

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

JEAN C. SIMMONS request(s) a special exception to Section 14-16-3-10(E)(3) W. Rt. 66 SDP: a VARIANCE of 10' to the 10' front yard setback landscape buffer requirement to allow for a proposed building on all or a portion of Lot(s) C10, TOWN OF ATRISCO GRANT AIRPORT UNIT zoned C-2, located at 5809 CENTRAL AVE NW (K-11)

Special Exception No:	10ZHE-80020
Project No:	Project# 1008162
Hearing Date:	03-16-10
Closing of Public Record:	03-16-10
Date of Decision:	03-31-10

**STATEMENT OF FACTS:** The applicant, Jean Simmons, requests a variance of 10' to the 10' front yard setback landscape buffer requirement to allow for a proposed building. Ms. Simmons testified that she purchased this property approximately 22 years ago. There is a manufactured building placed on a permanent foundation. The proposed hours of the activity will be from 8:00 a.m. to 5:00 p.m., six days a week. The applicant will have four employees and there will not be any retail activity. She submits that the lot is long and narrow. This is a landscaping business. They will have sufficient landscaping on the sides of the buildings and to the rear of the building. However, they seek a variance to the front. Landscaping to the front of the building would impede on pedestrian traffic; and further, there is a bus stop adjacent to the front of this building where passengers enter and exit onto a bus. The request is opposed by the Neighborhood Association and Mr. Gallegos. They request that the front should be landscaped and recommend that at least two planters be placed in the front so as to maintain the beautification of the commercial street. In my view, this request warrants consideration as the applicant will be complying with side and rear yard landscaping sufficient to exceed the landscaping requirements. As to the front, in light of the fact that there is a bus stop which would provide for passengers to wait to enter a bus and exit a bus the placement of any landscaping would subject it to being destroyed because of the amount of pedestrian activity. As to the variance, the applicant was able to demonstrate that this lot is long and narrow and therefore, exceptional as compared to other lots in the vicinity. Further, the variance to the landscaping requirement suggests that if there is sufficient landscaping on the other borders of the property, as in this case, the side yard and the rear yards, then the spirit of the landscaping Ordinance is met. For reasons above stated, I will approve this request. The applicant will be required to maintain the landscaping to the rear and the side yards of the property and we will ask Zoning Enforcement to periodically inspect the area to ensure the landscaping is being maintained.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this parcel is exceptional as compared to other parcels in the vicinity due to its long and narrow size and shape and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

## **DECISION:** Approved.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

## If you wish to appeal this decision, you may do so by 5:00 p.m., on April 15, 2010 in the manner described below:

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.

Roberto Albertorio, Esq.

Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File Jean Simmons, 5809 Central NW, 87105 Louis Tafoya, 6411 Avalon Road NW, 87105 Jerry Gallegos, 417 65<sup>th</sup> Street SW, 8712