



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

98th Street, LLC- Toot'n Totum (Agent, Modulus Architects) requests a conditional use to allow for liquor retail in an MX-M zone district for Lot E-5-A-2, Albuquerque South Unit 3, located at 99999 Gibson BLVD SW, zoned MX-M [Section 14-16-4-3(D)(39)(f)]

Special Exception No:..... **VA-2021-00404**
Project No: **Project#2021-006208**
Hearing Date: 12-21-21
Closing of Public Record: 12-21-21
Date of Decision: 01-05-22

On the 21st day of December, 2021, Modulus Architects, agent for property owner 98th Street, LLC- Toot'n Totum ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a conditional use to allow for liquor retail in an MX-M zone district ("Application") upon the real property located at 99999 Gibson 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 retail in an MX-M zone district.
2. The Subject Property is currently zoned NR-C under the City of Albuquerque Integrated Development Ordinance ("IDO").
3. The NR-C zone lists liquor retail as a permissive use with use-specific standards as required under IDO Section 4-3(D)(38).
4. In turn, IDO Section 4-3(D)(38)(c) provides: "Notwithstanding other provisions in this Subsection 14-16-4-3(D)(38), 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."
5. The Subject Property is located within 500 feet of a residential zone.
6. Therefore, liquor retail on the Subject Property requires a Conditional Use Approval pursuant to IDO Subsection 14-16-6-6(A).
7. 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:*
 - 6-6(A)(3)(a) *It is consistent with the adopted ABC Comp Plan, as amended.*
 - 6-6(A)(3)(b) *It complies with all applicable provisions of this 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 a prior permit or approval affecting the property, or there is a condition of approval that*

any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above.

- 6-6(A)(3)(c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.*
 - 6-6(A)(3)(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.*
 - 6-6(A)(3)(e) *On a project site with existing uses, it will not increase non-residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.*
 - 6-6(A)(3)(f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
8. 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).
 9. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
 10. Applicant submitted evidence that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
 11. All property owners and neighborhood association entitled to notice were notified of the Application.
 12. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. Specifically, Applicant submitted the following evidence supporting that the requested Conditional Use approval furthers the goals and policies of the ABC Comp. Plan by helping to ensure appropriate scale and location of development and character of design, placing new development along corridors, and providing employment and services for the area. Further, Applicant's agent provided evidence that there is a need for liquor retail in this area, because there is no significant other liquor retail in the near vicinity, and the location of this use therefore equitably locates the liquor sales establishment in an area of need.
 13. 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.
 14. Applicant has met 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, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact other than as would be effectively limited by the use-specific standards and other requirements of the IDO, with which Applicant will comply.

15. Applicant has met 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact, given that the proposed use is located on along a corridor and will have appropriate buffering between it and residential uses.
16. Applicant established that IDO Section 6-6(A)(3)(e) does not apply, because the project site has no existing uses.
17. 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.
18. The City Traffic Engineering Division stated no objection.
19. The criteria within IDO Section 14-16-6-6(A)(3) are satisfied.
20. Applicant has demonstrated compliance with the use-specific standards in IDO Section 14-16-4-3(D)(38).

DECISION:

APPROVAL of a conditional use to allow for liquor retail in an MX-M zone district.

APPEAL:

If you wish to appeal this decision, you must do so by January 20, 2022 pursuant to Section 14-16-6-4(V), 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
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