



APPLICATION FOR SPECIAL EXCEPTION CITY OF ALBUQUERQUE, PLANNING DEPARTMENT

Office of the Zoning Hearing Examiner
600 2nd Street NW, Suite 300, 87102
505 924 3918

A. APPLICANT INFORMATION--PLEASE PRINT

TELEPHONE (INCLUDE AREA CODE)

Owner Name (First, Last, Middle Initial) Daskalos Nob Hill LLC New Mexico CO (H) _____
Address 5351 Menaul Blvd. NE (W) 505-883-0414
City Albuquerque NM 87110 (C) _____
State _____ ZIP CODE _____

Agent Name (First, Last, Middle Initial) Jim Strozler (H) _____
Address 302 Eighth St. NW (W) 505-764-9801
City Albuquerque NM 87102 (C) _____
State _____ ZIP CODE _____

LEGAL DESCRIPTION OF PROPOSED SPECIAL EXCEPTION--PLEASE PRINT

Tract(s) 101605742829510510
Block 6 Lot(s) 16A
Subdivision Monte Vista Addition
Street Address of Special Exception 107 TULANE DR NE 87106
ZIP CODE _____

B. CRITERIA FOR DECISION-

I have been given the Criteria for Decision requirements.

C. EXPLANATION OF REQUEST-

On additional sheet(s) of paper, please state why you want this Special Exception, based on the Criteria for Decision Requirements.

D. DRAWINGS OF REQUEST-

ATTACH THREE (3) COPIES. Please follow instructions on the back of this form and attach the appropriate drawings.

E. TRAFFIC ENGINEERING REVIEW-

REQUIRED FOR ALL WALLS AND FENCES
IN THE FRONT AND STREET SIDE YARD SETBACKS.
Call the Traffic Analysis Supervisor at 505.857.8680 for
Site Plan Review. Delay of your case will result if you do not
obtain comments from the Traffic Analysis Supervisor.

F. ACKNOWLEDGEMENT-

I hereby acknowledge that, to the best of my knowledge, this application is correct and complete and that I have received one or more signs that I have agreed to post and maintain as provided and where instructed. I understand that failure to properly post sign(s) is grounds for deferral of my case

SIGNATURE [Signature] DATE 2/15/08
PROJECT #: 1007485 ZONING ENFORCEMENT OFFICE INTERNAL USE ONLY
APPLICATION #: 08 ZHE 80366

APPLICATION FOR: (CHECK AS APPROPRIATE)

- ☐ Conditional Use
☐ Expansion of a NonConforming Use
☐ NonConforming Use / Status Established Building

? Variance: (CHECK AS APPROPRIATE)

- ☐ Distance
☐ Height
☐ Setback
☐ Parking
☐ Size
☐ Other

SECTION NO.

14-16-2-26(B) REFERENCE SECTION NO: 14-16-2-27 (A)
LEGAL AD Requesting a conditional use to
allow a parking garage

SECTOR DEVELOPMENT AREA:

P-12 NOB HILL HIGHWAY
ZONED: 107 TULANE DR NE 16 NO. OF SIGNS ISSUED: 2

ZONE:

107 TULANE DR NE 16
POST SIGN(S) / STREET ADDRESS OF PROPOSED SPECIAL EXCEPTION
FEE: \$ 145.00

Michael Anaya 02-15-08
APPLICATION RECEIVED BY ZEO (PRINT FULL NAME) DATE

10-21-08
DATE OF PUBLIC HEARING

(APN) 441018 / 4971000 \$ 35.00
(SEA) 441006 / 4917000 \$ 100.00
(CMP) 441032 / 3424000 \$ 70.00

 Daskalos Nob Hill, LLC.

5319 Menaul Blvd. NE
Albuquerque, NM 87110
Phone: (505) 883-4131
Fax: (505) 883-4134
E-mail: montiz@daskalosllc.com

September 15, 2008

Mr. Roberto Albertorio, Esq.
Zoning Hearing Examiner
City of Albuquerque
Planning Department
600 2nd St. NW
Albuquerque, NM 87103

RE: 3339 Central Avenue NE

Dear Mr. Albertorio:

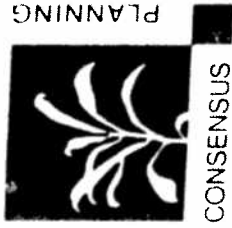
The purpose of this letter is to authorize Consensus Planning, Inc. to act as our agent on this request for two conditional uses for Lot 1A and Lot 16A, block 6, of the Monte Vista Addition. The property is located north of Central Avenue, in between Wellesley Drive NE and Tulane Drive NE.

Thank you for your consideration.

Sincerely,



Jason Daskalos
Daskalos Nob Hill, LLC



September 15, 2008

Mr. Roberto Albertorio, Esq.
Zoning Hearing Examiner
City of Albuquerque, Planning Department
600 2nd Street NW
Albuquerque, NM 87102

Landscape Architecture
Urban Design
Planning Services

322 Eighth St. NW
Albuquerque, NM 87102

(505) 764-9801
Fax (505) 542-5495
cpf@consensusplanning.com
www.consensusplanning.com

Re: Project # 1004765, 3339 Central Avenue NE

Dear Mr. Albertorio:

The following requests are on behalf of our client, Daskalos Nob Hill LLC, for the property located at 3339 Central Avenue NE, lots 1-A and 16A on block 6. On August 21, 2008, Judge Theresa Baca ruled that "The City's decision addressing the trash structure and parking garages is not in accordance with the law. Section 14-16-2-26 and Section 14-16-3-1 do not authorize structures on lots zoned for permissive use off-street parking, and the City did not approve the structures as a conditional use under Section 14-16-2-26(B) or as a variance. The City's decision on this issue is reversed" (Please see the attached Memorandum Opinion and Order regarding case no. CV-2007-06467 p. 9-15). These structures, located within P-R zoned lots, can only be allowed if conditional use approval is granted.

With this application for special exception, two separate Conditional Use requests are being made: one for the trash structure and one for the parking garages. A Conditional Use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:

- 1) Will not be injurious to the adjacent property, the neighborhood, or the community;
- 2) Will not be significantly damaged by surrounding structures or activities.

PRINCIPALS

Karen R. Marcotte, AICP
James K. Strozier, AICP
Christopher J. Green, ASLA

ASSOCIATES

Jacqueline Fishman, AICP

The structures in question serve a mixed use (commercial and residential) building consisting of retail space and twenty-six condominiums along one block of Central Avenue, which is currently

under construction. The P-R lots (1-A and 16A) are adjacent to the north side of the building, across from a public alley. For a lot zoned P-R, "all regulations of the P zone apply" Albuquerque Code of Ordinances, § 14-16-2-27(A) (1978). The P-Parking Zone Section 14-16-2-26(B) authorizes an additional structure as a conditional use. It states, "An additional structure which is reasonable and necessary for the function of the parking lot or for the convenience of patrons, such as attendant shelter, telephone booth, or rest rooms." Both structures meet this requirement because they are convenient to the patrons.

CONDITIONAL USE #1 – TRASH STRUCTURE

The first Conditional Use request is for the trash structure. The trash structure is located on the southwestern corner of lot 1-A, near Wellesley Drive and the public alley. The trash compactor is enclosed within a 500 square-foot area with 7-foot, 4-inch high CMU block walls and steel gates, and is equipped with drain and electrical systems. The location of the trash compactor was approved by the City's Solid Waste Management Department and meets all of the necessary standards. Its location is desirable because it can be easily serviced by the department. The trash compactor is provided for the adjacent building, and the residents of this building are the patrons of these lots.

The trash compactor will neither be injurious to the adjacent property, neighborhood, or the community, nor be significantly damaged by surrounding structures or activities. The compactor will be screened from adjacent neighbors, with access from the public alley in an area that is convenient for both the patrons and the City Solid Waste Department. The sealed trash compactor takes up less space than a conventional dumpster, is less likely to overflow, decreases the waste stream to the City's landfill, and is overall better for the environment. In addition to the trash compactor, this area will also include a City recycling bin.

CONDITIONAL USE #2 – PARKING GARAGES

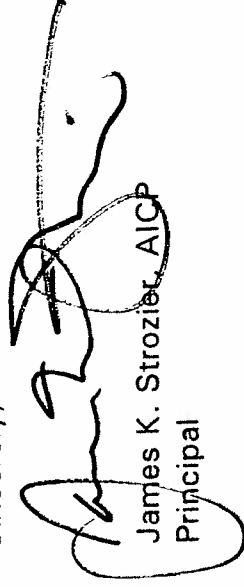
The second Conditional Use request is for the parking garages. The City approved Daskalos Nob Hill, LLC's request to build two private parking garage buildings on Lots 1-A and 16A. In reference to Section 14-16-2-26(B) of the P Parking Zone ordinance, a parking garage is "an additional structure which is reasonable and necessary for the function

of the parking lot or for the convenience of patrons." The patrons of this parking lot include the residents of the building. Parking garages are desirable because they add security and protection from the elements.

The parking garages will neither be injurious to the adjacent property, neighborhood, or the community, nor be significantly damaged by surrounding structures or activities. These single-story structures use complimentary building materials and colors as the adjacent building whose residents they serve. The uses of the building and parking garages complement one another. There is a 10-foot landscape buffer between from the neighboring house and vacant lot on the north side of the garages, and the scale of the neighboring houses and the parking garages are both one-story. Access is from the public alley south of the garages. The parking garages act as a buffer in between the less intense residential uses to the north and the more intense mixed-use commercial and residential building in which they serve.

Based upon the above, we feel that we have addressed the issues necessary for the approval two Conditional Uses: one for the trash structure and one for the parking garages. If you have any questions or require additional information, please do not hesitate to contact me at 764-9801. Thank you for your consideration in this matter.

Sincerely,

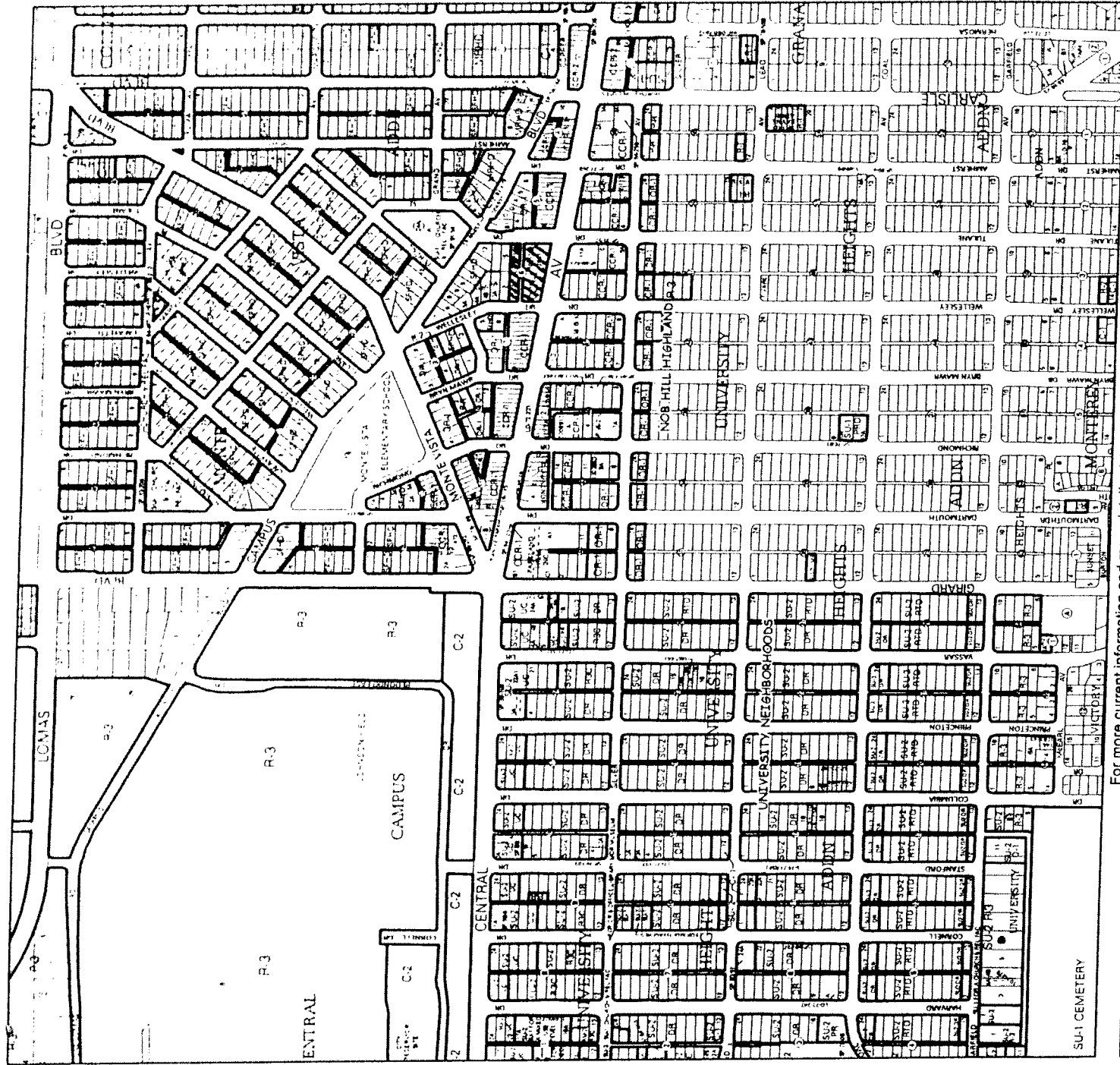


James K. Strozler, AICP
Principal

Attachments: Site Plan Exhibit

Memorandum Opinion and Order (No. CV-2007-06467)
Zone Atlas Page

c: Daskalos Nob Hill, LLC
Chris Gunning/Curtis Proctor, Dekker, Perich, Sabatini
Catherine Davis, Hunt & Davis, PC

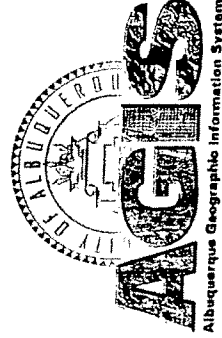
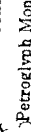
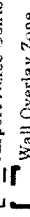
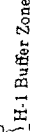
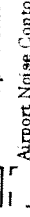
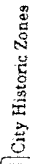
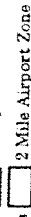
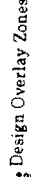
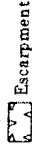


Zone Atlas Page:

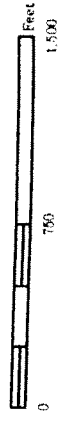
K-16-Z

Selected Symbols

SECTOR PLANS



Map amended through: 6/13/2008



AUG 21 2008

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

KENNETH M. ROBEY,

Appellant Pro Se,

v.

CITY COUNCIL OF THE CITY OF
ALBUQUERQUE,

Appellee,

JASON DASKALOS,

Interested Party.

No. CV-2007-06467
Consolidated with CV 2008-00312
and CV 2006-10497

Quanita M. Lujan
CLERK DISTRICT COURT

MEMORANDUM OPINION AND ORDER

(1) Appellant Kenneth M. Robey appeals the decisions of Appellee City Council of the City of Albuquerque approving building plan amendments concerning the property at 3339 Central Avenue NE, a project developed by Interested Party Jason Daskalos. The Court affirms in part and reverses in part. The City's decision addressing the trash structure, parking garages, and the calculation of off-street parking is not in accordance with the law and is thus reversed. The City is affirmed regarding Robey's remaining issues.

I. Facts and Background

(2) The parties do not dispute the underlying facts and procedural history. Robey resides at 121 Tulane Drive, NE, north of the property at issue. Daskalos submitted plans for the project, a mixed use multi-story commercial and residential building consisting of retail space and twenty-six apartments along one block of Central Avenue, as well as two single-story buildings on adjacent property north of Central, in December of 2005. The property is located on a sloping grade which descends north to a residential neighborhood.

(3) The City Planning Department issued a building permit in June 2006. Robey appealed this action to the City Council; following two hearings before the Land Use Hearing Officer (LUHO), the City Council accepted the LUHO's recommendation. The first permit was voided.

1 (4) Daskalos requested an on-street parking credit in July 2006.¹ The City sent property owners
2 within 250 feet a notice regarding this request. Ten residents, including Robey, wrote the traffic
3 engineer and objected to Daskalos's request. The traffic engineer approved the request for the on-
4 street parking credit of sixteen spaces, and Robey appealed. The LUHO conducted a hearing on
5 November 7, 2006, and recommended that Robey's appeal be denied. The City Council accepted
6 this recommendation and denied the appeal. Robey then appealed to this Court in Case Number CV
7 2006-10497. The Court stayed this appeal pending the appeals in the consolidated cases.

8 (5) Robey raises six issues in CV 2006-10497: (1) whether the traffic engineer's decision was
9 in accordance with law requiring notice and a hearing for zoning regulation amendments; (2)
10 whether the City's process of granting an on-street parking credit is in accordance with the appeal
11 process required by state law; (3) whether the decision was essentially a variance; (4) whether the
12 decision was arbitrary and capricious because the zoning ordinances lack adequate standards for
13 evaluation; (5) whether the decision was arbitrary and capricious because the credit was not
14 approved in conjunction with a site plan approval for off-street parking; and (6) whether the decision
15 was arbitrary and capricious because the traffic engineer did not make a clear record supporting his
16 decision.

17 (6) In January 2007, the City Planning Department issued a second building permit for the same
18 project, which Robey again appealed. Following hearings before the LUHO and the City Council,
19 the Council issued a decision on June 26, 2007, denying most of Robey's appeal. Robey's appeal
20 of these matters is case number CV 2007-06467. However, the Council remanded an issue regarding
21 a landscape buffer requirement to the Planning Director; further proceedings regarding this issue are
22 addressed in the consolidated appeal, discussed below.

23 (7) In CV 2007-06467, Robey raises six issues: (1) whether the City's decision to permit a trash
24 facility on a lot zoned P-R (Reserved Parking) was in accordance with the Zoning Code; (2) whether
25 its decision to permit buildings designated as "private garages" on two P-R lots was in accordance

¹The traffic engineer had initially approved Daskalos's application for an on-street parking credit without the required notice and opportunity for public comment, discovered by Robey and admitted by the City as an inadvertent error.

1 with the Zoning Code; (3) whether the decision to approve Daskalos's parking requirement analysis
2 was in accordance with the Zoning Code or City Council Bill R-06-80; (4) whether the decision to
3 approve Daskalos's average facade height analysis was in accordance with the Zoning Code; (5)
4 whether granting Daskalos an on-street parking credit without additional traffic engineer analysis
5 was arbitrary and capricious, not in accordance with the law, or not supported by substantial
6 evidence; and (6) whether the City's decision to grant the building permit for the project was
7 arbitrary and capricious based on a lack of an adequate record.

8 (8) In September 2007, the City approved a revised project plan concerning the remanded
9 landscape buffer zone issue, and Robey filed his third appeal. Following a hearing and the City
10 Council's rejection of his position, Robey also appealed the matter to this Court in the consolidated
11 case number CV 2008-00312.

12 (9) Robey raises several issues in case number 2008-00312: (1) whether the City properly
13 approved the building plan amendments prior to review and approval of the traffic engineer where
14 the engineer approved and testified after the City's approval; (2) whether the City properly approved
15 the plan amendments that reduced the size and changed the location of the buildings on Lots 1-A and
16 16-A consistent with the Zoning Code and the Development Process Manual; and (3) whether the
17 decision to grant a building permit for the revised project was lawful or whether it should be
18 remanded for development of a more detailed record.

19 II. Discussion

20 A. Standard of Review

21 (10) "The district court may reverse an administrative decision only if it determines that the
22 administrative entity . . . acted fraudulently, arbitrarily, or capriciously; if the decision was not
23 supported by substantial evidence in the whole record; or if the City did not act in accordance with
24 the law." Gallup Westside Dev., LLC, v. City of Gallup, 2004-NMCA-010, ¶ 10, 135 N.M. 30, 84
25 P.3d 78 This Court may not substitute its judgment for that of the City, and it "must view the
26 evidence in the light most favorable to the City while also considering contravening evidence." Id.
27 ¶ 11. "The party seeking to overturn the City's decision must establish that there is no substantial
28 evidence in the record to support the decision." Id. "Substantial evidence supporting an

1 administrative agency action is relevant evidence that a reasonable mind might accept as adequate
2 to support a conclusion " Id.

3 (11) However, the Court reviews the zoning "ordinances de novo, using the same rules of
4 construction that apply to statutes." Cadena v. Bernalillo County Bd. of County Comm'rs, 2006-
5 NMCA-036, ¶ 7, 139 N.M. 300, 131 P.3d 687. "We look to the plain language as the primary
6 indicator of legislative intent, giving words their ordinary meaning. We do not read language into
7 the ordinances unless they do not make sense." Id. (citation omitted). "We . . . attempt to harmonize
8 the language of each ordinance and facilitate their respective underlying purposes." Id. (relying on
9 Pub. Serv. Co. v. N.M. Pub. Util. Comm'n, 1999-NMSC-040, 128 N.M. 309, 992 P.2d 860).

10 (12) "'Interpretation of a statute is an issue of law, not a question of fact. We review questions
11 of law de novo.'" Pub. Serv. Co., 1999-NMSC-040, ¶ 14 (quoted authority omitted). "Because
12 statutory construction is 'outside the realm of the [administrative body's] expertise,' we afford little,
13 if any, deference to the [administrative body] on this matter." Id. (quoted authority omitted)

14 B. CV 2006-10497 Issues

15 1. Zoning Amendment

16 (13) The applicable version regarding the on-street parking credit² provides in part:

17 1. Where parking spaces are provided on a public street and about the property, one
18 half of the parking may be counted toward the off-street parking requirement of a
19 building or use on such property provided the on-street parking spaces are approved
20 by the Traffic Engineer, in conjunction with a site plan approval for off-street
21 parking.
22

23 5. Notification Requirement. The Planning Department, by regular mail, shall notify
24 all residents within 250 feet of the property for which on-street parking credit is
25 sought. Such residents may submit written comments to the Planning Director
26 regarding the request for on-street parking credit within 15 days from the date the
27

² In their briefing to this Court, none of the parties noted that some of the relevant zoning ordinances have been amended. The Court requested all parties to submit the ordinances in effect for this case to assure that the appropriate law was discussed in this appeal. Although at least one of the ordinances the parties submitted, Section 14-16-3-1, was different, and some parties did not include complete ordinances, the subsections relevant to the issues discussed in this appeal appear to be in agreement by the parties. This problem has caused the Court some difficulty and resulted in an inefficient use of time on this appeal and illustrates the necessity of the clear and correct citation to the applicable law by the parties.

1 notice was mailed. Comments received by the Planning Director that meet the
2 requirements of this section shall be considered by the Traffic Engineer prior to the
3 final determination of whether to grant credit for on-street parking
4

5 Section 14-16-3-1(E)(6)(d).

6 (14) Robey notes that, by statute, notice and a hearing are required before the amendment of a
7 zoning regulation. See NMSA 1978, § 3-21-6(B) (1981) ("No zoning regulation . . . shall become
8 effective, amended, supplemented or repealed until after a public hearing at which all parties in
9 interest and citizens shall have an opportunity to be heard."'). Without argument, explanation, or
10 authority, he contends that Section 14-16-3-1(E)(6)(d) provides for an amendment to applicable
11 parking requirements without a hearing, and no hearing was held for the on-street parking credit at
12 issue.

13 (15) The Court rejects this argument. As argued by the City and Dakalos, the City's grant of an
14 on-street parking credit is specifically authorized by Section 14-16-3-1(E)(6)(d) and is not an
15 amendment to the zoning code.

16 2. Appeal Process

17 (16) Robey notes that an appeal process from a zoning decision is required by state law. See
18 NMSA 1978, § 3-21-8(A) (2008) ("The zoning authority shall provide by resolution the procedure
19 to be followed in considering appeals allowed by this section.") Robey argues that the on-street
20 parking credit process does not satisfy the requirements for an appeal process. He recounts that he
21 became aware of the traffic engineer's decision because it became apparent through other
22 proceedings, including the fact that no notice was initially provided as required by the ordinance.
23 Robey asserts that the traffic engineer did not provide him or other neighbors notice of the decision
24 granting the credit, and that his right to appeal is impacted if he is not given notice of the decision.
25 (17) Daskalos notes that Robey went to the City and obtained a copy of the traffic engineer's
26 decision and that he has been able to appeal that decision. The Court agrees that Robey's right to
27 appeal this matter was not impacted because he conscientiously requested a copy of the traffic
28 engineer's decision and appealed the issue. However, this does not address Robey's argument that
29 he had a right to receive notice of the decision.

30 (18) The City argues that Robey was obligated to make a reasonable inquiry as to the decision

1 after he submitted comments, and that he "should not be heard to complain of lack of notice,"
2 Response, at 7, relying on Vander Vossen v. City of Espanola, 2001-NMCA-016, ¶ 23, 130 N.M.
3 287, 24 P.3d 319 ("[W]here circumstances are such that a reasonably prudent person should make
4 inquiries, that person is charged with knowledge of the facts reasonable inquiry would have
5 revealed'") (quoted authority omitted) (alteration in original) This argument is misplaced. As
6 discussed above, Robey did make an inquiry into the decision. The question is whether the City was
7 obligated to give Robey notice of the decision.

8 (19) While Robey discovered the decision through his own inquiry and has appealed that decision,
9 so his right to appeal was not impaired, the Court is troubled by the City's actions on this issue. The
10 City failed to follow its own ordinance initially by failing to give proper notice and an opportunity
11 to comment. It corrected this error only after Robey discovered it and noted it in an appeal of other
12 matters. Even after the traffic engineer properly gave the required notice and allowed comment, he
13 apparently decided that the ordinance did not require him to notify those that had commented of his
14 decision. LUHO hearing, at 44. While the ordinance does not explicitly require notification of the
15 decision, the Court agrees with Robey that notification impacts the right to appeal. The City and
16 Daskalos do not appear to dispute that Robey has a right to appeal the traffic engineer's decision.
17 As the neighbors had a right to notice, the opportunity to comment, and the right to appeal the
18 decision, they must also have a right to receive the decision or notice that a decision has been made,
19 a conclusion made plain by the City's own appeal section, which provides that a decision must be
20 appealed within fifteen days of "the announced decision." Section 14-16-4-4(B)(1); cf. Vander
21 Vossen, 2001-NMCA-016, ¶ 23 (concluding that, if the appellants "never received notice of the
22 hearing in any form, and only learned of the hearing after the fact, the time for an appeal would begin
23 to run when [they] were first made aware of the hearing or the Board's decision"). Although Robey
24 is not entitled to relief on this point, the Court agrees with him that the City is required to give the
25 decision or notice that the traffic engineer has made a decision to those neighbors that have properly
26 commented on the on-street parking requirement.

27 3. Variance

28 (20) Robey argues that the traffic engineer's decision to grant an on-street parking credit was not

1 in accordance with the ordinance and was essentially a variance. He contends that the applicable
2 procedures for a variance were not followed. He notes that the ordinance for off-street parking sets
3 out the requirements for parking, and that approval of less parking through the on-street parking
4 credit requires a variance because the credit is a variation from the strict and literal application of
5 the ordinance.

6 (21) The Court rejects this argument. Section 14-16-3-1(E)(6)(d) of the off-street parking
7 ordinance expressly allows for an on-street parking credit. The ordinance provides that "[i]t is
8 unlawful to reduce the amount of existing parking below the minimum required by this section
9 except as provided in Paragraph (D)(6) below." Section 14-16-3-1(E)(1) (emphasis added). Thus,
10 a variance is not required.

11 4. Standards for Evaluating an Application

12 (22) Robey argues that the traffic engineer's decision was arbitrary and capricious because he
13 lacked adequate standards for deciding whether to grant a credit and for the number of spaces
14 allowed. He notes that the traffic engineer admitted that, during peak periods, the existing traffic
15 problems in the area of the project are "probably" going to be exacerbated. LUHO hearing, at 45.
16 He further notes that the traffic engineer stated that there was no ordinance or statute that sets out
17 the standards. Id. at 48. Robey notes that the traffic engineer stated that he made the decision based
18 on technical reasons, and he contends that, if neighbors are allowed to comment, then there should
19 be clearly stated standards so the comments may be directed toward the relevant issues.

20 (23) At the hearing on this appeal, Robey argued that a recent decision from the New Mexico
21 Supreme Court, Albuquerque Commons P'ship v. City Council, 2008-NMSC-025, ¶ 32, 144 N.M.
22 99, 184 P.3d 411, supported his position. He asserted that the decision of the traffic engineer was
23 quasi-judicial, "involv[ing] a determination of the rights, duties, or obligations of specific individuals
24 on the basis of the application of currently existing legal standards or policy considerations of past
25 or present facts developed at a hearing conducted for the purpose of resolving the particular interest
26 in question." Id. (quoted authority omitted). Robey contended that a quasi-judicial proceeding
27 would require notice, an opportunity to be heard, a hearing to rebut evidence to an impartial tribunal,
28 and a record with adequate findings to facilitate a meaningful judicial review of the action,

1 demonstrating that the proper criteria was applied and the decision was not arbitrary. See id. ¶ 35

2 (24) While the Court agrees with Robey that this decision was more of a quasi-judicial
3 determination than a legislative action, as the Court explained in Albuquerque Commons, the issue
4 is not whether the action may be labeled legislative or quasi-judicial; “the real question here is
5 whether the City’s” process “was fair overall.” Id. ¶ 31. Albuquerque Commons involved a zoning
6 authority rezoning a piece of property to a more restrictive use, in which case “the zoning authority
7 must afford enhanced procedural protections to landowners whose properties are the subject of the
8 zone change.” Id. ¶ 33. The Court concludes that the process afforded here, notice, an opportunity
9 to comment, a right to have the comments considered, and a right to appeal, is a fair process overall
10 for the more limited determination of an on-street parking credit.

11 (25) Regarding the standards applied by the decision-maker, the traffic engineer approved the on-
12 street parking based on his findings that the streets currently had on-street parking, that no further
13 safety issues were expected to arise, and that additional on-street parking would be added with the
14 project. RP at 112. The City argues that the traffic engineer based his decision on the site plan,
15 Development Process Manual criteria for spaces abutting the property, safety issues, and the
16 neighbors’ comments. Daskalos argues that the ordinance sets out standards, including the
17 requirement that parking spaces be provided on a public street that abuts the property, that up to one
18 half of the parking may be counted toward the off-street parking requirement if the on-street parking
19 spaces are approved, that the credit cannot apply to residential developments of ten dwelling units
20 per acre or less, and that the credit cannot be applied toward buildings constructed before 1965 until
21 all off-street parking requirements are first met. The Court agrees that Robey has not demonstrated
22 that the traffic engineer’s decision was arbitrary or capricious.

23 5. Site Plan Approval

24 (26) Robey argues that the decision was arbitrary and capricious because the on-street credit was
25 not approved in conjunction with a site plan approval for off-street parking, as required by the
26 ordinance. Section 14-16-3-1(E)(6)(d)(1) provides:

27 Where parking spaces are provided on a public street and abut the property, one half
28 of the parking may be counted toward the off-street parking requirement of a building
29 or use on such property provided the on-street parking spaces are approved by the

1 only as a guide and may not apply to all circumstances. See § 7(F) (Note).

2 {83} In order to accommodate the required landscape buffer, the private garages were shortened.
3 Robey argues that they no longer have sufficient clearance depth to provide the required fifty off-
4 street parking spaces required by the plan. The version of Section 14-16-1-5's definition of a parking
5 space in effect at the relevant time provided:

6 A suitable space for vehicular storage, at least 8' 5" in width and 20' in length, with
7 access and circulation satisfactory to the Traffic Engineer; however, if a premises
8 contains more than 20 parking spaces, one-fourth of them may be at least 8' in width
9 and 15' length. Parking spaces inside a garage for a house or townhouse shall be a
10 minimum of 8.5 feet in width and 17 feet in length.
11

12 Robey notes that the new spaces in the private garages are thirty-five feet, four inches, and argues
13 that the minimum depth for two vehicle parking spaces is forty feet. The Court disagrees. The
14 ordinance allows spaces inside a garage to be seventeen feet in length, so only thirty-four feet, not
15 forty feet, are required

16 Sufficiency of the Record

17 {84} As he argued in CV 2007-06467, Robey contends that the City's decision was arbitrary and
18 capricious because the Planning Department did not make a clear record of its findings. As
19 discussed above, the Court concludes the record is sufficiently clear for purposes of appeal.

20 III. Conclusion

21 {85} The City's decision regarding the trash dumpster and the parking garages is not in accordance
22 with the law. Section 14-16-2-26 and Section 14-16-3-1 do not authorize structures on lots zoned
23 for permissive use off-street parking, and the City did not approve the structures as a conditional use
24 under Section 14-16-2-26(B) or as a variance. The City's decision on this issue is reversed—

25 {86} The City's decision regarding the calculation of off-street parking is also not in accordance
26 with the law. Section 14-16-3-1(E)(4) requires that, for mixed-use projects, the various uses be
27 computed separately, and then added together for a total number of required off-street parking.
28 Nothing in Subsection (E)(4) indicates the intent to allow a credit for one use through a surplus to
29 be applied to another use, or that only the total number of the various uses added together is required,
30 as Daskalos attempts to argue here. A parking reduction through a mixed-use project with residential
31 parking is not authorized and would result in insufficient parking for the retail customers. The City's

1 decision on this issue is reversed as well.

2 (87) Robey's remaining arguments are rejected The City's decision with regard to these other
3 issues is affirmed.

4 (88) The decision of the City is **AFFIRMED IN PART AND REVERSED IN PART**. The
5 Court **REMANDS** this matter for further proceedings consistent with this Opinion.

6 (89) **IT IS SO ORDERED.**

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THERESA BACA

THERESA BACA
DISTRICT COURT JUDGE

This is to certify that a true and correct copy of
the foregoing document was mailed/delivered/
or otherwise provided to Kenneth M. Robey, J
Matt Meyers, and Catherine Davis this 21
day of August, 2008.

LORENZO TORRES

§ 14-16-2-27 P-R RESERVE PARKING ZONE.

This zone designates lots reserved for off-street parking required by § 14-16-3-1 of this Zoning Code with regard to a use on another lot.

- (A)** All regulations of the P zone apply.
- (B)** Hereafter the PR zone satisfies the required off-street requirements of one or more other lots only when such lots are specified in the resolution or motion adopting or amending the PR designation.
(‘74 Code, § 7-14-35) (Ord. 80-1975; Am. Ord. 38-1978)

§ 14-16-2-26 P PARKING ZONE.

This zone provides sites suitable for parking of automotive vehicles.

(A) Permissive Uses.

- (1) Off-street parking.
- (2) Parking lot, as regulated in the O-1 zone, except the solid walls or fences shall be as approved by the Planning Commission; the Planning Commission may also require landscaping.
- (3) One sign for identification per street frontage, as provided in § 14-16-3-5 of this Zoning Code, and further provided:
 - (a) Size, Height. The sign area does not exceed 20 square feet nor the sign height exceed 15 feet.
 - (b) Illumination. The sign may be illuminated, but only by a non-oscillating concealed light source.

Conditional Use. An additional structure which is reasonable and necessary for the function of the parking lot or for the convenience of patrons, such as attendant shelter, telephone booth, or rest rooms.

- (C) **Lot Size.** No requirements.
(74 Code, § 7-14-34) (Ord. 80-1975)

ZONE GRID

No Features found.

OWNERSHIP

Rec	COASDE.BERNCO.ParcelIDec_2007.UPC	COASDE.BERNCO.ParcelIDec_2007.OWNER	COASDE.BERNCO.ParcelIDec_2007.OWNADD
1	101605742829510510	DASKALOS NOB HILL LLC NEW MEXICO CO	5319 MENAUL BLVD NE

ZONING

Rec	ZONING	DESCRIPTION
1	P-R	

ZONE GRID

Rec	ZONE ATLAS GRID
1	K16

PARCELS

Rec	NUMBER	NAME	DESIGNATION	QUADRANT	LOT	BLOCK	SUBDIVISION	PIN
1	107	TULANE DR		NE	16A	6	MONTE VISTA ADDN	ABQ144447

ZONE GRID

No Features found.

ZONE GRID

No Features found.

NEIGHBORHOODS

Rec	COASDE.AGIS.NEIGHBORHOODASSOCIATIONS.ASSOCIATIONNAME	COASDE.AGIS.NEIGHBORHOODASSOCIATIONS.ASSOCIATION
1	NOB HILL	R

SECTOR PLANS

Rec	SECTOR PLAN NAME
1	NOB HILL HIGHLAND

COUNCIL

Rec	COUNCILOR NAME	COUNCIL DISTRICT
1	GARDUNO	6

ZIPCODES

Rec	ZIPCODE
1	87106

ZONE GRID

No Features found.