



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

JOHN & KAREN MCCREERY requests a special exception to Section 14-16-2-6(B)(12): a CONDITIONAL USE to allow a proposed patio cover in the required rear yard setback for all or a portion of Lot 65-P1, Block 1, MIRABELLA UNIT 4 zoned R-1, located on 11408 GRAND MESA RD SE (L-21)

Special Exception No:.....14ZHE-80290
Project No:Project# 1010304
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-06-15

On the 23rd day of January, 2015 (hereinafter "**Hearing**") JOHN & KAREN MCCREERY (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Conditional Use to allow a proposed patio cover in the required rear yard setback (hereinafter "**Application**") upon the real property located at 11408 GRAND MESA RD SE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow a proposed patio cover in the required rear yard setback.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
8. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the proposed patio cover in the rear setback will comply with the six pronged regulations provided within Section 14-16-2-6 (B) (12): (a) no part is within three feet of a property line, (b) no building wall is ever built within the required setback area, (c) no more than 50% of the require rear yard setback area is covered by a roof of the patio, (d) the structure shall not exceed 12 feet in height nor shall it exceed the height of the principal building on site, (e) a second floor deck is prohibited, (f) the specific structure is in harmony with the building site and with surrounding sites. Additionally, the Applicant stated that the patio cover is consistent in design with the home trim and it will match the stucco color in areas.
9. The Applicant stated that there was no known opposition from neighbors, and that many of his neighbors have patio covers.
10. The Applicant stated that he received the support from the Mirabella Miravista NA.
11. The Applicant stated that his neighbors to the right and left of his home have patio covers as well (a precedent for patio covers in this neighborhood).

12. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*"
13. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities.
14. 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 SPECIAL EXCEPTIONS.
15. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a **CONDITIONAL USE** to allow a proposed patio cover in the required rear yard setback.

CONDITIONS OF APPROVAL:

- B. The Applicant's proposed patio cover shall comply with Section 14-16-2-6 (B) (12):
- (a) no part is within three feet of a property line,
 - (b) no building wall is ever built within the required setback area,
 - (c) no more than 50% of the require rear yard setback area is covered by a roof of the patio,
 - (d) the structure shall not exceed 12 feet in height nor shall it exceed the height of the principal building on site,
 - (e) a second floor deck is prohibited,
 - (f) the specific structure is in harmony with the building site and with surrounding sites (the patio cover shall match the colors and style of the home).

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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