



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

HENRY CHAN requests a special exception to Section 14-16-3-19(A)(2)(a) : a VARIANCE of 3 ft to the maximum 3 ft height allowed in the front yard setback for an existing fence for all or a portion of Lot 8C2, Block 41, Broad Acres zoned R-2, located on 3101 PENNSYLVANIA ST NE (G-19)

Special Exception No:..... **15ZHE-80281**
Project No:..... **Project# 1010658**
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**”) HENRY CHAN (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 3 ft to the maximum 3 ft height allowed in the front yard setback for an existing fence (hereinafter “**Application**”) upon the real property located at 3101 PENNSYLVANIA ST NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 3 ft to the maximum 3 ft height allowed in the front yard setback for an existing fence.
2. 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.”
3. The ZHE finds that the Applicant has not 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 as required pursuant to Section § 14-16-4-2 (C) (2) (a).

4. The design of the fence appears to be non-opaque when viewed head on, as it is made of thin vertical metal stiles or pickets with substantial space in between.
5. The fence in question is existing, however, which has allowed its potential to interfere with views to be tested.
6. The design of the fence is such that when viewed from an oblique angle it substantially interferes with the ability of a motorist, pedestrian or bicyclist to see through it.
7. The fence is located at the corner of Pennsylvania Street NE and Veranda Road NE. Pennsylvania Street NE, immediately across from Sandia High School, is a heavily trafficked road.
8. There is no traffic light at the corner of Veranda and Pennsylvania. Therefore, it is essential that individuals attempting to exit Veranda in either direction be able to fully see any oncoming traffic on Pennsylvania.
9. The evidence, both the testimony of a number of road users and photographs from several angles, substantially support the position that the fence interferes with the ability of users of Veranda to see oncoming traffic from the North on Pennsylvania when they are stopped at the limit line (the line adjacent to the stop sign) on Veranda.
10. Concerns were also expressed regarding emergency egress from the premises due to being surrounded by a fence, although it is not clear that relocating the fence to the setback line would address that concern.
11. Applicant did not indicate a willingness to relocate the corner portion of the fence to provide a clear sight triangle, and it is not clear that an eleven-foot clear sight triangle would fully address the safety concern.
12. The fence as constructed is contrary to the public interest and injurious to the community.
13. The ZHE does not make any finding on the remaining variance elements because the finding that Applicant has not met his burden of proving that the fence is not injurious or contrary to the public interest means that the application cannot be approved.
14. 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 for an existing fence.

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

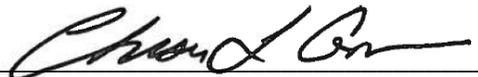
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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