



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

Kaplan Central, LLC (Agent, Wooten Engineering) requests an expansion of non-conforming use for Lot Parcel B, Block 38, Valley View Addn, located at 5115 Central Ave NE, zoned MX-M [Section 14-16-6-6(c)]

Special Exception No:..... **VA-2019-00401**
Project No: **Project#2019-003058**
Hearing Date: 12-17-19
Closing of Public Record: 12-17-19
Date of Decision: 01-01-20

On the 17th day of December, 2019, property owner Kaplan Central, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting an expansion of non-conforming use (“Application”) upon the real property located at 5115 Central Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting an expansion of a non-conforming use.
2. The City of Albuquerque Code of Ordinances Section 14-16-6-6(C)(3) (Review and Decision Criteria– Expansion of Nonconforming Use) reads: *“An application for an Expansion of Nonconforming Use or Structure shall be approved if it meets all of the following criteria, as applicable:*
 - (a) The expansion will not create material negative impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts.
 - (b) The expansion will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am.
 - (c) The expansion will not negatively impact pedestrian or transit connectivity without appropriate mitigation.
 - (d) The expansion will not exceed 25 percent of the gross floor area of the structure occupied by the nonconforming use, or 25 percent of the area occupied by the nonconforming use at the time it became nonconforming.
 - (e) The expansion will not exceed the gross floor area of a nonconforming structure by more than 25 percent of the gross floor area existing at the time the structure became non-conforming.
 - (f) The expansion will not increase an existing nonconformity or create a new nonconformity.
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 14-16-6-4(N)(1).
4. Applicant, through its agent, appeared and gave evidence in support of the application.
5. All property owners within 100 feet and affected neighborhood association(s) were timely notified.

6. The subject property is currently zoned MX-M.
7. A site plan and photographs were submitted in support of the Application.
8. Based on evidence submitted by the Applicant, the expansion will not create material negative impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts as required by Section 14-16-6-6(C)(3)(a). No evidence to the contrary was presented.
9. Based on evidence submitted by the Applicant, the expansion will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am as required by Section 14-16-6-6(C)(3)(b). No evidence to the contrary was presented.
10. Based on evidence submitted by the Applicant, the expansion will not negatively impact pedestrian or transit connectivity without appropriate mitigation as required by Section 14-16-6-6(C)(3)(c). No evidence to the contrary was presented.
11. Based on evidence submitted by the Applicant, the expansion does not exceed 25 percent of the gross floor area of the structure occupied by the nonconforming use, or 25 percent of the area occupied by the nonconforming use at the time it became nonconforming as required by Section 14-16-6-6(C)(3)(d). No evidence to the contrary was presented.
12. Based on evidence submitted by the Applicant, the expansion does not exceed the gross floor area of a nonconforming structure by more than 25 percent of the gross floor area existing at the time the structure became non-conforming as required by Section 14-16-6-6(C)(3)(e).
1. Based on evidence submitted by the Applicant, the expansion will not increase an existing nonconformity or create a new nonconformity, as required by Section 14-16-6-6(C)(3)(f). No evidence to the contrary was presented.
2. City Transportation stated no objection to the application.
3. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
4. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of an expansion of non-conforming use.

APPEAL:

If you wish to appeal this decision, you must do so by January 16, 2020 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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Wooten Engineering, 1005 21st ST SE, Suite 13, 87124