

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

TIM & RAMONA JARVIS (HABITATION INC., AGENT) request(s) a special exception to Section 14-16-2-6(B)(1): a CONDITIONAL USE to allow an existing accessory living quarters on all or a portion of Lot(s) 30, Block(s) 2B, COUNTRY CLUB ADDN zoned R-1, located at 1310 MARQUETTE PL NE (K-15)

Special Exception No:	. 11ZHE-80055
Project No:	. Project# 1008721
Hearing Date:	. 08-16-11
Closing of Public Record:	. 08-16-11
Date of Decision:	. 08-29-11

STATEMENT OF FACTS: The applicants, Tim and Ramona Jarvis, request a conditional use to allow an existing accessory living quarters. This matter was heard on August 16, 2011, after several prior deferrals. The file contains a letter of withdrawal of all prior requests for variances. The only matter remaining for review is a request for a conditional use to convert an accessory structure as an artist's studio, granted to the previous owner of the property, for an accessory living quarters requested by the present owner. The applicants wish to have the accessory living quarters for their son who is a student at the University of New Mexico. The evidence submitted, via oral testimony, is that the present owners do not presently, nor do they intend in the future, to reside in the main dwelling. This main dwelling is presently leased to tenants. It is the burden of the applicant to demonstrate that the proposed conditional use will not cause injury to the adjacent property, the neighborhood or the community. Injury can be inferred if there is potential negative affects on property values.

There is considerable opposition and acrimony from neighbors and the Spruce Park Neighborhood Association. They have been very vigilant in their opposition, appearing at all previous hearings for requested variances and eleven witnesses appeared in opposition to the requested conditional use.

A summary of the opposition is that the applicant's intent is to rent the main dwelling and probably rent the accessory living quarters, thereby having two households within an R-1 zone. They indicate that this would set an unacceptable precedence; would create further density problems; vehicles belonging to tenants would require parking onto the public streets as there is insufficient off-street parking at this location. They believe this will create a negative financial impact to property values.

The intent of the Zoning Ordinance for accessory living quarters is that the use provided for is incidental to the main residence. For example, guests who visit or in-laws that may be visiting would be using the accessory living quarters. It is not intended to allow the use to become potentially additional income vis a vis rental property, which would establish two households within an R-1 zone, single family designation.

An inquiry was made to all interested parties as to whether or not there were any other accessory living quarters present in the immediate community. All responses indicated that there were none known to the parties.

I believe that the proposed use of the accessory living quarters goes beyond the intent of the Zoning Ordinance and would negatively impact the general character of single family living in this generally historic community.

The proximity to the University of New Mexico provides for an extremely charming and welcoming community which should not be disturbed by potential increase in density projects and potentially negatively impact property values. For reasons above stated this request is denied.

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: I find that this request does not comply with Section 14. 16. 4. 2. (C). 1., for the granting of a conditional use upon a finding that the proposed use will cause injury to the neighborhood, adjacent property or the community, and will be damaged by surrounding structures. For reasons stated above, this request is denied.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on September 13, 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. (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

Tim & Ramona Jarvis, 1310 Marquette Place NE, 87106 Holly Arroyo, Habitation Inc., P.O. Box 93476, 87199

James & Susan Daniels

Martha Brown

Maggie Gombos

Diane Marshall & Bruce Milne

Stanley & Inez Campbell

William & Jane Turner

Gerald & Kathryn Simnacher

Joseph Riter

Richard & Phyllis Bowman

Harold Anderson & Maryanne Danfelser

Edward & Patricia Glarum Sullivan

Patricia Stubblefield

Valerie St. John, Spruce Park NA

Ed Sullivan

James Daniels

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Jim Metheny

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