



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.



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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.



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