

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

KEN GATTAS (ABQ TENTS, AGENT) request(s) a special exception to Section 14-16-2-17(B)(20): a CONDITIONAL USE to allow proposed activities in a tent year round on all or a portion of Lot(s) 234A, MRGCD MAP 35 zoned C-2, located at 1100 RIO GRANDE BLVD NW (H-13)

Special Exception No:..... **11ZHE-80191**
Project No: **Project# 1008914**
Hearing Date: 09-20-11
Closing of Public Record: 09-20-11
Date of Decision: 09-30-11

STATEMENT OF FACTS: The applicant, Ken Gattas, requests a conditional use to allow proposed activities in a tent year round. Applicant desires to have full year restaurant activity extending from the main building to a patio covered by a tent. Applicant also wishes to continue to have live musing and/or karaoke in the patio location. He states that his conditional use will not cause injury to the community, adjacent property or the neighborhood.

There is opposition to this request from neighbors of the community. They state that the music or karaoke emanating from the patio is disruptive to their enjoyment of their homes and property. They state that often the music is too loud and goes on through the evening and to 12:30 a.m. during the week and 1:30 a.m. during the weekends. They have lodged several complaints without any success. They state that this type of activity presents negative impact and will only be aggravated if this conditional use is approved.

Based on all of the evidence, it is determined that the use of the patio for music or other entertainment has had a negative deleterious affect on the enjoyment of neighbors who reside in the community. Furthermore, approval of the conditional use as identified by the applicant will only serve to further aggravate the negative impact. I am, therefore, compelled to deny this request up a finding that the conditional use will be injurious to the adjacent property, neighborhood and the community.

FINDINGS AND CONCLUSIONS: I find that this request does not comply with Section 14. 16. 4. 2. (C). 1., for the granting of a conditional use upon a finding that the proposed use will cause injury to the neighborhood, adjacent property or the community, and will be damaged by surrounding structures. For reasons stated above, this request is denied.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on October 17, 2011 in the manner described below:

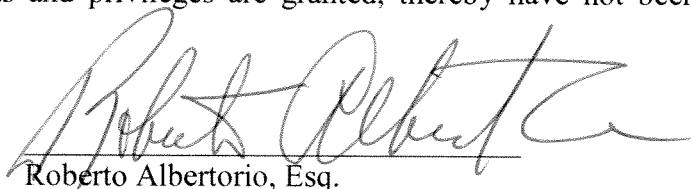
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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
Ken Gates, 1100 Rio Grande NW, 87104
David Ortiz, 2900 2nd Street NW, 87107
Catherine Maestas, 2411 Floral Road NW, 87104
Lawrence Martinez, 2411 Floral Road NW, 87104
Barney McCulloch, 2415 Rose Drive NW, 87104
Edward Anaya, 715 Tijeras Avenue NW, 87102
Tammy Montoya & Dorothy Chavez
Paula Spooner, 1218 Rio Grande Blvd. NW, 87102