZHE-80067**
Project No:..... **Project# 1011571**
Hearing Date:..... 06-19-2018
Closing of Public Record:..... 06-19-2018
Date of Decision: 07-04-2018

On the 19th day of June, 2018, JOHN DACAMARA (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow C-2 permissive uses in the SU-2/NCR zone (“Application”) upon the real property located at 1806 BROADWAY BLVD SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow C-2 permissive uses in the SU-2/NCR 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. Applicant proposes a conditional use to allow C-2 permissive uses and Applicant’s stated intent is to use the Subject Property for vehicle sales.
5. The Application is noticed for the street address of the business at 1806 Broadway Boulevard SE, with the business located on two parcels, Lot 8 Block 7 and Lot 8 Block 1 of the Eastern Addition Second Extension.
6. Applicant focusses on the pre-existing vacant, underutilized nature of the Subject Property and the increased economic activity as a benefit of the proposed use, as well as the potential to bring customers to other surrounding businesses as well.
7. Applicant submitted evidence of support of several neighbors, and there was testimony in support of the Application.
8. Parties to the hearing expressed significant concerns related to the proposed use, both in submittals and in testimony.

9. In reviewing the concerns, my task is to determine, first, if the concerns constitute substantial evidence of potential injury to the adjacent property, neighborhood or community and, if so, whether conditions of approval can be imposed to mitigate that potential injury.
10. The parties' concerns are summarized and addressed as follows:

The Subject Property is too small and will have inadequate parking for employee, customer and inventory vehicles.

Applicant estimates between 10 and 15 vehicles total on the site. Applicant refers to the dealer licensing regulations, which require adequate display space, customer parking and compliance with local parking regulations. NMAC §18.19.4.54. Applicant states that customer parking will be on the site, not the street, whenever possible.

The legal notice was incorrect because it did not specify both lots.

As identified above, the property is split between two lots, both of which were described in the legal notice.

The current fence is not permitted.

Applicant acknowledges that the fence was built without a permit and will obtain a permit.

The proposed use will discourage other, more compatible uses.

It is possible that a business, not otherwise injurious, could be specifically incompatible with other businesses to an extent that the resulting local economic depression was itself injurious. Without determining how such a situation fits under the Code's rubric, in this instance there is no substantial evidence of such a potential effect on which to base a decision in any event.

Granting the Application would constitute spot zoning.

The request is for a conditional use, not a rezoning. The zoning already allows for the conditional use.

The proposed use will not be successful due to lot size, location, access and operator inexperience.

If the use is unsuccessful, the property presumably reverts to its prior, vacant condition. Although a vacant property may not be beneficial, and endemic vacancy can be injurious, that is not a change from the current condition. The bigger concern may be what other C-2 allowable uses the Subject Property might be put to if the proposed vehicle sales use is unsuccessful. This is a reasonable concern. Applicant

did nothing to address the potential for injury from any business other than vehicle sales.

Granting this conditional use will set a harmful precedent

Each conditional use application must be reviewed on its own merits to ensure that it is not injurious, and denied, approved or approved with conditions as appropriate to address that injury.

The proposed use would not help the neighborhood, other businesses, the poor or children; it does not facilitate neighbor interaction; it is not an exercise destination; there is nothing of use for children; use of local advertising; it does nothing to revitalize the neighborhood.

While these are laudable goals, they are not a requirement of conditional use approval.

Signage, lighting and promotional material would be detrimental to property values.

There is no evidence of the property value effect, if any, and whether positive or negative, related to the proposed use.

There will be increased traffic.

It is to be expected that traffic will increase somewhat when a vacant parcel begins to be used for any use. Whether the particular proposed use would create traffic so much in excess of permitted uses as to create a marginal injury is not addressed by evidence in the record, other than to note that the proposed use apparently does not meet the threshold requirement for a traffic study.

The neighborhood does not need the use, either because there are other competing businesses nearby or there is not adequate demand in the neighborhood; the use is not wanted.

Proof of market need or local desire is not a requirement of conditional use approval.

The business is not compatible.

Compatibility is not specifically a requirement, lack of injury is the requirement. Certainly a use can be incompatible to the point of being injurious, but there is no evidence that this particular business is likely to be so.

There are objections to the appearance of the business.

Similarly, any such objections would need to rise to the level of substantial evidence of injury, and they do not.

Applicants or future owners might engage in predatory lending; used car sales have an unsavory reputation

An establishment engaging in predatory lending could surely be injurious to the community. Just as surely, there is no evidence that this is likely to occur.

There are fire concerns.

The business will require Fire Marshall review prior to obtaining a certificate of occupancy or business license. Applicant confirms that no fuel will be stored on site.

Selling used cars is a hazard to people living nearby.

This is an opinion, but decisions on the Application must be based on facts in the record. Applicant does state that the residential portion of the property will be fenced off from the commercial portion.

Applicant will be doing other activities, such as vehicle repair on the premises.

Applicant confirms that no other uses are intended, and only detailing, cosmetic prep for sale and other minor activities are intended.

The proposed use will affect property values.

There is concern that the use will lower property values, and that it will raise commercial but not residential property values. For his part, Applicant suggests that the business will raise values. There is no substantial evidence in the record as to the effect on values either way, and therefore the decision cannot be based on this aspect.

11. In fully reviewing the evidence and the positions of the parties, I find 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).
12. As to the requirement 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), Applicant states that it will not.
13. A submittal was made ostensibly identifying such potential injury to the proposed business. However, that submittal focusses on “the characteristics and layout of the site itself” rather than surrounding structures and activities.
14. 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).
15. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow C-2 permissive uses in the SU-2/NCR zone.

CONDITIONS OF APPROVAL:

The following conditions are imposed to avoid potential injury:

1. No owner, employee or inventory vehicles may be parked on the site.
2. Applicant shall obtain a permit for the unpermitted fence, or remove the fence, prior to opening the business.
3. This approval is limited to vehicle sales only. No other C-2 uses are permitted without further conditional use approval.
4. No fuels may be stored on site.
5. Only vehicle sales, detailing, cosmetic prep for sale and other minor activities related to sale of vehicles are allowed.

If you wish to appeal this decision, you must do so by July 19, 2018, 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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