

**Planning Department**  
Suzanne Lubar, Director  
Urban Design & Development Division  
600 2<sup>nd</sup> Street NW – 3<sup>rd</sup> Floor  
Albuquerque, NM 87102

**CITY OF ALBUQUERQUE  
BOARD OF APPEALS  
NOTIFICATION OF DECISION**

Frank & Evelyn Barela (DAC Zoning & Land Use Services, Agent) appeals the Zoning Hearing Examiner’s **Denial** of a special exception 14-16-2-6(E)(1): a VARIANCE of 8’ to the required 20’ front yard setback for an existing addition for all or a portion of lot 12, block 7, Huning Castle Addition zoned R-1, located on 1617 Los Alamos Ave SW (J-13).

Appeal No: ..... 14BOA-20009  
Special Exception No: ..... 14ZHE-80036  
Project No: ..... 1009980  
Hearing Date: ..... 08/26/14  
Decision Date: ..... 08/26/14

In the matter of **14BOA-20009**, 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:

**FINDINGS:**

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 8 feet to the required 20 foot front yard setback in the R-1 zone [§14-16-2-6(E)(1)] for an existing patio.
2. The subject site is described as Lot 12, block 7, Huning Castle Addition, containing approximately 0.22 acre and located at 1617 Los Alamos Avenue SW, within the boundaries of the Huning Castle Neighborhood.
3. The subject site is zoned R-1 and is developed with a single-family home. It is surrounded by single-family residential properties that are also zoned R-1. The subject site is not designed or zoned by the City as a Historic District.
4. The Albuquerque/Bernalillo County Comprehensive Plan, the Huning Castle Reynolds Sector Development Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.

5. The R-1 Residential Zone, Zoning Code Section §14-16-2-6(E)(1), states:  
(E) Setback (1) There shall be a front yard setback of not less than 20 feet.
6. 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.
7. The Zoning Hearing Examiner (ZHE) finds that the applicant has not met his burden of providing evidence to establish that the proposed variance would not be contrary to the public interest, injurious to the community, or injurious to the property/improvements in the vicinity of the subject property [§14-16-4-2(C)(2)(a)]. The patio enclosure potentially damages the streetscape in this historic community, there are no special circumstances applicable to the subject site, and the patio does not allow full visibility of children playing in the vicinity.
8. The ZHE also finds that the applicant has not met his burden of providing evidence to establish that there are special circumstances applicable to the subject site [§14-16-4-2(C)(2)(b)]. A review of the Zone Atlas page containing the subject site reveals neighboring properties that are also located on a curve and are wider in the front than they are in the rear.
9. The ZHE does not believe that the alleged special circumstances create an unnecessary hardship upon the applicant. Since the ZHE finds that there are no special circumstances, whether or not they are self-imposed is moot.
10. Finally, the ZHE finds that the applicant did not meet his burden of proving that substantial justice will be done if this application is approved. The ZHE finds that justice will better be served by denying the application for the aforementioned reasons.

11. The Huning Castle Neighborhood Association (HCNA) Board of Directors authored a letter of opposition to the proposed variance. Five area residents also expressed opposition at the June 17, 2014 ZHE hearing.
12. 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 states that the ZHE's decision was arbitrary and capricious (c), and that it contained statements that are not factually true (b). The appellant contends that the Huning Castle Addition does not have an identifiable streetscape and that it's not designated as historic, and that the subject site is indeed unusually shaped. The appellant also states that three neighbors support the request, while those who oppose it do not live near the appellant.

13. 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 **September 11, 2014**, 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](mailto:CLehner@cabq.gov)  
Brennon Williams, Zoning Enforcement Division [bnwilliams@cabq.gov](mailto:bnwilliams@cabq.gov)  
Jenica Jacobi/Legal Department, City Hall, 4<sup>th</sup> Floor [jjacobi@cabq.gov](mailto:jjacobi@cabq.gov)  
BOA File  
Frank & Evelyn Barela, 1617 Los Alamos Ave SW 87104  
DAC Zoning & Land Use Services 9520 Macallan Rd NE 87109  
Yntema Law Firm P.A., 215 Gold Ave SW Ste 201 87102  
Harvey Buchalter, [hcbuchalter@gmail.com](mailto:hcbuchalter@gmail.com)  
Lynn Hightower, [amerilyn@msn.com](mailto:amerilyn@msn.com)  
Jamie Jettwalker, [Jamie@jettwalker.com](mailto:Jamie@jettwalker.com)  
Janis La Fountain, [jlafountain@earthlink.net](mailto:jlafountain@earthlink.net)  
Tom La Fountain, 1604 Los Alamos SW 87104  
Susan Feil, [susan@susanfeil.com](mailto:susan@susanfeil.com)