

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

MARK CUMBOW DBA GENESIS  
WORLDWIDE PROP (DAC ENTERPRISES,  
AGENT) request(s) a special exception to  
Section 14-16-2-15(C)(1) and 14-16-2-17(C):  
a VARIANCE of 5' to the 26' maximum height  
allowance for a proposed hotel on all or a  
portion of Lot(s) 145A & 145B, MRGCD MAP  
38 zoned C-2, located at 2026 CENTRAL  
AVE SW (J-13)

Special Exception No:..... **11ZHE-80208**  
Project No: ..... **Project# 1008934**  
Hearing Date: ..... 09-20-11  
Closing of Public Record: ..... 09-20-11  
Date of Decision: ..... 10-05-11

**STATEMENT OF FACTS:** The applicant, Mark Cumbow dba Genesis Worldwide Prop., requests a variance of 5' to the 26' maximum height allowance for a proposed hotel. The applicant was represented by DAC, Mr. Doug Crandall. The applicant intends to build a hotel, which will exceed the maximum height. The agent testified that his client wishes to develop this property for a proposed hotel in the C-2 zone. This matter was previously approved at the November 28, 2007 hearing. The approval was not appealed. The time period for that approval has since expired. A subsequent request for a modification was heard on January 20, 2009, decided on February 2, 2009, wherein the required approval for an 80 room hotel was increased to 100 rooms. At the two previous hearings, the opposition was noted and their concerns were incorporated in the approvals. There was also support for these requests which were also duly noted. No appeals of either decision were filed.

The matter presently before me is the same as the February 2, 2009 decision as represented to this office by the applicant's agent/representative.

As there is no present opposition to this request, and there was no previous appeal of an approval, I will approve this request. The agent advises that due to financial constraints his client was unable to proceed with their prior approval privileges. He now assures that this project will go forward.

For reasons above stated, the prior approval is incorporated in this decision with an approval extension effective October 5, 2011.

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.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on October 20, 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.

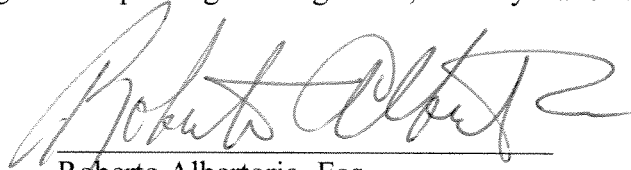
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

Mark Cumbow, dba Genesis Worldwide Prop., 310 Rio Grande Blvd. SW, 87104  
DAC Enterprises, Inc., P.O. Box 16658, 87191