



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

ALICE GEESEY (WILLIAM KRAEMER, AGENT) request(s) a special exception to Section DNA SDP: a VARIANCE to allow 100% non-residential uses (general office) in the SU-2 HDA zone on all or a portion of Lot(s) 16, 17 & 18, Block(s) 47, NM TOWN COMPANY ORIGINAL TOWNSITE zoned SU-2 HDA, located at 909 COPPER NW (K-13)

Special Exception No:..... **11ZHE-80091**
Project No: **Project# 1008764**
Hearing Date: 05-17-11
Closing of Public Record: 05-17-11
Date of Decision: 06-01-11

This matter was heard on May 17, 2011.

STATEMENT OF FACTS: The applicant, Alice Geesey, request a variance to allow 100% non-residential uses (general office) in the SU-2 HDA zone. William Kraemer, agent for the applicant, was asked what the exceptionality was on the property, he stated the structure was across from Robertson Park between 8th Street and 10th Street. He also stated that the property is on the very edge of the DNA Sector Plan and is in the commercial edge. The structure has a historic designation, and all of the other properties with the same zoning category are not being used as single family dwellings.

Jennifer DeGarmo, who represents the Downtown Neighborhood Association expressed opposition that this request should not have been accepted due to the fact that the Zoning Code does not allow variances based on the use of the property.

The HDA zone in the Downtown Neighborhood Sector Development Plan corresponds to the R-4 zone in the City of Albuquerque Comprehensive City Zoning Code. The R-4 zone allows permissive uses in Section (A)(1.) permissive uses in the R-3 and RC zones. Non-residential uses shall not exceed ten percent of the gross floor area on the premises. Also, under conditional uses Section (B)(1.) uses permissive in the C-2 zone provided the aggregate of non-residential uses does not exceed ten percent of the gross floor area on the premises.

In reviewing this language, the Zoning Hearing Examiner agrees with the opposition that this application should not have been accepted based on the regulations set forth in the R-4 zone of the Zoning Code.

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 June 16, 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.


Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Alice Geesey, 601 11th Street NW, 87102
William Kraemer, 600 First Street NW, #211, 87102