

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

DCI BIOLOGICALS (TONY KELLER, AGENT) request(s) a special exception to Section 14-16-2-4(A)(3): an EXPANSION OF A NON-CONFORMING USE to allow an existing blood plasma clinic on all or a portion of Lot(s) 11, Block(s) 1, UNIVERSITY HEIGHTS, zoned SU-2 UC, located at 122 YALE BLVD SE (K-15)

Special Exception No:	10ZHE-80341	
Project No:	Project# 1008543	
Hearing Date:		
Closing of Public Record:	11-16-10	
Date of Decision:	12-01-10	

STATEMENT OF FACTS: The applicant, DCI Biologicals, requests an expansion of a non-conforming use to allow an existing blood plasma clinic. The applicant testified that this is a proposed expansion on an existing non-conforming use which was granted some years ago. The expansion will be 576 sq ft, making a total of 2,896 sq ft which is used for this activity. The proposed hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. The expansion would be solely for purposes of storage capacity and staff rooms. There will be no other services or treatments of customers at this location. In 1990 and 1997 similar requests were opposed by neighbors and denied by this office.

Don Hancock of the University Heights Neighborhood Association opposes this request. He argues that this is encroaching into the area which the address is 120 Yale. He argues that the proposed expansion would be encroaching onto the property which does conform with the Zoning category. He states that to expand into a conforming use would essentially expand a non-conforming use beyond what was initially approved and is inappropriate.

The basic premise of a non-conforming use is to allow for a use which was initiated prior to the existing zoning. To allow the expansion would essentially nullify that property which is consistent with the zone category and make it non-conforming. In my view, this office does not have that authority. The opponents make persuasive arguments against allowing for this type of expansion.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: The applicant has failed to meet the requirement for approval of a Special Exception for an Expansion of a Non-Conforming Use, as above described in Section 14. 16. 4. 2. of the Zoning Ordinance. I find that this request, for reasons stated above, cannot be granted and it is denied.

**DECISION:** Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 16, 2010 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.

Roberto Albertorio, Esq. Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

DCI Biologicals, Kino Pierce, 701 2<sup>nd</sup> Street SW, 87102 Tony Keller, 8729 Shoal Creek Boulevard, Ste. 200, Austin, TX, 78757

Don Hancock, University Heights Association, 105 Stanford SE, 87106