



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

ROYCE KOHLMAYER (CARL GARCIA, AGENT) requests a special exception to Section 14-16-2-6(B)(1): a CONDITIONAL USE to allow an existing accessory living quarters in a RA-2 zone for all or a portion of Lot 12, Block B, LUKE zoned RA-2, located on 1836 CHEROKEE RD NW (G-13)

Special Exception No:..... **15ZHE-80177**  
Project No:..... **Project# 1010505**  
Hearing Date:..... 07-21-15  
Closing of Public Record:..... 07-21-15  
Date of Decision: ..... 07-31-15

On the 21st day of July, 2015 (hereinafter “**Hearing**”) CARL GARCIA, (hereinafter “**Agent**”) acting as agent on behalf of the property owner ROYCE KOHLMAYER (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow an existing accessory living quarters in a RA-2 zone (hereinafter “**Application**”) upon the real property located at 1836 CHEROKEE RD NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Conditional Use to allow an existing accessory living quarters in a RA-2 zone.
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.*”
3. 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 accessory living quarters are existing with no apparent injury to the adjacent property, neighborhood or community. Applicant states that the quarters are needed for a family member suffering from significant injuries. Allowance of the request will conform with plan density standards and respects historical family land use patterns.
4. 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.*”
5. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities because there are no surrounding commercial uses that would impact the property

6. 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.
7. 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 an existing accessory living quarters in a RA-2 zone.

**CONDITIONS OF APPROVAL:**

- A. The accessory living quarters will not be listed or rented as a separate Dwelling Unit.

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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CITY OF ALBUQUERQUE  
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ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

ROYCE KOHLMAYER (CARL GARCIA, AGENT) requests a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE request of 1' 11" to the required 10' separation to allow an existing accessory living quarters for all or a portion of Lot 12, Block B, LUKE zoned RA-2, located on 1836 CHEROKEE RD NW (G-13)

Special Exception No:..... **15ZHE-80178**  
Project No:..... **Project# 1010505**  
Hearing Date:..... 07-21-15  
Closing of Public Record:..... 07-21-15  
Date of Decision: ..... 07-31-15

On the 21st day of July, 2015 (hereinafter “**Hearing**”) CARL GARCIA, (hereinafter “**Agent**”) acting as agent on behalf of the property owner ROYCE KOHLMAYER (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 1' 11" to the required 10' separation to allow an existing accessory living quarters (hereinafter “**Application**”) upon the real property located at 1836 CHEROKEE RD NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 1' 11" to the required 10' separation to allow an existing accessory living quarters.
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 ZHE finds that the Applicant has met its 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.

Specifically, the Applicant provided testimony that the accessory living quarters are existing with no apparent injury to the adjacent property, neighborhood or community. Allowance of the request will conform with plan density standards and respects historical family land use patterns, as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application, which the ZHE takes as an indication that the application is not contrary to the public interest or injurious.

4. The ZHE finds that the Applicant has met its 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. Specifically, the Applicant provided testimony that the existing condition of the property is such that the minimal (under two foot) deviation from separation requirements constitutes a special circumstance [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
5. The ZHE finds that the Applicant has met its 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. Specifically, the Applicant provided testimony that Applicant states that they quarters are needed for a family member suffering from significant injuries and the existing separation deviates only minimally from the required separation which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
6. A prior request for a wall height variance has been withdrawn.
7. The ZHE finds that the Applicant has met its 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)]
8. 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 their 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 1' 11" to the required 10' separation to allow an existing accessory living quarters.

#### **CONDITIONS OF APPROVAL:**

- A. The accessory living quarters will not be listed or rented as a separate Dwelling Unit.

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