

Planning Department

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Urban Design & Development Division

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Carol Krause requests a special exception to Section 14-16-2-18(A)(2)(g)3: a CONDITIONAL USE to allow the treating of food products for proposed coffee bean roasting for all or a portion of Lot 50x100 bounded D22 P434, Gateway, zoned SU-2 C-3, located on 800 Mountain Rd. NE (J-15)

Appeal No:.....	14BOA-20003
Special Exception No:	13ZHE-80635
Project No:.....	1009820
Hearing Date:.....	03/25/14
Decision Date:	03/25/14

In the matter of **14BOA-20003**, 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 WITH CONDITIONS of a CONDITIONAL USE, pursuant to Section 14-16-4-2(C)(1)(a) and (b), Conditional Use Criteria, to allow the treating of food products for coffee bean roasting.
2. The Zoning Hearing Examiner (ZHE) approved the abovementioned conditional use, subject to conditions, as elaborated in the February 5, 2014 Notice of Decision. This case has been before the ZHE three times. It was first heard on October 15, 2013 and was continued for 30 days to allow the parties to meet. At the November 19, 2013 hearing, the case was continued for 60 days to allow the applicant time to submit expert testimony. The case was heard and decided at the January 21, 2014 hearing.
3. The subject site is described as a Lot 50 x 100, bounded D22, P434 Gateway (the “subject property”). The subject property is located at 800 Mountain Road NE, south of Lomas Boulevard and east of Broadway Boulevard.
4. The subject property is zoned SU-2/C-3 (industrial/commercial/wholesale/manufacturing land use) pursuant to the Martineztown/Santa Barbara Sector Development Plan. A single-family home exists on the subject site.

5. The Albuquerque/Bernalillo County Comprehensive Plan, the Martineztown/Santa Barbara Sector Development Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. The SU-2 designation means that the subject property is included in an area subject to a sector development plan; in this case, the Martineztown/Santa Barbara Sector Development Plan (see Finding #3). The C-3 (Heavy Commercial Zone) in the sector plan corresponds to the C-3 Heavy Commercial Zone in the Zoning Code (Section 14-16-2-18), with exceptions as noted on pages 74-75 of the sector plan.
7. The C-3 Heavy Commercial Zone (pages 74-75 of the sector plan) states that the following uses are permissive:
 - uses permissive and as regulated in the C-2 zone
 - antenna up to 65 feet high
 - uses that are permissive but must be conducted within a completely enclosed building (8 such uses are listed; food products is not), and
 - uses permissive in the R-2 zone.

The intent of the C-3 zone is to provide suitable sites for C-2 uses, wholesale commercial uses, and some light industrial uses which cause no vibration discernible beyond the premises. Coffee roasting is a permissive use in the C-3 zone pursuant to Section 14-16-2-18(A)(2)(g)(3). However, the Martineztown/Santa Barbara Sector Development Plan (p. 75) specifies that permissive uses in the C-3 zone become conditional uses.

8. 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 January 21, 2014 hearing, the applicant testified that the conditional use would not be injurious to the adjacent property, the neighborhood or the community, and that the conditional use would not be significantly damaged by surrounding structures or activities.

9. The ZHE found that the conditional use would not be environmentally injurious to adjacent property, the neighborhood or the community because of primarily two reasons: 1) the coffee bean roasters as proposed would not cause health issues due to ambient air impacts as demonstrated by two, separate air quality studies; and 2) a coffee bean roasting business would have to obtain a source registration permit, a type of air quality permit (AQP) issued by the City's Environmental Health Department, for low emitting sources- rather than a construction permit that is required for higher emitting sources.

10. The ZHE found that the applicant has met the burden of proving that the emissions from a coffee bean roaster would “show no significant impacts to public health” and that, therefore, the conditional use would not be injurious. Additionally, the ZHE imposed conditions of approval that will require the applicant to bring the building and coffee bean roasting into compliance with City, State and Federal regulations prior to roasting any coffee at the subject property.
11. The Martineztown Work Group (MWG) is opposed to the conditional use for a variety of reasons, primarily environmental impacts, community history and non-permitted activities. The ZHE found that the concerns raised by the MWG fall into two categories: concerns that can be addressed through conditions of approval, and concerns that the ZHE believes are not supported by facts. The ZHE imposed six conditions of approval upon the conditional use permit to create compliance with applicable regulations, limit operation hours, and parking and truck loading.
12. The ZHE APPROVED, with conditions, the request for a CONDITIONAL USE to allow the treating of food products for coffee bean roasting.
13. 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.

The appellant did not specifically cite any of the three reasons for an appeal. Rather, the appellant elaborated a response to the ZHE’s findings and, in sum, believes that the applicant failed to prove that the proposed use will not be injurious to the neighborhood and community.
14. The record includes no substantial evidence that the proposed use will result in significant environmental impacts related to air quality, traffic, noise, fire and structural safety, light pollution, parking, or any other potential hazards.
15. The record includes no substantial evidence that the proposed use is not consistent with the Comprehensive Plan, the Martineztown/Santa Barbara Sector Plan, or the zoning ordinance.
16. The conditions imposed by the ZHE appear pertinent, reasonable, and effective.
17. Based on these findings, the Zoning Board of Appeals (BOA) concludes that the decision of the Zoning Hearing Examiner (ZHE) to APPROVE the conditional use permit was CORRECT. Therefore, the appeal is DENIED and the conditional use permit is APPROVED.

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.

Suzanne Lubar, Planning Director

SL/cll

cc: Jenica Jacobi, Legal Department
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BOA File
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