



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

STEVEN MCWILLIAMS request(s) a special exception to Section 14-11-7: a SOLAR RIGHTS request for existing solar panels in an RA-2 zone on all or a portion of Lot(s) 6, ALVARADO GARDENS UNIT 1 zoned RA-2, located at 2824 RIO GRANDE BLVD NW (G-13)

Special Exception No:..... **10ZHE-80095**  
Project No: ..... **Project# 1008247**  
Hearing Date: ..... 11-16-10  
Closing of Public Record: ..... 11-16-10  
Date of Decision: ..... 12-01-10

**STATEMENT OF FACTS:** The applicant, Steven McWilliams, is requesting solar rights as provided by Section 14-11-7 of the Zoning Ordinance. It is the burden of the applicant to demonstrate that he meets the test for approval. The applicant testified that the solar panels were placed by a licensed contractor in accordance with the building code requirements. This is not disputed. The applicant has owned and resided on this property for 24 years. He submits that the solar panels do not cause any negative impact on his neighbors. There have not been any complaints of noise or any other measurable negative results from these panels. He submits that his neighbors may develop their property consistent with the Zoning Ordinance which would not interfere with the benefits of the solar panels. His only concern is that if there should be the planting of trees which may exceed 40' in height that interference with panels may occur. An on-site visit reveals that presently there are no trees or structures which would cause an interference. Finally, he states that the placement of solar panels is consistent with local and national goals of energy efficiency. Benefit to the applicant may be implied.

This request is opposed by adjacent property owners. Mr. Doyle Kibrough testified on his own behalf as well as for his mother-in-law. He stated that they have had a presence on the adjacent property for over 65 years. He submits that if this request is granted, they would be denied the ability to fully develop their property. He states that his mother-in-law may want to subdivide her property in the future and that solar panels may interfere with future development. In addition, there is some interest in future agricultural/landscaping which would be impeded if these solar rights are granted.

Also testifying in opposition was Margaret Romero, Attorney at Law, on behalf of her clients. She agrees that if this is approved, it would be tantamount to a "takings" of the property rights of adjacent neighbors. She questions whether or not the applicant has that right? She further argues that the applicant did not meet his burden to demonstrate the benefits obtained by the panels and finally, she questions what is the benefit to the public versus benefit to the property owner. Benefits of solar panels have been determined by the legislation passed by the City Council as well as the State and National goals of energy preservation.

This request is opposed by neighbors who state that they may develop their property, in the future, to include possible subdivision of RA2 zoned property, and or plant vegetation or landscaping which would be limited in height to less than 40' if this request is approved.

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:** The applicant, with permissive solar panels, is here in the present. To deny his solar rights request based on speculative development would be unjust. The applicant has complied with all of the requirements for the appropriate placement of the solar panels.

(A) Solar Energy; Permits Section 14-11-3 **INTENT** states, inter alia, the Ordinance is intended to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city.

(B) "The city recognizes that economic benefits can be derived for the people of the city from the use of solar energy. The city encourages the use of solar energy."

In this case, the solar collector and related solar rights created will be beneficially used.

The solar rights will not unreasonably interfere with the enjoyment of other sites, either the enjoyment of present use or perspective uses as indicated by zoning or adopted plans.

Finally, there is a rebuttable presumption that solar rights which do not limit the height of potential buildings more than is normally permissive height regulations of the Zoning code will not unreasonably interfere with the enjoyment of the other sites. See Section 14-11-7(c)(3).

I find that the applicant has met his burden and therefore approve this request.

**DECISION:** Approved.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on December 16, 2010 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.

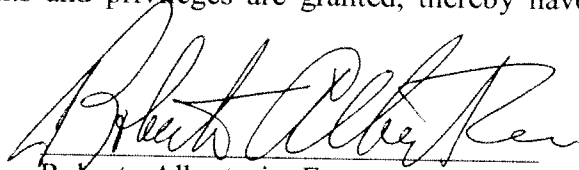
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written

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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