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)]

On the 18th day of August, 2020, Modulus Architects, agent for property owners 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 findings 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 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. Agent for property owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet and affected neighborhood association(s) were notified.
6. The subject property is currently zoned MX-M.
7. The subject property is in a designated “area of change” within the ABC Comp. Plan.
8. The subject property is located within the Bridge/Tower Major Transit Corridor.
9. The ABC Comp. Plan and the IDO promote development and redevelopment within areas of change located on or along transit corridors.
10. Agent testified that Applicant is under contract to sell the subject property to gas station and convenience store owner and operator Murphy USA. A representative of Murphy USA testified in support of the Application.
11. Multiple community members testified in opposition to the Application, which opponents included many residents who live next-door or near the subject site.
12. 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.”
13. Regarding IDO section 14-16-6-6(A)(3)(a) (It is consistent with the ABC Comp. Plan, as amended), Applicant submitted evidence in support of the following ABC Comp. Plan Goals and Policies:

2.4.6 FOCUSING GROWTH IN CENTERS & CORRIDORS - Existing and designated Centers and Corridors are intended to accommodate much of the anticipated future growth in the city and county. Instead of low density, single-use growth at our edges, new development and redevelopment will be encouraged in existing Centers connected by a strong transportation network that accommodates cars and trucks, transit, cyclists, and pedestrians.

Applicant Response (Bold): The subject site is located adjacent to the Tower Employment Center. The subject property sites squarely at the intersection of Tower/Bridge and Old Coors in the Tower/Bridge Corridor and is a designation Major Transit Corridor, which is a strong transportation network.

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.

Applicant Response (Bold): Future development on the subject site zoned NR-C and MX-M zone would be subject to IDO requirements including Neighborhood Edges (14-16- 5-9), the mixed-use zone dimensional standards (Table 5-1-2), buffer landscaping (14-16-5- 6-(E), and building design standards (14-16-4-11). These would help ensure appropriate scale and location of development and character of building design.
POLICY 5.1.1 Desired Growth: Capture regional growth in Centers and Corridors to help shape the built environment into a sustainable development pattern.

Applicant Response (Bold): The subject property is located in the Bridge/Tower Comprehensive Corridor along a Major Transit Corridor in "Area of Change" and would be an infill project in an area lacking investment and revitalization. it would encourage employment density and redevelopment and would further this policy as this is the most appropriate area to accommodate growth and discourage the need for development at the urban edge.

5.1.1.3 Evaluate existing land uses and development trends to identify opportunities for increased land use Intensity to support transit-oriented development within 660 ft of transit stations along Premium Transit Corridors.

Applicant Response (Bold): This furthers this policy by increasing the land use intensity to support infill development within a Transit Corridor as the subject site is located in the Tower Transit Corridor and is designated as a Major Transit Corridor.

5.1.1.4 Promote ongoing public-private cooperation necessary to create private market conditions that support intensified development of jobs and housing in Transit Corridors.]

Applicant Response (Bold): The Property is located in a Transit Corridor on Albuquerque's Southwest area in which the jobs to housing balance is significantly low as is the availability of day-to-day goods as services without the need to cross the river. The location is most appropriate to accommodate development and encourage appropriate density in an infill location, in a Transit Corridor, and thus discourage the need for development at the urban edge.

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.

Applicant Response (Bold): 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 MX-M 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 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

Applicant Response (Bold): The proposed Conditional Use request would allow for a mix of goods and services to be available which are conveniently accessible. This will encourage redevelopment that brings goods and services within walking and biking distance of neighborhoods. The location within a transit corridor offers choice transportation to services. Characteristics of the community will be maintained since the requested use would occur in an existing commercial zone within a transit corridor.

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

Applicant Response (Bold): This request would 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.

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

Applicant Response (Bold): While the request for Conditional Use may be objectionable to immediate neighbors, is would be useful to society and will be equitable to ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque Area.

Murphy USA has a long-proven track record of strong enforcement of liquor sales regulations. Murphy has more than 1,500 stores throughout the United States and train their employees to monitor the
sales of alcohol to prevent sales to impaired individuals. Murphy USA currently has zero violations or complaints with the State Liquor Board. The most recent Murphy that opened late last year had just 33 calls for service to-date in 2020 as compared to a Circle K across the street that saw 231 calls for service from the Albuquerque Police Department in that same time period. Murphy strives to operate their business's where employees and customers feel safe from potential crimes by implementing a thoughtful security and safety program. In their stores, which begins with store layout and design.

Murphy follows the model of the Smart Policing Initiatives and has adopted the CPTED (Crime Prevention through Environmental Design) crime prevention program. CPTED is a concept that is data driven with a proven concept that considers the physical environment and its effect on crime prevention. There are four guiding principles.

Natural Surveillance:
People must be able to see illegal acts taking place to defend property or prevent crime. Surveillance puts the perpetrator(s) under the threat of being observed, and therefore identified and apprehended.

Territoriality:
Territoriality is all about defining what is public space, what semi-public space is, and what is private space. It involves establishing ownership of areas and can be encouraged by activities and management processes that reduce large impersonal spaces to smaller areas that can be personalized and protected.

Access Control:
This principle relates to territoriality by directing people where to go and denying them access to areas that they do not belong in. This is accomplished through having established vehicle and pedestrian entrances and exits, fencing, door and window locks, access control devices, and appropriate, visible signage.

Maintenance:
Poorly maintained and neglected areas attract unwanted people and activities. Proper maintenance of landscaping, lighting, and other features are essential CPTED principles. A positive community image is a significant deterrent to criminal behavior. Principles such as natural surveillance, access management, territoriality, physical maintenance, and order maintenance inform our design. Murphy USA pays particular
attention to parking lots, building entries, restrooms, stairs and railings, fencing, wayfinding signage, landscaping, artwork, and displays of student work to create a warm, welcoming environment that gives students a sense of ownership and pride.

Convenience stores are one of the few 24/7 businesses that provide much-needed food, fuel and refreshment for millions of Americans, especially first responders, police officers, firemen, factory workers, hospital workers and restaurant employees. First responders and shift workers rely on Murphy stores. Late-night and early-morning customers depend upon stores for essential items that are not readily available elsewhere, and top reasons for a visit are shopping for a snack or meal, coffee or beverage, gasoline and cold medicine or to use the ATM.

Murphy USA 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. There is a constant presence of security on the premises to prevent alcohol related crime in the area. Murphy USA feels it has a proven method and track record of mitigating any problems related to retail liquor sales. We believe that the actions above are sufficient to mitigate any potential adverse impacts on the surrounding area.

Agent also submitted a “Retail Liquor Void Analysis Report”, containing, among other information, the following evidence:

Applicant Response (Bold):
- There is only (1) Liquor Retail opportunity within a 1.5-mile radius of this location;
- The average number of Liquor Retail opportunities in Albuquerque per 1-mile radius is 5;
- The average number of liquor opportunities in Albuquerque per 2-mile radius is 17.25.
- The distance between the proposed site and the nearest Liquor Retail opportunity is 7,392 sq. ft. away;
- The market trade area for this use is underserved by more than 40% as compared to the Albuquerque average.

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.

Applicant Response (Bold): 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. Because the proposed request will encourage growth and high-quality future redevelopment in accordance with this policy in a Transit Corridor.

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.

Applicant Response (Bold): The proposed project will encourage economic development that will provide jobs, goods, and services which improve the life for new and existing members of the community and contribute to a diverse and vibrant economy by revitalizing an area with growth that is consistent with and enhances the establish character of existing development. This type of economic development is best suited for infill locations supported by commercial corridors. This subject site encompasses all aspects of successful economic development and furthers this Policy.

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

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

14. Regarding IDO section 14-16-6-6(A)(3)(a) (It is consistent with the ABC Comp. Plan, as amended), opponents submitted testimony and evidence that the requested use would:
   - Increase crime in the area;
   - Increase noise caused by traffic and “boom boxes”;
   - Increase noxious fumes;
   - Increase drunk driving, which is already an issue of grave concern in Albuquerque and throughout New Mexico; and
   - Increase loitering and littering

15. On balance, Applicant has met its burden of providing evidence that establishes that the requested Conditional Use is consistent with the ABC Comp. Plan, as amended, as required by IDO section 14-16-6-6(A)(3)(a)
16. As required by IDO section 14-16-6-6(A)(3)(b), Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval complies with all applicable provisions of the IDO, including, but not limited to any Use-Specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.

17. Regarding the requirement under IDO section 14-16-6-6(A)(3)(c), that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community, Applicant and opponents submitted the evidence cited under IDO section 14-16-6-6(A)(3)(a), above. On balance, Applicant has met its burden of providing evidence to satisfy IDO section 14-16-6-6(A)(3)(c).

18. Regarding the requirement under IDO section 14-16-6-6(A)(3)(d), 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, Applicant and opponents submitted the evidence cited under IDO section 14-16-6-6(A)(3)(a), above. In addition:

   a. Applicant and opponents submitted the evidence cited under IDO section 14-16-6-6(A)(3)(a), above.
   b. Agent submitted evidence that the Bernalillo County public works department has jurisdiction over the traffic planning for the intersection and area surrounding the subject property, has redesigned the intersection at the subject property, and has approved the preliminary site plan regarding access to and from the subject property.
   c. Agent’s written submittals confirmed Applicant’s willingness to 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.
   d. Agent’s written submittals confirmed Applicant’s willingness to add landscape buffers to ensure the safety and privacy of adjacent residential neighborhoods.
   e. Agent’s written submittals confirmed Applicant’s plan to 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.
   f. Agent testified that Applicant agrees to sell no intoxicating spirits and to limit its alcohol sales to beer and wine, only.
   g. Agent stated in multiple written submittals and testimony that the requested use would be specific to Murphy USA and would not run with the land.

   On balance, Applicant has met its burden of providing evidence to satisfy IDO section 14-16-6-6(A)(3)(d).

19. Regarding the requirement under IDO section 14-16-6-6(A)(3)(d), which requires 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:
a. The subject property is located within 300 feet of a lot in a residential zone district.
b. Applicant testified that non-residential activity would not increase in any prohibited manner, because the proposed Murphy USA gas station and store attract only “passerby” traffic that already exists, not destination shoppers. However, as to liquor sales, this testimony appears to be contradicted by the evidence Applicant provided that there are no liquor stores within a 1.5-mile radius of this location and that the average number of Liquor Retail opportunities in Albuquerque per 1-mile radius is 5. Given the relative lack of liquor sales, it would appear that liquor sales could create a destination that would increase traffic beyond merely passerby traffic.
c. There is no commercial activity on the subject property currently, and therefore any commercial activity would be an increase in non-residential activity.
d. Murphy testified and stated in written submittals that its store would be open 24 house a day.
e. If the liquor retail use were restricted to prohibit liquor sales between the hours of 8:00 pm and 6:00 am, there would appear to be no significant increase in non-residential activity during those times.

On balance, Applicant will have met its burden of providing evidence to satisfy IDO section 14-16-6-6(A)(3)(d), if liquor retail use is restricted to prohibit liquor sales between the hours of 8:00 pm and 6:00 am.

20. Regarding the requirement under IDO section 14-16-6-6(A)(3)(e), Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Specifically, Applicant testified that no negative impact on pedestrian or transit connectivity would result. No evidence was submitted to the contrary.

21. Applicable Use-Specific Standards include the following:

4-3(D)(17) Light Vehicle Fueling Station

4-3(D)(17)(a) No inoperable vehicles shall be stored outside a building at any time.
4-3(D)(17)(b) This use must comply with stormwater quality requirements found in the DPM.
4-3(D)(17)(c) This use shall not be located where the only vehicle access to the lot is from a local street.
4-3(D)(17)(d) Each street that provides access to the lot shall have either 2 travel lanes in each direction or a center turn lane with access to the site.
4-3(D)(17)(e) Uses located on a corner lot with access from both streets shall have no more than one access point per frontage. Uses located mid-block or with access from only one street shall have no more than 2 access points from that street.
4-3(D)(17)(f) Access points shall be located no closer than 20 feet from any adjacent property that is not under common ownership.
4-3(D)(17)(g) Site access from a paved alley connecting to a public street is allowed provided that the access points from the site to the alley shall be a minimum of 25 feet from the intersection of the alley and the street.
4-3(D)(17)(h) For fueling station canopies, all under-canopy lighting shall be recessed so that no light lens projects below the canopy ceiling. The canopy fascia shall not be internally illuminated.
If located adjacent to any Residential zone district, this use shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A).

If located abutting or across an alley from any Residential zone district or lot containing a Residential use in any Mixed-use zone district, an opaque wall, fence, or vegetative screen at least 6 feet high is required.

In UC-AC-MS-PT-MT areas and the MX-H zone district, any building containing a retail use with 1,000 square feet or more of gross floor area shall have a maximum setback of 15 feet.

In UC-MS-PT areas, an opaque wall or vegetative screen at least 3 feet high shall be provided along all street frontages.

This use is prohibited within 330 feet of Major Public Open Space.

Applicant provided testimony and written submittals stating that the Applicable Use-Specific Standards would be satisfied. No evidence was presented to the contrary.

**DECISION:**

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

**CONDITIONS:**

1. The approved conditional use is personal to Murphy USA and does not run with the land.
2. The subject property must adhere to the Use Specific Standards set forth in IDO 4-3(D)(17) Light Vehicle Fueling Station.
3. 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.
4. 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.
5. Murphy USA must add landscape buffers to ensure the safety and privacy of adjacent residential neighborhoods neighboring properties.
6. 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.
7. Murphy USA may not sell any intoxicating spirit and must limit its alcohol sales to beer and wine, only.
8. Any liquor retail use is restricted to prohibit the sale of alcohol between 8:00 pm and 6:00 am.

**APPEAL:**

If you wish to appeal this decision, you must do so by September 17, 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.

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Robert Lucero, Esq.
Zoning Hearing Examiner

cc:
ZHE File
Zoning Enforcement
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