

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

PASEO PAVILLION @ SECOND STREET LLC., (TRISH LOPES, AGENT) request(s) a special exception to Section 14-16-3-10(E)(4)(c): a VARIANCE of 4' to the minimum required 10' setback separating the subject property and the neighboring property for all or a portion of Lot(s) E, ST. ANTHONY ORPHANAGE zoned R-1, located on 1120 INDIAN SCHOOL RD NW (H-13)

Special Exception No: **13ZHE-80517**
Project No:..... **Project# 1009670**
Hearing Date:..... 05-21-13
Closing of Public Record:..... 05-21-13
Date of Amended Decision:.... 07-23-13

On the 21st day of May, 2013 (hereinafter “**Hearing**”) Mr. Gordon L. Skarsgard, (hereinafter “**Agent**”) acting as agent on behalf of the property owner, Paseo Pavilion @ Second Street, LLC (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) amending the request from a variance of 10’ from the required 10’ setback requirement to a Variance of 4’ to the minimum required 10’ setback separating a proposed commercial site from a the neighboring property (hereinafter “**Application**”) upon the real property located at 1120 INDIAN SCHOOL RD NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 4' to the minimum required 10' setback separating a proposed commercial site from the neighboring property.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (a) “SPECIAL EXCEPTIONS” reads in part: “*Variance. A variance shall be approved if and only if the following tests are met: (a) The property is exceptional*”
3. Applicant testified at the Hearing that the Subject Property is exceptional for the following reasons:
 - a. The subject property is physically exception because it is an unusual and irregularly shaped lot;
 - b. The subject property is unusually narrow (as measured from east to west)
 - c. The exceptional aspect of the property existed prior to the time of adoption of the wall regulations.
4. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (b) “SPECIAL EXCEPTIONS” reads in part: “*A variance shall be approved if and only if the following tests are met: (b) as a result of the exceptional aspect of the property, the regulations produce unnecessary hardship*”
5. Applicant testified at the Hearing that the exceptionality of the subject property creates an unjustified limitation of the property owner’s reasonable

use of the subject property and that the City of Albuquerque Code of Ordinances Section § 14-16-3-10(E)(4)(a) creates a Setback regulation that produces an unnecessary hardship upon the Applicant and the Subject Property.

6. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (c) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (c) a particular variance is appropriate to prevent the unnecessary hardship.*"
7. Applicant testified at the Hearing that the variance Application (4' from the 10' setback), if approved, would be appropriate to prevent the unnecessary hardship.
8. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (d) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (d) financial gain or loss shall not be the sole determining factor in deciding a variance.*"
9. The Application and the testimony provided by the Applicant at the Hearing both suggest that financial gain/loss was not the sole determining factor of the Application.
10. The File contains a letter of opposition to the request filed by Richard Sandoval, President of the Near North Valley Neighborhood Association, but there was no testimony or other evidence presented in opposition at the hearing.
11. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
12. The Applicant/Agent has adequately justified the variance Application upon the Subject Property pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a VARIANCE of 4' to the minimum required 10' setback requirement separating the subject property to the neighboring property.

CONDITIONS OF APPROVAL:

1. The Applicant shall install sidewalk (**as shown on the EPC-Approved Site Development Plan**) on the remaining 6' setback

If you wish to appeal this decision, you may do so by 5:00 p.m., on August 5, 2013 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

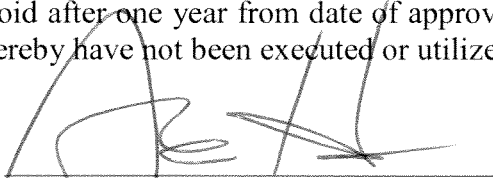
taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

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.



Stanley D. Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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