



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

SCOTT HINKEN (REBEKAH BELLUM, AGENT) request(s) a special exception to Section 14-16-2-16(B)(5): a CONDITIONAL USE to allow a proposed drive up service window on all or a portion of Lot(s) 3A, Block(s) E, GOODRICH ADDN zoned C-1, located at 4009 SAN MATEO BLVD NE (G-17)

Special Exception No:..... **10ZHE-80383**
Project No: **Project# 1008597**
Hearing Date: 02-15-11
Closing of Public Record: 02-15-11
Date of Decision: 02-23-11

STATEMENT OF FACTS: The applicant, Scott Hinken, requests a conditional use to allow a proposed drive up service window. This matter was initially scheduled at the January 18, 2011 hearing. At that hearing, it was deferred to the February 15, 2011 hearing in order for a facilitated meeting to take place between the applicant, agent and concerned neighbors.

At the February 15, 2011 hearing, Scott Hinken testified that it is his desire to add a drive up service window to the existing Dunkin Donuts, which has been in operation since the 1970's. Mr. Hinken purchased the business in 1986 and is in the process of remodeling. Their current hours of operation are seven days a week, twenty-four hours a day. If approved, the customer entrances to the building would be closed from 10:00 p.m. to 6:00 a.m. in order to provide employee security and safety. The drive thru facility would remain open 24 hours a day.

As stated, a facilitated meeting was held on February 2, 2011. Some concerns noted at this meeting were lighting, traffic and noise. Edie Cherry, agent for the applicant, stated that in order to help reduce the impact, they are prepared to construct a 6' high cinderblock wall between the Dunkin Donuts and the adjoining residents.

Judy Pointer and Brian Tucker testified in opposition to this request.

Brian Tucker, who is an adjacent residential property owner, stated the following. His concerns are the hours of operation, traffic that will be created by this drive thru and noise. He stated that if this request were approved, he would like the hours of operation for the drive thru to be limited. He also would like "sound dampening" materials added to the proposed wall.

Judy Pointer who lives behind Dunkin Donuts also testified in opposition to this request. Her concerns are that by constructing a wall, the "walk ability" in the area will be interfered with.

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. This is a well established commercial business that serves the immediate community. Their desire to provide safety and security for their employees and patrons is valid. For reasons stated above, this request is approved.

DECISION: Approved with conditions.

CONDITIONS:

1. A solid 6' concrete wall, which will minimize noise, must be constructed.
2. A pedestrian path must be established and maintained.
3. All landscaping and lighting requirements must be complied with.
4. Any graffiti must be removed within twenty-four (24) hours.

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.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

If you wish to appeal this decision, you may do so by 5:00 p.m., on March 10, 2011 in the manner described below:

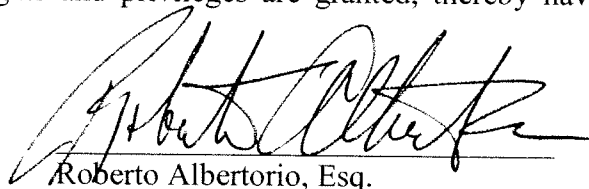
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.

A handwritten signature in black ink, appearing to read 'Roberto Albertorio', is written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Scott Hinken, P.O. Box 30381, 87190
Edi Cherry, 220 Gold SW, 87102
Brian Tucker, P.O. Box 27518, 87125
Judy Pointer, 4008 Van Buren, NE, 87110