



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

STEVE NUANEZ requests a special exception to Section 14-16-2-23(A) and pg 85 LOS DURANES SDP and 14-16-3-19(A)(1)(c) : a VARIANCE to allow an existing 6 ft fence within 10 ft of the right away line in the side yard of a corner lot for all or a portion of Lot B, Romero-Josh zoned SU-2 LD RA-2, located on 2807 CAMILO LA NW (H-12)

Special Exception No:..... **15ZHE-80245**
Project No:..... **Project# 1010601**
Hearing Date:..... 12-15-15
Closing of Public Record:..... 12-15-15
Date of Decision: 12-30-15

On the 15th day of December, 2015 (hereinafter “**Hearing**”) STEVE NUANEZ (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance to allow an existing 6 ft fence within 10 ft of the right away line in the side yard of a corner lot (hereinafter “**Application**”) upon the real property located at 2807 CAMILO LA NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

Applicant stated that he intended to relocate the existing side yard fence so that it does not violate the ten-foot setback, in effect withdrawing the variance request.

DECISION:

The ZHE therefore takes NO ACTION on this application.

If you wish to appeal this decision, you may do so in the manner described below:

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 **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.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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NOTIFICATION OF DECISION

STEVE NUANEZ requests a special exception to Section 14-16-2-23(A) and pg 85 LOS DURANES SDP and 14-16-3-19(A)(2)(a) : a VARIANCE request of 3 ft to the maximum 3 ft height allowed in the front yard setback area for an existing 6 ft fence for all or a portion of Lot B, Romero-Josh zoned SU-2 LD RA-2, located on 2807 CAMILO LA NW (H-12)

Special Exception No:..... **15ZHE-80246**
Project No:..... **Project# 1010601**
Hearing Date:..... 12-15-15
Closing of Public Record:..... 12-15-15
Date of Decision: 12-30-15

On the 15th day of December, 2015 (hereinafter “**Hearing**”) STEVE NUANEZ (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 3 feet to the maximum 3 feet height allowed in the front yard setback area for an existing 6 feet fence (hereinafter “**Application**”) upon the real property located at 2807 CAMILO LA NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 3 feet to the maximum 3 feet height allowed in the front yard setback area for an existing 6 feet fence.
2. Fence height in the front setback may not exceed three (3) feet, pursuant to City of Albuquerque Zoning Code Section 14-16-3-19(A)(2)(a).
3. The front setback is ten feet, pursuant to the 2012 Los Duranes Sector Development Plan (LSDSP).
4. Looked at another way, the requested variance can be seen as a variance of ten feet to the minimum ten-foot setback for fences over three feet in height.
5. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “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.

6. The Applicant states that because the Subject Property is a corner lot, with a unique home placement and alignment on the lot, the City of Albuquerque's determination that the front is on Camilo Lane NW and the side is on Los Luceros Road NW does not reflect the apparent or actual alignment of the Subject Property.
7. The Applicant explains that the rear (North) and left side (West) yards of the house are very limited due to the shape of the lot (an irregular pentagon) which reduces the size of the rear and side yards, and the existence of a regularly-trafficked easement in the rear yard.
8. The Applicant further explains that the bulk of the usable area on the Subject Property is in the front yard, on the South side.
9. Applicant wishes to use the property for gardening and outdoor leisure use.
10. The front yard is highly exposed to the streets (again, this is a corner lot), providing little privacy and raising security concerns to Applicant.
11. There was some discussion as to whether a full-height opaque fence does in fact enhance security, but for the purposes of this Hearing the ZHE simply notes that any security benefit to a six-foot fence at the property line is shared by a six-foot fence at the setback line.
12. Applicant states that a three-foot high fence, or a three-foot high fence/wall topped with non-opaque material (as proposed by several neighbors) would not provide the same privacy and security protections.
13. Applicant is also concerned with errant traffic coming on the Subject Property from the abutting intersection.
14. Several concerned area residents also testified. The objections primarily centered on a desire to honor and protect the recently-adopted sector plan that specifically imposes the ten-foot setback.
15. Speakers did not oppose the legally-permitted three foot-fence, or even a three-foot fence/wall topped with non-opaque materials.
16. Concerns were also expressed regarding the appearance of the fence and a desire for plantings to screen it. Here, the ZHE notes that the same concerns apply whether the fence is located within the setback or at the setback line.
17. The first portion of the necessary analysis is a required finding that the Applicant has met his burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property.
18. The ZHE is satisfied, after reviewing all evidence in the record, including statements of support for the application, and hearing all public testimony that the proposed fence would not be injurious to the community or the nearby properties and improvements.
19. The question remains as to whether the fence will be contrary to the public interest.
20. The LDSDP was adopted to "further... the health, safety, morals and general welfare of the city" and the purposes of the zone change associated with that plan include "maintain open space as a visual amenity." LDSDP, Enactment No. R-2012-033 at Section 1.L.A.

21. Similarly, “The revised standards in the Los Duranes SU-2 zone are intended to ensure that new development respects the scale and mass of the existing built environment and to encourage the preservation of visual and functional open space.” LDSDP at 84.
22. The ZHE finds that the adopted setbacks further goal of maintaining open space as a visual amenity.
23. The intent of the LDSDP zoning regulations are further to “preserve the historic scale and pattern of the neighborhood by requiring new development to follow revised standards for setbacks, frontages, building heights and lot coverage.” LDSDP at 79.
24. The recent significant planning process of the Los Duranes neighborhood and associated sector development plan must be viewed as an expression of the public interest.
25. The recentness of the LDSDP adoption, coupled with the intentionality of the setbacks as related to the purposes and intent of the plan, indicate that the public interest favors compliance with the setbacks.
26. Therefore, the ZHE cannot find that granting a variance to the setback is not contrary to the public interest.
27. The ZHE does not make a finding on the remaining variance criteria as a finding that the variance would not be injurious to the public interest is a necessity to granting the variance.
28. Applicant 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 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has not met his burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

DENIAL of a **VARIANCE** of 3 ft to the maximum 3 ft height allowed in the front yard setback area for an existing 6 ft fence.

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