

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

ALEX MORGAN request(s) a special exception to Section 14-16-2-6(B)(12): a CONDITIONAL USE to allow an existing shade structure in the rear yard setback area on all or a portion of Lot(s) 4, Block(s) 7, ZUNI ADDN, zoned R-1, located at 7414 LEAH DR NE (H-19)

Special Exception No:..... **10ZHE-80337**  
Project No:..... **Project# 1008539**  
Hearing Date: ..... 03-25-11  
Closing of Public Record: ..... 03-24-11  
Date of Decision: ..... 04-07-11

I have reviewed the entire file as well as the recordings, I make the following:

**STATEMENT OF FACTS:** The applicant, Alex Morgan, requests a conditional use to allow an existing shade structure in the rear yard setback area. This matter was originally heard at the November 16, 2010 ZHE hearing, at which time a determination of denial was made. Mr. Morgan appealed this decision to the Board of Appeals which remanded the matter back to this office for further clarification.

The Board of Appeals suggested that the request should be considered for a conditional use to allow a shade structure in the rear yard setback area. The proposed shade structure does not currently exist as such, but rather as an illegal home addition requiring substantial modifications to qualify as a shade structure.

Mr. Morgan testified, at this hearing, that the existing roofed structure is attached to the main dwelling. It is a single story structure with three (3) proposed arched openings on the south and west sides and does not exceed more than 50% of the required rear yard setback area. Mr. Morgan stated that this structure meets all the criteria for a conditional use as referenced in Section 14-6-2-6(B)(12).

A petition signed by neighbors who support this request is noted in the file.

Donna Yetter and Evelyn Feltner testified in opposition to this request.

The Board of Appeals included in their findings the expectation that the appellant will provide the Zoning Hearing Examiner with construction design drawings of sufficient detail as to make clear exactly what modifications to the existing structure are proposed. The elevation drawings were requested at this hearing. Mr. Morgan has submitted the elevation drawings.

By modifying the structure in question, it is determined that the elevation drawings submitted to the file meet the test for a conditional use for a shade structure.

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. For reasons stated above, this request is approved.

**DECISION:** Approved with conditions.

**CONDITIONS:** The applicant must comply with all Building Code requirements as determined by the City of Albuquerque Building and Safety Division.

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.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on April 22, 2011 in the manner described below:**

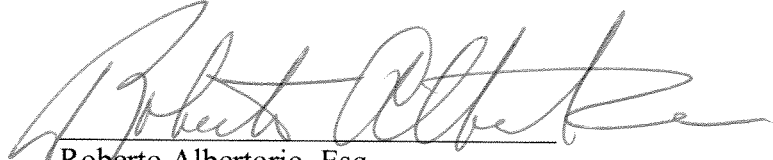
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

A handwritten signature in black ink, appearing to read 'Roberto Albertorio', written over a horizontal line.

Roberto Albertorio, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Alex Morgan, 7414 Leah Drive NE, 87110  
Donna Yetter, 2111 Hoffman Drive NE, 87110  
Evelyn Feltner, 2014 Utah Street, 87110  
Ron Berlint, 7516 Euclid NE, 87110  
Conrad & Laura Romero, 7521 Cutler Avenue NE, 87110  
Ralph & Denise Kleinstiver, 7612 Leah Drive NE, 87110