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

ANGELA R. PIERCEY request(s) a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 4' to the 10' distance separation requirement between an existing dwelling and accessory structure on all or a portion of Lot(s) 2, Block(s) 18, MESA DEL NORTE ADDN zoned R-1, located at 1204 MESILLA ST NE (J-19)

Special Exception No:..... **09ZHE-80444**
Project No: ..... **Project# 1008120**
Hearing Date:..... 02-16-10
Closing of Public Record:..... 02-16-10
Date of Decision: 03-03-10

STATEMENT OF FACTS: The applicant, Angela Piercey, requests a variance of 4' to the 10' distance separation requirement between an existing dwelling and accessory structure. Ms. Piercey testified, at the hearing, that she has owned and resided on this property for approximately six years. The accessory structure is approximately 220 sq ft and measures 28' 6" in length by 14' high (loft area). She indicated that her lot is exceptional because of an addition to the original house which therefore makes the parcel shallow. The Zoning Ordinance provides that a variance is to be granted only under unusual circumstances. An applicant is required to demonstrate that he/she is unable to comply with the Zoning requirement as a result of some physical exceptional parcel conditions which cause unnecessary hardship. In this case, the exceptionality results from the applicants own actions by the addition of the accessory structure as evidenced by her own testimony. There is no physical parcel exceptionality which would justify a variance. This applicant has not shown that this request meets the exceptionality standard. Having been unable to meet this standard, it is therefore unnecessary to inquire any further.

Celia Benson, an adjacent neighbor, testified in opposition to this request.

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 parcel is not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on March 18, 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
Angela Piercey, 1204 Mesilla Street Ne, 87110
Celia Benson, 1205 Espanola NE, 87110