



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

RED SHAMROCK 4, LLC (JOSH SKARSGARD, AGENT) requests a special exception to Section 14-16-2-24(A) and University of Albuquerque SDP Section B-2: a VARIANCE of 22 feet to the maximum 4 foot height to allow a 26 ft sign height within the boundaries of the University of Albuquerque SDP and the Coors Corridor Plan for all or a portion of Lot 6, Coors Pavilion zoned SU-3, located on 4001 COORS BLVD NW (G-11)

Special Exception No:..... **17ZHE-80247**
Project No: **Project# 1011410**
Hearing Date: 02-20-18
Closing of Public Record: 02-20-18
Date of Decision: 03-07-18

On the 20th day of February, 2018, JOSH SKARSGARD (“Agent”) acting as agent on behalf of the property owner RED SHAMROCK 4, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 feet to the maximum 4 foot height to allow a 14 foot sign height within the boundaries of the University of Albuquerque SDP and the Coors Corridor Plan (“Application”) upon the real property located at 4001 Coors Blvd NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 feet to the maximum 4 foot height to allow a 14 foot sign height (lot 6) and 10 foot sign heights (lots 4, 8) within the boundaries of the University of Albuquerque SDP and the Coors Corridor Plan.
2. Applicant amended the Application from the original request of a variance of 22 feet to the maximum 4 foot height to allow 26 foot sign height.
3. This Application was initially scheduled to be heard on the November 21, 2017 ZHE agenda. The hearing was postponed several times to allow the Applicant and concerned parties to consult, and to participate in the land use facilitation process.
4. 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.”

5. 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).
6. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
7. The underlying C-2 (made applicable by Section 14-16-2-24) zone allows signs up to 26 feet in height. The University of Albuquerque Sector Development Plan, however, limits height to 4 feet (Appx. A, § B-2, as made applicable by § C-1).
8. The proposed signs are designed to be attractive, with stacked stone bases rather than pole mounts, and are intended to match the buildings, in compliance with the Albuquerque/Bernalillo County Comprehensive Plan policy 2.0 intention that they be “Compatible with surroundings [and] expressive of the identity of individual properties [and be] Aesthetically pleasing.”
9. Applicant explains that nine separate lots are being combined for the proposed shopping plaza and that Applicant is proposing that there would only be three signs in total for all nine parcels. This would result in a significant reduction in sign clutter.
10. Applicant states that the reduced sign clutter would be safer for motorists.
11. The sign plan helps achieve the Coors Corridor Plan Signage Policy 1 rationale of providing “added safety and less distraction and confusion for the motorist” and the Albuquerque/Bernalillo County Comprehensive Plan Policy 2.0 intention that signs “shall be designed for minimal distraction [and be] non-distracting to motorists.”
12. There is no evidence in the record that the proposed signs would block views for the community or property or improvements in the vicinity, contrary to Coors Corridor Plan Signage Policy 1 intentions.
13. The Application caused substantial opposition.
14. The focus of that opposition is on a desire to protect, and have Applicant comply with, the zoning code and the University of Albuquerque Sector Development Plan.
15. In a careful review of all materials submitted and testimony at the hearing, there is no evidence that the requested variance would cause any injury or be contrary to any particular public interest, independent of its noncompliance with the code and plan.
16. Applicant acknowledges that the proposal does not comply with the code or plan. That noncompliance itself is the very reason for the variance requests.
17. A substantial basis of the concern then is not as to the specific signs in question, but as to the precedent that granting the variance may set.
18. However, in the zoning context each application must be reviewed on its own specific facts, and the granting of any one variance does not set a precedent for the granting of any other variance.
19. As an example, Applicant points to many other signs of a comparable size and height in the district. Whether those signs are legal nonconforming, received a variance or are simply unpermitted is not relevant to my analysis.

20. The University of Albuquerque SDP was adopted nearly 4 decades ago. The Subject Property remains undeveloped, and the evidence in the record indicates that granting the requested variance will assist in the viability of the project by enhancing its ability to attract and retain tenants and to have those tenants be successful. The parties agree as to the benefits of the overall development for the community, and there is nothing in the record that would prevent me from accepting the Applicant's case for the business necessity of the sign variance to facilitate the development.
21. Basing my decision on the evidence in the record I am compelled to find that the requested variance is not contrary to the public interest and is not injurious to the community or property or improvements located in the vicinity.
22. 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).
23. The ZHE acknowledges the Applicant's position that the special location of the 21-acre, nine-lot development between a church and a school supports consolidating signs for nine lots into three signs.
24. In addition, the ZHE finds that the shape of the Subject Property, which results in nine different lots for nine different tenants, but inadequate street frontage to meet the 300' frontage requirement for each of the lots, is a special circumstance.
25. Another aspect of the location of the lots, that is, the relationship of the nine lots as they are laid out, is such that not all storefronts in the shopping plaza will be visible to motorists, whether from Coors Blvd. or St. Josephs Drive NW.
26. 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).
27. Specifically, the ZHE finds that the development of the surrounding properties and their uses, and the 300' sign frontage requirement, are not self-imposed and create an unnecessary hardship.
28. Denying the variance which makes multi-tenant signs feasible would result in confusing and cluttering individual signage for some of the nine parcels, with some unable to have street signage due to the 300' per sign requirement.
29. In addition to being substantially more visually intrusive, and giving the community no guarantee that the signs will be attractively designed, this would create a hardship for the interior lot tenants whose businesses could not be easily seen from the street.
30. The alternative would also present a traffic hazard as motorists become distracted looking for dispersed signage.
31. 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).
32. 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).
33. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

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

DECISION:

APPROVAL WITH CONDITIONS of a variance of 10 feet to the maximum 4 foot height to allow a 14 foot sign height within the boundaries of the University of Albuquerque SDP and the Coors Corridor Plan (“Application”) upon the real property located at 4001 Coors Blvd NW (“Subject Property”).

CONDITIONS OF APPROVAL:

1. The Subject Property may not erect more freestanding signs than the three approved by this variance.
2. The signs shall be constructed as shown in the amended Application.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Red Shamrock LLC, 8220 San Pedro NE, Suite 500, 87113
Josh Skarsgard, 8220 San Pedro NE, Suite 500, 87113
Joe Valles, 5020 Grande Vista Ct NW, 87120
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NOTIFICATION OF DECISION

RED SHAMROCK 4, LLC (JOSH SKARSGARD, AGENT) requests a special exception to Section 14-16-2-24(A) and University of Albuquerque SDP Section B-2 and the Coors Corridor Plan page 113: a VARIANCE of 109 sf to the maximum allowable sign area of 24 sf (University of Albuquerque SDP) and a VARIANCE of 58 sf to the maximum allowable sign area of 75 sf (Coors Corridor Plan) to allow a 133 sf sign face for a free standing sign for all or a Lot 6, Coors Pavilion zoned SU-3, located on 4001 COORS BLVD NW (G-11)

Special Exception No:..... **17ZHE-80249**
Project No: **Project# 1011410**
Hearing Date: 02-20-18
Closing of Public Record: 02-20-18
Date of Decision: 03-07-18

On the 20th day of February, 2018, JOSH SKARSGARD (“Agent”) acting as agent on behalf of the property owner RED SHAMROCK 4, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 109 sf to the maximum allowable sign area of 24 sf (University of Albuquerque SDP) and a VARIANCE of 58 sf to the maximum allowable sign area of 75 sf (Coors Corridor Plan) (“Application”) upon the real property located at 4001 COORS BLVD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 109 sf to the maximum allowable sign area of 24 sf (University of Albuquerque SDP) and a VARIANCE of 58 sf to the maximum allowable sign area of 75 sf (Coors Corridor Plan).
2. This Application was initially scheduled to be heard on the November 21, 2017 ZHE agenda. The hearing was postponed several times to allow the Applicant and concerned parties to consult, and to participate in the land use facilitation process.
3. 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.”

4. 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).
5. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
6. The underlying C-2 zone (made applicable by Section 14-16-2-24) allows signs up to 300 square feet. The University of Albuquerque Sector Development Plan, however, limits size to 24 square feet per side (Appx. A, § B-2, as made applicable by § C-1). The Coors Corridor Plan limits size to 75 square feet (Pg. 113).
7. The proposed signs are 133 square feet at the largest.
8. The proposed signs are designed to be attractive, with stacked stone bases rather than pole mounts, and are intended to match the buildings, in compliance with the Albuquerque/Bernalillo County Comprehensive Plan policy 2.0 intention that they be “Compatible with surroundings [and] expressive of the identity of individual properties [and be] Aesthetically pleasing.”
9. Applicant explains that nine separate lots are being combined for the proposed shopping plaza and that Applicant is proposing that there would only be three signs in total for all nine parcels. This would result in a significant reduction in sign clutter, but requires additional size for the signs.
10. Applicant states that the reduced sign clutter would be safer for motorists.
11. The sign plan helps achieve the Coors Corridor Plan Signage Policy 1 rationale of providing “added safety and less distraction and confusion for the motorist” and the Albuquerque/Bernalillo County Comprehensive Plan Policy 2.0 intention that signs “shall be designed for minimal distraction [and be] non-distracting to motorists.”
12. There is no evidence in the record that the proposed signs would block views for the community or property or improvements in the vicinity, contrary to Coors Corridor Plan Signage Policy 1 intentions.
13. The Application caused substantial opposition.
14. The focus of that opposition is on a desire to protect, and have Applicant comply with, the zoning code, the University of Albuquerque Sector Development Plan and the Coors Corridor Plan.
15. In a careful review of all materials submitted and testimony at the hearing, there is no evidence that the requested variance would cause any injury or be contrary to any particular public interest, independent of its noncompliance with the code and plans.
16. Applicant acknowledges that the proposal does not comply with the code or plans. That noncompliance itself is the very reason for the variance requests.
17. A substantial basis of the concern then is not as to the specific signs in question, but as to the precedent that granting the variance may set.
18. However, in the zoning context each application must be reviewed on its own specific facts, and the granting of any one variance does not set a precedent for the granting of any other variance.
19. As an example, Applicant points to many other signs of a comparable size and height in the district. Whether those signs are legal nonconforming, received a variance or are simply unpermitted is not relevant to my analysis.

20. The University of Albuquerque SDP was adopted nearly 4 decades ago and the Coors Corridor Plan was adopted over 30 years ago.
21. The Subject Property remains undeveloped, and the evidence in the record indicates that granting the requested variance will assist in the viability of the project by enhancing its ability to attract and retain tenants and to have those tenants be successful. The parties agree as to the benefits of the overall development for the community, and there is nothing in the record that would prevent me from accepting the Applicant's case for the business necessity of the sign variance to facilitate the development.
22. Basing my decision on the evidence in the record I am compelled to find that the requested variance is not contrary to the public interest and is not injurious to the community or property or improvements located in the vicinity.
23. 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).
24. The ZHE acknowledges the Applicant's position that the special location of the 21-acre, nine-lot development between a church and a school supports consolidating signs for nine lots into three signs.
25. In addition, the ZHE finds that the shape of the Subject Property, which results in nine different lots for nine different tenants, but inadequate street frontage to meet the 300' frontage requirement for each of the lots, is a special circumstance.
26. Another aspect of the location of the lots, that is, the relationship of the nine lots as they are laid out, is such that not all storefronts in the shopping plaza will be visible to motorists, whether from Coors Blvd. or St. Josephs Drive NW.
27. 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).
28. Specifically, the ZHE finds that the development of the surrounding properties and their uses, and the 300' sign frontage requirement, are not self-imposed and create an unnecessary hardship.
29. Denying the variance which makes multi-tenant signs feasible would result in confusing and cluttering individual signage for some of the nine parcels, with some unable to have street signage due to the 300' per sign requirement.
30. In addition to being substantially more visually intrusive, and giving the community no guarantee that the signs will be attractively designed, this would create a hardship for the interior lot tenants whose businesses could not be easily seen from the street.
31. The alternative would also present a traffic hazard as motorists become distracted looking for dispersed signage.
32. 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).
33. 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).
34. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

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

DECISION:

APPROVAL WITH CONDITIONS of a variance of 109 sf to the maximum allowable sign area of 24 sf (University of Albuquerque SDP) and a VARIANCE of 58 sf to the maximum allowable sign area of 75 sf (Coors Corridor Plan).

CONDITIONS OF APPROVAL:

1. The Subject Property may not erect more freestanding signs than the three approved by this variance.
2. The signs shall be constructed as shown in the amended Application.

If you wish to appeal this decision, you must do so by March 22, 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 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

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