



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

STEVE GENDRON (SITES SOUTHWEST, AGENT) requests a special exception to Section PG. 75 MARTINEZTOWN/ SANTA BARBARA SDP. and 14-13-3-10(E)(3)(a) : a VARIANCE request of 10' to the 10' required front landscape buffer for a proposed addition for all or a portion of Lot 47-A, Block 3C, FRANCISCAN ACRES zoned SU-2 C-3, located on 404 TOWNER AV NE (H-15)

Special Exception No:..... **15ZHE-80048**
Project No:..... **Project# 1010390**
Hearing Date: 04-21-2015
Closing of Public Record: 04-21-2015
Date of Decision: 05-04-2015

On the 21st day of April, 2015 (hereinafter “**Hearing**”) SITES SOUTHWEST, (hereinafter “**Agent**”) acting as agent on behalf of the property owner STEVE GENDRON (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 10' to the 10' required front landscape buffer for a proposed addition (hereinafter “**Application**”) upon the real property located at 404 TOWNER AV NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10' to the 10' required front landscape buffer for a proposed addition.
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 plans to construct a covered storage facility for UV radiation-sensitive products integral to the Upland Corporation operations has created the need to comply with the landscape requirements that were not in the Zoning Code at the time that this site was developed. The Applicant believes that this project will not be injurious to the surrounding community because they are introducing 2,794 square feet of new landscaped material, however, they cannot comply with the 10' landscape buffer because to do so, they would compromise the parking and site circulation on this site that was constructed prior to the 10' landscape front yard requirement. The Applicant is unaware of any opposition and believes that this project is beneficial to the community [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.

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 the Subject Property has an unusual shape and was developed prior to the landscape regulations in the Zoning Code [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
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 the unusual shape of the lot was not self-imposed and restricting their ability to rehabilitate the Subject Property as a result of their inability to comply with the 10' landscape buffer constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]. The Applicant is adding 2,794 square feet of landscaping to the Subject Property.
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. 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' required front landscape buffer for a proposed addition.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that they add 2,794 square feet of active landscaping to the Subject Property and maintain those plantings after they are introduced to the site.

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.



Joshua J. Skarsgard, Esq.

Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

STEVE GENDRON (SITES SOUTHWEST, AGENT) requests a special exception to Section 14-13-3-10(E)(1) : a VARIANCE request of 2% to the required 15% Net Lot Area for a proposed addition for all or a portion of Lot 47-A, Block 3C, FRANCISCAN ACRES zoned SU-2 C-3, located on 404 TOWNER AV NE (H-15)

Special Exception No:..... **15ZHE-80059**
Project No:..... **Project# 1010390**
Hearing Date:..... 04-21-2015
Closing of Public Record:..... 04-21-2015
Date of Decision: 05-04-2015

On the 21st day of April, 2015 (hereinafter “**Hearing**”) SITES SOUTHWEST, (hereinafter “**Agent**”) acting as agent on behalf of the property owner STEVE GENDRON (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 2% to the 15% Net Lot Area a proposed addition (hereinafter “**Application**”) upon the real property located at 404 TOWNER AV NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 2% to the 15% Net Lot Area required front landscape buffer for a proposed addition.
2. The Applicant made their Application with sufficient time to be heard at the April Hearing, however, the Staff advertised the prior application made by the Applicant (15ZHE – 80048) and failed to include this Application (15ZHE – 80059) in the Agenda. The ZHE reviewed the facts and determined that the Applicant met all of their obligations to file this Application and posted a yellow Notice of Hearing sign and all of the interested parties that could be interested in this Application had an opportunity to be heard and voice their support or opposition. For these reasons, the ZHE has decided to render a decision on this Application despite the mistake causing it to be left off the Agenda.
3. 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.

4. 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 plans to construct a covered storage facility for UV radiation-sensitive products integral to the Upland Corporation operations has created the need to comply with the landscape requirements that were not in the Zoning Code at the time that this site was developed. The Applicant believes that this project will not be injurious to the surrounding community because they are introducing 2,794 square feet of new landscaped material, however, they cannot comply with the 15% landscaping of the net lot area because to do so, they would compromise the parking and site circulation on this site that was constructed prior to the percentage of net lot area landscaping regulation. The Applicant is unaware of any opposition and believes that this project is beneficial to the community [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.
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 the Subject Property has an unusual shape and was developed prior to the landscape regulations in the Zoning Code [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant believes they would have been able to comply with the 15% landscaping requirement of the Net Lot Area if they were allowed to include landscaping within the public right of way.
7. 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 the unusual shape of the lot was not self-imposed and restricting their ability to rehabilitate the Subject Property as a result of their inability to comply with the 15% landscaping of the net lot area is an “unjustified limitation on the reasonable use of the Subject Property” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]. The Applicant is adding 2,794 square feet of landscaping to the Subject Property.
8. 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)]

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% to the required 15% total landscaped area of the Net Lot Area for a proposed addition.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that they add 2,794 square feet of active landscaping to the Subject Property and maintain those plantings after they are introduced to the site.

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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