

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

FAMILY DOLLAR STORES (ISAACSON & ARFMAN P.A., FRED ARFMAN, AGENT) request(s) a special exception to Section 14-16-3-1(A)(21): a VARIANCE of 5 parking spaces to the 38 minimum parking space requirement for a proposed Family Dollar store for all or a portion of Lot(s) A4, UNSER & SAGE MARKETPLACE zoned C-1, located at the SOUTHEAST CORNER OF SAGE RD SW AND UNSER BLVD SW (M-10)

Special Exception No: ..... **12ZHE-80011**  
Project No: ..... **Project# 1009103**  
Hearing Date: ..... 10-16-12  
Closing of Public Record: ..... 10-16-12  
Date of Decision: ..... 10-31-12

On October 16, 2012, Fred Arfman, agent for Family Dollar Stores appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 5 parking spaces to the 38 minimum parking space requirement for a proposed Family Dollar Store at the Southeast corner of Sage Rd SW and Unser Blvd SW. Below are the findings of facts.

**FINDINGS:**

1. Fred Arfman, agent for Family Dollar Store requests a variance of 5 parking spaces tot the 38 minimum parking space requirements for a proposed Family Dollar Store at the southeast corner or Sage Rd SW and Unser Blvd SW.
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. Mr. Arfman testified that the property is exceptional in this case due to the property being the first development within the Sage & Unser Marketplace and therefore cannot enter into a cross lot parking agreement with the adjacent commercial users that would normally be available if this retail building were located in an established commercial area. Additionally Mr. Arfman indicated that the property was exceptional because it was not located on a bus route that would allow for a reduction in the parking calculations required on-site. Mr. Arfman made mention to a traffic study within the file that indicated that the Family Dollar store would rarely, if ever, reach capacity in their parking lot (in short, the parking required on site for operations would be in the 'teens' and rarely if ever compromise the parking lot capacity).
4. Mr. Arfman testified that recent public improvements to Unser Blvd. make it practical for the commercial corners along Unser to develop and provide mass transit services to the surrounding neighborhoods. These transit routes if they were in place today, his client would qualify for a 10% reduction in the parking requirements, therefore reducing the parking space requirement from 38 spaces to 34.
5. 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”*

6. Both the application and testimony provided at the hearing demonstrate that as a result of the exceptionality of the lot (current lack of public transportation and easements allowing cross-parking), the City of Albuquerque parking regulations produce an unnecessary hardship on this client.
7. Mr. Arfman testified that as a result of the exceptional aspect of the property, the variance is appropriate to prevent the unnecessary hardship that would result if the variance is not allowed to the require parking spaces.
8. 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.”*
9. Both the application and testimony provided at the hearing demonstrate that the variance to the parking requirements is needed to prevent the unnecessary hardship (the parking regulations contained with the City of Albuquerque Zoning Code).
10. Mr. Arfman testified if the variance is not allowed, Family Dollar Store would be required to either abandon the project or make unwanted modifications to the site model and parking layout which would compromise the viability of the site.
11. Mr. Arfman testified that by granting the variance will not significantly interfere with the enjoyment of other lands in the vicinity.
12. Mr. Arfman testified that the reduced parking request will not interfere with the enjoyment or functionality of the Family Dollar Store.
13. Mr. Arfman testified that the variance would be consistent with the spirit of the Albuquerque Zoning Code, substantial justice and general interest of the public.
14. 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.”*
15. Mr. Arfman testified that financial gain or loss is not the sole determining factor in requesting the variance. The Family Dollar Store is a “for profit” corporation, but that profit motive was not the sole determining factor of the variance application.
16. There was a facilitated meeting between the applicant and the neighborhood. Residences at the meeting oppose the variance. They stated that parking does not meet the City Zoning Code requirement. Also, they stated that the area already has plenty of Family Dollar Store types and they do not want another dollar store in their community. They would like to see higher end stores brought to the area.
17. There is a letter of opposition from Norman Mason, president of the Tower/Stinson Neighborhood Association in the file.
18. Emilio Chavez spoke in opposition to the request testifying that he has spoken to many neighbors who also oppose the Family Dollar in this community.
19. 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.
20. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS: a

VARIANCE of 5 parking spaces to the 38 minimum parking space requirement for a proposed Family Dollar store for all or a portion of Lot(s) A4, UNSER & SAGE MARKETPLACE zoned C-1, located at the SOUTHEAST CORNER OF SAGE RD SW AND UNSER BLVD SW (M-10)

**DECISION:**

**APPROVAL** of a VARIANCE of 5 parking spaces to the 38 minimum parking space requirement for a proposed Family Dollar store for all or a portion of Lot(s) A4, UNSER & SAGE MARKETPLACE zoned C-1, located at the SOUTHEAST CORNER OF SAGE RD SW AND UNSER BLVD SW (M-10)

**If you wish to appeal this decision, you may do so by 5:00 p.m., on November 16, 2012 in the manner described below:**

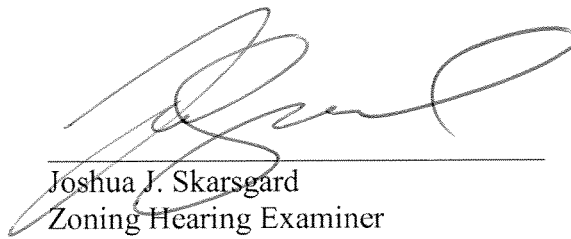
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



---

Joshua J. Skarsgard  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Fred Arfman, 128 Monroe St NE, 87108  
Emilio Chavez, 3670 Tower Rd SW, 87121  
Unser & Sage LLC., 6300 Jefferson St NE, Ste 102, 87109  
Norman Mason, 7427 Via Tranquilo SW, 87121  
Bobbi Young, 7427 Via Tranquilo SW, 87121  
Family Dollar Stores, 736 Cherry Street, Chattanooga, TN 37402