

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

HARRO AND NANCY ACKERMANN (URI, LLC, WINTON SMITH, AGENT) request(s) a special exception to Section 14-16-2-6(E)(4)(a): a VARIANCE of 3.7' to the required 8.7' side yard setback for a proposed addition for all or a portion of Lot(s) 29A, ACADEMY HILLS UNIT 3 zoned R-1, located on 9916 ACADEMY HILLS DR NE (E-21)

Special Exception No: **12ZHE-80288**
Project No: **Project# 1009429**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Winton Smith, agent for Harro and Nancy Ackermann appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 3.7' to the required 8.7' side yard setback for a proposed addition at 9906 Academy Hills Dr NE. Below are the findings of facts:

FINDINGS:

1. Winton Smith, agent for Harro and Nancy Ackerman are requesting a variance of 3.7' to the required 8.7' side yard setback for a proposed addition at 9906 Academy Hills 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. Mr. Smith testified that the parcel has an exceptional shape because it is wide in front and narrows in the rear, which does not allow for full use of the site.
4. Mr. Smith testified that the property is exceptional because it is six feet below the adjacent east lot where the addition is proposed.
5. 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*"
6. Both the application and testimony provided at the hearing demonstrate that as a result of the exceptionality of the lot (its shape and grade), the City of Albuquerque regulations produce an unnecessary hardship (setback requirements).
7. Mr. Smith testified that he has spoken to the affected property owner's to the east of the addition, and had no adverse comments to report.
8. Mr. Smith testified that because of the 6' drop in elevation between the two properties, the proposed addition does not adversely impact the property to the east.
9. Mr. Smith testified the variance request will not be of substantial detriment to the adjacent property, public good, and will not create health or safety hazards and character of the area.

10. 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.*"
11. Both the application and testimony provided at the hearing demonstrate that the variance to the setback is needed to prevent the unnecessary hardship.
12. 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.*"
13. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
14. 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.
15. There are no letters of opposition in the file.
16. 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 3.7' to the required 8.7' side yard setback for a proposed addition for all or a portion of Lot(s) 29A, ACADEMY HILLS UNIT 3 zoned R-1, located on 9916 ACADEMY HILLS DR NE (E-21)

DECISION:

APPROVAL of a VARIANCE of 3.7' to the required 8.7' side yard setback for a proposed addition for all or a portion of Lot(s) 29A, ACADEMY HILLS UNIT 3 zoned R-1, located on 9916 ACADEMY HILLS DR NE (E-21)

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:

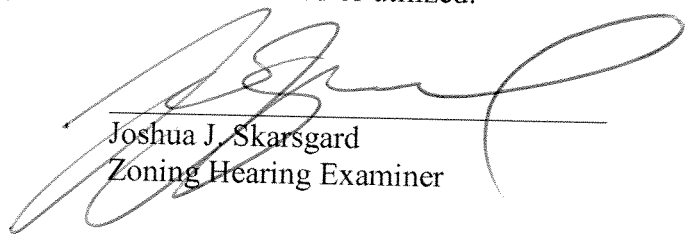
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

Harro and Nancy Ackermann, 9916 Academy Hills Dr NE, 87111
Winton Smith, 5607 Planeta Ct NE, 87111