

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

ERNEST LEGER request(s) a special exception to Section 14-16-4-13: a STATUS ESTABLISHED BUILDING REVIEW to allow two dwellings in an R-1 zone on all or a portion of Lot(s) 40, Block(s) 2, SANDIA PLAZA zoned R-1, located at 902 PALO DURO AVE NW (F-14)

Special Exception No:..... **11ZHE-80192**
Project No: **Project# 1008917**
Hearing Date: 09-20-11
Closing of Public Record: 09-20-11
Date of Decision: 09-29-11

STATEMENT OF FACTS: The applicant, Ernest Leger, requests a status established building review to allow two dwellings in an R-1 zone. Mr. Leger submits that this property has been used with two dwellings since 1946 and has remained non-conforming since the adoption of the Zoning Ordinance.

He states that he purchased this property four years ago and acknowledges that there have been some problems with tenants. However, he argues that the continued use as non-conforming is sufficient for the approval of the special exception.

There is considerable evidence within the file in opposition to this request. The applicant was given an opportunity to review the file prior to the hearing.

The granting of a Status Established Building requires continued uninterrupted non-conforming use. There is ample evidence to show that this property and use thereof has remained non-conforming.

Section 14-16-4-13(c)(4) Criteria for Decision also provides that the use, as currently operated and/or maintained, did not, and the continuance of the use is not likely to, significantly interfere with the enjoyment of, or be injurious to, other land in the vicinity.

The evidence in the file states that approving this request would continue to create a significant disparity between existing zoning and the status established building.

The history here indicates that the past use has had a negative affect on the enjoyment of adjacent property owners. There has been a history of complaints regarding noise, tenant disruptions, over parked vehicles as well as extreme density with two residential buildings onto this small lot, in violation of Section 14-16-4-13(c)(4).

This is an R-1 zone category with primarily single family homes. To allow the present use to remain in perpetuity would be inconsistent with the goals of the Zoning Ordinance and would be contrary to the public health, safety and welfare of the community. In addition, property values of adjacent homeowners will be negatively affected.

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 has failed to meet the requirement for approval of a Special Exception for a Status Established Building, as above described in Section 14. 16. 4. 13. (C). of the Zoning Ordinance.

DECISION: Denied.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

If you wish to appeal this decision, you may do so by 5:00 p.m., on October 14, 2011 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.

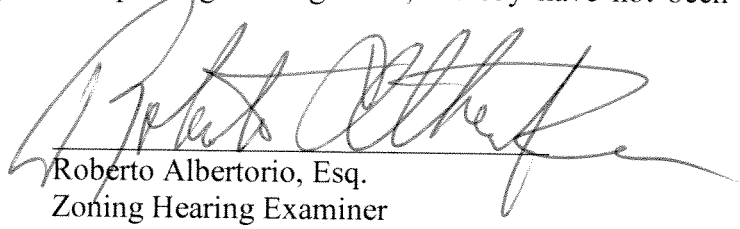
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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
 Ernest Leger, 3207 Manchester Court NW, 87107
 Deirdre Wampler, 907 Griegos Road NW, 87107
 Sean Kelly, 850 Palo Duro NW, 87107
 Kane Scarlett & Kevin Myers