MEETING DATE: November 8, 2018

CASE NO.: V18-011

REQUEST: Variance to the capacity and parking paving standards in Transect Zone of the UDC, for a proposed brewery/bar.

PROPERTY OWNER/APPLICANT/AGENT: John Bruker

LOCATION: 10092 Highway 28, Chamberino, NM.

PROPERTY SIZE: 0.93 & 2.42-acres

PARCEL ID NO.: R1710269 & R1902510

RECOMMENDATION: Conditional Approval

CASE MANAGER: Albert Casillas Planner

Case # V18-011: Submitted by John Bruker, a request for a Variance to the capacity and parking standards in Table 5.2 Conditions for Transect Zone of the UDC, for a proposed brewery/bar. Table 5.2 allows for no more than 40 seats and 20 parking spaces maximum. The applicant is requesting the Variance to allow 98 occupants and 55 parking spaces. The 0.93-acre and 2.42-acre parcels are located within a T4 (General Neighborhood) Zoning District and is located in Chamberino, within Section 18, Township 26 South, Range 3 East. The deeds were recorded in the Office of the Doña Ana County Clerk on October 16, 2014 with Instrument #1421548 and on June 18, 2018 with Instrument #1814484 and can be further identified by Parcel ID #s R1710269 and R1902510.

REPORT CONTENTS: (1) Case Analysis and Staff Recommendation (2) Supporting Documents (3) GIS Information & Maps
SURROUNDING ZONING AND LAND USE

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Existing Conditions and Zoning:
The 1.25-acre subject parcel is located within a T4 (Genera Neighborhood) Zoning District within Section 18, Township 26 South, Range 3 East. The property has a 3,487 sq. ft. home built in 1940, a 1,800 sq. ft. building/equipment shop and a 600 sq. ft. shade both built in 2005. The parcel is surrounded by mostly T2 (Rural) and some T3 (Neighborhood Edge) zoning on the east. Access to the property is from Highway 28 from the west, and E. Provencio Road from the north. Highway 28 is a NMDOT paved road, E. Provencio Road is a County paved road.

The Request:
The applicant is requesting a Variance to the capacity and parking standards in Table 5.2 Conditions for Transect Zone of the UDC, for a proposed brewery/bar. Table 5.2 allows for no more than 40 seats and 20 parking spaces maximum for a service establishment selling alcohol and food. The applicant is requesting the Variance to allow 98 seats/occupants, 55 parking spaces and to provide a graveled parking area.

BACKGROUND

The 0.93-acre and 2.42-acre parcels are located within a T4 (General Neighborhood) Zoning District and is located in Chamberino, within Section 18, Township 26 South, Range 3 East. Deeds were recorded in the Office of the Doña Ana County Clerk on October 16, 2014 with Instrument #1421548 and on June 18, 2018 with Instrument #1814484.

APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL

Chapter 350. Unified Development Code

§350-104.C.2 Duties of the Planning and Zoning Commission: Receive, hear and make final determinations on applications for variances and special use permits as prescribed by, and subject to, the procedures established herein.

§350-202.B General Notice Requirements

§350-207 Variances

§350-207.A Public Hearing and Approval
§350-207.B Findings

The P&Z and the BOCC, if the matter is appealed, may grant, grant with conditions, or deny a variance after making specific findings on whether the applicant has adequately demonstrated:

a. The variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice;

b. The variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice;

c. There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is not self-imposed; and;

d. The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done.

§350-504 Regulations Specific to Use Zones: Table 5.2, Conditions for Transect Zones

NOTICE / NOTIFICATION

- 20 letters of notification were mailed to the property owners within the area of notice on October 16, 2018.
- Legal Ad was placed in the Las Cruces Sun-News on October 17, 2018.
- Signs posted on the property in a timely manner.
- Agenda posted on the DAC Web site.

AGENCY COMMENTS

**DAC Engineering:** 1. The proposed access from Provencio is not ideal as it adds additional traffic onto a roadway limited sight distance at its intersection with HWY 28. Also, the roadway access does not meet the section designated for the zoning. The current street section would need improvements to meet the required street section. 2. Paving/hard surfacing of parking facilities for the proposed occupant loading and parking stalls proposed is necessary. Hard surfacing, such as pavement, reduces maintenance, provides for safer access and increased longevity. 3. All impervious area drainage will need to be retained on site via lot ponding.

**DAC Flood Commission:** **General Comments:** 1. The Flood Commission received this Variance request on October 10th, 2018. 2. Pursuant to FIRM No. 35013C0525G, the subject property is not currently located within a FEMA Special Flood Hazard Area and is located in FEMA “Other Areas”, Zone “X”, “areas determined to be outside 500-year floodplain. 3. Adding additional impervious areas requires that all additional runoff from improvements to be retained on site. Ponding location appears to be fields to the south and appears to be adequately sized. 4. If the parking lot will be constructed out
of any impervious material, it will have to be graded in a way that directs all runoff to the south onto adjacent farm fields owned by the brewery owner, and shall not be directed towards Provencio road. 5. If you have any questions or concerns regarding these comments, please feel free to call us at (575) 525-5558.

**DAC Fire Marshal:** 1. D103.4 Dead Ends. Dead-end fire apparatus access roads in excess of 150 feet shall be provided with 120 foot hammerhead, 60 foot “Y” or 96 foot diameter cul-de-sac and a minimum width of 20 feet. The minimum entrance gate width shall be no less than 20 feet. 2. D102.1 Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road with an asphalt, concrete, or other approved driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds.

**DAC Building Services:** No comments received.

**DAC Rural Addressing Coordinator:** No comments.

**DAC Zoning Codes:** No open zoning violations at this time.

**DAC Codes:** No violations on this property at this time.

**Advance Planning:** Landscaping, Buffering, and Fencing requirements per UDC 350-507 apply, based on non-industrial uses and areas in 350-507.D.2. That includes 1 tree/parking space evenly distributed in 6 foot minimum planting areas, and buffering the length of the residential use north of the existing building and west of the proposed parking area.

**NMDOT:** NMDOT has no issues or concerns on this request.

**NMED:** The variance request has no significant air quality implications or significant impact on any regulated public water system.

**STAFF ANALYSIS**

The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Variance request. The decision of the Planning and Zoning Commission can be appealed by an aggrieved party or person to the Board of County Commissioners.

The proposed brewery/bar will be located on a 0.93-acre and 2.42-acre parcel in Chamberino, NM. The property has a 3,487 sq. ft. home built in 1940, a 1,800 sq. ft. building/equipment shop and a 600 sq. ft. shade both built in 2005. Access to the property will be from Highway 28 from the west, and E. Provencio Road from the north of the property. Highway 28 is a NMDOT paved road. E. Provencio Road is a County paved road. Table 5.2 Conditions for Transect Zone of the UDC, Table 5.2 allows for no more than 40 seats and 20 parking spaces maximum for a service establishment selling alcohol and food. The applicant is requesting the Variance to allow 98 seats/occupants, 55 parking spaces and to provide a graveled parking area. The 0.93-acre and 2.42-acre parcels are located within a T4 (General Neighborhood) Zoning District.

The applicant contends that this will be a small brewery selling pints to the public and not distributing kegs or canning for resale. The proposed occupancy is based on the IBC 2009 Code which allows 1
occupant per every 15 sq. ft. for an A-2 use and 1 occupant per every 200 sq. ft. for the preparation area, which equates to 94 and 4 for a total of 98 occupants. The applicant also states that per the ITE Parking Generation Manual 50 parking spaces (.53 spaces per occupant) will be adequate.

§350-207.B Findings: (Staff response in bold) Applicants responses (Pg. 8)

a. The variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. Parking areas for similar establishments (Chopes Bar & Café, La Viña Winery) along Highway 28 are also graveled are unimproved and would not be a grant of special privilege if the Variance is granted.

b. The variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice. Approval of a Variance will not be detrimental to the public health, safety, and welfare, or be materially injurious to properties in the area as the property owner will be required to obtain all permits and inspections to be undertaken and approved to secure the public safety and welfare.

c. There is a physical hardship resulting from the size or shape of the parcel; or from existing structures on the parcel; or from topographic or physical conditions on the site or in the area of notice and the hardship is not self-imposed. The requirement to construct a paved parking area would be an unnecessary economical hardship placed on the developer as the projected operational and maintenance traffic generated will be minimal and would disproportionally place the burden on the developer. The existing structures are capable of hosting the proposed occupancy, based on the IBC 2009 Code which allows 1 occupant per every 15 sq. ft. for an A-2 use and 1 occupant per every 200 sq. ft. for the preparation area, which equates to 94 and 4 for a total of 98 seats/occupants. The applicant also states that per the ITE Parking Generation Manual 50 parking spaces (.53 spaces per occupant) will be adequate.

d. The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done. All permits and inspections will be required to be undertaken and approved to secure the public safety and welfare. The facility will be able to operate with minimal impact to the surrounding properties while providing substantial justice for the applicant to use the property for his and the public good.

STAFF FINDINGS:

1. The request of this application is consistent with the requirements of §350-207 Variances of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended).

2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County; therefore, the Planning & Zoning Commission has jurisdiction to hear this case.

3. Pursuant to §350-104.C.2, the Doña Ana County Planning & Zoning Commission shall receive, hear and make final determinations on applications for variances and special use permits as prescribed by, and subject to, the procedures established herein.

4. Notice requirements have been met as prescribed in §350-202.B Public Hearing and Approval.
5. No adverse public comments were received regarding this proposal.


   a) The Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. Parking areas for similar establishments (Chopes Bar & Café, La Viña Winery) along Highway 28 are also graveled are unimproved and would not be a grant of special privilege if the Variance is granted.

   b) The Variance will not be detrimental to the public health, safety, or welfare, or be materially injurious to properties or improvements in the area of notice. Approval of a Variance to will not be detrimental to the public health, safety, and welfare, or be materially injurious to properties in the area as the property owner will be required to obtain all permits and inspections to be undertaken and approved to secure the public safety and welfare.

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   d) The variance upholds the purpose and intent of this Chapter, public safety and welfare are secured, and substantial justice is done. All permits and inspections will be required to be undertaken and approved to secure the public safety and welfare. The facility will be able to operate with minimal impact to the surrounding properties while providing substantial justice for the applicant to use the property for his and the public good.

**STAFF RECOMMENDATION:**

Based on the request meeting the applicable sections of the Doña Ana County Code Chapter 350 Unified Development Code (Ordinance No. 287-2016, as amended), Staff recommends Conditional Approval of Case #V18-011 with the following condition:

1. **A cross section of the proposed graveled parking area has to be submitted prior to construction and shall be maintained and free of pot-holes.**
2. **Handicapped accessible parking areas shall have a paved or concrete surface**
3. **An STA shall be submitted by the applicant and receive approval from DAC Engineering.**
APPLICANT’S NARRATIVE

September 14, 2018

Dona Ana County
Community Development Corporation

RE: Variance for property at 10092 Highway 28

The applicant, John Bruker, is seeking a variance to increase the allowed number of occupants and parking for his proposed brewery/bar. The property is zoned T-4 which allows for this use but restricts the allowed occupants to 40 maximum and the parking to 20 spaces maximum. We will be a small brewery selling pints to the public and not distributing kegs or canning for resale. The Ordinance (below) seems to have a disproportionate building size to occupancy maximum?

Pursuant to Table 5.1 Land Use Classification Matrix: Zoning Districts of the Unified Development Code (Ord. # 287-2018) Bar, Pub, Tavern (Retail Services) and Wine Tasting Room (Agriculture) including the manufacturing of beer and wine are permitted on properties zoned T4 with conditions. Table 5.2 Conditions for Transect Zones requires a 12,000 sq. ft. building footprint maximum and shall not exceed 40 for alcohol and food service establishments (Retail Services). The condition for a Wine Tasting Room (Agricultural) is 20 parking spaces maximum.

The project design includes the beer preparation space (2-4 occupants), the bar and two four-seasons patios. One is designed to seat 36 occupants, the other 58. The desire is to use one patio for everyday business but have the other available for special events.

Therefore, we seek a variance to increase the allowed occupant load to 98, and the allowed parking to 50. See attached plan.

Additional justification for this request includes:

The IBC 2009, Table 1004.1.1 allows 15SF/occupant for the A-2 use which equates to 94 occupants allowed and 200SF/occupant for the preparation area, which equates to 4 occupants for a total of 98.

The ITE Parking Generation Manual (4th edition), also allows for 50 spaces. There data indicates 17.3 spaces per 1000SF and/or .53 spaces per occupant.

Please note, this is based on Land Use 932: High Turnover Restaurant with Bar, this land use classification comes closest to what the applicant is proposing (brewery/bar).
The state highway department has approved the driveway access plan showing 45 proposed spaces.

Thank you for considering this request.

John Bruker DVM
915 203 0818
PARCEL CLOSE UP
SURROUNDING AREA
PROPERTY NOTIFICATION
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