



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	Decisions Requiring a Public Meeting or Hearing	Policy Decisions
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Annexation of Land (Form Z)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
		Appeals
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

APPLICATION INFORMATION		
Applicant: Jose Alfredo and Ailda Martinez		Phone: 505-610-4147
Address: 3500 Bareback PL SW		Email: zapateriapedito@hotmail.com
City: Albuquerque	State: NM	Zip: 87105
Professional/Agent (if any): Modulus Architects, Inc. Angela Williamson / SaucedoChavez, P.C.		Phone: 505-338-1499
Address: 100 Sun Ave. NE Ste. 600		Email: awilliamson@modulusarchitects.com
City: Albuquerque	State: NM	Zip: 87109
Proprietary Interest in Site: Owner	List <u>all</u> owners:	

BRIEF DESCRIPTION OF REQUEST
Appeal of denial of VA-2020-00143 dated March 2, 2021 and
Appeal of denial of VA-2020-00144 dated March 2, 2021

SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)		
Lot or Tract No.: Commercial Tract B	Block: 5	Unit:
Subdivision/Addition: Los Altos	MRGCD Map No.:	UPC Code: 101105624937420702
Zone Atlas Page(s): L-11-Z	Existing Zoning: MX-M	Proposed Zoning:
# of Existing Lots:	# of Proposed Lots:	Total Area of Site (acres):

LOCATION OF PROPERTY BY STREETS		
Site Address/Street: 99999 Bridge Blvd. SW	Between:	and:

CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)	
Project #2020-003911, VA-2020-00143, VA-2020-00144	
Signature: <i>Christopher T. Saucedo</i>	Date: <i>3-17-2021</i>
Printed Name: <i>Christopher T. Saucedo (SaucedoChavez, P.C.)</i>	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

FOR OFFICIAL USE ONLY					
Case Numbers	Action	Fees	Case Numbers	Action	Fees
Meeting/Hearing Date:				Fee Total:	
Staff Signature:			Date:	Project #	

FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

- APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)

___ Interpreter Needed for Hearing? ___ if yes, indicate language: _____

X A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF shall be organized with the Development Review Application and this Form A at the front followed by the remaining documents in the order provided on this form.

X Project number of the case being appealed, if applicable: 2020-003911

X Application number of the case being appealed, if applicable: VA-2020-00143 and VA-2020-00144

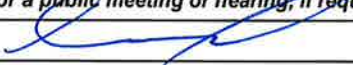

X Type of decision being appealed: ZHE Denial of Variance

X Letter of authorization from the appellant if appeal is submitted by an agent

X Appellant's basis of standing in accordance with IDO Section 14-16-6-4(V)(2)

X Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(V)(4)

X Copy of the Official Notice of Decision regarding the matter being appealed

<i>I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.</i>	
Signature: 	Date: <u>3-17-2021</u>
Printed Name: <u>Daniel Apodaca (Santodchavez, P.C.)</u>	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent
FOR OFFICIAL USE ONLY	
Case Numbers: _____	Project Number: _____
Staff Signature: _____	
Date: _____	

Jennifer Bridges
Vice President Asset Development
870-875-7602
jennifer.bridges@murphyusa.com



March 16, 2021

City of Albuquerque
Mr. Steven M. Chavez, Esq.
Land Use Hearing Officer
600 2nd St. NW
Albuquerque, NM 87102

Re: Agent Authorization Notice-Project #2020-003911

To Whom It May Concern,

Murphy Oil USA, Inc., hereby authorize SaucedoChavez, P.C. to act as agent on matters pertaining to any and all submittals to the City of Albuquerque regarding the above referenced Project. SaucedoChavez, P.C. will serve as our agent alongside Angela Williamson, CEO with Modulus Architects, Inc.

This authorization is valid until further written notice from Murphy Oil, or SaucedoChavez, P.C.

Sincerely,

DocuSigned by:
Jennifer Bridges
6291C866B20D493...

Jennifer Bridges
VP, Asset Development

JB/lh

Zoning Hearing Examiner
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102

Re: Agent Authorization Notice – BRIDGE BLVD SW ALBUQUERQUE NM 87121

To Whom It May Concern,

Martinez Jose Alfredo & Ailda, hereby authorizes Angela Williamson, CEO with Modulus Architects, Inc., to perform as the Agent of Record with the City of Albuquerque. This Agent Authorization is for the property located at: BRIDGE BLVD SW ALBUQUERQUE NM 87121 and legally described as: A TRACT OF LAND LYING WEST OF & ADJ TO TRS A & B LOS ALTOSADDN BLK 5 EXC LOT 12 & THE WESTERLY 26.2 FT OF LOT 13CONT 29475 SF M/L

This authorization is valid until further written notice from Martinez Jose Alfredo & Ailda or Angela Williamson, CEO with Modulus Architects, Inc. (Agent). Please direct all correspondence and communication to our Agent for the purpose of this request for a Conditional Use Permit.

Sincerely,

Handwritten signature of Jose A. Martinez and Ailda M. Z. The signature is written in black ink and includes the names "Jose A. Martinez" and "Ailda M. Z." with a stylized flourish.

Martinez Jose Alfredo & Ailda
108 Gore Ave SE
Albuquerque NM 87105

Zoning Hearing Examiner
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102

Re: Agent Authorization Notice – 1021 OLD COORS DR SW ALBUQUERQUE NM 87121

To Whom It May Concern,

Martinez Jose Alfredo & Ailda, hereby authorizes Angela Williamson, CEO with Modulus Architects, Inc., to perform as the Agent of Record with the City of Albuquerque. This Agent Authorization is for the property located at: 1021 OLD COORS DR SW ALBUQUERQUE NM 87121 and legally described as: TRACT "B" BLK 5 LAND DIVISION PLAT LOS ALTOS SUBD (LOT 14 & PORT LOT 13 & PORT COMMERCIAL RACT BLK 5) CONT 0.6510 AC.

This authorization is valid until further written notice from Martinez Jose Alfredo & Ailda or Angela Williamson, CEO with Modulus Architects, Inc. (Agent). Please direct all correspondence and communication to our Agent for the purpose of this request for a Conditional Use Permit.

Sincerely,

X Jose A Martinez
Ailda MTJ

Martinez Jose Alfredo & Ailda
3500 Bareback PL SW
Albuquerque NM 87105



SaucedoChavez, P.C.

Christopher T. Saucedo
csaucedo@saucedochavez.com

March 15, 2021

Mr. Steven M. Chavez, Esq.
Land Use Hearing Officer
Albuquerque City Council
P.O. Box 1293, Room 9087
Albuquerque, New Mexico 87103

Re: Project # 2020-003911: Appeal of VA-2020-00143 and VA-2020-00144-Denial March 2, 2021

Dear Mr. Chavez:

The ZHE erred in determining that the Applicant's own decision to limit the sale of alcohol to ensure compliance with the requirements of IDO section 14-16-6-6(A)(3) equates to an infringement of the State of New Mexico's preemption in the field of regulation of alcoholic beverage sales.

Please allow this letter to serve as an application to appeal the Zoning Hearing Examiner's ("ZHE") March 2, 2021, denials of requested variances. This firm represents Jose Alfredo and Ailda Martinez ("Appellants") with respect to their request for two variances: 1) the request for a conditional use to allow for a light vehicle fueling station adjacent to a residential zone; and 2) the request for a conditional use to allow for liquor sales within 500 feet of a residential zone. The real property in question is located at 99999 Bridge Blvd. SW. Please consider this appeal to be timely filed as it was submitted prior to 5:00 P.M. on March 17, 2021, when the fifteen day appeal deadline is set to expire. The ZHE's Notification of Decision for special exception number VA-2020-00143 is attached as **Exhibit A**. The ZHE's Notification of Decision for special exception number VA-2020-0144 is attached as **Exhibit B**. Appellants have standing pursuant to 14-16-6-4(V)(2)(a)(1) to bring this appeal as they are the property owners of record at the 99999 Bridge Blvd. SW location.

Background

Appellants own the property located at 99999 Bridge Blvd. S.W., which is zoned as a MX-M, Mixed-use-Moderate Intensity Zone District. It is the Appellants' intention to develop the property into a Murphy Oil light vehicle fueling station.

On December 16, 2020, this matter was remanded by the City Council to the ZHE "to re-evaluate the enforceability of the conditions of approval limiting liquor sales" specifically to allow the ZHE to address and enter findings related to IDO section 14-16-6-6(A)(3), and to determine

800 Lomas Blvd., NW, Suite 200, Albuquerque, NM 87102

P: (505) 338-3945 F: (505) 338-3950 www.saucedochavez.com

whether the requested conditional use variances would have any impact on non-residential activity within 300 feet of the adjacent residential zone between the hours of 8:00 p.m. and 6:00 a.m. *See* Notification of Decision dated February 2, 2021 attached as **Exhibit C**; *see also* Notice of Decision of City Counsel dated December 16, 2020 attached as **Exhibit D**. A hearing by the ZHE was heard on January 19, 2021 in which the ZHE received testimony and evidence related to the IDO inquiry from the City Council. At that January 19, 2021 hearing, applicants, through their agent, testified in support of the application and no other party presented testimony. As part of their defense of the application, applicants clarified that their gas pumps would not be open 24-hours and further noted that they would voluntarily limit alcohol sales from 8:00 p.m. to 6:00 a.m. to further ensure that there would not be an increase in nonresidential activity during those times.

The January 19, 2021 hearing was continued so that all parties could present evidence related to a potential legal issue of whether municipal restrictions as to the type and hour and sale of alcoholic beverages would encroach upon the state of New Mexico's preemption in the field of regulating alcohol beverage sales pursuant to the Liquor Control Act. On February 16, 2021, the ZHE heard further testimony related to the preemption issue. On March 2, 2021, the ZHE issued the two Notifications of Decision, in which it determined that based on the "Miniatures Case" (*Lee Investments Inc., et al., v. City of Albuquerque*, Case No. D-202-CV-2008-02996; Memorandum Opinion and Order dated May 22, 2008), and New Mexico Attorney General Opinion 80-23 (June 13, 1980), and ultimately concluded that the proposed conditions would "impermissibly infringe upon the State of New Mexico's preemption of the field of regulation of alcohol beverage sales." *See* Exhibits A, B ¶12. As more fully explained below, Appellants appeal that determination on the grounds that the proposed limitation of alcohol sales by applicants is not a City imposed regulation of alcohol beverage sales. Thus, there are no concerns of preemption by the State of New Mexico.

In issuing the denials in the two Notifications of Decisions (Exhibits A & B), the ZHE was rightfully concerned with whether the conditions in question would infringe on the State of New Mexico's ability to regulate and control the sale of alcoholic beverages. Though Appellants believe that as a matter of law a municipality has the right to limit the times in which alcoholic beverages can be sold without infringing on the State's ability to control the sale of liquor pursuant to the Liquor Control Act, such a determination does not need to be made in order to approve the application. Instead, this appeal focuses on the lack of conditions put on Appellant's liquor license by the City, leaving the question of preemption moot.

In reaching his conclusion, the ZHE's legal analysis relies upon the findings of a Memorandum Opinion and Order in the "Miniatures Case" and the New Mexico Attorney General Opinion 80-23. Both the Miniatures Case and the AG Opinion 80-23 questioned whether more restrictive municipal ordinance related to the sale of liquor would infringe upon the State's ability to control liquor sales. Specifically, the Miniatures Case looked at wither a 2005 Albuquerque zoning code that prohibited the sale of certain liquor within 500 feet of specific sites was preempted by the Liquor Control Act. AG Opinion 80-23 questioned whether a city council or board of county commissioners could enforce a limitation on the requirement under the Liquor Control Act that liquor not be sold within 300 feet of a school or church. In both the Miniatures Case, and the AG

Opinion the focus of the analysis centered around issues that the City's Ordinances conflicted with the Liquor Control Act, and were thus preempted. In the present matter, the City's Ordinance in question (IDO section 14-16-6-6(A)(3)) provides for review and decision criteria to determine if an application for conditional use should be accepted. Relevant to this matter, IDO Section 14-16-6-6(A)(3)(e) questions whether a project site will increase non-residential activity between the hours of 8:00 P.M. and 6:00 A.M.. Nothing within IDO Section 14-16-6-6(A)(3) limits the sale of alcohol, or otherwise attempts to expand or limit restrictions under the Liquor Control Act. Instead, in the present matter, in order to limit foot traffic and meet the requirement of the IDO, Appellants, as autonomous business owners, determined that they would not sell alcohol during the hours of 8:00 P.M. and 6:00 A.M to limit foot traffic. Although Appellants could have chosen an alternative method of limiting foot traffic (such as closing gas or closing the store generally), they determined, as a business decision, that the limitation of sale of alcohol during the hours in question would achieve the goal under 14-16-6-6(A)(3). Thus, it is not the City's ordinance that is limiting the sale of alcohol, it is the applicant's own decision that is limiting the sale. Applicants find no language in the Liquor Control Act that requires a license holder to remain open during all possible hours in which alcohol could be sold.

As noted in the Notifications of Determination, "Applicant would have met its burden of providing evidence to satisfy the IDO section 14-16-6-6(A)(3)(e)...only if liquor retail use is restricted to prohibit liquor sales between the hours of 8:00 P.M. and 6:00 A.M. Exhibit A, ¶ 7. Because the ZHE improperly determined that Applicants' own limitation related to the sale of liquor infringes on the State's ability to control liquor under the Liquor Control Act, there is no justifiable reason under law in which the applications in question should be denied. Appellants, therefor, respectfully request that the LUHO override the ZHE's decision and allow for the conditional use permits requested.

Very truly yours,

SaucedoChavez, P.C.

/s/ Christopher T. Saucedo,
Christopher T. Saucedo



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

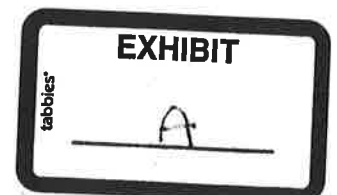
Jose Alfredo and Ailda Martinez (Agent, Modulus Architects) requests a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district for Commercial Tract, Block 5, Los Altos, located at 99999 Bridge Blvd SW, zoned MX-M [Section 14-16-4-3(D)(17)(i)]

Special Exception No:..... VA-2020-00143
Project No: Project#2020-003911
Hearing Date: 02-16-21
Closing of Public Record: 02-16-21
Date of Decision: 03-02-21

On the 16th day of February, 2021, Modulus Architects, agent for property owner Jose Alfredo and Ailda Martinez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district (“Application”) upon the real property located at 99999 Bridge Blvd SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district.
2. The ZHE incorporates all findings of its Notification of Decision dated September 2, 2020, and its Notification of Decision dated February 2, 2021, as if fully set forth in this Notification of Decision, except as expressly stated differently in this Notification of Decision. If any conflict exists between the prior Notifications of Decision and this Notification of Decision, then this Notification of Decision prevails.
3. This matter came before the ZHE on continuance from the January 19, 2021 ZHE hearing, at which the ZHE received testimony and evidence on the Application addressing solely the non-increase non-residential activity.
4. The ZHE Notification of Decision dated February 2, 2021 continued this case to the ZHE’s February 16, 2021 hearing, to allow Applicant, appellants, and the public with the opportunity to address questions regarding state preemption of municipal conditions on liquor licenses and sales posed by *Baker, et al., v. City of Albuquerque* (also cited as *Lee Investments Inc., et al., v. City of Albuquerque*), Case No. D-202-2008-02996, Memorandum Opinion and Order, May 22, 2008 (decided under prior statute) (attached to the ZHE Notification of Decision dated February 2, 2021, as EXHIBIT A) (herein the “Miniatures Case”); and New Mexico Attorney General Opinion 80-23, June 13, 1980 (decided under prior statute) (available at <https://nmonesource.com/nmos/ag/en/14713/1/document.do>) (discussing impermissible municipal restriction on hours or mode of operation of New Mexico liquor license as condition to granting licensee waiver) (herein, the “AG Opinion”).



5. Other than Applicant's agent's testimony at the February 16, 2021 ZHE hearing that the Miniatures Case and the AG Opinion speak for themselves, the ZHE received no additional evidence, testimony or argument on the state preemption issue.
6. One resident of the neighborhood in the vicinity of the Subject Property appeared at the February 16, 2021 ZHE hearing and spoke against the Application for reasons already considered by the ZHE.
7. The ZHE finds that, on balance, Applicant would have met its burden of providing evidence to satisfy IDO section 14-16-6-6(A)(3)(e), which requires that the proposed conditional use "*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,*" only if liquor retail use is restricted to prohibit liquor sales between the hours of 8:00 pm and 6:00 am.
8. However, as also discussed in the ZHE Notification of Decision in the companion case VA-2020-00144 dated February 2, 2021, the ZHE finds that the proposed liquor retail conditions of approval would impermissibly infringe upon the State of New Mexico's preemption of the field of the regulation of alcoholic beverage sales. *See* the Miniatures Case and the AG Opinion.
9. Essentially, the State has occupied the domain of regulation of liquor sales such that municipalities may act only as specifically authorized by statute. Here, the proposed conditions of approval are not specifically authorized by statute.
10. As stated in the Miniatures Case at page 8, while "local government has the power to approve or disapprove the location of the [liquor] licensed premises under [state statute]; the Legislature has not given municipalities the power to impose limitations, restrictions or conditions on a [liquor] license."
11. The proposed conditions of approval seek to impose "limitations, restrictions, or conditions" on a liquor license, and therefore those conditions of approval would be outside municipal authority to impose.
12. Because the proposed conditions of approval would be required to mitigate the negative impacts of the requested use, and because those conditions of approval would impermissibly infringe upon the State of New Mexico's preemption of the field of the regulation of alcoholic beverage sales, the ZHE finds that this Application should be denied.

DECISION:

DENIAL of a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district.

APPEAL:

If you wish to appeal this decision, you must do so by March 17, 2021 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
ZHE File
Zoning Enforcement
Angela Williamson, awilliamson@modulusarchitects.com
Gerard Garcia, 5916 Rio Vista DR SW, 87121
Bruce Stauder, 2909 Rio Vista Ct SW, 87105
Patti Stauder, 2909 Rio Vista Ct SW, 87105
Carmen Atencio, 1256 Cortez DR SW, 87121
Dan Goering, 2802 Los Altos PL NW, 87105
Diane Beserra, dlbeserra@icloud.com
Jennifer Kepesh, 1261 Cortez DR SW, 87105
Victor Prado, 1261 Cortez DR SW, 87121
Kelly Cockrell, ninedogs@gmail.com
Athena La Roux, athenalaroux@gmail.com



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

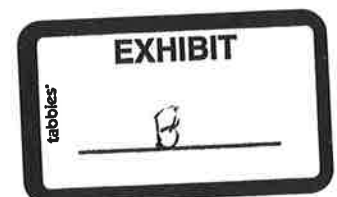
Jose Alfredo and Ailda Martinez (Agent, Modulus Architects) requests a conditional use to allow for liquor sale within 500 feet of residential for Lot B, Block 5, Los Altos, located at 99999 Bridge Blvd SW, zoned MX-M [Section 14-16-4-3(D)(36)(c)]

Special Exception No:..... **VA-2020-00144**
Project No: **Project#2020-003911**
Hearing Date: 02-16-21
Closing of Public Record: 02-16-21
Date of Decision: 03-02-21

On the 16th day of February, 2021, Modulus Architects, agent for property owner Jose Alfredo and Ailda Martinez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for liquor sale within 500 feet of residential (“Application”) upon the real property located at 99999 Bridge Blvd SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for liquor sale within 500 feet of residential.
2. The ZHE incorporates all findings of its Notification of Decision dated September 2, 2020, and its Notification of Decision dated February 2, 2021, as if fully set forth in this Notification of Decision, except as expressly stated differently in this Notification of Decision. If any conflict exists between the prior Notifications of Decision and this Notification of Decision, then this Notification of Decision prevails.
3. This matter came before the ZHE on continuance from the January 19, 2021 ZHE hearing, at which the ZHE received testimony and evidence on the Application addressing solely the enforceability of the conditions of approval limiting liquor sales, and limiting the conditional use approval to a single operator.
4. The ZHE Notification of Decision dated February 2, 2021 continued this case to the ZHE’s February 16, 2021 hearing, to allow Applicant, appellants, and the public with the opportunity to address questions regarding state preemption of municipal conditions on liquor licenses and sales posed by *Baker, et al., v. City of Albuquerque* (also cited as *Lee Investments Inc., et al., v. City of Albuquerque*), Case No. D-202-2008-02996, Memorandum Opinion and Order, May 22, 2008 (decided under prior statute) (attached to the ZHE Notification of Decision dated February 2, 2021, as EXHIBIT A) (herein the “Miniatures Case”); and New Mexico Attorney General Opinion 80-23, June 13, 1980 (decided under prior statute) (available at <https://nmonesource.com/nmos/ag/en/14713/1/document.do>) (discussing impermissible municipal restriction on hours or mode of operation of New Mexico liquor license as condition to granting licensee waiver) (herein, the “AG Opinion”).



5. Other than Applicant's agent's testimony at the February 16, 2021 ZHE hearing that the Miniatures Case and the AG Opinion speak for themselves, no additional evidence, testimony or argument was presented on the state preemption issue.
6. One resident of the neighborhood in the vicinity of the Subject Property appeared at the February 16, 2021 ZHE hearing and spoke against the Application for reasons already considered by the ZHE.
7. The ZHE finds that, on balance and in light of the ZHE's other findings, Applicant would have met its burden of providing evidence to satisfy IDO section 14-16-6-6(A)(3) only if conditions of approval were instituted to restrict liquor retail use by prohibiting liquor sales between the hours of 8:00 p.m. and 6:00 a.m., and also prohibiting sale of any intoxicating spirit and limit alcohol sales to only beer and wine.
8. However, as also discussed in the ZHE Notification of Decision in the companion case VA-2020-00143 dated February 2, 2021, the ZHE finds that these proposed liquor retail conditions of approval would impermissibly infringe upon the State of New Mexico's preemption of the field of the regulation of alcoholic beverage sales. *See* the Miniatures Case and the AG Opinion.
9. Essentially, the State has occupied the domain of regulation of liquor sales such that municipalities may act only as specifically authorized by statute. Here, the proposed conditions of approval are not specifically authorized by statute.
10. As stated in the Miniatures Case at page 8, while "local government has the power to approve or disapprove the location of the [liquor] licensed premises under [state statute]; the Legislature has not given municipalities the power to impose limitations, restrictions or conditions on a [liquor] license."
11. The proposed conditions of approval seek to impose "limitations, restrictions, or conditions" on a liquor license, and therefore those conditions of approval would be outside municipal authority to impose.
12. Because the proposed conditions of approval would be required to mitigate the negative impacts of the requested use, and because those conditions of approval would impermissibly infringe upon the State of New Mexico's preemption of the field of the regulation of alcoholic beverage sales, the ZHE finds that this Application should be denied.

DECISION:

DENIAL of a conditional use to allow for liquor sale within 500 feet of residential.

APPEAL:

If you wish to appeal this decision, you must do so by March 17, 2021 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
Angela Williamson, awilliamson@modulusarchitects.com
Gerard Garcia, 5916 Rio Vista DR SW, 87121
Bruce Stauder, 2909 Rio Vista Ct SW, 87105
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Dan Goering, 2802 Los Altos PL NW, 87105
Diane Beserra, dlbeserra@icloud.com
Jennifer Kepesh, 1261 Cortez DR SW, 87105
Victor Prado, 1261 Cortez DR SW, 87121
Kelly Cockrell, ninedogs@gmail.com
Athena La Roux, athenalaroux@gmail.com



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

Jose Alfredo and Ailda Martinez (Agent, Modulus Architects) requests a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district for Commercial Tract, Block 5, Los Altos, located at 99999 Bridge Blvd SW, zoned MX-M [Section 14-16-4-3(D)(17)(i)]

Special Exception No:..... **VA-2020-00143**
Project No:..... **Project#2020-003911**
Hearing Date:..... 01-19-21
Closing of Public Record: 01-19-21
Date of Decision: 02-02-21

On the 19th day of January, 2021, Modulus Architects, agent for property owner Jose Alfredo and Ailda Martinez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district (“Application”) upon the real property located at 99999 Bridge Blvd SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for a light vehicle fueling station adjacent to a residential zone district.
2. This matter came before the ZHE on remand by the City Council, pursuant to the Notice of Decision issued by the City Council in Case No. DAC-20-10, December 16, 2020 (the “Remand Order”).
3. The Remand Order states that the City Council voted to remand this case to the ZHE for the ZHE to address and enter findings on the IDO requirement that the requested light vehicle fueling use not increase non-residential activity within 300 feet of the adjacent residential zone districts between the hours of 8:00 p.m. and 6:00 a.m.
4. At the January 19, 2021 ZHE hearing, the ZHE received testimony and evidence on the Application, addressing solely the non-increase non-residential activity stated in finding 3, above.
5. The ZHE incorporates all findings of its Notification of Decision dated September 2, 2020, as if fully set forth in this Notification of Decision, except as expressly stated differently in this Notification of Decision. If any conflict exists between the Notification of Decision dated September 2, 2020 and this Notification of Decision, then this Notification of Decision prevails.
6. After the Remand Order and up until the January 19, 2020 ZHE hearing, the ZHE received no written evidence from applicant, opponents, or any other party addressing the Application.



7. Agent appeared at the January 19, 2020 ZHE hearing and testified in support of the Application.
8. No other party presented testimony at the January 19, 2020 ZHE hearing.
9. Applicant stated that this request 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, for the following reasons:
 - a. The property to the north, east and south are commercially zoned properties with commercial operations.
 - b. The proposed Murphy gas station is not a destination location, rather, consumers are only “passerby” traffic. As such, the proposed light fueling station would not increase the activity that is already active and present at this location.
 - c. Calculations by the Mid Region Council of Governments Current estimate that daily traffic volumes on Bridge Blvd. are currently 23,900 cars traveling past this site daily, and on Old Coors more than 16,200 cars traveling past this site daily.
 - d. Applicant clarified that the proposed store and pumps would not be open 24 hours a day, but rather would be limited to hours of operation of 5AM – Midnight.
 - e. Although alcohol sales may create a destination location, prohibiting alcohol sales between the hours of 8:00 pm and 6:00 am would further ensure there would be no significant increase in nonresidential activity during those times.
10. On balance, Applicant will have met its burden of providing evidence to satisfy IDO section 14-16-6-6(A)(3)(d), which requires that the proposed conditional use “*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,*” if liquor retail use is restricted to prohibit liquor sales between the hours of 8:00 pm and 6:00 am.
11. However, as discussed in more detail in the ZHE Notification of Decision in the companion case VA-2020-00144 dated February 2, 2021, questions have arisen regarding whether municipal restriction of the type and hours of sale of alcoholic beverages, as expressed in the ZHE conditions of approval to be considered on remand, may infringe upon the State of New Mexico’s preemption of the field of the regulation of alcoholic beverage sales.
12. The ZHE finds that this Application should be continued, to allow Applicant and the public to present evidence and legal argument regarding whether the ZHE conditions of approval to be considered on remand may infringe upon the State of New Mexico’s preemption of the field of the regulation of alcoholic beverage sales.

DECISION:

CONTINUANCE of the Application to be heard at the ZHE hearing at 9:00 a.m. on February 16, 2021.

APPEAL:

If you wish to appeal this decision, you must do so by February 17, 2021 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
Angela Williamson, awilliamson@modulusarchitects.com
Gerard Garcia, 5916 Rio Vista DR SW, 87121
Bruce Stauder, 2909 Rio Vista Ct SW, 87105
Patti Stauder, 2909 Rio Vista Ct SW, 87105
Carmen Atencio, 1256 Cortez DR SW, 87121
Dan Goering, 2802 Los Altos PL NW, 87105
Diane Beserra, dlbeserra@icloud.com
Jennifer Kepesh, 1261 Cortez DR SW, 87105
Victor Prado, 1261 Cortez DR SW, 87121
Kelly Cockrell, ninedogs@gmail.com



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

Jose Alfredo and Ailda Martinez (Agent, Modulus Architects) requests a conditional use to allow for liquor sale within 500 feet of residential for Lot B, Block 5, Los Altos, located at 99999 Bridge Blvd SW, zoned MX-M [Section 14-16-4-3(D)(36)(c)]

Special Exception No:..... **VA-2020-00144**
Project No: **Project#2020-003911**
Hearing Date: 01-19-21
Closing of Public Record: 01-19-21
Date of Decision: 02-02-21

On the 19th day of January, 2021, Modulus Architects, agent for property owner Jose Alfredo and Ailda Martinez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for liquor sale within 500 feet of residential (“Application”) upon the real property located at 99999 Bridge Blvd SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for liquor sale within 500 feet of residential.
2. This matter came before the ZHE on remand by the City Council, pursuant to the Notice of Decision issued by the City Council in Case No. DAC-20-11, December 16, 2020 (the “Remand Order”).
3. The Remand Order states that the City Council voted to remand this case to the ZHE for the ZHE to reevaluate the enforceability of the conditions of approval limiting liquor sales, and limiting the conditional use approval to a single operator.
4. At the January 19, 2021 ZHE hearing, the ZHE received testimony and evidence on the Application, addressing solely the conditions stated in finding 3, above.
5. The ZHE incorporates all findings of its Notification of Decision dated September 2, 2020, as if fully set forth in this Notification of Decision, except as expressly stated differently in this Notification of Decision. If any conflict exists between the Notification of Decision dated September 2, 2020 and this Notification of Decision, then this Notification of Decision prevails.
6. After the Remand Order and up until the January 19, 2020 ZHE hearing, the ZHE received no written evidence from applicant, opponents, or any other party addressing the Application.
7. Agent appeared at the January 19, 2020 ZHE hearing and testified in support of the Application.
8. No other party presented testimony at the January 19, 2020 ZHE hearing.
9. The ZHE September 2, 2020 Notification of Decision adopted the following conditions of approval:

- a. The approved conditional use is personal to Murphy USA and does not run with the land.
 - b. The subject property must adhere to the Use Specific Standards set forth in IDO 4-3(D)(17) Light Vehicle Fueling Station.
 - c. Murphy USA must follow the model of the Smart Policing Initiatives and adopt and comply with the CPTED (Crime Prevention through Environmental Design) crime prevention program Applicant, as described in its submittals, cited above.
 - d. Murphy USA must hire an engineering firm to conduct a photometric study that will ensure that there is no light pollution from the subject property onto neighboring properties.
 - e. Murphy USA must add landscape buffers to ensure the safety and privacy of adjacent residential neighborhoods and neighboring properties.
 - f. Murphy USA must place and monitor security cameras in indoor and outdoor areas of the subject property, and to monitor such security cameras on a 24-hours a day, 7-days a week basis.
 - g. Murphy USA may not sell any intoxicating spirit and must limit its alcohol sales to beer and wine, only.
 - h. Any liquor retail use is restricted to prohibit the sale of alcohol between 8:00 pm and 6:00 am.
10. As to the ZHE September 2, 2020 Notification of Decision condition that “the approved conditional use is personal to Murphy USA and does not run with the land”:
- a. IDO section 14-16-6-4(W)(1) provides that, “[u]nless specified otherwise on the permit or approval document for a specific type of development approval, permits and approvals run with the land and are not affected by changes in ownership or the form of ownership of the property.” (Emphasis added).
 - b. Thus, because an approval may “specif[y] otherwise,” the IDO expressly contemplates that a particular approval may be stated to break with the default rule that approvals run with the land, and instead require that an approval be personal to the proposed operator.
 - c. Pursuant to IDO section 14-16-6-4(W)(1), the ZHE September 2, 2020 Notification of Decision on the Application expressly states that the approval is conditioned such that it is personal to Murphy USA and does not run with the land. This appears clear and unambiguous.
 - d. This condition is enforceable, because the City routinely verifies the identity of applicants and the ownership of real property that is are subjects of zoning applications, and such verification would appear to continue to be feasible and reasonable into the future.
11. The ZHE September 2, 2020 Notification of Decision condition that the “subject property must adhere to the Use Specific Standards set forth in IDO 4-3(D)(17) Light Vehicle Fueling Station” is enforceable, because the standards are expressly stated in the IDO and are definite.
12. The ZHE September 2, 2020 Notification of Decision condition that “Murphy USA must follow the model of the Smart Policing Initiatives and adopt and comply with the CPTED (Crime Prevention through Environmental Design) crime prevention program Applicant, as described in its submittals, cited above,” may pose difficulties to enforcement. This is because the CPTED by its nature is more of a policy document than a list of particular and

definite measures to be taken. However, examining the evidence and testimony submitted by Murphy regarding its proposed measures to be taken pursuant to CPTED, the following conditions are enforceable and targeted to mitigate potential harm: (a) Murphy USA must install and maintain a security monitoring system, with both interior and exterior surveillance cameras in place, that operates 24 hours a day, 7 days a week, and that is monitored by the Murphy home office; and (b) Murphy USA must maintain a constant presence of security on the premises during business hours to help prevent alcohol-related crime in the area. These conditions are enforceable, because they are definite, express, and easily verifiable with a simple physical inspection of the subject property. As to the cameras operating 24 hours a day, 7 days a week, and are monitored by the Murphy home office, a simple requirement of a certification by Murphy verifying that those conditions are satisfied would appear to suffice.

13. The ZHE September 2, 2020 Notification of Decision condition that “Murphy USA must hire an engineering firm to conduct a photometric study that will ensure that there is no light pollution from the subject property onto neighboring properties” is enforceable, because it is definite and because City enforcement staff may easily verify the same. These types of engineering studies and reports are routinely reviewed by City technical staff.
14. The ZHE September 2, 2020 Notification of Decision condition that “Murphy USA must add landscape buffers to ensure the safety and privacy of adjacent residential neighborhoods and neighboring properties” is enforceable, because it is definite and because City enforcement staff may easily verify whether Murphy has added the required landscape buffers.
15. The ZHE September 2, 2020 Notification of Decision condition that “Murphy USA must place and monitor security cameras in indoor and outdoor areas of the subject property, and to monitor such security cameras on a 24-hours a day, 7-days a week basis” is enforceable, because it is definite and City enforcement staff may easily verify by a simple physical inspection of the subject property whether the required cameras are installed, and, as to the cameras operating 24 hours a day, 7 days a week, and are monitored by the Murphy home office, a simple requirement of a certification by Murphy verifying that those conditions are satisfied would appear to suffice.
16. The ZHE September 2, 2020 Notification of Decision conditions that:
 - (i) “Murphy USA may not sell any intoxicating spirit and must limit its alcohol sales to beer and wine, only;” and
 - (ii) “any liquor retail use is restricted to prohibit the sale of alcohol between 8:00 pm and 6:00 am.;would appear enforceable from a practical perspective, because they are definite and unambiguous, and because a simple physical inspection of the subject property by City enforcement staff would reveal whether Murphy is in compliance.
17. However, questions have arisen regarding whether municipal restriction of the type and hours of sale of alcoholic beverages, as expressed in the two ZHE conditions of approval to be considered on remand cited in finding 16, immediately above, may infringe upon the State of New Mexico’s preemption of the field of the regulation of alcoholic beverage sales.
18. Specifically, the Second Judicial District Court, Bernalillo County, New Mexico, in a case striking down a municipal ban on the sale of liquor miniatures, stated that “the Supreme Court of New Mexico has recognized legislative ‘preemption in the field of the regulation

of liquor businesses.” *Baker, et al., v. City of Albuquerque (also cited as Lee Investments Inc., et al., v. City of Albuquerque)*, Case No. D-202-2008-02996, Memorandum Opinion and Order, May 22, 2008 (decided under prior statute) (attached for reference as EXHIBIT A) (herein the “Miniatures Case”); *see also* New Mexico Attorney General Opinion 80-23, June 13, 1980 (decided under prior statute) (available at <https://nmonesource.com/nmos/ag/en/14713/1/document.do>) (discussing impermissible municipal restriction on hours or mode of operation of New Mexico liquor license as condition to granting licensee waiver) (herein, the “AG Opinion”).

19. Essentially, the Miniatures Case and the AG Opinion appear to provide authority for the proposition that a municipality, even a home rule municipality, may not, as a condition of approval related to a liquor license, limit the types of alcoholic beverages to be sold nor the hours of sales.
20. The Applicant, appellants, and the public have not addressed the questions posed by the Miniatures Case or the AG Opinion regarding state preemption of municipal conditions on liquor licenses and sales.
21. The ZHE finds that this Application should be continued, to allow Applicant, appellants, and the public to present evidence and legal argument regarding whether the ZHE conditions of approval to be considered on remand may infringe upon the State of New Mexico legislature’s apparent preemption of the field of the regulation of alcoholic beverage sales.

DECISION:

CONTINUANCE of the Application to be heard at the ZHE hearing at 9:00 a.m. on February 16, 2021.

APPEAL:

If you wish to appeal this decision, you must do so by February 17, 2021 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

**Notice of Decision
City Council
City of Albuquerque
December 16, 2020**

AC-20-11 Project PR-2020-003911, VA-2020-00144, VA-2020-00315: Los Altos Civic Association, Appeals The Zoning Hearing Examiners Decision To Approve A Conditional Use To Allow For Liquor Sale Within 500 Feet Of Residential For Commercial Tract, Block 5, Los Altos, Located At 99999 Bridge Blvd SW Zoned MX-M [Section 14-16-4-3(D)(36)(c)]

Decision

On December 7, 2020, by a vote of 9 FOR and 0 AGAINST the City Council voted to remand this matter to the Zoning Hearing Examiner to re-evaluate the enforceability of the conditions of approval limiting liquor sales, and limiting the conditional use permit approval to a single operator.

IT IS THEREFORE ORDERED THAT THIS MATTER IS REMANDED TO THE ZONING HEARING EXAMINER

Attachments

1. Action Summary from the December 7, 2020 City Council Meeting
2. Land Use Hearing Officer's Decision

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.



Date: 12/16/20

Patrick Davis, President
City Council

Received by: Camille Condova Date: 12/17/20
City Clerk's Office

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