



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

CANNADY SELF STORAGE SOLUTIONS LLC (CANNADY ARCHITECT STUDIO, AGENT) requests a special exception to Section 14-16-3-9(A)(3)(a): a VARIANCE of 5ft to the allowable 3ft wall height within 5ft of a public right of way for all or a portion of Lot B1, MARIPOSA SQUARE zoned C-1, located on 99999 LADERA DR NW (H-10)

Special Exception No:**18ZHE-80007**
Project No:**Project# 1011495**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, CANNADY ARCHITECT STUDIO (“Agent”) acting as agent on behalf of the property owner CANNADY SELF STORAGE SOLUTIONS LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5ft to the allowable 3ft wall height within 5ft of a public right of way (“Application”) upon the real property located at 99999 (UNASSIGNED ADDRESS) LADERA DR NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5ft to the allowable 3ft wall height within 5ft of a public right of way.
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. Applicant asserts that with one exception the abutting and nearby properties are all residential, featuring property-line walls of various heights. The proposed fence location will be in line with the existing fences or walls.
6. No objections were received as to the substance of the variance. Objections were received as to the process and the material proposed for the fence.
7. The process objections were primarily with respect to noticing and cooperation by the Applicant.
8. Whatever deficiencies in noticing, it is clear that the SRMNA (S.R. Marmon Neighborhood Association) representatives and others were able to attend and participate in both the EPC hearing and the ZHE hearing processes. *Hawthorne v. City of Santa Fe*, 88 N.M. 123 (actual notice of zoning hearing constitutes substantial compliance).
9. Interested parties state that Applicant was unwilling to discuss the fence application with them, and at hearing Applicant was reluctant to engage in a facilitated meeting process.
10. The ZHE finds the lack of cooperation disappointing and as a matter of policy and comity, all applicants should be prepared to meet with and engage in meaningful discussion with concerned parties, particularly representative organizations. That said, such cooperation is not an element of the required variance analysis and it would be improper to deny the Application on that basis, although the ZHE does implore the Applicant and Agent to endeavor to work with communities in which they proposed development in the future.
11. A question was also raised as to whether the Applicant is requesting a height variance or a setback variance. The requested variance, “of 5ft to the allowable 3ft wall height within 5ft of a public right of way” is an area variance that could fairly be categorized as either a setback variance or a height variance. The analysis is the same, and the effect of approval is the same.
12. Objection was raised to the material Applicant proposes, (panelized welded wire “Design Master” fencing).
13. The fence is intended to be attractive and provide transparency.
14. The ZHE finds that the fence meets both of these goals. It provides equal transparency to a chain link fence while being substantially more attractive, and it provides more transparency than a wrought iron or similar fence of similar security would (security being a primary reason for the transparent design).
15. The ZHE recognizes that the fence is of a different material and design than the surrounding, primarily raw or stuccoed CMU walls/fences.
16. The variance criteria do not include a design similarity requirement, however. Moreover, the Subject Property, zoned SU-1/C-2, can be expected to have different design elements than the nearby residentially zoned properties.
17. The fence design also meets the requirements of the City of Albuquerque Traffic Engineering Division that “[t]he proposed fence shall be constructed of see-thru material as proposed in the application” which would not be true of a CMU wall.
18. The proposed fence will not block or interfere with views or light or be reflective, and will not present security or safety concerns.

19. Finally, it is important to note that the variance request is only for the location of the fence, and denial of the request would not result in a different material, it would just result in a different location (not in line with the abutting walls).
20. 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).
21. The Subject Property is irregularly shaped, and constitutes a commercially zoned 'peninsula' (surrounded on three sides by residential zones).
22. The shape and zoning classification (with its attendant security, vehicle circulation and site plan requirements), which are not generally applicable to other property in the zone and vicinity, meet the criteria that the Subject Property exhibit special circumstances.
23. 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).
24. The Subject Property's irregular shape presents a hardship in accommodating typically rectilinear storage units, which are an allowed and reasonable use for the zone, and the reduced setbacks would help address that hardship.
25. A secure fence, taller than the permissive 3 feet, is a necessary component of the proposed storage use – and would be a necessary component of many other commercial uses as well.
26. The security, vehicle circulation and site plan requirements of the commercial use, in combination, present a hardship that can be addressed by the variance.
27. The ZHE notes that one possible exception to the hardship is with respect to the portion of the proposed fence on Ladera Drive NW that encloses a landscaped area. The fence could be located on the interior of the landscaped area, resulting in a variance only required for approximately 20 feet on the north end of the western property line. However, the ZHE recognizes that given the security concerns expressed, such a change would likely result in significantly sparser, lower landscaping by design. This would reduce the beneficial screening effect of the shown landscaping. On balance (balancing avoiding injury against avoiding hardship), granting the variance as requested seems preferable.
28. 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).
29. 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).
30. 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 5ft to the allowable 3ft wall height within 5ft of a public right of way.

CONDITIONS OF APPROVAL:

1. The proposed fence shall be constructed of see-thru material as proposed in the application.
2. Any post taller than 3ft. shall not be larger than 8” in width within the mini clear sight triangle or intersection.
3. There shall not be a solid wall higher than 3 ft. constructed in the mini clear sight triangle or intersection sight triangle as shown below.

If you wish to appeal this decision, you must do so by March 22, 2018, 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.



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cc: Zoning Enforcement
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