



Planning Department

Suzanne Lubar, Director

Urban Design & Development Division

600 2nd Street NW – 3rd Floor

Albuquerque, NM 87102

CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Henry Chan appeals the Zoning Hearing Examiner's Denial of a special exception to section 14-16-3-19(A)(2)(a) : a Variance of 3ft to the maximum 3ft height allowed in the front yard setback for an existing fence for all or a portion of Lot 8C2, Block 4, Board Acres zoned R-2, located on 3101 Pennsylvania St. NE (G-19).

Appeal No: 16BOA-20002
Special Exception No: ... 15ZHE-80281
Project No: 1010658
Hearing Date: 2/23/16
Decision Date: 2/23/16

In the matter of **16BOA-20002**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, thereby **UPHOLDING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

PO Box 1293

FINDINGS:

Albuquerque

1. This is an APPEAL of the Zoning Hearing Examiner's (ZHE) DENIAL of a SPECIAL EXCEPTION pursuant to Zoning Code §14-16-4-2(C)(2), Variance Criteria: a variance of 3 feet to the maximum 3 feet height allowed for a wall or fence in the front yard setback in the R-2 zone [Zoning Code §14-16-2-11(E)(1)] to allow for an existing fence.

New Mexico 87103

www.cabq.gov

2. The subject site is described as Lot 8C2, Block 41, Broad Acres Subdivision, containing approximately 0.91 acre and located at 3101 Pennsylvania Street NE (the "subject property"). The subject property is not within the boundaries of a sector development plan or a recognized neighborhood association.
3. The subject property is developed with an apartment complex (multi-family residential), is surrounded by a variety of land uses, including a high school, a church, townhomes, and single-family homes.
4. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is zoned R-2 Residential Zone. The required front yard setback is a minimum of 15 feet [§14-16-2-11(E)(1)]. A 3 foot wall or fence is allowed permissively. The associated fee is \$25, charged through Zoning. A five foot wall or fence that is primarily open (ex. 3 foot wall with two feet of wrought iron) is allowed as a conditional use [§14-16-2-11 (B)(1), which

refers to §14-16-2-6 (B)(14)]. The associated fee is \$25, charged through Zoning. A ZHE hearing would be required.

6. The existing fence is six feet tall and made of wrought iron. Pursuant to Zoning Code §14-16-3-19, Height/Design Regulations for Walls, Fences and Retaining Walls, a 6 foot wall or fence is allowed if not otherwise limited by the underlying zone. A variance of 3 feet to the allowed 3 foot wall or fence height would result in a 6 foot wall or fence, which would be subject to the \$25 Zoning fee.
7. Zoning Code §14-16-4-2(C)(2), Special Exceptions, states that a variance shall be approved by the ZHE, if and only if, the ZHE 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 Zoning Hearing Examiner (ZHE) found that the applicant has not met the burden of providing evidence (both oral testimony and written material) to establish that the proposed variance would not be contrary to the public interest, injurious to the community, or injurious to the property or improvements in the vicinity of the subject property pursuant to §14-16-4-2(C)(2)(a).
9. The ZHE did not make any findings on the remaining variance criteria because the finding that the applicant has not met the burden of proving that the fence is not injurious to the community or contrary to the public interest means that the application cannot be approved [§14-16-4-2(C)(2)(b),(c) and (d)].
10. Zoning Code Section 14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant does not specifically refer to any of the above reasons for appeal. Rather, appellant states that the variance would not be contrary to the public interest, injurious to the community, or injurious to property/improvements in the vicinity of the subject property because a majority of the apartment tenants are in favor of the fence, and the fence will prohibit unwanted activity (trespass,

loitering) on the subject property. Also, the variance will benefit the community by preventing loitering and reducing burglaries on the property. The appellant further stated that the fence is built of high-quality materials and does not interfere with the ability of drivers on Veranda Road to see oncoming traffic from the north on Pennsylvania Street.

11. Based on evidence in the record and on testimony from five individuals who reside near the subject property, the ZHE found that the fence is contrary to the public interest and injurious to the community. There is no traffic light at the corner of Veranda Road and Pennsylvania Street, so motorists must pull into the intersection and block the bicycle lane to be able to see traffic traveling southbound on Pennsylvania Street. This is necessary because the fence, when viewed at an oblique angle, appears to be non-opaque and, at 6 feet tall, drivers cannot see over the fence.
12. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in denying the variance request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is UPHELD.

If you wish to appeal this decision, you must do so by **March 9, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Suzanne Lubar, Planning Director

cc: Catalina Lehner/Planning Department- clehner@cabq.gov
Brennon Williams, Zoning Enforcement Division- bnwilliams@cabq.gov
Daniel Dietz/Legal Department, City Hall, 4th Floor- ddietz@cabq.gov
BOA File
Henry Chan, 3101 Pennsylvania St. NE Apt# 16, 87110
Henry Chan, 258 Mills Ave, Las Vegas, NM, 87701
Amy & Chris Williamson, 7117 Aztec Rd. NE, 87110
James & Karen Twohig, 7301 Aztec Rd. NE, 87110
Marna Herrick, 7321 Aztec Rd. NE, 87110
Mary Othmer, 6925 Brandywine Lp. NE, 87111
Geri P Saiz-Cano, Edward J Cano, 3101 Pennsylvania NE, Apt# 8, 87110
Amin Al Jeborx, 3101 Pennsylvania NE, Apt# 10, 87110
Celia Montoya, 3101 Pennsylvania NE, Apt# 12, 87110

Larry Kindness, 3101 Pennsylvania NE, Apt# 11, 87110
Charles Dodge & Cecilia Dodge, 3101 Pennsylvania NE, Apt# 13, 87110
Hector Almoque, 3101 Pennsylvania NE, Apt# 1, 87110
Donna Harrison, 3101 Pennsylvania NE, Apt# 7, 87110
Anthony Flores, 3101 Pennsylvania NE, Apt# 5, 87110
Tamera Gasparich & Cheri L Larson, NE, Apt# 6, 87110
Carmon Polk, 3101 Pennsylvania NE, Apt# 17, 87110
Juanita Gonzales, 3101 Pennsylvania NE, Apt# 3, 87110
Patricia A Garcia, 3101 Pennsylvania NE, Apt# 15, 87110
Arthur Uribe, 3101 Pennsylvania NE, Apt# 4, 87110
Scott Elder, 7801 Candelaria NE, 87110
Charles Dodge, 3101 Pennsylvania NE, Apt# 13, 87110
Haidar Almosaw, 3101 Pennsylvania NE, Apt# 1, 87110
Amin Aljebory, 3101 Pennsylvania NE, Apt# 10, 87110
qbearpaw@comcast.net
marston@q.com
astone@unm.edu
melindasemailaddress@gmail.com
shannon@roadrunnerwireless@gmail.com
rhuhrich@gmail.com
aaleos@live.com
bonnieholland@comcast.net
the_abyss@juno.com
chrisdubya@comcast.net