



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

DOUG ADAMS (RBA ARCHITECTURE-RICK BENNETT, AGENT) requests a special exception to Section 14-16-2-20(B)(5): a CONDITIONAL USE to allow retail to include drive-thru windows for on and off premises food consumption for all or a portion of Lot 1-A, Block 48, SKYLINE HEIGHTS zoned SU-2 / M-1, located on 401 EUBANK BLVD SE (L20)

Special Exception No: .....**18ZHE-80005**  
Project No:.....**Project# 1011493**  
Hearing Date:.....02-20-18  
Closing of Public Record:.....02-20-18  
Date of Decision: .....03-07-18

On the 20th day of February, 2018, RBA ARCHITECTURE-RICK BENNETT (“Agent”) acting as agent on behalf of the property owner DOUG ADAMS (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow retail to include drive-thru windows for on and off premises food consumption (“Application”) upon the real property located at 401 EUBANK BLVD SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow retail to include drive-thru windows for on and off premises food consumption.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: “*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.*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. Applicant has obtained necessary approvals from the EPC, with direction that he seek this variance before proceeding to DRB.
5. The ZHE finds that the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
6. The proposed window is at least 200 feet from any residential properties that might be disturbed by it.
7. There is no apparent concern associated with the already existing drive through uses nearby.
8. No objections were entered into the record.
9. In the context of the surrounding neighborhood the proposed use is consistent, reasonable and does not appear to create any adverse impacts.

10. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
11. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
12. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow retail to include drive-thru windows for on and off premises food consumption.

If you wish to appeal this decision, you must do so by March 22, 2018, 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 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.



---

Christopher L. Graeser, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Doug Adams, 39 Canyon Ridge Dr, 87047  
RBA Architecture, 1104 Park Ave SW, 87102