



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

HIGINIO AND MYRNA VELASQUEZ (BERNARDINO AGUIRRE, AGENT) requests a special exception to Section 1416-2-23(A) and pg 45 SOUTH BROADWAY SDP and 14-16-2-6(E)(4)(a) : a VARIANCE of 5 ft to the required 5 ft side yard setback to allow an existing shade structure for all or a portion of Lot 2A, Block 7, Eastern Addn First Extension zoned SU-2/MR, located on 1803 ARNO ST SE (L-14)

Special Exception No:..... **15ZHE-80222**
Project No:..... **Project# 1010574**
Hearing Date:..... 10-20-15
Closing of Public Record:..... 10-20-15
Date of Decision: 10-30-15

On the 20th day of October, 2015(hereinafter “**Hearing**”) BERNARDINO AGUIRRE, (hereinafter “**Agent**”) acting as agent on behalf of the property owner HIGINIO AND MYRNA VELASQUEZ (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 5 ft to the required 5 ft side yard setback to allow an existing shade structure (hereinafter “**Application**”) upon the real property located at 1803 ARNO ST SE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 5 ft to the required 5 ft side yard setback to allow an existing shade structure.
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. There was testimony regarding injury to property in the vicinity due to the size of the proposed and existing shade structure, contrary to Section § 14-16-4-2 (C) (2) (a).

4. The ZHE cannot find, on the evidence presented, that that the Applicants have met their burden of showing that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity as required pursuant to Section § 14-16-4-2 (C) (2) (b). Rather, it appears that Applicants’ tenants’ desired a shade structure. There is no evidence in the record that the subject property differs meaningfully from others in the zone or vicinity.
5. The ZHE finds that the Applicant have not met their 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 constituting an “*unjustified limitation on the reasonable use of the Subject Property*” as required pursuant to Section § 14-16-4-2 (C) (2) (c). Applicants did not provide substantial evidence of unnecessary hardship if the Application is denied.
6. The ZHE finds that the Applicant have not met their burden of providing evidence 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). There was essentially no evidence on this point.

CONCLUSIONS OF LAW:

The Applicant have not 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:

DENIAL of a VARIANCE of 5 ft to the required 5 ft side yard setback to allow an existing shade structure.

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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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

HIGINIO AND MYRNA VELASQUEZ (BERNARDINO AGUIRRE, AGENT) requests a special exception to Section 14-26-2-23(A) and pg 45 SOUTH BROADWAY SDP and 14-16-2-6(E)(5)(a) : a VARIANCE of 15 ft to the required 15 ft rear yard setback to allow an existing shade structure for all or a portion of Lot 2A, Block 7, Eastern Addn First Extension zoned SU-2/MR, located on 1803 ARNO ST SE (L-14)

Special Exception No:..... **15ZHE-80223**
Project No:..... **Project# 1010574**
Hearing Date:..... 10-20-15
Closing of Public Record:..... 10-20-15
Date of Decision: 10-30-15

On the 20th day of October, 2015 (hereinafter “**Hearing**”) BERNARDINO AGUIRRE, (hereinafter “**Agent**”) acting as agent on behalf of the property owner, HIGINIO AND MYRNA VELASQUEZ (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 15 ft to the required 15 ft rear yard setback to allow an existing shade structure (hereinafter “**Application**”) upon the real property located at 1803 ARNO ST SE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 15 ft to the required 15 ft rear yard setback to allow an existing shade structure.
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. There was testimony regarding injury to property in the vicinity due to the size of the proposed and existing shade structure, contrary to Section § 14-16-4-2 (C) (2) (a).

4. The ZHE cannot find, on the evidence presented, that that the Applicants have met their burden of showing that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity as required pursuant to Section § 14-16-4-2 (C) (2) (b). Rather, it appears that Applicants’ tenants’ desired a shade structure. There is no evidence in the record that the subject property differs meaningfully from others in the zone or vicinity.
5. The ZHE finds that the Applicant have not met their 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 constituting an “*unjustified limitation on the reasonable use of the Subject Property*” as required pursuant to Section § 14-16-4-2 (C) (2) (c). Applicants did not provide substantial evidence of unnecessary hardship if the Application is denied.
6. The ZHE finds that the Applicant have not met their burden of providing evidence 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). There was essentially no evidence on this point.

CONCLUSIONS OF LAW:

The Applicant have not 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:

DENIAL of a **VARIANCE** of 15 ft to the required 15 ft rear yard setback to allow an existing shade structure.

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.

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