

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

KATE M. SOUTHARD request(s) a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 4' to the 5' distance separation requirement between an accessory structure and an existing shed on all or a portion of Lot(s) 80' S of Lot 7, BROWNWELL AND LAIL'S HIGHLAND ADDN, zoned SU-2 MD-1, located at 1201 TIJERAS AVE NE (K-15)

Special Exception No:..... **10ZHE-80329**
Project No: **Project# 1008532**
Hearing Date: 11-16-10
Closing of Public Record: 11-16-10
Date of Decision: 12-01-10

STATEMENT OF FACTS: The applicant, Kate Southard, requests a variance of 4' to the 5' distance separation requirement between an accessory structure and an existing shed. The applicant purchased this property in March of 2010. This is a lot, which is 50' x 80' with a dwelling unit which is 729 sq ft. Ms. Southard states that her lot is exceptional because it is a corner lot and it is very small. The main dwelling and the accessory structure have been used as one rental unit and the applicant intends to maintain it as the tenant is also desirous of having the accessory structure remain so as to provide some space for their children to enjoy the property. The lease expires July 31, 2011.

This request is opposed by the Sycamore Neighborhood Association. They argue that there is no exceptionality to warrant approval. There are no slopes to the property. The house was built in the 1920's. However; the opponents do acknowledge that there are larger and smaller lots in the neighborhood. Therefore, one might conclude that this lot is exceptional. Furthermore, the opponents argue that there is no unnecessary hardship and that the applicant would not be denied a reasonable return on her investment. In rebuttal the applicant argued that there is a six foot slope with a substantial grade change. An on-site inspection reveals that this parcel does have some unique qualities; however, those qualities are not different than other parcels in the immediate community. The applicant indicated that her intent is to maintain the accessory structure as part of the rental unit only until July 31, 2011. I am inclined to make the following determination:

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. If a variance were to be granted, approval would be in perpetuity and the applicant would then not be required to comply with the zoning requirements and any subsequent buyer may also desire not to comply. However, in light of the fact that the lease is about to expire within the next

seven months it is my determination that the applicant will be allowed to maintain the property as is with no further improvements and at the end of the existing rental period she will be required to comply. Therefore, the decision is that there is no exceptionality sufficient to warrant approval and I will deny this request with the following condition.

DECISION: Denied with conditions.

CONDITION(S): The applicant will be allowed to keep the property in its current status until the expiration of the existing lease which is July 31, 2011. The applicant will be required to make the necessary modification to comply with the setback requirements and with the Zoning Ordinance by August 1, 2011.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 16, 2010 in the manner described below:

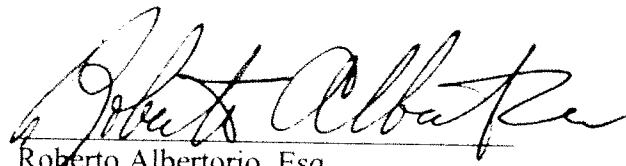
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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