



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

KENNETH AND MICHELLE SWAN request(s) a special exception to Section 14-16-2-6(E)(3)(a): a VARIANCE of 5' to the required 20' for a proposed addition in the side yard setback area for all or a portion of Lot(s) 4, Block(s) 27, MESA VILLAGE ADDITION zoned R-1, located on 1000 WADE CIRCLE NE (J-20)

Special Exception No: **12ZHE-80147**
Project No: **Project# 1009252**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Kenneth Swan appeared before Zoning Hearing Examiner, Joshua J. Skarsgard as a remand from the Board of Appeals, requesting a Variance of 5' to the required 20' for a proposed addition in the side yard setback area at 1000 Wade Circle NE. Below are the findings of facts.

FINDINGS:

1. Kenneth Swan is requesting a Variance of 5' to the required 20' setback for a proposed addition in the side yard setback area at 1000 Wade Circle 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. Swan testified that his lot is exceptional as compared with other land in the vicinity subject to the same regulations by reason of it being a corner lot (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
4. Mr. Swan testified that he is trying to build a garage on a corner lot that has plenty of space from the side yard.
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, the City of Albuquerque regulations (setback requirements) produce an unnecessary hardship.
7. Mr. Swan introduced new evidence at the Board of Appeals by stating that he has an 80 year old father in law who is on oxygen (that his wife cares for) and that the side yard setback regulations contained within the City of Albuquerque Code of Ordinances produces an unnecessary hardship on his family (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
8. Mr. Swan testified that the garage addition and ramp he is proposing to build is necessary to overcome the unnecessary hardship produced by the City of Albuquerque side yard

- setback regulations (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
9. Mr. Swan testified that the garage addition and sloped ramp will allow his wife to wheel his father in law in and out of the home and garage safely.
 10. Mr. Swan testified that having the extra 5' slope will give his wife the opportunity to be able to push his father in law up the ramp, where she otherwise would have to struggle to transport her father in law.
 11. Mr. Swan indicated that he failed to provide this justification (exceptionality and unnecessary hardship) to the Zoning Hearing Examiner at the first hearing because he was shy about his medical issues and did not want his private family health matters exposed. He remedied those failures to justify the variance during the remand back to the Zoning Hearing Examiner (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
 12. 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.*"
 13. Both the application and testimony provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship (setback requirements).
 14. 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.*"
 15. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
 16. There are no letters of opposition in the file, nor were there anyone at the hearing opposing the request.
 17. 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.
 18. 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 5' to the required 20' for a proposed addition in the side yard setback area for all or a portion of Lot(s) 4, Block(s) 27, MESA VILLAGE ADDITION zoned R-1, located on 1000 WADE CIRCLE NE (J-20)

DECISION:

APPROVAL of a VARIANCE of 5' to the required 20' for a proposed addition in the side yard setback area for all or a portion of Lot(s) 4, Block(s) 27, MESA VILLAGE ADDITION zoned R-1, located on 1000 WADE CIRCLE NE (J-20)

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:

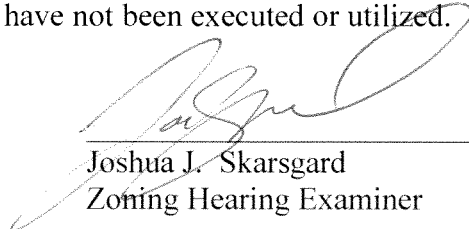
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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
Kenneth Swan, 1000 Wade Circle NE, 87112