



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

PRIMROSE SCHOOL OF WOODCREEK RESERVE (CONSENSUS PLANNING INC., AGENT) requests a special exception to Section 14-16-2-23(A) and P. 37 12 R-3 LA CUEVA SDP: a VARIANCE of 3 off street parking spaces to the maximum 33 allowed for all or a portion of Lot A, Block 0000, MORNINGSTAR AT PALOMAS zoned SU-2/O-1, located on 8001 PALOMAS AVE NE (D-19)

Special Exception No:..... **18ZHE-80078**
Project No:..... **Project# 1011583**
Hearing Date: 05-15-2018
Closing of Public Record: 05-15-2018
Date of Decision: 05-30-2018

On the 15th day of May, 2018, CONSENSUS PLANNING INC (“Agent”) acting as agent on behalf of the property owner PRIMROSE SCHOOL OF WOODCREEK RESERVE (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 off street parking spaces to the maximum 33 allowed (“Application”) upon the real property located at 8001 PALOMAS AVE NE (D-19) (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 off street parking spaces to the maximum 33 allowed.
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: (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).

5. Applicant seeks to include 3 additional parking spaces due to the need of the proposed use. Applicant has calculated the necessary number of parking spaces and it does not appear that there will be a surplus of unused spaces.
6. The parking space limit is a requirement of the La Cueva Site Development Plan.
7. As of May 17, 2018 (two days after this hearing, but prior to issuance of this Notice of Decision) the Integrated Development Ordinance (IDO) applies to all new applications. Although this Application falls under the prior code, it is relevant that the IDO does not impose the same upper limit on parking. This is an indication that the Governing Body has found that the limit is no longer necessary and that including additional parking is not injurious.
8. The EPC heard this Application on March 18, 2018 and no objections were raised.
9. Applicant has shown how the Application is consistent with the Albuquerque/Bernalillo Comprehensive Plan.
10. 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).
11. The Subject Property is a relatively small, dual frontage parcel, oblong in shape and over twice as long as it is wide, with only one entrance to Palomas Ave., and located in an area in which there is no on-street parking.
12. 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).
13. Applicant is not responsible for platting the size and shape of the lot, and after doing a full parking analysis and determining the needs of its employees and clients finds that the requested number of spaces is necessary for reasonable use of the Subject Property.
14. The limited access roads and restricted pedestrian access options also combine to work a hardship.
15. 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).
16. 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).
17. 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 of a variance of 3 off street parking spaces to the maximum 33 allowed.

If you wish to appeal this decision, you must do so by June 14, 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

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