

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

DELBERT ARNELL (GARCIA, KRAEMER & ASSOC., AGENT) request(s) a special exception to Section 14-16-2-17(B)(15): a CONDITIONAL USE to allow for the sale of alcoholic drink for off-premise consumption within 500' of a residential zone on all or a portion of Lot(s) 3 - 6, Block(s) 2, TOWNER ADDN zoned C-2, located at 2513 4TH ST NW (H-14)

. 10ZHE-80089
Project# 1008240
. 06-15-10
.06-15-10
.06-29-10

STATEMENT OF FACTS: The applicant, Delbert Arnell, requests a conditional use to allow for the sale of alcoholic drink for off-premise consumption within 500' of a residential zone. The applicant was represented by William Kraemer. Mr. Kraemer submits that the proposed use will not be injurious to the neighborhood, adjacent property or the community and therefore meets the requirements for a conditional use. He submits that the proposed use will be in conjunction with a grocery store. The sale of alcohol is incidental to the primary sale of groceries.

The applicant has agreed not to sell miniatures; fortified wines or single beers. Employees will be required to undergo training in compliance with the State requirements. There will be cameras in the store to assure compliance with conditions of this approval. The location of the alcohol sales will not exceed 25% of the square footage of the store.

This applicant has a seven year lease and the approval will be for that period only.

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.

<u>DECISION:</u> Approved with conditions.

CONDITIONS:

1. No miniatures, fortified wines or single beers will be sold at this location.

- 2. Employees will undergo training in order to be in compliance with State requirements.
- 3. Security cameras will be installed within the store and outside the store.
- 4. Sales of liquor shall not exceed 25% of the retail floor area.
- 5. No display of liquor on store floor outside the area specified for liquor sales.
- 6. No separate outdoor advertising of liquor sales; except as approved under sign permits issued by the City of Albuquerque.
- 7. The store shall prominently display, near the front door, the telephone number of a company representative designated to hear complaints and concerns relating to the sale of alcohol.
- 8. The property shall be cleaned of litter and debris on a daily basis.

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 July 14, 2010 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

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