



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

JASON BUCHANAN  
GARCIA/KRAEMER&ASSOC, AGENT)  
requests a special exception to Section 14-16-2-9(D)(1): a VARIANCE of 38 ft to the minimum required 22 ft lot width in the R-T zone for proposed 6 new townhomes for all or a portion of Lot 46, Rossiter Addn zoned R-T, located on 4622 12TH ST NW (F-14)

Special Exception No: ..... **15ZHE-80251**  
Project No:..... **Project# 1010606**  
Hearing Date:..... 10-20-15  
Closing of Public Record:..... 10-20-15  
Date of Decision: ..... 10-30-15

On the 20th day of October, 2015(hereinafter “**Hearing**”)  
GARCIA/KRAEMER&ASSOC, (hereinafter “**Agent**”) acting as agent on behalf of the property owner JASON BUCHANAN (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 38 ft to the minimum required 22 ft lot width in the R-T zone for proposed 6 new townhomes (hereinafter “**Application**”) upon the real property located at 4622 12TH ST NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 38 ft to the minimum required 22 ft lot width in the R-T zone for proposed 6 new townhomes.
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 his 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 as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Specifically, the Applicant provided evidence that the proposed project would replace two substandard, unoccupied dwellings with six modern, efficient and sustainable units that constitute infill development encouraged by City plans and policies. The Applicant does not seek variances to height, density, setbacks, open space, use or other standards that would present a more likely possibility of injury.
4. Los Griegos Neighborhood Association President Candice Knight testified regarding a number of aspects of the proposed project that present potential injury, including:
  - a. A discordant style of architecture not in keeping with the unique character of the area.
  - b. The decision to build new structures rather than rehabilitate the existing structures.
  - c. The height of the proposed units.
  - d. Inadequate 'green' landscaping.
  - e. The project will overwhelm the neighboring back yard.
5. In reviewing the Application for its potential to cause injury or be contrary to the public interest, it is necessary to review what changes the variance would allow, and what could be built without it.
6. The frontage variance does not address any of the neighborhood association's concerns, as the aspects of the project with which the association is concerned would continue to exist in the absence of the variance. That is the density (six units), height, architectural style, etc. all exist independent of the zoning variance.
7. Certainly the ZHE has sympathy for the neighborhood association's concerns, but does not have the ability to address those concerns in any meaningful way.
8. The ZHE tends to concur with Applicant's position that the property would support six units aligned along a straight driveway off of 12<sup>th</sup> St. The project as planned, with the units grouped facing inward rather than laid out in a linear manner, appears less intrusive and is more likely to foster a sense of community amongst the residents.
9. Applicant states that he has been in touch with the neighbor immediately behind the property, who supports the project. No other comments were submitted.
10. Therefore the evidence does not show that the variance is injurious or contrary to the public interest and Applicant has demonstrated otherwise.
11. The ZHE finds that the Applicant has met his 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 as required pursuant to Section § 14-16-4-2 (C) (2) (b). Specifically, the Applicant provided evidence of the unique lot size and layout. The size allows for the proposed six units but the odd dimension is such that there is inadequate frontage.
12. 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 the lot was platted in 1945 and as a contract purchaser he had no control over that situation, 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)]

13. The ZHE finds that the Applicant has met his 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)]
14. 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 his 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** of a VARIANCE of 38 ft to the minimum required 22 ft lot width in the R-T zone for proposed 6 new townhomes.

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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