



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

DONAL W. KEY requests a special exception to Section 14-16-2-6(E)(4)(b): a VARIANCE request of 3' to the required 5' side setback to allow a proposed addition for all or a portion of Lot 2, BARRASS-KEITH zoned R-1, located on 601 GRIEGOS RD NW (F-14)

Special Exception No:..... **15ZHE-80032**
Project No:..... **Project# 1010384**
Hearing Date:..... 04-21-2015
Closing of Public Record:..... 04-21-2015
Date of Decision: 05-04-2015

On the 21st day of April, 2015 (hereinafter “**Hearing**”) DONAL W. KEY (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a VARIANCE of 3' to the required 5' side setback (hereinafter “**Application**”) upon the real property located at 601 GRIEGOS RD NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a VARIANCE of 3' to the required 5' side setback.
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 proposed addition contain a third bedroom and it will not injure the next door neighbor because the current home is located two feet from the side yard property line and this “addition” will run parallel to that existing structure. The Applicant testified that this home was built,

likely, prior to the adoption of the side yard setback regulations because parts of the home are located directly contiguous to the property line. For these reasons, the Application believes that this proposed addition will not encroach any further than the existing home and will not reduce property values of the neighbors [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. The Applicant provided testimony that the property owner of Lot 601B (neighbor to the north) did not have any opposition to the proposed addition.

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 “Special Circumstances” obligating the Applicant to construct the addition in the rear of the lot is because there exists a gravel driveway that is encumbered by an access easement benefitting the property behind the Subject Property (to the north) [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. This driveway doesn’t allow the Applicant to construct any proposed addition (third bedroom) to the east of the current home. This easement also renders the Subject Property (and permissible building envelope) very narrow in relation to the neighboring properties.
5. The Applicant testified that the proposed addition would be a single story and stucco’d the same color as the home.
6. The property owner to the west of the Subject Property is the ABQ Fire Department, and the file received no testimony from their office or personnel.
7. 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 easement was not self-imposed and that prohibiting the Applicant to construct the addition as a result of the side yard setback constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. 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)].
9. 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 3' to the required 5' side setback.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the proposed addition is stucco'd with the same color to match the current home on the Subject Property.
- B. The Applicant shall submit the construction drawings/plans to the City of Albuquerque for review and approval prior to construction.
- C. The Applicant shall install down spouts to capture storm water on-site.
- D. The proposed addition shall be one-story in height.

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
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Tova Indritz 524 Griegos Rd NW, Albuquerque, NM 87107



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

DONAL W. KEY requests a special exception to Section 14-16-2-6(E)(5)(a): a VARIANCE request of 12' to the required 15' rear setback to allow a proposed addition for all or a portion of Lot 2, BARRASS-KEITH zoned R-1, located on 601 GRIEGOS RD NW (F-14)

Special Exception No:..... **15ZHE-80033**
Project No:..... **Project# 1010384**
Hearing Date:..... 04-21-2015
Closing of Public Record:..... 04-21-2015
Date of Decision: 05-04-2015

On the 21st day of April, 2015 (hereinafter “**Hearing**”) DONAL W. KEY (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 12' to the required 15' rear setback to allow a proposed addition (hereinafter “**Application**”) upon the real property located at 601 GRIEGOS RD NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 12' to the required 15' rear setback to allow a proposed addition.
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 proposed addition contain a third bedroom and it will not injure the next door neighbor located behind the proposed addition (Lot 601 B) because they have a shed located in their back yard in

the exact location where the view of the proposed addition will be constructed and it will not be injurious to the community or the neighbor. The Applicant testified that this home was built, likely, prior to the adoption of the rear yard setback regulations because parts of the home are located directly contiguous to the property line [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. The Applicant provided testimony that the property owner of Lot 601B (neighbor to the north) did not have any opposition to the proposed addition.

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 “Special Circumstances” obligating the Applicant to construct the addition in the rear of the lot is because there exists a gravel driveway that is encumbered by an access easement benefitting the property behind the Subject Property (to the north) [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. This driveway doesn’t allow the Applicant to construct any proposed addition (third bedroom) to the east of the current home. This easement also renders the Subject Property (and permissible building envelope) very narrow in relation to the neighboring properties.
5. The Applicant testified that the proposed addition would be a single story and stucco’d the same color as the home.
6. The property owner to the west of the Subject Property is the ABQ Fire Department, and the file received no testimony from their office or personnel.
7. 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 easement was not self-imposed and that prohibiting the Applicant to construct the addition as a result of the rear yard setback regulations constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. 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)].
9. 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 12' to the required 15' rear setback to allow a proposed addition.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the proposed addition is stucco'd with the same color to match the current home on the Subject Property.
- B. The Applicant shall submit the construction drawings/plans to the City of Albuquerque for review and approval prior to construction.
- C. The Applicant shall install down spouts to capture storm water on-site.
- D. The proposed addition shall be one-story in height.

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
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Donal W. Key 601 Griegos Rd NW 87107donalkey@msn.com
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CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

DONAL W. KEY requests a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE request of 7' to the required 10' minimum separation of (2) accessory structures for a proposed addition for all or a portion of Lot 2, BARRASS-KEITH zoned R-1, located on 601 GRIEGOS RD NW (F-14)

Special Exception No:..... **15ZHE-80034**
Project No:..... **Project# 1010384**
Hearing Date:..... 04-21-2015
Closing of Public Record:..... 04-21-2015
Date of Decision: 05-04-2015

On the 21st day of April, 2015 (hereinafter “**Hearing**”) DONAL W. KEY (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 7' to the required 10' minimum separation of (2) accessory structures for a proposed addition (hereinafter “**Application**”) upon the real property located at 601 GRIEGOS RD NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 7' to the required 10' minimum separation of (2) accessory structures for a proposed addition.
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 proposed addition contains a

third bedroom and it will not injure the next door neighbor because it will be single story and painted/stucco'd the same color as the home on the Subject Property. The Applicant testified that this home was built, likely, prior to the adoption of the accessory structure setback regulations because parts of the home are located directly contiguous to the property line. For these reasons, the Application believes that this proposed addition will not reduce property values of the neighbors [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. The Applicant provided testimony that the property owner of Lot 601B (neighbor to the north) did not have any opposition to the proposed addition.

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 “Special Circumstances” obligating the Applicant to construct the addition in the rear of the lot is because there exists a gravel driveway that is encumbered by an access easement benefitting the property behind the Subject Property (to the north) [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. This driveway doesn't allow the Applicant to construct any proposed addition (third bedroom) to the east of the current home. This easement also renders the Subject Property (and permissible building envelope) very narrow in relation to the neighboring properties.
5. The Applicant testified that the proposed addition would be a single story and stucco'd the same color as the home.
6. The property owner to the west of the Subject Property is the ABQ Fire Department, and the file received no testimony from their office or personnel.
7. 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 easement was not self-imposed and that prohibiting the Applicant to construct the addition as a result of accessory structure setback regulation constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
8. 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)].
9. 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 7' to the required 10' minimum separation of (2) accessory structures for a proposed addition.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the proposed addition is stucco'd with the same color to match the current home on the Subject Property.
- B. The Applicant shall submit the construction drawings/plans to the City of Albuquerque for review and approval prior to construction.
- C. The Applicant shall install down spouts to capture storm water on-site.
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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.

A handwritten signature in black ink, appearing to read 'Joshua J. Skarsgard', written over a horizontal line.

Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
donalkey@msn.com
Tova Indritz 524 Griegos Rd NW 87107