



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

Desert Specialty Properties, LLC (ABQ Land Use Consulting, Carl Garcia) requests a conditional use to allow a restaurant (Ice cream shop) in the MX-T zone for Lot 6, Block 3, Piermont Heights, located at 9609 Comanche Rd NE, zoned MX-T [Section 14-16- 4-3(D)(8)]

Special Exception No: ..... **VA-2023-00008**  
Project No: ..... **Project#2023-008064**  
Hearing Date: ..... 02-21-23  
Closing of Public Record: ..... 02-21-23  
Date of Decision: ..... 03-08-23

On the 21st day of February, 2023, ABQ Land Use Consulting, Carl Garcia, agent for property owner, Out West Self-Storage, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a restaurant (ice cream shop) in the MX-T zone (“Application”) upon the real property located at 9609 Comanche Rd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a restaurant (ice cream shop) in the MX-T zone.
2. Applicant provided evidence that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
3. Applicant provided evidence that all property owners and neighborhood association entitled to notice were notified of the Application.
4. Applicant has authority to pursue this Application.
5. The City of Albuquerque Integrated Development Ordinance (IDO) 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 impact.*

- (e) *On a project site with existing uses, it will not increase non-residential activity within 300 feet 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.*
6. 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).
  7. 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).
  8. Based on evidence submitted by the Applicant, the requested conditional use is consistent with the ABC Comp. Plan, as amended. Specifically, the Application furthers the following policies of the ABC Comp Plan:
    - a. *Policy 4.1.2 Identity and Design: Protect the identity and cohesiveness of neighborhoods by ensuring the appropriate scale and location of development, mix of uses, and character of building design.* The proposed restaurant use would occupy an existing non-residential building on Comanche Rd. NE. This building is a two-story building that appears to have been constructed as a multi-tenant office. This lot marks the edge of the commercial development on Comanche, which transitions to residential uses west of this lot. The owner does not propose new development or reconstruction of the building, so it will maintain the same scale and character of the existing building design. The proposed use will add a new pedestrian-oriented destination for nearby residents to visit, adding to the mix of uses in the area. The request for a restaurant at this location will maintain the identity and cohesiveness of this neighborhood by adding a complementary new use to a long-standing vacant building at the edge of the neighborhood.
    - b. *Policy 4.1.4 Neighborhoods: Enhance, protect, and preserve neighborhoods and traditional communities as key to our long-term health and vitality.* The proposed restaurant will enhance and preserve this neighborhood by introducing a new business, along with reinvestment in a neglected property. Long-vacant buildings are a blight upon neighborhoods and are detrimental to their long-term health and vitality. Neighborhood-serving uses, such as a small, local restaurant, add vitality to the surrounding area.
    - c. *Policy 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.* This request will encourage redevelopment of a vacant building and it will bring goods and services within walking and biking distance of neighborhoods. Its location on a minor arterial road also provides good access for all residents. Providing nearby dining opportunities helps create sustainable communities by providing a mix of uses that are conveniently accessible from surrounding neighborhoods. It also locates a new commercial use in an existing commercial zone. It will provide a complementary use that is compatible in form and scale to the surrounding development through adaptive reuse of an existing office building.
    - d. *Goal 5.6 City Development Areas: Encourage and direct growth to Areas of Change where it is expected and desired and ensure that development in and near Areas of Consistency reinforces the character and intensity of the surrounding area.* The request is located in an Area of Consistency. Because the requested use

will occupy an existing building on this property, it will continue to reinforce the character and type of development in the surrounding area. If approved, the request would allow a new use to occupy this currently vacant building. The requested use will be compatible in scale and intensity with the abutting uses, primarily because of the small building footprint the restaurant will occupy.

- e. *Policy 8.1.2 Resilient Economy: Encourage economic development efforts that improve quality of life for new and existing residents and foster a robust, resilient, and diverse economy; and Policy 8.2.1 Local Business: Emphasize local business development.* The request will allow a new, local business to open in a location that is near existing neighborhoods. This local business will hire local residents through the development and implementation of the restaurant. Developing local enterprises helps retain money in the community, while providing a service to nearby residents.
9. 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, as demonstrated in the evidence submitted by Applicant. This requested use and development will comply with the use-specific standards 4- 3(D)(8). This includes following state law, stormwater quality regulations in the DPM, solid waste collection regulations, and the 10,000 SF size limit in the MX-T zone. If the owner develops an outdoor dining area, it will comply with the use-specific standards in 4-3(F)(14), which include only selling items that are sold in the primary restaurant, not including open flames or other hazards, and meeting state law if alcohol sales are allowed.
  10. 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. The proposed development is located on an existing commercial lot with adequate capacity for this type of development. A restaurant will not harm water quality, natural resources, and it will not be harmful or injurious to human health, safety, or property.
  11. 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. The proposed use occupies only a small footprint and the restriction on outdoor dining in the MX-T zone will mitigate any potential noise issues. It is also oriented away from the residential lots to the south and it faces Comanche Rd. The size of the building and property will also limit the amount of traffic that this use could generate. The City Traffic engineer did not object to the Application.
  12. 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. The request is for a restaurant use is a nonresidential activity and this location is within 300 feet of a residential neighborhood. However, this site has long been vacant. Because it does not have existing uses, this criterion does not apply to this property. However, to be consistent with the intent of this criterion, the Applicant commits to operating hours that are between the hours of 6

am and 10 pm, so as to not increase any nonresidential activity or noise at this location during quiet hours.

13. 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). The requested restaurant use will occupy an existing building on a site that has existing sidewalks on the south and west sides of the property. There are two drive pads to access the property – one on each street frontage. The sidewalk has an existing curb ramp at the intersection. There are no changes proposed to the site that would impact pedestrian movement or transit connectivity.

DECISION:

APPROVAL of a conditional use to allow for a restaurant (ice cream shop) in the MX-T zone.

APPEAL:

If you wish to appeal this decision, you must do so by March 23, 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
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