

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

JAMES RAWLEY (DONALD VIA, AGENT) request(s) a special exception to Section 14-16-3-3(B)(2)(d): a VARIANCE of 2' to the 10' distance separation requirement between a existing accessory living quarters and a shed on all or a portion of Lot(s) 15, Block(s) 5, COUNTRY CLUB ADDN, zoned R-1, located at 449 ASH ST NE (K-15)

Special Exception No:..... **10ZHE-80355**
Project No: **Project# 1008495**
Hearing Date: 01-18-11
Closing of Public Record: 01-18-11
Date of Decision: 02-02-11

STATEMENT OF FACTS: The applicant, James Rawley, requests a variance of 2' to the 10' distance separation requirement between an existing accessory living quarters and a shed. Mr. Rawley testified, at the hearing, that his lot is exceptional due to its irregular size and shape. He indicated that the existing accessory structure was on the property at the time he purchased it. The reason for this variance request is for the separation distance between his accessory structure and the neighbors shed which also existed at the time of purchase. The yellow signs were posted.

There is opposition from the Spruce Park Neighborhood Association noted in the file. They do not feel that the lot is exceptional; however, did not specify why it is not exceptional. Robert Westfall with the Spruce Park Neighborhood Association and Mardon Gardella who is with the Sycamore Neighborhood Association testified in opposition to these requests. There are also other letters of opposition noted in the file. All these concerns were considered when making my determination. I have reviewed the recording of the hearing as well as letters of opposition to the variance request. It is not disputed that the shed existed at the time of this applicant's purchase of this property. There is no evidence that the pre-existing condition caused any significant negative impact with the enjoyment of other property. An on-site inspection as well as evidence in the file shows that this lot is narrow to the front and wider in the rear. As such, the lot is exceptional as compared to other lots in the vicinity.

I, therefore, find that this is sufficient exceptionality to warrant approval of the existing living quarters and the neighbors shed. However, I will place in this determination a condition that the living quarter's structure may not be increased in square footage. Furthermore, the accessory living quarters may not have a second kitchen and may not be used for separate rental purposes. Any substantiated violation of these conditions will be grounds for immediate loss of the special exception provided in this matter. Finally, as to the conditional use, for reasons above stated, I will find that the proposed use does not create injury to the neighborhood, adjacent property or the community nor will it be damaged by surrounded structures.

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 exceptional as compared to other parcels in the vicinity because of its irregular size and shape and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and the existing accessory structure and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 17, 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.

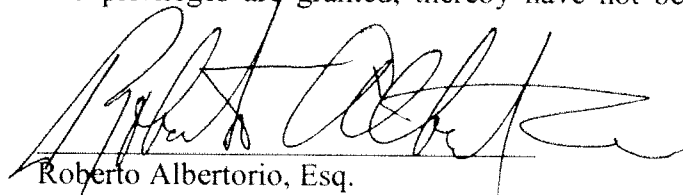
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 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
James Rawley, 919 Gold Avenue SW, 87102
Donald Via, 1014 Central Avenue SW, 87102
Mardon Gardella, 411 Maple Street NE, 87106
Robert Westfall, 1329 Sigma Chi Road NE, 87106
Valerie St. John, Spruce Park NA, 441 Ash Street NE, 87106
Nan Naranjo, nannaranjo@comcast.net
Cheryl Gooding, 434 Ash Street NE, 87106
Petra Sanchez, 449 Ash Street NE, 87106



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NOTIFICATION OF DECISION

JAMES RAWLEY (DONALD VIA, 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) 15, Block(s) 5, COUNTRY CLUB ADDN, zoned R-1, located at 449 ASH ST NE (K-15)

Special Exception No:..... **10ZHE-80305**
Project No:..... **Project# 1008495**
Hearing Date:..... 01-18-11
Closing of Public Record:..... 01-18-11
Date of Decision: 02-02-11

STATEMENT OF FACTS: The applicant, James Rawley, requests a conditional use to allow an existing accessory living quarters. Mr. Rawley testified, at the hearing, that he owns this property. The main dwelling is used as a rental property. He indicated that there is not a second kitchen in this structure. No additional traffic is expected to be generated with this use. The yellow sign was posted.

There is opposition from the Spruce Park Neighborhood Association noted in the file. They believe that granting this special exception will significantly interfere with the enjoyment of their properties. Robert Westfall with the Spruce Park Neighborhood Association and Mardon Gardella who is with the Sycamore Neighborhood Association testified in opposition to these requests. There are also other letters of opposition noted in the file. All these concerns were considered when making my determination. I have reviewed the recording of the hearing as well as letters of opposition to the variance request. It is not disputed that the shed existed at the time of this applicant's purchase of this property. There is no evidence that the pre-existing condition caused any significant negative impact with the enjoyment of other property. An on-site inspection as well as evidence in the file shows that this lot is narrow to the front and wider in the rear. As such, the lot is exceptional as compared to other lots in the vicinity.

I, therefore, find that this is sufficient exceptionality to warrant approval of the existing living quarters and the neighbors shed. However, I will place in this determination a condition that the living quarter's structure may not be increased in square footage. Furthermore, the accessory living quarters may not have a second kitchen and may not be used for separate rental purposes. Any substantiated violation of these conditions will be grounds for immediate loss of the special exception provided in this matter. Finally, as to the conditional use, for reasons above stated, I will find that the proposed use does not create injury to the neighborhood, adjacent property or the community nor will it be damaged by surrounded structures.

Based on all of the testimony and a review of the entire file, it is determined there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this request complies with Section 14.16.4.2.(C).1., for the granting of a conditional use upon a finding that the proposed use will not cause injury to the neighborhood, adjacent property or the community, nor will it be damaged by surrounding structures. As defined in the Zoning Code, family is defined as “any group of not more than five persons living together in a dwelling.” As stated by Mr. Rawley, these existing accessory living quarters will be used by family members. For reasons stated above, this request is approved. By granting this conditional use request, it is believed that no additional traffic is expected to be generated.

DECISION: Approved with conditions.

CONDITIONS:

- a. The applicant may not, now or in the future, offer this accessory structure as a rental unit. Occupants may only be family members. No exceptions.
- b. Should the property become marketable, this accessory structure may not be advertised as a potential rental unit.
- c. This accessory structure may only be used without a second kitchen and without a meter for separate utilities.
- d. This approval will be immediately vacated if the applicant does not comply with these conditions.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

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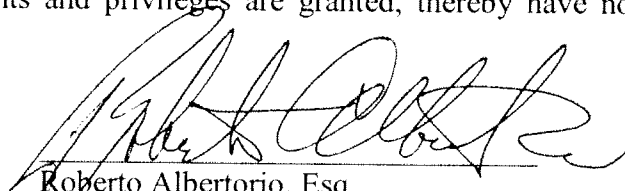
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