

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

JAMES ETRE request(s) a special exception to Section 14-16-2-5(E): a VARIANCE of 10' to the 25' rear yard setback area requirement for a proposed addition on all or a portion of Lot(s) 19, Block(s) 1, THE ESTATES AT VISTA DEL NORTE zoned RA-2, located at 804 PASEO VERDE RD NE (E-16)

Special Exception No:..... **11ZHE-80045**
Project No: **Project# 1008711**
Hearing Date: 08-16-11
Closing of Public Record: 08-16-11
Date of Decision: 08-23-11

STATEMENT OF FACTS: The applicant, James Etre, requests a variance of 10' to the 25' rear yard setback area requirement for a proposed addition. This matter was initially heard at the April 19, 2011 ZHE Hearing at which time the matter was denied. Mr. Etre filed an appeal with the Board of Appeals and this matter was remanded back to this office in order to resolve procedural issues. There was no appeal hearing on the merits of the determination of denial.

At the August 16, 2011 hearing, the applicant was given a full opportunity to present his case anew, including submitting additional exhibits.

This is a RA-2 zoned lot that borders an arroyo to the rear of the property; as do other lots along Paseo Verde Road NE. Variances to the setbacks in this zone are inconsistent with the intent of the RA-2 zoning and would negatively impact the community by reducing property values. These are premium lots for which a higher cost applies. The applicant has alternative lot space in order to achieve his requested expansion which would not require variances. The Zoning Ordinance provides that variances are to be granted if there is no alternative to the requested variance. In this case, there is an alternative, as testified to by the applicant.

In addition, the parcel does not possess any exceptional physical conditions which would create an unnecessary hardship.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this parcel is not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on September 7, 2011 in the manner described below:

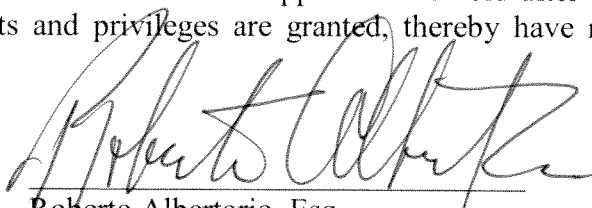
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
James Etre, 804 Paseo Verde Road NE, 87113