



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

PERI PAKROO (JOE SILVA, AGENT) requests a special exception to Section 14-16-2-23 and 14-16-2-6(E)(5) & pg 92 DOWNTOWN NEIGHBORHOOD AREA SDP : a VARIANCE of 15 ft to the required 15 ft rear yard setback for an existing house for all or a portion of Lot 3, Block 2, Chacon Addn zoned SU-2 DNA-SF, located on 614 17TH ST NW (J-13)

Special Exception No:..... **15ZHE-80271**  
Project No:..... **Project# 1010635**  
Hearing Date:..... 12-15-15  
Closing of Public Record:..... 12-15-15  
Date of Decision: ..... 12-30-15

On the 15th day of December, 2015 (hereinafter “**Hearing**”) JOE SILVA, (hereinafter “**Agent**”) acting as agent on behalf of the property owner PERI PAKROO (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 15 ft to the required 15 ft rear yard setback for an existing house (hereinafter “**Application**”) upon the real property located at 614 17TH ST NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 15 ft to the required 15 ft rear yard setback for an existing house.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “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 structure in question is a storage shed. It was built in its present location in approximately the 1950’s and was seriously deteriorating prior to Applicants initiating reconstruction.
4. Appellants obtained a permit for the current work, but seek a variance to obtain legal clarity.

5. The ZHE finds that the Applicant has met her burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property, as required pursuant to Section § 14-16-4-2 (C) (2) (a)].
6. Specifically, the structure has existed at its current location for many years without apparent ill effect. Permitting the structure to remain in its prior condition would itself be injurious because of aesthetic and safety concerns.
7. Abutting neighbor Andy Davidson did express several concerns about the project, although he did confirm that prior concerns about its height have been addressed.
8. Mr. Davidson expressed concern regarding the unstuccoed rear (the side facing him) of the structure.
9. Such aesthetic concerns may arise to to the level of injury to nearby property and improvements.
10. Applicants indicated that stuccoing was not part of their current plans, and that because they used stabilized adobe stuccoing was unnecessary.
11. The condition of approval related to this issue should address Mr. Davidson's concerns regarding the unstuccoed rear of the building.
12. Mr. Davidson also expressed concern that the wall of the structure was leaning, indicating potential structural integrity concerns.
13. Applicant's agent and contractor, Mr. Silva, testified that in his professional opinion the wall was structurally stable and that its lack of alignment is because it was built in a "free form" fashion.
14. The ZHE is satisfied that the wall is structurally stable, and that the City's permitting process will ensure that it remains so.
15. Mr. Davidson also expressed concern about the location of the structure on the property line wall. Although the ZHE does require consent of the owners of a subject property prior to granting approval for a special exception on that property, in the instance of determining the lot line vs. the location of improvements by a matter of inches, the ZHE simply has neither the authority nor the necessary evidence to make such a determination. Any trespass would be a civil matter between the parties.<sup>1</sup>
16. Finally, Mr. Davidson expressed concern that the project was proceeding in the absence of a building permit. Applicant assured the ZHE that they did in fact have a building permit. Regardless, violations such as unpermitted development are neither within the ZHE's jurisdiction to enforce, nor do the enter into the ZHE's analysis.
17. Mr. Davidson is clearly concerned with, and continues to object to, the project (and indicated his intent to appeal any approvals). However, Mr. Davidson was unable to articulate objections other than those adequately addressed by the Applicant, who otherwise has proven entitlement to the variance.
18. The Application and testimony of the Applicant at the Hearing suggest that there is no other neighborhood opposition to the Application.

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<sup>1</sup> Mr. Davidson suggested he may engage in self-help by removing the wall. The ZHE strongly cautions all parties to obtain the declaration of a court of competent jurisdiction before taking any irreversible action.

19. The ZHE finds that the Applicant has met her burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity, as required pursuant to Section § 14-16-4-2 (C) (2) (b). Specifically, the longstanding pre-existing structure built approximately 50 years before the Applicant purchased the property is a special circumstance applicable to the Subject Property.
20. The ZHE finds that the Applicant has met her burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed” and that those special circumstances create an unnecessary hardship upon the Applicant. Applicant did not design or construct the original improvements, which have existed for approximately 50 years. Applicant did purchase a property that had an existing storage structure located on a lot with fairly tight quarters and no other obvious and appropriate location for similar storage.
21. In general the ZHE finds that the lack of adequate storage works a hardship on both a homeowner and the community, because items then tend to be stored outdoors, creating an eyesore and security risk.
22. Eliminating the existing storage would constitute a hardship, as well as an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
23. The ZHE finds that the Applicant has met her burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved, as required pursuant to Section § 14-16-4-2 (C) (2) (d)].
24. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

### **CONCLUSIONS OF LAW:**

The Applicant has met her burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

### **DECISION:**

**APPROVAL WITH CONDITIONS** of a VARIANCE of 15 ft to the required 15 ft rear yard setback for an existing house.

### **CONDITIONS OF APPROVAL:**

- A. The Applicant shall construct the improvements in accordance with the plans submitted for and at the December 15, 2015 hearing, particularly with regard to limiting height to 8’9”.
- B. The Applicant shall stucco the rear of the structure facing the abutting property in a color matching the existing wall. Note: stucco work may require access provided by

the neighbor. This condition of approval is itself conditioned on the neighbor providing necessary access to complete the stuccoing project during regular business hours within the next sixty days.

C. The structure may not be used for purposes other than storage.

If you wish to appeal this decision, you may do so 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.

  
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Christopher L. Graeser, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
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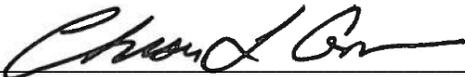
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Zoning Hearing Examiner

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