



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

G & L INVESTMENT CO, INC. (CADENCE DEVELOPMENT, AGENT) requests a special exception to Section 14-16-3-10(E)(4)(a): a VARIANCE of 10' to the 10' landscape buffer where located on the residential/non-residential boundary for a proposed new lot for all or a portion of Lot 8, 9, and 10, Block 2, Bel-Air zoned C-1, located on 2803, 2807, AND 2813 SAN MATEO BLVD NE (H-17)

Special Exception No:..... **15ZHE-80124**  
Project No:..... **Project# 1010432**  
Hearing Date:..... 05-19-2015  
Closing of Public Record:..... 05-19-2015  
Date of Decision: ..... 05-29-2015

On the 19th day of May, 2015 (hereinafter “**Hearing**”) Cadence Development (in conjunction with Mr. Jonathan Turner) (hereinafter “**Agent**”) acting as agent on behalf of the property owner G & L INVESTMENT CO (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 10' to the 10' landscape buffer where located on the residential/non-residential boundary for a proposed new lot (hereinafter “**Application**”) upon the real property located at 2803, 2807, AND 2813 SAN MATEO BLVD NE (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 10' to the 10' landscape buffer where located on the residential/non-residential boundary for a proposed new lot.
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 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 proposed automotive parts retail store will convert a previously vacant dirt lot into an aesthetically pleasing retail store in this “urban infill” location [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. In fact, the Agent indicated that the neighbor located to the north has “no opposition” to the Application. The ZHE notes that there is further evidence that this Application will not be injurious to the community, namely, that the lot will contain 28% of the net lot area as landscaped material (when only 15% is required pursuant to the City of Albuquerque Code of Ordinances).

4. 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 there are two special circumstances applicable to the Subject Property: (a) the site is located in between two public roads and an alley; and (b) there is a 5’ grade change in 125 feet of as the property slopes east to west [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. Specifically, the ZHE agrees with the Applicant that being sandwiched between two roads and a public alley makes it very difficult to comply with the landscaping and parking regulations in the code (on a narrow lot). Those constitute special circumstances that are not experienced by the neighboring commercial lots.
5. 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 forced to comply with the landscaping and parking regulations the retail store would not be able to safely circulate vehicular traffic and the delivery trucks to the store 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)]
6. 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)].
7. The ZHE disclosed that he is a member of an LLC that is constructing a similar retail store on 4<sup>th</sup> Street in Albuquerque, NM but made a representation to the Applicant that no conflict existed and that the decision would be rendered in an impartial manner. The ZHE did not have any ex parte communication with the Applicant regarding this Application.
8. 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 10' to the 10' landscape buffer where located on the residential/non-residential boundary for a proposed new lot.

### **CONDITIONS OF APPROVAL:**

- A. The Applicant shall ensure that the Subject Property exceeds 15% of the net lot area in landscaping (as represented by the Agent during the Hearing).
- B. The Applicant shall construct a 6 foot CMU block wall (and stucco the wall) to provide a buffer between the adjacent property owners (the wall shall not be located along the public right of way).

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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Joshua I. Skarsgard, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Jonathan Turner - 600 1<sup>st</sup> St NW, Suite 211, 87102  
Kay Stallworthy – 8450 E Orchard Rd, Greenwood Village, CO 80111



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

G & L INVESTMENT CO, INC. (CADENCE DEVELOPMENT, AGENT) requests a special exception to Section 14-16-3-10(E)(3)(c): a VARIANCE request of 6' to the 6' required rear landscape buffer for a proposed new lot for all or a portion of Lot 8, 9, and 10, Block 2, Bel-Air zoned C-1, located on 2803, 2807, AND 2813 SAN MATEO BLVD NE (H-17)

Special Exception No:..... **15ZHE-80126**  
Project No:..... **Project# 1010432**  
Hearing Date:..... 05-19-2015  
Closing of Public Record:..... 05-19-2015  
Date of Decision: ..... 05-29-2015

On the 19th day of May, 2015 (hereinafter “Hearing”) Cadence Development (in conjunction with Mr. Jonathan Turner) (hereinafter “**Agent**”) acting as agent on behalf of the property owner G & L INVESTMENT CO (hereinafter “Applicant”) appeared before the Zoning Hearing Examiner (hereinafter “ZHE”) requesting a Variance of 6' to the 6' required rear landscape buffer for a proposed new lot (hereinafter “Application”) upon the real property located at 2803, 2807, AND 2813 SAN MATEO BLVD NE (“Subject Property”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 6' to the 6' required rear landscape buffer for a proposed new lot.
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 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 proposed automotive parts retail store will convert a previously vacant dirt lot into an aesthetically pleasing retail store in this “urban infill” location [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. In fact, the Agent indicated that the neighbor located to the north has “no opposition” to the Application. The ZHE notes that there is further evidence that this Application will not be injurious to the community, namely, that the lot will contain 28% of the net lot area as landscaped material (when only 15% is required pursuant to the City of Albuquerque Code of Ordinances).

4. 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 there are two special circumstances applicable to the Subject Property: (a) the site is located in between two public roads and an alley; and (b) there is a 5’ grade change in 125 feet of as the property slopes east to west [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. Specifically, the ZHE agrees with the Applicant that being sandwiched between two roads and a public alley makes it very difficult to comply with the landscaping and parking regulations in the code (on a narrow lot). Those constitute special circumstances that are not experienced by the neighboring commercial lots.
5. 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 forced to comply with the landscaping and parking regulations the retail store would not be able to safely circulate vehicular traffic and the delivery trucks to the store 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)]
6. 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)].
7. The ZHE disclosed that he is a member of an LLC that is constructing a similar retail store on 4<sup>th</sup> Street in Albuquerque, NM but made a representation to the Applicant that no conflict existed and that the decision would be rendered in an impartial manner. The ZHE did not have any ex parte communication with the Applicant regarding this Application.
8. 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' to the 6' required rear landscape buffer for a proposed new lot.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall ensure that the Subject Property exceeds 15% of the net lot area in landscaping (as represented by the Agent during the Hearing).
- B. The Applicant shall construct a 6 foot CMU block wall (and stucco the wall) to provide a buffer between the adjacent property owners (the wall shall not be located along the public right of way).

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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Joshua J. Skarsgard, Esq.  
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cc: Zoning Enforcement  
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ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

G & L INVESTMENT CO, INC. (CADENCE DEVELOPMENT, AGENT) requests a special exception to Section 14-16-3-1(A)(27): a VARIANCE of 2 off-street parking spaces to the required 30 parking spaces for a proposed new lot for all or a portion of Lot 8, 9, and 10, Block 2, Bel-Air zoned C-1, located on 2803, 2807, AND 2813 SAN MATEO BLVD NE (H-17)

Special Exception No:..... **15ZHE-80127**  
Project No:..... **Project# 1010432**  
Hearing Date:..... 05-19-2015  
Closing of Public Record:..... 05-19-2015  
Date of Decision: ..... 05-29-2015

On the 19th day of May, 2015 (hereinafter “Hearing”) Cadence Development (in conjunction with Mr. Jonathan Turner) (hereinafter “**Agent**”) acting as agent on behalf of the property owner G & L INVESTMENT CO (hereinafter “Applicant”) appeared before the Zoning Hearing Examiner (hereinafter “ZHE”) requesting a Variance of 6’ to the 6’ required rear landscape buffer for a proposed new lot (hereinafter “Application”) upon the real property located at 2803, 2807, AND 2813 SAN MATEO BLVD NE (“Subject Property”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 2 off-street parking spaces to the required 30 parking spaces for a proposed new lot.
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 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 proposed automotive parts retail store will convert a previously vacant dirt lot into an aesthetically pleasing retail store in this “urban infill” location [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. In fact, the Agent indicated that the neighbor located to the north has “no opposition” to the Application. The ZHE notes that there is further evidence that this Application will not be injurious to the community, namely, that the lot will contain 28% of the net lot area as landscaped material (when only 15% is required pursuant to the City of Albuquerque Code of Ordinances).

4. The Applicant also indicated that the entire project requires **30 parking stalls** and yet they can provide **28 parking spaces** on site while exceeding the 15% net lot area landscaping requirement.
5. 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 there are two special circumstances applicable to the Subject Property: (a) the site is located in between two public roads and an alley; and (b) there is a 5’ grade change in 125 feet of as the property slopes east to west [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. Specifically, the ZHE agrees with the Applicant that being sandwiched between two roads and a public alley makes it very difficult to comply with the landscaping and parking regulations in the code (on a narrow lot). Those constitute special circumstances that are not experienced by the neighboring commercial lots.
6. 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 forced to comply with the landscaping and parking regulations the retail store would not be able to safely circulate vehicular traffic and the delivery trucks to the store 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)]
7. 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)].
8. The ZHE disclosed that he is a member of an LLC that is constructing a similar retail store on 4<sup>th</sup> Street in Albuquerque, NM but made a representation to the Applicant that no conflict existed and that the decision would be rendered in an impartial manner. The ZHE did not have any ex parte communication with the Applicant regarding this Application.
9. 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 2 off-street parking spaces to the required 30 parking spaces for a proposed new lot.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall ensure that the Subject Property exceeds 15% of the net lot area in landscaping (as represented by the Agent during the Hearing).
- B. The Applicant shall construct a 6 foot CMU block wall (and stucco the wall) to provide a buffer between the adjacent property owners (the wall shall not be located along the public right of way).

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