



# CITY OF ALBUQUERQUE

*Albuquerque, New Mexico*

## Planning Department

Mayor Timothy M. Keller

### INTER-OFFICE MEMORANDUM

September 6, 2024

**TO:** Dan Lewis, President, City Council

**FROM:** Alan Varela, Planning Director

**SUBJECT:** AC-24-25, PR-2024-010482, VA-2024-00179: The Barelás Neighborhood Association appeals the Zoning Hearing Examiner's decision to Approve a Conditional Use for a drive-through facility for the property located at 310 Avenida Cesar Chavez SW.

#### OVERVIEW

On July 16th, 2024, Tierra West LLC, agent for the property owner, NMR-Avenida RE LLC ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a Conditional Use Approval to allow for a drive-through window in the MX-H zone district on a lot located at 310 Avenida Cesar Chavez SW.

The ZHE approved the Applicant's request in a written decision dated July 31, 2024.

The Appellant timely filed an appeal of the ZHE's decision prior to the appeal deadline of August 15, 2024. The Appellant, the Barelás Neighborhood Association, has standing due to proximity, as the Association's boundaries are within 660 feet of the site, pursuant to IDO §14-16-6-4(U)(2)(a)5 and Table 6-4-2.

#### BASIS FOR APPEAL

IDO §14-16-6-4(U)(4) outlines the applicable criteria for the appeal in determining whether the ZHE erred in its decision:

##### 6-4(U)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

6-4(U)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(U)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(U)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

## STAFF RESPONSE

The reasons for the appeal are listed in quotes below, with bulleted, italicized responses from the Senior Planner for the ZHE.

### **“IDO 14-16-6-4(U)(4) Criteria for Decision cited for reason for appeal:**

**IDO 6-4(U)(4)(a) The ZHE’s decision is not supported by substantial evidence.**

**IDO 6-4(U)(4)(c) The ZHE erred in applying the requirements of this IDO (or plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).”**

- *The ZHE heard the application in a duly noticed public hearing and approved the request based on the evidence provided in the application materials and testimony from parties at the hearing. Relevant findings are excerpted from the Official Notification of Decision below.*
- *Finding #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 nonresidential activity within 300 feet of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.*
  - (f) It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
- *Finding # 7: The 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).*
- *Finding # 8: The 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).*
- *Finding # 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.*

- *Finding # 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.*
- *Finding # 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.*
- *Finding # 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.*
- *Finding # 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.*
- *Finding # 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.*
- *Finding # 16: The City Traffic Engineer submitted a report stating no objection to the Application.*

/ Adam Sena /

Adam Sena, Senior Planner  
City of Albuquerque Planning Department