

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

ROBERT OSMOND request(s) a special exception to Section 14-16-2-6(E)(4)(a): a VARIANCE request of 1' 4" to the required 5' side yard setback for a proposed addition for all or a portion of Lot(s) 4, Block(s) 2, W.J. WAGNER ADDN zoned R-1, located on 1812 MADEIRA DR NE (J-18)

Special Exception No:..... **12ZHE-80125**  
Project No: ..... **Project# 1009221**  
Hearing Date: ..... 05-15-12  
Closing of Public Record: ..... 05-15-12  
Date of Decision: ..... 05-31-12

**STATEMENT OF FACTS:** The applicant, Robert Osmond requests a variance of 1'4" to the required 5' side yard setback area at 1812 Madeira Dr NE. Anthony Wegrzynek, designer and agent for the applicant testified that his client would like to increase the living area of the existing home. A site plan submitted shows the existing 2 bedroom residence with the proposed addition which will attach the existing 2 car garage. Mr. Wegrzynek testified that this proposed request is exceptional because the dwelling and garage were built prior to the adoption of the 1959 City of Albuquerque Comprehensive City Zoning Code. Mr. Wegrzynek testified that the garage is within the side yard setback area, and once it is attached to the existing dwelling, makes the two structures non-conforming. He also testified that if the variance request were not approved, the property owners would incur the additional expense required to demolish the building. Mr. Wegrzynek feels that the variance would be an improvement to the neighborhood. He spoke to the neighbors and they had no adverse comments to the request. This matter was recommended for facilitation through the City of Albuquerque Land Use Facilitation Program. However, there was no need for a facilitated meeting. There are no letters of opposition in the file nor was there any opposition at the hearing. The yellow signs were posted.

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 the applicant has not met the burden of exceptionality of the lot located at 1812 Madiera NE for the following reasons:

1. Mr. Wegrzynek stated that the property is exceptional because the property became a non-conforming property with the connection of the residence and the garage; and
2. The zoning code defines non-conforming as a structure or land which does not conform to this article and which was in conformity with any zoning ordinance in effect at the time it was created; and
3. This addition does not make the property non-conforming, therefore it does not make the property exceptional.

Because of the reasons stated above this request is denied.

**DECISION:** Denied.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on June 15, 2012 in the manner described below:**

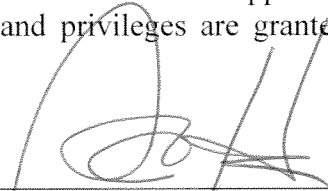
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



---

Stanley D. Harada, Esq.  
Interim Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Robert Osmond, 1812 Madeira Drive NE, 87106  
Anthony Wegrzynek, 3406 Mackland Ave NE, 87106