



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

LAVINA SYKES (ARCH & PLAN LAND USE CONSULTANTS) request(s) a special exception to Section 14-16-2-14(A)(D) and 14-16-2-6(E)(5)(a): a VARIANCE of 3' to the required 15' rear yard setback for a proposed addition for all or a portion of Lot(s) 45B, WIMBLEDON WEST AT TANOAN zoned R-D, located on 6908 LA COSTA DR NE (E-20)

Special Exception No: **12ZHE-80291**
Project No: **Project# 1009432**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Derrick Archuleta with Arch & Plan Land Use Consultants, agent for Lavina Sykes appeared before Zoning Hearing Examiner, Joshua Skarsgard, requesting a variance of 3' to the required 15' rear yard setback for a proposed addition at 6908 La Costa Dr NE. Below are the findings of facts.

FINDINGS:

1. Lavina Sykes requests a variance of 3' to the required 15' rear yard setback for a proposed addition at 6908 La Costa Dr NE.
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. Derrick Archuleta, agent for Lavina Sykes testified at the hearing that the exceptionality of this property is that it is an odd shaped lot. The front is 73' in the front and 39' in the back (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
4. 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*"
5. Mr. Archuleta testified that the variance (3' into the setback requirement) is necessary to overcome the unnecessary hardship incurred as a result of the 15' setback requirement promulgated by the City of Albuquerque.
6. 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.*"
7. The application and testimony provided at the hearing suggest that the variance, if approved, will prevent the unnecessary hardship (15 foot setback).
8. 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.”

9. Mr. Archuleta’s application provides evidence that financial gain or loss is not the sole determining factor in this variance application.
10. Mr. Archuleta testified that the proposed patio will be 11’9” from the rear yard setback and 9’9” from the side yard setback.
11. Mr. Archuleta testified that the patio will be constructed similar to the home and the stucco color will also match the home.
12. The Tanoan Community Association, Inc., Planning Committee has approved the covered patio prior to this ZHE Hearing. The letter of approval is in the file.
13. There are no letters of opposition in the file nor was there any opposition at the hearing.
14. 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.
15. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS.: a VARIANCE of 3’ to the required 15’ rear yard setback for a proposed addition for all or a portion of Lot(s) 45B, WIMBLEDON WEST AT TANOAN zoned R-D, located on 6908 LA COSTA DR NE (E-20)

DECISION:

APPROVAL of a VARIANCE of 3’ to the required 15’ rear yard setback for a proposed addition for all or a portion of Lot(s) 45B, WIMBLEDON WEST AT TANOAN zoned R-D, located on 6908 LA COSTA DR NE (E-20)

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:

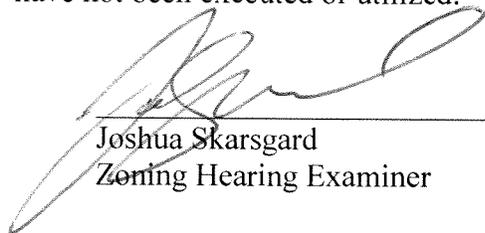
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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 Skarsgard
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Lavina Sykes, 6908 La Costa Dr NE, 87111
Richard Malenfaut, 9119 La Costa Dr NE, 87111
Derrick Archuleta, PO Box 25911, 87125
The Tanoan Community Association, 9820 Murifield Ct NE, 87111