



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

Unser & Ladera LLC (Agent, Consensus Planning) request a conditional use to allow a drive-through facility for Lot 5A1C2, El Rancho Atrisco Phase 3, located at 1901 Ladera DR NW, zoned MX-L [Section 14-16-4-2]

Special Exception No:..... **VA-2021-00132**  
Project No: ..... **Project#2019-002291**  
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, Consensus Planning, agent for property owner Unser & Ladera LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a drive-through facility (“Application”) upon the real property located at 1901 Ladera DR NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a drive-through facility.
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 Subject Property is located at the northeast corner of Unser Boulevard NW and Ladera Drive NW, has an address of 1901 Ladera Drive NW, and is approximately 1.588 acres in size.
9. The Subject Property has vehicular access only from Ladera Drive, as vehicular access directly to or from Unser Blvd is currently prohibited.
10. The Subject Property is located in an area of consistency.
11. A Site Plan for Subdivision, approved by the City Development Review Board in 2017, governs the Subject Property. This Site Plan contemplates commercial use of the Subject Property.
12. The proposed Conditional Use was previously granted by the ZHE by a written Notification of Decision dated June 5, 2019, which approval has expired.
13. Based on evidence submitted by the Applicant, the requested conditional use is consistent with the ABC Comp. Plan, as amended. Specifically, applicant cited that the Subject Property is located along a major corridor and an area of change, where development is encouraged. Further, Applicant submitted evidence that the proposed conditional use furthers the following policies of the ABC Comp Plan:
  - a. Policy 5.1.12 (*Commuter Corridors: Allow auto-oriented development along Commuter Corridors that are higher-speed and higher-traffic volume routes for people going across town, often as limited-access roadways*), by proposing a drive-through auto-oriented use along Unser, which is a Commuter Corridor and a limited access roadway.
  - b. Policy 5.2.1 (*Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods. . . . (h) Encourage infill development that adds complementary uses and is compatible in form and scale to the immediately surrounding development*), by creating infill development on a vacant property that is surrounded by developed subdivisions, apartment complexes, drainage facilities, and other commercial uses, while remaining consistent with surrounding commercial uses.
  - c. Policy 5.6.3 (*Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space. . . . (b) Ensure that development reinforces the scale, intensity, and setbacks of the immediately surrounding context.*), by developing a commercial use in an area designated for the same, rather than in outside a corridor and within a residential area.
14. Based on evidence submitted by the Applicant, 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. However, the conceptual site plan submitted by Applicant is preliminary in nature and Agent stated that it is subject to change. Therefore, it would be appropriate to require, as conditions of approval, that the Subject Property must comply with the Use-specific Standards for a Drive-through or Drive-up Facility under IDO Section 14-16-4-3(F)(4) and all applicable standards from Section 14-16-5-5 (Parking and Loading).

15. Based on evidence submitted by the Applicant, the requested conditional use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. While neighbors offered evidence and testimony that traffic would increase, the City Traffic engineer did not object to the Application. Further, the Applicant proposed to take steps to mitigate any material adverse impact; namely, to condition further development approvals on providing a traffic impact study and to limit the Subject Property to only one (1) drive-through facility.
16. Based on evidence submitted by the Applicant, 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. While neighbors offered evidence and testimony that traffic would increase, the City Traffic engineer did not object to the Application. Further, the Applicant proposed to take steps to mitigate any material adverse impact; namely, to condition further development approvals on providing a traffic impact study and to limit the Subject Property to only one (1) drive-through facility. .
17. Applicant established that IDO Section 6-6(A)(3)(e) does not apply, because the project site has no existing uses. To the extent, if at all, that Section 6-6(A)(3)(e) applies, Applicant has met its burden of providing evidence that establishes 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 10:00 pm and 6:00 am. Specifically, Applicant submitted evidence that the Subject Property is more than 300 feet from the nearest lot in a Residential zone district, and therefore the proposed conditional use will not cause any increase in non-residential activity within that specified distance.
18. 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). Agent submitted evidence that public sidewalks along Unser Boulevard and Ladera Drive will not be negatively impacted by the proposed conditional use, nor will the nearest ABQ Ride bus stops, located approximately 500 feet to the south along Unser Boulevard and 900 feet east along Ladera Drive. Further, the Applicant proposed to take steps to mitigate any material adverse impact; namely, to condition further development approvals on providing a traffic impact study and to limit the Subject Property to only one (1) drive-through facility.
19. 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).
20. The ZHE finds that the Applicant has authority to pursue this Application.

#### DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow a drive-through facility.

CONDITIONS:

1. The Subject Property must comply with the Use-specific Standards for a Drive-through or Drive-up Facility under IDO Section 14-16-4-3(F)(4) and all applicable standards from Section 14-16-5-5 (Parking and Loading).
2. The Subject Property is limited to only one (1) drive-through facility.
3. Further development approvals are conditioned on Applicant or its agent providing a traffic impact study pursuant to Article 7-5(D) of the Development Process Manual, notwithstanding the thresholds or mitigation requirements in the Development Process Manual, which the City may use as the basis to require further mitigation of the traffic generated by the use through conditions of approval.

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  
Consensus Planning, cp@consensusplanning.com  
Rene Horvath, aboard111@gmail.com  
John Vrabec, jvrabecoffice@earthlink.net  
Phyllis Vilchuck, pvilchuck@comcast.net  
Paul Gonzales, paul.gonzales01@comcast.net  
David Gebeke, dlja2geb@comcast.net  
Frank Comfort, laurelwoodna@gmail.com  
Candy Patterson,  
Mary Loughran, [marykloughran@comcast.net](mailto:marykloughran@comcast.net)  
Frances Lujan, flujan3@msn.com