



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

EDMUND SAMUEL (MARTIN GUTIERREZ, Special Exception No:..... **16ZHE-80103**
AGENT) requests a special exception to Project No:..... **Project# 1010810**
Section 14-16-2-6(B)(1) : a CONDITIONAL Hearing Date:..... 05-17-16
USE to allow an accessory living quarters for Closing of Public Record:..... 05-17-16
all or a portion of Lot 24, Block 7, Sunset Date of Decision: 06-01-16
Terrace Addn 1046 PRINCETON DR NE (J-
16)

On the 17th day of May, 2016, MARTIN GUTIERREZ (“Agent”) acting as agent on behalf of the property owner EDMUND SAMUEL (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow an accessory living quarters (“Application”) upon the real property located at 1046 PRINCETON DR NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow an accessory living quarters.
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 ZHE finds that in the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
5. Specifically, the ZHE finds that the Applicant intends to convert an existing detached garage to residential use. The proposed use, residential accessory living quarters, is in harmony with the existing use of the subject property. Approval conditioned as below will not result in any substantial increase in intensity of use or impacts to the area. There is no new exterior construction planned that will impact adjacent properties as to views, light or buffer space. The Applicant stated that neighbors are in support of the project, which indicates the absence of injury to adjacent property, the neighborhood or community. Moreover, the abutting structure is only a garage and thus not the type of use that might be harmed by the proposed use. Finally, the Applicant intends to use the property only 2-3 days per week.
6. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).

7. 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).
8. The ZHE finds that the Applicant has authority to pursue this Application.
9. The ZHE was approached by a concerned area resident after the hearing concluded. The ZHE explained that the hearing was closed and that no *ex parte* discussion was permitted. The individual was referred to ZHE staff.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow an accessory living quarters.

CONDITIONS OF APPROVAL:

1. No kitchen may be constructed in the accessory living quarters.
2. The applicant is prohibited from renting the accessory living quarters to separate tenants than the primary residence.
3. All vehicles used by occupants of the subject property shall be parked on the subject property.

If you wish to appeal this decision, you must do so by June 16, 2016, 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

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

EDMUND SAMUEL (MARTIN GUTIERREZ, AGENT) requests a special exception to Section 14-16-3-3(B)(2)(e) : a VARIANCE of 5 ft 6 in to the 10ft separation to allow a proposed accessory living quarters for all or a portion of Lot 24, Block 7, Sunset Terrace Addn 1046 PRINCETON DR NE (J-16)

Special Exception No:..... **16ZHE-80104**
Project No:..... **Project# 1010810**
Hearing Date:..... 05-17-16
Closing of Public Record:..... 05-17-16
Date of Decision: 06-01-16

On the 17th day of May, 2016, MARTIN GUTIERREZ (“Agent”) acting as agent on behalf of the property owner EDMUND SAMUEL (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft 6 in to the 10ft separation to allow a proposed accessory living quarters (“Application”) upon the real property located at 1046 PRINCETON DR NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft 6 in to the 10ft separation to allow a proposed accessory living quarters.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “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 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 ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).

5. Specifically, the ZHE finds that the Applicant intends to convert an existing detached garage to residential use. The proposed use, residential accessory living quarters, is in harmony with the existing use of the subject property. Approval conditioned as below will not result in any substantial increase in intensity of use or impacts to the area. There is no new exterior construction planned that will impact adjacent properties as to views, light or buffer space. The Applicant stated that neighbors are in support of the project, which indicates the absence of injury to adjacent property, the neighborhood or community. Moreover, the abutting structure is only a garage and thus not the type of use that might be harmed by the proposed use. Finally, the Applicant intends to use the property only 2-3 days per week.
6. The conditions imposed below will help ensure that the decreased separation permitted by this variance will not be injurious to the community or nearby properties and improvements.
7. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
8. Specifically, the ZHE finds that the structures are existing in their as-built locations. The location of these structures in proximity to each other is such that compliance with code requirements is impossible without substantially deconstructing the structure on the subject property.
9. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).
10. Specifically, the ZHE finds that it does not appear that Applicant planned the site layout or constructed the structures in their current locations. Denying the request, and thus in essence requiring substantial demolition of an existing, sound structure before it can be put to better use is unjustified and economically unreasonable.
11. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
12. 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).
13. The ZHE finds that the Applicant has authority to pursue this Application.
14. The ZHE was approached by a concerned area resident after the hearing concluded. The ZHE explained that the hearing was closed and that no *ex parte* discussion was permitted. The individual was referred to ZHE staff.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 5 ft 6 in to the 10ft separation to allow a proposed accessory living quarters.

CONDITIONS OF APPROVAL:

1. No kitchen may be constructed in the accessory living quarters.
2. The accessory living quarters may not be rented out to separate tenants than the primary residence.
3. All vehicles used by occupants of the subject property shall be parked on the subject property.

If you wish to appeal this decision, you must do so by June 16, 2016, 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.

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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.

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from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Zoning Hearing Examiner

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