



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

JAMES M. SANTISTEVAN (CARL A GARCIA, AGENT requests a special exception to Section 14-16-3-10(E)(8)(a) : a VARIANCE of 10 feet to the required 10 foot rear landscape buffer for all or a portion of Lot 8-12, Block 12, Bel Air Addition zoned C-2, located on 4913 MENAUL BLVD NE (H-17)

Special Exception No:..... **17ZHE-80222**
Project No: **Project# 1011377**
Hearing Date: 10-17-17
Closing of Public Record: 10-17-17
Date of Decision: 11-01-17

On the 17th day of October, 2017, CARL A GARCIA (“Agent”) acting as agent on behalf of the property owner JAMES M. SANTISTEVAN (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 feet to the required 10 foot rear landscape buffer (“Application”) upon the real property located at 4913 MENAUL BLVD NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 feet to the required 10 foot rear landscape buffer.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;*
 - (c) *Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
 - (d) *Substantial justice is done.*”
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).

5. Specifically, the ZHE finds that the existing legal nonconforming property has no landscaping and Applicant proposed to add landscaping, although Applicant cannot add enough landscaping to bring the property into full compliance.
6. Due to angle parking the landscaping that will be provided will be up to 6 feet deep at regular distances.
7. The Applicant will provide 12 new trees on Menaul Blvd, 10 new trees along Manzano and Quincy Streets and 30+ shrubs on site. Applicant is bound to develop the Subject Property in accordance with Applicant's submittal.
8. A block wall buffering the adjacent residential properties will be installed.
9. The proposed work will result in a better appearing property.
10. The ZHE recognizes the prevalence of nonexistent or substandard landscaping barriers on the surrounding streetscape.
11. The support of surrounding residents and property owners further indicates the lack of injury.
12. The ZHE finds that there are special circumstances applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-4-2(C)(2)(b).
13. Specifically, the ZHE finds that the Subject Property encompasses a full city block, with an additional alley, and contains existing improvements that were placed before the landscaping requirements were adopted.
14. The Subject Property is currently nonconforming and the proposed improvements will render it more conforming.
15. The ZHE finds that such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by Section 14-16-4-2(C)(2)(c).
16. Applicant seeks to add to the Subject Property to make it ADA compliant, denial of which would be an unjustified limitation to both Applicant and Applicant's customers.
17. If the full landscaping is required it will prevent Applicant from accessing the garage doors on the structure, created another unjustified limitation.
18. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
19. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
20. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 10 feet to the required 10 foot rear landscape buffer.

If you wish to appeal this decision, you must do so by November 16th, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

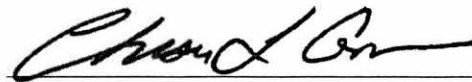
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
James M. Santistevan, 4913 Manual Blvd NE, 87110
Carl Garcia, 6062 Staubach Ave NW, 87120
carlgar01@gmail.com