



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

KATHRYN MILLER request(s) a special exception to Section 14-16-2-6(E)(3)(b): a VARIANCE of 9' to the 10' side yard setback area requirement for a proposed addition to the dwelling on all or a portion of Lot(s) 6, Block(s) 2, MCDUFFIE PLACE UNIT 3 zoned R-1, located at 3402 MACKLAND AVE NE (J-16)

Special Exception No:.....**09ZHE-80321**
Project No:.....**Project# 1007994**
Hearing Date:.....11-17-09
Closing of Public Record:.....11-17-09
Date of Decision:.....12-01-09

STATEMENT OF FACTS: The applicant, Kathryn Miller, requests a variance of 9' to the 10' side yard setback area requirement for a proposed addition to the dwelling. The applicant was represented by Tom McCulloug and Andrew Sherwood. They initially testified that this is the smallest lot of four corner lots. The applicants have owned this property for four years and reside there. The remodeling effort will be a two car garage with storage. The applicant testified "this is a common lot" "nothing physically exceptional" and stated that there is no exceptionality.

There is considerable opposition to this request as evidenced by letters in the file. In addition, there were nine (9) people present at the hearing opposing both of these requests. Opponents state this proposed expansion would not be in keeping with the character of the neighborhood. The Summit Park Neighborhood Association was represented by Ms. Jennings. She argues that the request does not meet the burden of proof as required. She states that there is no exceptionality, no hardship as defined by the Ordinance; no denial of reasonable use or return on the applicant's investment and will significantly interfere with the enjoyment of other land. Finally, she submits that this development will significantly impact the safety to the neighborhood.

Based on all of the evidence, an on-sight inspection and a review of the entire file, it is determined that these requests do meet the standards for approval of the requested variances.

The applicant states that there is no physical exceptionality. Once lack of exceptionality has been established, no further inquiry is required.

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 December 16, 2009 in the manner described below:

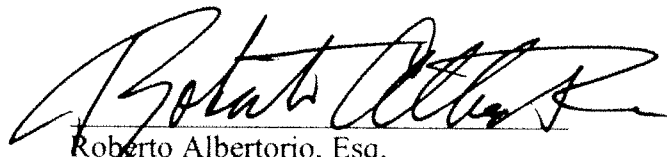
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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

A handwritten signature in black ink, appearing to read 'Roberto Albertorio', is written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
 ZHE File
 Kathryn Miller, 7012 Guadalupe Trail NW, 87107
 Judy Jennings, Summit Park NA
 Georgianny Pena-Kues
 Robert Crossno, P.E.
 Tom McCullough, 7012 Guadalupe Trail NW, 87107
 Abraham Santillanes, 3404 Calle del Monte NE



CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

KATHRYN MILLER request(s) a special exception to Section 14-16-2-6(E)(5)(a): a VARIANCE of 6' to the 15' rear yard setback area requirement for a proposed addition to the dwelling on all or a portion of Lot(s) 6, Block(s) 2, MCDUFFIE PLACE UNIT 3 zoned R-1, located at 3402 MACKLAND AVE NE (J-16)

Special Exception No:.....**09ZHE-80322**
Project No: **Project# 1007994**
Hearing Date: 11-17-09
Closing of Public Record: 11-17-09
Date of Decision: 12-01-09

STATEMENT OF FACTS: The applicant, Kathryn Miller, requests a variance of 6' to the 15' rear yard setback area requirement for a proposed addition to the dwelling. The applicant was represented by Tom McCulloug and Andrew Sherwood. They initially testified that this is the smallest lot of four corner lots. The applicants have owned this property for four years and reside there. The remodeling effort will be a two car garage with storage. The applicant testified "this is a common lot" "nothing physically exceptional" and stated that there is no exceptionality.

There is considerable opposition to this request as evidenced by letters in the file. In addition, there were nine (9) people present at the hearing opposing both of these requests. Opponents state this proposed expansion would not be in keeping with the character of the neighborhood. The Summit Park Neighborhood Association was represented by Ms. Jennings. She argues that the request does not meet the burden of proof as required. She states that there is no exceptionality, no hardship as defined by the Ordinance; no denial of reasonable use or return on the applicant's investment and will significantly interfere with the enjoyment of other land. Finally, she submits that this development will significantly impact the safety to the neighborhood.

Based on all of the evidence, an on-sight inspection and a review of the entire file, it is determined that these requests do meet the standards for approval of the requested variances.

The applicant states that there is no physical exceptionality. Once lack of exceptionality has been established, no further inquiry is required.

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 December 16, 2009 in the manner described below:

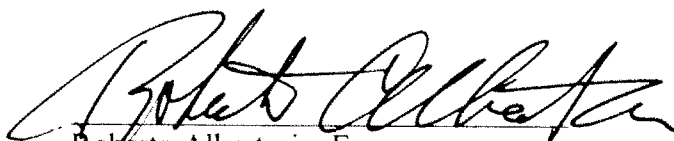
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Roberto Albertorio, Esq.
Zoning Hearing Examiner

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