

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

ELIZABETH FRAYJO request(s) a special exception to Section 14-16-2-6(E)(1): a VARIANCE of 10' to the required 20' front yard setback for a proposed single family dwelling addition for all or a portion of Lot(s) 8, Block(s) 8, PARKLAND HILLS zoned R-1, located on 614 SOLANO DR SE (L-17)

Special Exception No:..... **12ZHE-80274**
Project No: **Project# 1009420**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision:..... 10-31-12

On October 16, 2012, Elizabeth Frayjo appeared before Zoning Hearing Examiner, Josh Skarsgard, requesting a Variance of 10' to the required 20' front yard setback area for a proposed addition at 614 Solano Dr SE. Below are the findings of facts.

FINDINGS:

1. Elizabeth Frayjo and Andru Zeller request a variance of 10' to the required 20' front yard setback for a proposed addition to a single family dwelling.
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. Ms. Frayjo and Mr. Zeller testified that their property is exceptional given the smaller dimensions and thinness of the lot, as compared to the average size in the neighborhood.
4. The file contains an AGIS map printout of the lot which indicates that the lot sizes adjacent to the Subject Property are not different then the Subject Property.
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. Ms. Frayjo testified that because of this thin lot, they are only able to build a single car garage which results in an unnecessary hardship.
7. Ms. Frayjo and Mr. Zeller testified that they currently have a small one car garage but it is positioned behind the front of the house, and is in disrepair and is too small for modern cars.
8. Ms. Frayjo and Mr. Zeller testified that the new garage towards the front of the property will not significantly interfere with the enjoyment of other land in the vicinity, and the improvements will increase property values in the area.
9. There was a facilitated meeting between neighbors and applicants. The concerns ranged from the variance will set precedence for the neighborhood to no opposition to the request.

10. 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.*”
11. Both the application and testimony provided at the hearing indicated that the variance of 10 feet to the required 20 feet setback, is needed to prevent the unnecessary hardship.
12. The AGIS printout of the Subject Property within the file indicates that the garage is located such that the Owner has the ability to expand upon the garage without requiring a variance within the 20’ setback required in the Zoning Code. In short, there is ample space along the side of the home (in front of the garage) to expand the garage without entering into the 20’ setback area.
13. 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.*”
14. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
15. 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.
16. There are no letters of opposition in the file, there is however a facilitated meeting report that indicates concerns from some neighbors regarding the “precedent” that this variance would provide to the surrounding community.
17. There is a letter of support to the request in the file from Debra and Robert Stevens.
18. The Applicant has **not** adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS: a VARIANCE of 10' to the required 20' front yard setback for a proposed single family dwelling addition for all or a portion of Lot(s) 8, Block(s) 8, PARKLAND HILLS zoned R-1, located on 614 SOLANO DR SE (L-17)

DECISION:

DENIAL of the application of a VARIANCE of 10' to the required 20' front yard setback for a proposed single family dwelling addition for all or a portion of Lot(s) 8, Block(s) 8, PARKLAND HILLS zoned R-1, located on 614 SOLANO DR SE (L-17) to the November 19, 2012 public hearing.

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

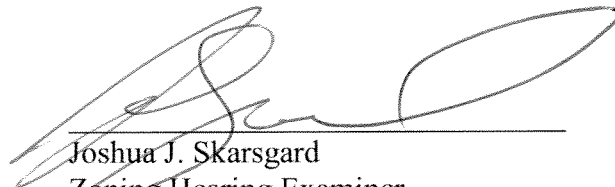
side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

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
Elizabeth Frayjo, 614 Solano Dr SE, 87108
Robert and Debra Stevens, 615 Solano Dr SE, 87108