

**Notice of Decision
City Council
City of Albuquerque
May 10, 2019**

AC-19-1 Project #2018-001763, VA-2018-00186, 00187, 00188: William Sabatini, appeals the Zoning Hearing Examiner (ZHE) decision to approve a conditional use to allow auto sales for all or a portion of Lot 18, 19, 20, Block 7, Stronghurst Addition, zoned MX/L, located at 3015 and 3017 Edith Blvd NE

Decision

On April 15, 2019, by a vote of 6 FOR, 1 AGAINST, and 1 RECUSED, the City Council voted to grant the appeal and deny the Conditional Use Permit.

Excused: Peña
Recused: Borrego
Against: Harris

On May 6, 2019, by a vote of 8 FOR, 0 AGAINST the City Council voted to adopt the following findings in support of its decision:

1. This is an appeal of the Zoning Hearing Examiner's (the "ZHE's") approval of a Conditional Use Permit for Auto Sales (the "CUP") for all or a portion of LOT 18, 19, 20, Block 7, Stronghurst Addition, containing approximately 0.4379 acres Zoned MX/L, and located at 3015 and 3017 Edith Boulevard NE.
2. William Sabatini, on behalf of the Stronghurst Improvement Association, appealed the decision of the ZHE to the City Council.
3. On appeal, the City Council considers whether the ZHE made one or more of the following errors:
 - a. The ZHE acted fraudulently, arbitrarily, or capriciously;
 - b. The decision being appealed is not supported by substantial evidence; and/or
 - c. The ZHE erred in applying the requirements of the IDO. [ROA 1994 § 14-16-6-4(U)(4)]
4. Pursuant to the IDO, the CUP may be approved only if the applicant provides a sound justification based on substantial evidence that the request:
 - a. Is consistent with the adopted 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 a prior permit or approval affecting the property;
 - 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. It will not increase non-residential activity within 300 feet of a lot in any Residential zone district between the hours of 8:00 P.M. and 6:00 A.M; and
- f. It will not negatively impact pedestrian or transit connectivity without appropriate mitigation. [ROA 1994 §§ 14-16-6-4(F)(2), 14-16-6-6(A)(3)]

5. The decision of the ZHE is not supported by substantial evidence, and the ZHE erred in applying the requirements of the IDO to this request for a CUP.

6. The ZHE lacked substantial evidence to determine that the CUP is consistent with the ABC Comp Plan, as amended. In order to satisfy this requirement, an analysis of relevant policies within the Comp Plan is required, and per the IDO, it's the applicant's burden to put forth these policies and identify how they apply. However, the Applicant neglected to cite any specific, relevant policies of the Comp Plan in support of the requested CUP, and the ZHE entered only a generic finding that this requirement had been satisfied without reference to any supporting evidence. A review of the record does not reveal any clear analysis or evidentiary basis for the ZHE's finding.

7. The ZHE erred in applying, and lacked substantial evidence for determining compliance with, the requirement that the CUP request comply with all applicable provisions of the IDO. The required site plan that was submitted by the Applicant and depicted on page 50 of the record demonstrates that the request does not comply with applicable provisions of the IDO. Specifically, the site plan is deficient in showing compliance with the following IDO requirements:

- a. Section 14-16-4-3(D)(19)(C) requiring that no outdoor display, storage or sales activity take place within fifty feet of the abutting residential lot lines, or within the front setback – the site plan depicts outdoor display within this area;
- b. Section 14-16-5-6(E)(2)(a) requiring a fifteen foot landscape buffer along the abutting residential lot lines – the site plan lacks this buffer;
- c. Section 14-16-5-8(D)(2) and (D)(3) limiting the amount of light spillage allowed from outdoor lighting – the site plan does not address lighting;
- d. Section 14-16-5-9(E)(1) requiring a minimum six-foot-high opaque wall or fence along the abutting residential lot lines – the site plan identifies an "existing block wall" but does not identify its height; and
- e. Section 14-16-5-9(E)(2) requiring that parking areas be separated from the abutting residential lot lines by at least fifty feet – the site plan depicts parking within this area.

8. While the Applicant made assertions during the public hearings that he intended to meet the requirements of the IDO, these assertions are contrary to, or otherwise unsupported by, the technical submittal which forms the basis for a CUP approval. Given the small size of the lot (less than $\frac{1}{2}$ acre), and the fact that it abuts residential property lines on two sides where it must meet 50-foot separation requirements for both outdoor display and parking, it is not clear whether compliance with the IDO for

this particular conditional use at this location is technically feasible. Accordingly, it's not possible to conclusively find based on the record that the request complies with all applicable requirements of the IDO.

9. The ZHE lacked substantial evidence to determine that the CUP would not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Without, at a minimum, a clear showing this request is consistent with the ABC Comp Plan, and that it complies with all of the separation, buffering, screening, and lighting requirements of the IDO, it cannot be found that this CUP would not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
10. For the forgoing reasons, the appeal is accepted, the decision of the ZHE in this matter is reversed and the CUP request is denied.

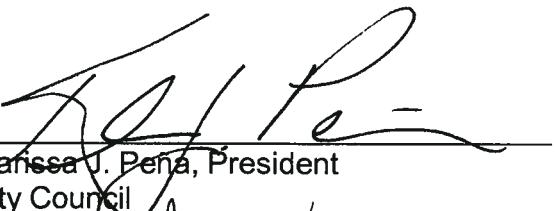
Excused: Borrego

IT IS THEREFORE ORDERED THAT THE APPEAL IS GRANTED, THE DECISION OF THE ZHE IS REVERSED, AND THE CONDITIONAL USE PERMIT FOR AUTO SALES IS DENIED

Attachments

1. Action Summary from the April 15, 2019 City Council Meeting
2. Action Summary from the May 6, 2019 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.


Klarissa J. Pena, President
City Council

Date: 5/13/19

Received by: Stephanie Casals Date: 5/13/2019
City Clerk's Office
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