



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

MARSHALL SEBAY (DANIEL BERRY, AGENT) requests a special exception to Section PG 32 VOLCANO TRAILS SDP and 14-16-2-14(E)(1) and 14-16-2-6(B)(12): a CONDITIONAL USE to allow for a proposed shade structure in the rear yard setback for all or a portion of Lot 47- P1, TIERRA VISTA @ THE TRAILS UNIT 1 zoned SU-2 VTRD, located on 7020 TEMPE AVE NW, ALBUQUERQUE NM 87114 (C-9)

Special Exception No:..... **15ZHE-80135**
Project No:..... **Project# 1010448**
Hearing Date:..... 06-16-15
Closing of Public Record:..... 06-16-15
Date of Decision: 06-29-15

On the 16th day of June, 2015 (hereinafter “**Hearing**”) DANIEL BERRY (hereinafter “**Agent**”) acting as agent on behalf of the property owner MARSHALL SEBAY (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow for a proposed shade structure in the rear yard setback (hereinafter “**Application**”) upon the real property located at 7020 TEMPE AVE NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow for a proposed shade structure in the rear yard setback.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) “SPECIAL EXCEPTIONS” reads in part: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*”
3. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the Application meets the five pronged test identified in Section 14-16-2-6 (B) (12) and it was approved by the “Trails Community Association” pursuant to a letter from Nigel Burgess, Community Manager, dated March 30 2015 which states in part: “*the committee has reviewed and APPROVED your request as follows: Your request to add a balcony (and shade structure) has been approved with the following conditions: 1) obtain a building permit 2) proposed improvements must meet minimum building code requirements 3) upper deck rail height must be minimum height of railing for fall protection 4) Applicant is required to meet city zoning requirements for setbacks 5) proposed improvements shall be finished with wall board and stucco to match existing house 6) vertical columns shall be 1’ x 1’ minimum with stucco finish also to match the existing house.*” (See ZHE File for a copy of letter). The ZHE notes that the Applicant meets all of the six criteria except

for criteria # 5. Specifically, the Applicant is requesting a variance of 6' and 6" from the 15' rear yard setback to construct the sun shade and balcony. The Applicant is encouraged to disclose this 6' 6" variance application to the Neighborhood Association board.

4. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*"
5. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities.
6. 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 SPECIAL EXCEPTIONS.
7. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a CONDITIONAL USE to allow for a proposed shade structure in the rear yard setback.

CONDITIONS OF APPROVAL:

- A. The Applicant shall adhere to the five pronged requirements promulgated in City of Albuquerque Zoning Code Section 14-16-2-6 (B) (12).
- B. The upper deck rail height must be minimum height of railing for fall protection
- C. The proposed improvements shall be finished with wall board and stucco to match existing house
- D. The vertical columns shall be 1' x 1' minimum with stucco finish also to match the existing house."

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

MARSHALL SEBAY (DANIEL BERRY, AGENT) requests a special exception to Section PG. 32 VOLCANO TRAILS SDP and 14-16-2-14(B) and 14-16-2-9(E)(4) : a VARIANCE request of 6' 6" to the required 15' rear setback area to allow a proposed addition for all or a portion of Lot 47-P1, TIERRA VISTA @ THE TRAILS UNIT 1 zoned SU-2 VTRD, located on 7020 TEMPE AV NW (C-9)

Special Exception No:..... **15ZHE-80136**
Project No:..... **Project# 1010449**
Hearing Date:..... 06-16-15
Closing of Public Record:..... 06-16-15
Date of Decision: 06-29-15

On the 16th day of June, 2015 (hereinafter "**Hearing**") DANIEL BERRY (hereinafter "**Agent**") acting as agent on behalf of the property owner MARSHALL SEBAY (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 6' 6" to the required 15' rear setback area to allow a proposed addition (hereinafter "**Application**") upon the real property located at 7020 TEMPE AV NW ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 6' 6" to the required 15' rear setback area to allow a proposed addition.
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.
8. The ZHE finds that the Applicant has met its 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.

Specifically, the Applicant provided testimony that the Application was approved by the “Trails Community Association” pursuant to a letter from Nigel Burgess, Community Manager, dated March 30 2015 which states in part: “*the committee has reviewed and APPROVED your request as follows: Your request to add a balcony (and shade structure) has been approved with the following conditions: 1) obtain a building permit 2) proposed improvements must meet minimum building code requirements 3) upper deck rail height must be minimum height of railing for fall protection 4) Applicant is required to meet city zoning requirements for setbacks 5) proposed improvements shall be finished with wall board and stucco to match existing house 6) vertical columns shall be 1’ x 1’ minimum with stucco finish also to match the existing house.*” (See ZHE File for a copy of letter). The ZHE notes that the Applicant meets all of the six criteria except for criteria # 5. Specifically, the Applicant is requesting a variance of 6’ and 6” from the 15’ rear yard setback to construct the sun shade and balcony. The Applicant is encouraged to disclose this 6’ 6” variance application to the Neighborhood Association board. The approval from the neighborhood association and the professional design of the shade structure and balcony appears to the ZHE to not be injurious to the community [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application (See Trails Community Assoc. Inc. letter).

3. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the home is located on a small lot and there is a public street located behind the home which is not common in this surrounding community [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
4. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if required to comply with the Zoning Code (and forced to not construct a balcony) that it would limit the size and room available to the Applicant which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
6. 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 met their 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:

APPROVAL WITH CONDITIONS of a VARIANCE of 6' 6" to the required 15' rear setback area to allow a proposed addition.

CONDITIONS OF APPROVAL:

- E. The Applicant shall adhere to the five pronged requirements promulgated in City of Albuquerque Zoning Code Section 14-16-2-6 (B) (12).
- F. The upper deck rail height must be minimum height of railing for fall protection
- G. The proposed improvements shall be finished with wall board and stucco to match existing house
- H. The vertical columns shall be 1' x 1' minimum with stucco finish also to match the existing house.”

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

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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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Zoning Hearing Examiner

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