



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

ROCHELLE ROBYN ATENCIO requests a special exception to Section 14-16-2-6(B)(7): a CONDITIONAL USE to allow therapy as a home occupation for all or a portion of Lot 20, Block 17, Desert Terrace Addn. Unit 3 zoned R-1, located on 5020 SAN PEDRO CT NE (F-18)

Special Exception No:..... **15ZHE-80055**
Project No:..... **Project# 1010397**
Hearing Date:..... 10-20-15
Closing of Public Record:..... 10-20-15
Date of Decision: 10-30-15

On the 20th day of October, 2015 (hereinafter “**Hearing**”) ROCHELLE ROBYN ATENCIO (hereinafter “**Applicant**”) was scheduled before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow therapy as a home occupation (hereinafter “**Application**”) upon the real property located at 5020 SAN PEDRO CT NE (“**Subject Property**”). Below are the findings of fact:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow therapy as a home occupation.
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 submitted application materials and appeared at prior hearings on the Application, but failed to appear at the Hearing despite the ZHE rescheduling the hearing on several occasions to accommodate the Applicant.
4. The ZHE deferred the Hearing until well after the scheduled start time to ensure Applicant had adequate opportunity to attend. The ZHE adopts into the record Applicant’s prior testimony.
5. A number of residents of the neighborhood appeared to testify as to the injurious nature of the proposed use.
6. Those testifying raised significant concerns regarding security, traffic, parking and the specific nature of Applicant’s proposed practice and intended clientele.
7. Applicant was not present to respond to the objections, explain why any concerns may have been unfounded or meet her burden of proof that the proposed use would not be injurious.
8. The ZHE accepts the expressed concerns as posing potential injury to the adjacent property and neighborhood.
9. 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.”*
10. The ZHE makes no finding on this code requirement.
 11. The Applicant has failed to adequately justify the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
 12. “Subsequent to the hearing, the ZHE was informed that Applicant communicated with ZHE staff and requested that the Application be withdrawn.”

DECISION:

Withdrawn Application of a CONDITIONAL USE to allow therapy as a home occupation.

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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