

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

NATHANIEL SIMS request(s) a special exception to Section 14-16-2-12(E)(3): a VARIANCE of 13' to the 15' rear yard setback area requirement to allow an existing dwelling on all or a portion of Lot(s) 6, Block(s) 50, TERRACE ADDN zoned R-3, located at 1502 SILVER AVE SE (K-15)

Special Exception No:..... **11ZHE-80260**
Project No: **Project# 1009008**
Hearing Date: 01-17-12
Closing of Public Record: 01-17-12
Date of Decision: 01-27-12

STATEMENT OF FACTS: The applicant, Nathaniel Sims, requests a variance of 13' to the 15' rear yard setback area requirement to allow an existing dwelling. Mr. Sims stated that he purchased this property in 2009. He testified that this lot is exceptional because it is one of only three properties that are zoned R-3 and is the only one that sits on a corner lot allowing for parking in the front and side streets. He also indicated that the dwelling is historical and was built in 1917.

There are currently three apartments below the main dwelling as well as a detached workshop on this property. Mr. Sims testified that the detached unit would not be used for rental purposes and there is sufficient parking for all units.

Bill Cobb who represented the Silver Hill Neighborhood Association testified in opposition to this request. He stated that this lot is not exceptional and that denying these requests would not create a hardship for the applicant. In addition, the letter from the Silver Hill Neighborhood Association's President is very comprehensive and offers a historical perspective of the development of this property. Mr. Jay Gunasegaram, whose daughter owns the adjacent property, also testified in opposition to this request. He feels that a structure this close to the property line creates a fire hazard and also negatively impacts their property.

The applicant essentially states that he was unaware of the non-compliance of the Zoning Ordinance when he purchased this property.

The Zoning Ordinance does not grant authority to this office to grant approval of variance requests as a result of errors made by buyers and investors to property. The houses in this area do allow for multiple residential living. The applicant may permissibly continue to have three rental units. However, he desires to have more in the presence of a studio. This would appear to be over development of property beyond what is provided by the R-3 zone.

The granting of the variances can only be supported by meeting the tests for variances as prescribed by the Zoning Ordinance. An on-site inspection and the sworn testimony of

the opponents to these requests evinces that there is no exceptionality to the parcel as compared to other parcels in the vicinity. Therefore, the applicant fails to meet the first test of the variance requirements. Accordingly, there is no need to consider unnecessary hardship due to exceptionality. Finally, financial considerations may not be the sole factor in granting variances as provided by the Zoning Ordinance.

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 February 13, 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.

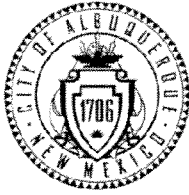
You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building 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.



Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Nathaniel Sims, 1502 Silver Avenue SE, 87106
Marla Gunasegaram, 6262 Topiary Street, Carlsbad, CA 92009
Aruni Gunasegaram, 11005 Plumewood Drive, Austin, TX 78750
Gordon Reiselt, President, SHNA
Jay Gunasegaram
Bill Cobb, Silver Hill NA, 1701 Silver SE, 87106



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

NATHANIEL SIMS request(s) a special exception to Section 14-16-2-12(E)(2): a VARIANCE of 4' to the 5' side yard setback area requirement to allow an existing dwelling on all or a portion of Lot(s) 6, Block(s) 50, TERRACE ADDN zoned R-3, located at 1502 SILVER AVE SE (K-15)

Special Exception No:..... **11ZHE-80261**
Project No: **Project# 1009008**
Hearing Date: 01-17-12
Closing of Public Record: 01-17-12
Date of Decision: 01-27-12

STATEMENT OF FACTS: The applicant, Nathaniel Sims, requests a variance of 4' to the 5' side yard setback area requirement to allow an existing dwelling. Mr. Sims stated that he purchased this property in 2009. He testified that this lot is exceptional because it is one of only three properties that are zoned R-3 and is the only one that sits on a corner lot allowing for parking in the front and side streets. He also indicated that the dwelling is historical and was built in 1917.

There are currently three apartments below the main dwelling as well as a detached workshop on this property. Mr. Sims testified that the detached unit would not be used for rental purposes and there is sufficient parking for all units.

Bill Cobb who represented the Silver Hill Neighborhood Association testified in opposition to this request. He stated that this lot is not exceptional and that denying these requests would not create a hardship for the applicant. In addition, the letter from the Silver Hill Neighborhood Association's President is very comprehensive and offers a historical perspective of the development of this property. Mr. Jay Gunasegaram, whose daughter owns the adjacent property, also testified in opposition to this request. He feels that a structure this close to the property line creates a fire hazard and also negatively impacts their property.

The applicant essentially states that he was unaware of the non-compliance of the Zoning Ordinance when he purchased this property.

The Zoning Ordinance does not grant authority to this office to grant approval of variance requests as a result of errors made by buyers and investors to property. The houses in this area do allow for multiple residential living. The applicant may permissibly continue to have three rental units. However, he desires to have more in the presence of a studio. This would appear to be over development of property beyond what is provided by the R-3 zone.

The granting of the variances can only be supported by meeting the tests for variances as prescribed by the Zoning Ordinance. An on-site inspection and the sworn testimony of

the opponents to these requests evinces that there is no exceptionality to the parcel as compared to other parcels in the vicinity. Therefore, the applicant fails to meet the first test of the variance requirements. Accordingly, there is no need to consider unnecessary hardship due to exceptionality. Finally, financial considerations may not be the sole factor in granting variances as provided by the Zoning Ordinance.

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 February 13, 2012 in the manner described below:

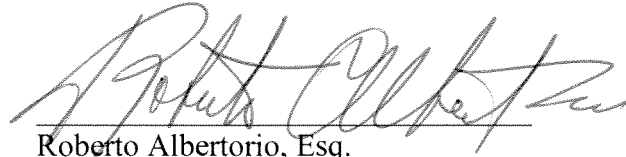
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

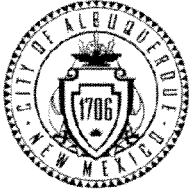
You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building 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.

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
Nathaniel Sims, 1502 Silver Avenue SE, 87106
Marla Gunasegaram, 6262 Topiary Street, Carlsbad, CA 92009
Aruni Gunasegaram, 11005 Plumewood Drive, Austin, TX 78750
Gordon Reiselt, President, SHNA
Jay Gunasegaram
Bill Cobb, Silver Hill NA, 1701 Silver SE, 87106



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

NATHANIEL SIMS request(s) a special exception to Section 14-16-2-12 (A) (1): a VARIANCE of 660' to the 7260' minimum required lot size to allow 5 existing dwelling units on all or a portion of Lot(s) 6, Block(s) 50, TERRACE ADDN zoned R-3, located at 1502 SILVER AVE SE (K-15)

Special Exception No:..... **11ZHE-80282**
Project No: **Project# 1009008**
Hearing Date: 01-17-12
Closing of Public Record: 01-17-12
Date of Decision: 01-27-12

STATEMENT OF FACTS: The applicant, Nathaniel Sims, requests a variance of 660' to the 7260' minimum required lot size to allow 5 existing dwelling units. Mr. Sims stated that he purchased this property in 2009. He testified that this lot is exceptional because it is one of only three properties that are zoned R-3 and is the only one that sits on a corner lot allowing for parking in the front and side streets. He also indicated that the dwelling is historical and was built in 1917.

There are currently three apartments below the main dwelling as well as a detached workshop on this property. Mr. Sims testified that the detached unit would not be used for rental purposes and there is sufficient parking for all units.

Bill Cobb who represented the Silver Hill Neighborhood Association testified in opposition to this request. He stated that this lot is not exceptional and that denying these requests would not create a hardship for the applicant. In addition, the letter from the Silver Hill Neighborhood Association's President is very comprehensive and offers a historical perspective of the development of this property. Mr. Jay Gunasegaram, whose daughter owns the adjacent property, also testified in opposition to this request. He feels that a structure this close to the property line creates a fire hazard and also negatively impacts their property.

The applicant essentially states that he was unaware of the non-compliance of the Zoning Ordinance when he purchased this property.

The Zoning Ordinance does not grant authority to this office to grant approval of variance requests as a result of errors made by buyers and investors to property. The houses in this area do allow for multiple residential living. The applicant may permissibly continue to have three rental units. However, he desires to have more in the presence of a studio. This would appear to be over development of property beyond what is provided by the R-3 zone.

The granting of the variances can only be supported by meeting the tests for variances as prescribed by the Zoning Ordinance. An on-site inspection and the sworn testimony of

the opponents to these requests evinces that there is no exceptionality to the parcel as compared to other parcels in the vicinity. Therefore, the applicant fails to meet the first test of the variance requirements. Accordingly, there is no need to consider unnecessary hardship due to exceptionality. Finally, financial considerations may not be the sole factor in granting variances as provided by the Zoning Ordinance.

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 February 13, 2012 in the manner described below:

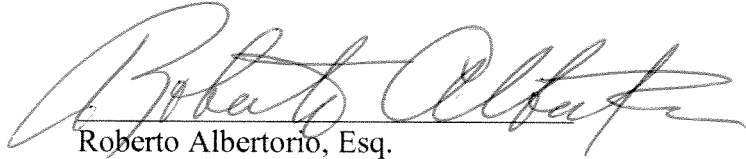
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Nathaniel Sims, 1502 Silver Avenue SE, 87106
Marla Gunasegaram, 6262 Topiary Street, Carlsbad, CA 92009
Aruni Gunasegaram, 11005 Plumewood Drive, Austin, TX 78750
Gordon Reiselt, President, SHNA
Jay Gunasegaram
Bill Cobb, Silver Hill NA, 1701 Silver SE, 87106