

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

NINA SIMON request(s) a special exception to Section 14-16-2-6(B)(1): a CONDITIONAL USE for a proposed accessory living quarters for all or a portion of Lot(s) 30, Block(s) C, ALTURA ADDN zoned R-1, located on 1826 SOLANO DR NE (J-17)

Special Exception No:..... **12ZHE-80327**
Project No: **Project# 1009476**
Hearing Date: 11-19-12
Closing of Public Record: 11-19-12
Date of Decision:..... 12-06-12

On the 19th day of November, 2012(hereinafter “**Hearing**”) Ms. Nina Simon (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a CONDITIONAL USE for a proposed accessory living quarters (hereinafter “**Application**”) upon the real property located at 1826 SOLANO DR NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a CONDITIONAL USE for a proposed accessory living quarters.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) “SPECIAL EXCEPTIONS” reads in part: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*”
3. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because she is attempting to add a “toilet and hand sink” to an existing accessory building that is located in her back yard. The Applicant stated in her justification letter that “I am certain that this construction project (adding a toilet and hand sink) will not be injurious to the neighbors or be significantly damaged by surrounding structures or activities (letter dated October 10, 2012). The intent of the Applicant is to add a toilet and hand sink to help her “disabled father” when he stays with his daughter.
4. The Applicant stated that the “accessory building” was originally built in 2002. The Applicant purchased the Subject Property in January of 2012.
5. The Applicant stated in her justification letter that she “*does not intend to sublet or rent the guesthouse.*” At the public hearing the Applicant reiterated that the toilet and hand sink would help her disabled father if he stayed with her in the accessory building.
6. There are letters of neighborhood opposition in the file. Additionally, five persons from the surrounding neighborhood attended the public hearing in opposition to the request: Mr. Richard Royman, Ms. Sharon Royman, Ms. Jeanne Adams, Mr. Colin Adams and Ms. Elaine Coates.
7. A petition was submitted to the record that opposed the Application because it may, among other things: “*lead to other such living quarters... and may lead to increased*

- traffic and parking problems.*” The petition was signed by ten neighbors who lived on either Solano Drive or Aliso Drive.
8. The Applicant indicated that *“the accessory structure (building) was already granted and approved by the City of Albuquerque in 2001 as an accessory structure with proposed plumbing.”*
 9. The Applicant indicated that she will not be separately metering the Accessory Living Quarters in the event the Application is approved. Additionally, the Applicant indicated that she will not be constructing a closet, kitchen or any cooking facilities. She stated the *“proposal is merely to create a simple wash room, in an already existing approved inspected solid structure for the intermittent use of my disabled father.”*
 10. Ms. Meghan Norvell of 1826 Aliso Drive sent an email to the Applicant on the 17th day of November, 2012 that indicated that during the AANA Neighborhood Association meeting that the Board of Directors *“were evenly split between support for you (Applicant) and Richard (Royman), thus there will be no statement from the board because there is no consensus.”* She added, *“If you were my direct neighbor, I would have no problem with the work you are doing on your property.”*
 11. Ms. Denise Hammer submitted a letter to the file on the 23rd day of November that made four arguments supporting denial of the conditional use: (i) The accessory living quarters should not be allowed because it resides within an accessory building; (ii) The Application requests that primary uses for a residence be housed within an Accessory Building; (ii) the Application if approved would cause immediate harm to the adjoining properties and undermine the purpose and intent of the Zoning Code. Additionally, Ms. Hammer made reference to setback regulations within the letter. Additionally, Ms. Hammer made reference to a 2-story structure housing *“primary residential uses.”*
 12. The ZHE finds that the Accessory Living Quarters will be compliant with setback regulations in the City Zoning Code.
 13. The ZHE finds that the Application makes no reference to a 2-story Accessory Living Quarters.
 14. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) *“SPECIAL EXCEPTIONS”* reads in part: *“A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.”*
 15. Applicant testified at the Hearing that the proposed conditional use will not be significantly damaged by the surrounding structures or activities.
 16. The Applicant indicated that the accessory living quarters will not be separately metered.
 17. 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.
 18. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a **CONDITIONAL USE** for a proposed accessory living quarters upon the real property located at 1519 5TH ST NW E.

CONDITIONS OF APPROVAL:

1. The Applicant shall not add a second story to the Accessory Living Quarters.
2. The Applicant shall not construct a kitchen within the Accessory Living Quarters.
3. The Applicant shall submit to the City of Albuquerque for review, all construction plans required to construct the “hand sink and toilet” within the Accessory Living Quarters.
4. The Applicant shall only schedule construction services within the Accessory Living Quarters during the hours of 8 a.m. to 5 p.m. Monday through Friday.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 21, 2012 in the manner described below:

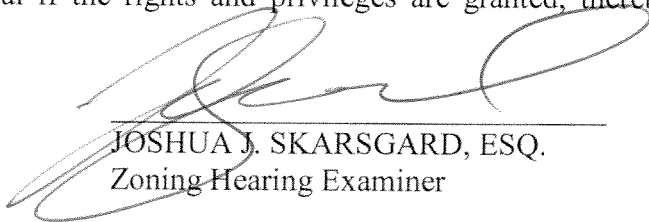
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$50.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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, ESQ.
Zoning Hearing Examiner

cc: Zoning Enforcement (2)
ZHE File