

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

EDWARD & RAYMOND NILES request(s) a special exception to Section 14-16-3-36 (A)(3)(a): a VARIANCE of 9' 8" to the 10' corner side yard setback area requirement to allow a proposed solar collector on all or a portion of Lot(s) 61-P1, EL RANCHO GRANDE UNIT II zoned R-LT, located at 10428 SANDY FLATS AVE SW (M-8)

Special Exception No:..... **11ZHE-80152**
Project No: **Project# 1008857**
Hearing Date: 08-16-11
Closing of Public Record: 08-16-11
Date of Decision: 08-19-11

STATEMENT OF FACTS: The applicant, Edward & Raymond Niles, request a variance of 9' 8" to the 10' corner side yard setback area requirement to allow a proposed solar collector. This matter was originally scheduled for the July 19, 2011 hearing at which time it was determined that an additional variance request for the accessory structure was also needed.

Mr. Niles testified, at the hearing, that an accessory structure has been constructed along the side of the home along a parameter wall in order to place solar collectors on top of it. A permit was not obtained prior to the building of this structure. The applicant's testimony on the benefits of solar power is supported by the Hearing Examiner. Solar energy is a renewable resource that is good for the community and environment.

The accessory structure is built up to the side wall and is visible from the front and side streets. When asked if the accessory structure could be built in another area of the property that would still have the necessary proximity to the house in order to benefit from the solar panels, Mr. Niles stated that it could be constructed at a different location on the property.

The applicant was advised that all permits should be obtained prior to building the accessory structure.

Mr. Niles stated that his lot is exceptional because it is a corner lot with different setback requirements than his neighbors. After a review of the entire file and an on-sight inspection, this Hearing Officer finds 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 September 5, 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.



Anita Reina, Esq.
Deputy Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Edward & Raymond Niles, 10428 Sandy Flats Avenue SW, 87121



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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

EDWARDS & RAYMOND NILES request(s) a special exception to Section 14-16-3-3(B)(2)(b): a VARIANCE of 9' 8" to the 10' corner side yard setback area requirement to allow a proposed accessory structure on all or a portion of Lot(s) 61-P1, EL RANCHO GRANDE UNIT II zoned R-LT, located at 10428 SANDY FLATS AVE SW (M-8)

Special Exception No:..... **11ZHE-80187**
Project No: **Project# 1008857**
Hearing Date: 08-16-11
Closing of Public Record: 08-16-11
Date of Decision: 08-19-11

STATEMENT OF FACTS: The applicants, Edwards and Raymond Niles, request a variance of 9' 8" to the 10' corner side yard setback area requirement to allow a proposed accessory structure. This matter was originally scheduled for the July 19, 2011 hearing at which time it was determined that an additional variance request for the accessory structure was also needed.

Mr. Niles testified, at the hearing, that an accessory structure has been constructed along the side of the home along a parameter wall in order to place solar collectors on top of it. A permit was not obtained prior to the building of this structure. The applicant's testimony on the benefits of solar power is supported by the Hearing Examiner. Solar energy is a renewable resource that is good for the community and environment.

The accessory structure is built up to the side wall and is visible from the front and side streets. When asked if the accessory structure could be built in another area of the property that would still have the necessary proximity to the house in order to benefit from the solar panels, Mr. Niles stated that it could be constructed at a different location on the property.

The applicant was advised that all permits should be obtained prior to building the accessory structure.

Mr. Niles stated that his lot is exceptional because it is a corner lot with different setback requirements than his neighbors. After a review of the entire file and an on-sight inspection, this Hearing Officer finds 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.

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