

Planning Department

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Urban Design & Development Division

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Albuquerque, NM 87102

CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

ALLEN MINER- CIC, LLC (JEREMY ORTIZ / ARCHIS DESIGN LLC, AGENT) requests a special exception pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: a VARIANCE of 5 off-street parking spaces to the required 21 off-street parking spaces [Zoning Code Section 14-16-3-1(A)(26)] to allow for a proposed change of use for all or a portion of Lot 1-A, Block 2-A, Vista Larga Addition, zoned C-2, located at 2800 Indian School Rd. NE (H-16)

Appeal No:..... 18BOA-20006
Special Exception No: 18ZHE-80016
Project No:..... 1011500
Hearing Date:..... 04/24/2018

In the matter of **18BOA-20006**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal of 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 SPECIAL EXCEPTION, with Conditions, pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: a variance of 5 off-street parking spaces to the required 21 off-street parking spaces [Zoning Code §14-16-3-1(A)(26)] to allow for a proposed change of use (the “current application”).
2. The subject site is described as Lot 1-A, Block 2-A, Vista Larga Addition, containing approximately 0.38 acre and located at 2800 Indian School Rd. NE (the “subject property”).
3. The subject property is developed with a small commercial building, which is vacant. The applicant wants to reuse the existing building (formerly the Alpine Sausage Kitchen) for a small-batch distillery and farm-to-table restaurant.
4. The subject property is not within the boundaries of a sector development plan.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. At the February 20, 2018 Zoning Hearing Examiner (ZHE) hearing, the applicant was granted the following:
 - A. A conditional use to allow for retail sale of alcoholic drinks for off-premise consumption (18ZHE-80013).

- B. A conditional use to allow for a retail business in which products may be manufactured (18ZHE-80014).
- C. A variance of 5 off-street parking spaces to the required 21 parking spaces (18ZHE-80016).

The variance is being appealed with the current application.

- 7. The subject site is zoned C-2 Community Commercial (Zoning Code §14-16-2-17). Pursuant to Subsection F of the C-2 zone, off-street parking shall be provided as in Zoning Code §14-16-3-1 (Off-Street Parking Regulations).
- 8. Zoning Code §14-16-4-2(C)(2), Special Exceptions, states that a variance shall be approved by the ZHE, if and only if, the ZHE finds all of the following:
 - (a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
 - (b) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;
 - (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§ 14-16-1-3) and the applicable zoning district; and
 - (d) Substantial justice is done.
- 9. The ZHE found that the application is not contrary to the public interest, injurious to the community, or injurious to the property or improvements located in the vicinity as required by §14-16-4-2(C)(2)(a). The applicant addressed the potential for injury due to inadequate parking (i.e. on-street parking in the neighborhood) by committing to providing additional off-site parking in excess of the deficiency.
- 10. The ZHE found that special circumstances, such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, apply to the subject property that do not apply generally to other property in the same zone and vicinity [§14-16-4-2(C)(2)(b)]. The subject property is small in the context of its zoning category (C-2) and is irregularly shaped, with multiple access points preventing additional parking on-site. Also, the subject property is a “peninsula” surrounded on three sides by streets.
- 11. The ZHE also found that such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by §14-16-4-2(C)(2)(c). Specifically, the subject property’s size, shape and location make providing the required parking an unnecessary hardship, and that this would be the case for most permissive or conditional uses of the subject property.

12. The ZHE finds that substantial justice will be done if the subject application is approved, as required pursuant to §14-16-4-2 (C)(2)(d).
13. The ZHE's decision is subject to the following, five conditions of approval:
 - A. The applicant shall provide at least six additional off-site, off-street parking spaces.
 - B. The additional parking spaces shall be available at all times during business hours for parking the personal vehicles of employees and customers for which the spaces are required.
 - C. The additional parking spaces shall, during business hours, be unobstructed and shall not be used for storage, display, sales or parking of vehicles unrelated to the use of the subject property.
 - D. If the additional parking spaces are leased from another landowner, the applicant shall submit documentation of a lease of a minimum of two years and that the lease of such parking will not cause the lessor property to be in noncompliance with parking requirements. This variance is conditional on the applicant maintaining such a lease.
 - E. The applicant shall ensure that at least six parking spaces on the subject property are available at any time that the additional parking is not at capacity. This may be accomplished by dedicated employee parking, valet parking, parking monitoring, or other means of the applicant's choosing.
14. Zoning Code §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.

The appellant believes that the ZHE erred in his decision because he did not include five, specific requirements from Zoning Code §14-16-3-1, Off-Street Parking Regulations, in his decision: i) location of spaces to be visible from the building entrance; ii) parking cannot be reduced below the minimum; iii) reserved parking spaces shall not be counted meeting the shared parking requirement; iv) shared parking lease must be between property owners, not an owner and lessee; and v) the maximum parking reduction allowed shall be 20% (Record, p. 4-5).

15. Pursuant to Zoning Code §14-16-3-1(C)(2), Off-Street Parking Regulations, motorcycle spaces are required to be visible from the building's entrance. Regular parking spaces, which include handicap spaces, are not required to be visible from the building's entrance (appellant argument i).
16. Parking may be reduced below the required minimum if a Transit Reduction is taken and shared parking arrangements are made in accordance with Zoning Code §14-16-3-1(E)(6) (appellant argument ii).

17. The ZHE's decision to grant the variance is based upon conditions of approval to ensure that Zoning Code §14-16-3-1(E)(6) is complied with (Record, p. 25, appellant arguments iii, iv, and v).
18. Though the record contains evidence to address the appellant's arguments, parking calculations for the intended use on the subject property are not found in the record. Therefore, there is no evidence regarding the number of parking spaces required (regular spaces, handicap spaces, and motorcycle spaces). The ZHE's decision is based on a presumption that 21 is the required number of regular parking spaces, which is not supported by evidence.
19. Furthermore, it is unknown how the number of required regular parking spaces compares to the number of provided regular parking spaces, and whether or not a transit reduction of 10%, pursuant to Zoning Code §14-16-3-1(E)(6)(a)(i), was applied.
20. Pursuant to Zoning Code §14-16-3-1(A)(26), a bar or restaurant is required to provide one parking space for every four seats for establishments without a full-service liquor license; otherwise, one space per three persons of permitted fire occupancy load.
21. There is no evidence in the record if the proposed use would have a full-service liquor license. Therefore, it is unknown if the rate of one parking space to four seats applies or the rate of one parking space for every three persons of permitted fire occupancy applies.
22. The applicant's letter (Record, p. 72) states that the subject site can accommodate 17 parking spaces, but that this number is still below the current City standards for the proposed use. However, parking calculations were not included in the applicant's letter.
23. The exhibit (Record, p. 8, 73) shows a total of 16 parking spaces (including two handicap spaces) and one motorcycle space, which is not counted in the regular parking space total. The exhibit does not include parking calculations.
24. Zoning Code §14-16-3-1 contains the following exception: "...buildings constructed before October 22, 1965 need supply such parking only to the extent on-premise ground space is available." If this is the case, the variance application is not needed. However, there is no evidence in the record regarding when the building was constructed and this information was not available to the ZHE.
25. Based on these findings, the Zoning Board of Appeals concludes that the decision of the ZHE in approving the special exception (variance) request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is AFFIRMED.

If you wish to appeal this decision, you must do so by **May 9, 2018**, 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.

David S. Campbell, Planning Director

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