

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

LEE HEARN DEVET (VINCENT ACCARDI JR., AGENT) request(s) a special exception to Section 14-16-3-12(A)(7): a VARIANCE of 576.5' to the 1500' minimum distance separation requirement between Community Residential Programs to allow a proposed Community Residential Program on all or a portion of Lot(s) 20, Block(s) 1, ACADEMY ESTATES UNIT 7 zoned R-1, located at 9500 LAYTON PLACE NE (E-20)

Special Exception No:..... **11ZHE-80001**
Project No: **Project# 1008638**
Hearing Date: 02-15-11
Closing of Public Record: 02-15-11
Date of Decision: 02-23-11

STATEMENT OF FACTS: The applicant, Lee Hearn Devet, requests a variance of 576.5' to the 1500' minimum distance separation requirement between Community Residential Programs. The applicant presently operates a home for the elderly. There are 5 occupants which qualify for permissive use under the Zoning Ordinance. The applicant desires to expand the capacity an additional two persons which requires approval of a Special Exception. The total number of participants will be 7. The present location of this community residential home is within 1500' of another pre-existing facility. Accordingly, a variance to the minimum distance between community residential programs is required. The applicant's intentions seem well founded in that he states that occasionally a spouse or relative of one of his residents requests approval to also reside at this facility.

There is considerable opposition to this request by affected neighbors.

A review of the entire file and the many letters contained therein, as well as considering the two hours of testimony, requires the following conclusions.

The applicant did not provide substantial evidence that the parcel contains exceptionality sufficient to warrant approval for a variance. He did not show that he would experience undue hardship nor be denied reasonable use of his property if a variance is denied.

The Zoning Ordinance provides that a variance is to be granted only under unusual circumstances. An applicant is required to demonstrate that he/she is unable to comply with the Zoning requirement as a result of some physical exceptional parcel conditions which cause unnecessary hardship. This applicant has not shown that this request meets the exceptionality standard. Having been unable to meet this standard, it is therefore unnecessary to inquire any further.

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 not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on March 10, 2011 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.

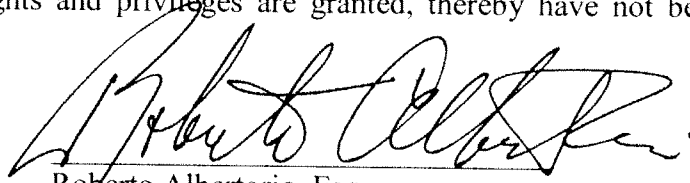
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

A handwritten signature in black ink, appearing to read 'Roberto Albertorio', written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
 ZHE File
 Lee Hearn Devet, 7413 Quixote Court, Bowie, MD, 20720
 Vincent Accardi, Jr. 6601 Tennyson Avenue NE, Apt. 10203, 87111
 Cynthia Shelton
 Stacey Laird
 Armando DeArguero
 Mark & Donna Bleck
 Donald Couchman
 Jeanette Fantl
 Bill & Karen Avery