

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

PACIFIC REALTY (LES GUTIERREZ, AGENT) request(s) a special exception to Section 14-16-3-17(A)(4)(a): a VARIANCE of 1' 7" to the 9' equipment cabinet height requirement for a proposed wireless telecommunications facility on all or a portion of Lot(s) UNPLATTED, UNPLATTED PACIFIC REALTY zoned C-2 (SC), located at 7220 LOMAS BLVD NE (K-19)

Special Exception No:..... **10ZHE-80174**
Project No: **Project# 1008286**
Hearing Date: 06-15-10
Closing of Public Record: 06-15-10
Date of Decision: 06-29-10

STATEMENT OF FACTS: The applicant, Pacific Realty, requests a variance of 1' 7" to the 9' equipment cabinet height requirement for a proposed wireless telecommunications facility. Mr. Gutierrez, agent for the applicant, testified that this lot is exceptional because of its irregular size. He indicated that landscaping will be added in order to shield the equipment cabinet. Mr. Gutierrez stated that if they were required to "bury" the shelter it would cause severe drainage problems with leakage which would cause electrical safety issues. Nancy Bearce with the La Mesa Community Improvement Association testified in opposition to this request. The applicant, Verizon Wireless, submits that they would experience unnecessary hardship if they were required to comply with the 9' maximum height requirement. This would require a 2' burial of the shelter which would be impacted by drainage problems with leakage. See "Exhibit A" attached. Furthermore, the potential for safety issues with exposure to moisture into the electronic equipment poses threats to the project and their customers.

This is a modest variance request with minimal negative impact. Accordingly, the applicant has offered and is directed to establish visual and maintain sufficient landscaping throughout the perimeter which is to exceed the height of the shelter to offset this impact.

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 exceptional as compared to other parcels in the vicinity because of its irregular size and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other

land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved with conditions.

CONDITIONS: Landscaping must be added throughout the perimeter which is to exceed the height of the shelter.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

If you wish to appeal this decision, you may do so by 5:00 p.m., on July 14, 2010 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.

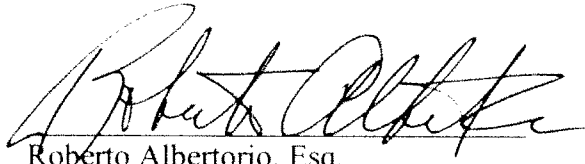
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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.

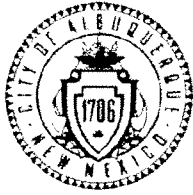
Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for 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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A handwritten signature in black ink, appearing to read 'Roberto Albertorio', written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Pacific Realty/Jim Schumacher, 7220 Lomas Blvd., NE, 87108
Les Gutierrez #1 La Villita Circle NE, 87112
Nancy Bearce, 600 San Pablo NE, 87108
Idalia Lechuga-Tena, 537 San Pablo NE, 87108



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PACIFIC REALTY (LES GUTIERREZ, AGENT) request(s) a special exception to Section 14-16-3-17(A)(16)(b): a VARIANCE of 1' 7" to the 9' high solid wall requirement for a proposed 10' 7" high solid wall surrounding a wireless telecommunications facility on all or a portion of Lot(s) UNPLATTED, UNPLATTED PACIFIC REALTY zoned C-2 (SC), located at 7220 LOMAS BLVD NE (K-19)

Special Exception No:..... **10ZHE-80119**
Project No: **Project# 1008286**
Hearing Date: 06-15-10
Closing of Public Record: 06-15-10
Date of Decision: 06-29-10

STATEMENT OF FACTS: The applicant, Pacific Realty, requests a variance of 1' 7" to the 9' high solid wall requirement for a proposed 10' 7" high solid wall surrounding a wireless telecommunications facility. Mr. Gutierrez, agent for the applicant, testified that this lot is exceptional because of its irregular size. He indicated that landscaping will be added in order to shield the wall. Mr. Gutierrez stated that if they were required to "bury" the shelter it would cause severe drainage problems with leakage which would cause electrical safety issues. Nancy Bearce with the La Mesa Community Improvement Association testified in opposition to this request. The applicant, Verizon Wireless, submits that they would experience unnecessary hardship if they were required to comply with the 9' maximum height requirement. This would require a 2' burial of the shelter which would be impacted by drainage problems with leakage. See "Exhibit A" attached. Furthermore, the potential for safety issues with exposure to moisture into the electronic equipment poses threats to the project and their customers.

This is a modest variance request with minimal negative impact. Accordingly, the applicant has offered and is directed to establish visual and maintain sufficient landscaping throughout the perimeter which is to exceed the height of the shelter to offset this impact.

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 exceptional as compared to other parcels in the vicinity because of its irregular size and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved with conditions.

CONDITIONS: Landscaping must be added throughout the perimeter which is to exceed the height of the shelter.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

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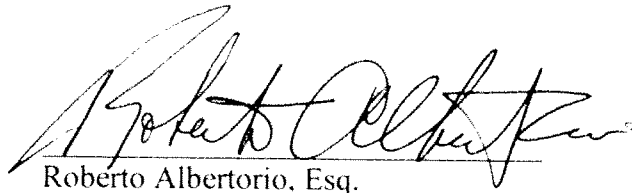
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