

Planning Department

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Urban Design & Development Division

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

RED SHAMROCK 4, LLC (JOSH SKARSGARD, AGENT) requests a special exception to Zoning Code Section 14-16-2-24(A) and the University of Albuquerque Sector Development Plan (UASDP) Section B-2: a VARIANCE of 22 feet to the maximum 4 foot height to allow a 26 ft sign height within the boundaries of the UASDP and the Coors Corridor Plan for all or a portion of Lot 6, Coors Pavilion zoned SU-3, located at 4001 Coord Blvd. NW (G-11).

Appeal No: 18BOA-20008
Special Exception No: 17ZHE-80249
Project No: 1011410
Hearing Date: 04/24/2018

In the matter of **18BOA-20008**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal of the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

FINDINGS:

1. This is an APPEAL of the Zoning Hearing Examiner's (ZHE) APPROVAL of a SPECIAL EXCEPTION pursuant to Zoning Code §14-16-2-24(A) and Section B-2 of the University of Albuquerque Sector Development Plan (UASDP), and the Coors Corridor Plan (CCP) p. 113: a VARIANCE of 109 sf to the maximum allowable sign area of 24 sf (UASDP) and a VARIANCE of 58 sf to the maximum allowable sign area of 75 sf (CCP) to allow a 133 sf sign face for a free-standing sign (the “subject application”).
2. The subject site is described as Tract X-1-A2, plat of Tracts X-1-A1 and X-1-A2, University of Albuquerque Urban Center, containing approximately 21.1 acres and located at the northwest corner of the intersection of Coors Blvd. NW and St. Joseph's Dr. NW (5801 St. Joseph's Dr. NW- the “subject property”). The subject property is vacant.
3. The original application was first scheduled to be heard at the November 21, 2017 ZHE hearing. The request was deferred to the December 19, 2018 at the applicant's request. At the December hearing, the request was deferred to the January 16, 2018 hearing to allow the applicant to meet with concerned individuals and to allow the Traffic Engineering Division time to do its review. At the January hearing, the request was deferred and the matter was referred to the land use facilitation program.

4. The subject property is within the boundaries of the University of Albuquerque Sector Development Plan (UASDP), the Coors Corridor Plan (CCP), and the Westside Strategic Plan (WSSP). The subject property is located in Segment 2 of the Coors Corridor.
5. The Albuquerque/Bernalillo County Comprehensive Plan, the UASDP, the CCP, the WSSP, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. The subject site is zoned SU-3 Special Center Zone (Zoning Code §14-16-2-24). Subsection (A) states that specifications in the Sector Development Plan control.
7. The UASDP contains design regulations pertaining to signage. Regulation B-2 states that “The maximum allowable sign area is 24 square feet on a single face. A double faced sign is allowed to have 24 square feet of sign area per face”. Regulation B-2 is under the heading “Single Tenant Freestanding Sign”, which is intended for single-tenant buildings and allows each building to have a monument sign. The applicant intends to install free-standing, multi-tenant signage for a collection of single-tenant buildings.
8. The subject property is not a shopping center (SC) site by definition. Though it exceeds five acres in size, the zoning is SU-3.

SHOPPING CENTER SITE. A premises containing five or more acres; zoned P, C-1, C-2, C-3, M-1, M-2, or a combination thereof; or a large retail facility; but excluding premises used and proposed to be used only for manufacturing, assembling, treating, repairing, rebuilding, wholesaling, and warehousing. Shopping center sites are subject to the shopping center regulations of the Zoning Code § 14-16-3-2.

The Shopping Center Regulations in Zoning Code § 14-16-3-2 do not apply because the subject property is not a shopping center site.

9. Zoning Code §14-16-4-2(C)(2), Special Exceptions, states that a variance shall be approved by the ZHE, if and only if, the ZHE 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.

Pursuant to Zoning Code §14-16-4-2(C)(2), all of the tests (a, b, c, and d) must be met for a variance to be approved.

10. The ZHE found that the applicant bears the burden of ensuring that there is evidence in the record to support findings that the above criteria are met pursuant to §14-16-4-2(C).
11. The ZHE found that subject 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).
12. The ZHE found that special circumstances apply to the subject property that do not apply generally to other property in the same zone and vicinity, as required by §14-16-4-2(C)(2)(b). The ZHE acknowledges the applicant's position that the special location of the 21-acre, nine-lot development between a church and a school supports consolidating signs for nine lots into three signs.

In addition, the ZHE finds that the shape of the subject property, which results in nine different lots for nine different tenants, but inadequate street frontage to meet the 300' frontage requirement for each of the lots, is a special circumstance. Another aspect of the location of the lots, that is, the relationship of the nine lots as they are laid out, is such that not all storefronts in the shopping plaza will be visible to motorists, whether from Coors Blvd. or St. Josephs Drive NW.
13. The ZHE found that 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 district, as required by Section 14-16-4-2(C)(2)(c). Specifically, the ZHE finds that the development of the surrounding properties and their uses, and the 300' sign frontage requirement, are not self-imposed and create an unnecessary hardship.
14. 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).
15. The ZHE concluded that all tests of Zoning Code §14-16-4-2(C)(2) were met, and therefore approved the subject application for a variance.
16. 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 refers to all three reasons for appeal. The appellant believes that the ZHE's decision was arbitrary, capricious, and manifestly abusive of discretion because his conclusions were unsupported by evidence in the record and he placed the burden of proof on party opponents rather than on the applicant.

The ZHE erred in applying the Albuquerque Code of Ordinances because the variance application does not meet all the tests for granting a variance as required. Specifically, the subject property is not exceptional or any different from other properties along Coors Blvd. with respect to size, shape, and topography, and the configuration of the shopping center plan was a circumstance entirely created by the applicant. Also, the UASDP and the CCP were adopted to prevent injury to the community and their requirements should be adhered to (Record, p. 3-A).

17. The variance would make multi-tenant signage feasible, which would result in less confusing and cluttered individual signage for the parcels and the shopping center overall and therefore would be less visually intrusive for the area.
18. A lack of multi-tenant signage would create a hardship for the interior lot tenants whose businesses could not be easily seen from the street.
19. Based on these findings, the Zoning Board of Appeals concludes that the decision of the ZHE in denying the special exception (variance) request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is AFFIRMED.

If you wish to appeal this decision, you must do so by **May 9, 2018**, 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.

David S. Campbell, Planning Director

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