



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

BC111 BCSMS06-PWR14MOLINA BLDG C/O MAESTAS & WARD (DAC ENTERPRISES, AGENT) requests a special exception to Section 14-16-2-23(A) and Pg 38(e)(5) North I-25 SDP : a VARIANCE of 18 in to the height and width to the allowed letter size to allow a proposed new sign for all or a portion of Lot 1, IHS Acquisition No 120 Inc zoned SU-2 HOSPITAL AND MEDICAL USES O-1 PERM USES OR SU-2 C, located on 8801 HORIZON BLVD NE (C-17)

Special Exception No:..... **17ZHE-80180**
Project No: **Project# 1011324**
Hearing Date: 09-19-17
Closing of Public Record: 09-19-17
Date of Decision: 10-04-17

On the 19th day of September, 2017, DAC ENTERPRISES ("Agent") acting as agent on behalf of the property owner BC111 BCSMS06-PWR14MOLINA BLDG C/O MAESTAS & WARD ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 18 in to the height and width to the allowed letter size to allow a proposed new sign ("Application") upon the real property located at 8801 HORIZON BLVD NE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 18 in to the height and width to the allowed letter size to allow a proposed new sign.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: "*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner 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.*"
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).

4. The ZHE finds that 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 Section 14-16-4-2 (C)(2)(a).
5. There were previously two large Molina signs (subsequently removed) that were located up to 80' above grade and were up to 60" high. The present Application seeks a lower height and smaller letters.
6. The proposed sign does comply with the underlying IP zone regulations.
7. The height and scale of the building on the Subject Property is such that 18" maximum letters would appear incongruous. Moreover, 18" letters would be difficult to read from Alameda Boulevard and even potentially dangerous for motorists attempting to decipher them.
8. Comments were received from C&S Equities LLC and C&S Equities II LLC, owners of nearby property. The comments focused primarily on the accuracy of the Application, although also noting that the commentator sees no special circumstances.
9. The comments were considered when reviewing and applying scrutiny to the Application and the statements made therein, and this decision is made based solely on evidence in the record.
10. No written comments other than the above in opposition to the Application were received, and no one appeared at the hearing to testify in opposition to the Application.
11. No written or oral testimony indicating the potential for injury was received.
12. It does not appear that the additional height or size of the letters would be injurious to any surrounding properties, the community or the public interest.
13. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
14. Specifically, the ZHE finds that there are two entrances to the Subject Property, from Alameda and from Horizon Boulevard, with the building set back over 100' from Alameda, which has a 45mph limit at that point and no turn lane.
15. Moreover, the building, which predates the SDP, does not have a feasible location below the proposed sign location to place signs, as it is fully fenestrated up to that level.
16. Taken together, these constitute the requisite special circumstances.
17. The ZHE finds 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 Section 14-16-4-2(C)(2)(c).
18. Specifically, the ZHE finds that identifying signage is an integral part of owner-occupied office buildings and prohibiting reasonable identifying signage is an unjustified limitation.
19. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).

20. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
21. The ZHE finds that the Applicant has authority to pursue this Application.
22. Note: additional materials submitted after the hearing were not considered in rendering this decision, but will be made a part of the record for appeal purposes.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 18 in to the height and width to the allowed letter size to allow a proposed new sign.

If you wish to appeal this decision, you must do so by October 19, 2017, 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 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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Zoning Hearing Examiner

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