



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

GOLDSTON INVESTMENT (FLIP DEMENGE, AGENT) request(s) a special exception to Section 14-16-2-16(B)(3) and Ref. Pg. 73(B)(3): a CONDITIONAL USE to allow existing vehicle storage as an outdoor activity on all or a portion of Lot(s) 4, Block(s) 9, FRANCISCAN ACRES zoned SU-2 NRC, located at 402 INDIAN SCHOOL RD NE (H-15)

Special Exception No:..... **11ZHE-80068**
Project No: **Project# 1008737**
Hearing Date: 08-16-11
Closing of Public Record: 08-16-11
Date of Decision: 08-25-11

STATEMENT OF FACTS: The applicant, Goldston Investment, requests a conditional use to allow existing vehicle storage as an outdoor activity. Flip DeMenge, Agent for the applicant, testified that they are a US Mail contractor who has been at this location for approximately 35 years. The request is to be allowed to store vehicles in 42% of the lot, which is not allowed under the Zoning Code. Mr. DeMenge stated that he was not aware they were in non-compliance and would reduce the request to 25% of the lot. He stated that he would move larger trailers out of the conditional use request area and replace them with trailers that are 30' in length and do not exceed 12' in height or a registered gross vehicle weight capacity of 26,000 pounds. When asked if this request would be injurious to the surrounding area, Mr. DeMenge stated that they had been there for 35 years. He did not give adequate evidence to show how this request would not be injurious to the surrounding area.

Lewis Colker with the Greater Albuquerque Housing Partnership testified in opposition to this request. Mr. Colker testified the parking of trailers and truck tractors next to the proposed housing development will cause noise and air pollution reducing the ability to attract families and reducing the value of the property. If the trailers are being stored, they are not to exceed 14' unless they are recreational vehicles; therefore, the 30' trailers are not allowed. Even if allowed, when a tractor is added to the front of the trailer, the vehicle would exceed 35'. Concern remains about the larger trailers (over 50' in length) and tractors being stored on the property. The opposition also raised concerns about the applicant's history of non-compliance with the Zoning Code. Also noted in the file, is a letter of opposition from the Santa Barbara/Martineztown Neighborhood.

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 request does not comply with Section 14. 16. 4. 2. (C). 1., for the granting of a conditional use upon a finding that the proposed use will cause injury to the neighborhood, adjacent property or the community,

and will be damaged by surrounding structures. For reasons stated above, this request is denied.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on September 9, 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.



Anita Reina, Esq.
Deputy Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File

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