

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

DAN D. AND ADELIN S. CHAVEZ request(s) a special exception to Page 2 of the amendment of the Downtown 2010 Sector Development Plan: a VARIANCE to the parking lighting requirement of sufficient lighting of safe pedestrian passage and adequate lighting in a parking lot for all or a portion of Lot(s) 87 THRU 94, Block(s) 8, ARMIJO-PERFECTO & BROTHERS ADDN zoned SU-3/GOVERNMENT/FINANCIAL/HOSPITALITY FOCUS, located on 615 MARQUETTE AVE NW (J-14)

Special Exception No:..... **12ZHE-80268**
Project No:..... **Project# 1009416**
Hearing Date:..... 11-19-12
Closing of Public Record:..... 11-19-12
Date of Decision: 12-06-12

On the 19th day of November, 2012 (hereinafter "**Hearing**") Mr. Ron Taylor, Esq. (hereinafter "**Agent**") acting as Agent on behalf of the property owner, Mr. and Mrs. Dan and Adeline Chavez (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a special exception (Variance) to Page 2 of the amendment of the Downtown 2010 Sector Development Plan (hereinafter "**Application**") upon the real property located at 615 Marquette Avenue, NW ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance to Page 2 of the amendment of the Downtown 2010 Sector Development Plan, to the parking lighting requirement of sufficient lighting of safe pedestrian passage and adequate lighting in a parking lot for all or a portion of Lot(s) 87 THRU 94, Block(s) 8, ARMIJO-PERFECTO & BROTHERS ADDN.
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. Agent testified at the Hearing on behalf of the Applicant that the Subject Property is exceptional for the following reasons:
 - a. Exceptionality Reason #1: The parking lots are not used at night.
 - b. Exceptionality Reason #2: The parking lot is the only downtown parking lot that provides economic parking for the City employees.
 - c. Exceptionality Reason #3: The Applicant believes the property is exception because the performed a Lighting survey by Kimbrough Electric, Inc. that indicated that the property complies with the lighting requirements in numerous places within the Subject Property.

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 as a result of the exceptionality (doesn’t utilize parking spaces in the evening, etc.) that the City of Albuquerque Sector Development Plan for the Downtown 2010 Amendment requires owners to have “sufficient lighting for safe pedestrian passage” (Page 2 of the Sector Development Plan) that produces an unnecessary hardship upon the Applicant and the Subject Property because it would result in an expense to the property owner of \$21,799 (per the Kimbrough Electric, Inc. bid submitted to the ZHE dated July 31, 2012) that would not generate additional parking clients, because the parking lot does not accommodate nighttime parking.
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 for the lighting standards, if approved, would be appropriate to prevent the unnecessary hardship and the property owner could maintain their existing parking lot.
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 Agent on behalf of the Applicant at the Hearing both suggest that financial gain/loss was not the *sole* determining factor of the Application, however it certainly was a factor as a result of the expensive bid provided by Kimbrough Electric, Inc. to retrofit the property with lighting. The Applicant reminded the ZHE that there are sections of the property that meet or exceed .5 foot candles at the property line (See study submitted to the ZHE).
10. The application, file and testimony of the Agent on behalf of the Applicant at the Hearing suggest that there is no written neighborhood opposition to the Application. In fact, the ZHE received a statement of “no objection” from Paul Matteuci and Mr. John Duhigg.
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 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 of a VARIANCE to Page 2 of the amendment of the Downtown 2010 Sector Development Plan upon the real property located at 615 Marquette Avenue, NW.

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

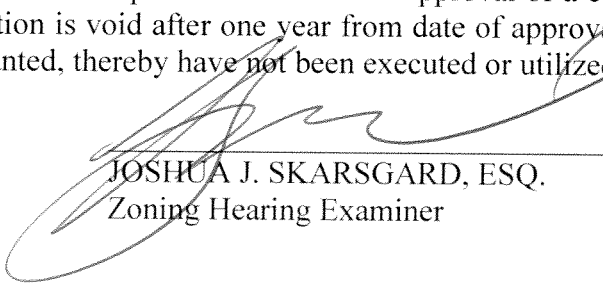
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$50.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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, ESQ.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Daniel Chavez, PO Box 27701, 87125
Ron Taylor, 708 Marquette NW, 87102