



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

Murphy Oil USA, Inc. requests a conditional use to allow liquor retail for Lot 11, Unser Crossing, located at 99999 Unser Blvd SW, zoned MX-M [Section 14-16-4-3(D)(36)]

Special Exception No:..... **VA-2019-00165**
Project No: **Project# 2019-002381**
Hearing Date: 06-18-19
Closing of Public Record: 06-18-19
Date of Decision: 07-03-19

On the 18th day of June, 2019, Modulus Architects, agent for applicant Murphy Oil USA, Inc. and property owner Armstrong Central Unser Blvd. LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow liquor retail (“Application”) upon the real property located at 99999 Unser Blvd SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow liquor retail.
2. Applicant has authority to pursue this Application.
3. The Subject Property is currently zoned MX-M under the City of Albuquerque Integrated Development Ordinance (“IDO”).
4. The MX-M zone lists liquor retail as a permissive use with use-specific standards as required under IDO Section 4-3(D)(36)(c).
5. In turn, IDO Section 4-3(D)(36)(c) provides: “Notwithstanding other provisions in this Subsection 14-16-4-3(D)(36), this use requires a Conditional Use Approval pursuant to Subsection 14-16-6-6(A) when proposed within 500 feet of any Residential or NR-PO zone district or any group home use, as measured from the nearest edge of the building containing the use to the nearest Residential or NR-PO zone district or lot containing a group home.”
6. The Subject Property is located within 500 feet of a residential zone.
7. Therefore, liquor retail on the Subject Property requires a Conditional Use Approval pursuant to IDO Subsection 14-16-6-6(A).
8. The City of Albuquerque Integrated Development Ordinances Section 14-16-6-6(A)(3) (Review and Decision Criteria– Conditional Use) reads: “*An application for a Conditional Use Approval shall be approved if it meets all of the following criteria:*
 - (a) *It is consistent with the ABC Comp. Plan, as amended;*
 - (b) *It complies with all applicable provisions of the IDO, including, but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property;*
 - (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*

(d) It will not create material adverse 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;

(e) It 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;

(f) It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.

9. 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(F)(2).
10. Applicant appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
11. Applicant testified at the hearing that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
12. Applicant testified at the hearing that all property owners and neighborhood association entitled to notice were notified of the Application.
13. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. Specifically, Applicant submitted evidence supporting that the requested Conditional Use approval furthers the following goals of the ABC Comp. Plan:

POLICY 4.1.2 Identity and Design: Protect the identity and cohesiveness of neighborhoods by ensuring the appropriate scale and location of development, mix of uses, and character of building design.

Future development on the subject site would be subject to IDO requirements including Neighborhood Edges (14-16- 5-9), the mixed-use zone dimensional standards (Table 5-1-2), buffer landscaping (14-16-5- 6-(E)), and building design standards (14-16-4-11). These would help ensure appropriate scale and location of development and character of building design.

POLICY 5.1.1 Desired Growth: Capture regional growth in Centers and Corridors to help shape the built environment into a sustainable development pattern.

The Subject Property is located in "Area of Change" and would be an infill project located in a Major Transit Corridor, it would encourage employment density and redevelopment and would further this policy as this in an infill project in Transit Corridor and is the most appropriate area to accommodate growth.

POLICY 5.1.2-Development Areas: Direct more intense growth to Centers and Corridors and use Development Areas to establish and maintain appropriate density and scale of development within areas that should be more stable.

The subject site is located in a designated Transit Corridor, and in an Area of Change that is intended to develop. The current zoning of NR-C zone allows for a wide array of moderate intensity retail and commercial uses that provide for the day to day goods and services of the community that is encouraged in Centers and Corridors.

POLICY 5.1.8 Premium Transit Corridor. Foster corridors that prioritize high capacity, high-frequency transit service with mixed use.

The Subject Property is located in a Premium Transit Corridor fostering high frequency transit service.

POLICY 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The proposed Conditional Use request would allow for a mix of goods and services to be available. This will encourage redevelopment that brings goods and services within walking and biking distance of neighborhoods.

POLICY 5.3.1 IOW Development: Support additional growth in areas with existing infrastructure and public facilities.

The proposed Conditional Use will support additional growth in an Area of Change with existing infrastructure and public facilities.

POLICY 5.3.7 Locally Unwanted Land Uses: Ensure that land uses that are objectionable to immediate neighbors but may be useful to society are located carefully and equitably to ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque area.

b) Ensure appropriate setbacks, buffers, and/or design standards to minimize offsite impacts.

c) See Policy 5.2.1 for desired land uses to support complete communities.

POLICY 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

a) Encourage development and redevelopment that brings goods, services, and amenities within walking and biking distance of neighborhoods and promotes good access for all residents.

b) Maintain the characteristics of distinct communities through zoning and design standards that are consistent with long-established residential development patterns.

This request for Conditional Use which may be objectionable to immediate neighbors may be useful to society and would be located equitably to help ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque Area.

GOAL 5.6 City Development Areas: Encourage and direct growth to Areas of Change where it is expected and desired and ensure that development is and near Areas of Consistency reinforces the character and intensity of the surrounding area.

POLICY 5.6.2: Areas of Change: Direct growth and more intense development to Centers, Corridors, industrial and business parks, and Metropolitan Redevelopment Areas where change is encouraged. [A]

The Subject Property is located in an Area of Change and will direct growth and more intense development to this corridor where change is encouraged.

POLICY 8.1.2 Resilient Economy: Encourage economic development efforts that improve quality of life for new and existing residents and foster a robust, resilient, and diverse economy.

The proposed Conditional Use Approval will encourage economic development that will provide jobs, goods, and services which improve the life for new and existing residents and contribute to a diverse and vibrant economy by revitalizing a developed area with growth that is consistent with and enhances the established character of existing development. This type of economic development is suited for infill locations supported by commercial corridors.

POLICY 8.1.3 Economic Base: Strengthen and diversify the economic base to help reduce reliance on government spending.

This request allows for future redevelopment of the property providing an incentive to local business to expand and diversify employment, promote local hiring, higher wages and business that contributes to the economic base of the community and region that helps reduce reliance on government spending.

14. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval complies with all applicable provisions of the IDO, including, but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No evidence was submitted to the contrary. No prior permits or approvals apply.
15. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact. No evidence was submitted to the contrary.
16. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create material adverse 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact. No evidence was submitted to the contrary.
17. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval 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. Specifically, Applicant testified that non-residential activity would not increase in any prohibited manner. No evidence was submitted to the contrary.
18. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Specifically, Applicant testified that no negative impact on pedestrian or transit connectivity would result. No evidence was submitted to the contrary.

19. The City Traffic Engineering Division stated no objection.
20. The criteria within IDO Section 14-16-6-6(A)(3) are satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow liquor retail.

CONDITIONS:

Applicant and the Subject Property must comply with all applicable New Mexico state law requirements pertaining to alcohol sales, including but not limited to any required spacing from other uses or facilities.

APPEAL:

If you wish to appeal this decision, you must do so by July 18, 2019 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 L. Lucero, Jr., Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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