



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

COURTYARD NM LLC (ROBERT RAYNER AIA, AGENT) requests a special exception to Section 14-16-2-17(B)(3) : a CONDITIONAL USE to allow for a place of worship in a C-2 zone for all or a portion of Lot 1&7, Block 21-22, Albq Highlands Addn zoned C-2, located on 1100 SAN MATEO BLVD NE (J-17)

Special Exception No:..... **16ZHE-80256**
Project No:..... **Project# 1011001**
Hearing Date:..... 10-18-16
Closing of Public Record:..... 10-18-16
Date of Decision: 11-02-16

On the 18th day of October, 2016, ROBERT RAYNER (“Agent”) acting as agent on behalf of the property owner COURTYARD NM LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a place of worship in a C-2 zone (“Application”) upon the real property located at 1100 SAN MATEO BLVD NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for a place of worship in a C-2 zone.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:*
 - (a) *Will not be injurious to the adjacent property, the neighborhood, or the community;*
 - (b) *Will not be significantly damaged by surrounding structures or activities.*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The ZHE finds that in the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
5. Specifically, the ZHE finds that there will be no significant increase in intensity of use, noise or traffic over otherwise-permissible uses and the proposed use will not detrimentally impact neighborhood character or security.
6. The primary hours of operation and available parking significantly reduce any likelihood that the use will require more parking spaces than are reasonably available, or that the proposed use will interfere significantly with parking required for existing uses.
7. Concerns were expressed by nearby business owners that the proposed use, a church, would then limit the ability of other business, such as those selling alcohol or medical marijuana, to locate in proximity to the church. See, e.g., NMSA 1978, Section 60-6B-10 (requiring 300’ separation from church for alcohol sales, but also permitting

local waiver); NMAC 7.34.4.22(B) (requiring 300' separation from church for medical marijuana distribution).

8. There is an existing brew pub in the Courtyard development, and there is a medical marijuana dispensary located nearby.
9. As legal nonconforming businesses, they would be permitted to remain. However, no similar new businesses could be opened.
10. Limiting uses seen as incompatible by Code could change the nature of the shopping center and nearby neighborhood. However, it does not follow that such a limitation would be "injurious" under the terms of the Code.
11. Rather, whatever the efficacy of the restrictions, it would appear that they are motivated by reducing perceived injury to churches themselves.
12. It is also important to note that the subject premises have been vacant for two years, increasingly the speculative nature of any attempt to determine what might otherwise locate there if the proposed church did not.
13. There is no substantial evidence in the record to support the suggestion that limiting future alcohol or marijuana businesses with 300 (or, for packaged sales, 500) feet of the proposed church would be injurious to the community. It does appear that the dispute raised may be more one of lease terms than a zoning issue.
14. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b) (the church has accepted the location of the existing uses, including the alcohol and marijuana sales facilities).
15. This application also presents a required analysis under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42USC2000cc *et. seq.*, which imposes a federal law overlay on the land use approval analysis. The primary relevant aspects of RLUIPA are its requirement, under subsection (a)(1), that "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution - (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest and its requirement, under Section (b)(1) (Equal Terms), that "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."
16. These federal law requirements, taken together, raise the bar for a finding that the proposed use would be injurious, and I do not find substantial evidence in the record on which to find that there is a compelling government interest in deny the location of the Application at the Subject Property. Moreover, given the the objections posed would not apply to nonreligious uses, I do not find a basis for imposing the regulation in a manner that treats the religious use differently.
17. 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).
18. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow for a place of worship in a C-2 zone.

CONDITIONS OF APPROVAL:

The conditional use is limited to Units 12,13,14 and 15 only, in order to maintain adequate separation from surrounding uses.

If you wish to appeal this decision, you must do so by November 17, 2016, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number.

Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Zoning Hearing Examiner

cc: Zoning Enforcement
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