

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

CVS PHARMACY (KALIKIMAKA, MENDOZA, AGENT) request(s) a special exception to Section 14-16-2-16(A)(12)(b)3.b.: a VARIANCE of 3.876 acres to the 5 acre requirement for a proposed free-standing on-premise sign on all or a portion of Lot(s) 38-4-A, TAYLOR RANCH zoned SU-1 C-1, located at 4201 MONTANO RD NW (E-12)

Special Exception No:..... **10ZHE-80295**
Project No:..... **Project# 1008473**
Hearing Date:..... 09-21-10
Closing of Public Record:..... 09-21-10
Date of Decision:..... 10-07-10

STATEMENT OF FACTS: The applicant, CVS Pharmacy, requests a variance of 3.876 acres to the 5 acre requirement for a proposed free-standing on-premise sign. John Myers, agent for the applicant, testified that if approved the proposed sign will be a free standing monument sign located on the corner of Coors Boulevard and Montano. This property is elevated considerably higher than adjacent property to the East and South of this location. Furthermore, other nearby commercial properties have monument signs similar to what is being requested.

There is opposition to this request. They argue that the applicant will have sufficient signage visible to the public because of the high elevation of this building. They do acknowledge however, that there are substantial elevation differences. Opponents also argue that the proliferation of signage has a negative impact on the streetscape which is bordered by residential properties.

In rebuttal the applicant has indicated that they will reduce the wall mounted signage by 3 to soften the impact.

The applicant will be required, to submit for review of this office an amended site plan showing the reduction of wall mounted signage by 3. Permit will not be issued until there is a review and approval of the amended site plan.

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 its elevation differences 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 with conditions.

CONDITIONS:

1. Submission of an amended site plan as above described.
2. The free-standing sign must not be an electronic sign.

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 22, 2010 in the manner described below:

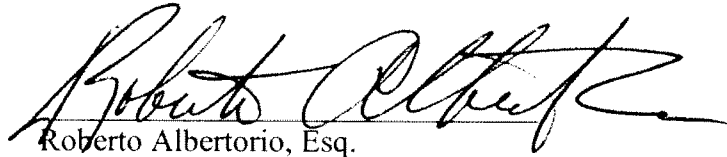
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.

A handwritten signature in black ink, appearing to read 'Roberto Albertorio', is written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
 ZHE File
 CVS Pharmacy, 1 CVS Drive, Woonsocket, RI, 02895
 Kalikimaka, Mendoza, 7208 South WW White Road, San Antonio, TX 78222
 John Myers, 1401 Central Avenue NW, 87104
 Chris Czyz, 1500 N. Priest Drive, Ste. 100, Tempe, AZ
 La Luz Landowners, 6 Link NW, 87120
 Renee' Horvath, TRNA
 Dave Waters, TRNA
 Patsy Nelson, Alban Hills NA