

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

LORIE GALLEGOS (FACILITY BUILD) request(s) a special exception to Section 14-16-3-3(A)(3)(b) and 14-16-2-6(E)(4)(a): a VARIANCE of 2' to the required 5' side yard setback for a proposed addition all or a portion of Lot(s) 14, Block(s) H, MONKBRIDGE GARDENS ADDN zoned R-1, located on 926 HEADINGLY AVE NW (G-14)

Special Exception No: ..... **12ZHE-80270**  
Project No: ..... **Project# 1009418**  
Hearing Date: ..... 10-16-12  
Closing of Public Record: ..... 10-16-12  
Date of Decision: ..... 10-31-12

On October 16, 2012, Lorie Gallegos of Facility Build appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 2' to the required 5' side yard setback for a proposed addition at 926 Headingly Ave NW. Below are the findings of facts.

**FINDINGS:**

1. Ron Jaramillo, agent for Lorie Gallegos requests a variance of 2' to the required 5' setback for a proposed addition at 926 Headingly Ave NW.
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. Mr. Jaramillo testified that the property is exceptional as compared with other land in the vicinity subject to the same regulations because it was built in the 1930's, prior to the adoption of the City of Albuquerque Zoning Code and that it has a 3' setback from the property line.
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. Both the application and testimony of Mr. Jaramillo provided at the hearing demonstrate that as a result of the exceptionality of the lot (age of construction and unique shape), the City of Albuquerque regulations (setback requirements) produce an unnecessary hardship.
6. Mr. Jaramillo testified that as a result of the exceptional aspect of the property, the setback requirements in the City Zoning Code produce an unnecessary hardship that creates an exceptional, substantial, and unjustified limitation of his reasonable use of the subject property.
7. Mr. Jaramillo testified that the City of Albuquerque Office of Neighborhood Revitalization program will perform the necessary rehabilitations to the property.

8. Marie Chavez, Manager of the City of Albuquerque Office of Neighborhood Revitalization, testified in support, and that the work would include ADA compliance renovations.
9. 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.*"
10. Both the application and testimony provided at the hearing demonstrate that the variance to the setback requirements are needed to prevent the unnecessary hardship.
11. Ms. Chavez testified that the renovations to the home include exterior ramps and bathroom upgrades. The existing bathroom is 6'x 5', and does not allow for the homeowners disabled son to easily maneuver about the room.
12. Ms. Chavez testified that the home does not allow "stealing" square footage from the existing space and that an addition was needed.
13. Mr. Jaramillo testified that the variance differs from the development in the vicinity, which would be permitted under existing regular zoning regulation no more than necessary to overcome the unnecessary hardship.
14. Mr. Jaramillo testified that proposed addition will enlarge the space 1'6" x 6'1" and will include ADA compliance.
15. Mr. Jaramillo testified that without addition to the bathroom will not comply with ADA Fair Housing Accessibility Guidelines.
16. 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.*"
17. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
18. 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.
19. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS.: a VARIANCE of 2' to the required 5' side yard setback for a proposed addition all or a portion of Lot(s) 14, Block(s) H, MONKBRIDGE GARDENS ADDN zoned R-1, located on 926 HEADINGLY AVE NW (G-14)

**DECISION:**

**APPROVAL** of a VARIANCE of 2' to the required 5' side yard setback for a proposed addition all or a portion of Lot(s) 14, Block(s) H, MONKBRIDGE GARDENS ADDN zoned R-1, located on 926 HEADINGLY AVE NW (G-14)

**CONDITIONS OF APPROVAL:**

1. The construction of the addition shall comply with City of Albuquerque Building Code and the American with Disabilities Act.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on November 16, 2012 in the manner described below:**

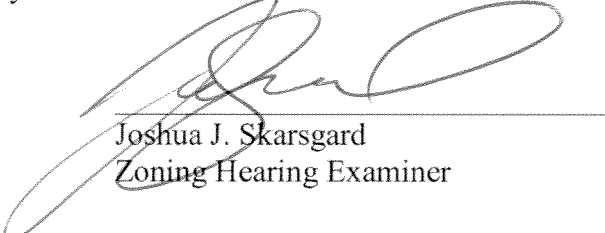
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



Joshua J. Skarsgard  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Lorie Gallegos, 926 Headingly NW, 87107  
Marie Chavez, 700 4<sup>th</sup> Street SW, 87102  
Facility Build, 5904 Florence Ave NE, 87113