

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

ALEX MORGAN request(s) a special exception to Section 14-16-2-6(B)(12): a CONDITIONAL USE to allow an existing shade structure in the rear yard setback area on all or a portion of Lot(s) 4, Block(s) 7, ZUNI ADDN, zoned R-1, located at 7414 LEAH DR NE (H-19)

Special Exception No:	. 10ZHE-80337
Project No:	. Project# 1008539
Hearing Date:	. 11-16-10
Closing of Public Record:	. 11-16-10
Date of Decision:	. 11-30-10

STATEMENT OF FACTS: The applicant, Alex Morgan, requests a conditional use to allow an existing shade structure in the rear yard setback area. Mr. Morgan testified, at the hearing, that he has owned and resided on this property for approximately 24 years. He posted the yellow signs giving sufficient notice to interested parties of this request. The applicant has over developed his property. The site plan indicates that he initially built an extension to the home which consisted of an entertainment room which was connected to the main dwelling and went as far back to the rear yard to be within the 5' rear yard setback. The development was brought to the attention of Zoning Enforcement. An on-site inspection revealed that this was in fact a violation and the applicant then modified the extension to the main home which encroached into the rear yard setback by 11' 6". When this was brought to the attention of the property owner, he then modified the extension by essentially eliminating the rear wall of the entertainment room; which he now presents as a shade structure. It is important to note that this is a unique open shade structure as open shade structures are generally open on both sides and to the rear of the property. The applicant, in this case, wishes to maintain the two side walls.

This request is opposed by the Zuni Neighborhood Association and the Inez Neighborhood Association. On behalf of the Zuni Neighborhood Association, Ron Berlint argued that there approximately 239 homes in this neighborhood. He states that this property is over developed. There are presently two sheds on the neighbor's property which are too close to this structure. Ms. Yetter representing the Inez Neighborhood Association argues that the immediate adjacent property owner is negatively impacted by this structure. She argues that the previous violation which encroached into the rear yard setback had been modified, but the mere fact that there are two walls does not conform to what is customarily considered an open shade structure.

An on-site inspection reveals that this parcel appears to be over developed; and further the shade structure does have a negative impact on the immediate adjacent neighbor. Finally, the open shade structure is not fully open in the same fashion of other open shade structures.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this existing conditional use will have a negative impact on adjacent property, the neighborhood and the community as it is an over-developed parcel which may negatively impact property values in the community. I further conclude that the Associations above listed made persuasive arguments as to how this type of development negatively impacts a neighborhood. I find that this request does not comply with Section 14. 16. 4. 2. (C). 1., for the granting of a conditional use. Accordingly, I AM COMPELLED to deny this request.

## **DECISION:** Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 15, 2010 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.

Roberto Albertorio, Esq. Zoning Hearing Examiner

cc: Zoning Enforcement

ZHE File

Alex Morgan, 7414 Leah Drive NE, 87110 Donna Yetter, 2111 Hoffman Drive NE, 87110

Evelyn Feltner, 2014 Utah Street, 87110 Ron Berlint, 7516 Euclid NE, 87110