



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

RITA MOYA (JUAN ROMERO, AGENT) requests a special exception to Section 14-16-3-4 (B) (4) : a request for expansion of a NONCONFORMING structure of less than 25% for all or a portion of Lot 29, Block 2, Sandia Plaza Subd zoned R-1, located on 802 PALO DURO NW (F14)

Special Exception No:..... **17ZHE-80203**
Project No: **Project# 1011345**
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, JUAN ROMERO ("Agent") acting as agent on behalf of the property owner RITA MOYA ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting expansion of a NONCONFORMING structure of less than 25% ("Application") upon the real property located at 802 PALO DURO NW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting expansion of a NONCONFORMING structure of less than 25%.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2(C) reads:

Criteria for Decision. The city shall approve a special exception if the evidence presented to the record shows that the following criteria are met. Although others may submit evidence, it is the burden of the applicant to ensure that there is such evidence in the record.

- (3) *The expansion of a nonconforming use, including the expansion of a building to accommodate such expanded nonconforming use, shall be approved if and only if, in the circumstances of the particular case and under conditions imposed:*
 - (a) *The expanded use will not significantly interfere with the enjoyment of other land in the vicinity;*
 - (b) *The expanded use will not be significantly damaged by surrounding structures or activities;*
 - (c) *The expanded use is consistent with the spirit of this Zoning Code, substantial justice, and the general public interest;*
 - (d) *The owner will experience unnecessary hardship and in addition will be denied a continued reasonable use of the property if the expansion is not approved;*
 - (e) *The expansion does not exceed 25% of the floor or ground area in nonconforming uses on the site at the time it became nonconforming; and*

(f) The owner covenants that the use of the entire premises will be ceased or made conforming at the time specified by this Zoning Code for termination of the original nonconforming use on the premises.

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 ZHE finds that the proposed expansion is to allow for a larger kitchen, as the existing property has an inadequate, 8-foot by 8-foot kitchen. The 160 square foot expansion will be toward the rear of the Subject Property and thus have minimal impact on surrounding properties.
5. ZHE finds that the proposed expansion is designed to coordinate with the existing house and otherwise be harmonious with the Subject Property. The proposed expansion will not interfere with the views, light or access of other residents or detrimentally impact neighborhood character or security. The ZHE finds that there will be no significant increase in intensity of use, noise or traffic associated with the expansion.
6. On the basis of these facts, the ZHE finds that the expanded use will not significantly interfere with the enjoyment of other land in the vicinity and that it is consistent with the spirit of this Zoning Code, substantial justice, and the general public interest.
7. Moreover, the expanded use will not be significantly damaged by surrounding structures or activities.
8. The owner will experience unnecessary hardship and in addition will be denied a continued reasonable use of the property if the expansion is not approved, because the Subject Property as currently built contains an obsolete, unreasonably small kitchen which will significantly impact efforts to rent or sell the Subject Property.
9. The addition of 160 square feet to an 864 square foot residence will not exceed 25% of the conforming footprint.
10. The ZHE finds that there is no time limit associated with the Subject Property.
11. 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).
12. 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 expansion of a NONCONFORMING structure of less than 25%.

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.


Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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