



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 5A1, Block 2, Traction Park Addn, located at 2309 County Parcel/2305 City Parcel Central Ave NW, zoned MX-M [Section 14-16-4-3(D)(36)]

Special Exception No:..... **VA-2019-00164**
Project No: **Project# 2019-002382**
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 Anthem Oil LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow liquor retail (“Application”) upon the real property located at 2309 County Parcel/2305 City Parcel Central Ave NW (“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). However, public testimony and photographs indicated that the signage was damaged to the point of being illegible during the required posting period and was not repaired or replaced.
12. Applicant testified at the hearing that all property owners and neighborhood association entitled to notice were notified of the Application.
13. The West Old Town Neighborhood Association and the West Park Neighborhood Association oppose the Application and submitted written evidence in opposition to the Application.
14. Applicant failed to meet its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. While Applicant provided evidence that certain goals and policies of the ABC Comp. Plan would be furthered, overwhelming testimony and written evidence from opponents show how the Application would be inconsistent with the ABC Comp. Plan. Specifically, Applicant and opponents to the Application provided evidence with regard to the following ABC Comp. Plan goals and policies, as discussed, below:

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.

Testimony and written submittals by neighbors and concerned individuals demonstrated that liquor retail is an inappropriate use in this area, given the likelihood of causing a nuisance and public intoxication of transient persons in an area near residences, City facilities such as the ABQ BioPark, and internationally known tourist destinations such as the Old Town Plaza.

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. However, the potential for negative impacts from nuisance and public intoxication would not support a sustainable development pattern.

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. However, the potential for negative impacts from nuisance and public intoxication could create interference with 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. However, the potential for negative impacts would not foster a healthy or sustainable community.

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 is clearly objectionable to immediate residential and commercial neighbors and neighborhood associations. Placing liquor retail in this location could be harmful to society and would not be located equitably to help ensure that social assets are distributed evenly and social responsibilities are

borne fairly across the Albuquerque Area. There are already liquor retail establishments close by at the Monte Carlo at 3916 Central Ave SW, Albuquerque, NM 87105, and at Lowe's supermarket at 701 11th St NW, Albuquerque, NM 87102.

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 would provide jobs, goods, and services. However, given the apparent likelihood of negative impacts, liquor retail would not foster a robust, resilient, and diverse economy in this location, given the proximity to protected residential and public uses.

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. However, given the apparent likelihood of negative impacts and existing challenges of homelessness and drug use in the area, this application could require increased government spending in the form of increased law enforcement calls.

15. Applicant has failed to meet 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, opponents submitted petitions signed by dozens of concerned persons, letters, and testimony stating that liquor sales at the Subject Property would create significant adverse impacts on adjacent businesses, the neighborhood, and the larger community; namely:
- a. There are already nearby businesses selling package liquor and an increase in the density of these businesses will negatively impact the community.
 - b. The area surrounding the Subject Property experiences a significant amount of transient traffic and disturbances, which would only increase with liquor sales.
 - c. The proximity of liquor sales to neighborhood alleys, lots, the Bosque, and abandoned houses causes concerns for the safety and well-being of residents and visitors to the area businesses and open spaces.

Applicant argues that Murphy USA trains its employees to monitor the sales of alcohol to prevent sales to impaired individuals, has an extensive security monitoring system with both

interior and exterior surveillance systems in place that operates 24/7 that is monitored by the home office, and would have a constant presence of security on the premises to prevent alcohol related crime. However, any on-site mitigation Applicant may put in place would not extend to nearby neighborhoods, alleys, lots, the Bosque, or abandoned houses where transient persons and others may become intoxicated with alcohol purchased legally on-site. Further, while Murphy USA may have best practices in place, there is nothing to guarantee that any subsequent owner or operator of the property would have any such practice in place. Even if such practices were held to be effective to mitigate significant adverse impacts, policing such practices as conditions of approval would not be feasible.

16. Applicant has failed to meet 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, based on the evidence discussed in Findings 14 and 15, above.
17. Applicant has failed to meet 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, the Subject Property is located within 300 feet of a lot in any residential zone, Applicant stated that the business would be open past 8:00 pm for liquor sales, and opponents submitted written evidence and testimony that such liquor sales would increase non-residential activity in the prohibited areas and times.
18. Applicant has failed to meet 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, opponents submitted evidence that increased transient activity due to the sale of packaged liquor will negatively impact pedestrian movement and transit experiences along Central.
19. The criteria within IDO Section 14-16-6-6(A)(3) have not been satisfied.

DECISION:

DENIAL of a conditional use to allow liquor retail.

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
Murphy Oil USA, INC., 200 E. Peach ST, 71730
Modulus Architects, Inc., 100 Sun Ave NE, Suite 305, 87109
John Holverson, 207 Gallup Ave SW, 87104
Glen Effertz, 2918 Mountain RD NW, 87104
Johnny Mangu, 2305 Central Ave NW, 87104
Elena Mangu, 2321 Central Ave NW, 87104
Louis Chalaminas, 2319 Edna Ave NW, 87104