

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

CHARLES AND BERNADETTE MILLER request(s) a special exception to Section 14-16-2-14(B) and 14-16-2-9(E)(4)(a): a VARIANCE of 8'6" to the required 15' rear yard setback for a proposed addition for all or a portion of Lot(s) 13, Block(s) 14, HERITAGE EAST 2 zoned R-D, located on 9608 BOLACK DR NE (D-20)

Special Exception No:.....**12ZHE-80275**  
Project No: .....**Project# 1009009**  
Hearing Date: .....10-16-12  
Closing of Public Record: .....10-16-12  
Date of Decision:.....10-31-12

On October 16, 2012, Charles and Bernadette Miller appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 8'6" to the required 15' rear yard setback for a proposed addition at 9608 Bolack Dr NE. Below are the findings of facts.

**FINDINGS:**

1. Charles and Bernadette Miller are requesting a variance of 8'6" to the required 15' rear yard setback for a proposed addition at 9608 Bolack Dr NE.
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. Miller testified that the property is irregular in shape as a result of its "pie shape".
4. Mr. Miller testified the property consists of four walls instead of the three walls to enclose the backyard area.
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. Mr. Miller testified that as a result of the exceptionality of the property (pie shaped design), the current zoning regulations which do not allow a setback less than 15 feet, produces an unnecessary hardship upon the Applicant.
7. Mr. Miller testified that due to the aspects of the property, including setback into the cul-de-sac and parcel shape makes it impossible to locate the additional space needed to construct within the current zoning regulations.
8. 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.*"
9. Both the application and testimony from Mr. Miller provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship.

10. Mr. Miller testified that because the parcel is not a standard shape, conventional layout, and design is not able to be used creating a substantial and unjustified limitation of the property owner's reasonable use and return of the property.
11. 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.*"
12. Both the application and testimony provided by Mr. Miller at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
13. 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.
14. Mr. Miller testified that he has owned the property since 1997.
15. There are no opposition letters in the file.
16. There is a letter of support in the file from Robert Meyers.
17. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS: a VARIANCE of 8'6" to the required 15' rear yard setback for a proposed addition for all or a portion of Lot(s) 13, Block(s) 14, HERITAGE EAST 2 zoned R-D, located on 9608 BOLACK DR NE (D-20).

### **DECISION:**

**APPROVAL** of a VARIANCE of 8' 6" to the required 15' rear yard setback for a proposed addition for all or a portion of Lot(s) 13, Block(s) 14, HERITAGE EAST 2 zoned R-D, located on 9608 BOLACK DR NE (D-20).

**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:**

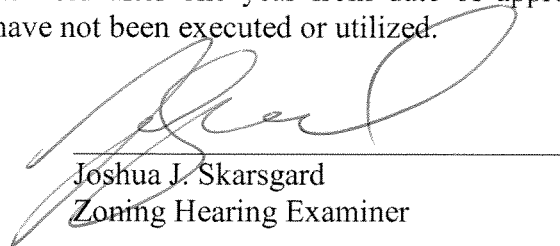
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



Joshua J. Skarsgard  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Charles and Bernadette Miller, 9608 Bolack Dr NE, 87109  
Robert Myers, 9612 Bolack Dr NE, 87109