

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

KATHLEEN RAMIREZ (KENNETH LUJAN) request(s) a special exception to Section 14-16-2-6(B)(7): a CONDITIONAL USE to allow a proposed audiologist office for all or a portion of Lot(s) 78, Block(s) 41, KNOLLS OF PARADISE HILLS UNIT 2 zoned R-1, located on 4516 CAPRI CT NW (B-12)

Special Exception No:..... **12ZHE-80233**  
Project No: ..... **Project# 1009378**  
Hearing Date: ..... 09-18-12  
Closing of Public Record: ..... 09-18-12  
Date of Decision: ..... 10-01-12

On September 18, 2012 Kenneth Lujan appeared in front of Interim Zoning Hearing Examiner, Stanley D. Harada, for a conditional use to allow a proposed audiologist office at 4516 Capri Ct NE.

**SUMMARY:**

1. Mr. Lujan testified that he and his business partner Kathleen Ramirez are requesting a conditional use to allow a home audiologist office.
2. Mr. Lujan and Ms. Ramirez have a mobile hearing company that has clients and travel to assisted living facilities. He would like to have a small amount of clients come to his home office for audiology testing for client convenience.
3. Mr. Lujan testified that he and Ms. Ramirez would like to set up appointments for clients several times a week at the residence. He would hope that number would go up, but he does not anticipate more than 10 a week. If the business takes off, he would seek a commercial sight for clients.
4. Mr. Lujan testified that all the equipment for the audiologist business is mobile and is placed in a van that is parked in the garage of the residence.
5. Mr. Lujan testified that the hours of operation would be Monday through Friday from 8 am to 5pm, and occasionally after 5pm.
6. Mr. Lujan testified that he would perform fitting devices for clients at the residence, but not sell anything at the residence.
7. Mr. Lujan testified that the business would have a separate entrance tht the main residence.
8. Mr. Lujan testified that there is a three car garage and 2 parking spaces in front of the garage that would adequately accommodate clients.
9. Mr. Lujan testified that Kathleen is a licensed audiologist and he is certified to operate the audiology business.
10. There is a letter of opposition in the file (W. R. Sanderson V).

11. Mr. Sanderson objections are that the business intrudes into the privacy of a totally residential area. The request lowers property values in the vicinity. The request introduces a greater influx of traffic, as well as noise and congestion. The request has the potential for impingement on private property. Permits a business operation that could best be served in a commercial area. Mr. Sanderson's letter reads that granting the conditional use sets a serious precedent in the area which promotes future abuse by others of a home situation designed to provide sanctity for family relationships, child rearing, and safety of a private domain.
12. Mr. Sanderson left an address as 1807 Washington NE, which is not near 4516 Capri Ct NW.
13. Richard Fortenbury also was at the hearing to oppose the request.
14. Mr. Fortenbury testified that he lives on the corner of Capri NW and Caddie NW.
15. Mr. Fortenbury testified tht the applicant lives in the middle of the street that is on a cul de sac.
16. Mr. Fortenbury testified that he feels that this use should be in a commercial location. There are plenty of commercial properties available in the area. There is no reason to put a commercial use in residential zone.
17. Mr. Fortnbury testified that this type of use will bring down the property values of the area.
18. Mr. Fortenbury testified that there are already a high number of businesses in the area including a chop shop, import shop, and a carpet cleaning business. Mr. Fortenbury has had to call the City Nuisance Abatement and City Zoning to help regulate the carpet cleaning business.
19. Mr. Fortenbury testified that there is an illegal 2'x3' sign on the van that is parked in the front yard which the applicant uses for the business and is not allowed in a residential zone. There is not enough room for the business.
20. Alice Fortenbury also testified in opposition to the request.
21. Mrs. Fortenbury testified that this type of business breed a bad element.
22. Mr. Lujan spoke in rebuttal that there is enough room for parking clients and storing the van in a garage.
23. Mr. Lujan testified that the equipment is stored in the van is very expensive and he could not afford to have the van parked outside.
24. Mr. Lujan testified that he is not a bad neighbor, and he and Ms. Ramirez are professional and would not compromise the neighborhood. They are sensitive to the traffic issues and noise.
25. The yellow signs were posted for the required time.

### **FINDINGS:**

Mr. Lujan has met the burden for a conditional use to allow a proposed audiologist office at 4516 Capri Ct NE. After review of all the evidence in the file it appears property does not appear to show any evidence of being injurious to the surrounding community, nor will it damage any adjacent properties in the area. The illegal business uses listed by the

opposition are not caused by this request, and should be called into code enforcement for investigation.

**DECISION:** Approved with conditions.

**CONDITIONS:**

1. Applicant shall not block or have an inordinate amount of traffic at he residence.
2. The applicant is restricted to one business sign not to exceed 1'x1' in size.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on October 16, 2012 in the manner described below:**

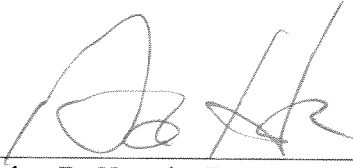
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

cc: Zoning Enforcement  
Kenneth Lujan, 4516 Capri Ct NE 87114  
W.R. Sanderson V, 1807 Washington NE 87110  
Richard Fortenbury, 4533 Capri Ct NW 87114  
ZHE File