



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

GREG BOULOY requests a special exception to Section 14-16-2-6-(B)(12): CONDITIONAL USE to allow for an existing attached shade structure in the rear yard setback for all or a portion of Lot 2, Block 3, KNAPP HEIGHTS ADDN zoned R-1, located on 7204 PRAIRIE RD NE. ALBUQUERQUE NM 87111 (F-19)

Special Exception No:..... **15ZHE-80060**
Project No:..... **Project# 1010405**
Hearing Date:..... 05-19-2015
Closing of Public Record:..... 05-19-2015
Date of Decision: 05-29-2015

On the 19th day of May, 2015 (hereinafter “**Hearing**”) GREG BOULOY (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow for an existing attached shade structure in the rear yard setback (hereinafter “**Application**”) upon the real property located at 7204 PRAIRIE RD NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow for an existing attached shade structure in the 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.*”
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 existing shade structure complies with all of the elements required in City of Albuquerque Zoning Code Section 14-16-2-6 (B) (12): (a) no part of the shade structure is located within three feet of a property line; (b) no building wall of the shade structure is ever built within the required rear yard setback area; (c) no more than 50% of the required rear yard setback area is covered by a roof of the shade structure; (d) the shade structure does not exceed 12 feet in height nor does it exceed the height of the principal building (home) on the site; (e) there is not a second floor deck on the shade structure; (f) the specified shade structure is in harmony with the building site and the surrounding sites (largely due to the fact that the shade structure color matches the home and has similar building materials). Additionally, the ZHE notes that the Application did not have any opposition at the time of the Hearing and believes that the “existing” structure appears to be well received by the neighborhood.
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.
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 for an existing attached shade structure in the rear yard setback

CONDITIONS OF APPROVAL:

- A. The Applicant shall adhere to City of Albuquerque Zoning Code Section 14-16-2-6 (B) (12):
 - (a) no part of the shade structure shall be located within three feet of a property line;
 - (b) no building wall of the shade structure shall ever built within the required rear yard setback area;
 - (c) no more than 50% of the required rear yard setback area shall be covered by a roof of the shade structure;
 - (d) the shade structure shall not exceed 12 feet in height nor shall it exceed the height of the principal building (home) on the site;
 - (e) the shade structure shall not have a second floor deck; and
 - (f) the shade structure shall be in harmony with the building site and the surrounding sites (the color of the shade structure shall match the home and have similar building materials).

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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