

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

TIM & RAMONA JARVIS (HABITATION INC., AGENT) request(s) a special exception to Section 14-16-2-6(e)(5)(a): a VARIANCE of 5' to the 5' side yard setback area requirement for an existing addition on all or a portion of Lot(s) 30, Block(s) 2B, COUNTRY CLUB ADDN zoned R-1, located at 1310 MARQUETTE PLACE NE (K-15)

Special Exception No: **11ZHE-80011**
Project No: **Project# 1008651**
Hearing Date: 02-15-11
Closing of Public Record: 02-15-11
Date of Decision: 03-01-11

STATEMENT OF FACTS: The applicants, Tim and Ramona Jarvis, request a variance of 5' to the 5' side yard setback area requirement for an existing addition. The applicants are represented by agent Holly Arroyo of Habitation Inc., General Contractors. A new site plan was submitted by the applicant at the request of the Zoning Hearing Examiner. It replaces the initial submission and is part of the permanent record.

The agent stated that her clients submitted site plans and obtained City of Albuquerque permits approved by the Zoning Enforcement Office. It is important to note that the Zoning Enforcement office does not come under the authority or jurisdiction of the Zoning Hearing Examiner. The permits granted were relied upon by the applicant and they built their structure. There was no evidence to refute these statements. The applicant was later cited for encroachment into the setback as it was later discovered that the permits were issued in error.

The applicant now appears before this office requesting approval of this requested variance because of the City's error.

There was evidence presented suggesting that this lot is exceptional. However, a review of the general landscape shows many lots with similar configurations.

There is opposition to this variance request. A summary of the opponent's testimony essentially states that this application for a variance does not meet the requirements for approval. There is no exceptionality to the parcel as compared to other lots in the vicinity.

During the hearing the applicant's agent was advised that this office may not compound an error in the initial granting of permits by approving a special exception. The applicant may have other avenues for remedy, but it is well settled that variances to be granted must meet the standards adopted by the City Council as provided by the Zoning Ordinance. This request does not meet the standard.

Accordingly, I am COMPELLED to deny this request.

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 March 16, 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.

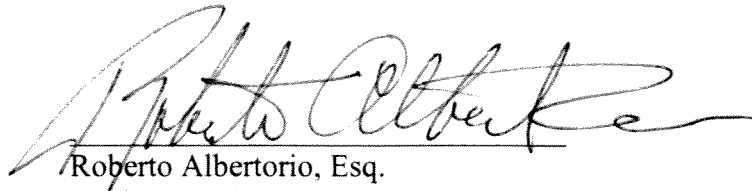
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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', is written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
 ZHE File
 Tim & Ramona Jarvis, 1310 Marquette NE, 87106
 Holly Arroyo, P.O. Box 93475, 87199
 Martha Brown
 Maggie Gombos, 422 Ridge Circle NE, 87106
 Dr. Harold M. Anderson and M.A. Danfesler
 Valerie St. John
 Richard & Phyllis Bowman, Esqs.
 William & Jane Turner
 Stanley & Inez Campbell
 Diane Marshall & Bruce Milne
 Gerald & Kathryn Simnacher
 Ed Sullivan & Patsy Glarum
 Joseph Riter
 Eve Gedanic
 Joe Binyon



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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

TIM & RAMONA JARVIS (HABITATION INC., AGENT) request(s) a special exception to Section 14-16-2-6(e)(4)(a): a VARIANCE of 15' to the 15' rear yard setback area requirement for an existing addition on all or a portion of Lot(s) 30, Block(s) 2B, COUNTRY CLUB ADDN zoned R-1, located at 1310 MARQUETTE PLACE NE (K-15)

Special Exception No: **11ZHE-80010**
Project No: **Project# 1008651**
Hearing Date: 02-15-11
Closing of Public Record: 02-15-11
Date of Decision: 03-01-11

STATEMENT OF FACTS: The applicants, Tim and Ramona Jarvis, request a variance of 15' to the 15' rear yard setback area requirement for an existing addition. The applicants are represented by agent Holly Arroyo of Habitation Inc., General Contractors. A new site plan was submitted by the applicant at the request of the Zoning Hearing Examiner. It replaces the initial submission and is part of the permanent record.

The agent stated that her clients submitted site plans and obtained City of Albuquerque permits approved by the Zoning Enforcement Office. It is important to note that the Zoning Enforcement office does not come under the authority or jurisdiction of the Zoning Hearing Examiner. The permits granted were relied upon by the applicant and they built their structure. There was no evidence to refute these statements. The applicant was later cited for encroachment into the setback as it was later discovered that the permits were issued in error.

The applicant now appears before this office requesting approval of this requested variance because of the City's error.

There was evidence presented suggesting that this lot is exceptional. However, a review of the general landscape shows many lots with similar configurations.

There is opposition to this variance request. A summary of the opponent's testimony essentially states that this application for a variance does not meet the requirements for approval. There is no exceptionality to the parcel as compared to other lots in the vicinity.

During the hearing the applicant's agent was advised that this office may not compound an error in the initial granting of permits by approving a special exception. The applicant may have other avenues for remedy, but it is well settled that variances to be granted must meet the standards adopted by the City Council as provided by the Zoning Ordinance. This request does not meet the standard.

Accordingly, I am COMPELLED to deny this request.

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 March 16, 2011 in the manner described below:

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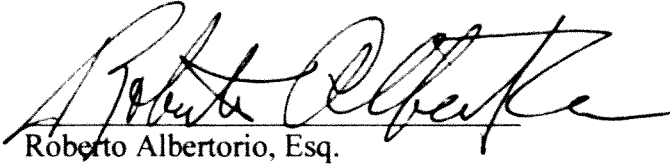
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Roberto Albertorio, Esq.
Zoning Hearing Examiner

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