

**Planning Department**  
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**CITY OF ALBUQUERQUE  
BOARD OF APPEALS  
NOTIFICATION OF DECISION**

Kathleen Conlin appeals the Zoning Hearing Examiner’s **APPROVAL WITH CONDITIONS** of a special exception to p. 118, (C)(3) of the Downtown Neighborhood Area SDP: a **CONDITIONAL USE** to allow retail of food and drink for consumption on or off-premises for all or a portion of Lot 6A, Block 25, Perea Addition, zoned SU-2 DNA-MUM, located on 1025 Lomas Blvd. NW.

Appeal No: ..... 14BOA-20010  
Special Exception No: ..... 14ZHE-80172  
Project No: ..... 1010146  
Hearing Date: ..... 10/28/14  
Decision Date: ..... 10/28/14

In the matter of **14BOA-20010**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, thereby **UPHOLDING** the Zoning Hearing Examiner’s (ZHE’s) decision based on the following findings:

**FINDINGS:**

1. This is an **APPEAL** of the Zoning Hearing Examiner’s (ZHE) **APPROVAL** of a **SPECIAL EXCEPTION** to the Downtown Neighborhood Area Sector Development Plan (DNASDP) p. 118, Item C.3: a conditional use to allow “retail sales of food and drink for consumption on or off-premises.”
2. Pursuant to the DNASDP (p. 117-118), a conditional use for “retail sales of food and drink for consumption on or off-premises” is subject to the following, three restrictions:
  - A. There shall be no drive-up service windows.
  - B. Alcoholic drink may be sold only under a restaurant license for the sale of beer or wine, as provided by Section 60-6A-4 NMSA 1978.
  - C. Outdoor restaurant seating is allowed along the Lomas Boulevard frontage only.
3. The subject property is described as Lot 6A, Block 25, Perea Addition, containing approximately 0.33 acre and located at 1025 Lomas Blvd. NW, within the boundaries of the DNASDP and the Downtown Neighborhood Association (DNA).
4. The subject site is zoned SU-2 DNA-MUM (Downtown Neighborhood Area Mixed-Use Medium zone) and is developed with two small commercial buildings. It is surrounded by

commercial service uses to the east and south, a commercial retail use to the west and single-family residential properties to the north.

5. The Albuquerque/Bernalillo County Comprehensive Plan, the DNASDP, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. Zoning Code Section 14-16-4-2(C)(1)(a) and (b) specifies the tests that must be met for a conditional use, a type of special exception, to be approved:
  - (1) A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:
    - (a) Will not be injurious to the adjacent property, the neighborhood, or the community;
    - (b) Will not be significantly damaged by surrounding structures or activities.

At the August 19, 2014 hearing, the applicant testified that the conditional use would not be injurious to the adjacent property, the neighborhood or the community (a) because the proposed restaurant would not serve liquor or beer and wine for off-premises consumption. The conditional use application is limited to the sale of beer and wine for on-premises consumption at the proposed restaurant only. The applicant also testified that the conditional use would not be significantly damaged by the surrounding structures or activities (b).

7. The Zoning Hearing Examiner (ZHE) found that “the tapas restaurant concept has a far different impact on the community than the neighborhood 7-11 and Lowe’s that sell alcohol for off-premises consumption.”
8. The ZHE also found that the community “has examples of restaurants that sell beer and wine for on-premises consumption that have not had an injurious impact on the community” such as Capo’s and Monroe’s restaurants.
9. Finally, the ZHE found that the applicant has adequately justified the conditional use request pursuant to Zoning Code Section 14-16-4-2(C), Special Exceptions, for the aforementioned reasons and based on testimony at the August 19, 2014 hearing.
10. The ZHE approved the conditional use request subject to six conditions (A-F), as follows:
  - A. The applicant shall not sell beer and wine from the subject property for off premises consumption, only for on-premises consumption.
  - B. The applicant shall not be allowed to sell liquor, spirits or hard alcohol from the subject property.
  - C. The applicant shall only sell beer and wine at the subject property, and only as part of a restaurant license for the sale of beer and wine (Section 60-6A-4 NMSA 1978).
  - D. There shall be no drive-up service windows at this location.
  - E. Outdoor restaurant seating is allowed along the Lomas Blvd. frontage only.

F. The applicant shall demonstrate to the City of Albuquerque Planning Department (Transportation Division) that this proposed use will comply with the City-wide parking regulations.

Conditions C, D and E are re-statements of zoning restrictions B, A, and C in the DNASDP (see Finding 2).

11. The record contains two letters of opposition and a letter of support for the conditional use request. Two nearby residents expressed concern that the neighborhood is already overwhelmed by businesses that sell alcohol, that traffic would increase, that parking would spill over onto neighborhood streets, and that patrons could be a nuisance. The letter of support is from the property owner of 1025 Lomas Blvd. NW. All three parties testified at the hearing.
12. The applicant testified that he emailed the Downtown Neighborhood Association (DNA), and that a representative of the DNA indicated they are pleased that another business wants to open in the area. The DNA president declined the offer for a facilitated meeting.
13. Zoning Code Section 14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
  - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
  - (b) in the appealed action or decision, including its stated facts; and
  - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant did not cite any of the abovementioned reasons for appeal, but rather stated the following: i) Zoning enforcement did not comply with the City of Albuquerque Code of Ordinances 14-16-4-2(C)(1)(a), Special Exceptions, before granting conditional use of the property, and ii) the parking questions passed on to the Planning Department (Transportation Division) is a wrong (an injurious act).

14. The site plan must be updated to satisfy Condition F from the ZHE. Parking spaces must be numbered and dimensioned, the dumpster shall be located, and access aisles located and dimensioned.
15. Based on these findings, the Zoning Board of Appeals concludes that the decision of the ZHE in approving the special exception request was CORRECT. Therefore, the appeal is GRANTED and the decision of the ZHE is UPHeld.

If you wish to appeal this decision, you must do so by **November 13, 2014**, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

**APPEAL TO THE CITY COUNCIL:** Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an

appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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