

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

KURT BROWNING, TITAN SANTA MONICA LLC., (CONSENSUS PLANNING, INC.) request(s) a special exception to Section 14-16-3-18(C)(1)(d): a VARIANCE of 2' to the required 6' width sidewalk clearance requirement for a new multifamily development for all or a portion of Lot(s) 2, SANTA MONICA PLACE zoned R-2, located on 6401 SANTA MONICA AV NE (D-18)

Special Exception No:..... **12ZHE-80230**
Project No: **Project# 1009376**
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. Jim Strozier (Consensus Planning) (hereinafter “**Agent**”) acting as agent on behalf of the property owner, Titan Santa Monica, LLC a New Mexico limited liability company (Managing Member: Mr. Kurt Browning) (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a of 2' to the required 6' width sidewalk clearance requirement for a new multifamily development (hereinafter “**Application**”) upon the real property located at 6401 SANTA MONICA AV NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 2' to the required 6' width sidewalk clearance requirement for a new multifamily development.
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. Exceptionality Reason #1: The Subject Property is an infill development located within the existing developed portion of the City surrounded by existing sidewalks and streets that are only 5 feet in width.
 - b. Exceptionality Reason #2: The Subject Property was previously developed as a mobile home park and has an unusually flat elevation, which requires innovate drainage design solutions.
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 (flat topography, and surrounded by 5' sidewalks) that the City of Albuquerque Code of Ordinances Section § 14-16-3-18(C)(1)(d) creates a regulation that produces an unnecessary hardship upon the Applicant and the Subject Property. The unnecessary hardship of the Applicant constructing wider sidewalks would damage the viability of the project and its drainage solutions.
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, if approved, would be appropriate to prevent the unnecessary hardship of having to construct wider sidewalks.
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 both the Agent (Mr. Strozier) and the Applicant (Mr. Browning) at the Hearing both suggest that financial gain/loss was not the sole determining factor of the Application.
10. The Agent (Mr. Strozier) and the Applicant (Mr. Browning) made a compelling argument in the justification letter that the Application is supported by Comprehensive Plan Policy C.2.b. (storm water solutions).
11. The application, file and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.
12. Applicant and Agent 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.
13. 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 of 2' to the required 6' width sidewalk clearance requirement for a new multifamily development upon the real property located at 6401 SANTA MONICA AV NE.

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
Kurt Browning, 6300 Riverside Plaza Lane NW, Suite 200, 87120
Consensus Planning, 302 8th Street NW, 87102



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KURT BROWNING, TITAN SANTA MONICA LLC., (CONSENSUS PLANNING, INC.) request(s) a special exception to Section 14-16-3-1(H)(1): a VARIANCE of 2' to the required 6' width unobstructed pedestrian walkways within a site for a multi-family development for all or a portion of Lot(s) 2, SANTA MONICA PLACE zoned R-2, located on 6401 SANTA MONICA AV NE (D-18)

Special Exception No:..... **12ZHE-80231**
Project No: **Project# 1009376**
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. Jim Strozier (Consensus Planning) (hereinafter “**Agent**”) acting as agent on behalf of the property owner, Titan Santa Monica, LLC a New Mexico limited liability company (Managing Member: Mr. Kurt Browning) (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 2' to the required 6' width unobstructed pedestrian walkways within a site for a multi-family development (hereinafter “**Application**”) upon the real property located at 6401 SANTA MONICA AV NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 2' to the required 6' width unobstructed pedestrian walkways within a site for a multi-family development.
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 and Agent testified at the Hearing that the Subject Property is exceptional for the following reasons:
 - a. Exceptionality Reason #1: The Subject Property is an infill development located within the existing developed portion of the City surrounded by existing sidewalks and streets that are only 5 feet in width.
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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 (flat topography, and surrounded by 5' sidewalks) that the City of Albuquerque Code of Ordinances Section § 14-16-3-18(C)(1)(d) creates a regulation that produces an unnecessary hardship upon the Applicant and the Subject Property. The unnecessary hardship of the Applicant constructing wider sidewalks would damage the viability of the project and its drainage solutions.
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13. 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 of 2' to the required 6' width unobstructed pedestrian walkways within a site for a multi-family development upon the real property located at 6401 SANTA MONICA AV NE.

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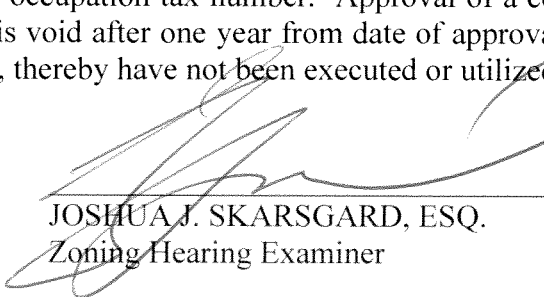
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Please note that pursuant to Section 14.16.4.4.(B)., of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

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