



## Planning Department

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### CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Martina Mesmer appeals the Zoning Hearing Examiner’s Approval of a special exception, with conditions, to Zoning Code Section §14-16-2-6(B)(10): a Conditional Use to allow a community center in an R-1 zone for Tract A, Singing Arrow Park located within Canada Village Second Unit, zoned R-1, located at 13001 Singing Arrow Ave. SE (L-22).

Appeal No:..... 17BOA-20010  
Special Exception No: ..... 16ZHE-80328  
Project No:..... 1011083  
Hearing Date:..... 01/23/2018

In the matter of **17BOA-20010**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, to the Zoning Hearing Examiner (ZHE) based on the following findings:

PO Box 277  
**FINDINGS:**

- Albuquerque
1. This is an APPEAL of the Zoning Hearing Examiner’s (ZHE’s) APPROVAL, on REMAND, of a SPECIAL EXCEPTION pursuant to Zoning Code §14-16-2-6 (B)(10): a CONDITIONAL USE to allow a community center in an R-1 Residential zone. The appellant, Martina Mesmer, is appealing the ZHE’s decision on remand (the “subject request” and the “second appeal”).

NM 87103  
*Context*

- www.cabq.gov
2. The subject site, described as Tract A, Singing Arrow Park located within Canada Village Second Unit, contains approximately 16 acres and is located at 13001 Singing Arrow Ave. SE.
  3. The subject site is zoned R-1 Residential zone, which is §14-16-2-6 of the Zoning Code. A “recreational facility (non-profit), such as a community center, swimming pool, tennis club” is a conditional use in the R-1 Residential zone pursuant to Zoning Code §14-16-2-6 (B)(10).
  4. The conditional use is requested to allow the proposed Singing Arrow Community Center, an approximately 15,000 sf building that would be located on the eastern end of the approximately 16 acre park site, owned by the City of Albuquerque. The existing community center building (6,000 sf), near the western end of the park site, would remain.
  5. The subject site is within the boundaries of the East Gateway Sector Development Plan (EGSDP), though it was not rezoned with the adoption of the EGSDP in 2010. The EGSDP’s adoption included a repeal of the Singing Arrow Neighborhood Plan (1983).

6. Chapter 7 of the EGSDP addresses parks and open space. Under 7.3- Recommendations, one recommendation is to “Expand park uses as Singing Arrow Park: Protect, but develop the archaeological site with natural vegetation, carefully placed trails, interpretive signage, and outdoor furnishings.” This recommendation is also found in Chapter 10- Implementation.
7. The Albuquerque/Bernalillo County Comprehensive Plan, the EGSDP, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.

#### *Background/History*

8. The ZHE heard the subject request on October 17, 2017 (the “second ZHE hearing”) and rendered a decision of APPROVAL of the conditional use based on 146 findings (139 findings and 7 conclusions) as elaborated in the Official Notification of Decision (Record, p. 3, p. 30 and p. 60).
9. The original ZHE hearing regarding the conditional use to allow a community center was held on January 17, 2017 (the “first ZHE hearing”). The ZHE approved the conditional use request with conditions, as elaborated in the Official Notification of Decision (Record, p. 82, p. 373, and p. 387). The appellant, Martina Mesmer, appealed the decision to the Board of Appeals (BOA) (the “first appeal”).
10. The BOA heard the first appeal submitted by the appellant, Martina Mesmer, at is April 25, 2017 hearing and decided to REMAND the case to the ZHE, as elaborated in the Official Notification of Decision (Record, p. 76).
11. The ZHE hearing on remand was first scheduled for June 20, 2017. However, the applicant requested a deferral to the October 17, 2017 hearing in order to address the BOA’s conditions of remand, which included: parking, safety and security, traffic and access, visual impacts/site plan, and expansion of community amenities, and also to conduct a facilitated meeting. The ZHE granted the deferral.

#### *Relevant Criteria*

12. Zoning Code §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 did not specifically cite one or more of the alleged errors pursuant to Zoning Code §14-16-4-4(B)(4), but articulated many reasons for the second appeal in a letter (Record, p. 42-48). The appellant refutes the details of several ZHE findings. The appellant’s responses can be categorized into the following topics: presumed need for the community center (not enough users, irresponsible public spending, etc.); impacts to the community nearby (increased

crime, use of the park by undesirable people, etc.); and process (ineffective public meeting, yellow notification signs not posted for remand hearing).

13. Zoning Code §14-16-4-2(C)(1), Special Exceptions, states that a conditional use shall be approved, if and only if, in the circumstances of the particular case and under conditions imposed, the proposed use:

- (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.

On remand, the ZHE found that the proposed use would not be injurious to the adjacent property, the neighborhood, or the community, as required by §14-16-4-2(C)(1)(a), based on 126 findings (Findings 1-126) as elaborated in the Official Notification of Decision from the October 17, 2017 hearing (Record, p. 30-38).

14. The ZHE also found that the proposed use will not be significantly damaged by surrounding structures or activities, as required by Zoning Code §14-16-4-2-(C)(1)(b), based on 11 findings (Findings 127-138), as elaborated in the Official Notification of Decision from the October 17, 2017 hearing (Record, p. 38-39).

#### *Support for Decisions & Conditions*

15. At its April 25, 2017 hearing, the BOA remanded this matter to the ZHE for a rehearing. The BOA specifically requested that the ZHE's report (the Official Notification of Decision) from the re-hearing include findings of fact to support the conclusions of law that the ZHE reached. The re-hearing occurred on October 17, 2017. To support his decision, the ZHE developed 139 findings and 7 conclusions, based on substantial evidence in the record. Therefore, the ZHE fulfilled the remand instructions from the BOA and demonstrated that his decision is fully supported.

16. Like the first hearing, on remand, the ZHE found that there is substantial evidence in the record to demonstrate that the criteria of Zoning Code §14-16-4-2-(C)(1)(a) and (b) are met, and that the applicant has met its burden to ensure that there is such evidence in the record (Record, p. 39, Conclusions 1-4).

17. After the first ZHE hearing, the ZHE approved the conditional use based on the following, two conditions:

Condition 1: Applicant shall involve interested parties, including neighbors and the neighborhood association, in the design phase. This involvement shall include adequate notice, an opportunity for meaningful input, and, if necessary, facilitated dispute resolution.

Condition 2: The design phase shall specifically include means to address impacts from traffic and parking associated with the center, and impacts from users of the center. Parking is required to be calculated according to Zoning Code 14-16-3-1, Off Street Parking Regulations.

Condition 1 has been met. Concerned neighbors have been involved in the process and have expressed their concerns at the ZHE hearings and at a facilitated meeting held on August 9,

2017 (Record, p. 124). Condition 2 has been met. Impacts from traffic, parking, and users of the center have been discussed at the April 25, 2017 BOA hearing and the second ZHE hearing (on remand). The ZHE Official Notification of Decision, dated October 17, 2017, discusses traffic impacts (Findings 80-86), parking (Findings 87-94, see also Finding 18 of this Notice of Decision), and users of the center (see Exacerbation of Crime and Homelessness, Findings 55-79).

18. In the October 17, 2017 Notice of Decision, under “Parking Impacts”, the ZHE found (Finding 93) that “the parking requirement must be addressed by the Applicant before receipt of a building permit” (§14-16-3-1, Off Street Parking Regulations).

The BOA agrees, and further finds that the parking requirement must be addressed correctly as determined by the Code Enforcement Division of the Planning Department, which is responsible for interpreting the Zoning Code and its provisions, including parking. It is not the purview of the applicant or the ZHE to decide how parking is calculated; therefore ZHE Findings 89, 90 and 94 are in error.

19. Prior to the April 25, 2017 BOA hearing, Staff verified with the Code Enforcement Division that the parking calculations shown in the record are incorrect because: a) parking is calculated based on a building’s primary use (not on a table of multiple sub-uses), and b) community center falls under the category “public assembly space”, as determined by the long-standing practice of the Code Enforcement Division.
20. With respect to the subject request/the second appeal, the BOA finds that the appellant did not meet the burden of proof that the proposed conditional use would be injurious to the adjacent property, the neighborhood, or the community, pursuant to Zoning Code §14-16-4-2-(C)(1)(a), because the appellant did not adequately address the applicant’s evidence that the use will not be injurious, as elaborated in Findings 31-38 of October 17, 2017 ZHE decision. The burden of proof is on the appellant. Furthermore, the appellant did not: make a supported and logical argument regarding the alleged deficiencies in the Needs Assessment (Findings 40-54) and the archaeological study (Findings 100-107); prove that there is a nexus between future construction of the Community Center and increased criminal activity (Findings 55-79). Therefore, the appellant did not prove that the conditional use would be injurious to adjacent property, the neighborhood, or the community.

### *Conclusion*

21. The BOA recognizes that the ZHE decision in the October 17, 2017 Notification of Decision does encompass and continue the conditions of approval as stated in the earlier Notice of Decision dated February 1, 2017.
22. Based on these findings, the BOA concludes that the decision of the ZHE in approving the conditional use request was CORRECT. Therefore, the decision of the ZHE is AFFIRMED, the appeal is DENIED, and the conditional use is APPROVED.

If you wish to appeal this decision, you must do so by **February 07, 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.

*Catalina Lehner*

for David S. Campbell, Planning Director

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