



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

ROBERT ROSSBERG requests a special exception to Section 14-16-2-23(A) and Sawmill SDP pg 86 3.b: a VARIANCE of 10 ft to the required 10 ft setback for an addition over 15 ft in height for all or a portion of Lot A, Block 25, Rosemont Park Addn zoned S-R, located on 1114 11TH ST NW (J-13)

Special Exception No: ..... **18ZHE-80132**  
Project No: ..... **Project# 1011654**  
Hearing Date: ..... 06-19-2018  
Closing of Public Record: ..... 06-19-2018  
Date of Decision: ..... 07-04-2018

On the 19th day of June, 2018, property owner ROBERT ROSSBERG (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the required 10 ft setback for an addition over 15 ft in height (“Application”) upon the real property located at 1114 11TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 ft to the required 10 ft setback for an addition over 15 ft in height.
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. Applicant explains that the two-story addition is consistent with others in the vicinity and was approved by the City prior to construction.

6. As to objections that it causes a loss of privacy for the immediate neighbor, Applicant similarly explains that being able to see into the neighbor's back yard is a condition that exists throughout the City.
7. As to objections that it is inconsistent with the historic neighborhood, there is no indication that it violates any historic design regulations, covenants, or height restrictions other than the required step back.
8. Applicant states that the neighbor to the South does not object to the design, and that other neighbors accept it as well.
9. Although controversial, and to some extent problematic due to the height within the stepback, on balance I do not find that the structure is contrary to the public interest or injurious.
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 subject property is irregularly shaped, creating a four-sided triangular shape that limits opportunities for expansion.
12. In addition to a special circumstance here, is that the Applicant obtained approval (permit) in good faith from the City of Albuquerque prior to constructing the improvements. After obtaining the permit, the Applicant then proceeded with construction. This fact pattern meets the requirements of a vested right under New Mexico law.
13. 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).
14. Specifically, the ZHE finds that Applicant is responsible neither for the shape of the lot, which limits expansion opportunities, nor for the City's inadvertent error in issuing the permit. Requiring that the already-constructed improvements be substantially demolished would work an unnecessary hardship, significantly interfere with Applicant's return on the property and need not be endured.
15. 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).
16. 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).
17. 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 10 ft to the required 10 ft setback for an addition over 15 ft in height.

If you wish to appeal this decision, you must do so by July 19, 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.

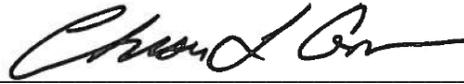
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



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Zoning Hearing Examiner

cc: Zoning Enforcement  
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