



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

Jose Alfredo & Ailda Martinez (Agent, Modulus Architects) request a conditional use to allow for the retailing of liquor within 500 feet of a residential zone for Lot Commercial Tract, Block 5, Los Altos, located at 99999 Bridge BLVD SW, zoned MX-M [Section 14-16-4-3(D)(39)(c)]

Special Exception No:..... **VA-2021-00342**
Project No: **Project#2021-003911**
Hearing Date: 10-19-21
Closing of Public Record: 10-19-21
Date of Decision: 11-03-21

On the 19th day of October, 2021, Modulus Architects, agent for property owner Jose Alfredo & Ailda Martinez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for the retailing of liquor within 500 feet of a residential zone (“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 the retailing of liquor within 500 feet of a residential zone.
2. Applicant is requesting a conditional use to allow for a light fueling station adjacent to a residential zone.
3. Applicant appeared and gave evidence in support of the application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified. Several neighbors and neighborhood association members submitted evidence in opposition to the Application.
5. 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.*
6. IDO Section 14-16-6-6(A)(3)(c) (“It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community”) is dispositive and requires denial of the Application.
7. In the IDO, a conditional use is defined as:
*A land use that is allowable in a particular zone district subject to conditional approval by the ZHE based on a review of the **potential adverse impacts** of the use and any appropriate mitigations to minimize those impacts **on nearby properties**. Table 4-2-1 indicates whether a particular conditional use is primary (listed as C) or accessory (listed as CA) or allowed conditionally in a primary building that has been vacant for a specified amount of time (listed as CV).*
- IDO, § 14-16-7, Definitions (emphasis added).
8. Conditional uses are therefore by definition land uses that have been identified by the City Council in the IDO as having “potential adverse impacts...on nearby properties.”
9. The land uses proposed by Applicant are categorized under the IDO as conditional uses in this case because of their proximity to a residential zone and to residential uses. See Table 4-2-1 of the IDO, as well as the applicable Use-specific Standards identified in § 14-16-4-3 of the IDO as to light vehicle fueling and liquor retail, respectively:
4-3(D)(18)(g) If located adjacent to any Residential zone district, this use shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A);
 and
4-3(D)(39)(c) Notwithstanding other provisions in this Subsection 14-16-4-3(D)(39), 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.
10. It is apparent from the Use-specific Standards for both light vehicle fueling and for liquor retail that the City Council has given purpose to why and when these uses convert from permissive uses to conditional uses under the IDO — their proximity to residential zones. This is so because, as a matter of policy in the IDO, conditional uses are legislatively defined land uses that by their nature have a “potential” for “adverse impacts...on nearby properties” of which requires further review from the ZHE of “any appropriate mitigations to minimize those impacts on nearby properties” [IDO, § 14-16-7, Definition of Conditional Use].
11. To repeat, IDO Section 14-16-6-6(A)(3)(c) requires that the proposed Conditional Use not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.

12. Here, opponents cited concerns regarding safety, graffiti, crime, noise, community disruption, and other adverse impacts on adjacent properties, the surrounding neighborhood, and the larger community that would arise from the proposed uses. The ZHE finds that these adverse impacts would be significant, because they would impact quality of life.
13. It is notable that while IDO Section 14-16-6-6(A)(3)(d) allows for “sufficient mitigation or civic or environmental benefits that outweigh the expected impacts” of the negative impacts of a proposed use, IDO Section 14-16-6-6(A)(3)(c) allows for no such mitigation.
14. Further, under IDO Section 14-16-6-4(Q)(2) the ZHE may impose conditions on approvals, provided that they are reasonably related to “mitigating the negative impacts of the proposed development.” However, the Applicant’s justification as to why the proposed Conditional Use would not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community rests on Applicant’s assertions that Murphy USA is “NOT any other convenience store operator, they are the model across the country for best practices, security protocol, training, store design for crime prevention, engagement of ownership, extensive surveillance of all locations, product placement and most importantly, the culture of the company.” See Applicant’s justification letter at pages 8 through 11. Conditions that might align with Murphy USA’s cited characteristics and procedures to mitigate significant adverse impacts would therefore be unenforceable under New Mexico law, because they would be personal to Murphy and not generally applicable to any subsequent operator. *See Mechem v. City of Santa Fe*, 1981-NMSC-104, ¶¶ 21, 23 (“[I]t is not within the proper function of the zoning authority to condition an exception to the use of real property upon personal rights of ownership rather than use.”)
15. The ZHE finds that Applicant failed to satisfy IDO Section 14-16-6-6(A)(3)(c).
16. Because all prongs of the Conditional Use test must be satisfied and, as stated above, Applicant failed to satisfy Section 14-16-6-6(A)(3)(c), the Application must be denied.

DECISION:

DENIAL of a conditional use to allow for the retailing of liquor within 500 feet of a residential zone.

APPEAL:

If you wish to appeal this decision, you must do so by November 18, 2021 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.



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cc:

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