

CITY OF ALBUQUERQUE



Planning Department

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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 (D)(A) (1)(a)- a Conditional Use to allow R-2 uses in a SU-2 MR zone; 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; and a special exception to Section 14-16-3- 1(A)(24)(b)- a Variance of 1 off-street parking space to the required 1 and ½ spaces per unit for a new development proposed on Lot A, Hanily Subdivision, approximately 2.9 acres, and on MRGCD Map 41, Lot 328, approximately 0.9 acre.

Appeal #s:..... 16BOA-20004
16BOA-20005
16BOA-20006
16BOA-20007
16BOA-20008
16BOA-20009
Project #s:..... 1010769 & 1010770
Hearing Date:..... 6/28/2016
Decision Date: 6/28/2016

PO Box 1293

In the matter of the subject request, as described below in Finding #1, the Zoning Board of Appeals (BOA) voted to **REMAND** the Appeal based on the following findings:

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FINDINGS:

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**); also

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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**);

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**);

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 #1010770 - 16BOA-20007 / 16ZHE-80069**);

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**); and

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**). Collectively, these are the "subject request".

2. The subject sites, 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, and 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. Collectively, these are the "subject properties".
3. The subject properties are within the boundaries of the South Broadway Sector Development Plan (SBSDP). 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 properties are 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 requests were heard by the Zoning Hearing Examiner (ZHE) on April 19, 2016.
6. Each of the subject requests were approved with no cited conditions.
7. The San Jose Neighborhood Association filed an appeal of the ZHE decision on May 19, 2016. The appeal was timely.
8. At the appeal hearing, City Staff notified the BOA that:
 - A. The notification regarding the subject request was incorrect. Notification is required to be mailed to property owners within 100 feet of the subject property, which is Lot A of the Hanily Subdivision and MRGCD Map 41, lot 328. Instead, the buffer map (Record, p. 331) shows buffering of 100 feet from a different parcel.
 - B. Staff also discovered that the legal descriptions for the subject properties were incorrect for the legal advertisement.
9. Based on these findings, the Zoning Board of Appeals concludes that the subject requests are REMANDED to the Zoning Hearing Examiner (ZHE) to:
 - A. Allow for proper notification and re-advertisement to occur;
 - 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.

If you wish to appeal this decision, you must do so by **July 15, 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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