



CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

COA DEPARTMENT FAMILY COMMUNITY SERVICES (GREATER ALBUQUERQUE HOUSING PARTNERSHIP, AGENT) requests a special exception to Section 14-16-2-23(A) and Pg 45 South Broadway SDP (I)(A)(1)(a) : a CONDITIONAL USE to allow R-2 uses in a SU-2 MR zone for all or a portion of Lot 328, Hanily Subdivision, and MRDGD MAP 41 zoned SU-2 MR, located on 2205 JOHN ST SE (L-14)

Special Exception No:..... **16ZHE-80069**  
Project No:..... **Project# 1010770**  
Hearing Date:..... 04-19-16  
Closing of Public Record:..... 04-19-16  
Date of Decision: ..... 05-04-16

On the 19th day of April, 2016, GREATER ALBUQUERQUE HOUSING PARTNERSHIP (“Agent”) acting as agent on behalf of the property owner COA DEPARTMENT FAMILY COMMUNITY SERVICES (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow R-2 uses in a SU-2 MR zone (“Application”) upon the real property located at 2205 JOHN ST SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow R-2 uses in a SU-2 MR zone.
2. 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.*”
3. 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).
4. I find 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).
5. This Application caused significant concern and objection within the community and its elected representatives, and a more careful look at the concerns expressed is appropriate.
6. 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.
7. Many of those speaking to the application focused on the prospective residents of the project as opposed to the use or the project itself.

8. 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.
9. 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.
10. In the aspect that is essential to my analysis, the speakers were unable to offer substantial evidence of those risks, and my decisions must be based on substantial evidence in the record.
11. The purpose of the project is to quickly move at-risk community members into housing in conjunction with providing on-site services to support their being productive members of the community.
12. The Applicant explained that all residents will be required to undergo screening a well.
13. Some opposition centered on concerns that past government housing initiatives had failed and that the project would be sold off in a dilapidated state when maintenance becomes unsustainable. The Applicant explained that durable construction methods and materials will be used and that adequate maintenance reserves will be required.
14. While this project is innovative in design, it does follow the very successful national housing first model.
15. 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.
16. Certainly a use of the property as proposed, or any other use, would be expected to result in attendant noise and traffic. As to whether those impacts are injurious, however, they must be seen in the context of otherwise allowable uses.
17. Here, it is particularly relevant that the population to be served by and large does not drive (11% can be expected to use vehicles), and services will be provided on site, reducing the need to travel off site and through the neighborhood. Moreover, the site has good access to public transportation.
18. Projected traffic does not rise to the level of warranting a detailed traffic study, and the evidence is that any traffic congestion that does exist and can be expected to exist in the future is associated with the nearby school, for which the peak hour traffic does not coincide with the expected traffic from the development.
19. 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.
20. As to security concerns, site security will be provided both by access-controlled fencing and more importantly by site planning encouraging community watchfulness and awareness (which the Applicant refers to as “eyes on the street”).
21. The inquiry as to whether the project is injurious encompasses a review of the relevant planning documents.
22. Here, the Applicant details compliance with the relevant sector development plan and the comprehensive plan and makes a compelling case that the project is supported by those documents. I have not been provided with any sort of analysis indicating that the project disregards or violates the plan goals.
23. 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

- well outside my jurisdiction and substantially removed from the required inquiry as to whether this particular use will be injurious to the area or community.
24. That is not to say that community priorities, gentrification, relocation of residents or the appropriate amount of community involvement in development projects such as this are not important topics of community discussion. They are, however, not within the narrow land use inquiry with which I am charged.
  25. 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.
  26. Thus, the Applicant has met its burden and I find that the proposed use will not be injurious.
  27. It is important to recognized that this is a used conditionally permitted in the zone. There is no request for a use variance.
  28. I find 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.
  29. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
  30. The ZHE finds that the Applicant has authority to pursue this Application.

#### DECISION:

APPROVAL of a conditional use to allow R-2 uses in a SU-2 MR zone.

If you wish to appeal this decision, you must do so by May 19, 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 is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.


An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all

conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.

  
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Zoning Hearing Examiner

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NOTIFICATION OF DECISION

COA DEPARTMENT FAMILY COMMUNITY SERVICES (GREATER ALBUQUERQUE HOUSING PARTNERSHIP, AGENT) requests a special exception to Section 14-16-3-1(H)(1) : a VARIANCE of 2ft to the 6ft width for a pedestrian sidewalk for all or a portion of Lot 328, Hanily Subdivision, and MRDGD MAP 41 zoned SU-2 MR, located on 2205 JOHN ST SE (L-14)

Special Exception No:..... **16ZHE-80070**  
Project No:..... **Project# 1010770**  
Hearing Date:..... 04-19-16  
Closing of Public Record:..... 04-19-16  
Date of Decision: ..... 05-04-16

On the 19th day of April, 2016, GREATER ALBUQUERQUE HOUSING PARTNERSHIP (“Agent”) acting as agent on behalf of the property owner COA DEPARTMENT FAMILY COMMUNITY SERVICES (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2ft to the 6ft width for a pedestrian sidewalk (“Application”) upon the real property located at 2205 JOHN ST SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2ft to the 6ft width for a pedestrian sidewalk.
2. 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.*”
3. 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).
4. The ZHE finds 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).
5. Specifically, the ZHE finds that 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.
6. Thus, the extra width is not needed, and its reduction will both reduce impervious surface and reduce cost for the City of Albuquerque.
  7. The ZHE finds 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).
  8. Specifically, the ZHE finds that the subject property is adjacent to a neighborhood in which there only four-foot-wide sidewalks are required, and the existing sidewalks range from nonexistent, to two or three feet wide. The unique circumstance thus requires six foot sidewalks internally in an area where they are not otherwise required.
  9. The ZHE finds 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).
  10. Specifically, the ZHE finds that these circumstances are not self-imposed and that 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.
  11. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
  12. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
  13. The ZHE finds that the Applicant has authority to pursue this Application.

#### CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

#### DECISION:

APPROVAL of a variance of 2ft to the 6ft width for a pedestrian sidewalk.

If you wish to appeal this decision, you must do so by May 19, 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 is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.

  
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Zoning Hearing Examiner

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COA DEPARTMENT FAMILY COMMUNITY SERVICES (GREATER ALBUQUERQUE HOUSING PARTNERSHIP, AGENT) requests a special exception to Section 14-16-3-1(A)(24)(b) : a VARIANCE of 1 off street parking to the required 1 and 1/2 per unit for a proposed new development for all or a portion of Lot 328, Hanily Subdivision, and MRDGD MAP 41 zoned SU-2 MR, located on 2205 JOHN ST SE (L-14)

Special Exception No:..... **16ZHE-80071**  
Project No:..... **Project# 1010770**  
Hearing Date:..... 04-19-16  
Closing of Public Record:..... 04-19-16  
Date of Decision: ..... 05-04-16

On the 19th day of April, 2016, GREATER ALBUQUERQUE HOUSING PARTNERSHIP (“Agent”) acting as agent on behalf of the property owner COA DEPARTMENT FAMILY COMMUNITY SERVICES (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 1 off street parking to the required 1 and 1/2 per unit for a proposed new development (“Application”) upon the real property located at 2205 JOHN ST SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 1 off street parking to the required 1 and 1/2 per unit for a proposed new development.
2. 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.*”
3. 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).
4. The ZHE finds 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).

5. Specifically, the ZHE finds that the project is expected to serve residents with a vehicle ownership rate of approximately 11%. Thus, the required parking is excessive and results in unnecessary area dedicated to parking rather than open space on the project. This is a situation in which denial of the variance request results in more injury than granting it.
6. Although the associated project is the subject of much controversy, the variance request appears to lessen its potential impacts
7. The ZHE finds 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).
8. Specifically, the ZHE finds that the special circumstances are due to the unique use and associated minimal need for parking on the proposed project.
9. The ZHE finds 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).
10. Specifically, the ZHE finds that the project is designed to serve a particular population, but the Applicant does not dictate that population's vehicle infrastructure needs. The unjustified limitation is in the form of requiring expensive, environmentally undesired and unnecessary construction.
11. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
12. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
13. The ZHE finds that the Applicant has authority to pursue this Application.

#### CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

#### DECISION:

APPROVAL of a variance of 1 off street parking to the required 1 and 1/2 per unit for a proposed new development.

If you wish to appeal this decision, you must do so by May 19, 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.

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Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

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