



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

HOGARES INC. (GARCIA/KRAMER & ASSOC., AGENT) requests a special exception to Section 14-16-2-16(B)(7): a CONDITIONAL USE to allow proposed townhomes in a C-1 zone for all or a portion of Lot 40,41,42,43,44, ROSSITER ADDN zoned C-1, located on 1120-1106 GRIEGOS RD NW (F-14)

Special Exception No:.....14ZHE-80302
Project No:Project# 1010317
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:02-06-15

On the 23rd day of January, 2015 (hereinafter "Hearing") GARCIA/KRAMER & ASSOC., (hereinafter "Agent") acting as agent on behalf of the property owner, HOGARES INC. (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Conditional Use to allow proposed townhomes in a C-1 zone (hereinafter "Application") upon the real property located at 1120-1106 GRIEGOS RD NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow proposed townhomes in a C-1 zone.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
3. **Procedural History:** This Subject Property (and Applicant) had an application that was previously heard at the Environmental Planning Commission (Zone Map Amendment from C-1 to SU-1 for R-T permissive uses – Project Number 1010183). On August 18, 2014 there was a public facilitated meeting in the neighborhood that was well attended. On September 11, 2014 the EPC held a hearing on the application and denied the request (hereafter "EPC Application"). The Applicant has amended their application upon the Subject Property and submitted special exception applications (both variances and conditional use) for consideration by the ZHE (hereafter the "ZHE Applications"). The ZHE is not "bound" by any precedent established at the EPC, and certainly the Application has changed enough to be considered "anew" by the ZHE. Additionally, the criteria for a zone map amendment (Resolution 270-1980) is different from the criteria required by the Albuquerque Zoning Code as it relates to a Conditional Use and Variance.
4. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the

Applicant voluntarily agreed to make substantial amendments (“concessions”) to the Application during the Hearing in an effort to secure the support of the neighbors, Greater Gardner Neighborhood Association, North Valley Coalition, Los Griegos Neighborhood Association, Shirley Arrellano and other interested persons (collectively referred to hereafter as “Interested Parties”). Those voluntarily agreed to changes to the Application include the following:

- a. Reduction in Dwelling Units. The Applicant previously submitted to the EPC for consideration a site plan that included 25 dwelling units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
- b. Reduction in Height of Units adjacent to Griegos. The Applicant originally submitted an Application that contemplated two story unit located adjacent to Griegos, but voluntarily agreed to reduce the height of all units adjacent to Griegos down to 1-story.
- c. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW). The Applicant originally contemplated a two-story unit adjacent to Shirley Arrellano residence. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence. Additionally, the Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home. Additionally, the Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano’s home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano’s home. The Applicant stated that there would be a 28’ setback between Ms. Arellano’s property and the residential project.
- d. Location and number of Visitor Parking Stalls. The Applicant agreed to increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
- e. Northern New Mexico Style. The Applicant agreed to design these residential units with a “northern New Mexico style” and to visit with the Interested Parties regarding colors and design elements. The Interested Parties committed to helping the Applicant design this project to be relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- f. Porches. The Applicant agreed to install/design porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

As a result of the amendments presented by the Applicant, the Interested Parties expressed their support to the ZHE verbally during the Hearing. The ZHE applauded the Applicant and the Interested Parties for taking some time to amend the Application in a manner that was mutually beneficial to all of the stakeholders. At the end of the Hearing, the ZHE communicated to the Interested Parties that he would draft a Notice of Decision of Approval that contained all of the “amendments”/”concessions” agreed to by the Interested Parties. Accordingly, this

Notice of Decision will read more like a "settlement" than most of the other Notice of Decisions issued by the ZHE. The ZHE has copied some of the arguments within this NOD and applied them to the variance applications associated with this Subject Property, in an effort to have a congruent presentation of the Finding of Facts within the multiple applications.

The ZHE is delighted that a long and contentious project was able to be resolved amicably by the parties and thinks this Hearing and the approach utilized by the Interested Parties and the Applicant can serve as a good model for projects going forward that have divergent points of view as to how to best develop projects in our historic communities located in Albuquerque's north valley.

The ZHE finds that the amended Application will not be injurious to the community or the surrounding properties as a result of the amendments articulated in Section 4 (a) through 4 (f) above.

5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: *"A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities."*
6. The ZHE received a number of letters of opposition to this Application (see the File).
7. The ZHE received as exhibits to this Application a number of photographs of the Subject Property and surrounding community (see the File).
8. The ZHE would like to note that the current use on the Subject Property is an abandoned school site that is currently vacant, unsightly, dangerous to the community, an eye sore to the community, and damaging the aesthetical and historical qualities of this neighborhood.
9. The current zoning on the Subject Property is O-1, which **CONDITIONALLY** allows for up to 60% of the gross floor area of the premises to be residential units. The City Council recently amended the Zoning Code to allow up to 30-50 dwelling units per acre. The Applicant's amended Application is for 17 dwelling units on the entire Subject Property (well below the City Council text amendment allowing 30-50 DU's).
10. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities. The ZHE believes that the landscape buffer between the Subject Property and Ms. Arrellano's home will mitigate much of the "damage" to surrounding activities. Additionally, the one story appearance from Griegos will mitigate the potential damage to the aesthetics of this proud neighborhood by framing the public right of way (Griegos) with a more pedestrian friendly design.
11. The yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS. The Applicant testified that there were two signs posted. One of the signs unfortunately was either removed due to weather or my human efforts to remove the sign. The ZHE believes that one sign was sufficient for providing notice

to the public, in conjunction with the Albuquerque Journal advertisement, letters issued to neighbors, and the CABQ.GOV website posting of the agenda. There is little concern by the ZHE that the Interested Parties were unaware of this Application as a result of the strong turnout at the Hearing.

12. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a **CONDITIONAL USE** to allow proposed townhomes in a C-1 zone.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the following amendments to the Site Plan that were communicated to the Interested Parties during the Hearing are captured in the final Site Development Plan and Elevations submitted on behalf of the Subject Property:
- a. Reduction in Dwelling Units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - b. Reduction in Height of Units adjacent to Griegos. The Applicant shall reduce the height of all units adjacent to Griegos down to 1-story.
 - c. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW).
 - i. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence.
 - ii. The Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano's home such that it can view down into the pool and back yard of Ms. Arrellano's home.
 - iii. The Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano's home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano's home.
 - iv. The Applicant shall ensure a 28' setback between Ms. Arellano's property and the residential project.
 - d. Location and number of Visitor Parking Stalls. The Applicant shall increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
 - e. Northern New Mexico Style. The Applicant shall design these residential units with a "northern New Mexico style" and shall visit with the Interested Parties regarding colors and design elements to ensure that they are relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
 - f. Porches. The Applicant shall install/design additional porches on some of the residential units to provide a pedestrian-friendly orientation to the project.
 - g. Setback from Griegos. The Applicant shall ensure an adequate setback from Griegos (at least 30').

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File

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

HOGARES INC. (GARCIA/KRAMER & ASSOC., AGENT) requests a special exception to Section 14-16-2-15(B)(4)(a): a CONDITIONAL USE to allow up to 60% of the gross floor area for a proposed dwelling units in an O-1 zone for all or a portion of Lot 40,41,42,43,44, ROSSITER ADDN zoned C-1, located on 1120-1106 GRIEGOS RD NW (F-14)

Special Exception No:.....14ZHE-80303
Project No:Project# 1010317
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") GARCIA/KRAMER & ASSOC., (hereinafter "Agent") acting as agent on behalf of the property owner, HOGARES INC. (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Conditional Use to allow up to 60% of the gross floor area for a proposed dwelling units in an O-1 zone (hereinafter "Application") upon the real property located at 1120-1106 GRIEGOS RD NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow up to 60% of the gross floor area for a proposed dwelling units in an O-1 zone.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
3. **Procedural History:** This Subject Property (and Applicant) had an application that was previously heard at the Environmental Planning Commission (Zone Map Amendment from C-1 to SU-1 for R-T permissive uses – Project Number 1010183). On August 18, 2014 there was a public facilitated meeting in the neighborhood that was well attended. On September 11, 2014 the EPC held a hearing on the application and denied the request (hereafter "EPC Application"). The Applicant has amended their application upon the Subject Property and submitted special exception applications (both variances and conditional use) for consideration by the ZHE (hereafter the "ZHE Applications"). The ZHE is not "bound" by any precedent established at the EPC, and certainly the Application has changed enough to be considered "anew" by the ZHE. Additionally, the criteria for a zone map amendment (Resolution 270-1980) is different from the criteria required by the Albuquerque Zoning Code as it relates to a Conditional Use and Variance.

4. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the Applicant voluntarily agreed to make substantial amendments (“concessions”) to the Application during the Hearing in an effort to secure the support of the neighbors, Greater Gardner Neighborhood Association, North Valley Coalition, Los Griegos Neighborhood Association, Shirley Arrellano and other interested persons (collectively referred to hereafter as “Interested Parties”). Those voluntarily agreed to changes to the Application include the following:
- a. Reduction in Dwelling Units. The Applicant previously submitted to the EPC for consideration a site plan that included 25 dwelling units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - b. Reduction in Height of Units adjacent to Griegos. The Applicant originally submitted an Application that contemplated two story unit located adjacent to Griegos, but voluntarily agreed to reduce the height of all units adjacent to Griegos down to 1-story.
 - c. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW). The Applicant originally contemplated a two-story unit adjacent to Shirley Arrellano residence. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence. Additionally, the Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home. Additionally, the Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano’s home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano’s home. The Applicant stated that there would be a 28’ setback between Ms. Arellano’s property and the residential project.
 - d. Location and number of Visitor Parking Stalls. The Applicant agreed to increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
 - e. Northern New Mexico Style. The Applicant agreed to design these residential units with a “northern New Mexico style” and to visit with the Interested Parties regarding colors and design elements. The Interested Parties committed to helping the Applicant design this project to be relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
 - f. Porches. The Applicant agreed to install/design porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

As a result of the amendments presented by the Applicant, the Interested Parties expressed their support to the ZHE verbally during the Hearing. The ZHE applauded the Applicant and the Interested Parties for taking some time to amend the Application in a manner that was mutually beneficial to all of the stakeholders. At the end of the Hearing, the ZHE communicated to the Interested Parties that he would

draft a Notice of Decision of Approval that contained all of the "amendments"/"concessions" agreed to by the Interested Parties. Accordingly, this Notice of Decision will read more like a "settlement" than most of the other Notice of Decisions issued by the ZHE. The ZHE has copied some of the arguments within this NOD and applied them to the variance applications associated with this Subject Property, in an effort to have a congruent presentation of the Finding of Facts within the multiple applications.

The ZHE is delighted that a long and contentious project was able to be resolved amicably by the parties and thinks this Hearing and the approach utilized by the Interested Parties and the Applicant can serve as a good model for projects going forward that have divergent points of view as to how to best develop projects in our historic communities located in Albuquerque's north valley.

The ZHE finds that the amended Application will not be injurious to the community or the surrounding properties as a result of the amendments articulated in Section 4 (a) through 4 (f) above.

5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*"
6. The ZHE received a number of letters of opposition to this Application (see the File).
7. The ZHE received as exhibits to this Application a number of photographs of the Subject Property and surrounding community (see the File).
8. The ZHE would like to note that the current use on the Subject Property is an abandoned school site that is currently vacant, unsightly, dangerous to the community, an eye sore to the community, and damaging the aesthetical and historical qualities of this neighborhood.
9. The current zoning on the Subject Property is O-1, which CONDITIONALLY allows for up to 60% of the gross floor area of the premises to be residential units. The City Council recently amended the Zoning Code to allow up to 30-50 dwelling units per acre. The Applicant's amended Application is for 17 dwelling units on the entire Subject Property (well below the City Council text amendment allowing 30-50 DU's).
10. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities. The ZHE believes that the landscape buffer between the Subject Property and Ms. Arrellano's home will mitigate much of the "damage" to surrounding activities. Additionally, the one story appearance from Griegos will mitigate the potential damage to the aesthetics of this proud neighborhood by framing the public right of way (Griegos) with a more pedestrian friendly design.
11. The yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS. The Applicant testified that there were two signs posted. One of the

signs unfortunately was either removed due to weather or my human efforts to remove the sign. The ZHE believes that one sign was sufficient for providing notice to the public, in conjunction with the Albuquerque Journal advertisement, letters issued to neighbors, and the CABQ.GOV website posting of the agenda. There is little concern by the ZHE that the Interested Parties were unaware of this Application as a result of the strong turnout at the Hearing.

12. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a **CONDITIONAL USE** to allow up to 60% of the gross floor area for a proposed dwelling units in an O-1 zone.

CONDITIONS OF APPROVAL:

- B. The Applicant shall ensure that the following amendments to the Site Plan that were communicated to the Interested Parties during the Hearing are captured in the final Site Development Plan and Elevations submitted on behalf of the Subject Property:
- a. Reduction in Dwelling Units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - b. Reduction in Height of Units adjacent to Griegos. The Applicant shall reduce the height of all units adjacent to Griegos down to 1-story.
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 - iii. The Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano's home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano's home.
 - iv. The Applicant shall ensure a 28' setback between Ms. Arellano's property and the residential project.
 - d. Location and number of Visitor Parking Stalls. The Applicant shall increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
 - e. Northern New Mexico Style. The Applicant shall design these residential units with a "northern New Mexico style" and shall visit with the Interested Parties regarding colors and design elements to ensure that they are relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
 - f. Porches. The Applicant shall install/design additional porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

g. Setback from Griegos. The Applicant shall ensure an adequate setback from Griegos (at least 30').

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

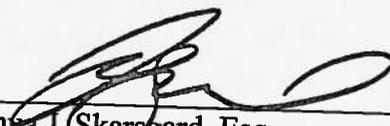
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc:

Zoning Enforcement

ZHE File

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

HOGARES INC. (GARCIA/KRAMER & ASSOC., AGENT) requests a special exception to Section 14-16-2-16(A)(7)(e)(8)(iii): a VARIANCE of 11% to the minimum 20% glazing requirement on the ground floor for a proposed townhome for all or a portion of Lot 40,41,42,43,44, ROSSITER ADDN zoned C-1, located on 1120-1106 GRIEGOS RD NW (F-14)

Special Exception No:14ZHE-80304
Project No:Project# 1010317
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") GARCIA/KRAMER & ASSOC., (hereinafter "Agent") acting as agent on behalf of the property owner, HOGARES INC. (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 11% to the minimum 20% glazing requirement on the ground floor for a proposed townhome (hereinafter "Application") upon the real property located at 1120-1106 GRIEGOS RD NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 11% to the minimum 20% glazing requirement on the ground floor for a proposed townhome.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that these variance applications will not be injurious to the adjacent property, neighborhood, or the community because the glazing requirements would if strictly applied would not allow the Applicant to comply with the energy efficiency design (LEED Certification). The extensive glass facing the façade of these units would allow too much energy and cooling to escape the units and be costly to maintain and waste energy. Additionally, the Applicant provided photographs of some adjacent residential uses that do not meet the glazing requirements called out in this regulation. For these reasons the ZHE believes that this specific variance to the glazing percentage requirements will not be injurious to the community.
4. Additionally, the ZHE believes that this variance application will not be injurious because the design of these units were addressed collectively by the Applicant when they voluntarily agreed to make substantial amendments (“concessions”) to the Application during the Hearing in an effort to secure the support of the neighbors, Greater Gardner Neighborhood Association, North Valley Coalition, Los Griegos Neighborhood Association, Shirley Arrellano and other interested persons (collectively referred to hereafter as “Interested Parties”). Those voluntarily agreed to changes to the Application include the following:
 - (a) Reduction in Dwelling Units. The Applicant previously submitted to the EPC for consideration a site plan that included 25 dwelling units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - (b) Reduction in Height of Units adjacent to Griegos. The Applicant originally submitted an Application that contemplated two story unit located adjacent to Griegos, but voluntarily agreed to reduce the height of all units adjacent to Griegos down to 1-story.
 - (c) Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW). The Applicant originally contemplated a two-story unit adjacent to Shirley Arrellano residence. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence. Additionally, the Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home. Additionally, the Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano’s home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano’s home. The Applicant stated that there would be a 28’ setback between Ms. Arrellano’s property and the residential project.
 - (d) Location and number of Visitor Parking Stalls. The Applicant agreed to increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.

- (e) Northern New Mexico Style. The Applicant agreed to design these residential units with a “northern New Mexico style” and to visit with the Interested Parties regarding colors and design elements. The Interested Parties committed to helping the Applicant design this project to be relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- (f) Porches. The Applicant agreed to install/design porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

As a result of the amendments presented by the Applicant, the Interested Parties expressed their support to the ZHE verbally during the Hearing. The ZHE applauded the Applicant and the Interested Parties for taking some time to amend the Application in a manner that was mutually beneficial to all of the stakeholders. At the end of the Hearing, the ZHE communicated to the Interested Parties that he would draft a Notice of Decision of Approval that contained all of the “amendments”/“concessions” agreed to by the Interested Parties. Accordingly, this Notice of Decision will read more like a “settlement” than most of the other Notice of Decisions issued by the ZHE. The ZHE has copied some of the arguments within the Conditional Use NOD and applied them to the variance applications associated with this Subject Property, in an effort to have a congruent presentation of the Finding of Facts within the multiple applications.

The ZHE is delighted that a long and contentious project was able to be resolved amicably by the parties and thinks this Hearing and the approach utilized by the Interested Parties and the Applicant can serve as a good model for projects going forward that have divergent points of view as to how to best develop projects in our historic communities located in Albuquerque’s north valley.

The ZHE finds that the amended Application (and related variance applications) will not be injurious to the community or the surrounding properties as a result of the amendments articulated in Section 4 (a) through 4 (f) above [and as required pursuant to Section § 14-16-4-2 (C) (2) (a)].

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has some unique physical characteristics in the form of dilapidated buildings (school units) and oddly shaped lot configuration on the Subject Property, and the “split zoning” designation line located on a single platted parcel [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. The Applicant did not “self-impose” the oddly shaped lot, nor the existence of the dilapidated buildings (vacant

Hogares buildings), nor the “split” zoning designation on the Subject Property. Specifically, the Applicant provided testimony that if the Applicant were required to comply with the glazing (glass) percentage requirements that they would not be able to meet their LEED certification and energy savings design which constitutes an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
8. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS. The Applicant testified that there were two signs posted. One of the signs unfortunately was either removed due to weather or my human efforts to remove the sign. The ZHE believes that one sign was sufficient for providing notice to the public, in conjunction with the Albuquerque Journal advertisement, letters issued to neighbors, and the CABQ.GOV website posting of the agenda. There is little concern by the ZHE that the Interested Parties were unaware of this Application as a result of the strong turnout at the Hearing.

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL WITH CONDITIONS of a VARIANCE of 11% to the minimum 20% glazing requirement on the ground floor for a proposed townhome.

CONDITIONS OF APPROVAL:

- C. The Applicant shall ensure that the following amendments to the Site Plan that were communicated to the Interested Parties during the Hearing are captured in the final Site Development Plan and Elevations submitted on behalf of the Subject Property:
 - a. Reduction in Dwelling Units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - b. Reduction in Height of Units adjacent to Griegos. The Applicant shall reduce the height of all units adjacent to Griegos down to 1-story.
 - c. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW).
 - i. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence.
 - ii. The Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home.

- iii. The Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano's home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano's home.
- iv. The Applicant shall ensure a 28' setback between Ms. Arellano's property and the residential project.
- d. Location and number of Visitor Parking Stalls. The Applicant shall increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
- e. Northern New Mexico Style. The Applicant shall design these residential units with a "northern New Mexico style" and shall visit with the Interested Parties regarding colors and design elements to ensure that they are relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- f. Porches. The Applicant shall install/design additional porches on some of the residential units to provide a pedestrian-friendly orientation to the project.
- g. Setback from Griegos. The Applicant shall ensure an adequate setback from Griegos (at least 30').

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

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

HOGARES INC. (GARCIA/KRAMER & ASSOC., AGENT) requests a special exception to Section 14-16-2-16(A)(7)(e)(8)(iv): a VARIANCE of 11% to the minimum 20% glazing requirement on second story for a proposed townhome for all or a portion of Lot 40,41,42,43,44, ROSSITER ADDN zoned C-1, located on 1120-1106 GRIEGOS RD NW (F-14)

Special Exception No:.....14ZHE-80305
Project No:Project# 1010317
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") GARCIA/KRAMER & ASSOC., (hereinafter "Agent") acting as agent on behalf of the property owner, HOGARES INC. (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 11% to the minimum 20% glazing requirement on second story for a proposed townhome (hereinafter "Application") upon the real property located at 1120-1106 GRIEGOS RD NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 11% to the minimum 20% glazing requirement on second story for a proposed townhome.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that these variance applications will not be injurious to the adjacent property, neighborhood, or the community because the glazing requirements would if strictly applied would not allow the Applicant to comply with the energy efficiency design (LEED Certification). The extensive glass facing the façade of these units would allow too much energy and cooling to escape the units and be costly to maintain and waste energy. Additionally, the Applicant provided photographs of some adjacent residential uses that do not meet the glazing requirements called out in this regulation. For these reasons the ZHE believes that this specific variance to the glazing percentage requirements will not be injurious to the community.
4. Additionally, the ZHE believes that this variance application will not be injurious because the design of these units were addressed collectively by the Applicant when they voluntarily agreed to make substantial amendments (“concessions”) to the Application during the Hearing in an effort to secure the support of the neighbors, Greater Gardner Neighborhood Association, North Valley Coalition, Los Griegos Neighborhood Association, Shirley Arrellano and other interested persons (collectively referred to hereafter as “Interested Parties”). Those voluntarily agreed to changes to the Application include the following:
 - a. Reduction in Dwelling Units. The Applicant previously submitted to the EPC for consideration a site plan that included 25 dwelling units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - b. Reduction in Height of Units adjacent to Griegos. The Applicant originally submitted an Application that contemplated two story unit located adjacent to Griegos, but voluntarily agreed to reduce the height of all units adjacent to Griegos down to 1-story.
 - c. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW). The Applicant originally contemplated a two-story unit adjacent to Shirley Arrellano residence. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence. Additionally, the Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home. Additionally, the Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano’s home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano’s home. The Applicant stated that there would be a 28’ setback between Ms. Arellano’s property and the residential project.
 - d. Location and number of Visitor Parking Stalls. The Applicant agreed to increase the number of visitor parking stalls within the site plan and to

- locate them close to the dwelling units to provide for easy parking and access for visitors.
- e. Northern New Mexico Style. The Applicant agreed to design these residential units with a "northern New Mexico style" and to visit with the Interested Parties regarding colors and design elements. The Interested Parties committed to helping the Applicant design this project to be relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
 - f. Porches. The Applicant agreed to install/design porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

As a result of the amendments presented by the Applicant, the Interested Parties expressed their support to the ZHE verbally during the Hearing. The ZHE applauded the Applicant and the Interested Parties for taking some time to amend the Application in a manner that was mutually beneficial to all of the stakeholders. At the end of the Hearing, the ZHE communicated to the Interested Parties that he would draft a Notice of Decision of Approval that contained all of the "amendments"/"concessions" agreed to by the Interested Parties. Accordingly, this Notice of Decision will read more like a "settlement" than most of the other Notice of Decisions issued by the ZHE. The ZHE has copied some of the arguments within the Conditional Use NOD and applied them to the variance applications associated with this Subject Property, in an effort to have a congruent presentation of the Finding of Facts within the multiple applications.

The ZHE is delighted that a long and contentious project was able to be resolved amicably by the parties and thinks this Hearing and the approach utilized by the Interested Parties and the Applicant can serve as a good model for projects going forward that have divergent points of view as to how to best develop projects in our historic communities located in Albuquerque's north valley.

The ZHE finds that the amended Application (and related variance applications) will not be injurious to the community or the surrounding properties as a result of the amendments articulated in Section 4 (a) through 4 (f) above [and as required pursuant to Section § 14-16-4-2 (C) (2) (a)].

5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has some unique physical characteristics in the form of dilapidated buildings (school units) and oddly shaped lot configuration on the Subject Property, and the "split zoning" designation line located on a single platted parcel [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances

presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. The Applicant did not “self-impose” the oddly shaped lot, nor the existence of the dilapidated buildings (vacant Hogares buildings), nor the “split” zoning designation on the Subject Property. Specifically, the Applicant provided testimony that if the Applicant were required to comply with the glazing (glass) percentage requirements that they would not be able to meet their LEED certification and energy savings design which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
8. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS. The Applicant testified that there were two signs posted. One of the signs unfortunately was either removed due to weather or my human efforts to remove the sign. The ZHE believes that one sign was sufficient for providing notice to the public, in conjunction with the Albuquerque Journal advertisement, letters issued to neighbors, and the CABQ.GOV website posting of the agenda. There is little concern by the ZHE that the Interested Parties were unaware of this Application as a result of the strong turnout at the Hearing.

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL WITH CONDITIONS of a **VARIANCE** of 11% to the minimum 20% glazing requirement on second story for a proposed townhome.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the following amendments to the Site Plan that were communicated to the Interested Parties during the Hearing are captured in the final Site Development Plan and Elevations submitted on behalf of the Subject Property:
 - a. Reduction in Dwelling Units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - b. Reduction in Height of Units adjacent to Griegos. The Applicant shall reduce the height of all units adjacent to Griegos down to 1-story.
 - c. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW).

- i. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence.
- ii. The Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano's home such that it can view down into the pool and back yard of Ms. Arrellano's home.
- iii. The Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano's home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano's home.
- iv. The Applicant shall ensure a 28' setback between Ms. Arellano's property and the residential project.
- d. Location and number of Visitor Parking Stalls. The Applicant shall increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
- e. Northern New Mexico Style. The Applicant shall design these residential units with a "northern New Mexico style" and shall visit with the Interested Parties regarding colors and design elements to ensure that they are relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- f. Porches. The Applicant shall install/design additional porches on some of the residential units to provide a pedestrian-friendly orientation to the project.
- g. Setback from Griegos. The Applicant shall ensure an adequate setback from Griegos (at least 30').

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

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

HOGARES INC. (GARCIA/KRAMER & ASSOC., AGENT) requests a special exception to Section 14-16-2-16(A)(7)(e)(8)(iii): a VARIANCE of 10% to the minimum 20% glazing requirement on the ground floor for a proposed townhome for all or a portion of Lot 40,41,42,43,44, ROSSITER ADDN zoned C-1, located on 1120-1106 GRIEGOS RD NW (F-14)

Special Exception No:14ZHE-80306
Project No:Project# 1010317
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") GARCIA/KRAMER & ASSOC., (hereinafter "Agent") acting as agent on behalf of the property owner, HOGARES INC. (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 10% to the minimum 20% glazing requirement on the ground floor for a proposed townhome (hereinafter "Application") upon the real property located at 1120-1106 GRIEGOS RD NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10% to the minimum 20% glazing requirement on the ground floor for a proposed townhome.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "*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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that these variance applications will not be injurious to the adjacent property, neighborhood, or the community because the glazing requirements would if strictly applied would not allow the Applicant to comply with the energy efficiency design (LEED Certification). The extensive glass facing the façade of these units would allow too much energy and cooling to escape the units and be costly to maintain and waste energy. Additionally, the Applicant provided photographs of some adjacent residential uses that do not meet the glazing requirements called out in this regulation. For these reasons the ZHE believes that this specific variance to the glazing percentage requirements will not be injurious to the community.
4. Additionally, the ZHE believes that this variance application will not be injurious because the design of these units were addressed collectively by the Applicant when they voluntarily agreed to make substantial amendments (“concessions”) to the Application during the Hearing in an effort to secure the support of the neighbors, Greater Gardner Neighborhood Association, North Valley Coalition, Los Griegos Neighborhood Association, Shirley Arrellano and other interested persons (collectively referred to hereafter as “Interested Parties”). Those voluntarily agreed to changes to the Application include the following:
 - (a) Reduction in Dwelling Units. The Applicant previously submitted to the EPC for consideration a site plan that included 25 dwelling units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - (b) Reduction in Height of Units adjacent to Griegos. The Applicant originally submitted an Application that contemplated two story unit located adjacent to Griegos, but voluntarily agreed to reduce the height of all units adjacent to Griegos down to 1-story.
 - (c) Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW). The Applicant originally contemplated a two-story unit adjacent to Shirley Arrellano residence. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence. Additionally, the Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home. Additionally, the Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano’s home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano’s home. The Applicant stated that there would be a 28’ setback between Ms. Arellano’s property and the residential project.
 - (d) Location and number of Visitor Parking Stalls. The Applicant agreed to increase the number of visitor parking stalls within the site plan and to

locate them close to the dwelling units to provide for easy parking and access for visitors.

- (e) Northern New Mexico Style. The Applicant agreed to design these residential units with a "northern New Mexico style" and to visit with the Interested Parties regarding colors and design elements. The Interested Parties committed to helping the Applicant design this project to be relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- (f) Porches. The Applicant agreed to install/design porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

As a result of the amendments presented by the Applicant, the Interested Parties expressed their support to the ZHE verbally during the Hearing. The ZHE applauded the Applicant and the Interested Parties for taking some time to amend the Application in a manner that was mutually beneficial to all of the stakeholders. At the end of the Hearing, the ZHE communicated to the Interested Parties that he would draft a Notice of Decision of Approval that contained all of the "amendments"/"concessions" agreed to by the Interested Parties. Accordingly, this Notice of Decision will read more like a "settlement" than most of the other Notice of Decisions issued by the ZHE. The ZHE has copied some of the arguments within the Conditional Use NOD and applied them to the variance applications associated with this Subject Property, in an effort to have a congruent presentation of the Finding of Facts within the multiple applications.

The ZHE is delighted that a long and contentious project was able to be resolved amicably by the parties and thinks this Hearing and the approach utilized by the Interested Parties and the Applicant can serve as a good model for projects going forward that have divergent points of view as to how to best develop projects in our historic communities located in Albuquerque's north valley.

The ZHE finds that the amended Application (and related variance applications) will not be injurious to the community or the surrounding properties as a result of the amendments articulated in Section 4 (a) through 4 (f) above [and as required pursuant to Section § 14-16-4-2 (C) (2) (a)].

- 5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has some unique physical characteristics in the form of dilapidated buildings (school units) and oddly shaped lot configuration on the Subject Property, and the "split zoning" designation line located on a single platted parcel [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
- 6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances

presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. The Applicant did not “self-impose” the oddly shaped lot, nor the existence of the dilapidated buildings (vacant Hogares buildings), nor the “split” zoning designation on the Subject Property. Specifically, the Applicant provided testimony that if the Applicant were required to comply with the glazing (glass) percentage requirements that they would not be able to meet their LEED certification and energy savings design which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
8. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS. The Applicant testified that there were two signs posted. One of the signs unfortunately was either removed due to weather or my human efforts to remove the sign. The ZHE believes that one sign was sufficient for providing notice to the public, in conjunction with the Albuquerque Journal advertisement, letters issued to neighbors, and the CABQ.GOV website posting of the agenda. There is little concern by the ZHE that the Interested Parties were unaware of this Application as a result of the strong turnout at the Hearing.

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL WITH CONDITIONS of a **VARIANCE** of 10% to the minimum 20% glazing requirement on the ground floor for a proposed townhome.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the following amendments to the Site Plan that were communicated to the Interested Parties during the Hearing are captured in the final Site Development Plan and Elevations submitted on behalf of the Subject Property:
 - h. Reduction in Dwelling Units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - i. Reduction in Height of Units adjacent to Griegos. The Applicant shall reduce the height of all units adjacent to Griegos down to 1-story.
 - j. Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW).

- i. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence.
- ii. The Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano's home such that it can view down into the pool and back yard of Ms. Arrellano's home.
- iii. The Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano's home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano's home.
- iv. The Applicant shall ensure a 28' setback between Ms. Arellano's property and the residential project.
- k. Location and number of Visitor Parking Stalls. The Applicant shall increase the number of visitor parking stalls within the site plan and to locate them close to the dwelling units to provide for easy parking and access for visitors.
- l. Northern New Mexico Style. The Applicant shall design these residential units with a "northern New Mexico style" and shall visit with the Interested Parties regarding colors and design elements to ensure that they are relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- m. Porches. The Applicant shall install/design additional porches on some of the residential units to provide a pedestrian-friendly orientation to the project.
- n. Setback from Griegos. The Applicant shall ensure an adequate setback from Griegos (at least 30').

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

HOGARES INC. (GARCIA/KRAMER & ASSOC., AGENT) requests a special exception to Section 14-16-2-16(A)(7)(e)(8)(iv): a VARIANCE of 10% to the minimum 20% glazing requirement on second story for a proposed townhome for all or a portion of Lot 40,41,42,43,44, ROSSITER ADDN zoned C-1, located on 1120-1106 GRIEGOS RD NW (F-14)

Special Exception No:.....14ZHE-80307
Project No:Project# 1010317
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:02-09-15

On the 23rd day of January, 2015 (hereinafter "Hearing") GARCIA/KRAMER & ASSOC., (hereinafter "Agent") acting as agent on behalf of the property owner, HOGARES INC. (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 10% to the minimum 20% glazing requirement on second story for a proposed townhome (hereinafter "Application") upon the real property located at 1120-1106 GRIEGOS RD NW ("Subject Property"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10% to the minimum 20% glazing requirement on second story for a proposed townhome.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that these variance applications will not be injurious to the adjacent property, neighborhood, or the community because the glazing requirements would if strictly applied would not allow the Applicant to comply with the energy efficiency design (LEED Certification). The extensive glass facing the façade of these units would allow too much energy and cooling to escape the units and be costly to maintain and waste energy. Additionally, the Applicant provided photographs of some adjacent residential uses that do not meet the glazing requirements called out in this regulation. For these reasons the ZHE believes that this specific variance to the glazing percentage requirements will not be injurious to the community.
4. Additionally, the ZHE believes that this variance application will not be injurious because the design of these units were addressed collectively by the Applicant when they voluntarily agreed to make substantial amendments (“concessions”) to the Application during the Hearing in an effort to secure the support of the neighbors, Greater Gardner Neighborhood Association, North Valley Coalition, Los Griegos Neighborhood Association, Shirley Arrellano and other interested persons (collectively referred to hereafter as “Interested Parties”). Those voluntarily agreed to changes to the Application include the following:
 - (a) Reduction in Dwelling Units. The Applicant previously submitted to the EPC for consideration a site plan that included 25 dwelling units. The Applicant agreed at the Hearing to reduce the dwelling units on the Subject Property down to 17 dwelling units.
 - (b) Reduction in Height of Units adjacent to Griegos. The Applicant originally submitted an Application that contemplated two story unit located adjacent to Griegos, but voluntarily agreed to reduce the height of all units adjacent to Griegos down to 1-story.
 - (c) Visual and Landscape Buffer Adjacent to Shirley Arrellano Residence (4633 11th Street NW). The Applicant originally contemplated a two-story unit adjacent to Shirley Arrellano residence. The Applicant voluntarily agreed to remove one of the two story units (down to one-story) immediately adjacent to Ms. Arrellano residence. Additionally, the Applicant agreed to not design a window on the 2nd Story of the next unit adjacent to Ms. Arrellano’s home such that it can view down into the pool and back yard of Ms. Arrellano’s home. Additionally, the Applicant agreed to plant mature landscaping along the fence that borders Ms. Arrellano’s home to buffer the visual effects of the residential project from the back yard of Ms. Arrellano’s home. The Applicant stated that there would be a 28’ setback between Ms. Arellano’s property and the residential project.
 - (d) Location and number of Visitor Parking Stalls. The Applicant agreed to increase the number of visitor parking stalls within the site plan and to

locate them close to the dwelling units to provide for easy parking and access for visitors.

- (e) Northern New Mexico Style. The Applicant agreed to design these residential units with a "northern New Mexico style" and to visit with the Interested Parties regarding colors and design elements. The Interested Parties committed to helping the Applicant design this project to be relatively congruent with the New Mexican styles enjoyed in the 12th/Griegos neighborhoods.
- (f) Porches. The Applicant agreed to install/design porches on some of the residential units to provide a pedestrian-friendly orientation to the project.

As a result of the amendments presented by the Applicant, the Interested Parties expressed their support to the ZHE verbally during the Hearing. The ZHE applauded the Applicant and the Interested Parties for taking some time to amend the Application in a manner that was mutually beneficial to all of the stakeholders. At the end of the Hearing, the ZHE communicated to the Interested Parties that he would draft a Notice of Decision of Approval that contained all of the "amendments"/"concessions" agreed to by the Interested Parties. Accordingly, this Notice of Decision will read more like a "settlement" than most of the other Notice of Decisions issued by the ZHE. The ZHE has copied some of the arguments within the Conditional Use NOD and applied them to the variance applications associated with this Subject Property, in an effort to have a congruent presentation of the Finding of Facts within the multiple applications.

The ZHE is delighted that a long and contentious project was able to be resolved amicably by the parties and thinks this Hearing and the approach utilized by the Interested Parties and the Applicant can serve as a good model for projects going forward that have divergent points of view as to how to best develop projects in our historic communities located in Albuquerque's north valley.

The ZHE finds that the amended Application (and related variance applications) will not be injurious to the community or the surrounding properties as a result of the amendments articulated in Section 4 (a) through 4 (f) above [and as required pursuant to Section § 14-16-4-2 (C) (2) (a)].

- 5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Subject Property has some unique physical characteristics in the form of dilapidated buildings (school units) and oddly shaped lot configuration on the Subject Property, and the "split zoning" designation line located on a single platted parcel [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
- 6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances

presented hereinabove were not "self-imposed", and that those special circumstances create an unnecessary hardship upon the Applicant. The Applicant did not "self-impose" the oddly shaped lot, nor the existence of the dilapidated buildings (vacant Hogares buildings), nor the "split" zoning designation on the Subject Property. Specifically, the Applicant provided testimony that if the Applicant were required to comply with the glazing (glass) percentage requirements that they would not be able to meet their LEED certification and energy savings design which constitutes an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
8. The yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS. The Applicant testified that there were two signs posted. One of the signs unfortunately was either removed due to weather or my human efforts to remove the sign. The ZHE believes that one sign was sufficient for providing notice to the public, in conjunction with the Albuquerque Journal advertisement, letters issued to neighbors, and the CABQ.GOV website posting of the agenda. There is little concern by the ZHE that the Interested Parties were unaware of this Application as a result of the strong turnout at the Hearing.

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL WITH CONDITIONS of a **VARIANCE** of 10% to the minimum 20% glazing requirement on second story for a proposed townhome.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the following amendments to the Site Plan that were communicated to the Interested Parties during the Hearing are captured in the final Site Development Plan and Elevations submitted on behalf of the Subject Property:
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Zoning Hearing Examiner

cc: **Zoning Enforcement**

ZHE File

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