

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

MORGAN BUILDING AND SPAS and Page 9(2) : a VARIANCE of 7' to the required 7' wide planting strip for an existing development for all or a portion of Lot(s) 4 -5 and 1, 2, 3, Block(s) 5 and 6, SKYLINE HEIGHTS zoned SU-2 EG-C, located on 10028 CENTRAL AVE SE (I-20)

Special Exception No:..... **12ZHE-80135**  
Project No: ..... **Project# 1009230**  
Hearing Date: ..... 05-15-12  
Closing of Public Record: ..... 05-15-12  
Date of Decision: ..... 05-31-12

**STATEMENT OF FACTS:** The applicant, Morgan Building and Spas, request a variance of 7' to the required 7' wide planting strip for an exiting development at 10028 Central Ave SE. William Kraemer, agent for the applicant, testified that his client is seeking clarification to a previous variance request of Project# 1008900, 11ZHE-80183, which was approved on August 26, 2011. The site plan shows an existing 7' sidewalk located at the back of the curb and an existing 10' landscape buffer in the back of the sidewalk. The East Gateway Sector Development Plan requires a combined minimum 7' landscape and edge zone at the back of the curb and a 6' minimum walking zone behind that. Mr. Kraemer believes that the property is exceptional because Morgan Builders is located on five separate lots, leased from three different landowners. In addition, the grade of the property is not uniformed and has grade differences. He feels that the exceptionality lies in the fact that the presently existing sidewalk at the back of the curb is universal throughout that area of Central Avenue. Mr. Kraemer testified that it would be an unnecessary economic hardship to his client because of the cost of flip-flopping the landscape and sidewalk from their existing locations to conform to the East Gateway Sector Plan. There is a letter in the file from the Traffic Engineer's Office that indicates that the owners must not plant any vegetation within 11' of either side of their driveway, which has the potential to grow above 3' in height. The owners must also relocate their existing banner, which is mounted, on their fence at the northwest corner of their property. It has the potential to cause a visual obstruction for pedestrians and drivers exiting the adjacent property. There was no opposition to this request at the hearing, nor is there any opposition noted in the file. There was an inquiry on the property. The yellow signs were posted.

**FINDINGS AND CONCLUSIONS:** I find that this parcel is exceptional as compared to other parcels in the vicinity for the following reasons:

1. The property is 5 separate lots that are leased from 3 separate land owner; and
2. The property has grade differences creating exceptionality; and
3. The cost of flip flipping the landscape buffer and sidewalk from their existing locations to conform tot h East Gateway Sector Plan will pose an economic hardship to the property owners; 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:** The applicant must comply with any and all requirements made by the City Traffic Engineer in that clear sight must be maintained. Vehicles, dumpsters, or landscaping that may mature and cause an obstruction to clear sight may not be placed next to this wall. The existing banner on the northwest corner must be relocated.

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 June 15, 2012 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.

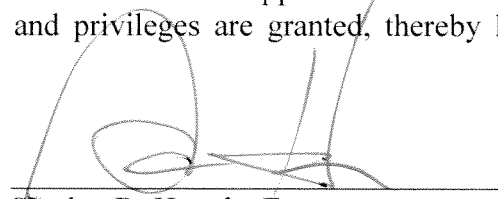
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

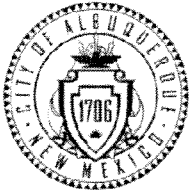
conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building 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.



Stanley D. Harada, Esq.  
Interim Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Morgan Building and Spas, 10028 Central Ave SE, 87123  
William Kraemer, 600 1<sup>st</sup> Street NW #211, 87102  
Paul Beatty, 1413 Dakota NE, 87110



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

MORGAN BUILDING AND SPAS request(s) a special exception to Section Page 3 (1)(b): a VARIANCE of 5' to the 15' maximum for an existing development in the front yard setback for all or a portion of Lot(s) 4,5 and 1, 2, 3, Block(s) 5 AND 6, SKYLINE HEIGHTS zoned SU-2 EG-C, located on 10028 CENTRAL AVE SE (I-20)

Special Exception No:..... **12ZHE-80136**  
Project No: ..... **Project# 1009230**  
Hearing Date: ..... 05-15-12  
Closing of Public Record: ..... 05-15-12  
Date of Decision: ..... 05-31-12

**STATEMENT OF FACTS:** The applicant, Morgan Building and Spas, request a variance of 5' to the required 15' maximum front setback for an office building/showroom. The site plan shows a building less than 30' in height and therefore has a front yard setback of 15' under the applicable guidelines. Mr. Kraemer testified that the existing building is 30' back from Central Ave. Mr. Kraemer believes that the property is exceptional because Morgan Builders is located on five separate lots, leased from three different landowners. In addition, the grade of the property is not uniformed and has grade differences. He feels that the exceptionality lies in the fact that the presently existing sidewalk at the back of the curb is universal throughout that area of Central Avenue. Mr. Kraemer testified that it would be an unnecessary economic hardship to his client because of the cost of flip-flopping the landscape and sidewalk from their existing locations to conform to the East Gateway Sector Plan. There is a letter in the file from the Traffic Engineer's Office that indicates that the owners must not plant any vegetation within 11' of either side of their driveway, which has the potential to grow above 3' in height. The owners must also relocate their existing banner, which is mounted, on their fence at the northwest corner of their property. It has the potential to cause a visual obstruction for pedestrians and drivers exiting the adjacent property. There was no opposition to this request at the hearing, nor is there any opposition noted in the file. There was an inquiry on the property. The yellow signs were posted.

**FINDINGS AND CONCLUSIONS:** I find that this parcel is exceptional as compared to other parcels in the vicinity for the following reasons:

4. The property is 5 separate lots that are leased from 3 separate land owner; and
5. The property has grade differences creating exceptionality; and
6. The cost of flip flipping the landscape buffer and sidewalk from their existing locations to conform tot h East Gateway Sector Plan will pose an economic hardship to the property owners; 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:** The applicant must comply with any and all requirements made by the City Traffic Engineer in that clear sight must be maintained. Vehicles, dumpsters, or landscaping that may mature and cause an obstruction to clear sight may not be placed next to this wall. The existing banner on the northwest corner must be relocated.

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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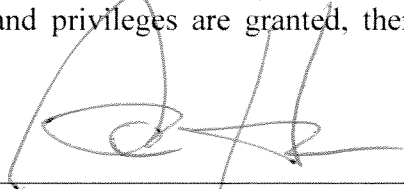
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objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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