



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

Robert and Laura Norman request a variance of 4 ft to the minimum required 10 ft side yard setback and a variance of 17 1/2 ft to the minimum required 25 ft rear yard setback for Lot 3-P1, Villa Plaza Vieja, located on 2704 Corte Mirabal RD NW, zoned R-A [Section 14-16-5-1]

Special Exception No:.....**VA-2018-00038**
Project No:**Project#2018-001306**
Hearing Date:08-21-18
Closing of Public Record:08-21-18
Date of Decision:09-05-18

On the 21st day of August, 2018, Johnathon Turner, agent for property owners Robert and Laura Norman (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft to the minimum required 10 ft side yard setback and a variance of 17 1/2 ft to the minimum required 25 ft rear yard setback (“Application”) upon the real property located at 2704 Corte Mirabal RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 ft to the minimum required 10 ft side yard setback and a variance of 17 1/2 ft to the minimum required 25 ft rear yard setback.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “A *variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
 - (a) *The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;*
 - (b) *There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;*
 - (c) *Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and*
 - (d) *Substantial justice is done.*”
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. Johnathon Turner, agent for property owners Robert and Laura Norman (“Applicant”) appeared gave evidence in support of the application.
5. The subject property is currently zoned R-A.
6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified of the application.

7. The affected neighborhood association is the West Old Town Neighborhood Association.
8. A letter submitted indicates the neighborhood association gives an opinion of “indifference” to the application.
9. A letter from adjacent property owners, Christopher and Kathleen Burmeister, 2700 Corte Mirabel NW, showing support for the application was submitted
10. A letter from adjacent property owner Bobak Khodale, 2704 Corte Mirabel indicating support for the application was submitted.
11. A letter from nearby neighbor Boyd Barger, 2901 Maximillian Rd NW, in support of the application was submitted.
12. Geraldine A. White, 2708 Corte Mirabel NW, appeared and gave testimony in support of the application.
13. Charles Chavez, 2717 Mountain Road NW, appeared and gave testimony in opposition to the application.
14. Mr. Chavez indicated he opposes changes to the neighborhood and desires for things to “remain the same.”
15. The subject property was legally platted by the City of Albuquerque prior to the enactment of zoning regulations of the IDO and is now subject to more restrictive setback standards that prior to May 17, 2018, for which no compensation was paid.
16. The subject property is exceptionally shaped and is L shaped in form.
17. The subject property contains 6 different lot lines which makes it unique in physical characteristics as compared with other properties in the same zone district and vicinity.
18. The application will allow construction of a new home and the infill development of a vacant lot will remove blight, enhance the appearance, improve drainage, and increase property values within the subdivision, thereby improving and strengthening the public safety, health and welfare of the neighborhood and surrounding community.
19. The subject property is the last vacant lot in the Villa Plaza Vieja Subdivision.
20. The proposed project is a new energy efficient single family home.
21. The construction of the home, will positively impact the surrounding properties and complete the last part of the infrastructure in the subdivision.
22. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
23. The ZHE finds that there are special circumstances applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-4-2(C)(2)(b).
24. The ZHE finds that such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable district, as required by Section 14-16-4-2(C)(2)(c).

25. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
26. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
27. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 4 ft to the minimum required 10 ft side yard setback and a variance of 17 1/2 ft to the minimum required 25 ft rear yard setback.

If you wish to appeal this decision, you must do so by September 20, 2018 in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to be filed within 15 days of the decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, on the west side of the lobby.
Please present this letter of notification when filing an appeal.

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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Robert and Laura Norman, 830 Newton Way, 86323
Jonathan Turner, 600 1st ST NW, Suite 211, 87102
Charles Chavez, 2717 Mountain RD NW, 87104
Geraldine White, 2708 Corte Mirabal Rd NW, 87104