



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

GARCIA'S KITCHEN request(s) a special exception to Section 14-16-2-17(B)(20): a CONDITIONAL USE to allow an existing tent to be up for longer than 14 days on all or a portion of Lot(s) A3A1, Block(s) 20, BELLHAVEN ADDN zoned C-2, located at 8518 INDIAN SCHOOL RD NE (J-20)

Special Exception No:..... **11ZHE-80116**
Project No: **Project# 1008808**
Hearing Date: 08-16-11
Closing of Public Record: 08-16-11
Date of Decision: 08-26-11

STATEMENT OF FACTS: The applicant, Garcia's Kitchen, requests a conditional use to allow an existing tent to be up for longer than 14 days. This matter was originally scheduled to be heard at the June 21, 2011 ZHE Hearing at which time the matter was deferred to the July 19, 2011 hearing at the request of the applicant. Once again on July 19, 2011, the applicant requested that this matter be deferred to the August 16, 2011 hearing and the request was granted.

Dan & Steve Garcia attended the hearing on August 16, 2011. They testified that the existing tent is being used as outdoor seating for patrons at one of their restaurants. They have owned this property for approximately ten years.

Lt. Skip Navarette, City of Albuquerque Fire Marshal's Office, testified at this hearing. He stated that the Fire Marshal must give approval prior to the erection of the tent as meeting the requirements of Chapter 14, Article 2, Fire Code.

Lt. Navarette testified that the permit was issued for thirty (30) days and that permit has since expired. The Zoning Hearing Examiner can not grant this extension without a permit from the Fire Marshal in place. Concerns were raised that the tent was put up prior to obtaining a permit.

The applicant testified that they plan to put a permanent structure at this location in the future. A permanent structure built with required permits and approvals appears to better suit the long term seasonal needs of the applicants as presented at hearing.

The request for the tent to remain up from May, 2011 through the end of September, 2011 (approximately 150 days) exceeds a reasonable extension to the 14 day Zoning Code provision and would require continuous renewal of the permit from the Fire Marshal. This renewal appears not to have taken place thus creating the potential of unsafe conditions.

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: 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 September 12, 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.



Anita Reina, Esq.

Deputy Zoning Hearing Examiner

cc: Zoning Enforcement
 ZHE File
 Steve & Dan Garcia, Garcia's Kitchen, 1113 4th Street NW, 87102
 Neal Zimmer, 8518 Indian School Road NE, 87112
 Skip Navarrette, 724 Silver Avenue SW, 87102