



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

DANIEL DOMME 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 for an existing fence in the front yard setback for all or a portion of Lot 7, Block 23, Stardust Skies Unit 9 zoned R-1, located on 3113 TEXAS ST NE (G-19)

Special Exception No:..... **16ZHE-80054**  
Project No:..... **Project# 1010754**  
Hearing Date:..... 06-21-16  
Closing of Public Record:..... 06-21-16  
Date of Decision: ..... 07-06-16

On the 21st day of June, 2016, DANIEL DOMME (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the maximum 3 ft height allowed for an existing fence in the front yard setback (“Application”) upon the real property located at 3113 TEXAS ST NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the maximum 3 ft height allowed for an existing fence in the front yard setback.
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. Specifically, the proposed fence is harmonious with the subject property. The fence does not interfere with the views, light or access of other residents or detrimentally impact neighborhood character or security. The ZHE finds that there will be no significant increase in intensity of use, noise or traffic due to erection of the fence, which has been in place since 2008.
6. The immediate neighbor has raised concerns related to interference with views of oncoming pedestrian traffic on the sidewalk. While the concerns are relevant and worthy of consideration, the traffic engineer's report requiring reduction of height of the fence within the 11.0 foot mini clear sight triangle appears to address those concerns. A review of the City's sight triangle standards (*See Clear Sight Triangle Evaluations by Department of Municipal Development, Traffic Engineering dated November 13, 2008*) shows that the mini clear sight triangle is measured from the interior of the sidewalk, not from the street, and that the evaluation considerations include "Does the proposed wall/structure impact the person's ability to see oncoming pedestrians and vehicular traffic?"
7. The traffic engineer conducted a site visit and based on the site visit made a recommendation to lower the fence back four feet.
8. The applicant has complied with the traffic engineer's recommendation.
9. The ZHE relies on the expertise of the traffic engineer and the traffic engineer's field review of the fence as built.
10. 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).
11. Specifically, the ZHE finds that The Subject Property is particularly and uniquely impacted by the ongoing and excessive number of inoperable/junk vehicles (currently, seven unregistered vehicles) and trash/recycling and other items stored in the front yard of the neighboring property. The physical siting of the Subject Property on a curved street exacerbates this impact.
12. 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).
13. Specifically, the ZHE finds that Applicant has no control over the circumstances described above, which affect both the Applicant's reasonable aesthetic enjoyment and property values.
14. 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).
15. 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).
16. 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 3 ft to the maximum 3 ft height allowed for an existing fence in the front yard setback.

### CONDITIONS OF APPROVAL

The fence shall be maintained in compliance with the recommendations of the traffic engineer for this Application.

If you wish to appeal this decision, you must do so by July 21, 2016, 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  
ddomme2nd@gmail.com  
garychiuminatto@gmail.com