

Planning Department

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Jolene Wolfley appeals the Zoning Hearing Examiner's Approval of a special exception to section 14-16-2-16(B)(21) : a Conditional Use to allow storage of household goods, equipment or material reasonable to neighborhood function in a C-1(SC) zone for all or a portion of Lot 1, Bosque Plaza, zoned C-1(SC), located on 3600 Bosque Plaza LA NW (D-12).

Appeal No: 16BOA-20003

Special Exception No: ... 15ZHE-80293

Project No:..... 1010688

Hearing Date: 4/26/2016

Decision Date: 4/26/2016

In the matter of **16BOA-20003**, the Zoning Board of Appeals (BOA) voted to **GRANT** the Appeal, thereby **REVERSING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

FINDINGS:

1. This is an APPEAL of the Zoning Hearing Examiner's (ZHE) APPROVAL of a CONDITIONAL USE pursuant to Zoning Code §14-16-4-2(C)(1), Special Exception: A Conditional Use to allow an self-storage facility on a property zoned C-1 (SC) [Zoning Code §14-16-2-6(B)(21)(a-c)].
2. The subject site is described as Lot 1, Bosque Plaza, containing approximately 1.8 acres and located at 3600 Bosque Plaza Lane NW (the "subject property"). The subject property is within the boundaries of the Westside Strategic Plan (WSSP) and the Coors Corridor Plan (CCP).
3. The subject property is zoned C-1(SC) and is part of the Bosque Plaza Shopping Center which contains twelve lots. Four of the lots have developed and eight are vacant.
4. The Albuquerque/Bernalillo County Comprehensive Plan, the WSSP, the CCP, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is zoned C-1 (SC), Neighborhood Commercial, Shopping Center site. Pursuant to Zoning Code §14-16-2-6(B)(21)(a-c), storage of household goods, office records, equipment or material reasonable to neighborhood function, is allowed as a conditional use provided that:
 - a. All activities are conducted within a completely enclosed building, the scale and style of which fits its location;

- b. Individual storage cubicles, units, or facilities are not each directly accessible from outside the enclosed building; and
 - c. Direct access to the premises from an arterial or collector street is available.
6. The above-referenced request was heard by the Zoning Hearing Examiner (ZHE) on February 16, 2016. The request was first scheduled for the January 19, 2016 ZHE hearing, but was deferred to ensure that notification requirements were completed and met (Record, p. 19).
7. Zoning Code §14-16-4-2(C)(1), Special Exceptions, states that a conditional use shall be approved, if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:
- (a) Will not be injurious to the adjacent property, the neighborhood or the community;
 - (b) Will not be significantly damaged by surrounding structures or activities.

As indicated in the Notification of Decision, the ZHE found that the proposed use will not be injurious to the adjacent property, the neighborhood or the community (a). Indoor storage is by nature a low impact use that does not generate excessive traffic, noise, light, fumes, odors or vibration. Its impact will be notably less than that of other permissive uses on the subject property. The ZHE also found that the proposed use would not be significantly damaged by surrounding structures or activities (b) because the use, by its nature, would not be susceptible to damage by permissive surrounding uses and structures (Record, p. 21-22).

8. At the February 16, 2016 ZHE hearing, two members of the Taylor Ranch Neighborhood Association, and an interested party, testified in opposition to the conditional use request. Rene Horvath testified that the proposed three-story structure would be out of scale with the one-story buildings in the Bosque Plaza Shopping Center and would be taller than the 26 foot height limitation of the C-1 zone. Jolene Wolfley, TRNA president, stated that the request violates requirements of the Bosque Plaza design standards, such as massing, height, and architecture, as found in the Bosque Plaza site development plan for subdivision. The request does not further the WSSP or CCP. Mr. Pat Gallagher testified that the proposed building, due to its height, would not comply with the View Regulations in the CCP (Record, p. 27-32).
9. Zoning Code Section 14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
- (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

In her April 15, 2016 appeal letter, the appellant (Jolene Wolfley) claims that the ZHE erred in applying the Zoning Code and in applying adopted City plans and policies (a). She states that the ZHE did not consider, and make findings, regarding the requirements for a conditional use in the C-1 zone (see Finding 5, herein) and therefore erred. She further states that the ZHE erred because he did not apply the City approved site development plan for Bosque Plaza (a, b).

10. The appellant believes that the request does not meet the requirements for a conditional use for indoor storage pursuant to Zoning Code 14-16-3-16(B)(21)(a-c), the C-1 zone. Test A states that all activities must be conducted within a completely enclosed building, the scale and style of which fits its location; and Test C states that direct access to the premises from an arterial or collector street must be available. Appellant argues that the large scale, non-compliant height and unarticulated style of the proposed building renders it unfitting of its proposed location (a), and that there is no evidence in the record regarding access to the premises and if that would be adequate. No argument is made regarding Test B, which requires that individual storage units must not each be directly accessible from outside the enclosed building.
11. The agent's response to appeal states that the ZHE did not err in granting the conditional use request because indoor storage is a conditional use in the C-1 zone, there are no exclusions prohibiting the request, and that the ZHE made his decision based on the use and not the site development plan for subdivision. Though not originally envisioned at this location, the site development plan for subdivision can be changed at future time to accommodate the use. The ZHE agreed that the use is low-impact and did not stipulate any conditions of approval (Record, p. 11-12).
12. The Notice of Decision (NOD) acknowledges real and significant concerns expressed about a potential conflict with applicable plans. An inconsistency with approved or adopted plans may result in an injury to adjacent property, the neighborhood, or the community. The record does not include evidence that the proposed use will be consistent with existing, applicable plans. The NOD states that the ZHE has no authority to decide on design issues pertaining to the application, but only on the use itself. However, §14-16-2-16(B)(21)(a) requires contextual scale and style. The ZHE didn't acknowledge this required test in Finding 14.
13. The NOD states that the use itself, as distinguished from its design or operation, is not injurious. However, §14-16-2-16(B)(21)(c) requires direct access to a collector or arterial, which could be interpreted as an issue of community safety. The site plan does not meet this test, nor did the ZHE address it in this hearing.
14. Conditional use provisions by zone in the Zoning Code routinely include restrictions related to the design or operation of a use. Not only did the ZHE fail to add criteria that would ensure compliance with applicable approved plans, he failed to meet the three explicit tests for conditional use in §14-16-2-16(B)(21).
15. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the conditional use request was INCORRECT. Therefore, the decision of the ZHE is REVERSED and the appeal is GRANTED.

If you wish to appeal this decision, you must do so by **May 11, 2016**, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

APPEAL TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

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