



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

Montgomery Place Church of God requests a conditional use to allow light vehicle fueling station adjacent to residential zone district for Lot G2B, Montgomery Complex, located at 3601 Montgomery Blvd NE, zoned MX-M [Section 14-16-4-3(D)(17)(I)]

Special Exception No:..... **VA-2019-00326**
Project No: **Project#2019-002920**
Hearing Date: 11-19-19
Closing of Public Record: 11-19-19
Date of Decision: 12-04-19

On the 19th day of November, 2019, property owner Montgomery Place Church of God (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow light vehicle fueling station adjacent to residential zone district (“Application”) upon the real property located at 3601 Montgomery Blvd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a light vehicle fueling station adjacent to a residential zone district.
2. The City of Albuquerque Code of 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*
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. The request is for a Conditional Use to Allow Light Vehicle Fueling Station arises under Section 14-16-4-2; **USE REGULATIONS**; Table 4-2-1; **Allowable Uses**.
5. This use is regulated by Section 14-16-4-3(D)(17)(i); **Use-specific Standards: Light vehicle fueling station**: “*If located adjacent to any residential zone district, this use shall require a Conditional Use permit Approval, pursuant to Subsection 14-16-6-6(A)*”.
6. The subject property is located adjacent to a Residential zone district.
7. Ronald Bohannan at Tierra West, LLC, agent, for Maverick, Inc, operator, appeared and gave evidence in support of the application.
8. The address of the subject property is 3601 Montgomery Blvd. NE.
9. The subject property is currently zoned MX-M.
10. The subject property is located within an Area of Change as designated in the ABC Comp. Plan.
11. The proposed project is removal of the existing church buildings from the subject property and construction of a light vehicle fueling station.
12. The church is relocating to another location, which potentially may create instability in the area.
13. A preliminary site plan, zone map, survey and photographs of the area and existing buildings were submitted in support of the Application.
14. All property owners within 100 feet and affected neighborhood association(s) were notified.
15. Hodgin Neighborhood Association and District 4 Coalition of Neighborhood Associations; and District 7 Coalition of Neighborhood Associations are the affected neighborhood associations.
16. A pre-application meeting was held between representatives of Maverick, Inc. and representatives of the affected neighborhood associations and other interested parties on September 19, 2019.
17. A summary of that meeting and the sign in sheet was submitted in support of the Application.
18. Three major items of concern to the affected citizens are: 1) Adverse traffic impacts resulting from the project; 2) Security and concerns of the business being operated 24 hours per day; and 3) Sight lighting and security fencing.
19. These neighborhood concerns were discussed and incorporated into the Application.
20. The existing entrance and exit cuts will remain on the side streets and no new traffic flow from Montgomery will be on the site.
21. Traffic circulation will be consistent with the prior existing use and will remain on the site.
22. The traffic flow and potential traffic impacts are to be heard by D.R.B. on the site plan hearing.
23. The site plan shows the primary store building will be oriented away from the residential area on the northerly end of the subject lot and all lighting will be contained upon the subject site.
24. There is an existing landscape barrier/buffer to the residential townhouse development to the north, which will remain.
25. The operator will not be requesting any liquor license for the site.
26. Christy Hutchinson, manager for Maverick, the operator, gave testimony in support of the Application.

27. In response to the security concerns raised in the meeting with the neighborhood, since the operation will be 24/7 and there are multiple high quality lights and video recording all areas of the lot and the standard policy of Maverick is to prosecute all criminal activity on their properties.
28. This will help discourage transients and criminal activity on the subject lot.
29. Rev. Richard Hutchins, 3601 Montgomery NE, pastor of the Church appeared and gave testimony in support of the requested use.
30. The Church and Maverick are working with APD on formal plans to also discourage crime in the area.
31. He stated most of the Church congregation supports the requested use.
32. He also stated most of the other business owners in this area, support the requested use.
33. Daniel Regan, 4109 Chama NE, Chairman of the zoning and development committee of the District 4 Coalition of Neighborhood Associations, appeared and gave testimony in partial opposition and partial support to the request.
34. The NA supports the Church being able to relate and continue its mission.
35. He raises points in opposition, primarily the fact that a 24 hour operation will impact the residential zone district to the north between the hours of 8:00 pm and 6:00 am; and the fact that traffic issues will be increased by this use.
36. He points out that the site plan, shows traffic access between the proposed store and the 6 foot barrier to the residential zone
37. He also points out that the shared access on that side of the lot, is 30 feet away from the residential zone and will increase adverse traffic congestion and non-residential activity within 300 feet of that residential zone between those restricted hours.
38. John Pricer, 305 San Pablo NE, appeared and gave testimony in opposition to the requested use.
39. The only issue he raised is the fact that there is a lack of fresh fruits and vegetables easily available in the area and that another convenience store will only sell fast and non-nutritious foods.
40. David Haughawout, 2824 Chama St. NE, appeared and gave testimony in opposition to the requested use.
41. He is the President of the District 7 Coalition of neighborhood Associations and Hodgkin Neighborhood Association.
42. The Hodgkin NA is in opposition to the request, the main reason being traffic.
43. The NA would like to restrict ingress and egress from Montgomery Blvd. to be restricted to right turn into the project and right turn out of the property only.
44. The NA wants the left turn median from Montgomery be removed.
45. The NA also wants Maverick to agree not to request a liquor license for the site for a minimum of 3 to 5 years.
46. The District 7 Coalition of NAs supports the request so the Church can continue its mission, and wants a restriction that only Maverick can operate the new site, in order to keep out any undesirable projects from happening.
47. R. Bohannan gave responses to the issues raised by the opposing testimony.
48. Maverick does not intend to purchase a liquor license for this site since it does not feel it is economically feasible at this time.
49. The primary traffic flow and congestion issues related to ingress and egress from Montgomery will be thoroughly discussed at the DRB site plan review.

50. The criminal activity and transient problems were addressed and the Church and Maverick will remain actively involved with the neighborhoods and APD. to continue to work on these ongoing and public concerns.
51. The subject property is located within a Major Transit Corridor.
52. The proposed development will support a sustainable development pattern by encouraging density and growth along a major corridor that has the necessary infrastructure to support further development, which is consistent with and will promote **ABC Comp. Plan**, Policy 5.1.1: *Desired Growth*.
53. The project, located within a Major Transit Corridor, will provide goods and services to meet the needs of the community that is encouraged along Centers and Corridors, as well as convenient to main transportation corridors to work centers, which is consistent with the **ABC Comp. Plan**, Policy 5.2.1: *Land Use*.
54. The proposed project will help create a healthy, sustainable community, within a mix of uses conveniently accessible from surrounding neighborhoods, which is consistent with **ABC Comp. Plan**, Policy 5.2.1: *Land Use*.
55. The project supports growth in an area with existing infrastructure and public facilities available, which is consistent with **ABC Comp. Plan**, Policy 5.3.1: *Infill Development*.
56. The project will bring goods and services and amenities within walking distance and biking distance from neighborhoods and promotes good access for all residents, which is consistent with **ABC Comp. Plan**, Policy 5.3.1: *Land Uses*.
57. The proposed use is consistent with the ABC Comp. Plan, as amended, as required by Section 14-16-6-6(A)(3)(a).
58. The proposed use 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; any conditions specifically applied to the development of the property in a prior permit or approval affecting the property, as required by Section 14-16-6-6(A)(3)(b).
59. The requested use will not create a significant adverse impact to adjacent properties as the site is zoned MX-M zone and is currently built out as commercial.
60. The requested use will utilize the existing driveways access points with no new access points being proposed, and no additional traffic will impact the surrounding residential neighborhood to the north.
61. The use will replace the church building with an active business that will increase the viability and appearance of the area.
62. The building for the store is placed between the fuel canopies and the residential multi-family apartments to the north of the site, to reduce any potential adverse impacts and is designed to buffer the residential from light, traffic or noise that may be generated by the requested use.
63. The site is designed with an angled canopy, which allows easier movement in and out of the site, which will further reduce traffic congestion.
64. The project is designed with a 15 foot landscape strip between the building and parking and the residential zone for an additional buffer.
65. The proposed use will not create significant adverse impacts on the adjacent properties; the surrounding neighborhood, or the larger community, as required by Section 14-16-6-6(A)(3)(c).

66. The residential zone district begins north of the Carlisle driveway access point and no additional non-residential activity is expected beyond the driveway entrance.
67. The proposed use will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration as requires by Section 14-16-6(A)(3)(d).
68. The proposed use is a convenience-oriented business rather than a destination business and traffic generated on the site is primarily bypass traffic from the surrounding area.
69. All commercial activity and business density is along the major transit corridor on Montgomery Blvd. and Carlisle Blvd.
70. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 8:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e).
71. The existing pedestrian connections around the site will remain and no transit connectivity will be negatively impacted.
72. The proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f).
73. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
74. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the IDO are satisfied.

DECISION:

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

CONDITIONS:

The use shall comply with Use-Specific Standards contained in Section 14-16-4-3(D)(17): ***Light Vehicle Fueling Station.***

Specifically the use shall comply with all relevant and material provisions contained in Section 14-16-5-6: ***Landscaping, Buffering and Screening***; and Sub-Section 5-6(E): ***Edge Buffer Landscaping.***

The use shall comply with all relevant and material provisions contained in Section 14-16-5-8: ***Outdoor Lighting.***

The use shall comply with all material and relevant provision contained in Section 14-16-5-9: ***Neighborhood Edges.***

APPEAL:

If you wish to appeal this decision, you must do so by December 19, 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc:

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