



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

ARCHDIOCESE OF SANTA FE (ST. FRANCIS XAVIER PARISH) request(s) a special exception to Section 14-16-3-10(E)(3)(b): a VARIANCE of 6' to the 6' side yard landscape buffer requirement for an existing parking lot on all or a portion of Lot(s) 1-12, Block(s) 5, LEWIS & SIMONDS ADDN zoned SU-2 NCR, located at 820 BROADWAY BLVD SE (K-14)

Special Exception No:..... **10ZHE-80023**
Project No: **Project# 1008168**
Hearing Date: 04-20-10
Closing of Public Record: 04-20-10
Date of Decision: 05-04-10

STATEMENT OF FACTS: The applicant, Archdiocese of Santa Fe, requests a variance of 6' to the 6' side yard landscape buffer requirement for an existing parking lot. The applicant was represented by Ms. Angela Benson. She states that this variance is to the side yard which abuts a right of way. If the applicant is required to comply with the landscaping requirements, the owner would lose approximately thirteen (13) parking spaces. This property was developed in 1928. The evidence introduced also indicates that the remaining three areas surrounding this property will comply with the landscaping requirements. A review of the site plan as well as an on-site inspection concludes that in the aggregate, the applicant will be complying with the requirements for landscaping. To deny this requested variance would create an unnecessary hardship to wit; the loss of the 13 parking spaces. Parking spaces in this area are crucial. This church provides for daily activities in the form of providing for their congregation as well as providing services that they provide on the weekend. To eliminate 13 spaces from an already limited parking area would only cause the parking to spill onto the neighborhood, which would have a greater negative impact.

This request is supported by Roni Montoya who is a former co-chair of the South Broadway Neighborhood Association. She indicates that she's been a life-long resident of this area. She believes that the loss of the 13 spaces would cause over flow parking onto the neighborhood and this would have a more negative effect. Patrick Martinez was also present to testify in support of this request.

In opposition to this request is the President of the South Broadway Neighborhood Association, Diana Dorn-Jones. She requested that the matter be deferred indefinitely, be denied or in the alternative that this office encourage the applicant to withdraw. Of course, this office never engages in encouraging people to withdraw as that would go beyond the authority of the office. Ms. Jones raises some issues as to whether or not the paving for the existing parking was ever properly approved. That is a matter that is not before this Hearing Officer; therefore, no ruling is required.

An on-site inspection reveals that there is considerable existing landscaping. In addition, the applicant has modified their request and has indicated that pursuant to a subsequent landscaping plan that they will provide five trees along this corridor and therefore, will not need a complete variance of 6' to the landscaping buffer. That is to say that they will have some mature trees which will serve as a buffer and will not take away from the parking spaces that are available. Subsequent to the hearing, the applicant was requested to send a copy of the amended landscaping proposal to representatives from the South Broadway Neighborhood Association. We have been assured that this has been forwarded. I believe that with the proposed modifications, the landscaping variance is minimal at best.

Section 14-16-3-10(E)(3) provides that the landscaping buffer may be relocated if the lot line is within a common access easement. This matter was recommended for mediation. It is clear from the note in the file, that there are strong opinions on both sides of this request, with the common goal in doing what is in the best interest of the community. A review of the entire file, an on-site inspection and a review of the amended landscaping plan indicates the desire of the Archdiocese to take into consideration some of the issues raised by the South Broadway Neighborhood Association. Accordingly, I find that this request will not interfere with the enjoyment of other land. The preservation of the 13 parking spaces is of equal importance to the community. A review of the site plan as well as the existing landscaping indicates that in the aggregate there is sufficient landscaping to comply with the spirit of the landscaping ordinance. This request is approved with the condition that the applicant maintain landscaping and assure that it remains viable.

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 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 May 19, 2010 in the manner described below:

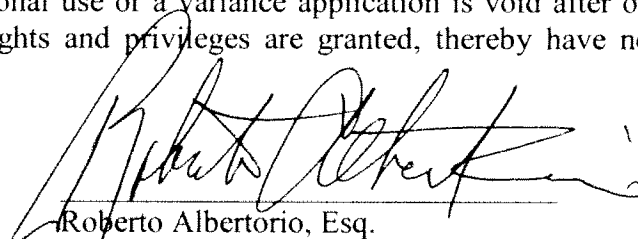
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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
Archdiocese of Santa Fe, 4000 St. Joseph Place NW, 87120
Sister Bernice Garcia, St. Francis Xavier Parish, 820 Broadway Blvd., SE, 87102
Angela Benson, 4700 Lincoln Road NE, 87111
Diana Dorn-Jones, SBNA, 1213 Edith SE, 87102

Anna Cordova, 1417 Lucreta St., SW, 87121
Tina Martinez, 1212 High St., SE, 87102
Lorraine Smith, 1123 William SE, 87102
Laura Jones, 1012 Broadway Blvd., 87102
Marie Legrand, 918 Walter Street SE, 87102
Patrick Martinez, 801 John SE, 87102
Esther Lopez, 617 Edith SE, 87102
Cathy Maestas, 4201 Axtell SE, 87105
Adela Trujillo, 1807 High Street SE, 87102
Alfredo Urban, 801 Tulane NE, 87102
E. Bustillos, 2945 Broadway SE, 87102
Andrea Trujillo, 1222 William Street SE, 87102
Roni Montoya, 611 Edith SE, 87102
Janice Chavez, 919 Walter Street SE, 87102
Leslie Bailly, 919 Walter Street SE, 87102