



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

LYNDA EASTER (RICHARD BOWDITCH, AGENT) requests a special exception to Section 14-16-2-6(B)(1) : a CONDITIONAL USE to allow an accessory living quarters in a R-3 zone for all or a portion of Lot 18, Block 3, Coronado Builders Inc/Knob Heights Addn zoned R-3, located on 3520 ANDERSON AV SE (L-16)

Special Exception No:..... **17ZHE-80153**
Project No:..... **Project# 1011304**
Hearing Date:..... 08-15-17
Closing of Public Record:..... 08-15-17
Date of Decision: 08-30-17

On the 15th day of August, 2017, RICHARD BOWDITCH (“Agent”) acting as agent on behalf of the property owner LYNDA EASTER (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow an accessory living quarters in a R-3 zone (“Application”) upon the real property located at 3520 ANDERSON AV SE (“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 in a R-3 zone.
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 because the proposed accessory living quarters will not contain a kitchen and thus cannot be used as an independent dwelling, there will be no significant increase in intensity of use, noise or traffic over otherwise-permissible uses and the proposed use will not detrimentally impact neighborhood character or security.
6. The proposed quarters consist of the existing garage, and therefore there will be no significant outward apparent changes, and it will not block light or views or otherwise visually interfere with adjacent properties.

7. The project represents investment in and improvement of the neighborhood, and provides residential options and flexibility that the testimony indicates are demanded by the market.
8. The primary area of concern is parking.
9. The Applicant and supporters of the project acknowledge that parking is occasionally tight in the neighborhood. Additional living quarters naturally implies additional residents, who can be presumed to have and use vehicles that will need parking.
10. Several residents and occupants of the neighborhood testified to community efforts that are already being made to reduce parking pressure, and their support of the project in light of these efforts.
11. Applicant proposes as part of the project to construct additional on-site parking spaces, for a total of four (with potential room for five vehicles if three parked in tandem).
12. On balance it would appear that Applicant is at least addressing the increased parking demand of this particular project, and that as Applicant and others work to transform and improve the neighborhood parking is an acknowledged component of that process.
13. Letters and testimony of support was received from several neighbors, acknowledging and discussing neighborhood parking concerns and joint efforts to alleviate those concerns.
14. Letters of concern were also received. The concerns centered on parking, addressed above, and on the potential for misuse of the accessory living quarters as a “substandard” residence and use by transient tenants.
15. Without further evidence the ZHE cannot make a finding that the Applicant intends to violate applicable zoning restrictions, or that those restrictions are likely to be violated. The code is clear as to what is permitted in an accessory living quarters and the ZHE expects that the Applicant will adhere to the code.
16. The concern about transient residents is understandable, but in the absence of legal prohibitions on the existence or number of rental units or the permissible length of residency it would not be appropriate to impose such limits on the particular Subject Property that are not applicable to other properties in the district or vicinity.
17. 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).
18. 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).
19. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow allow an accessory living quarters in a R-3 zone.

If you wish to appeal this decision, you must do so by September 14, 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 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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Zoning Hearing Examiner

cc: Zoning Enforcement
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