

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF AMENDED DECISION

AJAY JARIWALA (WILLIAM KRAEMER, AGENT) request(s) a special exception to Section 14-16-3-1(A)(20): a VARIANCE of 21 parking spaces from the required 98 spaces 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-80254**
Project No: **Project# 1009396**
Hearing Date: 11-19-12
Closing of Public Record: 11-19-12
Date of Amended Decision: 12-06-12

On the 19th day of November, 2012 (hereinafter "**Hearing**") Mr. William Kraemer (hereinafter "**Agent**") acting as agent on behalf of the property owner, Mr. Ajay Jariwala (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner, Stanley D. Harada (hereinafter "**ZHE**") requesting a Variance of 21 parking spaces from the required 98 spaces for all or a portion of Lot(s) 4B (hereinafter "**Application**") upon the real property located at 1300 Woodward Rd SE (M-15) ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant/Agent is requesting a Variance of 21 parking spaces from the required 98 spaces.
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/Agent testified at the Hearing that the Subject Property is exceptional for the following reasons:
 - a. The subject property is narrow as opposed to other properties in the adjacent areas;
 - b. The City of Albuquerque has taken an area 52 feet wide as a street maintenance easement at the extreme southern end of the property;
 - c. This easement ends under Sunport Blvd and does not lead to any other street or property;
 - d. The property has a pronounced slope to the western end of the 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. Agent testified at the Hearing that as a result of the exceptionality (the removal of approximately 17% of the property by governmental action for the maintenance area) that the City of Albuquerque Code of Ordinances Section § 14-16-3-1(20) creates a reduction of the property available for parking requirements 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/Agent testified at the Hearing that the variance Application of a reduction of 21 required parking spaces, if approved, would be appropriate to prevent the unnecessary hardship. In addition, approval of the variance, would allow applicant to erect a building in conformance with the Sunport Master Development Plan.
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/Agent at the Hearing both suggest that financial gain/loss was not the sole determining factor of the Application.
10. The Application, File and testimony of the Applicant/Agent at the Hearing suggest that there is no neighborhood opposition. There is a written opposition in the file from a competing, neighboring hotel (Marquis Hospitality) to the Application.
11. Applicant/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.
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: a Variance of 21 parking spaces from the required 98 spaces.

DECISION:

APPROVAL of a VARIANCE of 21 parking spaces from the required 98 spaces.

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**

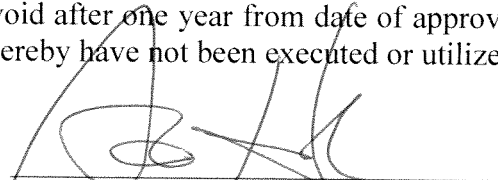
letter of notification when filing an appeal. When an application is withdrawn, the fee shall not be refunded.

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.



Stanley D. Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
William Kraemer, bilbyomon@hotmail.com
Peter Butterfield, 13013 Glenwood Hills Ct NE, 87111
Ajay Jariwala, 2231 Yale Blvd SE, 87102
Matt Myers, 1401 Central Ave NW, 87104
David Silva, 1500 Sunport Place SE, 87106