



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

NOB HILL, LLC (DAC ENT., AGENT) request(s) a special exception to Section Pg. 103 D.1.: a VARIANCE of 18" to the 18" maximum letter height allowance for a proposed wall mounted sign with 36" letters on all or a portion of Lot(s) 28A1, Block(s) 6, MONTE VISTA ADDN zoned CCR-1, located at 3339 CENTRAL AVE NE (K-16)

Special Exception No:..... **10ZHE-80201**
Project No:..... **Project# 1008369**
Hearing Date:..... 07-20-10
Closing of Public Record:..... 07-20-10
Date of Decision:..... 08-03-10

STATEMENT OF FACTS: The applicant, Nob Hill, LLC, requests a variance of 18" to the 18" maximum letter height allowance for a proposed wall mounted sign with 36" letters. This matter comes to hearing on a request for approval to enlarge the maximum allowable size of letters for mounted signage. There is one letter of opposition stating that the request does not meet the requirements for variances as provided by Section 14.16.4.2. The applicant's agent, Doug Crandall, states that his client request should be granted because of the physical exceptionality of the site and further that the applicant had obtained a permit prior to the adoption of the new regulations. Of course, there is some concern that an approval of this request may be viewed as license for future retailers to seek similar approval on a theory of precedence. The Zoning Ordinance does not permit the use of precedence to be controlling on future requests for variances. Each request is based on its own merits.

It is noted that the enforcement of the Sector Development Plan is closely monitored by the Zoning Enforcement Office as well as supporters of the Nob Hill Neighborhood Association.

In prior occasions regarding this parcel, albeit different variance requests, it was determined that this parcel is exceptional. This determination was not reversed on appeal.

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: This request is supported by the Nob Hill Neighborhood Association as well as supporting testimony at the hearing. An agreement between the applicant and the neighborhood resulted in a reduction of the lettering to the east of the building and will have a deminimis impact on the community. I find that the agent for the applicant has presented persuasive rationale, as above stated, to warrant approval of this request. I find that this parcel is exceptional as compared to other parcels in the vicinity 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 August 18, 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.

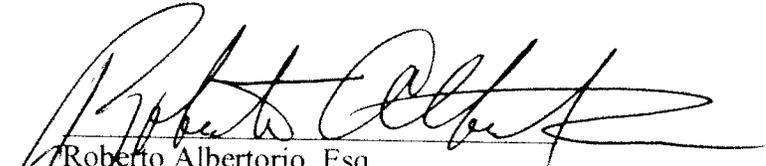
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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
Nob Hill, LLC, 5319 Menaul Blvd., NE, 87110
DAC Enterprises, Inc., P.O. Box 16658, 87191
Kenneth Robey, 121 Tulane Drive NE, 87106
Nob Hill NA, P.O. Box 4875, 87196