

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

PHILIP & EMMA PANUZZO request(s) a special exception to Section 14-16-3-3(A)(4)(a)(3) and Ref. Section 14-16-2-6: a CONDITIONAL USE to allow a fence over 3' in height in the side yard setback area for an existing 6' high fence on all or a portion of Lot(s) A, Block(s) 33, TERRACE ADDN zoned SU-2 MD-2, located at 1200 COAL AVE SE (K-15)

. 11ZHE-80032
Project# 1008675
.03-25-11
03-24-11
.04-15-11

This matter was heard on March 24, 2011.

STATEMENT OF FACTS: The applicants, Philip and Emma Panuzzo, request a conditional use to allow a fence over 3' in height in the side yard setback area for an existing 6' high fence. This office received a report from the Traffic Engineer dated March 9, 2011 indicating that the existing fence impacts the City of Albuquerque Transportation Design 11 foot mini clear sight triangle for residential driveways. A subsequent report dated March 11, 2011 indicates that the proposed modifications, by the applicant, to the existing vinyl fence no longer impacts the clear sight triangle. The applicant gave testimony that the fence will provide added security and privacy, as well as dramatic cosmetic improvement to the home which was built in 1946.

Mardon Gardella testified, at the hearing, in opposition to this request. She stated that the existing fence is too high and is injurious to the neighborhood. She questioned the placement of the fence being in the public right of way. She expressed concern regarding the construction and safety of the fence. Peter Shillke also testified in opposition to this request.

I have reviewed the entire file as well as the recordings, I make the following determination:

The solid vinyl fence would be inconsistent with the overall design of the neighborhood and thereby cause injury to the neighborhood, adjacent property and the community.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this request does not comply with Section 14. 16. 4. 2. (C). 1., for the granting of a conditional use upon a finding that the proposed use will cause injury to the neighborhood, adjacent property or the community,

and will be damaged by surrounding structures. For reasons stated above, this request is denied.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on May 2, 2011 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.

Roberto Albertorio, Esq.

Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File Philip & Emma Panuzzo, 4640 Arlington Avenue NW, 87114 Mardon Gardella, 411 Maple Street NE, 87106 Peter Schillke, 1217 Coal Avenue SE, 87106



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

PHILIP & EMMA PANUZZO request(s) a special exception to Pg. 74 of the University Heights Sector Plan and 14-16-2-9(E)(1)(3): a VARIANCE of 10' 6" to the 15' front yard setback area requirement for an existing entry way on all or a portion of Lot(s) A, Block(s) 33, TERRACE ADDN zoned SU-2 MD-2, located at 1200 COAL AVE SE (K-15)

11ZHE-80022
Project# 1008675
03-25-11
03-24-11
04-15-11

This matter was heard on March 24, 2011.

STATEMENT OF FACTS: The applicants, Philip and Emma Panuzzo, request a variance of 10' 6" to the 15' front yard setback area requirement for an existing entry way. The applicants testified that their lot is exceptional because it is a corner lot that is shaped irregularly.

Mardon Gardella who is with the Sycamore Neighborhood Association testified in opposition to this request. She argues that this lot is not exceptional and that there is no hardship. Ms. Gardella also has concerns regarding accurate property lines.

Peter Schillke also testified in opposition to this request. He indicates that the structure does not conform to setback requirements. He is also objecting that the applicant did not obtain the proper permits prior to starting construction of this structure.

I have reviewed the entire file as well as the recordings, I make the following determination:

According to City records, this lot was platted prior to the applicants residing on the property.

The applicant, in constructing this structure, has exasperated and over-developed the lot. This is a corner lot, but it does not have any exceptional physical characteristics sufficient to meet the test for a variance.

After a review of the entire file, I find that this lot is not exceptional as compared to other parcels in the vicinity.

The Zoning Ordinance provides that a variance is to be granted only under unusual circumstances. An applicant is required to demonstrate that he/she is unable to comply with the Zoning requirement as a result of some physical exceptional parcel conditions

which cause unnecessary hardship. This applicant has not shown that this request meets the exceptionality standard. Having been unable to meet this standard, it is therefore unnecessary to inquire any further.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this parcel is not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on May 2, 2011 in the manner described below:

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Roberto Albertorio, Esq. Zoning Hearing Examiner

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