

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

BILL KRAEMER (KEN HOVEY, AGENT) request(s) a special exception to Section 14-16-2-6(E)(4)(b): a VARIANCE of 10' to the 20' corner side yard setback area requirement for a proposed 4-plex on all or a portion of Lot(s) 10, Block(s) C, DAVIDSON ADDN NO. 1 zoned SU-2 R-T, located at 916 CANDELARIA RD NW (G-14)

Special Exception No:..... **11ZHE-80064**
Project No: **Project# 1008731**
Hearing Date: 04-19-11
Closing of Public Record: 04-19-11
Date of Decision: 05-04-11

This matter was heard on April 19, 2011.

STATEMENT OF FACTS: The applicant, Bill Kraemer, requests a variance of 10' to the 20' corner side yard setback area requirement for a proposed 4-plex. Ken Hovey, agent for the applicant, testified that this lot is exceptional because of its irregular shape, and the conditions existed at the time of the adoption of the regulation or were created by natural forces or governmental action for which no compensation was paid. Mr. Hovey stated that this lot has been vacant for approximately ten years. There were originally houses on this property; however, they were condemned and torn down by the City approximately twenty years ago. Bill Kraemer and a business partner purchased this property three years ago.

If approved, the developers plan to build 16 townhouses as four two-story four-plexes, with front doors and garages facing an interior private roadway running east/west down the middle of the property, and with back yards on the north and south. Each townhouse will have 1141 sq ft heated space plus a single car garage. If approved, the setback along the west, which is 10th Street, will be 10' rather than 20', and the setback along the east, will be 5' rather than 10'. This configuration is in harmony with the Los Candelarias Village Center and Metropolitan Redevelopment Plan which encourages redevelopment of medium density housing.

The Near North Valley Neighborhood Association did not object to this project, nor did they voice their support.

This townhouse project could proceed without variances with modifications to plans to rotate building which would result in four more curb cuts on 10th Street or could connect two southern most units to have an eight-plex. Both options would be harmful to the neighborhood and not comport with the spirit of the Los Candelarias Village Center and Metropolitan Redevelopment Plan.

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

FINDINGS AND CONCLUSIONS: I find that this parcel is exceptional as compared to other parcels in the vicinity because of its irregular shape and the conditions existed at the time of the adoption of the regulation or were created by natural forces or governmental action for which no compensation was paid, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. Where the site faces or is contiguous to a different residential zone the setback requirements of that zone apply. In this case, the R-1 residential zone applies and will be the basis for the decision. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

If you wish to appeal this decision, you may do so by 5:00 p.m., on May 19, 2011 in the manner described below:

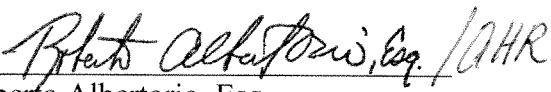
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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
Bill Kraemer, 600 1st Street, Suite 211, 87102
Ken Hovey, 1606 Central Avenue, Suite 101, 87106