

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

SKYVIEW CENTER (JOHN MYERS, AGENT) request(s) a special exception to Section 14-16-2-17(B)(15): a CONDITIONAL USE to allow for proposed retail sale of alcoholic drink for consumption off premises in a C-2 zone on all or a portion of Lot(s) 2, SPROUL SECURITY SUBDIVISION NO 2 zoned C-2 (SC), located at 1500 TRAMWAY BLVD NE (J-23)

Special Exception No:..... **09ZHE-80306**
Project No:..... **Project# 1007973**
Hearing Date:..... 11-17-09
Closing of Public Record:..... 11-17-09
Date of Decision:..... 12-01-09

STATEMENT OF FACTS: The applicant, Skyview Center, requests a conditional use to allow for proposed retail sale of alcoholic drink for consumption off-premises in a C-2 zone. The applicant was represented by John Meyers, Esq. This will be a CVS Pharmacy located on Tramway. There are five (5) other CVS Pharmacies throughout Albuquerque with similar conditional uses. There is no history of violations. Employees will be trained and State Certified to assure that there will not be any sales to minors or anyone who exhibits inebriation. CVS has a no-tolerance policy for errors of State Liquor Requirements. There will not be the sale of individual cans, miniatures or fortified wines. If there should be present, any undesirables, they will be removed from the store and/or parking premises by security. Security will be monitored on both the interior and exterior of the premises.

There is opposition as evidenced by two witnesses. Mr. Quintana who lives beyond the 500' radius argues that he approves the pharmacy, but not the sale of liquor. Mr. Gopal who resides one mile from this location is also opposed for similar reasons.

In rebuttal, Mr. Myers states that this is an appropriate commercial neighborhood use. He has agreed to the establishment of a community complaint process as well as the conditions that follow.

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. For reasons stated above, this request is approved.

DECISION: Approved with conditions.

CONDITIONS:

1. The store shall operate security cameras within the store as well as outside the store.
2. The store is prohibited from selling spirits in containers smaller than 750 milliliters.
3. The store is prohibited from selling beer in single unit containers.
4. The store is prohibited from selling fortified wine with alcohol content of 13.5 percent or greater
5. There shall be no sales or display of package liquor on the store sales floor outside of the specified area for package liquor.
6. There shall be no outdoor advertising on the store premises of the availability of liquor in the store.
7. The permittee shall display a telephone number of a company representative designated to hear complaints or concerns by members of the public about the sale of alcoholic drinks. This number shall be prominently displayed on or near the front door of the store.
8. The property shall be cleaned of litter and debris on a daily basis.

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.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 16, 2009 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.

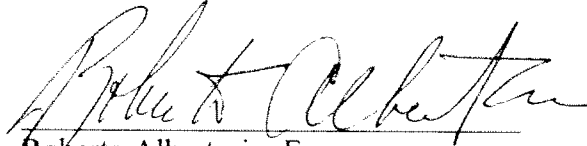
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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
Skyview Center, 250 W. Southlake Blvd., #250, Southlake, TX, 76092
John Myers, 1401 Central Avenue NW, 87104
Christina Gopal, 1605 Adelita Drive NE, 87112
Alfred Quintana, 13149 Argon NE