



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

RANDALL & ESTHER BERGH requests a special exception to Section 14-16-2-6(E)(4)(a) : a VARIANCE of 1 ft to the required 5 ft side setback to allow a proposed addition for all or a portion of Lot 17, Block 10, Sandia Plaza zoned R-1, located on 828 PONDEROSA AV NW (F-14)

Special Exception No:..... **17ZHE-80177**
Project No: **Project# 1011320**
Hearing Date: 09-19-17
Closing of Public Record: 09-19-17
Date of Decision: 10-04-17

On the 19th day of September, 2017 RANDALL & ESTHER BERGH ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 1 ft to the required 5 ft side setback to allow a proposed addition ("Application") upon the real property located at 828 PONDEROSA AV NW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 1 ft to the required 5 ft side setback to allow a proposed addition.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: "*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 Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The proposed variance will not interfere with the views, light or access of other residents or impact neighborhood character or security. There will still be substantial landscaped area, and substantial separation to the neighboring home.

5. The site plan as proposed is appropriate in the context of the surrounding development, and the design is aesthetically pleasing and in harmony with the residence. It will allow preservation of mature trees.
6. Applicant submitted evidence of support from several neighbors, and there was no opposition stated either in writing or at the hearing. The support of surrounding neighbors indicates the absence of potential injury to the surrounding area.
7. The amount of the variance is no more than is necessary to overcome the unnecessary hardship. Development Process Manual, Ch. 11.
8. No written comments in opposition to the Application were received, and no one appeared at the hearing to testify in opposition to the Application. The ZHE takes the lack of opposition as an indication that the Application will not prove injurious.
9. Therefore the ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
10. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
11. Specifically, the ZHE finds that the existing residence is constructed on two different levels, which limits the options for constructing a garage that must be lower than the floor level. In addition, the proposed design avoid cutting down established mature landscaping.
12. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).
13. Moreover, under Section 14-16-3-3(A)(3)(b) “A setback variance may be approved... even though there is only a minimal showing as to exceptional physical conditions for Houses located on lots created when side-yard setback requirements were less severe and the lot’s dimensions make it unreasonable to require the current side-yard setback requirements.”
14. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
15. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
16. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 1 ft to the required 5 ft side setback to allow a proposed addition.

If you wish to appeal this decision, you must do so by October 19, 2017, 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 is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

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

Please note that pursuant to Section 14.16.4.4.(B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Zoning Hearing Examiner

cc: Zoning Enforcement
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