



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

GREG WILLIAMS (JOE FORTIN, AGENT) requests a special exception to Section 14-16-3-3(B)(2)(h) : a VARIANCE of 5 ft to the required 5 ft distance to a lot line or building to allow a swimming pool for all or a portion of Lot 29, Fairway Estates at Tanoan unit 1 zoned R-D, located on 9716 GREENBRIER RD NE (E-21)

Special Exception No:..... **17ZHE-80226**
Project No: **Project# 1011379**
Hearing Date: 10-17-17
Closing of Public Record: 10-17-17
Date of Decision: 11-01-17

On the 17th day of October, 2017, JOE FORTIN (“Agent”) acting as agent on behalf of the property owner GREG WILLIAMS (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the required 5 ft distance to a lot line or building to allow a swimming pool (“Application”) upon the real property located at 9716 GREENBRIER RD NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the required 5 ft distance to a lot line or building to allow a swimming pool.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: *“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 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 Tanoan Community Association, Inc. submitted letters and appeared in person to protest the Application due to the violation of setbacks imposed by covenant.

5. I have no jurisdiction to enforce covenants. However, I do find that evidence of covenant violation is relevant to the determination of injury, and find that violation of the setback covenants would be injurious.
6. Applicant states that “in order to install a pool, and maintain the setback for the property and not encroach on the rear setback and still have a pool that has a usable volume and size, it is necessary to encroach of the separation between the house and the pool.”
7. The Applicant has submitted no evidence that these circumstances are special or not generally applicable to other property in the same zone and vicinity.
8. The Applicant further states that “Because of the size and shape of the lot, the landscaping improvements including the pool are necessary to reasonably use the property in proportion with the surrounding properties. Without the improvements the property value will be significantly reduced.”
9. The Applicant has submitted no evidence that denial of the ability to build a pool works a substantial and unjustified limitation on the reasonable use and return of the property, or in fact what the reasonable use and return of the property should be.
10. Therefore, the ZHE cannot find that the Applicant has met his burden of ensuring adequate evidence in the record to support such findings.
11. 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).
12. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code have not been satisfied.

DECISION:

DENIAL of a variance of 5 ft to the required 5 ft distance to a lot line or building to allow a swimming pool.

If you wish to appeal this decision, you must do so by November 16th, 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Greg Williams, 9716 Greenbriar NE, 87111
Joe Fortin, 166 Juniper Mill Rd NE, 87122
Jackie Fishman, 302 Eighth St. NW, 87102
Sandra Johnson, 831 Silver Ave SW, 87102
William C. Herring, 3104 Coca Rd NW, 87104
Lee Gamelsky, 3230 Camilo Ln. NW, 87104
Jeff Philbin, 9609 Pebble Beach Dr., 87111
Darleen Kosick, 9820 Murifield Ct. NE, 87111
fortinjoe@comcast.net
fishman@consensusplanning.com
sandra.e.johnson.84@gmail.com
billherring@comcast.net
lee@lganm.com
jphilb@msn.com
tanoan@comcast.net