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 MRGCD Map 41, Lot 328, zoned SU-2 MR, located on John St. SE, between Thaxton Ave. SE and Englewood Dr. SE (L-14).

Special Exception No:..... **16ZHE-80069**
Project No:..... **Project# 1010770**
Hearing Date:..... 08-16-16
Closing of Public Record:..... 08-16-16
Date of Decision: 08-31-16

On the 16th day of August, 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 John St. SE, between Thaxton Ave. SE and Englewood Dr. SE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. On May 4, 2016 I issued a Notification of Decision approving the conditional use permit. That decision was appealed to the Board of Appeals.
2. On June 28, 2016 the Board of Appeals found that notification of the application and the legal description used in the notification were incorrect, and remanded the case to the ZHE to:

A. Allow for proper notification and re-advertisement to occur;

B. Ensure the ZHE decision make specific references to the all *(sic)* law considered in the rendering of 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.

3. A hearing on remand in front of the ZHE was scheduled for August 16, 2016.
4. The record shows that the hearing was properly noticed under the requirements of §14-16-4-2(B)(2)(c), requiring individual written notice to the owners of lots within 100 feet, excluding public right of way, of the application site.
5. A hearing on remand was held on August 16, 2016 where the ZHE took additional evidence and testimony, and stated that the evidence and testimony received at the April 19, 2016 hearing would also remain part of the record and be used in making the decision.
6. After a full review of the record from the April 19, 2016 hearing and the record from the August 16, 2016 hearing I make the following findings and conclusions.
7. Applicant is requesting a conditional use to allow R-2 uses in an SU-2 MR zone.
8. 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.

9. 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). §14-16-4-2(C).
10. The Subject Property is zoned SU-2/MR, Special Neighborhood Zone/Mixed Residential.
11. The SU-2 zone "allows a mixture of uses controlled by Sector Development Plan which specifies new development and redevelopment which is appropriate to a given neighborhood, when other zones are inadequate to address special needs." §14-16-2-23.
12. Any use specified by a duly adopted Sector Development Plan for a given location is permitted. §14-16-2-23(A).
13. Development of the Subject Property is governed by the South Broadway Neighborhoods Sector Development Plan, Enactment No. 106-1986 (SBNSDP).
14. The goals of the SBNSDP are as follows:
    a. Elimination of conditions which are detrimental to the public health, safety and welfare;
    b. Elimination of blight and prevention of blighting influences;
    c. Conservation, improvement and expansion of the housing available to low and moderate income families until all housing in the area meets City Housing Code standards;

d. Improvement of economic conditions through coordinated City and private actions. SBNSDP II.D.

15. The Subject Property is also subject to the Albuquerque/Bernalillo County Comprehensive Plan's (ABCCP) goals and policies.

16. The Mixed Residential/MR land use for the Subject Property corresponds to the R-1 Residential Zone, with uses listed as conditional in the R-1 zone and uses listed as permissive and as regulated in the R-2 zone except group training homes. SBSNDP 45.

17. The project is a studio apartment project with a leasing office and a community building located on a 2.7-acre lot.

18. The Applicant proposes 72 total units, with 42 in the first phase.

19. The intended occupants are singles, young couples and residents with special needs.

20. The project is part of the Housing First Model, with on-site supportive and job training services, intended to break the cycle of homelessness.

21. The property is currently a vacant lot.

22. As an affordable housing project, the project consists of City of Albuquerque land, with substantial funding from the City of Albuquerque. The applicant is the City of Albuquerque Department of Family and Community Services.

23. 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) and will not be significantly damaged by surrounding structures or activities, as required by Section 14-16-4-2(C)(1)(b).

24. 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.

25. Many of those speaking to the application focused on the prospective residents of the project as opposed to the use or the project itself.

26. 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.

27. 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.

28. 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.

29. 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.

30. The Applicant explained that all residents will be required to undergo screening as well.

31. 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.

32. While this project is innovative in design, it does follow the very successful national Housing First model.

33. 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.

34. 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.

35. More to the point, the focus for my analysis is on whether this proposed use is injurious, not on whether or not other uses would be injurious.

36. 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.

37. Projected traffic does not rise to the level of warranting a detailed traffic study (300 units), 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.

38. 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.

39. 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 an “urban village” of clustered homes with street-facing “eyes on the street”).

40. The inquiry as to whether the project is injurious encompasses a review of the relevant planning documents.

41. 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.

42. The goals of the SBNSDP are as follows:

    a. Elimination of conditions which are detrimental to the public health, safety and welfare;

    b. Elimination of blight and prevention of blighting influences;

    c. Conservation, improvement and expansion of the housing available to low and moderate income families until all housing in the area meets City Housing Code standards;

    d. Improvement of economic conditions through coordinated City and private actions. SBNSDP II.D.

43. The Applicant addresses the SBNSDP goals by stating, "This development is an infill project that will eliminate the blight, while creating housing that is affordable to low income individuals and couples. Furthermore, the project is being designed and would be constructed by Albuquerque and Bernalillo County based employees and companies."

44. Analyzing the record, it appears clear that the project will eliminate the current illegal dumping and vagrancy concerns associated with the vacant Subject Property. Eliminating blight follows from this finding as well.

45. The property is currently a vacant lot, with both the Applicant and community members noting that it has historically attracted trespassers and illegal dumping.

46. The project will unquestionably expand availability of low income housing that meets housing codes.

47. Economic conditions for residents will improve in accordance with the Housing First model, and this is through a coordinated city and private action as encouraged by the plan.

48. The Applicant states that the project will serve as a transitional zone between adjacent residential and commercial on the other side of the project, as encouraged by the SBNSDP.

49. As to social issues, the SBNSDP states, "Day care, elderly, and homeless issues were of particular concern to the South Broadway Neighborhoods." SBNSDP 20.

50. The SBNSDP contains substantial discussion of homeless issues, facilities to serve the homeless and their location in the SBNSDP area. SBNSDP 23.

51. The proposal here is not a shelter or a group home of the type addressed by the SBNSDP and of a type about which many of the opponents expressed concern.

52. The SBNSDP, under "Appropriate Higher Density Residential Development," recommended to "Allow higher density residential development that meets the R-2 requirements as conditional." SBNSDP 38.

53. Thus, it appears that the project readily meets the goals of the SBNSDP.

54. The Applicant addresses the Albuquerque Bernalillo County Comprehensive Plan in detail, beginning on Page 5 of the application letter.

55. The Applicant focusses on and provides narrative support for compliance with ABCCP goals and policies in support of maximizing choice in housing (B, Land Use Goal 5), respect for existing conditions (Policy D), development contiguous to facilities and services and respecting integrity of existing neighborhoods (Policy E), Clustering and orienting homes (Policy F), location of higher density development (Policy H), quality innovative and appropriate design (Policy L), redevelopment and rehabilitation (Policy O), cost-effective redevelopment (Policy P), balanced circulation system (D, Community Resource Management Goal 4), affordable, quality, nondiscriminatory housing (D, Community Resource Management Goal 5), affordable housing (Policy A). Application letter at 5.

56. I have not been provided with any sort of analysis indicating that the project disregards or violates the goals or policies of either the SBNSDP or the ABCCP.

57. Reviewing the design process and the projects design elements, as described by the Applicant (see "Casa San Juan Community Design Elements" pg. 4 of Applicant's letter), it is clearly well thought out and should result in a safe, attractive, dynamic living space for its residents.

58. Opponents of the project, or those expressing concern, led by the San Jose Neighborhood Association (SJNA), focus on the the location of the project in the community and the proximity of the project to the community elementary school

59. The SJNA submitted a letter and petition signed by numerous area residents in opposition to the special exception request, although without specific objections described.

60. The themes of the objections presented throughout include concerns about compatibility of the project with the neighborhood, the clientele to be served, safety of children in the neighborhood and parking and traffic issues.

61. Objections also included the position that project's use of land and tax resources does not address neighborhood needs as identified by the parties.

62. Other concerns included property values, long-term viability and attractiveness of the project and sustainability of funding sources for support services.

63. The land use facilitation program project meeting report provides a concise and accurate summary of the concerns expressed during the hearing process.

64. Concerns expressed about mentally ill individuals, drug users, crime, fighting, sick people, killings, discrimination, child endangerment, a dangerous transient/rotating population and other fears about aspects of the project are simply unsupported by any substantial evidence in the record, on which I am bound to make my decision.

65. Objections were expressed that the project "does not meet the code" but no analysis of code deficiencies was provided.

66. 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.

67. 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.

68. 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.

69. Thus, the Applicant has met its burden and the I find that the proposed use will not be injurious.

70. It is important to recognized that this is a used conditionally permitted in the zone. There is no request for a use variance.

71. 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.

72. I find that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).

73. I find that the Applicant has authority to pursue this Application.

74. Appropriate conditions are imposed to limit the development to that presented by Applicant, where the underlying zoning would permit more units than planned, at a taller height.

DECISION:

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

CONDITIONS OF APPROVAL:

1. Project height shall be limited to 26' overall height.
2. There shall be a maximum of 72 units.

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

Christopher L. Graeser, Esq.
Zoning Hearing Examiner

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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 14-16-3-1(H)(1): a Variance of 2 ft. to the 6 ft width for a pedestrian sidewalk for all or a portion of MRGCD Map 41, Lot 328, zoned SU-2 MR, located on John St. SE, between Thaxton Ave. SE and Englewood Dr. SE (L-14).

Special Exception No:..... **16ZHE-80070**
Project No:..... **Project# 1010770**
Hearing Date:..... 08-16-16
Closing of Public Record:..... 08-16-16
Date of Decision: 08-31-16

On the 16th day of August, 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 2 ft. to the 6 ft width for a pedestrian sidewalk ("Application") upon the real property located at John St. SE, between Thaxton Ave. SE and Englewood Dr. SE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 ft to the 6 ft 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. 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. The Code states that "the intent of the regulations in this subsection is to accommodate the inter-related movement of vehicles, bicycles, and pedestrians…" Section 14-16-3-1(H). Here, the unique nature of the development, limited vehicle use and access and urban village design all indicate that compliance with the intent can be achieved with the narrower sidewalks.
7. Thus, the extra width is not needed, and its reduction will both reduce impervious surface and reduce cost for the City of Albuquerque.
8. Although the associated project is the subject of much controversy, the variance request appears to lessen its potential impacts.
9. 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).
10. 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.
11. 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).
12. 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.
13. 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).
14. 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).
15. 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 2 ft to the 6 ft width for a pedestrian sidewalk.

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

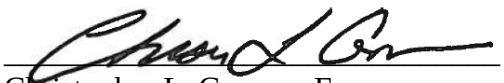
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of $105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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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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 14-16-3-1(A)(24)(b): a Variance of 1 space to the required 1 and ½ spaces per unit for a proposed new development for all or a portion of MRGCD Map 41, Lot 328, zoned SU-2 MR, located on John St. SE, between Thaxton Ave. SE and Englewood Dr. SE (L-14).

Special Exception No:..... **16ZHE-80071**
Project No:..... **Project# 1010770**
Hearing Date:..... 08-16-16
Closing of Public Record:..... 08-16-16
Date of Decision: 08-31-16

On the 16th day of August, 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 space to the required 1 and ½ spaces per unit for a proposed new development ("Application") upon the real property located at John St. SE, between Thaxton Ave. SE and Englewood Dr. 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, as conditioned, 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 WITH CONDITIONS of a variance of 1 off street parking to the required 1 and 1/2 per unit for a proposed new development.

CONDITIONS OF APPROVAL:

1. The variance shall be limited to one-half space per unit rather than the one space per unit requested.

2. One year after occupancy the Applicant shall submit an analysis to the Code Compliance Official showing that on site parking is not exceeding capacity and there is no parking impact on the surrounding streets and properties. Upon review of Applicant's analysis and any other materials submitted, the Code Compliance Official may require construction of the additional ½ space per unit if parking as constructed is inadequate.

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

Christopher L. Graeser, Esq.
Zoning Hearing Examiner

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