



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

Group II U26 VC LLC (Agent, Consensus Planning) requests a conditional use to allow for self-storage for Lot Portion of Lot 1, Block 2, Volcano Cliffs Unit 26, located at 99999 Paseo Del Norte NW, zoned MX-M [Section 14-16-4-3(D)(29)]

Special Exception No: ..... **VA-2022-00167**  
Project No: ..... **Project#2019-002663**  
Hearing Date: ..... 1-17-23  
Closing of Public Record: ..... 1-17-23  
Date of Decision: ..... 02-01-23

On the 17th day of January, 2023, Consensus Planning, agent for property owner Group II U26 VC LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for self-storage (“Application”) upon the real property located at 99999 Paseo Del Norte NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for self-storage.
2. The Application came before the ZHE at December 20, 2022 ZHE hearing after remand by the City of Albuquerque Land Use Hearing Officer (“LUHO”), AC-22-15, dated October 18, 2022, and after the ZHE’s granting of a continuance from the November 15, 2022 ZHE hearing to allow Applicant to comply with the LUHO’s required submittal of additional evidence and justification.
3. The ZHE continued the application from the December 20, 2022 ZHE hearing to the January 17, 2022 ZHE hearing, to allow for a facilitated meeting to take place before the January 17, 2023 hearing. That facilitated meeting took place on January 12, 2023 and the facilitated meeting report and an amendment thereto are in the ZHE record in this matter.
4. At the January 17, 2022 ZHE hearing, Applicant’s Agent, as well as community members and representatives of neighborhood associations and the National Park Service appeared and gave testimony regarding the Application.
5. Applicant’s agents provided a revised view study in response to requests from the National Park Service to consider specific geographic locations identified by the National Parks Service.
6. Applicant and community members also provided evidence and argument regarding the prior zone map amendment (ZMA) pertaining to the Subject Site, Project #2019-002663, RZ-2019-00043, which approves, with condition, the zone change of the Subject Property from MC-L to MX-M. The ZMA was appealed to the LUHO and affirmed by City Council.
7. The condition of the ZMA states that “[t]he zone map amendment shall not become effective until Lot 1, Block 2 is replatted and a lot line is created that corresponds to the proposed zone boundary, located at 436.01 feet south of the Paseo del Norte Blvd. NW right-of-way, and the plat is recorded.”

8. Regarding the status of the replat upon which the ZMA approval is conditioned, the DRB approved a preliminary plat corresponding to the proposed zone boundary of the ZMA on November 9, 2022, in case PR-2022-007712 / SD-2022-00143. However, no final plat has been approved or recorded resulting from this preliminary plat approval (pursuant to the IDO, Applicant must obtain final plat approval before the plat may be recorded).
9. Consequently, the condition of approval of the ZMA has not been met, and the Subject Property therefore should be considered as zoned MX-L (its prior zone category) unless and until the ZMA condition is met.
10. The ZHE is informed that the preliminary plat in PR-2022-007712 / SD-2022-00143, along with the revocation of the site plan governing the Subject Property approved by the DRB in 2017 (the "Site Plan") and Site Plan amendment that accompanied the preliminary plat, currently are under appeal in case AC-23-1. This appeal is currently scheduled to be heard by the LUHO on February 6, 2023. Therefore, it appears that Applicant cannot achieve final plat approval and recordation unless and until after the preliminary plat appeal concludes with an affirmation of the DRB approval. If the appellate process upholds the DRB decision, then Applicant may proceed with the next steps for final plat at that time.
11. Applicant's rationale and argument in favor of the Application have centered on the assumption that the Subject Property is zoned MX-M, not MX-L.
12. MX-M and MX-L have different purposes under the IDO. *Compare* IDO Section 14-16-2-4(C)(1) *with* IDO Section 14-16-2-4(D)(1).
13. Moreover, the Site Plan contains height restrictions that would purport to limit the proportion, if any, of buildings that may exceed 26 feet under certain scenarios. Applicant argued that the Site Plan merely recited the then-existing zone code text verbatim, and that these height requirements should therefore be superseded by the IDO and the ZMA. However, Applicant cited no IDO provision or other source of law to support this argument. Again, the Site Plan currently is on appeal.
14. In the past, the ZHE has considered cases that require further action by a different City body, at times making ZHE approvals conditioned upon approval by such other City body. However, given that the ZMA on which much of the justification for the Application rests, along with the Site Plan which may impact height requirements, are both on appeal, the ZHE finds that it would be appropriate in this instance to continue this case to allow the appellate process on PR-2022-007712 / SD-2022-00143 / AC-23-1 to conclude and provide guidance and clarity.
15. The ZHE's decision to continue this case is bolstered by the fact that, even if the above-described appeal results in affirmance of the DRB approval, Applicant must still proceed to obtain approval of and record a final plat before the condition of the ZMA is met. Therefore, it appears that Applicant is not prejudiced by this ZHE continuance.

DECISION:

CONTINUANCE of the Application to the February 21, 2023 ZHE hearing, beginning at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by February 16, 2023 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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