



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

98TH Street, LLC (Agent, Modulus Architects) request a conditional use to allow for a light fueling station adjacent to a residential zone for Lot E-5-A-2, Albuquerque South Unit 3, located at 99999 Gibson BLVD SW, zoned MX-M [Section 14-16-4-3(D)(18)(g)]

Special Exception No: **VA-2023-00241**
Project No: **Project#2021-006208**
Hearing Date: 10-17-23
Closing of Public Record: 10-17-23
Date of Decision: 11-01-23

On the 17th day of October, 2023, Modulus Architects, agent for property owner 98TH Street, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a light fueling station adjacent to a residential zone (“Application”) upon the real property located at 99999 Gibson 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 a light fueling station adjacent to a residential zone.
2. 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).
3. 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).
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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)(4).
6. The ZHE finds that the Applicant has authority to pursue this Application.
7. 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:*
 - (a) *It is consistent with the ABC Comp. Plan, as amended;*
 - (b) *It 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;*
 - (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*
 - (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;*

(e) It will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am;

(f) It will not negatively impact pedestrian or transit connectivity without appropriate mitigation

8. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. Specifically, Applicant submitted the following evidence supporting that the requested Conditional Use approval furthers the goals and policies of the ABC Comp. Plan by helping to ensure appropriate scale and location of development and character of design, placing new development along corridors, and providing employment and services for the area. Further, Applicant's agent provided evidence that there is a need for fueling stations in this area, and the fueling station would be appropriately buffered from the adjacent residential zoned property.
9. Applicant has met its burden of providing evidence that establishes 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 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements.
10. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact other than as would be effectively limited by the use-specific standards and other requirements of the IDO, with which Applicant will comply.
11. Applicant has met its burden of providing evidence that establishes 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact, given that the proposed use is located on along a corridor and will have appropriate buffering between it and residential uses.
12. Applicant established that IDO Section 6-6(A)(3)(e) does not apply, because the project site has no existing uses.
13. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Specifically, Applicant testified that no negative impact on pedestrian or transit connectivity would result.
14. The City Traffic Engineering Division stated no objection..

DECISION:

APPROVAL of a conditional use to allow for a light fueling station adjacent to a residential zone.

APPEAL:

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



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

98TH Street, LLC (Agent, Modulus Architects)
request a conditional use to allow for liquor retail
in an MX-M zoned district for Lot E-5-A-2,
Albuquerque South Unit 3, located at 99999
Gibson BLVD SW, zoned MX-M [Section 14-16-
4-3(D)(39)(f)]

Special Exception No: **VA-2023-00242**
Project No: **Project#2021-006208**
Hearing Date: 10-17-23
Closing of Public Record: 10-17-23
Date of Decision: 11-01-23

On the 17th day of October, 2023, Modulus Architects, agent for property owner 98TH Street, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for liquor retail in an MX-M zoned district (“Application”) upon the real property located at 99999 Gibson 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 liquor retail in an MX-M zoned district.
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:*
 - (a) *It is consistent with the ABC Comp. Plan, as amended;*
 - (b) *It 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, 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;*
 - (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*
 - (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;*
 - (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.;*
 - (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 notified.
6. 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)(4).
7. The ZHE finds that the Applicant has authority to pursue this Application.
8. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. Specifically, Applicant submitted the following evidence supporting that the requested Conditional Use approval furthers the goals and policies of the ABC Comp. Plan by helping to ensure appropriate scale and location of development and character of design, placing new development along corridors, and providing employment and services for the area. Further, Applicant’s agent provided evidence that there is a need for liquor retail in this area, because there is no significant other liquor retail in the near vicinity, and the location of this use therefore equitably locates the liquor sales establishment in an area of need.
9. Applicant has met its burden of providing evidence that establishes 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 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements.
10. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact other than as would be effectively limited by the use-specific standards and other requirements of the IDO, with which Applicant will comply.
11. Applicant has met its burden of providing evidence that establishes 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact, given that the proposed use is located on along a corridor and will have appropriate buffering between it and residential uses.
12. Applicant established that IDO Section 6-6(A)(3)(e) does not apply, because the project site has no existing uses.
13. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Specifically, Applicant testified that no negative impact on pedestrian or transit connectivity would result.
14. The City Traffic Engineering Division stated no objection.

DECISION:

APPROVAL of a conditional use to allow for liquor retail in an MX-M zoned district.

APPEAL:

If you wish to appeal this decision, you must do so by November 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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Zoning Hearing Examiner

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

98TH Street, LLC (Agent, Modulus Architects)
request a conditional use to allow for liquor retail
within 500 ft of a residential zone for Lot E-5-A-2,
Albuquerque South Unit 3, located at 99999
Gibson BLVD SW, zoned MX-M [Section 14-16-
4-3(D)(39)(c)]

Special Exception No: **VA-2023-00243**
Project No: **Project#2021-006208**
Hearing Date: 10-17-23
Closing of Public Record: 10-17-23
Date of Decision: 11-01-23

On the 17th day of October, 2023, Modulus Architects, agent for property owner 98TH Street, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for liquor retail within 500 ft of a residential zone (“Application”) upon the real property located at 99999 Gibson 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 liquor retail within 500 ft of a residential zone.
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:*
 - (a) *It is consistent with the ABC Comp. Plan, as amended;*
 - (b) *It 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, 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;*
 - (c) *It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*
 - (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;*
 - (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.;*
 - (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 notified.
6. 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)(4).
7. The ZHE finds that the Applicant has authority to pursue this Application.
8. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. Specifically, Applicant submitted the following evidence supporting that the requested Conditional Use approval furthers the goals and policies of the ABC Comp. Plan by helping to ensure appropriate scale and location of development and character of design, placing new development along corridors, and providing employment and services for the area. Further, Applicant’s agent provided evidence that there is a need for liquor retail in this area, because there is no significant other liquor retail in the near vicinity, and the location of this use therefore equitably locates the liquor sales establishment in an area of need.
9. Applicant has met its burden of providing evidence that establishes 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 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements.
10. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact other than as would be effectively limited by the use-specific standards and other requirements of the IDO, with which Applicant will comply.
11. Applicant has met its burden of providing evidence that establishes 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact, given that the proposed use is located on along a corridor and will have appropriate buffering between it and residential uses.
12. Applicant established that IDO Section 6-6(A)(3)(e) does not apply, because the project site has no existing uses.
13. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Specifically, Applicant testified that no negative impact on pedestrian or transit connectivity would result.
14. The City Traffic Engineering Division stated no objection.

DECISION:

APPROVAL of a conditional use to allow for liquor retail within 500 ft of a residential zone.

APPEAL:

If you wish to appeal this decision, you must do so by November 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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Zoning Hearing Examiner

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

98TH Street, LLC (Agent, Modulus Architects) requests a variance of 144.5 to the required 15 maximum setback for a building containing 1000 sq.ft. or more in an Activity Center for Lot E-5-A-2, Albuquerque South Unit 3, located at 99999 Gibson BLVD SW, zoned MX-M [Section 14-16-4-3(D)(18)(1)]

Special Exception No: **VA-2023-00244**
Project No: **Project#2021-006208**
Hearing Date: 10-17-23
Closing of Public Record: 10-17-23
Date of Decision: 11-01-23

On the 17th day of October, 2023, Modulus Architects, agent for property owner 98TH Street, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 144.5 to the required 15 maximum setback for a building containing 1000 sq.ft. or more in an Activity Center (“Application”) upon the real property located at 99999 Gibson BLVD SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 144.5 to the required 15 maximum setback for a building containing 1000 sq.ft. or more in an Activity Center.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(3)(a) (Variance-Review and Decision Criteria) reads: “... *an application for a Variance-ZHE shall be approved if it meets all of the following criteria:*
 - (1) *There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.*
 - (2) *The Variance will not be materially contrary to the public safety, health, or welfare.*
 - (3) *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*
 - (4) *The Variance will not materially undermine the intent and purpose of this IDO, the applicable zone district, or any applicable Overlay Zone.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
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. Agent and Applicant appeared and gave evidence in support of the Application.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. The subject property is currently zoned MX-M.
8. Based on evidence submitted by or on behalf of Applicant, it appears that there are special circumstances applicable to the Subject Property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-6-6(N)(3)(a)(1). Specifically, Applicant testified and provided written evidence that, the Subject Property has special circumstances because of its location in relation to major thoroughfares, accessways and adjacent properties based on historic platting, which give rise to the need for this request. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would not allow for the reasonably proposed use that otherwise would be in compliance with the IDO
9. Based on evidence submitted by or on behalf of Applicant, the variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the wall in a manner that is consistent with the IDO and the Development Process Manual (DPM).
10. Based on evidence submitted by or on behalf of Applicant, the variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(O)(3)(a)(3). Specifically, the proposal is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by written evidence and oral testimony. Photographs were submitted showing the neighborhood. The proposal would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements existing and proposed for the Subject Property and the area.
11. Based on evidence submitted by or on behalf of Applicant, the variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(O)(3)(a)(4). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will be in harmony with the underlying zone district and the area, and the proposed variance would merely add to the safety and useability of the site.
12. Based on evidence submitted by or on behalf of Applicant, the variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the useability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
13. City Transportation submitted a report stating no objection.
14. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).

15. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a variance of 144.5 to the required 15 maximum setback for a building containing 1000 sq.ft. or more in an Activity Center.

APPEAL:

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