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

TIM HOGSETT (KENT TRAUERNICHT, AGENT) request(s) a special exception to Section 14-16-3-10(E)(3)(a): a VARIANCE of 6' to the 6' landscape area buffer requirement for a proposed addition on all or a portion of Lot(s) A, FITZGERALD & DAVIDSON ADDN zoned C-3, located at 3601 4TH ST NW (C-14)

Special Exception No:..... **10ZHE-80203**
Project No: ..... **Project# 1008371**
Hearing Date:..... 07-20-10
Closing of Public Record:..... 07-20-10
Date of Decision: ..... 07-28-10

**STATEMENT OF FACTS:** The applicant, Tim Hogsett, requests a variance of 6' to the 6' landscape area buffer requirement for a proposed addition. Kent Trauernicht, agent for the applicant, testified at this lot is exceptional because it is narrower than other lots in the vicinity. He indicated that this existing Wendy's restaurant is adding a 300 sq ft eating area which is triggering this request. There is approximately 15% existing landscaping at this location and that will be increased by an additional 5%. Bill Kraemer testified in support of this request. The yellow sign was posted. There was no opposition to this request at the hearing, nor is there any opposition noted in the file.

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 because of the narrowness of the lot 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. **An additional 5% landscaping is required.**

**If you wish to appeal this decision, you may do so by 5:00 p.m., on August 12, 2010 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
Tim Hogsett, 4810 Hardware Drive NE, 87109
Ken Trauernicht, 55 Camino del Senador, Tijeras, 87059
William Kraemer