

Planning Department

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Frank Salazar appeals the Zoning Hearing Examiner's APPROVAL WITH CONDITIONS of an amendment to the previous Notice of Decision Condition B in order to expand the ability to sell all New Mexico brewed beers on-site for off-premises consumption for all or a portion of Lot 16, Block 4, Monte Vista zoned CCR-1, located on 3507 Central Ave. NE.

Appeal No:	14BOA-20002
Special Exception No:	13ZHE-80645
Project No:.....	1009828
Hearing Date:	03/25/14
Decision Date:	03/25/14

In the matter of **14BOA-20002**, the 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 an amendment to Condition B, as elaborated in the February 5, 2014 Notice of Decision, in order to allow the applicant to sell all New Mexico brewed beers on site, rather than only beers brewed on premise, for off-premises consumption.
2. On October 15, 2013, the ZHE heard a request for a conditional use to allow for alcohol sales for off-premise consumption for an establishment with a small brewer's license. The applicant testified that the conditional use would not be injurious to the neighborhood or community because there are a number of brewers in the community. Also, beer sales for off-premise consumption would be limited to only beer that is brewed on site and contained in "growlers" (32 or 64 ounce bottles).
3. As elaborated in the October 30, 2013 Notice of Decision, the ZHE APPROVED the abovementioned conditional use (see Finding #2) subject to two conditions of approval: A) that every server that works on the subject property shall be trained with alcohol training courses, and B) that the applicant shall only sell beer, which is brewed on-site, for off-premise consumption. No appeal to the October 30, 2013 decision was received.
4. After the October 30, 2013 decision was made, the applicant realized that he did not want to be thus limited by Condition B. He wanted to be able to sell all New Mexico brewed

beers, in addition to those brewed on site, for off-premise consumption. To amend Condition B, the applicant appeared before the ZHE at the January 21, 2014 hearing.

5. As stated in the February 5, 2014 Notice of Decision, the ZHE found that amendment to Condition B to allow the applicant to sell all New Mexico brewed beers for off-premise consumption would not be injurious to the community, neighborhood or adjacent neighbors, and APPROVED the amendment to Condition B. The amendment to Condition B is the subject of this appeal (the "March 2014 appeal", see Finding #1).
6. The subject site is described as Lot 16, Block 4, Monte Vista Addition (the "subject property"). The subject property is located at 3507 Central Avenue NE, on the north side of Central Avenue, between Amherst Drive and Carlisle Boulevard.
7. The subject site is zoned CCR-1 (Community Commercial-Residential 1) pursuant to the Nob Hill-Highland Sector Development Plan. A commercial building exists on the subject property.
8. The Albuquerque/Bernalillo County Comprehensive Plan, the Nob Hill-Highland Sector Development Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
9. The CCR-1 (Community Commercial-Residential 1) zone corresponds to the C-2 zone for non-residential uses and the R-3 zone for residential uses, with four exceptions. One exception is that "alcoholic beverage sales for off-premise consumption are not allowed." However, the Nob Hill-Highland Sector Development Plan was amended in 2012 (R-12-29) and sales of alcoholic beverages for off-premise consumption, by establishments with an approved small brewer's license or an approved winegrower's license, became a conditional use in the CCR-1 and CCR-2 zones.
10. Zoning Code Section 14-16-4-2(C)(1) 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 January 21, 2014 hearing, the applicant testified that the amendment to Condition B, which restricted the conditional use approved in October 2013 (see Finding #3), would not be injurious to the adjacent property, the neighborhood or the community (a), and that it would not be significantly damaged by surrounding structures or activities (b). The ZHE found that the applicant had adequately justified the amendment to Condition B to allow the applicant to sell all New Mexico brewed beers, in addition to those brewed on site, for off-premise consumption (see Finding #5).

11. Zoning Code Section 14-16-4-4(B)(4) states that an appellant to a special exception action shall specifically cite and explain one or more errors of the ZHE in rendering his decision, and allege that the ZHE erred:
 - 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.

In a February 21, 2014 letter, the appellant states that the ZHE decision is arbitrary and capricious and is not supported by substantial evidence (c), and that it was improper of the ZHE to adopt findings from a prior hearing (b). The appellant believes that increased sales of other craft beers brewed elsewhere for off-site consumption will be injurious to appellant and the neighborhood, and has expressed concerns about the number of patrons and employees, parking and food trucks.
12. The record includes no substantial evidence that the City did not follow the legal notice provisions for the October ZHE hearing.
13. The use will be subject to the City's parking requirements either with the original condition of approval or with the amended condition.
14. The record includes no substantial evidence that the amended condition of approval will be injurious to the appellant or the neighborhood.
15. Issues raised by the appellant related to sales of food, public intoxication, and parking enforcement are not supported by substantial evidence in the record.
16. Based on these findings, the Zoning Board of Appeals (BOA) concludes that the decision of the Zoning Hearing Examiner (ZHE) to APPROVE the amendment to Condition B was CORRECT. Therefore, the appeal is DENIED and the amendment to Condition B is UPHeld.

If you wish to appeal this decision, you must do so by **April 09, 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.

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SL/cll

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