



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

KENNETH GLERIA request(s) a special exception to the DOWNTOWN NEIGHBORHOODS SECTOR DEVELOPMENT PLAN Page 117, A.1.b and Page A.1, Section 14-16-3-3(A)(3)(b) and 14-16-2-6(E)(4)(a): a VARIANCE of 4' to the required 5' side yard setback for a proposed addition for all or a portion of Lot(s) G, Tract(s) B, DURAN & ALEXANDER ADDN zoned SU-2 DNA-MUM, located on 411 GRANITE AV NW (J-14)

Special Exception No: **12ZHE-80272**
Project No: **Project# 1009419**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Kenneth Gleria appeared before Zoning Hearing Examiner, Josh Skarsgard, requesting a variance of 4' to the required 5' side yard setback for a proposed addition at 411 Granite Ave NW. Below are the findings of facts.

FINDINGS:

1. Kenneth Gleria is requesting a variance of 4' to the required 5' side yard setback for a proposed addition at 411 Granite Ave NW.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (a) "SPECIAL EXCEPTIONS" reads in part: "*Variance. A variance shall be approved if and only if the following tests are met: (a) The property is exceptional*"
3. Mr. Gleria testified that the exceptionality of the property is that it is irregular in shape and unusually narrow. Mr. Gleria testified that the lot is only 33 feet wide and the existing house is only 23'6" wide.
4. Mr. Gleria testified that the adjacent properties are two to three times as wide and do not have the same constraints.
5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (b) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (b) as a result of the exceptional aspect of the property, the regulations produce unnecessary hardship*"
6. Both the application and testimony provided by Mr. Gleria at the hearing demonstrate that as a result of the exceptionality of the lot (shape/narrowness), the City of Albuquerque setback regulations produce an unnecessary hardship on the Applicant.
7. Mr. Gleria stated that as a result of the exceptional narrowness of the property, the side yard setback produces an unnecessary hardship and limitation of the owner's reasonable use of the property. The proposed addition must follow the boundary of the existing dwelling to the north in order to be a usable addition.
8. Mr. Gleria proposes to add a master bedroom and bathroom to the north. Mr. Gleria proposes to increase the minimal existing setback from 0.6 feet to 1.5 feet for the addition.

9. Mr. Gleria contends that if the 5' side yard setback is enforced, the addition becomes very narrow and long, making it an awkward addition to the home.
10. Mr. Gleria testified that the variance to allow a 1.5 feet side yard setback for the addition on the east will not significantly interfere with the enjoyment of the other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and general public interest.
11. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (c) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (c) a particular variance is appropriate to prevent the unnecessary hardship.*"
12. Both the application and testimony provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship.
13. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (d) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (d) financial gain or loss shall not be the sole determining factor in deciding a variance.*"
14. Both the application and Mr. Gleria testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
15. The yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
16. There are no letters of opposition in the file.
17. There are two letters of support in the file (Jan Nelson & Elaine Nelson, Tillie Silva)
18. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS.: a VARIANCE of 4' to the required 5' side yard setback for a proposed addition for all or a portion of Lot(s) G, Tract(s) B, DURAN & ALEXANDER ADDN zoned SU-2 DNA-MUM, located on 411 GRANITE AV NW (J-14)

DECISION:

APPROVAL of a VARIANCE of 4' to the required 5' side yard setback for a proposed addition for all or a portion of Lot(s) G, Tract(s) B, DURAN & ALEXANDER ADDN zoned SU-2 DNA-MUM, located on 411 GRANITE AV NW (J-14).

If you wish to appeal this decision, you may do so by 5:00 p.m., on November 16, 2012 in the manner described below:

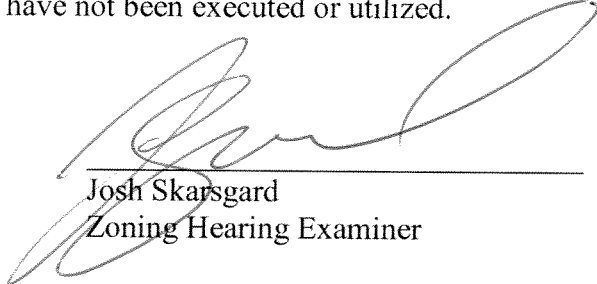
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

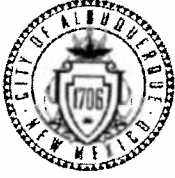
You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building 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.



Josh Skarsgard
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Kenneth Gleria, 411 Granite Av NW, 87102
Elaine and Jan Nelson, 407 Granite Ave NW, 87102
Tillie Silva, 420 Granite NE, 87102
Alex and Gabrielle Uballez, 415 Granite Ave NW, 87102



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Special Exception No: **12ZHE-80273**
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Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Kenneth Gleria appeared before Zoning Hearing Examiner, Josh Skarsgard, requesting a Variance of 5' to the required 10' separation between dwellings at 411 Granite Ave NW. Below are the findings of facts.

FINDINGS:

1. Kenneth Gleria is requesting a variance of 5' to the required 10' separation between dwellings at 411 Granite Ave NW.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (a) "SPECIAL EXCEPTIONS" reads in part: "*Variance. A variance shall be approved if and only if the following tests are met: (a) The property is exceptional*"
3. Mr. Gleria testified that the exceptionality of the property is that it is irregular in shape and unusually narrow. Mr. Gleria testified that the lot is only 33 feet wide and the existing house is only 23'6" wide.
4. Mr. Gleria testified that the adjacent properties are two to three times as wide and do not have the same constraints.
5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (b) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (b) as a result of the exceptional aspect of the property, the regulations produce unnecessary hardship*"
6. Both the application and testimony provided by Mr. Gleria at the hearing demonstrate that as a result of the exceptionality of the lot (shape/narrowness), the City of Albuquerque 10' separation between buildings regulations produce an unnecessary hardship on the Applicant.
7. Mr. Gleria stated that as a result of the exceptional narrowness of the property, the 10' separation between buildings produces an unnecessary hardship and limitation of the owner's reasonable use of the property. The proposed addition must follow the boundary of the existing dwelling to the north in order to be a usable addition.

8. Mr. Gleria proposes to add a master bedroom and bathroom to the north. Mr. Gleria proposes to increase the minimal existing setback from 0.6 feet to 1.5 feet for the addition.
9. Mr. Gleria contends that if the 5' side yard setback is enforced, the addition becomes very narrow and long, making it an awkward addition to the home.
10. Mr. Gleria testified that the variance will not significantly interfere with the enjoyment of the other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and general public interest.
11. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (c) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (c) a particular variance is appropriate to prevent the unnecessary hardship.*"
12. Both the application and testimony provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship (10' separation between buildings).
13. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (d) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (d) financial gain or loss shall not be the sole determining factor in deciding a variance.*"
14. Both the application and Mr. Gleria testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
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18. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS: a VARIANCE of 5' to the required 10' separation between dwellings for a proposed addition for all or a portion of Lot(s) G, Tract(s) B, DURAN & ALEXANDER ADDN. zoned SU-2 DNA-MUM, located on 411 GRANITE AV NW (J-14)

DECISION:

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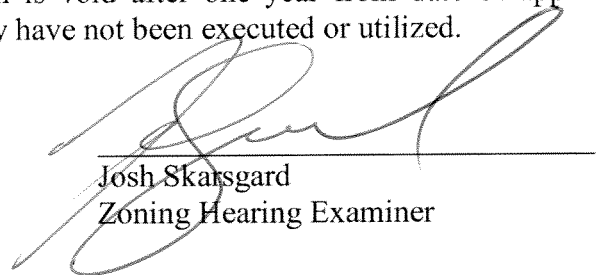
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Please note that pursuant to Section 14.16.4.4.(B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

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.

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