



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

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 70 4.B. of the UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-A for all or a portion of Lot 1, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR SE (K-16)

Special Exception No: **14ZHE-80085**
Project No:..... **Project# 1010039**
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter "**Hearing**") Consensus Planning, (hereinafter "**Agent**") acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-A (hereinafter "**Application**") upon the real property located at 202 Cornell Dr SE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-A.
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 these applications, if approve, will allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited may goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would

constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

8. The Conditions of Approval adopted below herein are an attempt by the ZHE to “memorialize” the discussions and negotiations between the Applicant and the University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.
9. 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)]
10. 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 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-A.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
- C. The Applicant shall request approval of a gate, or similar feature, at the Cornell access in order to discourage it being used as a “shortcut” by other vehicles
- D. The Applicant shall coordinate with the property owner to the south of the Subject Property regarding the implementation of appropriate screening between the two properties.

If you wish to appeal this decision, you may do so by 5:00 p.m., on June 20, 2014 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

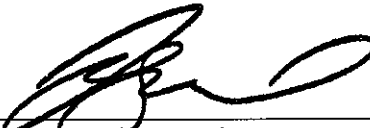
Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

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 I. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Cornell Silver LLC, 7433 El Morro NE 87119
Consensus Planning /Jim Strozier, 302 8th St NW 87102



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

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 70 4. B. OF THE UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE OF 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of Lot 1-B for all or a portion of Lot 1, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR NE (K-16)

Special Exception No: 14ZHE-80086
Project No:..... Project# 1010039
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter “**Hearing**”) Consensus Planning, (hereinafter “**Agent**”) acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-B (hereinafter “**Application**”) upon the real property located at 202 Cornell Dr SE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-B.
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 these applications, if approve, will allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited may goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would constitutes an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

8. The Conditions of Approval adopted below herein are an attempt by the ZHE to “memorialize” the discussions and negotiations between the Applicant and the University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.
9. 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)]
10. 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 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-B.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
- C. The Applicant shall request approval of a gate, or similar feature, at the Cornell access in order to discourage it being used as a “shortcut” by other vehicles
- D. The Applicant shall coordinate with the property owner to the south of the Subject Property regarding the implementation of appropriate screening between the two properties.

If you wish to appeal this decision, you may do so by 5:00 p.m., on June 20, 2014 in the manner described below:

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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.

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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
Cornell Silver LLC, 7433 El Morro NE 87119
Consensus Planning /Jim Strozier, 302 8th St NW 87102



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NOTIFICATION OF DECISION

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 71 5.A. OF THE UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE of 10' to the required 20' frontyard setback area of proposed Lot 1-A for all or a portion of Lot 1, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR NE (K-16)

Special Exception No: 14ZHE-80087
Project No:..... Project# 1010039
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter "**Hearing**") Consensus Planning, (hereinafter "**Agent**") acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-A (hereinafter "**Application**") upon the real property located at 202 Cornell Dr NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-A.
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 these applications, if approve, will

allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

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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 required 20’ front yard setback area of proposed Lot 1-A.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
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Joshua J. Skarsgard, Esq.
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Special Exception No: 14ZHE-80088
Project No:..... Project# 1010039
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter "**Hearing**") Consensus Planning, (hereinafter "**Agent**") acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-B (hereinafter "**Application**") upon the real property located at 202 Cornell Dr NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-B.
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:*
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(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 these applications, if approved, will allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited many goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would constitute an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

8. The Conditions of Approval adopted below herein are an attempt by the ZHE to “memorialize” the discussions and negotiations between the Applicant and the University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.
9. 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)]
10. 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 required 20’ front yard setback area of proposed Lot 1-B.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
- C. The Applicant shall request approval of a gate, or similar feature, at the Cornell access in order to discourage it being used as a “shortcut” by other vehicles
- D. The Applicant shall coordinate with the property owner to the south of the Subject Property regarding the implementation of appropriate screening between the two properties.

If you wish to appeal this decision, you may do so by 5:00 p.m., on June 20, 2014 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**

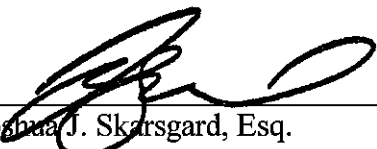
letter of notification when filing an appeal. When an application is withdrawn, the fee shall not be refunded.

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
Cornell Silver LLC, 7433 El Morro NE 87119
Consensus Planning /Jim Strozier, 302 8th St NW 87102



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

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 70 4. B. OF THE UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-C for all or a portion of Lot 2, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR NE (K-16)

Special Exception No: 14ZHE-80089
Project No:..... Project# 1010040
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter “**Hearing**”) Consensus Planning, (hereinafter “**Agent**”) acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-C (hereinafter “**Application**”) upon the real property located at 202 Cornell Dr SE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-C.
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 these applications, if approve, will allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited may goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would

constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

8. The Conditions of Approval adopted below herein are an attempt by the ZHE to “memorialize” the discussions and negotiations between the Applicant and the University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.
9. 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)]
10. 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 297 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-C.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
- C. The Applicant shall request approval of a gate, or similar feature, at the Cornell access in order to discourage it being used as a “shortcut” by other vehicles
- D. The Applicant shall coordinate with the property owner to the south of the Subject Property regarding the implementation of appropriate screening between the two properties.

If you wish to appeal this decision, you may do so by 5:00 p.m., on June 20, 2014 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
Cornell Silver LLC, 7433 El Morro NE 87119
Consensus Planning /Jim Strozier, 302 8th St NW 87102



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

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 70 4. B. OF THE UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE of 36 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-D for all or a portion of Lot 2, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR NE (K-16)

Special Exception No: **14ZHE-80090**
Project No:..... **Project# 1010040**
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter "**Hearing**") Consensus Planning, (hereinafter "**Agent**") acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 36 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-D (hereinafter "**Application**") upon the real property located at 202 Cornell Dr SE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 36 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-D.
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 these applications, if approve, will allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited may goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would

constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

8. The Conditions of Approval adopted below herein are an attempt by the ZHE to “memorialize” the discussions and negotiations between the Applicant and the University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.
9. 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)]
10. 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 36 square feet to the required 3000 square foot minimum lot size for a proposed replat of proposed Lot 1-D.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
- C. The Applicant shall request approval of a gate, or similar feature, at the Cornell access in order to discourage it being used as a “shortcut” by other vehicles
- D. The Applicant shall coordinate with the property owner to the south of the Subject Property regarding the implementation of appropriate screening between the two properties.

If you wish to appeal this decision, you may do so by 5:00 p.m., on June 20, 2014 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.

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Zoning Hearing Examiner

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

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 71 5.A. OF THE UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE of 10' to the required 20' frontyard setback area of proposed Lot 1-C for all or a portion of Lot 2, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR NE (K-16)

Special Exception No: **14ZHE-80091**
Project No:..... **Project# 1010040**
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter "**Hearing**") Consensus Planning, (hereinafter "**Agent**") acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-C (hereinafter "**Application**") upon the real property located at 202 Cornell Dr NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-C.
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 these applications, if approved, will allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited many goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would constitute an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].

8. The Conditions of Approval adopted below herein are an attempt by the ZHE to “memorialize” the discussions and negotiations between the Applicant and the University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.
9. 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)]
10. 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 required 20’ front yard setback area of proposed Lot 1-C.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
- B. The Applicant shall ensure that the new curb cut/access for the proposed private easement from Cornell shall be narrowed as much as possible at the sidewalk, subject to Development Review Board approval
- C. The Applicant shall request approval of a gate, or similar feature, at the Cornell access in order to discourage it being used as a “shortcut” by other vehicles
- D. The Applicant shall coordinate with the property owner to the south of the Subject Property regarding the implementation of appropriate screening between the two properties.

If you wish to appeal this decision, you may do so by 5:00 p.m., on June 20, 2014 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 C. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Cornell Silver LLC, 7433 El Morro NE 87119
Consensus Planning /Jim Strozier, 302 8th St NW 87102



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

CORNELL SILVER, LLC (CONSENSUS PLANNING, AGENT) requests a special exception to Page 71 5.A. OF THE UNIVERSITY NEIGHBORHOODS SDP: a VARIANCE of 10' to the required 20' frontyard setback area of proposed Lot 1-D for all or a portion of Lot 2, Block 10, UNIVERSITY HEIGHTS ADDN zoned SU-2 DR, located on 202 CORNELL DR NE (K-16)

Special Exception No: 14ZHE-80092
Project No:..... Project# 1010040
Hearing Date:..... 05-20-14
Closing of Public Record:..... 05-20-14
Date of Decision: 06-05-14

On the 20th day of May, 2014 (hereinafter "**Hearing**") Consensus Planning, (hereinafter "**Agent**") acting as agent on behalf of the property owner, Cornell Silver, LLC (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-D (hereinafter "**Application**") upon the real property located at 202 Cornell Dr NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10' to the required 20' front yard setback area of proposed Lot 1-D.
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 these applications, if approve, will

allow the development of four townhouses, which is compatible with the existing development in this surrounding community. Additionally, the Applicant stated that the variances (if approved) would enable a townhouse development that has a strong pedestrian orientation to Silver Ave., and help the momentum of high density new construction residential units near the University of New Mexico campus (students, teachers, young families, etc.). The ZHE agrees with the Applicant and finds that these variance will not be injurious 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. In fact, the University Heights Neighborhood Association Board of Directors voted 5-0 to support the numerous variance applications, pursuant to some mutually agreed upon conditions of approval which the ZHE has included herein below within the "Conditions of Approval" section of the Notice of Decision.

4. Mr. Bob O'Neal, neighbor, attended the public hearing and voiced support for the numerous variance applications.
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 property is a vacant lot in a developed high density housing community, with rare access to an alley (east side of Subject Property) which provides vehicular access directly to Cornell from the alley (as opposed to via Silver Ave.). The Applicant further stated that this property has a special circumstance, in that it perfectly suits the goals (urban infill, pedestrian oriented design, etc.) of the University Neighborhood Sector Development Plan, which is unlike many of the vacant parcels in the plan area [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
6. The Applicant cited may goals within the Albuquerque/Bernalillo "Comp Plan" that are furthered by the approval of these multiple variance applications (lot sizes, and front yard setback): Policy B.5.d, Policy B.5.e, etc. The ZHE agrees with the Applicant that these multiple variance applications are furthered by the Comp Plan policies provided in the Justification Letter (e.g. diverse housing options, promotes walking culture within the area, etc.).
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 if denied, the Applicant would be required to make 4 curb cuts off of the adjacent right of way. The rear alley on the site is aimed at allowing access to the garages instead of having multiple curb cuts on the adjacent right of way. These variances will dramatically reduce the curb cuts on this property and make it a safer pedestrian orientation on the adjacent sidewalk and street. Again, if the variances were denied these multiple curb cuts and amended lot sizes would constitutes an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)].
8. The Conditions of Approval adopted below herein are an attempt by the ZHE to "memorialize" the discussions and negotiations between the Applicant and the

University Heights Neighborhood Association. The Conditions of Approval are largely captured in a letter sent to the ZHE dated May 14, 2014 from the Agent of the Applicant – Consensus Planning. The Agent testified at the Public Hearing that the four proposed conditions of approval contained within the letter had met with the concurrence of the University Heights NA.

9. 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)]
10. 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 required 20’ front yard setback area of proposed Lot 1-D.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the Building on Lot 1-D will not have a “blank wall” facing Cornell (right of way). The Applicant can solve this any number of ways: articulation on the wall, diverse choice of materials, pedestrian level window, etc.
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cc: Zoning Enforcement
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Consensus Planning /Jim Strozier, 302 8th St NW 87102