

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

ANDRES MEDINA III request(s) a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 5' to the required 10' separation from a dwelling for an existing accessory building for all or a portion of Lot(s) 9-P1, Block(s) 6, ENCANTADO VILLAGE UNIT 1 zoned R-T, located on 585 VIA PATRIA NW (L-10)

Special Exception No:..... **12ZHE-80283**
Project No: **Project# 1009427**
Hearing Date: 11-19-12
Closing of Public Record: 11-19-12
Date of Decision: 12-06-12

On the 19th day of November, 2012 (hereinafter "**Hearing**") Mr. Andres Medina III (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 5' to the required 10' separation from a dwelling for an existing accessory building (hereinafter "**Application**") upon the real property located at 585 VIA PATRIA NW (L-10) ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 5' to the required 10' separation from a dwelling for an existing accessory building.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (a) "SPECIAL EXCEPTIONS" reads in part: "*Variance. A variance shall be approved if and only if the following tests are met: (a) The property is exceptional*"
3. Applicant testified at the Hearing (and in his written Application) that the Subject Property is exceptional for the following reasons:
 - a. Exceptionality Reason #1: The Applicant indicated that the property is located on a corner lot. Additionally the lot is surrounded by three streets.
 - b. Exceptionality Reason #2: There is an elevation change from the swimming pool to the home of the Applicant, and that elevation change has caused the property to be "exceptional."
 - c. Exceptionality Reason #3: There is an elevation change from the swimming pool to the existing shed.
 - d. Exceptionality Reason #4: The City of Albuquerque issued the Applicant a permit to construct the pool equipment on 8/25/2004, and he relied on the permit to construct the pool equipment.
4. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (b) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (b) as a result of the exceptional aspect of the property, the regulations produce unnecessary hardship*"

5. Applicant testified at the Hearing that as a result of the exceptionality (corner lot, building permit, surround by three streets, grade change) that the City of Albuquerque Code of Ordinances Section 14-16-3-3(B)(2)(e) creates a setback regulation from an accessory building that produces an unnecessary hardship upon the Applicant and the Subject Property.
6. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (c) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (c) a particular variance is appropriate to prevent the unnecessary hardship.*"
7. Applicant testified at the Hearing that the variance Application (5 feet into the 10' setback area), if approved, would be appropriate to prevent the unnecessary hardship.
8. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (d) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (d) financial gain or loss shall not be the sole determining factor in deciding a variance.*"
9. The Application and the testimony provided by the Applicant at the Hearing both suggest that financial gain/loss was not the sole determining factor of the Application.
10. The Applicant admitted that he did not submit the plans to the Architectural Control Committee of his neighborhood association. The ZHE reminds the Applicant that this is not an element for consideration by the ZHE and is a private agreement between the encumbered lots within his subdivision.
11. The Application, File and testimony of the Applicant at the Hearing suggest that there is some neighborhood opposition and some neighborhood support for this Application. Specifically, Steven Wick supports the Application and indicated that the accessory structure is not visible from across the street. Norman Mason the Vice President of the Encanto Village Neighborhood Association indicated that the parties met and no final agreement was reached between the Applicant and the leadership of the neighborhood association. Mrs. Yolanda Medina (the wife of the Applicant) spoke in support of the Application. Ms. Linda Oaks previously objected to the property but she now is supportive of the application stating that it would be "unreasonable and burdensome to move the building".
12. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
13. The Applicant has adequately justified the variance Application upon the Subject Property pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL of a VARIANCE of 5' to the required 10' separation from a dwelling for an existing accessory building upon the real property located at 585 VIA PATRIA NW.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 21, 2012 in the manner described below:

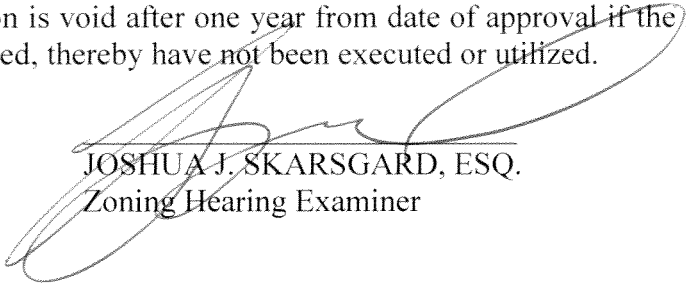
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$50.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.

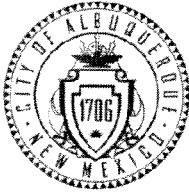
You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building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



JOSHUA J. SKARSGARD, ESQ.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Andres Medina III, 585 Via Patria NW, 87121
Jon McCormick, 2823 Richmond Dr NE, 87107
Norman Mason, 7427 Via Tranquillo SW, 87121
Linda Oakes, 7415 Via Tranquillo SW, 87121



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Project No: **Project# 1009427**
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Date of Decision: 12-06-12

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FINDINGS:

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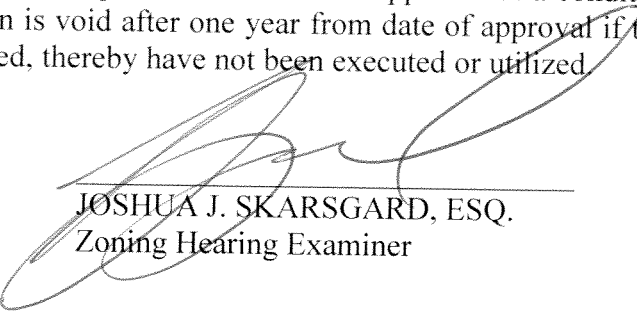
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