



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

Marie Coleman (Agent, Owen Kramme) requests a conditional use to allow artisan manufacturing in the MX-T zone district Lot 232A/Old Town Park, MRGCD MAP 38, located at 522 Romero ST NW, zoned MX-T [Section 14-16-4-2]

Special Exception No:..... **VA-2021-00383**
Project No: **Project#2021-002253**
Hearing Date: 01-18-22
Closing of Public Record: 01-18-22
Date of Decision: 02-02-22

On the 18th day of January, 2022, Owen Kramme, agent for property owner Marie Coleman (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow artisan manufacturing in the MX-T zone district (“Application”) upon the real property located at 522 Romero ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow artisan manufacturing in the MX-T zone district.
2. This matter came before the ZHE at the December 21, 2021 ZHE hearing.
3. The Subject Property is the subject of a prior approval of a conditional use to allow for artisan manufacturing of distilled spirits, VA-2019-00244, Project#2019-002679 (the “Prior Approval”), which Prior Approval appears to have expired. It also appears, based on evidence in the record that circumstances in the vicinity of the Subject Property have changed since the Prior Approval.
4. Applicant and Agent appeared at the ZHE December 21, 2021 hearing and gave evidence in support of the Application.
5. Several community members appeared at the ZHE December 21, 2021 hearing and spoke in opposition of the Application, citing concerns regarding traffic, congestion, concentration of alcohol establishments, and other adverse impacts.
6. The Prior Approval cites mitigating factors that enabled the approval of the conditional use requested at that time.
7. The ZHE found that as of the December 21, 2021 hearing, the record was not fully developed regarding any mitigating circumstances that may exist or that Applicant may agree to undertake.
8. The ZHE granted a continuance of the Application to the January 18, 2022 ZHE hearing to enable Applicant and the public to submit further evidence regarding the Application, in particular with regard to any adverse impacts and any mitigating circumstances that may exist or that Applicant may agree to undertake.
9. Applicant, Agent, supporters and opponents submitted written evidence and testimony before and at the January 18, 2022 ZHE hearing.

10. 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.*
11. 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).
12. 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).
13. All property owners within 100 feet and affected neighborhood association(s) were notified.
14. The City Traffic Engineer submitted a report stating no objection to the Application.
15. Regarding IDO Section 6-6(A)(3)(a), which requires that the requested conditional use be consistent with the adopted ABC Comp Plan, as amended:
 - a. Applicant cites ABC Comp Plan Chapter 7: Urban Design, and in particular strong neighborhoods, economic vitality, sustainability, mobility, equity, and community health.
 - i. Regarding strong neighborhoods, Applicant argues that “a distillery business has extremely high social value that has obvious upside in today’s business market.” However, opponents pointed out many potential negative effects of another liquor establishment in the neighborhood.
 - ii. Regarding economic vitality, Applicant states that the proposed conditional use “will create a brand new and highly popular product and business model in the geographic area,” citing Marble Brewing and other alcohol establishments as positive examples. However, when pressed for details regarding the proposed use and whether a distillery or coffee

roastery or both were proposed, Applicant and Agent did not appear to have firm plans, nor did they appear to be in a position to concede to one use or the other. Many neighbors were opposed to a distillery use but not a coffee roastery, while some neighbors were opposed to both, citing negative impacts.

- iii. Applicant states that sustainability and mobility goals of the ABC Comp Plan are furthered by the proposals use of green infrastructure and its location in relation to preexisting infrastructure. Neighbors pointed out potential traffic congestion and parking problems.
- iv. Applicant argued that “Equity” maintains that streetscape enhancements attract investment to areas desiring revitalization. However, neighbors submitted evidence indicating that a liquor establishment would be “Locally Unwanted Land Use” as such term is used in the ABC Comp Plan.
 1. The Comp Plan *“uses the term ‘equity’ to describe ensuring that different people or places have the opportunities, access, and services they most need. Many people think ‘equity’ and ‘equality’ are interchangeable terms. ‘Equality’ aims to ensure that all people or places have the same opportunities, access, and services – a laudable goal. Distributing an equal amount to each would be fair if people and places had the same starting amounts. Discussions of “equity” acknowledge that people and places might need and want different things – and have different starting places. The equity approach involves assessing the different needs that people and places have and prioritizing resources and efforts to address them in the order of urgency that best matches those needs to move toward equality over time.”* See Comp Plan at 4-2. Accordingly, the Comp Plan institutes the policy that resources and unwanted land uses be located equitably, in consideration of the totality of the circumstances.
 2. Further, Comp Plan POLICY 5.3.7 states *“Locally Unwanted Land Uses: Ensure that land uses that are objectionable to immediate neighbors but may be useful to society are located carefully and equitably to ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque area. (a) Minimize the impacts of locally unwanted land uses on surrounding areas through policies, regulations, and enforcement. (b) Ensure appropriate setbacks, buffers, and/or design standards to minimize offsite impacts.”* Neighbors have pointed out a recent opening of an alcohol establishment next-door to the subject property. Such concentration of liquor uses would appear to be inequitable. Despite being given ample opportunity and having the question posed directly by the ZHE, Applicant proposed no definite mitigating measures such as those described by Comp Plan POLICY 5.3.7.

- v. Applicant stated that “Community Health” dictates that a more attractive pedestrian area entices more physical activity and that design encouraging visibility improves public safety and social cohesion. However, opponents pointed out potential negative health impacts of liquor uses and manufacturing in general. While a potential tenant testified as to potential controls that could be put in place, no specific commitments to mitigating steps were offered by Applicant.
 - b. City Historic Preservation submitted written statements advising denial of the Application, including based on ABC Comp Plan POLICY 11.2.3 “Distinct Built Environments: Preserve and enhance the social, cultural, and historical features that contribute to the identities of distinct communities, neighborhoods, and districts.” Historic Preservation pointed out that “the social, cultural and historic character of Old Town is one of a family oriented tourist destination. Distillery activities, especially next door to a tap room, would begin a trend of alcohol sales in the northwest corner of Old Town that would be contrary to the preservation of the historical and cultural aspects of the area.”
 - c. On balance, the ZHE finds that the Applicant has not met its burden of establishing that the requested conditional use be consistent with the adopted ABC Comp Plan, as amended, under IDO Section 6-6(A)(3)(a).
- 16. Applicant provided evidence 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; 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, Agent testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. However, as stated, above, City Historic Preservation is recommending denial of the Application. If the Application cannot satisfy all the requirements for a conditional use, it would not be in compliance with the IDO. As stated, above, the ZHE finds that the Applicant has not met its burden of establishing that the requested conditional use be consistent with the adopted ABC Comp Plan, as amended. Accordingly, the ZHE finds that the Applicant has not met its burden of establishing that the requested Conditional Use approval complies with all applicable provisions of the IDO.
- 17. Applicant written justification letter summarily asserts that the proposed use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community, arguing that the proposed use “will enhance property values, increase commercial sales, and cultivate and invigorate the surrounding neighborhood and community.” However, neighbors, including residents of the area, pointed out environmental and social impacts that would have significant adverse impacts, including increases in crime from concentration of alcohol uses. The ZHE finds that the Applicant has not met its burden of establishing that the requested Conditional Use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
- 18. Applicant’s written justification letter summarily states 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,

arguing that “any negative impact this proposed Business Plan potentially has is substantially outweighed by the civic and environmental benefits . . . relating to the Urban Design Principles of Chapter 7 of the ABC Comp. Plan.” As stated, above, the ZHE finds that the Applicant has not met its burden of establishing that the requested conditional use be consistent with the adopted ABC Comp Plan, as amended. Further, opponents pointed out many impacts of traffic congestion, parking congestion, noise, and vibration that likely would result from the proposed use. Applicant and Agent identified no concrete mitigating steps they would be willing to take to offset any such impacts. The ZHE finds that the Applicant has not met its burden of establishing 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.

19. 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, Agent submitted evidence that no residential zone is located within 300 feet of the subject property. Nevertheless, a neighbor testified she lives within 20 feet of the subject property and opposes the Application because of the impacts it would have on her residence.
20. Applicant submitted evidence that that the requested Conditional Use approval will not negatively impact pedestrian activity. However, Applicant did not sufficiently address whether there would be any impact to transit connectivity without appropriate mitigation. Given that it is the Applicant’s burden to establish each element of approval, The ZHE finds that the Applicant has not met its burden of establishing that the requested Conditional Use approval will not negatively impact pedestrian activity.

DECISION:

DENIAL of a conditional use to allow artisan manufacturing.

APPEAL:

If you wish to appeal this decision, you must do so by February 17, 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.



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