

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

RESOLUTION EQUITIES, LLC., TIERRA WEST, LLC request(s) a special exception to Section 14-16-2-16(A)(12)(b)(b): a VARIANCE of 4.27 acres to the minimum 5 acres zoning code requirement to allow a proposed freestanding sign for all or a portion of Lot(s) 22, Block(s) 10, NORTH ALBUQUERQUE ACRES zoned SU-2 MIXED USE, located on 7401 PASEO DEL NORTE NE (C-19)

Special Exception No:..... **12ZHE-80363**  
Project No: ..... **Project# 1009496**  
Hearing Date: ..... 11-19-12  
Closing of Public Record: ..... 11-19-12  
Date of Decision: ..... 12-03-12

On the 19th day of November, 2012 (hereinafter “**Hearing**”) Mr. Ron Bohanen, (hereinafter “**Agent**”) acting as agent on behalf of the property owner, Tierra West, LLC., on behalf of Resolution Equalities LLC., (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner, Stanley D. Harada (hereinafter “**ZHE**”) requesting a Variance of 4.27 acres to the minimum 5 acres zoning code requirement to allow a proposed freestanding sign (hereinafter “**Application**”) upon the real property located at 7401 Paseo del Norte NE (C-19) (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 4.27 acres to the minimum 5 acres zoning code requirement to allow a proposed freestanding sign.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (a) “SPECIAL EXCEPTIONS” reads in part: “*Variance. A variance shall be approved if and only if the following tests are met: (a) The property is exceptional*”
3. Agent testified at the Hearing that the Subject Property is exceptional for the following reasons:
  - a. The property’s parcel size was pre-existing at the time the regulations in the Zoning Code were established;
  - b. The parcel size was reduced by governmental action when the New Mexico Department of Transportation condemned a portion of the property for right of way for Paseo del Norte.
4. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (b) “SPECIAL EXCEPTIONS” reads in part: “*A variance shall be approved if and only if the following tests are met: (b) as a result of the exceptional aspect of the property, the regulations produce unnecessary hardship*”
5. Agent testified at the Hearing that as a result of the exceptionality (the smaller size of the property as a result of governmental action) that the City of Albuquerque Code of Ordinances Section § 14-16-2-16(A)(12)(b)(b) creates

- a minimum acreage for monument business signs regulation that produces an unnecessary hardship upon the Applicant and the Subject Property.
6. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (c) “SPECIAL EXCEPTIONS” reads in part: “*A variance shall be approved if and only if the following tests are met: (c) a particular variance is appropriate to prevent the unnecessary hardship.*”
  7. Agent testified at the Hearing that the variance Application of 4.27 acres to the minimum 5 acres zoning code requirement to allow a proposed freestanding sign, if approved, would be appropriate to prevent the unnecessary hardship.
  8. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (d) “SPECIAL EXCEPTIONS” reads in part: “*A variance shall be approved if and only if the following tests are met: (d) financial gain or loss shall not be the sole determining factor in deciding a variance.*”
  9. The Application and the testimony provided by the Applicant/Agent at the Hearing both suggest that financial gain/loss was not the sole determining factor of the Application.
  10. The Application, File and testimony of the Applicant/Agent at the Hearing suggest that there is no neighborhood opposition and no other opposition to the Application.
  11. Agent testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
  12. The Applicant/Agent has adequately justified the variance Application upon the Subject Property pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS: a Variance of 4.27 acres to the minimum 5 acres zoning code requirement to allow a proposed freestanding sign.

**DECISION:**

**APPROVAL** of a VARIANCE of 4.27 acres to the minimum 5 acres zoning code requirement to allow a proposed freestanding sign.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on December 18, 2012 in the manner described below:**

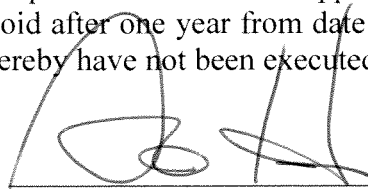
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$50.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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 'S. Harada', is written over a horizontal line.

Stanley D. Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Tierra West, LLC., 5571 Midway Park Place NE, 87109  
Resolution Equities, LLC., 8220 San Pedro NE, Suite 500, 87113