



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

JONATHAN TING (DANIEL BOARDMAN, AGENT) requests a special exception to Section 14-16-2-15(B)(5): a CONDITIONAL USE to allow instruction in music or dance in an existing building, for all or a portion of Lot 5, Block 8, GILCHRISTS-NORA E zoned O-1, located on 222 TRUMAN STREET NE (K-17)

Special Exception No:..... **15ZHE-80054**
Project No:..... **Project# 1010396**
Hearing Date:..... 04-21-2015
Closing of Public Record:..... 04-21-2015
Date of Decision: 05-04-2015

On the 21st day of April, 2015 (hereinafter "**Hearing**") DANIEL BOARDMAN, (hereinafter "**Agent**") acting as agent on behalf of the property owner JONATHAN TING (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Conditional Use to allow instruction in music or dance in an existing building (hereinafter "**Application**") upon the real property located at 222 TRUMAN STREET NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow instruction in music or dance in an existing building.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
3. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the intention is to "*remodel the interior of the primary building to accommodate several uses which already [comply] with the zoning for that area (massage therapy, acupuncture, and physical therapy) and ask for a conditional use for a portion of the building to include dance classes and Pilates-like movement classes.*" (See Justification Letter in ZHE file). The Applicant further added that the Application will not be injurious because there will be no expansion of the footprint of the building on the outside of the building and the walls will have insulation (noise attenuation). Additionally, the Applicant added that the building will have plenty of parking available adjacent to the building and pursuant to a parking lease (see the Exhibit A – Parking Space Rental Agreement - in the ZHE File). The Applicant is leasing 10 spaces across the street in the vacant lot and agreed to setback the parking at least 10' from 219 Truman (Mr. David Marquez). Additionally, a neighboring property owner Jane Carlton (229 Truman) indicated that she thought the use would

not be injurious to the property owners in the community. The Applicant further added that “the weeknight classes will typically conclude by 9 p.m. and the weekend classes will usually be late morning and afternoon.” For these reasons, the ZHE believes that the conditional use will not be injurious to the community or neighbors.

4. Mr. David Marquez voiced concern about parking and noise... however the Applicant agreed at the end of the Hearing to setback all parked cars adjacent to his suite by 10’ to mitigate any concerns about the disruption to his property.
5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) “SPECIAL EXCEPTIONS” reads in part: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*”
6. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities.
7. Mr. Kevin Georges authored a letter of support for the Application.
8. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
9. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a CONDITIONAL USE to allow instruction in music or dance in an existing building.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the parked cars are setback at least 10 feet from 219 Truman (Mr. Marquez property).
- B. The Applicant shall add insulation to the dance class walls to help buffer the effects of the music.

If you wish to appeal this decision, you may do so 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.



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Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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