



Planning Department

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

David Pino appeals the Zoning Hearing Examiner’s Denial of a special exception to Section 14-16-3-3(B)(2)(e): a Variance of 10 feet to the required 10 foot separation of an accessory buildings for all or a portion of Lot 11B, Williams Dora A Addition, zoned R-1, located at 2310 Dora Ave. NW (J-12).

Appeal No:..... 16BOA-20020
Special Exception No: 16ZHE-80248
Project No:..... 1010992
Hearing Date:..... 1/24/2017

In the matter of **16BOA-20020**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, thereby **AFFIRMING** the Zoning Hearing Examiner’s (ZHE’s) decision based on the following findings:

PO Box 1293

FINDINGS:

Albuquerque

NM 87103

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1. This is an APPEAL of the Zoning Hearing Examiner’s (ZHE) DENIAL of a SPECIAL EXCEPTION pursuant to Zoning Code §14-16-3-3(B)(2)(e), Variance Criteria: a variance of 10 feet to the required 10 foot separation distance for an accessory building [Zoning Code §14-16-2-6(E)(4)(a)] to allow for an existing addition (the “request”).
2. The subject property is described as Lot 11B, Williams Dora A. Addition, containing approximately 1 acre and located at 2310 Dora Ave. NW (the “subject property”). The applicant owns the subject property.
3. The subject property is within the boundaries of the Old Town Sector Development Plan (OTSDP). The OTSDP does not contain any regulations relevant to the request.
4. The Albuquerque/Bernalillo County Comprehensive Plan, the City of Albuquerque Zoning Code, and Old Town Sector Development Plan are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is zoned R-1 Residential zone. A single-family home and a 100 sf storage shed, which abuts the home, exist on the western portion of the subject property. Another single-family home exists on the eastern portion of the subject property.
6. The subject property is zoned R-1 Residential zone. Pursuant to Zoning Code Section §14-16-2-6(A)(1)(a) (the R-1 Residential zone), an accessory structure for storage, such as a shed, is a permissive use.
7. The appellant states that the subject property is 80 years old (Record, p. 39). Both homes are shown on the 1949 historical aerial photograph; they existed prior to Zoning Code adoption in

1959 and therefore are non-conforming with the current requirement in the R-1 zone of “house, one per lot” [Ref: §14-16-2-6(A)(1)].

8. It is unclear when the original shed, which was replaced, was built. It does not appear on the 1949 historical aerial photograph. However, because the appellant tore down the original shed and replaced it with a new shed in 2016, the Zoning Code regulations in effect in 2016 apply.
9. Pursuant to Zoning Code §14-16-3-3(B)(2)(e), Supplementary Height, Area and Use Regulations- Accessory Structures, states that:

An accessory building that is larger in area or height than an accessory building as described in division (d) above [note: division (d) refers to an 80 sf accessory building] must be at least five feet from any other accessory building without living quarters and at least 10 feet from any dwelling or accessory living quarters.

The appellant requested a variance of 10 feet to the minimum 10 foot separation requirement. The existing, recently built accessory building (a shed) abuts the dwelling (a single-family home) on the subject property (Record, p. 24).

10. Zoning Code Section §14-16-1-5 contains the following, relevant definitions:

BUILDING, ACCESSORY. A building detached from and smaller than the main building on the same lot; the use of an accessory building shall be appropriate, subordinate, and customarily incidental to the main use of the lot.

The appellant provided a site plan that indicates (Record, p. 24) that the shed abuts the existing home, which is the main building on the subject property. The shed meets the definition of accessory building. In zoning practice, the shed is considered detached because it is not structurally a part of the main building.

11. Zoning Code Section §14-16-2-6(E), R-1 Residential Zone-Setbacks, states that the setback regulations apply except as provided for in §14-16-3-3, Supplementary Height, Area, and Use Regulations. §14-16-3-3(B)(2)(e) contains the language regarding accessory buildings, which is the subject of this request. Furthermore, §14-16-3-3(B)(2)(e), Supplementary Height, Area and Use Regulations- Accessory Structures, states that an accessory structure has no required setback from a lot line.
12. Zoning Code §14-16-4-2(C)(2), Special Exceptions, states that a variance shall be approved by the ZHE, if and only if, the ZHE 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.

13. The request was first heard at the October 18, 2016 ZHE hearing. It was deferred to allow time for a facilitated meeting to occur (Record, p. 11).
14. A facilitated meeting, in the form of a conference call, was held on November 9, 2016. Participants were the appellant and a neighbor, Ms. Petrecca, who were unable to come to an agreement. The appellant believes that the shed is an improvement to his property because it replaced a smaller, metal shed that was in disrepair. Ms. Petrecca believes that the new shed is too tall, poorly constructed, and is actually a building addition because it's adjacent to the house. She wants the shed to be torn down; the appellant does not want to tear the shed down and believes that moving it is infeasible.
15. The ZHE heard the request on November 17, 2016 and denied it based on findings elaborated in the November 30, 2016 Notification of Decision (Record, p. 7).
16. The ZHE found that the shed can be considered injurious because it blocks the neighbor's views to some extent §14-16-4-2 (C)(2)(a) and that the shed's location at the rear of the subject property does not meet the criteria of §14-16-4-2(C)(2)(b) regarding special circumstances (size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid). The ZHE did not find sufficient evidence to evaluate self-imposition of special circumstances and unnecessary hardship in §14-16-4-2(C)(2)(c). He did not make a finding regarding §14-16-4-2(C)(2)(d).
17. Zoning Code Section §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant does not specifically refer to any of the above reasons for appeal. Rather, he states that the variance is needed because there is no other place to build the shed because of underground utility lines (Record, p. 3). The appellant did not refer to any of the above reasons in testimony, even when directly questioned to his reasons for appeal.

18. The appellant did not provide any information in the record to substantiate his claim on appeal that the shed cannot be moved due to underground utility lines. At the facilitated meeting, the appellant stated that it would not be feasible to move the shed to another part of the subject property because it is heavy and is bolted down (Record, p. 40).
19. Based on these findings, the Zoning Board of Appeals concludes that the decision of the ZHE in denying the variance request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is AFFIRMED.

If you wish to appeal this decision, you must do so by **February 8, 2017**, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

Catalina Lehner

for Suzanne Lubar, Planning Director

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