



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

Jesus Apodaca or Victor Apodaca (Agent, Juanita Garcia, JAG Planning & Zoning, LLC) request a conditional use to allow self-storage for Lot 1D, MRGCD Map 37, located at 1718 Broadway Blvd NE, zoned MX-M [Section 14-16-4-3(D)(28)]

Special Exception No:..... **VA-2020-00140**
Project No: **Project#2020-003906**
Hearing Date: 07-21-20
Closing of Public Record: 07-21-20
Date of Decision: 08-05-20

On the 21st day of July, 2020, Juanita Garcia, JAG Planning & Zoning, LLC, agent (“Agent”) for property owner Jesus Apodaca or Victor Apodaca (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow self-storage (“Application”) upon the real property located at 1718 Broadway Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow self-storage on the Subject Property.
2. The City of Albuquerque Integrated Development Ordinance (“IDO”) Section 14-16-7-1 defines “self-storage” as “[a] use consisting of 3 or more individual, small, self-contained units in a building that are leased or owned for the indoor storage of business and household goods or contractors' supplies”
3. The Subject Property is currently zoned MX-M (Mixed Use - Moderate Intensity Zone District).
4. IDO Section 14-16-2-4(C)(1) states that the “purpose of the MX-M zone district is to provide for a wide array of moderate-intensity retail, commercial, institutional and moderate-density residential uses, with taller, multi-story buildings encouraged in Centers and Corridors. Allowable uses are shown in Table 4-2-1.”
5. Table 4-2-1 lists self-storage as a conditional primary use within the MX-M zone.
6. The Subject Property is designated as an Area of Consistency.
7. The applicable overlay zone of the Subject Property is CPO-7.
8. The City Traffic Engineering Division submitted a report stating no objection to the requested conditional use approval based on its analysis of clear sight triangle requirements.
9. Applicant provided evidence that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
10. Applicant provided evidence that all property owners and neighborhood association entitled to notice were notified of the Application.
11. Agent, on behalf of the Applicant, met with representatives of the Santa Barbara Martineztown Neighborhood Association, representatives of the Martineztown Work

Group, and other community members, via a virtual meeting on Thursday, May 21, 2020. Minutes of that meeting are in the ZHE record on this Application.

12. The Agent and community members discussed, both prior to and at the July 21, 2020 ZHE hearing, the possibility of a facilitated meeting. However, based on the testimony before the ZHE, it appeared that a facilitated would not be fruitful. Therefore the ZHE did not require a facilitated meeting.
13. IDO 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*
14. Pursuant to IDO Section 14-16-6-4(F)(2), the Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence.
15. Regarding whether the proposed conditional use would be consistent with the ABC Comp. Plan, as required by IDO Section 14-16-6-6(A)(3)(a), Applicant submitted the following evidence and arguments:

“The site is located within an Area of Consistency and those uses that are listed as permissive or conditional are expected to occur within Areas of Consistency. The proposed request will meet the standards of the IDO, such as off-street parking requirements, building setbacks, building height limitations and landscaping requirements, which are all intended to protect nearby existing development from new uses. The applicant is requesting a use that is identified as a conditional use within the subject site's zone category. Those uses listed as permissive or conditional uses are uses that are expected to occur within a particular zone. The applicant is not requesting a use that is outside of the site's designated zone category.”
16. However, Applicant cited to no Policy, Goal, or other provision of the ABC Comp. Plan with which the proposed conditional use would be consistent. Similarly, Applicant provided no authority or citation for Applicant's assertion that uses that are listed as conditional are expected to occur within Areas of Consistency, nor for how that assertion relates to consistency with the ABC Comp. Plan.

17. Regarding whether the proposed conditional use would be consistent with the ABC Comp. Plan, Opponent Santa Barbara Martineztown Neighborhood Association submitted the following evidence and arguments:
- a. Under ABC Comp. Plan “Goal 4-1-the Goal is to enhance, protect and preserve distinct communities – Martineztown Santa Barbara Neighborhood is a historical residential neighborhood”.
 - b. “Policy 4.1.4. – Neighborhoods” would be violated “by not enforcing the historical protection to enhance, protect and preserve the historical residential neighborhood and traditional communities as key to our long term. Based on this Goal, the more restrictive zoning is required to be applied.”
 - c. “The Albuquerque Comprehensive Plan Part 14-16-1 General Provisions Purpose 1-3(A-L), The purpose is to protect the quality and character of residential neighborhoods;1-3(G) Protect the health, safety, and general welfare of the public; 1-3(J) Implement a connected system of parks , trails, and open spaces to promote improved outdoor activity and public health; 1-3(K) Provide reasonable protection from possible nuisances and hazards and to otherwise protect and improve public health; Provide reasonable protection possible nuisances and hazards and to otherwise protect and improve public health; Encourage efficient and connected transportation and circulation systems for motor vehicles, bicycles, and pedestrians.” Opponent Santa Barbara Martineztown Neighborhood Association testified that the proposed use would bring increased large truck and other traffic to an already congested area, having a detrimental effect on health safety and welfare, particularly given the location of the Subject Property across Hannett Avenue NE.
 - d. “In the Comp Plan Introduction on Environmental justice: After making significant gains in protecting our natural environment, we will need to continue to develop and implement strategies to address the environmental health hazards that affect vulnerable populations more severely in some areas of our community.” Opponent Santa Barbara Martineztown Neighborhood Association testified that the negative effects are unfairly focused on a vulnerable population in an historic residential neighborhood.
 - e. “Part 1.4 Legal Purpose of the Comp Plan states the Comp Plan is the general plan for Albuquerque and Bernalillo County, . . . Its statutory purpose, in NMSA 1978, Section 3-19-9(A), is ‘to guide and accomplish a coordinated, adjusted and harmonious development of the City, which will, in accordance with existing, and future needs, best promote health, safety, morals, other, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.” Opponent Santa Barbara Martineztown Neighborhood Association testified that the proposed use would be out of harmony with existing and future needs of the neighborhood, because of the negative impacts on environment, health, safety, and welfare.
 - f. “The Albuquerque Comprehensive Plan, Chapter 5, Land Use, 5.1.1 Introduction states “In general, it is important to protect public health and safety by separating residential and industrial land uses and ensuring adequate buffering, separation distances, or mitigation measures between incompatible uses.” . . . Policy 5.6.3 (a-j) “Areas of Consistency: Protect and enhance the character of existing single-

family neighborhoods....” Opponent Santa Barbara Martineztown Neighborhood Association testified that the proposed conditional use would be incompatible with the adjacent residential uses.

- g. “Chapter 13, Resilience & Sustainability, Section on Air Quality states that since Albuquerque is located in a river valley bounded by a high mountain range to the east, Albuquerque's geographic location, mile-high altitude, and meteorological conditions such as canyon winds affect Albuquerque’s air quality. Martineztown Santa Barbara Neighborhood is bounded by Interstate 25 to the east and Interstate 40 to the west. A Health Impact Study done for Martineztown Santa Barbara Neighborhood indicates that Martineztown Santa Barbara Neighborhood is an already vulnerable area and any more concentrated pollution such as storage facility for a contractor’s yard is detrimental to the health, safety, and welfare of the neighborhood.” A copy of this Health Impact Study was submitted into the public record in this matter.
18. On balance, substantial evidence exists in favor of a conclusion that the proposed conditional use would be inconsistent with the ABC Comp. Plan, while there is a lack of substantial evidence in favor of a conclusion that the proposed conditional use would be consistent with the ABC Comp. Plan.
19. Consequently, Applicant has failed to meet its burden of providing a sound justification, based on substantial evidence, for the requested decision that the requested Conditional Use approval would be consistent with the ABC Comp. Plan, as required by IDO Section 14-16-6-6(A)(3)(a).
20. Section 14-16-6-6(A)(3) requires Applicant to establish a sound justification for all the criteria stated in that Section – if one criterion fails, the entire application must fail. As stated, above, Applicant has failed to satisfy the criterion set forth in IDO Section 14-16-6-6(A)(3)(a). Therefore, the application must be denied. Given the denial on such grounds, the ZHE need not address the remaining criteria of IDO Section 14-16-6-6(A)(3) or any other applicable criterion of approval.

DECISION:

DENIAL of a conditional use to allow self-storage.

APPEAL:

If you wish to appeal this decision, you must do so by August 20, 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.

A handwritten signature in blue ink, appearing to read "Robert Lucero".

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File

Zoning Enforcement

Juanita Garcia, JAG Planning & Zoning, LLC, jag@jagpandz.com