

Planning Department
Suzanne Lubar, Director
Urban Design & Development Division
600 2nd Street NW – 3rd Floor
Albuquerque, NM 87102

CITY OF ALBUQUERQUE
BOARD OF APPEALS
NOTIFICATION OF DECISION

MASADA, LLC (John Koehler, Agent) appeals the Zoning Hearing Examiner’s Denial of a special exception to section 14-16-3-24(A)(2): a Variance of 5200 ft. to the required 5280 ft. to allow a proposed small loan business for all or a portion of lot 1, block B, Towner Addn. zoned C-2 or SU-2NFTOD, located on 2501 4th St. NW (H-14)

Appeal No: 15BOA-20005
Special Exception No: 15ZHE-80189
Project No: 1010524
Hearing Date: 10/27/15
Decision Date: 10/27/15

In the matter of **15BOA-20005**, 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:

FINDINGS:

1. This is an APPEAL of the Zoning Hearing Examiner’s (ZHE) DENIAL of a SPECIAL EXCEPTION pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: a variance of 5,200 feet to the required separation distance of 5,280 feet between small loan businesses (SLBs), to allow a new, proposed SLB to operate.
2. The subject site is described as Lots 1 & 2, Block 2, Towner Addition and the easterly 7 feet of the vacated adjacent alley, containing approximately 0.23 acre and located at 4501 Fourth St. NW (the “subject property”).
3. The subject property is within the boundaries of the North Fourth Street Rank III Corridor Plan (NFSCP), a sector development plan, and the North Valley Area Plan (NVAP).
4. The subject property is zoned C-2 or SU-2 NFTOD and is developed with a building. It is surrounded by properties zoned C-2 or SU-2 NFTOD, P or SU-2 NFTOD, and R-1 or SU-2 NFTOD. The land uses are commercial, parking and single-family homes.
5. The Albuquerque/Bernalillo County Comprehensive Plan, the NFSCP, the NVAP, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. Council Bill No. O-14-22, which amended the Zoning Code to regulate small loan businesses (SLBs), became effective on February 14, 2015. A requirement that a new SLB be separated a

minimum of 5,280 feet from an existing SLB was included. O-14-22 was incorporated into the City's Zoning Code as a new Section, 14-16-3-24.

7. The agent signed a lease for the subject property on March 11, 2015, and was unaware that O-14-22 had become effective approximately one month prior. The agent also submitted a business license application for the new, proposed SLB on May 15, 2015.
8. Council Bill No. O-14-22 requires a minimum separation distance of 5,280 feet between SLBs. The subject site is approximately 80 feet from an existing SLB, so a variance of 5,200 feet is needed for the new, proposed SLB to operate on the subject 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.
10. The ZHE finds that the proposed use is indisputably among those uses that the City Council deems to be both injurious and against the public interest (a). Bill No. O-14-22 states that clustering of SLBs is an indicator of economic distress in a community, that they exacerbate such distress by circulating and cycling greater debt amongst proximate SLBs and exporting the interest and fees on the debt out of the community. Furthermore, the prevalence of SLBs in low to moderate income areas corresponds to much of the City's redevelopment investment areas and is contradictory to the intent of those investments.
11. The ZHE finds that the applicant has not met its burden of providing evidence (both oral testimony and written material) to establish that there are special circumstances applicable to the subject property that do not apply generally to other property in the same zone and vicinity (b). The fact that the applicant was unaware of the regulations for SLBs does not constitute a special circumstance applicable to the subject property. There is no evidence in the record that the subject property is different from any of the 30 buildings mentioned by the agent as available.
12. The ZHE finds that the applicant has not met its burden of providing evidence (both oral testimony and written material) to establish that the special circumstances presented herein were not self-

imposed, and that those special circumstances create an unnecessary hardship upon the applicant (c). The circumstances were self-imposed in that the agent did not keep abreast of legal changes directly affecting his business, and that he signed a lease and incurred improvement costs despite the fact that Bill No. O-14-22 had rendered the use illegal prior to having taken these actions.

13. Also, the applicant has not met its burden of providing evidence (both oral testimony and written material) to establish that substantial justice will be done if the application is approved (d).
14. Representatives of the Near North Valley Neighborhood Association and the Fourth Street Task Force testified in opposition to the variance application. The opposition focused on the language and intent of O-14-22, the type of development considered needed along the Fourth St. Corridor, and the effect of such a business on its customers.
15. 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 states that there is an error of omission in the facts regarding the ZHE decision, which is reason (b). The zoning decision does not acknowledge that the appellant was issued a Certificate of Occupancy, and that notification to property owners or small loan businesses regarding the ordinance change was limited. Furthermore, the appellant asserts that competition of any sort benefits customers, that his business is distinct from other payday lenders, and that the subject property is uniquely suited for his business.

16. A Certificate of Occupancy, dated July 16, 2015, was issued for the building on the subject property. Bill No. O-14-22 became Zoning Code Section 14-16-3-24. Pursuant to Zoning Code Section 14-16-4-5(B), “A permit, license, or certificate issued in conflict with the provisions of this Zoning Code is void.” The Certificate of Occupancy conflicts with Zoning Code Section 14-16-3-24 and therefore is void.
17. The process for review of Bill No. O-14-22, including advertising, was standard procedure. The legislation was drafted by Council Services staff and sent to the Planning Department for review by the Environmental Planning Commission (EPC), which heard the case on November 13, 2014 (Project #1001620/14EPC-40070) at its regularly scheduled public hearing. The EPC process includes advertising in the City’s Neighborhood News (October/November 2014 issue), which is available on the Planning Department’s web page. An announcement was also placed on the introductory web page. A legal ad “Notice of Public Hearing” was published in the Albuquerque Journal on October 22, 2014.
18. Bill No. O-14-22 was discussed at two more public hearings: the Land Use Planning and Zoning subcommittee (LUPZ) of the City Council on January 14, 2015 and at the full Council meeting on January 21, 2015.

19. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in denying the variance 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 11, 2015**, 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

cc: Catalina Lehner/Planning Department- clehner@cabq.gov
Brennon Williams, Zoning Enforcement Division- bnwilliams@cabq.gov
Jenica Jacobi/Legal Department, City Hall, 4th Floor- jjacobi@cabq.gov
Jill Plaman, mjplaman@msn.com
John Koehler, john.a.koehler@gmail.com
Lori Robertson, lrobertson@nmrea.com
Michael Debenham, mike@americantitleloans.com
Joe Sabatini, jsabatini423@gmail.com
Becky Lujan, blujun2031@gmail.com
Anne Lalopa, queenann@spinn.net
Randall K Cole Jr, rkcole@swcp.com
BOA File