



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

WILLIAM J. ALVAREZ request(s) a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 5' 10" to the 10' minimum distance separation requirement between an existing accessory structure (deck) and an existing dwelling on all or a portion of Lot(s) 36, Block(s) 3, PRAIRIE RIDGE UNIT 6 zoned R-D, located at 4215 RABBIT BRUSH AVE NW (E-12)

Special Exception No:..... **12ZHE-80063**
Project No: **Project# 1009170**
Hearing Date: 04-17-12
Closing of Public Record: 04-17-12
Date of Decision: 05-02-12

I have reviewed the entire file as well as the recordings, I make the following:

STATEMENT OF FACTS: The applicant, William J. Alvarez, requests a variance of 5' 10" to the 10' minimum distance separation requirement between an existing accessory structure (deck) and an existing dwelling. Mr. Alvarez testified at the hearing, that he has owned the property for approximately thirteen years. Mr. Alvarez claims he hired a contractor to build the deck and was told that no permit was needed. He was later told by Enforcement that the deck needed a permit.

There are three letters of opposition noted in the file. Dr. Carl Bloemker, Kimberlee Bloemker and Elizabeth A. Benton all oppose the variance request. The matter was previously recommended for the City of Albuquerque Land Use Facilitation Program. However, the association did not wish to be involved with the meeting. The yellow signs were posted.

FINDINGS AND CONCLUSIONS: I find that this parcel is not exceptional as compared to other parcels in the vicinity because all parcels in the area have slopes and, therefore no exceptionality as to his property, 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 May 17, 2012 in the manner described below:

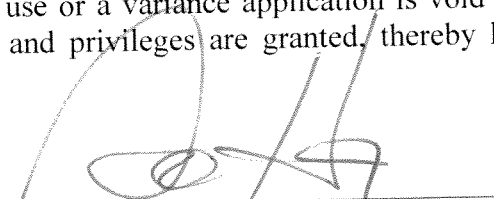
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



Stanley D. Harada, Esq.
Interim Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
William J. Alvarez, 4215 Rabbit Brush Ave NW, 87120
Elizabeth Benton, 6215 Via Corta Del Sur NW, 87120
Kimberlee Bloemker, 6217 Via Corta Del Sur NW, 87120
Carl Bloemker, cbloemk@prodigy.net