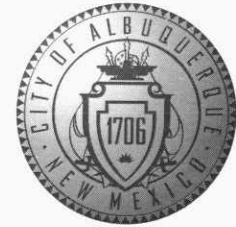


CITY OF ALBUQUERQUE



Planning Department

Suzanne Lubar, Director

Urban Design & Development Division

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Albuquerque, NM 87102

CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

San Jose Neighborhood Association (NA) (Deanna M. Baca) appeals the Zoning Hearing Examiner's Approval of a special exception to Section 14-16-2-23(A) and p. 45 of the South Broadway Sector Development Plan (I)(A) (1)(a)-a Conditional Use to allow R-2 uses in a SU-2 MR zone for Lot A, Hanily Subdivision, approximately 2.9 acres.

Appeal #s: 16BOA-20015
(Agenda #4, Item 1A)
Project #: 1010769
Hearing Date: 10/25/2016
Decision Date: 10/25/2016

In the matter of **16BOA-20015**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, thereby **UPHOLDING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

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1. This is an APPEAL of the Zoning Hearing Examiner's (ZHE) APPROVAL of a CONDITIONAL USE pursuant to Zoning Code §14-16-4-2(C)(1), Special Exception and the South Broadway Sector Development Plan page 45 (Record, p. 266): A **Conditional Use to allow R-2 uses** in a SU-2/MR (Mixed Residential) zone, on a property zoned SU-2 MR (Project #1010769 - 16BOA-20004/16ZHE-80066, the "subject request").
2. The subject site, described as Lot A, Hanily Subdivision, contains approximately 2.9 acres and is located on John Street SE, between Thaxton Avenue SE and Englewood Drive SE.
3. The subject site is within the boundaries of the South Broadway Sector Development Plan. The Albuquerque/Bernalillo County Comprehensive Plan, the SBSDP, and the City of Albuquerque Zoning Code are applicable to the subject properties and are incorporated herein by reference and made part of the record for all purposes.
4. The subject site is zoned SU-2/MR, Mixed Residential. Pursuant to the SBSDP, the MR zone corresponds to the R-1 Residential Zone of the Zoning Code, and conditionally allows uses listed as permissive and as regulated in the R-2 zone except for group training homes.
5. The subject request was heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016. The San Jose Neighborhood Association appealed the ZHE's approval of the subject request. The appeal was heard by the Zoning Board of Appeals (BOA) on June 28, 2016 (Record, p. 360). The BOA voted to REMAND the subject request to the ZHE.

6. The remand instructions from the BOA, elaborated in the June 28, 2016 Notice of Decision, required proper notification and re-advertisement (see Finding 8A). Proper notification and re-advertisement occurred prior to the ZHE hearing on August 16, 2016.
7. A hearing on remand was held on August 16, 2016. The ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
8. The BOA remand instructions requested that the ZHE do three things specifically (see Items B, C, and D) when re-hearing the subject request:
 - A. allow for proper notification and re-advertisement to occur (see Finding 6, above);
 - B. ensure the ZHE decision make specific references to all law considered in the rendering the ZHE opinion including, without limitation, all applicable codes, regulations and Sector Development Plans (“applicable law”).
 - C. ensure the ZHE decision clearly articulates how facts presented at the ZHE hearing support or fail to support the applicable law;
 - D. ensure the ZHE decision clearly articulates the facts supporting the ZHE final decision:
 - i. in the event of a denial, all facts, evidence or testimony that support a denial.
 - ii. in the event of an approval, if such approval is made with conditions, what those conditions are and, if such approval is made without conditions, the legal, factual basis for not imposing conditions.
9. The ZHE approved the subject request (16BOA-20015) on August 31, 2016 and made detailed findings of fact to support the decision and fulfill the remand instructions.
10. The San Jose Neighborhood Association filed an appeal of the ZHE decision on September 14, 2016. The appeal was timely.
11. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant believes that the conditional use is essentially a change of zone and that the ZHE’s decision was arbitrary, capricious, and abusive of discretion, and that the standards for a zone change were not satisfied. Also, the conditional use would be injurious to the neighborhood because the ZHE did not impose conditions to regulate risks associated with “at risk” behavior (Record, p. 12).

12. 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.”*

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).

13. The ZHE found that 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) and will not be significantly damaged by surrounding structures or activities, as required by Section 14-16-4-2(C)(1)(b).
14. The purpose of the project, which the conditional use would make possible, is to quickly move at-risk community members into housing and provide on-site services to support their being productive members of the community and break the cycle of homelessness. The project would consist of studio apartments (72 units) with a leasing office and a community building. All residents will be required to undergo screening.
15. The project will serve the needs of low and extra-low income individuals, which is the biggest housing need in the community. The project is located pursuant to City- identified priorities and target areas and includes a model that has been shown to reduce, rather than exacerbate, public nuisances. From that perspective, it is intended to remedy injuries already being experienced rather than cause injury itself.
16. Many of those speaking to the application focused on the prospective residents of the project as opposed to the use or the project itself. Some speakers suggested that the prospective residents will cause crime and substance abuse in the community, and even sexual assaults, increase traffic and present a risk to children in the nearby school.
17. There was disagreement as to whether the project would introduce crime and substance abuse problems into a community that does not already experience them, or exacerbate existing problems. Many speakers preferred other uses, or even no uses, of the subject property in order to preserve peace and tranquility, although there were concerns expressed as to past nuisances associated with the vacant parcel.
18. In the context of other allowable uses in the SU-2 MR zone, which includes mixed commercial and residential, the noise and traffic impacts of this project are not undue or disproportionate and cannot be considered injurious. Projected traffic does not rise to the level of warranting a detailed traffic study.
19. Many of the concerns addressed the wisdom of the project overall, the decision to locate the project in this neighborhood or whether other locations would be better, the decision to allocate funds to this project as opposed to other projects within the community and the desirability of the proposed housing types. These are inquiries outside of the ZHE’s authority and

substantially removed from the required inquiry as to whether this particular use will be injurious to the community.

20. The inquiry as to whether the project is injurious encompasses a review of the relevant planning documents. The ZHE found that the subject request would contribute to meeting goals of the SBNSDP, which are:

- a. Elimination of conditions which are detrimental to the public health, safety, and welfare;
- b. Elimination of blight and prevention of blighting influences;
- c. Conservation, improvement and expansion of the housing available to low and moderate income families until all housing in the area meets City Housing Code standards;
- d. Improvement of economic conditions through coordinated City and private actions. SBNSDP II.D.

The future development would eliminate blight such as illegal dumping and vagrancy concerns (b), while creating housing that is affordable to low income individuals and families (b). The development would expand the availability of low income housing that meets housing codes (c) and create improved economic conditions through a coordinated city and private action. Therefore, the development would further the goals of the SBNSDP.

21. The ZHE found that the applicant has fairly met its burden of offering substantial evidence that the proposed use will not be injurious. Although there were many policy concerns expressed by other community members, they offered very little in the way of substantial evidence. Thus, the Applicant has met its burden and the ZHE found that the proposed use will not be injurious.
22. The ZHE also found that the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b), as those structures and activities (primarily residential) are of a harmonious character and not of the sort that would be injurious to the proposed development.
23. A conditional use is not equivalent to a change of zone, so the standards of R270-1980 do not apply. A conditional use is an allowed use, provided the conditional use criteria are met. In this case, the Zoning Code requirements for a conditional use in Section 14-16-4-2(C)(1)(a) and (b) have been demonstrated to be fulfilled so the conditional use is allowed.
24. The ZHE approved the conditional use request subject to the following, two conditions: 1) Project height shall be limited to 26' overall height, and 2) There shall be a maximum of 72 units.
25. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the conditional use request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is UPHeld.

If you wish to appeal this decision, you must do so by **November 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

San Jose Neighborhood Association (NA) (Deanna M. Baca) appeals the Zoning Hearing Examiner's Approval of a special exception to Section 14-16-3-1(H)(1)- a Variance of 2 feet to the 6 foot width for a pedestrian sidewalk for Lot A, Hanily Subdivision, approximately 2.9 acres.

Appeal #: 16BOA-20014
(Agenda #5, Item 1B)
Project #: 1010769
Hearing Date: 10/25/2016
Decision Date: 10/25/2016

In the matter of **16BOA-20014**, the Zoning Board of Appeals (BOA) voted to **GRANT** the Appeal, thereby **OVERTURNING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

1. This is an APPEAL of Zoning Hearing Examiner's (ZHE) APPROVAL of a Variance pursuant to §14-16-4-2(C)(2), Variance Criteria: **a variance of 2 ft. to the 6 ft. width for a pedestrian sidewalk** required pursuant to Zoning Code §14-16-3-1(H)(1) on a property zoned SU-2 MR (Project #1010769 - 16BOA-20005 / 16ZHE-80067);
PO Box 1293
Albuquerque
2. The subject site, described as Lot A, Hanily Subdivision, contains approximately 2.9 acres and is located on John Street SE, between Thaxton Avenue SE and Englewood Drive SE.
3. The subject site is within the boundaries of the South Broadway Sector Development Plan. The Albuquerque/Bernalillo County Comprehensive Plan, the SBSDP, and the City of Albuquerque Zoning Code are applicable to the subject properties and are incorporated herein by reference and made part of the record for all purposes.
NM 87103
4. The subject site is zoned SU-2/MR, Mixed Residential. Pursuant to the SBSDP, the MR zone corresponds to the R-1 Residential Zone of the Zoning Code, and conditionally allows uses listed as permissive and as regulated in the R-2 zone except for group training homes.
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5. The subject request was heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016. The San Jose Neighborhood Association appealed the ZHE's approval of the subject request. The appeal was heard by the Zoning Board of Appeals (BOA) on June 28, 2016 (Record, p. 360). The BOA voted to REMAND the subject request to the ZHE.
6. The remand instructions from the BOA, elaborated in the June 28, 2016 Notice of Decision, required proper notification and re-advertisement (see Finding 8A). Proper notification and re-advertisement occurred prior to the ZHE hearing on August 16, 2016.

7. A hearing on remand was held on August 16, 2016. The ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
8. The BOA remand instructions requested that the ZHE do three things specifically (see Items B, C, and D) when re-hearing the subject request:
 - a. allow for proper notification and re-advertisement to occur (see Finding 6, above);
 - b. ensure the ZHE decision make specific references to the all law considered in the rendering the ZHE opinion including, without limitation, all applicable codes, regulations and Sector Development Plans (“applicable law”).
 - c. ensure the ZHE decision clearly articulates how facts presented at the ZHE hearing support or fail to support the applicable law;
 - d. ensure the ZHE decision clearly articulates the facts supporting the ZHE final decision:
 - i. in the event of a denial, all facts, evidence or testimony that support a denial.
 - ii. in the event of an approval, if such approval is made with conditions, what those conditions are and, if such approval is made without conditions, the legal, factual basis for not imposing conditions.
9. The ZHE approved the subject request (16BOA-20014) on August 31, 2016 and made detailed findings of fact to support the decision and fulfill the remand instructions.
10. The San Jose Neighborhood Association filed an appeal of the ZHE decision on September 14, 2016. The appeal was timely.
11. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant believes that the sidewalk variance does not satisfy the requirements of state law and City ordinance with respect to “special circumstances” and “unnecessary hardship”. Special circumstances don’t apply because the subject site has no exceptional physical characteristics. There is no unnecessary hardship (denial of reasonable use of the land) imposed by applying the zoning (Record, p. 13).

12. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*

- (b) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;*
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
- (d) Substantial justice is done.”*

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).

13. The ZHE found that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
14. The request is to permit narrowed sidewalks where additional width is not required for adjacent vehicular use. The Applicant proposes that a four-foot sidewalk is fully adequate where vehicles will not be parking or opening doors over a portion of the sidewalk, which is typically the basis of a six-foot width.
15. The Code states that “the intent of the regulations in this subsection is to accommodate the inter-related movement of vehicles, bicycles, and pedestrians...” Section 14-16-3-1(H). Here, the unique nature of the development, limited vehicle use and access and urban village design all indicate that compliance with the intent can be achieved with the narrower sidewalks.
16. The ZHE found that there are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-4-2(C)(2)(b).
17. Specifically, the ZHE found that the subject property is adjacent to a neighborhood in which only four-foot-wide sidewalks are required, and the existing sidewalks range from nonexistent, to two or three feet wide. These unique circumstances would require six foot sidewalks internally in an area where they are not otherwise required.
18. The ZHE found that such special circumstances were not self-imposed and would create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by Section 14-16-4-2(C)(2)(c).
19. Specifically, the ZHE found that these circumstances are not self-imposed and, although Applicant could build the project with the wider sidewalks, they are neither necessary nor

desirable and would impose a hardship due to extra costs and increased environmental (impervious area, runoff and heat island effect) impacts.

20. The ZHE found that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
21. The special circumstances found by the ZHE to warrant approval relate to the contrast between, on one hand, the existing condition of sidewalks in the neighborhood and the lower width requirements that apply off-site and, on the other, the wider standards for on-site pedestrian walkways. The ZHE found that this contrast is a unique circumstance warranting variance approval.
22. The contrast is not unique. The off-street parking regulations that include pedestrian walkway widths affect properties all over the City, regardless of the existing conditions or standards for on-street sidewalks in adjacent neighborhoods.
23. The special circumstances found by the ZHE to warrant approval relate specifically to the use proposed, rather than to the property's size, shape, topography, location, surroundings, or physical characteristics. The proposed use of a property, however unique, does not substitute for the characteristics of the property itself or constitute a special circumstance as described by the code.
24. Approval of a variance requires that there be an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property. The hardship found by the ZHE to warrant approval is an unjustified limitation in that wider sidewalks would involve extra costs and increased environmental impacts.
25. The applicant has stated that the project has been designed to accommodate the 6 foot sidewalks throughout, and the ZHE has found that the applicant could build the project with the wider sidewalks. The record includes no evidence that the unjustified limitation would preclude a reasonable use of the property.
26. The ZHE's findings do not support approval of this variance pursuant to the applicable code provisions.
27. In approving the variance, the ZHE erred in applying adopted City plans, policies, and ordinances in arriving at his decision.
28. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the variance request was INCORRECT. Therefore, the appeal is GRANTED and the decision of the ZHE is OVERTURNED.

If you wish to appeal this decision, you must do so by **November 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting

written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

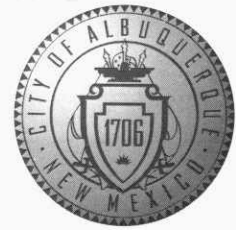
The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

San Jose Neighborhood Association (NA) (Deanna M. Baca) appeals the Zoning Hearing Examiner's Approval of a special exception to Section 14-16-3-1(H)(1)- a Variance of 2 feet to the 6 foot width for a pedestrian sidewalk for Lot A, Hanily Subdivision, approximately 2.9 acres.

Appeal #: 16BOA-20012
(Agenda #6, Item 1C)
Project #: 1010769
Hearing Date: 10/25/2016
Decision Date: 10/25/2016

In the matter of **16BOA-20012**, the Zoning Board of Appeals (BOA) voted to **GRANT** the Appeal, thereby **OVERTURNING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

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1. This is an APPEAL of Zoning Hearing Examiner's (ZHE) APPROVAL of a Variance pursuant to Zoning Code §14-16-4-2(C)(3), Variance Criteria: **of 1 space to the required 1 and ½ spaces per** unit pursuant to §14-16-3-1(A)(24)(b), Off Street Parking Regulations on a property zoned SU-2 MR(Project #1010769 - 16BOA-20006 / 16ZHE-80068);
2. The subject site, described as Lot A, Hanily Subdivision, contains approximately 2.9 acres and is located on John Street SE, between Thaxton Avenue SE and Englewood Drive SE.
3. The subject site is within the boundaries of the South Broadway Sector Development Plan. The Albuquerque/Bernalillo County Comprehensive Plan, the SBSDP, and the City of Albuquerque Zoning Code are applicable to the subject properties and are incorporated herein by reference and made part of the record for all purposes.
4. The subject site is zoned SU-2/MR, Mixed Residential. Pursuant to the SBSDP, the MR zone corresponds to the R-1 Residential Zone of the Zoning Code, and conditionally allows uses listed as permissive and as regulated in the R-2 zone except for group training homes.
5. The subject request was heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016. The San Jose Neighborhood Association appealed the ZHE's approval of the subject request. The appeal was heard by the Zoning Board of Appeals (BOA) on June 28, 2016 (Record, p. 360). The BOA voted to REMAND the subject request to the ZHE.
6. The remand instructions from the BOA, elaborated in the June 28, 2016 Notice of Decision, required proper notification and re-advertisement (see Finding 8A). Proper notification and re-advertisement occurred prior to the ZHE hearing on August 16, 2016.

7. A hearing on remand was held on August 16, 2016. The ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
8. The BOA remand instructions requested that the ZHE do three things specifically (see Items B, C, and D) when re-hearing the subject request:
 - a. allow for proper notification and re-advertisement to occur (see Finding 6, above);
 - b. ensure the ZHE decision make specific references to the all law considered in the rendering the ZHE opinion including, without limitation, all applicable codes, regulations and Sector Development Plans (“applicable law”).
 - c. ensure the ZHE decision clearly articulates how facts presented at the ZHE hearing support or fail to support the applicable law;
 - d. ensure the ZHE decision clearly articulates the facts supporting the ZHE final decision:
 - i. in the event of a denial, all facts, evidence or testimony that support a denial.
 - ii. in the event of an approval, if such approval is made with conditions, what those conditions are and, if such approval is made without conditions, the legal, factual basis for not imposing conditions.
9. The ZHE approved the subject request (16BOA-20015) on August 31, 2016 and made detailed findings of fact to support the decision and fulfill the remand instructions.
10. The San Jose Neighborhood Association filed an appeal of the ZHE decision on September 14, 2016. The appeal was timely.
11. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant believes that the variance to required parking spaces does not satisfy the requirements of state law and City ordinance with respect to “special circumstances” and “unnecessary hardship”. Special circumstances don’t apply because the subject site has no exceptional physical characteristics. Unnecessary hardship doesn’t apply because there is no denial of reasonable use of the land that would result without approving the variance request (Record, p. 13).

12. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*

- (b) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;*
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
- (d) Substantial justice is done.”*

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).

13. The ZHE finds that Application, as conditioned, is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
14. Specifically, the ZHE finds that the project is expected to serve residents with a vehicle ownership rate of approximately 11%. The project is part of the “Housing First” model that prioritizes providing housing as quickly as possible to homeless individuals in need. The Applicant conducted a survey of 101 random potential residents of the development and determined that only 11% owned a vehicle. The parking plan, as conditioned, will already provide nearly ten times the required parking. Thus, the required parking is excessive and results in unnecessary area dedicated to parking rather than open space on the project, and results in extra expense to the City of Albuquerque’s housing funds that could be better used elsewhere. This is a situation in which denial of the variance request results in more injury than granting it.
15. Moreover, there are adequate public transportation options at this location, facilitating the transportation ability of residents without vehicles.
16. The ZHE found that there are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-4-2(C)(2)(b).
17. Specifically, the ZHE found that the special circumstances are due to the unique use and associated minimal need for parking for the future development. The special circumstances faced here relate to the development of a compact project that will house a clientele with slightly over one in ten residents owning a vehicle. This is a special ownership pattern not generally applicable to other properties in the zone or vicinity, which range from single family residential to institutional and commercial.
18. The ZHE found that such special circumstances were not self-imposed and would create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and

purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by Section 14-16-4-2(C)(2)(c).

19. Specifically, the ZHE found that the project is designed to serve a particular population, those of previously homeless people, only 11% of whom are expected to own vehicles. The Applicant is attempting to provide housing for this cohort of residents, but the Applicant does not dictate that population's vehicle infrastructure needs. The limitation on the need for vehicles, and the inverse limitation on the project imposed by parking requirements that are excessive in this case, are not imposed by the Applicant but rather are imposed by the economic reality facing the residents. The unjustified limitation is in the form of requiring expensive, environmentally undesired and unnecessary construction.
20. The ZHE also found that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
21. The ZHE approved the variance request subject to the following, two conditions: 1) The variance shall be limited to one-half space per unit rather than the one space per unit requested, and 2) The additional space acquired that would have been dedicated to parking must be dedicated to open space.
22. The special circumstances found by the ZHE to warrant approval relate specifically to the uniqueness of the use proposed and its minimal need for parking, rather than to the property's size, shape, topography, location, surroundings, or physical characteristics. The proposed use of a property, however unique, does not substitute for the characteristics of the property itself or constitute a special circumstance as described by the code.
23. Approval of a variance requires that there be an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property. The hardship found the ZHE to warrant approval is an unjustified limitation related to expensive, environmentally undesired, and unnecessary construction. The record includes no evidence that this unjustified limitation would preclude a reasonable use of the property.
24. The ZHE's findings do not support approval of this variance pursuant to the applicable code provisions.
25. In approving the variance, the ZHE erred in applying adopted City plans, policies, and ordinances in arriving at his decision.
26. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the variance request was INCORRECT. Therefore, the appeal is GRANTED and the decision of the ZHE is OVERTURNED.

If you wish to appeal this decision, you must do so by **November 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

San Jose Neighborhood Association (NA) (Deanna M. Baca) appeals the Zoning Hearing Examiner’s Approval of a special exception to Section 14-16-2-23(A) and p. 45 of the South Broadway Sector Development Plan (I)(A) (1)(a)- a Conditional Use to allow R-2 uses in a SU-2 MR zone for MRGCD Map 41, Lot 328, approximately 0.9 acre.

Appeal #:..... 16BOA-20017
(Agenda #7, Item 2A)
Project #:..... 1010770
Hearing Date:..... 10/25/2016
Decision Date:..... 10/25/2016

In the matter of **16BOA-20017**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, **thereby UPHOLDING** the Zoning Hearing Examiner’s (ZHE’s) decision based on the following findings:

Albuquerque

NM 87103

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1. This is an APPEAL of the Zoning Hearing Examiner’s (ZHE) APPROVAL of a CONDITIONAL USE pursuant to Zoning Code §14-16-4-2(C)(1), Special Exception and the South Broadway Sector Development Plan page 45 (Record, p. 266): **A Conditional Use to allow R-2 uses** in a SU-2/MR (Mixed Residential) zone, on a property zoned SU-2 MR.
2. The subject site, described as MRGCD Map 41, Lot 328, contains approximately 0.9 acres is located on John St. SE, between Thaxton Ave. SE and Englewood Dr. SE.
3. The subject site is within the boundaries of the South Broadway Sector Development Plan. The Albuquerque/Bernalillo County Comprehensive Plan, the SBSDP, and the City of Albuquerque Zoning Code are applicable to the subject properties and are incorporated herein by reference and made part of the record for all purposes.
4. The subject site is zoned SU-2/MR, Mixed Residential. Pursuant to the SBSDP, the MR zone corresponds to the R-1 Residential Zone of the Zoning Code, and conditionally allows uses listed as permissive and as regulated in the R-2 zone except for group training homes.
5. The subject request was heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016. The San Jose Neighborhood Association appealed the ZHE’s approval of the subject request. The appeal was heard by the Zoning Board of Appeals (BOA) on June 28, 2016 (Record, p. 360). The BOA voted to REMAND the subject request to the ZHE.

6. The remand instructions from the BOA, elaborated in the June 28, 2016 Notice of Decision, required proper notification and re-advertisement (see Finding 8A). Proper notification and re-advertisement occurred prior to the ZHE hearing on August 16, 2016.
7. A hearing on remand was held on August 16, 2016. The ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
8. The BOA remand instructions requested that the ZHE do three things specifically (see Items B, C, and D) when re-hearing the subject request:
 - A. allow for proper notification and re-advertisement to occur (see Finding 6, above);
 - B. ensure the ZHE decision make specific references to all law considered in the rendering the ZHE opinion including, without limitation, all applicable codes, regulations and Sector Development Plans (“applicable law”);
 - C. ensure the ZHE decision clearly articulates how facts presented at the ZHE hearing support or fail to support the applicable law;
 - D. ensure the ZHE decision clearly articulates the facts supporting the ZHE final decision:
 - i. in the event of a denial, all facts, evidence or testimony that support a denial.
 - ii. in the event of an approval, if such approval is made with conditions, what those conditions are and, if such approval is made without conditions, the legal, factual basis for not imposing conditions.
9. The ZHE approved the subject request (16BOA-20015) on August 31, 2016 and made detailed findings of fact to support the decision and fulfill the remand instructions.
10. The San Jose Neighborhood Association filed an appeal of the ZHE decision on September 14, 2016. The appeal was timely.
11. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant believes that the conditional use is essentially a change of zone and that the ZHE’s decision was arbitrary, capricious, and abusive of discretion, and that the standards for a zone change were not satisfied. Also, the conditional use would be injurious to the neighborhood because the ZHE did not impose conditions to regulate risks associated with “at risk” behavior (Record, p. 12).

12. 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.”*

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).

13. The ZHE found that 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) and will not be significantly damaged by surrounding structures or activities, as required by Section 14-16-4-2(C)(1)(b).
14. The purpose of the project, which the conditional use would make possible, is to quickly move at-risk community members into housing and provide on-site services to support their being productive members of the community and break the cycle of homelessness. The project would consist of studio apartments (72 units) with a leasing office and a community building. All residents will be required to undergo screening.
15. The project will serve the needs of low and extra-low income individuals, which is the biggest housing need in the community. The project is located pursuant to City- identified priorities and target areas and includes a model that has been shown to reduce, rather than exacerbate, public nuisances. From that perspective, it is intended to remedy injuries already being experienced rather than cause injury itself.
16. Many of those speaking to the application focused on the prospective residents of the project as opposed to the use or the project itself. Some speakers suggested that the prospective residents will cause crime and substance abuse in the community, and even sexual assaults, increase traffic and present a risk to children in the nearby school.
17. There was disagreement as to whether the project would introduce crime and substance abuse problems into a community that does not already experience them, or exacerbate existing problems. Many speakers preferred other uses, or even no uses, of the subject property in order to preserve peace and tranquility, although there were concerns expressed as to past nuisances associated with the vacant parcel.
18. In the context of other allowable uses in the SU-2 MR zone, which includes mixed commercial and residential, the noise and traffic impacts of this project are not undue or disproportionate and cannot be considered injurious. Projected traffic does not rise to the level of warranting a detailed traffic study.
19. Many of the concerns addressed the wisdom of the project overall, the decision to locate the project in this neighborhood or whether other locations would be better, the decision to allocate funds to this project as opposed to other projects within the community and the desirability of the proposed housing types. These are inquiries outside of the ZHE’s authority and

substantially removed from the required inquiry as to whether this particular use will be injurious to the community.

20. The inquiry as to whether the project is injurious encompasses a review of the relevant planning documents. The ZHE found that the subject request would contribute to meeting goals of the SBNSDP, which are:
 - a. Elimination of conditions which are detrimental to the public health, safety, and welfare;
 - b. Elimination of blight and prevention of blighting influences;
 - c. Conservation, improvement and expansion of the housing available to low and moderate income families until all housing in the area meets City Housing Code standards;
 - d. Improvement of economic conditions through coordinated City and private actions. SBNSDP II.D.

The future development would eliminate blight such as illegal dumping and vagrancy concerns (b), while creating housing that is affordable to low income individuals and families (b). The development would expand the availability of low income housing that meets housing codes (c) and create improved economic conditions through a coordinated city and private action. Therefore, the development would further the goals of the SBNSDP.

21. The ZHE found that the applicant has fairly met its burden of offering substantial evidence that the proposed use will not be injurious. Although there were many policy concerns expressed by other community members, they offered very little in the way of substantial evidence. Thus, the Applicant has met its burden and the ZHE found that the proposed use will not be injurious.
22. The ZHE also found that the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b), as those structures and activities (primarily residential) are of a harmonious character and not of the sort that would be injurious to the proposed development.
23. A conditional use is not equivalent to a change of zone, so the standards of R270-1980 do not apply. A conditional use is an allowed use, provided the conditional use criteria are met. In this case, the Zoning Code requirements for a conditional use in Section 14-16-4-2(C)(1)(a) and (b) have been demonstrated to be fulfilled so the conditional use is allowed.
24. The ZHE approved the conditional use request subject to the following, two conditions: 1) Project height shall be limited to 26' overall height, and 2) There shall be a maximum of 72 units.
25. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the conditional use request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is UPHeld.

If you wish to appeal this decision, you must do so by **November 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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CITY OF ALBUQUERQUE



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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

San Jose Neighborhood Association (NA) (Deanna M. Baca) appeals the Zoning Hearing Examiner's Approval of a special exception to Section 14-16-3-1(H)(1)- a Variance of 2 feet to the 6 foot width for a pedestrian sidewalk for MRGCD Map 41, Lot 328, approximately 0.9 acre.

Appeal #:..... 16BOA-20016
(Agenda #8, Item 2B)
Project #:..... 1010770
Hearing Date: 10/25/2016
Decision Date: 10/25/2016

In the matter of **16BOA-20016**, the Zoning Board of Appeals (BOA) voted to **GRANT** the Appeal, thereby **OVERTURNING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

PO Box 1293

Albuquerque

NM 87103

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1. This is an APPEAL of Zoning Hearing Examiner's (ZHE) Approval of a Variance pursuant to §14-16-4-2(C)(2), Variance Criteria: **a variance of 2 ft. to the 6 ft. width for a pedestrian sidewalk** required pursuant to Zoning Code §14-16-3-1(H)(1) on a property zoned SU-2 MR (Project #1010770 - 16BOA-20008 / 16ZHE-80070)
2. The subject site, described as MRGCD Map 41, Lot 328, contains approximately 0.9 acres is located on John St. SE, between Thaxton Ave. SE and Englewood Dr. SE.
3. The subject site is within the boundaries of the South Broadway Sector Development Plan. The Albuquerque/Bernalillo County Comprehensive Plan, the SBSDP, and the City of Albuquerque Zoning Code are applicable to the subject properties and are incorporated herein by reference and made part of the record for all purposes.
4. The subject site is zoned SU-2/MR, Mixed Residential. Pursuant to the SBSDP, the MR zone corresponds to the R-1 Residential Zone of the Zoning Code, and conditionally allows uses listed as permissive and as regulated in the R-2 zone except for group training homes.
5. The subject request was heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016. The San Jose Neighborhood Association appealed the ZHE's approval of the subject request. The appeal was heard by the Zoning Board of Appeals (BOA) on June 28, 2016 (Record, p. 360). The BOA voted to REMAND the subject request to the ZHE.
6. The remand instructions from the BOA, elaborated in the June 28, 2016 Notice of Decision, required proper notification and re-advertisement (see Finding 8A). Proper notification and re-advertisement occurred prior to the ZHE hearing on August 16, 2016.

7. A hearing on remand was held on August 16, 2016. The ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
8. The BOA remand instructions requested that the ZHE do three things specifically (see Items B, C, and D) when re-hearing the subject request:
 - a. allow for proper notification and re-advertisement to occur (see Finding 6, above);
 - b. ensure the ZHE decision make specific references to the all law considered in the rendering the ZHE opinion including, without limitation, all applicable codes, regulations and Sector Development Plans (“applicable law”).
 - c. ensure the ZHE decision clearly articulates how facts presented at the ZHE hearing support or fail to support the applicable law;
 - d. ensure the ZHE decision clearly articulates the facts supporting the ZHE final decision:
 - i. in the event of a denial, all facts, evidence or testimony that support a denial.
 - ii. in the event of an approval, if such approval is made with conditions, what those conditions are and, if such approval is made without conditions, the legal, factual basis for not imposing conditions.
9. The ZHE approved the subject request (16BOA-20016) on August 31, 2016 and made detailed findings of fact to support the decision and fulfill the remand instructions.
10. The San Jose Neighborhood Association filed an appeal of the ZHE decision on September 14, 2016. The appeal was timely.
11. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - b) in the appealed action or decision, including its stated facts; and
 - c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant believes that the sidewalk variance does not satisfy the requirements of state law and City ordinance with respect to “special circumstances” and “unnecessary hardship”. Special circumstances don’t apply because the subject site has no exceptional physical characteristics. There is no unnecessary hardship (denial of reasonable use of the land) imposed by applying the zoning (Record, p. 13).

12. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*

- (b) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;*
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
- (d) Substantial justice is done.”*

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).

13. The ZHE found that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
14. The request is to permit narrowed sidewalks where additional width is not required for adjacent vehicular use. The Applicant proposes that a four-foot sidewalk is fully adequate where vehicles will not be parking or opening doors over a portion of the sidewalk, which is typically the basis of a six-foot width.
15. The Code states that “the intent of the regulations in this subsection is to accommodate the inter-related movement of vehicles, bicycles, and pedestrians...” Section 14-16-3-1(H). Here, the unique nature of the development, limited vehicle use and access and urban village design all indicate that compliance with the intent can be achieved with the narrower sidewalks.
16. The ZHE found that there are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-4-2(C)(2)(b).
17. Specifically, the ZHE found that the subject property is adjacent to a neighborhood in which only four-foot-wide sidewalks are required, and the existing sidewalks range from nonexistent, to two or three feet wide. These unique circumstances would require six foot sidewalks internally in an area where they are not otherwise required.
18. The ZHE found that such special circumstances were not self-imposed and would create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by Section 14-16-4-2(C)(2)(c).
19. Specifically, the ZHE found that these circumstances are not self-imposed and, although Applicant could build the project with the wider sidewalks, they are neither necessary nor

desirable and would impose a hardship due to extra costs and increased environmental (impervious area, runoff and heat island effect) impacts.

20. The ZHE found that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
21. The special circumstances found by the ZHE to warrant approval relate to the contrast between, on one hand, the existing condition of sidewalks in the neighborhood and the lower width requirements that apply off-site and, on the other, the wider standards for on-site pedestrian walkways. The ZHE found that this contrast is a unique circumstance warranting variance approval.
22. The contrast is not unique. The off-street parking regulations that include pedestrian walkway widths affect properties all over the City, regardless of the existing conditions or standards for on-street sidewalks in adjacent neighborhoods.
23. The special circumstances found by the ZHE to warrant approval relate specifically to the use proposed, rather than to the property's size, shape, topography, location, surroundings, or physical characteristics. The proposed use of a property, however unique, does not substitute for the characteristics of the property itself or constitute a special circumstance as described by the code.
24. Approval of a variance requires that there be an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property. The hardship found by the ZHE to warrant approval is an unjustified limitation in that wider sidewalks would involve extra costs and increased environmental impacts.
25. The applicant has stated that the project has been designed to accommodate the 6 foot sidewalks throughout, and the ZHE has found that the applicant could build the project with the wider sidewalks. The record includes no evidence that the unjustified limitation would preclude a reasonable use of the property.
26. The ZHE's findings do not support approval of this variance pursuant to the applicable code provisions.
27. In approving the variance, the ZHE erred in applying adopted City plans, policies, and ordinances in arriving at his decision.
28. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the variance request was INCORRECT. Therefore, the appeal is GRANTED and the decision of the ZHE is OVERTURNED.

If you wish to appeal this decision, you must do so by **November 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting

written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

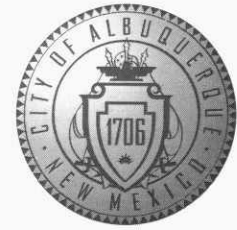
The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

San Jose Neighborhood Association (NA) (Deanna M. Baca) appeals the Zoning Hearing Examiner’s Approval of a special exception to Section 14-16-3-1(H)(1)- a Variance of 2 feet to the 6 foot width for a pedestrian sidewalk for MRGCD Map 41, Lot 328, approximately 0.9 acre.

Appeal #: 16BOA-20013
(Agenda #9, Item 2C)
Project #: 1010770
Hearing Date: 10/25/2016
Decision Date: 10/25/2016

In the matter of **16BOA-20013**, the Zoning Board of Appeals (BOA) voted to **GRANT** the Appeal, thereby **OVERTURNING** the Zoning Hearing Examiner’s (ZHE’s) decision based on the following findings:

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1. This is an APPEAL of Zoning Hearing Examiner’s (ZHE) APPROVAL of a Variance pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: **of 1 space to the required 1 and ½ spaces per unit** pursuant to §14-16-3-1(A)(24)(b), Off Street Parking Regulations on a property zoned SU-2 MR (Project #1010770 - 16BOA-20009 / 16ZHE-80071).
2. The subject site, described as MRGCD Map 41, Lot 328, contains approximately 0.9 acres is located on John St. SE, between Thaxton Ave. SE and Englewood Dr. SE.
3. The subject site is within the boundaries of the South Broadway Sector Development Plan. The Albuquerque/Bernalillo County Comprehensive Plan, the SBSDP, and the City of Albuquerque Zoning Code are applicable to the subject properties and are incorporated herein by reference and made part of the record for all purposes.
4. The subject site is zoned SU-2/MR, Mixed Residential. Pursuant to the SBSDP, the MR zone corresponds to the R-1 Residential Zone of the Zoning Code, and conditionally allows uses listed as permissive and as regulated in the R-2 zone except for group training homes.
5. The subject request was heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016. The San Jose Neighborhood Association appealed the ZHE’s approval of the subject request. The appeal was heard by the Zoning Board of Appeals (BOA) on June 28, 2016 (Record, p. 360). The BOA voted to REMAND the subject request to the ZHE.
6. The remand instructions from the BOA, elaborated in the June 28, 2016 Notice of Decision, required proper notification and re-advertisement (see Finding 8A). Proper notification and re-advertisement occurred prior to the ZHE hearing on August 16, 2016.

7. A hearing on remand was held on August 16, 2016. The ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
8. The BOA remand instructions requested that the ZHE do three things specifically (see Items B, C, and D) when re-hearing the subject request:
 - a. allow for proper notification and re-advertisement to occur (see Finding 6, above);
 - b. ensure the ZHE decision make specific references to the all law considered in the rendering the ZHE opinion including, without limitation, all applicable codes, regulations and Sector Development Plans (“applicable law”).
 - c. ensure the ZHE decision clearly articulates how facts presented at the ZHE hearing support or fail to support the applicable law;
 - d. ensure the ZHE decision clearly articulates the facts supporting the ZHE final decision:
 - i. in the event of a denial, all facts, evidence or testimony that support a denial.
 - ii. in the event of an approval, if such approval is made with conditions, what those conditions are and, if such approval is made without conditions, the legal, factual basis for not imposing conditions.
9. The ZHE approved the subject request (16BOA-20015) on August 31, 2016 and made detailed findings of fact to support the decision and fulfill the remand instructions.
10. The San Jose Neighborhood Association filed an appeal of the ZHE decision on September 14, 2016. The appeal was timely.
11. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - b) in the appealed action or decision, including its stated facts; and
 - c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant believes that the variance to required parking spaces does not satisfy the requirements of state law and City ordinance with respect to “special circumstances” and “unnecessary hardship”. Special circumstances don’t apply because the subject site has no exceptional physical characteristics. Unnecessary hardship doesn’t apply because there is no denial of reasonable use of the land that would result without approving the variance request (Record, p. 13).

12. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*

- (b) There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;*
- (c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
- (d) Substantial justice is done.”*

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).

13. The ZHE finds that Application, as conditioned, is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
14. Specifically, the ZHE finds that the project is expected to serve residents with a vehicle ownership rate of approximately 11%. The project is part of the “Housing First” model that prioritizes providing housing as quickly as possible to homeless individuals in need. The Applicant conducted a survey of 101 random potential residents of the development and determined that only 11% owned a vehicle. The parking plan, as conditioned, will already provide nearly ten times the required parking. Thus, the required parking is excessive and results in unnecessary area dedicated to parking rather than open space on the project, and results in extra expense to the City of Albuquerque’s housing funds that could be better used elsewhere. This is a situation in which denial of the variance request results in more injury than granting it.
15. Moreover, there are adequate public transportation options at this location, facilitating the transportation ability of residents without vehicles.
16. The ZHE found that there are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-4-2(C)(2)(b).
17. Specifically, the ZHE found that the special circumstances are due to the unique use and associated minimal need for parking for the future development. The special circumstances faced here relate to the development of a compact project that will house a clientele with slightly over one in ten residents owning a vehicle. This is a special ownership pattern not generally applicable to other properties in the zone or vicinity, which range from single family residential to institutional and commercial.
18. The ZHE found that such special circumstances were not self-imposed and would create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and

purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by Section 14-16-4-2(C)(2)(c).

19. Specifically, the ZHE found that the project is designed to serve a particular population, those of previously homeless people, only 11% of whom are expected to own vehicles. The Applicant is attempting to provide housing for this cohort of residents, but the Applicant does not dictate that population's vehicle infrastructure needs. The limitation on the need for vehicles, and the inverse limitation on the project imposed by parking requirements that are excessive in this case, are not imposed by the Applicant but rather are imposed by the economic reality facing the residents. The unjustified limitation is in the form of requiring expensive, environmentally undesired and unnecessary construction.
20. The ZHE also found that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
21. The ZHE approved the variance request subject to the following, two conditions: 1) The variance shall be limited to one-half space per unit rather than the one space per unit requested, and 2) The additional space acquired that would have been dedicated to parking must be dedicated to open space.
22. The special circumstances found by the ZHE to warrant approval relate specifically to the uniqueness of the use proposed and its minimal need for parking, rather than to the property's size, shape, topography, location, surroundings, or physical characteristics. The proposed use of a property, however unique, does not substitute for the characteristics of the property itself or constitute a special circumstance as described by the code.
23. Approval of a variance requires that there be an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property. The hardship found the ZHE to warrant approval is an unjustified limitation related to expensive, environmentally undesired, and unnecessary construction. The record includes no evidence that this unjustified limitation would preclude a reasonable use of the property.
24. The ZHE's findings do not support approval of this variance pursuant to the applicable code provisions.
25. In approving the variance, the ZHE erred in applying adopted City plans, policies, and ordinances in arriving at his decision.
26. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in approving the variance request was INCORRECT. Therefore, the appeal is GRANTED and the decision of the ZHE is OVERTURNED.

If you wish to appeal this decision, you must do so by **November 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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