



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

TOM JARAMILLO, TRUDY JARAMILLO (CHANTELLE A EVERAGE, AGENT) requests a special exception to Section 14-16-2-23(A) and pg 101 of the DOWNTOWN NEIGHBORHOOD SDP and 14-16-3-19(A)(2)(a) : a VARIANCE request of 3 ft to the 3 ft max height to allow an existing 6 ft fence in the front setback for all or a portion of Lot 3, Zapf Van Addn zoned SU-2 DNA-MR, located on 511 8TH ST NW (J-14)

Special Exception No:..... **15ZHE-80237**
Project No:..... **Project# 1010593**
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**”) CHANTELLE A EVERAGE, (hereinafter “**Agent**”) acting as agent on behalf of the property owner TOM AND TRUDY JARAMILLO (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 3 ft to the 3 ft max height to allow an existing 6 ft fence in the front setback (hereinafter “**Application**”) upon the real property located at 511 8TH ST NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicants are requesting a Variance of 3 ft to the 3 ft max height to allow an existing 6 ft fence in the front setback.
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 Applicants have not met their 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.
4. City Traffic Engineer Gary Sandoval reviewed the proposed fence that is the subject of this application and states, “Based on a site visit to the above mentioned address, the existing fence does appear to negatively impact the City of Albuquerque Transportation Design 11 ft. mini clear sight triangles (CST’s) for residential driveway.
 5. Immediate neighbor Gil Padilla testified that he cannot see when backing out of his driveway, and that although he previously indicated to Applicants that he had no objection he did not know that the fence would be six feet high.
 6. The ZHE finds that granting the Application would be injurious to nearby property and thus contrary to the public interest, particularly the public interest in safety.
 7. The ZHE notes Applicants’ concerns with keeping their children safe (the Applicant stating that is the sole purpose of the fence), and finds that a fence that blocks views while backing out of the subject property would also pose a potential danger to the children. Further, fences that allow visibility would seem to serve the Applicants’ needs.

CONCLUSIONS OF LAW:

The Applicants 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 3 ft to the 3 ft max height to allow an existing 6 ft fence in the front setback.

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

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