

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

BREWER OIL CO., INC. (MICHELLE HENRIE, AGENT) request(s) a special exception to Section 14-16-2-20(B)(5): a CONDITIONAL USE to allow the proposed sale of alcoholic drink for off-premise consumption in the M-1 zone on all or a portion of Lot(s) B1A, SUNDT'S INDUSTRIAL AREA zoned M-1, located at 501 CANDELARIA RD NE (G-15)

Special Exception No:..... **11ZHE-80218**
Project No: **Project# 1008947**
Hearing Date: 09-20-11
Closing of Public Record: 09-20-11
Date of Decision: 09-30-11

STATEMENT OF FACTS: The applicant, Brewer Oil Co., Inc., requests a conditional use to allow the proposed sale of alcoholic drink for off-premise consumption in an M-1 zone. The applicants were represented by counsel, Michelle Henrie. She called Tom Hennessey as her first witness. He stated that this is a New Mexico company employing 456 employees at their 37 convenience stores throughout the state. They intend to sell beer and wine as an addition to the sale of other grocery goods available. There will not be the sale of single beers, miniatures or fortified wines. All of their employees are trained and qualified by obtaining State licensing. They are directed not to sell any alcohol to anyone inebriated or underage. The renovations on this property will include proper lighting; compliance with landscaping requirements as well as on-site security. Employees are required to assure that there is clean up maintenance of the exterior of the property.

A second witness, Mr. Charles Gardner, is an employee of the applicant in a managerial capacity. He states that during his four years of service, there have been no citations or violations of state liquor laws. They will have 15 employees in total.

Finally, the applicant states that this conditional use will add to the living conditions and benefit the community.

An on-site inspection reveals that this location has been significantly neglected. Any improvement in the manner proposed will improve this property and should add to the quality and use of adjacent commercial and residential neighbors.

The file contains opposition to this request. The opponents raise legitimate concerns which will be incorporated in these findings.

Based on all of the testimony and a review of the entire file, it is determined there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this request complies with Section 14.16. 4. 2. (C). 1., for the granting of a conditional use upon a finding that the proposed use will not cause injury to the neighborhood, adjacent property or the community, nor will it be damaged by surrounding structures. For reasons stated above, this request is approved with the following conditions which address the opponents concerns. Upon compliance thereof, I conclude that the proposed request will not cause injury to the neighborhood, adjacent property of the community.

DECISION: Approved with conditions.

CONDITIONS:

1. No single beer sales;
2. No miniatures;
3. No fortified wines;
4. No sales to minors;
5. No sales to anyone who is exhibiting inebriation;
6. Manager at this location is to place a system/box to address any complaints from the Stronghurst Improvement Association or representatives of the Menaul School;
7. Measures to address any substantiated complaints, including clean up of the property are to be taken within 24 hours of receipt of the complaint;
8. Approval is solely to the Brewer Oil Company. Any transfer or sale to future owners will require a new application; and
9. Any substantial complaints or violations to the State Liquor Laws may be grounds for vacating this approval.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

If you wish to appeal this decision, you may do so by 5:00 p.m., on October 17, 2011 in the manner described below:

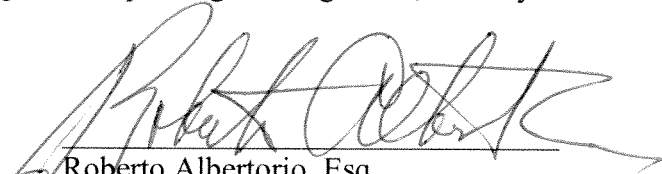
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B)., of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Brewer Oil Co., Inc., 2701 Candelaria NE, 87107
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Lindsey Gilbert, Jr. President & Head of Menaul School
Beth Brownell