



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

RICHARD QUANZ DBA QUANZ AUTO CARE (DAC ENTERPRISES INC, AGENT) requests a special exception to Section 14-16-2-22(F), 14-16-2-23(A) and Pg 3 Coors Corridor Plan : a VARIANCE of 17 ft to the 9 ft in height to allow a proposed new freestanding sign for all or a portion of Lot G, Block D, Rancho Sereno Unit 3 zoned SU-1 PDA to include C-3 uses, located on 9111 EAGLE RANCH RD NW (C-12)

Special Exception No:..... **16ZHE-80247**
Project No:..... **Project# 1010991**
Hearing Date:..... 01-17-17
Closing of Public Record:..... 01-17-17
Date of Decision: 02-01-17

On the 17th day of January, 2017, DAC ENTERPRISES INC (“Agent”) acting as agent on behalf of the property owner RICHARD QUANZ DBA QUANZ AUTO CARE (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 17 ft to the 9 ft in height to allow a proposed new freestanding sign (“Application”) upon the real property located at 9111 EAGLE RANCH RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 17 ft to the 9 ft in height to allow a proposed new freestanding 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. This project has been the subject of substantial and protracted discussion and negotiation among the applicant and the various neighborhood and community interests.
5. The ZHE referred the project to the land use facilitation program, which did not result in resolution but did aid in a dialog that resulted in some areas of agreement among some parties, including the withdrawal of one of the requested variances.
6. Opposition to the request, even as limited by the Applicant, does remain.
7. There is a unique procedural history associated with this property, going back to its 1993 approval.
8. The underlying C-3 zoning permits a sign of the height and size proposed. Thus, in the absence of any other limitations no variance would be required.
9. However, the 1993 zone map approval included a condition stating “This site plan must conform to the Coors Corridor Plan in all respects.” The condition has been interpreted to mean that the Coors Corridor Plan applies to the entire property, not just the part of the property that is located within the planning boundaries.
10. The portion of the property where the sign is to be located is not within the Coors Corridor planning boundary.
11. As part of the Applicant’s agreement with some parties, he has proposed lowering the proposed height to twenty (20) feet, limiting the message board portion of the sign, turning off the west face of the sign by 9:00PM and turning off the existing west side building-mounted sign’s illumination.
12. In the context of the underlying zoning, procedural history and proposed limitations on the approval, 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).
13. The next requirement is to find 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. The special circumstances asserted by the Applicant is the EPC’s “arbitrary” imposition of the Coors Corridor Plan requirements. The Coors Corridor Plan requirements are not circumstances related to “size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid.” While the circumstances do appear to be related to government action, it is not government action creating physical characteristics.
15. The list of circumstances in Section 14-16-4-2(C)(2)(b) is not an exhaustive list, and the ZHE has discretion to find other special circumstances. The question is whether the action of the EPC constitutes such special circumstances (those circumstances do not apply generally to other property in the zone – that is the Applicant’s point).
16. The ZHE presumes that the EPC had a reason for its actions, related to the impacts of the proposed development, and in the absence of further evidence that its decision was arbitrary, or that its condition is being interpreted incorrectly (“compliance in all respects” could just as easily mean that the plan applies only within the planning

boundary, which would be in compliance with the plan), the ZHE cannot say that the EPC's action was arbitrary.

17. On balance, while it appears that the ZHE has the discretion to make a positive finding on this element of a variance request, the ZHE is loath to grant a request apparently at odds with the considered determination of the EPC.
18. The ZHE finds that there are not special circumstances associated with the Subject Property.
19. The Applicant is entitled to seek an amendment of the condition of approval, through the EPC and Governing Body.
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.

CONCLUSIONS OF LAW:

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

DECISION:

DENIAL of a variance of 17 ft to the 9 ft in height to allow a proposed new freestanding sign.

If you wish to appeal this decision, you must do so by February 16, 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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NOTIFICATION OF DECISION

RICHARD QUANZ DBA QUANZ AUTO CARE (DAC ENTERPRISES INC, AGENT)) requests a special exception to Section 14-16-2-22(F), 14-16-2-23(A) and Pg 113 Coors Corridor Plan : a VARIANCE of 150 sq ft to the 75 sq ft in size to allow a proposed new freestanding sign for all or a portion of Lot G, Block D, Rancho Sereno Unit 3 zoned SU-1 PDA to include C-3 uses, located on 9111 EAGLE RANCH RD NW (C-12)

Special Exception No:..... **16ZHE-80320**
Project No:..... **Project# 1010991**
Hearing Date:..... 01-17-17
Closing of Public Record:..... 01-17-17
Date of Decision: 02-01-17

On the 17th day of January, 2017, DAC ENTERPRISES INC (“Agent”) acting as agent on behalf of the property owner RICHARD QUANZ DBA QUANZ AUTO CARE (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 150 sq ft to the 75 sq ft in size to allow a proposed new freestanding sign (“Application”) upon the real property located at 9111 EAGLE RANCH RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 150 sq ft to the 75 sq ft in size to allow a proposed new freestanding 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. This project has been the subject of substantial and protracted discussion and negotiation among the applicant and the various neighborhood and community interests.
5. The ZHE referred the project to the land use facilitation program, which did not result in resolution but did aid in a dialog that resulted in some areas of agreement among some parties, including the withdrawal of one of the requested variances.
6. Opposition to the request, even as limited by the Applicant, does remain.
7. There is a unique procedural history associated with this property, going back to its 1993 approval.
8. The underlying C-3 zoning permits a sign of the height and size proposed. Thus, in the absence of any other limitations no variance would be required.
9. However, the 1993 zone map approval included a condition stating “This site plan must conform to the Coors Corridor Plan in all respects.” The condition has been interpreted to mean that the Coors Corridor Plan applies to the entire property, not just the part of the property that is located within the planning boundaries.
10. The portion of the property where the sign is to be located is not within the Coors Corridor planning boundary.
11. As part of the Applicant’s agreement with some parties, he has proposed lowering the proposed height to twenty (20) feet, limiting the message board portion of the sign, turning off the west face of the sign by 9:00PM and turning off the existing west side building-mounted sign’s illumination.
12. In the context of the underlying zoning, procedural history and proposed limitations on the approval, 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).
13. The next requirement is to find 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).
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15. The list of circumstances in Section 14-16-4-2(C)(2)(b) is not an exhaustive list, and the ZHE has discretion to find other special circumstances. The question is whether the action of the EPC constitutes such special circumstances (those circumstances do not apply generally to other property in the zone – that is the Applicant’s point).
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boundary, which would be in compliance with the plan), the ZHE cannot say that the EPC's action was arbitrary.

17. On balance, while it appears that the ZHE has the discretion to make a positive finding on this element of a variance request, the ZHE is loath to grant a request apparently at odds with the considered determination of the EPC.
18. The ZHE finds that there are not special circumstances associated with the Subject Property.
19. The Applicant is entitled to seek an amendment of the condition of approval, through the EPC and Governing Body.
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.

CONCLUSIONS OF LAW:

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

DECISION:

DENIAL of a variance of 150 sq ft to the 75 sq ft in size to allow a proposed new freestanding sign.

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