



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

JOE TAPIA (RICHARD SCHALK, AIA, AGENT) requests a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 6 feet 9 inches to the required 10 foot separation from an existing accessory structure to a dwelling for all or a portion of Lot 28, Block 25A, Elder Homestead Addn zoned R-3, located on 6404 EASTERN AVE SE (L-18)

Special Exception No:**18ZHE-80008**
Project No:**Project# 1011496**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, RICHARD SCHALK (“Agent”) acting as agent on behalf of the property owner JOE TAPIA (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 6 feet 9 inches to the required 10 foot separation from an existing accessory structure (“Application”) upon the real property located at 6404 EASTERN AVE SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 6 feet 9 inches to the required 10 foot separation from an existing accessory structure.
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 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).

5. The structure in question, a laundry room, constructed by Applicant to facilitate that chore for his elderly tenants.
6. A review of the site plan does not reveal any other location for the structure that would not require similar variance from the code requirements.
7. The structure does not appear to block the light, views or access for any other properties.
8. The structure is modest, and not highly visible.
9. The portion of the Subject Property where the accessory structure is located abuts an alleyway, across from a gas station.
10. Applicant testifies that the accessory structure has been in place for approximately 14 years without complaint, but that he is required to address the violation now to sell the property.
11. 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).
12. Specifically, the ZHE finds that the property was constructed in 1949-1950, prior to the zoning restriction in question. Although not strictly applicable, it is worth noting the spirit of § 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.”
13. The R-3 zoned, corner lot is smaller than the general size of lots in the vicinity.
14. 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).
15. Specifically, the ZHE finds that these special circumstances are not a result of the Applicant’s actions.
16. 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).
17. 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).
18. 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 6 feet 9 inches to the required 10 foot separation from an existing accessory structure.

If you wish to appeal this decision, you must do so by March 22, 2018, 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

Joe Tapia, 6404 Eastern Ave SE, 87108

Richard Schalk, AIA, 1606 Old Town Rd NW, 87104



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NOTIFICATION OF DECISION

JOE TAPIA (RICHARD SCHALK, AIA, AGENT) requests a special exception to Section 14-16-3-10(E)(7)(b): a VARIANCE of 6 ft to the required 6 ft side landscape buffer required for all or a portion of Lot 28, Block 25A, Elder Homestead Addn zoned R-3, located on 6404 EASTERN AVE SE (L-18)

Special Exception No:**18ZHE-80009**
Project No:**Project# 1011496**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, RICHARD SCHALK (“Agent”) acting as agent on behalf of the property owner JOE TAPIA (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 6 ft to the required 6 ft side landscape buffer (“Application”) upon the real property located at 6404 EASTERN AVE SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 6 ft to the required 6 ft side landscape buffer.
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 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).
5. The structure in question a laundry room, constructed by Applicant to facilitate that chore for his elderly tenants.
6. A review of the site plan does not reveal any other location for the structure that would not require similar variance from the code requirements.

7. The structure does not appear to block the light, views or access for any other properties.
8. The structure is modest, and not highly visible.
9. The portion of the Subject Property where the accessory structure is located abuts an alleyway, across from a gas station.
10. Applicant testifies that the accessory structure has been in place for approximately 14 years without complaint, but that he is required to address the violation now to sell the property.
11. 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).
12. Specifically, the ZHE finds that the property was constructed in 1949-1950, prior to the zoning restriction in question. Although not strictly applicable, it is worth noting the spirit of § 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.”
13. The R-3 zoned, corner lot is smaller than the general size of lots in the vicinity.
14. 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).
15. Specifically, the ZHE finds that these special circumstances are not a result of the Applicant’s actions.
16. 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).
17. 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).
18. 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 6 ft to the required 6 ft side landscape buffer.

If you wish to appeal this decision, you must do so by March 22, 2018, 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.

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