



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

TENNIS CLUB OF ALBUQUERQUE (JIM STROZIER, AICP, AGENT) requests a special exception to Section 14-16-3-9(F) : a VARIANCE of 9 ft to the max 16 ft high light pole allowed within 100 ft within a residential zone for all or a portion of Lot 15-20, Block 5, Netherwood Park zoned R-3, located on 2901 INDIAN SCHOOL RD NE (H-16)

Special Exception No:..... **17ZHE-80172**  
Project No: ..... **Project# 1011316**  
Hearing Date: ..... 09-19-17  
Closing of Public Record: ..... 09-19-17  
Date of Decision: ..... 10-04-17

On the 19th day of September, 2017, JIM STROZIER ("Agent") acting as agent on behalf of the property owner TENNIS CLUB OF ALBUQUERQUE ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 9 ft to the max 16 ft high light pole allowed within 100 ft of a residential zone ("Application") upon the real property located at 2901 INDIAN SCHOOL RD NE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 9 ft. to the max 16 ft. high light pole allowed within 100 ft of a residential zone.
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. A neighbor of the Applicant expressed concern about light spillover to her property.

5. Applicant addressed those concerns with the neighbor, and explained that the proposed lighting technology is designed to have better cut off and thus less light spillover to surrounding properties, as well as to have time of day limits.
6. The existing lighting predates the zoning code and is of older technology that permits significant light spillover and complies with night sky protections.
7. The Applicant also committed to working with the neighborhood to ensure that any adjustments that are necessary are made.
8. In that light, the proposed replacements, although taller, appear to be a reasonable tradeoff and are likely to reduce overall light impacts to surrounding properties and the neighborhood.
9. In addition, the Applicant went door to door in the affected neighborhood to ensure that there were no other concerns about injurious impacts.
10. The tennis club with lighted courts has been in existence since 1956 with no apparent injury.
11. This approval will be conditioned on a one-year review to ensure that the light impacts are not injurious.
12. The ZHE therefore 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).
13. 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).
14. Specifically, the ZHE finds that the existing use pre-dates the current R-3 zoning, having been in operation since 1956. The Subject Property also has a substantial grade change with respect to adjacent properties, thus lowering the apparent height of the proposed lights to roughly their otherwise allowable height.
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. Tennis court lighting standards require lights higher than the permissible height to ensure adequate lighting for play and safety. Enforcing lower heights would be an unjustified limitation.
17. 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).
18. 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).
19. 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 WITH CONDITIONS of a variance of 9 ft to the max 16 ft high light pole allowed within 100 ft within a residential zone.

### CONDITIONS OF APPROVAL:

1. Extra shielding shall be provided along the east side of the Court 1 light fixtures.
2. The fixtures on the east side of Court 1 shall have back light control to control off premise light trespass.
3. The lights shall be timer controlled to ensure they are not operated after 10PM.
4. This approval will expire after one year. Applicant is responsible for re-applying in advance of the expiration of this one year period. If no evidence of injury is presented at the hearing on re-approval then permanent approval will be considered.

If you wish to appeal this decision, you must do so by October 19, 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  
[nmtaprograms@gmail.com](mailto:nmtaprograms@gmail.com)  
[cp@consensusplanning.com](mailto:cp@consensusplanning.com)  
[cmaguiresdesign@gmail.com](mailto:cmaguiresdesign@gmail.com)  
[bobby@thebullcompany.com](mailto:bobby@thebullcompany.com)  
[crenfro@unm.edu](mailto:crenfro@unm.edu)  
[lbrig@comcast.net](mailto:lbrig@comcast.net)