



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

JAMES BURKE requests a special exception to Section 14-16-2-6(B)(11) : a CONDITIONAL use to allow a second kitchen in a dwelling for all or a portion of Lot 16, Block 27, Monterey Hills Addn No 2 zoned R-1, located on 3000 SAN JOAQUIN AV SE (L-16)

Special Exception No:..... **16ZHE-80316**
Project No:..... **Project# 1011066**
Hearing Date:..... 01-17-17
Closing of Public Record:..... 01-17-17
Date of Decision: 02-01-17

On the 17th day of January, 2017, JAMES BURKE (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a second kitchen in a dwelling (“Application”) upon the real property located at 3000 SAN JOAQUIN AV SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a second kitchen in a dwelling.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:*
(a) *Will not be injurious to the adjacent property, the neighborhood, or the community;*
(b) *Will not be significantly damaged by surrounding structures or activities.*”
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 criteria for approval of a second kitchen under 14-16-2-6 include the requirement that the kitchen is incidental to occupancy of the entire house in common by members of one family (as herein defined); that, in fact, there would not be two separate and distinct dwelling units, each exclusively occupied by some family members.
5. These criteria serve to constrain any potential injury that might be caused by in essence converting a single-family home to a multi-family use.
6. Here, it does appear that Applicant previously used the second kitchen (it is an existing installation) to facilitate use as two separate and distinct dwelling units. This is not permitted by the Zoning Code.
7. However, the ZHE finds that an approval can be properly conditioned to permit reasonable use while ensuring that both the letter and the spirit of the Zoning Code are met.

8. The ZHE finds that in the proposed use, as conditioned below, will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
9. Specifically, the ZHE finds that the subject residence is a larger structure, capable of reasonable occupancy by a larger, or extended, family.
10. The home sits on a double lot, on a cul-de-sac, with adequate off street parking for such a family.
11. The abutting neighbors expressed concern over what they characterize as an injurious condition. However, those concerns appear more related to use as a rental unit and, apparently, interpersonal issues with the Applicant, that they are related to allowing the additional kitchen to facilitate occupancy by a larger, diverse family.
12. The use is entirely internal and, properly conditioned, would not appreciably increase intensity of use, noise, traffic or neighborhood character or security.
13. The ZHE finds that the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
14. 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).
15. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow a second kitchen in a dwelling.

CONDITIONS OF APPROVAL:

1. Pursuant to Section 14-16-2-6, the terms of this action shall be accepted in writing by Applicant and shall be recorded with the County Clerk.
2. No part of the subject residence shall be rented, advertised or offered for rent separately from the entire house.
3. Occupancy of the subject residence shall be limited to one family, as defined in the Zoning Code.
4. So long as the second kitchen remains installed, Applicant shall provide proof of familial status of any occupants on reasonable inquiry from the City.

If you wish to appeal this decision, you must do so by February 16, 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.

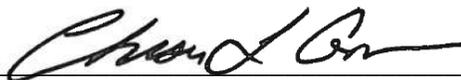
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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