

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

JOHNNY ROBINSON (DAC ENT., AGENT) request(s) a special exception to Section 14-16-2-6(E)(5)(a): a VARIANCE of 13' to the 15' rear yard setback area requirement to allow an existing addition on all or a portion of Lot(s) 27, Block(s) 5, DESERT TERRACE ADDN zoned R-1, located at 4400 BOONE ST NE (F-18)

Special Exception No:..... **11ZHE-80292**
Project No:..... **Project# 1009062**
Hearing Date: 01-17-12
Closing of Public Record: 01-17-12
Date of Decision: 02-01-12

STATEMENT OF FACTS: The applicant, Johnny Robinson, requests a variance of 13' to the 15' rear yard setback area requirement to allow an existing addition. DAC Enterprises, Inc., agents for the applicant states that the applicant advised his immediate neighbor of his goals to expand his home and obtained a side yard setback agreement which is an exhibit to this file. In addition, the agent states that subsequent to their client obtaining the side yard setback agreement, he was able to receive building permits from the City of Albuquerque. Relying on these two documents, side yard setback agreement and building permits, the applicant initiated construction. It is important to note that this is a request for a variance to the rear yard setback.

There is considerable opposition to this request by neighbors of the community. Present at the hearing were approximately 15 opponents, several of which testified. A summary of the opposition is as follows: The side yard setback agreement signed by the immediate neighbor was obtained without full knowledge of the extent of the applicant's expansion. They argue that the granting of the building permits by the City of Albuquerque was in error. Several neighbors contend that the proximity of the expansion creates a fire hazard, negatively affects privacy and changes the character of single story structures in the neighborhood. An on-site inspection as well as the many photos contained in the file evinces a structure that towers over the immediate neighbors properties and in fact impacts the privacy and enjoyment of their back yards. It is noted that the construction is not complete which only adds to its negative impact. However, even upon completion, the privacy and desired enjoyment of the neighbor's homes would still be negatively affected. Property values would certainly diminish exponentially due to this construction.

The Zoning Ordinance provides, inter alia, that variances may be granted upon a showing that setback requirements are not warranted when there are exceptional physical parcel conditions. In addition, due to the exceptionality of the parcel, the property owner would experience undue hardship if he were required to comply with the setbacks noted in the R-1 zone category. Finally, if a variance is to be granted, it may only be approved to cure the undue hardship caused by the exceptionality.

The applicant, in this case, has been unable to demonstrate any exceptionality to the parcel. All of the parcels are similar. Not showing exceptionality therefore eliminates any further inquiries.

The applicant does have a viable argument in his reliance on the City of Albuquerque when they issued a building permit. Reliance thereon caused the applicant to initiate this project and it is assumed this was done at considerable cost. This office does not have equitable powers and may not compound the error of the approval of a building permit by granting a variance. For reasons above stated, this request is denied.

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 parcel is not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 16, 2012 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.

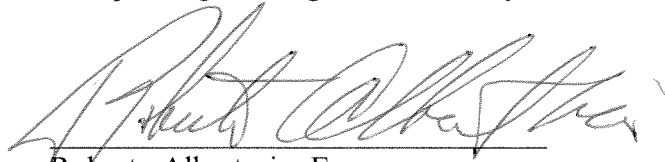
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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
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