

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

JAMES WRIGHT AND DENISE HAMMER request(s) a special exception to Section 14-16-2-6(E)(1): a VARIANCE of 2' to the required 20' front yard setback to allow a proposed patio cover for all or a portion of Lot(s) 9, Block(s) C, ALTURA ADDITION zoned R-1, located on 1735 ALISO DR NE (J-17)

Special Exception No: **12ZHE-80277**
Project No: **Project# 1009422**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Denise Hammer appeared before Zoning Hearing Examiner, Joshua Skarsgard, requesting a variance of 2' to the required 20' front yard setback to allow a proposed patio cover at 1735 Aliso Dr NE. Below are the findings of facts.

FINDINGS:

1. James Wright and Denise Hammer request a variance of 2' to the required 20' front yard setback to allow a proposed patio cover at 1735 Aliso Dr NE.
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. Ms. Hammer testified that her property is exceptional because of a utility easement to the north of the property and the remaining shape of the property (after factoring in the easement).
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. Ms. Hammer testified that as a result of the exceptional nature of the property (easement and shape), that the City of Albuquerque front yard setback requirement creates an unnecessary hardship for Ms. Hammer and Mr. Wright as it reduces their reasonable use of their 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. Ms. Hammer's application and testimony provided at the hearing suggest that the variance, if approved, will prevent the unnecessary hardship (setback requirements).
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 Ms. Hammer both provide evidence that financial gain/loss is not the sole determining factor of the Variance Application.
10. Ms. Hammer testified that this request will not be injurious the surrounding neighborhood or activities as it will not be noisy or odorous.
11. Ms. Hammer and Mr. Wright would like to construct this patio for increased privacy and use of the front yard.
12. Some of the various neighbors: Mira Berkstein, Ian and Roxanna Caird, John Patchell, Susie Kubie, Helen Minot, Jim Hoyt, and Peggie Alexander are all in support of this variance application. There is a letter in the file corroborating their support.
13. 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.
14. 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 20' front yard setback to allow a proposed patio cover for all or a portion of Lot(s) 9, Block(s) C, ALTURA ADDITION zoned R-1, located on 1735 ALISO DR NE (J-17)

DECISION:

APPROVAL of a VARIANCE of 2' to the required 20' front yard setback to allow a proposed patio cover for all or a portion of Lot(s) 9, Block(s) C, ALTURA ADDITION zoned R-1, located on 1735 ALISO DR NE (J-17).

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:

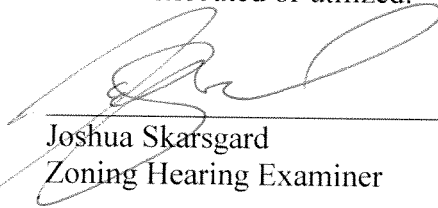
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

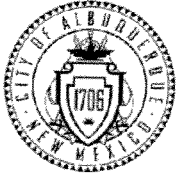
You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building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

cc: Zoning Enforcement
ZHE File
James Wright and Denise Hammer, 1735 Aliso Dr NE, 87110
Mira Berkstein, 1815 Aliso Dr NE, 87110
Ian and Roxanna Caird, 1814 Aliso Dr NE, 87110
John Patchell, 1811 Aliso Dr NE, 87110
Susie Kubie, 1800 Aliso Dr NE, 87110
Leah Burkhardt, 1731 Aliso Dr NE, 87110
Helene Minot, 1727 Aliso Dr NE, 87110
Jim Hoyt, 1726 Aliso Dr NE, 87110
Peggie Alexander, 1724 Aliso Dr NE, 87110



CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

JAMES WRIGHT AND DENISE HAMMER request(s) a special exception to Section 14-16-2-6(B)(14): a CONDITIONAL USE to allow a proposed 5' fence in the front yard setback area for all or a portion of Lot(s) 9, Block(s) C, ALTURA ADDITION zoned R-1, located on 1735 ALISO DR NE (J-17)

Special Exception No: **12ZHE-80278**
Project No: **Project# 1009422**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, James Wright and Denise Hammer appeared before Zoning Hearing Examiner, Joshua Skarsgard, requesting a conditional use to allow a 5' fence in the front yard setback area at 1735 Aliso Dr NE. Below are the findings of facts.

FINDINGS:

1. James Wright and Denise Hammer request a conditional use to allow a 5' fence in the front yard setback area at 1735 Aliso Dr NE.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
3. Ms. Hammer testified that this request will not be injurious the surrounding neighborhood or activities as it will not be noisy or odorous.
4. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*"
5. The Applicant indicated that the conditional use will not be damaged by surrounding structures.
6. Ms. Hammer and Mr. Wright would like to construct this fence along with their patio cover in the front yard for increased privacy and use of the front yard.
7. Mr. Wright testified that they set up furniture in the front yard to visualize the wall and patio to make sure that there was no conflict with the neighbors.
8. Mira Berkstein, Ian and Roxanna Caird, John Patchell, Susie Kubie, Helen Minot, Jim Hoyt, and Peggie Alexander are all in support of this request. There is a letter in the file.
9. The yellow "Notice of Hearing" signs were posted for the prescribed amount of time.

10. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS

DECISION:

APPROVAL of a CONDITIONAL USE to allow a proposed 5' fence in the front yard setback area for all or a portion of Lot(s) 9, Block(s) C, ALTURA ADDITION zoned R-1, located on 1735 ALISO DR NE (J-17)

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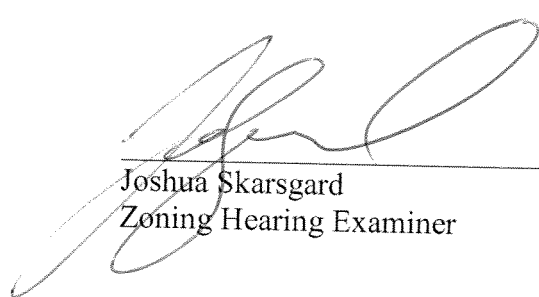
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