



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

SCOTT AND MICHELLE OTTERNESS (DAVID MONTOYA, AGENT) requests a special exception to Section 14-16-2-23(A) and 14-16-2-15(B)(9) and pg 99 NOB HILL HIGHLAND SDP : a CONDITIONAL USE to allow retailing of food and drink to allow existing restaurant with beer & wine license for all or a portion of Lot 24, Block 42, University Heights zoned OR-1, located on 3218 SILVER AVE SE (K-16)

Special Exception No:..... **15ZHE-80182**
Project No:..... **Project# 1010512**
Hearing Date:..... 08-18-15
Closing of Public Record:..... 08-18-15
Date of Decision: 08-27-15

On the 18th day of August, 2015 (hereinafter “**Hearing**”) DAVID MONTOYA (hereinafter “**Agent**”) acting as agent on behalf of the property owner SCOTT AND MICHELLE OTTERNESS (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow retailing of food and drink to allow existing restaurant with beer & wine license (hereinafter “**Application**”) upon the real property located at 3218 SILVER AVE SE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow retailing of food and drink to allow existing restaurant with beer & wine license.
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 requested use has been ongoing for several years with no apparent injury, and in fact with the support of two neighborhood associations for the existing use. The use is appropriate and complementary to the surrounding area.
4. 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.*”

5. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities based on its history of untroubled coexistence.
6. 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.
7. 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 of a **CONDITIONAL USE** to allow retailing of food and drink to allow existing restaurant with beer & wine license.

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

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