



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

LAURA BRUZZESE requests a special exception to PG. 94 DNA SDP (I)(1): a VARIANCE request of 1 off-street parking to the required 1 space for an existing residential dwelling for all or a portion of Lot B, Block 11, PEREA ADDN zoned SU-2 DNA-SF, located on 1225 ROMA AV NW (J-13)

Special Exception No: **15ZHE-80006**
Project No: **Project# 1010339**
Hearing Date: February 20, 2015
Closing of Public Record: February 20, 2015
Date of Decision: 03-06-15

On the 20th day of February, 2015 (hereinafter “**Hearing**”) LAURA BRUZZESE (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 1 off-street parking to the required 1 space for an existing residential dwelling (hereinafter “**Application**”) upon the real property located at 1225 ROMA AV NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

18. Applicant is requesting a Variance of 1 off-street parking to the required 1 space for an existing residential dwelling.
19. 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.”
20. 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 this lot line adjustment between 412 13th Street NW (“**Property 1**”) and 1225 Roma Ave NW (“**Property 2**”) has

created the new to apply for two variances, and that a variance to the request of 1 off-street parking stall to the required 1 parking space for an existing residential dwelling unit will not burden or create problems for the neighbors adjacent to Property 1 and Property 2 [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. The Applicant testified that she was not aware of any detrimental impact that this parking variance would cause to the two properties or neighboring properties. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.

21. 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 existing boundary to the property line runs through a common building and down “the driveway” (letter to ZHE), with one side belonging to Property 1 and one side belonging to Property 2. Additionally, the Applicant testified that the two properties are both uniquely shaped on odd-contoured lots located on the corner of two public streets, which creates special circumstances related to the platting and orientation of the two properties [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
22. 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 if the parking variance was not granted and she was forced to comply with the existing zoning code sections that she would not be able to remedy the property line that straddles the home, and it would preclude her from selling either property without massive title binder complications, 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)]
23. 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)]
24. 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 1 off-street parking to the required 1 space for an existing residential dwelling.

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
Laura Bruzzese 412 13th St NW Albuquerque NM 87102



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

LAURA BRUZZESE requests a special exception to PG. 92 DNA SDP (D)(2): a VARIANCE request of 1800 square feet to the required 5000 square feet for a proposed lot split for all or a portion of Lot B, Block 11, PEREA ADDN zoned SU-2 DNA-SF, located on 1225 ROMA AV NW (J-13)

Special Exception No: **15ZHE-80007**
Project No: **Project# 1010339**
Hearing Date: February 20, 2015
Closing of Public Record: February 20, 2015
Date of Decision: 03-06-15

On the 20th day of February, 2015 (hereinafter “**Hearing**”) LAURA BRUZZESE (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 1800 square feet to the required 5000 square feet for a proposed lot split (hereinafter “**Application**”) upon the real property located at 1225 ROMA AV NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

25. Applicant is requesting a Variance of 1800 square feet to the required 5000 square feet for a proposed lot split.
26. 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.”
27. 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 this lot line adjustment between 412 13th Street NW (“**Property 1**”) and 1225 Roma Ave NW (“**Property 2**”) has

created the new to apply for two variances, and that a variance to the request of 1 off-street parking stall to the required 1 parking space for an existing residential dwelling unit will not burden or create problems for the neighbors adjacent to Property 1 and Property 2 [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. The Applicant testified that she was not aware of any detrimental impact that this parking variance would cause to the two properties or neighboring properties. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.

28. 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 existing boundary to the property line runs through a common building and down “the driveway” (letter to ZHE), with one side belonging to Property 1 and one side belonging to Property 2. Additionally, the Applicant testified that the two properties are both uniquely shaped on odd-contoured lots located on the corner of two public streets, which creates special circumstances related to the platting and orientation of the two properties [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
29. The Applicant testified that there is a precedent in this community for smaller and older lots that are very close to the 5,000 square feet minimum lot requirements.
30. 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 if the minimum square feet of a residential lot variance was not granted and she was forced to comply with the existing zoning code sections that she would not be able to remedy the property line that straddles the home, and it would preclude her from selling either property without massive title binder complications, 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)]
31. 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)]
32. 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 1800 square feet to the required 5000 square feet for a proposed lot split.

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
Laura Bruzzese 412 13th St NW Albuquerque NM 87102