

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

AJAY JARIWALA (PETER BUTTERFIELD, AGENT) request(s) a special exception to Section 14-16-2-19(C): a VARIANCE 32' to the allowed 33' to allow a proposed building in a IP zone for all or a portion of Lot(s) 4B, Block(s) 4B, SUNPORT PARK zoned IP, located on 1300 WOODWARD RD SE (M-15)

Special Exception No:..... **12ZHE-80210**
Project No: **Project# 1009344**
Hearing Date:08-21-12
Closing of Public Record:08-21-12
Date of Decision:09-06-12

On August 21, 2012, Peter Butterfield, agent for Ajay Jariwala appeared before the Interim Hearing Officer, Stanley D. Harada, for a variance of 32' to the allowed 33' to allow a proposed building at 1300 Woodward Rd SE.

SUMMARY:

1. Mr. Butterfield, agent for Ajay Jariwala is seeking a variance of 32' to the allowed 33' to allow a building at 1300 Woodward Rd SE.
2. Mr. Butterfield testified that the request is for the western mean grade and property line.
3. Mr. Butterfield testified that his client meets Zoning regulations on three sides of the property.
4. Mr. Butterfield testified that he is requesting this special exception to develop a new four story building.
5. Mr. Butterfield testified that the new building will conform to the Sunport Master Development Plan, and will be attractive and in harmony with the surrounding area.
6. Mr. Butterfield testified that the parcel is exceptional as compared to other land in the area that is subject to the same regulations by reason of the physical characteristics of the land and the conditions.
7. Mr. Butterfield testified that the property is a narrow lot and has easements that restrict his client's ability to maximize his development options.
8. Mr. Butterfield testified that the narrow, odd shaped lot has a slope of 21 feet parallel from the east of the property line. The significant slope and requirement to measure the height of the building from the mean grade require an additional height variance of 13 feet.
9. Mr. Butterfield testified that due to the exceptional aspects of the property, the regulations produce unnecessary hardship for his client because it creates an exceptional, substantial and unjustified limitation of the property owner's reasonable use of the property, and therefore deprives the owner of a reasonable return on the property.

10. Mr. Butterfield testified the requested variance is appropriate to prevent unnecessary hardship. Mr. Butterfield testified that it differs from development that would be permitted under existing zoning regulations no more than is necessary to overcome unnecessary hardship.
11. Mr. Butterfield testified that the variance request will not cause injury to adjacent properties, the neighborhood or the community. The proposed improvements will be an asset to the community.
12. There is one letter of opposition (DAC Zoning and Land Use Services) in the file.
13. Doug Crandall (DAC), agent for Mr. Aleem Kassam of Hospitality, Inc. (Legacy).
14. Mr. Crandall testified that Mr. Kassam is the President Hospitality Inc. (Legacy).
15. Mr. Crandall testified that the parcel does not meet the test of exceptionality as compared to other lands in the vicinity.
16. Mr. Crandall testified that the IP zone category allows a substantial number of reasonable uses of the property that do not require a variance.
17. Mr. Crandall testified that he feels the requested variance is less than required.
18. Mr. Crandall testified that to the site plan submitted by the applicant would require a parking variance in order to develop the property.
19. Mr. Crandall testified that although the property has an elevation difference, it is not any different from the any of the other parcels in the vicinity.
20. Mr. Crandall testified that both lots directly to the east of his request Lot (4A) and (1A) were also impacted with easements, and had to deal with substantial topographical issues.
21. Mr. Crandall testified that there are 4 other lots in the vicinity that are either narrower or smaller than the applicant's lot.
22. Mr. Crandall also testified that the physical exceptionality of the property should have a direct relationship to the variance requested. A smaller lot does not justify a higher building, and lot differences like almost every other lot in the vicinity is not exceptional.
23. Mr. Crandall testified that he feels that the exceptionality argument is being used to overdevelop the property. The height variance, along with the parking variance to develop a 98 unit motel is required.
24. Mr. Crandall testified that the desire to maximize a mall lot for maximum financial gain is not a valid argument for an exceptional, substantial and unjustified limitation of a property owner's reasonable use of the property.
25. Mr. Crandall testified that his client is not opposed to a three story motel with no more hotel units than available parking spaces.
26. Mr. Crandall testified that he believes if the requested variance is approved, it would provide all of het other property owner's in the vicinity on for overbuilding their own lots.
27. Mr. Butterfield testified in rebuttal that he feels that he has demonstrated the exceptionality test, and urges approval of the request.

FINDINGS: Mr. Butterfield has not met the burden of showing the property being exceptional. There is significant number of uses that are allowed under the IP zone that are similarly sized and graded. The Hearing Examiner finds that the granting of the special exception would result in overbuilding of the property, therefore, finds the subject property is not exceptional..

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on September 21, 2012 in the manner described below:

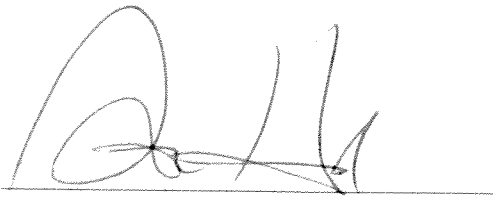
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



Stanley D. Harada, Esq.
Interim Zoning Hearing Examiner

cc: Zoning Enforcement
Peter Butterfield, 13013 Glenwood Hills Ct. NE 87111
Doug Crandall, 9520 MacAllan Rd NE 87109
ZHE File