

Planning Department
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**CITY OF ALBUQUERQUE
BOARD OF APPEALS
NOTIFICATION OF DECISION**

Carlos Gallegos (Garcia/Kraemer & Associates, Agent) appeals the Zoning Hearing Examiner’s (ZHE’s) **DENIAL** of a **CONDITIONAL USE** to allow for a storage yard for equipment, material, or activity incidental to a specific construction project, provided it is of a temporary nature, for all or a portion of Lot 10, Block 15, Sandia Plaza zoned R-1, located on 1023 Delamar Ave. NW.

Appeal No: 14BOA-20007
Special Exception No: 14ZHE-80079
Project No: 1010033
Hearing Date: 07/22/14
Decision Date: 07/22/14

In the matter of **14BOA-20007**, the Zoning Board of Appeals (BOA) voted to **REMAND** the Appeal based on the following findings:

FINDINGS:

1. This is an APPEAL of the Zoning Hearing Examiner’s (ZHE) DENIAL of a CONDITIONAL USE, pursuant to Section 14-16-4-2(C)(1)(a) and (b), Conditional Use Criteria, to allow a storage yard for equipment, material, or activity incidental to a specific construction project, provided it is of a temporary nature.
2. The Zoning Hearing Examiner (ZHE) denied the abovementioned conditional use, as elaborated in the June 5, 2014 Notice of Decision. This case was heard at the May 20, 2014 hearing.
3. The subject site is described as a Lot 10, Block 15, Sandia Plaza (the “subject property”). The subject property is located at 1023 Delamar Avenue NW, which is north of Griegos Road NW and east of Grande Drive NW.
4. The subject property is zoned R-1 Residential and is vacant.
5. The Albuquerque/Bernalillo County Comprehensive Plan, the North Valley Area Plan, the Los Griegos Sector Development Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. The intent of the R-1 zone (Zoning Code Section 14-16-2-6) is to provide suitable sites for houses and uses incidental thereto in the Established and Central Urban areas. A “storage

yard for equipment, material, or activity incidental to a specific construction project, provided it is of a temporary nature...” is a conditional use listed in (B)(13).

7. Zoning Code Section 14-16-4-2(C)(1)(a) and (b) specifies the tests that must be met for a conditional use, a type of special exception, to be approved:
 - (1) A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:
 - (a) Will not be injurious to the adjacent property, the neighborhood, or the community;
 - (b) Will not be significantly damaged by surrounding structures or activities.
8. The ZHE found that the conditional use would likely be a nuisance to the surrounding residents (noise, truck traffic, dust, construction debris, hours of operations, etc.) and possibly a safety hazard (large truck traffic delivering equipment and construction materials on a residential street frequented by children, pedestrians, bicycles, strollers, etc).
9. The ZHE DENIED the request for a CONDITIONAL USE to allow a storage yard for equipment, material, or activity incidental to a specific construction project, provided it is of a temporary nature.
10. Zoning Code Section 14-16-4-4(B)(4) states that an appellant to a special exception action shall specifically cite and explain one or more errors of the ZHE in rendering his decision, and allege that the ZHE erred:
 - a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - b) in the appealed action or decision, including its stated facts; and
 - c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant did not specifically cite any of the three reasons for an appeal. Rather, the appellant’s response refers to abuse of discretion (c), error in applying city plans, policies and ordinances (a), and arbitrary and capricious (c). The appellant believes that his testimony and evidence at the hearing were disregarded, and that the ZHE did not substantiate the reasoning that the temporary storage use would be injurious to the neighborhood.

11. The Notice of Decision failed to support the reasons for denial based on the record. Additionally, the Board found indecisive statements in the Notice of Decision, which lacked a clear foundation for the decision arrived at by the ZHE.
12. Based on these findings, the Zoning Board of Appeals (BOA) hereby remands this matter back to the ZHE for a determination in accordance with these Findings, with the following instructions: support the decision with facts and clear evidence from the record, and not include contradictory statements.

If you wish to appeal this decision, you must do so by **August 6, 2014**, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department’s Land Development Coordination counter and is required at the time the Appeal is filed.

APPEAL TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

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