

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

JOSEPH C. PEREA request(s) a special exception to Section 14-16-2-5(E) and 14-16-2-6(E)(4)(a): a VARIANCE of 4" 6" for a proposed addition in the side yard setback area for all or a portion of Lot(s) B, BERNADO GALLEGOS zoned RA-2, located on 1759 AVENIDA LOS GRIEGOS NW (F-13)

Special Exception No:..... **12ZHE-80158**
Project No: **Project# 1009263**
Hearing Date: June 19, 2012
Closing of Public Record: June 19, 2012
Date of Decision: July 5, 2012

On June 19, 2012, the Interim Zoning Hearing Examiner, Stanley D. Harada heard Project 1009263, 12ZHE-80158, a variance of 4'6" to the required 5' side yard setback for a proposed addition at 1759 Avenida Los Griegos NW.

1. Joseph C. Perea requests a variance of 4'6" to the required 5' side yard setback area for a proposed addition at 1759 Avenida Los Griegos NW.
2. Mr. Perea is requesting the variance to enclose a carport for needed storage.
3. Mr. Perea has owned the property for over 12 years.
4. Mr. Perea testified that he has an existing 2 car garage.
5. Mr. Perea testified that the property is exceptional due to the fact that it is irregular in size and shape.
6. Mr. Perea stated that the parcel is also exceptional because there are seven (7) adjacent properties which are uncharacteristic in the vicinity, and the physical traits have not been changed since Mr. Perea purchased the property in 1999.
7. Mr. Perea testified the hardship is the configuration of the parcel in such a way that it limits the setback on the south east corner and is unattainable. The physical characteristic of the parcel has caused an undue hardship and has denied Mr. Perea reasonable use of the property in that he is denied the right of security on a daily basis.
8. Mr. Perea testified that he built the existing carport in 2004.
9. City records do not show that a building permit was applied for in 2004.
10. Mr. Perea submitted a petition with seven (7) signatures in support of the variance request. Two of the seven signatures have rescinded their approval in the petition. (Mike and Lucinda Garcia, Edward and Justie Martinez)
11. There are letters of opposition in the file (Jeana Gurley, who lives directly south to Mr. Perea).
12. Ms. Gurley testified that she does not think the property is exceptional in size and shape. It is very similar to her lot.
13. Ms. Gurley testified in opposition that Mr. Perea is going to use the proposed enclosed carport to do auto repair for himself as well as friends vehicles.
14. Ms. Gurley testified that she approached Mr. Perea on 4/2/12 when it appeared that there was some activity going on with the carport. When Ms. Gurley asked

- Mr. Perea why he was putting windows on the carport, Mr. Perea stated "I just decided to enclose the carport so I can restore my grandfather's truck."
15. Ms. Gurley testified that she is concerned that the proposed request would result in excessive noise, traffic, dust, fumes, toxic material that will be emanating from Mr. Perea's variance request is approved and he is allowed to work on vehicles.
 16. Photos show the carport is very close to the common property line of Ms. Gurley and Mr. Perea.
 17. Lydia Paiz testified in opposition. Ms. Paiz is worried that if the variance is approved, it will set precedence and eliminate the rural feel of the valley. Ms. Paiz could not believe the carport was built so close to the common wall.
 18. Teresa E. Chavez testified in opposition to the request. Ms. Chavez lives at 1713 Patrick Place NW.
 19. Ms Chavez stated that when Mr. Perea and his friends work on cars on the narrow street, it is very difficult to get through it.
 20. Candace Knight (President of Los Griegos Neighborhood Association) testified in opposition to the variance request.
 21. Ms Knight is very concerned that allowing the variance request is sending the wrong message to homeowners. Ms. Knight is concerned that Los Griegos is turning into a North 4th Street.
 22. Ms. Knight stated that there is not enough room for Mr. Perea's auto activities, as well as enough room for his boat.
 23. Ms. Knight testified that the carport was built without a permit drains rainwater runoff to the common wall which compromises the structural strength over time.
 24. Mr. Perea rebuttal states that the carport will not be a car store. Work takes place in existing garage. The carport will be used only for storage. The drainage issues can be alleviated with a sump pump system which pumps water away from the wall.

FINDINGS:

1. The property is not exceptional.
2. The request will significantly interfere with the enjoyment of other land in the vicinity.
3. The request is not consistent with the spirit of the Zoning Code, substantial justice and the general public interest.
4. The carport was built in 2004 without a building permit and in violation of required setbacks.
5. The carport creates drainage problems for the adjoining property.
6. There is opposition to the request from adjacent property owners.
7. There is opposition from the neighborhood associations.
8. They yellow signs were posted for the required time.

CONCLUSION: Substantial evidence does not support the request and is therefore denied.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on July 20, 2012 in the manner described below:

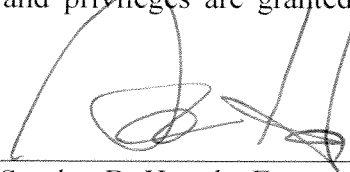
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

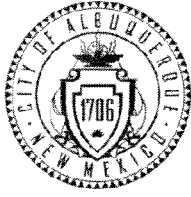
Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for 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
Joseph Perea, 1759 Avenida Los Griegos NW, 87107
Mike and Lucinda Garcia, 1705 Avenida Cristo Rey NW, 87107
Edward Martinez, 1745 Avenida Los Griegos NW, 87107

Justie Martinez, 1724 Griegos Rd NW, 87107
Wallace Preston, 1730 Griegos NW, 87107
Jose A. Candelaria, 1709 Avenida Cristo Rey NW, 87107
Melba and Rick Sanchez, 1756 Avenida Los Griegos NW, 87107
Adam Apodaca, 1716 Griegos NW, 87107
Jeana Gurley, 1753 Avenida Los Griegos NW, 87107



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JOSEPH C. PEREA request(s) a special exception to Section 14-16-2-5(E) and 14-16-2-6(E)(4)(b): a VARIANCE of 4' 6" to the required 10' separation between an existing dwelling and a proposed addition for all or a portion of Lot(s) B, BERNADO GALLEGOS zoned RA-2, located on 1759 AVENIDA LOS GRIEGOS NW (F-13)

Special Exception No:..... **12ZHE-80159**
Project No: **Project# 1009263**
Hearing Date: June 19, 2012
Closing of Public Record: June 19, 2012
Date of Decision:

On June 19, 2012, the Interim Zoning Hearing Examiner, Stanley D. Harada heard Project 1009263, 12ZHE-80159, a variance of 4'6" for a proposed addition in the side yard setback for a proposed addition at 1759 Avenida Los Griegos NW.

1. Joseph C. Perea requests a variance of 4'6" for a proposed addition in the side yard setback area for a proposed addition at 1759 Avenida Los Griegos NW.
2. Mr. Perea is requesting the variance to enclose a carport for needed storage.
3. Mr. Perea has owned the property for over 12 years.
4. Mr. Perea testified that he has an existing 2 car garage.
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7. Mr. Perea testified the hardship is the configuration of the parcel in such a way that it limits the setback on the south east corner and is unattainable. The physical characteristic of the parcel has caused an undue hardship and has denied Mr. Perea reasonable use of the property in that he is denied the right of security on a daily basis.
8. Mr. Perea testified that he built the existing carport in 2004.
9. City records do not show that a building permit was applied for in 2004.
10. Mr. Perea submitted a petition with seven (7) signatures in support of the variance request. Two of the seven signatures have rescinded their approval in the petition. (Mike and Lucinda Garcia, Edward and Justie Martinez)
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23. Ms. Knight testified that the carport was built without a permit drains rainwater runoff to the common wall which compromises the structural strength over time.
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FINDINGS:

1. The property is not exceptional.
2. The request will significantly interfere with the enjoyment of other land in the vicinity.
3. The request is not consistent with the spirit of the Zoning Code, substantial justice and the general public interest.
4. The carport was built in 2004 without a building permit and in violation of required setbacks.
5. The carport creates drainage problems for the adjoining property.
6. There is opposition to the request from adjacent property owners.
7. There is opposition from the neighborhood associations.
8. They yellow signs were posted for the required time.

CONCLUSION: Substantial evidence does not support the request and is therefore denied.

DECISION: Denied.

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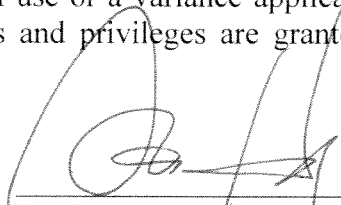
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Stanley D. Harada, Esq.
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