



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

NMR-Avenida RE LLC ATTN: Murad Fazal (Agent Tierra West LLC – Sergio Lozoya) requests CONDITIONAL USE to allow for a Drive Through window in a MX-H for Lot Tract G-1, South Barelmas Industrial Park Unit2, located at 310 Avenida Cesar Chavez SW, zoned MX-H 14-16- 4-2 Table 4-2-1	Special Exception No:	VA-2024-00179
	Project No:	PR-2024-010482
	Hearing Date:.....	07-16-24
	Closing of Public Record:	07-16-24
	Date of Decision:	07-31-24

On the 16th day of July, 2024, Tierra West LLC - Sergio Lozoya, agent for property owner, NMR-Avenida RE LLC ATTN: Murad Fazal (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a Drive Through window in a MX-H Zone (“Application”) upon the real property located at 310 Avenida Cesar Chavez SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a Drive Through window in the MX-H Zone.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
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)(3).
6. The City of Albuquerque Code of Ordinances 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 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 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 of a lot in any Residential zone district between the hours of 10:00 pm and 6:00 am;

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

7. 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).
8. 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).
9. Agent appeared and gave evidence in support of the Application.
10. Applicant has met the burden of providing evidence that established that the requested Conditional Use Approval is consistent with the ABC Comp. Plan, as amended. Applicant submitted 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, and providing employment and services for the area. Applicant submitted evidence in its justification letter that the Application supports Comp. Plan Goals 4.1, 5.1, 5.2, 5.3, and Policies under those Goals.
11. Applicant has met the 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. Applicant submitted evidence that, if granted this approval, development and operation of the Subject Property would take place in accordance with IDO requirements.
12. Applicant has met the 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. A neighbor and a representative of the Barelás Neighborhood Association submitted written correspondence expressing concerns that traffic and congestion may increase in the area, which could cause accidents and negatively impact pedestrians. The Letter from the Barelás Neighborhood association cited several figures and percentages regarding potential negative impacts. However, upon cross-examination by Applicant’s Agent, it became apparent that several of the figures in the neighborhood correspondence were skewed, because the underlying data was taken from other intersections and portions of road. Further, the traffic impact study submitted by Applicant was reviewed and approved by the City Transportation Section. On balance, Applicant has met its burden to establish that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
13. Applicant has met the 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. See discussion and findings in the immediately preceding paragraph. The site plan submitted by applicant demonstrates that there is sufficient stacking of drive-through vehicles, parking, and signage to mitigate potential material adverse impacts.

14. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval 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. Applicant confirmed in written submittals that non-residential activity would not increase in any prohibited manner.
15. Applicant has met their burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Applicant submitted evidence that there will be no modification to the lot, sidewalks, traffic access, roadways, or any other areas that would negatively impact pedestrian or traffic connectivity. The proposed use and associated plan have designated pedestrian pathways, and the drive through is designed as such to minimize interactions with pedestrians. As described in the traffic study and justification letter submitted by Applicant, the traffic generated by the proposed use is relatively minimal, and will mostly serve pass-through traffic, not generate significant new trips.
16. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a conditional use to allow a Drive Through window in the MX-H Zone.

APPEAL:

If you wish to appeal this decision, you must do so by August 15, 2024 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

Murad Fazal 310 Avenida Cesar Chavez SW

Sergio Lozoya 5571 Midway Park Pl NE, 87109

Slozoya@Tierrawestllc.com

Ronald Bohannon 5571 Midway Park NW

Christina Rogers 500 2nd St SW

Sean Potter 705 Iron Ave SW

Joe West 612 10th St SW, 87102