



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

Rudy Marquez requests a conditional use to allow a bar/pub for Lot B1 & B2A, Audio Clinic Inc & International, located at 1600 and 1608 Eubank BLVD NE, zoned MX-L [Section 14-16-4-2]

Special Exception No:..... **VA-2021-00113**  
Project No: ..... **Project#2021-005394**  
Hearing Date: ..... 06-15-21  
Closing of Public Record: ..... 06-15-21  
Date of Decision: ..... 06-30-21

On the 15th day of June, 2021, property owner Rudy Marquez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a bar/pub (“Application”) upon the real property located at 1600 and 1608 Eubank BLVD NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a bar/pub.
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:*”
  - 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.*
3. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

4. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
5. All property owners within 100 feet and affected neighborhood association(s) were timely notified.
6. The subject property is currently zoned MX-L.
7. City Transportation stated no objection to the application.
8. 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).
9. The ZHE finds that the Applicant has authority to pursue this Application.
10. Regarding whether the requested conditional use is consistent with the ABC Comp. Plan, Applicant stated that the Subject Property is zoned MX-L in which a restaurant is listed as a permissive use and an on-premises liquor license is allowed as a conditional use if approved. However, Applicant failed to establish how these facts relate to the ABC Comp Plan or how the specifics of the proposed sports bar and grill on the Subject Property would be consistent with the ABC Comp Plan. Consequently, IDO Section 6-6(A)(3)(a) is not satisfied.
11. Regarding whether the requested conditional 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; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property, Applicant provided evidence that the existing restaurant use does not have outdoor dining and that, if the conditional use requested were approved, Applicant would properly permit such an outdoor dining structure. However, Applicant failed to establish use-specific criteria required by IDO Section 14-16-4-3(d)(8), including whether and how storm water requirements found in the DPM would be satisfied (14-16-4-3(d)(8)(b)), and whether and how compliance with Part 9-10-1 of ROA 1994 (Solid Waste Collection), in particular the City's minimum specifications for waste enclosures for restaurant and food services to include a sanitary sewer drain, would be satisfied (14-16-4-3(d)(8)(d)). Consequently, IDO Section 6-6(A)(3)(b) is not satisfied.
12. Applicant asserted that the requested conditional use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community, because the Subject Property was previously used as a gas station and as a liquor store and bar with a drive-through, and that the proposed sports bar and grill is consistent with those prior uses. However, numerous neighbors owning or occupying both residential and commercial property submitted evidence that a sports bar and grill is a different use than the prior use, and that the proposed use would attract more and longer-staying customers. Opponents submitted evidence that the proposed use would have negative impacts on adjacent properties, the surrounding neighborhood, or the larger community, because the proposed sports bar and grill would increase traffic and create noise in an unduly burdensome manner. Consequently, IDO Section 6-6(A)(3)(c) is not satisfied.
13. Applicant asserted that the requested conditional use 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, because the Subject Property was designed and developed to accommodate high traffic flows. While this evidence would

bode well for adequate ingress and egress to and from the property, numerous neighbors owning or occupying both residential and commercial property submitted evidence that a sports bar and grill is a different use than the prior liquor sale and gas station uses, and that the proposed sports bar and grill would attract more and longer-staying customers. Opponents submitted testimony that the proposed use would create noise in an unduly burdensome manner, despite the existence of a block wall between the Subject Property and adjacent residential properties. Consequently, IDO Section 6-6(A)(3)(d) is not satisfied.

14. Applicant asserted that the requested conditional use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 10:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e), because the Subject Property is separated from the residential zone by a block wall and because there are limited entrances into the residential zone in the vicinity of the Subject Property. However, this assertion overlooks the fact that the proposed sports bar and grill would stay open beyond 10:00PM, and Applicant testified that he anticipates that the proposed use would result in increased customer visits to the Subject Property. Consequently, IDO Section 6-6(A)(3)(d) is not satisfied.
15. One opponent asserted that the Application must be denied because the Subject Property is adjacent to a school. However, the private dance school in question does not appear to meet the definition of "School" under IDO Section 14-16-7-1 ("An accredited public or private institution offering a course of education recognized by the State as leading to a high school diploma or equivalent.").
16. Based on evidence submitted by the Applicant, the requested conditional use proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f). Specifically, Eubank Blvd. is a high-volume thoroughfare with ample sidewalks, curb cuts, ramps, and other infrastructure. No new curb cut or other improvement that would impact pedestrian or transit connectivity is proposed. Consequently, IDO Section 6-6(A)(3)(e) is satisfied.
17. Applicant has satisfied the requirements of IDO Section 6-6(A)(3)(e), but has not satisfied the requirements of IDO Section 6-6(A)(3)(a) through (d). Because all requirements of IDO Section 6-6(A)(3) must be satisfied to be eligible for approval of a conditional use application, and Applicant failed to do so, the Application must be denied.

#### DECISION:

DENIAL of a conditional use to allow a bar/pub.

#### APPEAL:

If you wish to appeal this decision, you must do so by July 15, 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.



---

Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Rudy Marquez, rudyspub@live.com  
Sandy Rubi, sandrarubi8@gmail.com  
Karen Gomez, 1609 Mary Ellen ST NE, 87112  
Judy Hill, 1613 Mary Ellen ST NE, 87112  
John Mitchell, john@abq.realty  
Mildred McMullen, 1605 Mary Ellen ST NE, 87112